

Galindo Cárdenas et al. v. Peru

ABSTRACT¹

This case is about the prosecution of an attorney who represented members of the terrorist organization Sendero Luminoso in criminal proceedings. The victim, who had been coerced in serving as defense counsel by members of Sendero Luminoso, later became a judge. While he was serving as a magistrate, he was arrested and detained for a month. Eventually, charges against him were dropped, but only after he had admitted to illegal acts. The Court found the State in violation of several articles of the American Convention. This case is notable for the discussion of Peru's Repentance Law.

I. FACTS

A. Chronology of Events

December 1992: Mr. Luís Antonio Galindo Cárdenas is an attorney with a private practice.² Mr. Galindo Cárdenas is married to Mrs. Irma Díaz Galindo, with whom he has a ten-year-old son.³ Mr. Galindo Cárdenas serves as defense counsel for Juan Santamaría Ramos, “Mirko,” who is being prosecuted for terrorism as an alleged member of *Sendero Luminoso* (Shining Path).⁴ However, Mr. Galindo Cárdenas withdraws from the case before the trial.⁵

August 1993: Two women and one man appear in Mr. Galindo Cárdenas's office to persuade him to provide legal defense for Eduardo Elí Nación Ramos, more commonly known as “Beto,” who is also charged with terrorism and allegedly a member of *Sendero Luminoso*.⁶

1. Brenna McGill, Author; Edgar Navarette, Editor; Erin Gonzalez, Chief IACHR Editor; Cesare Romano, Faculty Advisor.

2. Galindo Cárdenas et al. v. Peru, Report on Merits, Report No. 57/12, Inter-Am. Comm'n H.R., Case No. 11.568, ¶ 87 (Mar. 21, 2012).

3. *Id.* ¶ 87.

4. *Id.* ¶ 120.

5. *Id.* ¶ 91.

6. *Id.* ¶¶ 91; 120.

The three show in-depth knowledge of the details of Mr. Galindo Cárdenas's life.⁷ Fearing for the safety of his family, Mr. Galindo Cárdenas reluctantly agrees to represent Beto.⁸ Mr. Galindo Cárdenas represents Beto during his initial declaration before the JECOTE (Office of the Chief of Counter-Terrorism), the police department, the preliminary hearing, and the search of his residence.⁹ Mr. Galindo Cárdenas then returns to Lima for family and work related reasons, and ceases representing Beto.¹⁰

September 15, 1994: Mr. Galindo Cárdenas serves as a Provisional Magistrate Judge on the Huánuco Superior Court.¹¹ Mr. Galindo receives unofficial notice that a member of the *Sendero Luminoso* accused Mr. Galindo Cárdenas of being a member of the group.¹² The State later confirms that at this time, Mr. Galindo Cárdenas is under investigation for associating with *Sendero Luminoso*, but never specifies when exactly the investigation began.¹³ Allegedly, Mr. Galindo Cárdenas is involved with *Sendero Luminoso* through an organization called the "Association of Democratic Lawyers."¹⁴

The victim and the State provide conflicting versions of subsequent events.

October 14, 1994: According to Mr. Galindo Cárdenas, on this date he voluntarily visits the Chief of Counter-Terrorism's office to "clarify his situation."¹⁵ Mr. Galindo Cárdenas then returns to work and explains to his colleagues why he is late.¹⁶

October 15, 1994: According to the State, on this date Mr. Galindo Cárdenas provides an "Applicant's Declaration" to a representative from the Public Prosecutor's Office, Dr. Ricardo Robles y Coz, and an official of the national police (PNP).¹⁷ In the declaration, Mr. Galindo Cárdenas allegedly repents and voluntarily abandons all terrorist activity; asks for the benefits of the Repentance Law; and admits to

7. *Id.* ¶ 91.

8. Galindo Cárdenas et al. v. Peru, Report on Merits, ¶ 91.

9. *Id.*

10. *Id.*

11. *Id.* ¶ 88.

12. *Id.*

13. *Id.*

14. Galindo Cárdenas et al. v. Peru, Admissibility Report, Report No. 14/04, Inter-Am. Comm'n H.R., Case No. 11.568, ¶ 9 (Feb. 27, 2014). (Available only in Spanish).

15. Galindo Cárdenas et al. v. Peru, Report on Merits, ¶ 90.

16. *Id.*

17. *Id.* ¶ 91.

being coerced into providing legal services¹⁸ to terrorists of *Sendero Luminoso*.¹⁹ However, Mr. Galindo Cárdenas makes clear in his declaration that he is not confessing to activism with *Sendero Luminoso*. The Declaration is signed by the witnesses and also apparently by Mr. Galindo Cárdenas, whose signature is illegible.²⁰ There is no fingerprint on the Declaration, which is required by the regulations regarding the Repentance Law.²¹ The lack of a fingerprint calls into question the Declaration's authenticity.²²

October 16, 1994: On this date according to Mr. Galindo Cárdenas, the Chief of Counter-Terrorism appears at his home and informs him that Colonel Negrón, Head of Huánuco Military-Political Command, wishes to speak with him at the "Yánac" Army Barracks.²³

October 16, 1994: President Alberto Fujimori announces to the media that the University of Huánuco Headmaster and the President of the Huánuco Superior Court have been arrested for having ties with the *Sendero Luminoso* terrorist group.²⁴ Both accused individuals wish to "avail themselves of the benefits of the Repentance Law."^{25,,26}

October 17, 1994: According to Mr. Galindo Cárdenas, on this date he goes to the army barracks to meet Colonel Negrón.²⁷ Once he arrives, Colonel Negrón and another officer invite him into a room and proceed to "lock the door from the outside with a chain."²⁸ Mr. Galindo Cárdenas maintains this version of the story throughout the entirety of the case.²⁹

On the same day, the Minister of Defense, Mr. Frente Huallaga, officially announces that an alleged *Sendero Luminoso* terrorist by the name of Dr. Luís Galindo Cárdenas had been captured on October 14.³⁰

18. *Id.*

19. *Id.*

20. *Id.* ¶ 92.

21. Galindo Cárdenas et al. v. Peru, Report on Merits, ¶ 92.

22. *Id.* ¶ 103.

23. *Id.*

24. *Id.* ¶ 94.

25. The Repentance Law was issued into effect on May 12, 1992, and outlined circumstances in which a penalty for terrorism could be reduced, exempted, remitted or mitigated. *Id.* ¶¶ 56; 111.

26. *Id.* ¶ 94.

27. Galindo Cárdenas et al. v. Peru, Report on Merits, ¶ 94.

28. *Id.*

29. *Id.* ¶ 100.

30. *Id.* ¶ 95.

Mr. Galindo Cárdenas's sister, Ms. María Luisa Galindo Cárdenas, travels with Mr. Galindo Cárdenas's wife, Ms. Irma Díaz Galindo Cárdenas, to Huánuco after hearing news reports that Mr. Galindo Cárdenas was "mixed up in terrorist activities."³¹ Upon arrival, they learn of Mr. Galindo's detention, and are allowed only a brief visit.³²

The Huánuco Superior Court, in the name of its president, sends a communication to the Head of the Military-Political Command, Colonel Negrón, asking for an explanation for the various announcements in the media claiming he, and other individuals affiliated with the court, had "applied for the benefits of the Repentance Law."³³ The President of the Superior Court sends a similar communication to the Chief Superior Prosecutor of Huánuco.³⁴

October 18, 1994: President Fujimori announces he mistakenly announced the arrest of the President of Huánuco Superior Court, Mr. Humberto Jajahuanca Vásquez, in his announcement two days prior while he meant to refer to the arrest of a Magistrate of the Court, Mr. Galindo Cárdenas.³⁵ The President also states that the Repentance Law will expire the following November.³⁶ The State later declares that President Fujimori's statements have "no legal value or effect...[and] are merely informative...[and] may be inaccurate and subject to correction or amendment."³⁷

October 19, 1994: According to the Huánuco DECOTE (Department Against Terrorism), Mr. Galindo Cárdenas requests to apply for the benefit of the Repentance Law, and is taken into custody in the barracks "for security reasons."³⁸

October 20, 1994: Mr. Galindo Cárdenas sends his resignation letter to the Administrative Secretariat of the Superior Court. He resigns because he is "under police investigation on false and mendacious charges; that investigation compromises [his] dignity and honor as a citizen and a professional; [and he does] not want the investigation being conducted

31. *Id.* ¶ 104.

32. *Id.*

33. Galindo Cárdenas et al. v. Peru, Report on Merits, ¶ 105.

34. *Id.* ¶ 106.

35. *Id.* ¶ 96.

36. *Id.*

37. *Id.* ¶ 101.

38. *Id.* ¶ 97.

against [him] to lead to conjectures that would be prejudicial to the Judiciary.”³⁹

October 24, 1994: The President of the Huánuco Superior Court accepts Mr. Galindo Cárdenas’s resignation as Provisional Magistrate of the Central Command of the Armed Forces-Lima, effective October 21, 1994.⁴⁰

October 26, 1994: The Attorney General of Peru, Ms. Blanca Nélanda Colán Maguiño, and the Provincial Prosecutor visit Mr. Galindo Cárdenas in the Yánac Barracks.⁴¹ Mr. Galindo Cárdenas states he has been detained in the barracks since October 16, and has not suffered any physical mistreatment, but he suffered the psychological effects that come with incarceration.⁴² During the Attorney General’s visit, Mr. Galindo Cárdenas signs a deposition confirming the Prosecutor was present for the Declaration.⁴³ Mr. Galindo Cárdenas also states that he does not think retaining a lawyer is appropriate since he himself is an attorney, and because of the widespread media coverage the case has received.⁴⁴

During this visit, Mr. Galindo Cárdenas tells the Attorney General that he is “not guilty of belonging to a terrorist organization” and that he only provided them legal services because the terrorists threatened him.⁴⁵

October 29, 1994: Mr. Galindo Cárdenas gives an “Amplified Declaration from Applicant” stating that he learned through media reports that the Democratic Lawyers defend terrorists of *Sendero Luminoso*.⁴⁶ Mr. Galindo Cárdenas asserts he only provided legal services to the alleged terrorists during the policing stage of their proceedings.⁴⁷ Mr. Galindo Cárdenas signs this declaration, and the government concludes that this signature, his signature on the October 15 declaration, and his signature on his government identification all match.⁴⁸

39. Galindo Cárdenas et al. v. Peru, Report on Merits, ¶ 109.

40. *Id.*

41. *Id.* ¶ 110.

42. *Id.*

43. *Id.* ¶ 100.

44. *Id.* ¶ 110.

45. Galindo Cárdenas et al. v. Peru, Report on Merits, ¶ 111.

46. *Id.* ¶ 114.

47. *Id.*

48. *Id.* ¶ 116.

October 31, 1994: The Declaration of Repentance is issued.⁴⁹

November 4, 1994: The Provincial Prosecutor issues a decision granting Mr. Galindo Cárdenas “extinguishment of the penalty,” and refers the case to the Chief Superior Prosecutor to take appropriate action.⁵⁰

November 9, 1994: The Superior Prosecutor closes the case on the grounds that Mr. Galindo Cárdenas’s actions “constitute acts of collaboration” punishable by law.⁵¹ However, the Prosecutor does not indicate specifically which unlawful act Mr. Galindo Cárdenas committed.⁵² The Commission notes that providing legal defense services to criminal terrorists does not constitute “an act of collaboration under the article in question.”⁵³ On this date, Mr. Galindo Cárdenas also makes a written statement to the International Committee of the Red Cross, noting that his detention period began on October 16.⁵⁴

November 16, 1994: The Provincial Prosecutor determines there are “no grounds for charges to be brought” and orders Mr. Galindo Cárdenas’s release after thirty-one days of detention.⁵⁵ Immediately, Mr. Galindo Cárdenas lodges a complaint against the Provincial Prosecutor and the Senior Prosecutor for an “abuse of authority against the jurisdictional function and malfeasance in office as a consequence of his arbitrary detention.”⁵⁶

December 1994: Mr. Galindo Cárdenas contests the validity of the Declaration, and continues to do so throughout the case.⁵⁷ Mr. Galindo Cárdenas further contends that the actual statement he provided to the Chief of Counter-Terrorism, “National Anti-Terrorism Directorate” (DINCOTE), and the Deputy Prosecutor was “deliberately misplaced.”⁵⁸ In the missing declaration, Mr. Galindo Cárdenas insists there are invoices for legal services rendered, which were seized from

49. *Id.* ¶ 117.

50. *Id.* ¶ 120.

51. Galindo Cárdenas et al. v. Peru, Report on Merits, ¶ 122.

52. *Id.*

53. *Id.*

54. *Id.* ¶ 100.

55. Galindo Cárdenas et al. v. Peru, Admissibility Report, ¶ 16.

56. *Id.* ¶ 23.

57. Galindo Cárdenas et al. v. Peru, Report on Merits, ¶ 93.

58. *Id.*

his home.⁵⁹ Mr. Galindo Cárdenas further asserts that the search record attached to his missing statement verifies that he was not a member of the Association of Democratic Lawyers.⁶⁰ Further, he disputes the State's account of events, claiming that since he was not a member of a terrorist organization, he would have never made a "declaration of repentance."⁶¹

December 13, 1994: Mr. Galindo Cárdenas provides "certified copies" of the "military police investigation" to the Provincial Prosecutor, and says that while "detained at a military base...[he suffered] psychological torture and...isolation."⁶²

January 16 and 23, 1995: In his filings with the Attorney General's Office and the Human Rights Commission of Congress, Mr. Galindo Cárdenas makes the same statement and provides the same explanation of the events of his detention as he did previously on December 13.⁶³ Mr. Galindo Cárdenas requests an investigation into his detention as well as into the misconduct of the Public Ministry of Huanuco Officials.⁶⁴

B. Other Relevant Facts

In its 1993 Annual Report, the Commission notes that while the new laws encourage a large number of terrorists to turn themselves in, the Repentance Law allows terrorists to disclose false accusations, causing many innocent people to be arrested, detained, and even convicted.⁶⁵ A number of the provisions in the anti-terrorism laws are ruled unconstitutional in January 2003.⁶⁶

59. *Id.*

60. *Id.*

61. *Id.*

62. Galindo Cárdenas et al. v. Peru, Preliminary Objections, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser.C) No. 301, ¶ 262 (Oct. 2, 2015). (Available only in Spanish).

63. *Id.*

64. *Id.*

65. Galindo Cárdenas et al. v. Peru, Report on Merits, ¶ 73.

66. *Id.* ¶ 79.

II. PROCEDURAL HISTORY

A. Before the Commission

January 3, 1994: The Commission receives a petition from Mr. Galindo Cárdenas.⁶⁷

May 8, 1998: The Public Prosecutor files Mr. Galindo Cárdenas's complaint on abuse of authority against the State, for abuse of power and lying about its actions.⁶⁸

October 15, 2001: The State determines that a settlement is not appropriate in this case.⁶⁹

November 29, 2001: The State sends a copy of the reports from the DECOTE of Huanuco "referred to the police actions in the case" to the Commission.⁷⁰

March 21, 2012: The Commission issues its Report on the Merits.⁷¹ The Commission determined that the abovementioned facts gave rise to violations of Articles 5 (Right to Humane Treatment), 7 (Right to Personal Liberty), 8 (Right to a Fair Trial), 9 (Freedom from *Ex Post Facto* Laws), and 25 (Right to Judicial Protection) in relation to Articles 1(1) (Obligation of Non-Discrimination) and (2) (Obligation to Give Domestic Legal Effect to Rights) of the American Convention to the detriment of Mr. Galindo Cárdenas.⁷²

The Commission recommends the State do the following: (1) make full reparations to Mr. Galindo Cárdenas and his family; (2) conduct an adequate investigation to determine the individuals responsible for committing the violations of the American Convention; (3) after concluding the interrogation, punish the perpetrators; and (4) nullify Mr. Galindo Cárdenas' Declaration of Repentance and any of its effects.⁷³

67. Galindo Cárdenas et al. v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 3.

68. *Id.* ¶ 264.

69. Galindo Cárdenas et al. v. Peru, Admissibility Report, ¶ 6.

70. *Id.* ¶ 6.

71. *See generally* Galindo Cárdenas et al. v. Peru, Report on Merits.

72. *Id.* ¶ 268.

73. *Id.* ¶ 269.

B. Before the Court

January 19, 2014: The Commission submits the case to the Court after the State failed to adopt its recommendations.⁷⁴

April 21, 2014: Attorney Richard M. Rocha files requests, arguments, and evidence, substantially⁷⁵ similar to the allegations by the Commission, with the Court.

July 25, 2014: The State submits its reply and preliminary objections.⁷⁶ The State objects to the lack of exhaustion of domestic remedies and expiration of the time period to submit the initial petition, and identifies some inconsistencies in the initial factual report.⁷⁷

August 30, 2015: The Commission and the Representative submit their comments and request for the rejection of the preliminary objections.⁷⁸

1. Violations Alleged by Commission⁷⁹

Article 5 (Right to Humane Treatment)

Article 7 (Right to Personal Liberty)

Article 8 (Right to a Fair Trial)

Article 9 (Freedom from *Ex Post Facto* Laws)

Article 25 (Right to Judicial Protection)

all in relation to:

Article 1(1) (Obligation of Non-Discrimination)

Article 2 (Obligation to Give Domestic Legal Effect to Rights) of the American Convention.

2. Violations Alleged by Representatives of the Victims⁸⁰

Same Violations Alleged by Commission, plus:

74. Galindo Cárdenas et al. v. Peru, Preliminary Objections, Merits, Reparations and Costs, ¶ 1.

75. *Id.* ¶ 8.

76. *Id.* ¶ 9.

77. *Id.*

78. *Id.* ¶ 10.

79. *Id.* ¶ 6.

80. Galindo Cárdenas et al. v. Peru, Admissibility Report, ¶ 2. Richard M. Roca served as representative of Mr. Galindo Cárdenas.

Article 10 (Right to Compensation in the Event of Miscarriage of Justice)

Article 11 (Right to Privacy)

Article 14 (Right of Reply)

Article 17 (Rights of the Family)

Article 22 (Freedom of Movement and Residence)

all in relation to:

Article 1(1) (Obligation of Non-Discrimination) of the American Convention.

III. MERITS

*A. Composition of the Court*⁸¹

Humberto Antonio Sierra Porto, President

Roberto F. Caldas, Judge

Manuel E. Ventura Robles, Judge

Alberto Pérez Pérez, Judge

Eduardo Vio Grossi, Judge

Eduardo Ferrer Mac-Gregor Poisot, Judge

Pablo Saavedra Alessandri, Secretary

Emilia Segares Rodríguez, Deputy Secretary

B. Decision on the Merits

October 2, 2015: The Court issues its Judgment on Preliminary Objections, Merits, Reparations and Costs.⁸²

The Court found by five votes to one that the State had violated:⁸³

Article 7 (Right to Personal Liberty) in relation to Article 1(1) (Obligation of Non-Discrimination) of the Convention, to the detriment of Mr. Galindo Cárdenas,⁸⁴ because:

81. Judge Diego García-Sayán, of Peruvian nationality, did not participate in the knowledge and deliberation of the case, in accordance with the provisions of Article 19.1 of the Rules of Procedure of the Court.

82. *See Generally* Galindo Cárdenas et al. v. Peru, Preliminary Objections, Merits, Reparations, and Costs.

83. *Id.* “Decides” ¶ 2.

84. *Id.*

The Court has previously asserted that an essential element of the right to personal liberty is the “protection of freedom [of] the individual against any arbitrary or unlawful state interference.”⁸⁵ The Court considered the relevant State laws in place during Mr. Galindo Cárdenas’s detention, and found that such detention was unlawful.⁸⁶ In fact, the domestic laws at the time specifically required authorization by a judge prior to detaining a suspect, and prohibited preventative detention for terrorist suspects for any period longer than fifteen days.⁸⁷ The Court acknowledged that the State declared a state of emergency, but such circumstances did not give the State absolute power to act unlawfully.⁸⁸

The Court also acknowledged that while the Chief of Counter Terrorism issued a report on Mr. Galindo Cárdenas’s detention, the State had no record of such detention as required by international law.⁸⁹ Evidence showed that Repentance Law procedures did not occur until November 11, and the five days between that date and Mr. Galindo’s release are unaccounted for, indicating the deprivation of his liberty.⁹⁰

The Court established that when a person is arrested, they must receive both an oral statement clarifying the reasons for their arrest, and a written statement of the charges against them.⁹¹ The Court further reasoned that the lack of information and uncertainty in regards to Mr. Galindo’s detention supports a finding of a violation of Article 7 (Right to Personal Liberty), and determined that his entire detention was arbitrary.⁹² Therefore, the Court found the State in violation of Mr. Galindo Cárdenas’s right to personal liberty.⁹³

The Court found by four votes to two that the State had violated:⁹⁴

Article 5 (Right to Humane Treatment) in relation to Article 1(1) (Obligation of Non-Discrimination) of the Convention, to the detriment

85. *Id.* ¶ 178.

86. *Id.* ¶¶ 182-83.

87. *Id.* ¶ 185.

88. Galindo Cárdenas et al. v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 175.

89. *Id.* ¶¶ 192-94.

90. *Id.* ¶ 195.

91. *Id.* ¶ 208.

92. *Id.* ¶¶ 199; 214.

93. *Id.* ¶ 229.

94. Galindo Cárdenas et al. v. Peru, Preliminary Objections, Merits, Reparations, and Costs, “Decides” ¶ 4.

of Mr. Galindo Cárdenas, his sister Ms. Galindo, his wife Mrs. Díaz, and his child, Idelso Galindo Diaz,⁹⁵ because:

The Court had previously considered that such isolated confinement can “generate extreme psychological and moral suffering to the detainee,” but this was not the case for Mr. Galindo Cárdenas, as his sister and wife were allowed to visit him daily and provide him with necessary food and clothing.⁹⁶ However, when assessing the situation from the perspective of Mr. Galindo Cárdenas at the time, the Court considered that such uncertainty of his confinement in an environment of pressure and fear constitutes a violation of the right to humane treatment.⁹⁷

Additionally, the Court has previously held that the relatives of victims can also be victims for the suffering they endure as a result of violations against their loved one.⁹⁸ The Court considered the detention of Mr. Galindo Cárdenas, the public accusations by the President framing him as a terrorist, and the prolonged uncertainty of his situation, violated the right of his family members’ personal integrity.⁹⁹ Accordingly, the Court determined the State violated the right to personal integrity of Mr. Galindo’s wife, sister, and child.¹⁰⁰

Article 8 (Right to a Fair Trial) and Article 25 (Right to Judicial Protection) in relation to Article 1(1) (Obligation of Non-Discrimination) of the Convention, to the detriment of Mr. Galindo Cárdenas,¹⁰¹ because:

Included in the right to a fair trial is the “time and means to prepare a defense,” and whether or not charges have officially been made.¹⁰² Here, the lack of information undermined Mr. Galindo Cárdenas’s ability to prepare a defense.¹⁰³ Mr. Galindo Cárdenas’s timely requests in December 1994 and January 1995 for an official investigation into the events were met with an inadequate response by the State, which did not conduct the investigation until 2012, nearly twenty years after the

95. *Id.* “Decides” ¶ 4.

96. *Id.* ¶ 242.

97. *Id.* ¶¶ 245-46.

98. *Id.* ¶ 249.

99. *Id.* ¶ 251.

100. Galindo Cárdenas et al. v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 251.

101. *Id.* “Decides” ¶ 5.

102. *Id.* ¶ 209.

103. *Id.* ¶ 214.

incident.¹⁰⁴ For these reasons, the Court found that the State violated Mr. Galindo's right to a fair trial and right to judicial protection.¹⁰⁵

The Court found by five votes to one that the State had not violated:¹⁰⁶

Article 2 (Obligation to Give Domestic Legal Effect to Rights) to the detriment of Mr. Galindo Cárdenas,¹⁰⁷ because:

*The Court did not find any evidence that showed the State breached its duty to adopt domestic law in relation to the right to personal liberty of Mr. Galindo.*¹⁰⁸ *The Court also reasoned that the factual report did not provide support for the allegation of violation of this article.*¹⁰⁹

Article 9 (Freedom from *Ex Post Facto* Laws) to the detriment of Mr. Galindo Cárdenas,¹¹⁰ because:

*The decisions from November 4 and 9, 1994 did not in any way imply Mr. Galindo Cárdenas was a criminal, nor did they render him a person with criminal convictions.*¹¹¹ *There were no legal consequences for Mr. Galindo Cárdenas from the subsequent decisions.*¹¹² *Therefore, the Court found that Mr. Galindo Cárdenas's right to freedom from ex post facto laws was not violated.*¹¹³

C. Dissenting and Concurring Opinions

1. Partially Dissenting Opinion of Judge Humberto Antonio Sierra Porto

In a separate opinion, Judge Humberto Antonio Sierra Porto partially dissented from the judgment and concluded that the State was not liable for the violation of the right to personal integrity to the

104. *Id.* ¶¶ 262-63.

105. *Id.* ¶ 266.

106. Galindo Cárdenas et al. v. Peru, Preliminary Objections, Merits, Reparations, and Costs, "Decides" ¶ 6.

107. *Id.* "Decides" ¶ 6.

108. *Id.* ¶ 207.

109. *Id.* ¶ 217.

110. *Id.* "Decides" ¶ 7.

111. *Id.* ¶ 276.

112. Galindo Cárdenas et al. v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 276.

113. *Id.* ¶ 279.

detriment of Mr. Galindo Cárdenas.¹¹⁴ Judge Sierra Porto noted that given the uncertainty of the facts, the Court used a “free and flexible assessment of the evidence.”¹¹⁵ Judge Sierra Porto opined that even such a loose interpretation of the evidence is not sufficient to warrant the finding of violation of Mr. Galindo Cárdenas’s personal integrity set forth by the majority opinion.¹¹⁶ Judge Sierra Porto supported this assertion by explaining that a mere feeling of uncertainty during the victim’s detention was not sufficient to merit the finding of a violation of the individual’s right to personal integrity.¹¹⁷ The Judge noted that the allegations the victim “suffered intimidation, pressure, and abuse and psychological torture” were not supported by any specific examples or evidence.¹¹⁸ Judge Sierra Porto identified contradictory evidence showing that Mr. Galindo Cárdenas received frequent visits from his family, the Attorney General, the Provincial Prosecutor and the First Provincial Prosecutor of Huánuco, and was able to send letters and otherwise communicate with the outside world.¹¹⁹

Judge Sierra Porto’s opinion also disagreed with the finding that the State violated the right to personal integrity to the detriment of Mr. Galindo Cárdenas’s family members.¹²⁰ If the State did not violate Mr. Galindo Cárdenas’s right to personal integrity, then it certainly did not violate his family member’s rights for the same reasoning.¹²¹ Furthermore, Judge Sierra Porto disagreed with the reparation of medical, psychological and psychiatric treatment, as such a remedy was not requested by Mr. Galindo Cárdenas or his representative, and no evidence was provided to establish the need for such a remedy.¹²²

Next, Judge Sierra Porto disagreed with the finding that the State violated Mr. Galindo Cárdenas’s right to a fair trial and right to judicial protection.¹²³ Judge Sierra Porto noted that the State had launched an investigation in Mr. Galindo Cárdenas’s allegations of torture not long before the writing of this opinion.¹²⁴ However, according to Judge

114. Galindo Cárdenas et al. v. Peru, Partially Dissenting Opinion of Judge Humberto Antonio Sierra Porto, Inter-Am. Ct. H.R. (ser.C) No. 301, ¶¶ 1, 15 (Oct. 2, 2015). (Available only in Spanish).

115. *Id.* ¶ 7.

116. *Id.*

117. *Id.* ¶ 8.

118. *Id.* ¶ 11.

119. *Id.* ¶ 8.

120. Galindo Cárdenas et al. v. Peru, Partially Dissenting Opinion of Judge Humberto Antonio Sierra Porto, ¶ 16.

121. *Id.*

122. *Id.* ¶ 17.

123. *Id.* ¶ 18.

124. *Id.* ¶ 23.

Sierra Porto, Mr. Galindo Cárdenas never provided enough evidence of his alleged torture to warrant an investigation.¹²⁵ Therefore, he believed the State did not violate the right to a fair trial and the right to judicial protection to the detriment of Mr. Galindo Cárdenas.¹²⁶

2. Partially Dissenting Opinion of Judge Eduardo Vio Grossi

Judge Vio Grossi's dissent argued that the preliminary objection of lack of exhaustion of domestic remedies should have been accepted by the Court.¹²⁷ Judge Vio Grossi explained that he voted against the other paragraphs of the Judgment, because if domestic remedies were not exhausted, then there was no further judgment the Court should have made.¹²⁸ The two paragraphs to which Judge Vio Grossi signed on were procedural, and therefore, not contingent on the admissibility and merits of the case.¹²⁹

Judge Vio Grossi first analyzed of the purpose of the exhaustion of domestic remedies requirement and its importance to international human rights law.¹³⁰ Judge Vio Grossi recognized that the requirement of prior exhaustion of domestic remedies is an “expression of the validity of State sovereignty,” and allows States the opportunity to correct human rights violations internally before the issue comes before a regional or international court.¹³¹ He further asserted that “compliance with the rule of prior exhaustion of domestic remedies or inability to comply” must be addressed in the petition to the Court, otherwise, the State would not be able to give an answer.¹³² Therefore, the exhaustion of domestic remedies is a prerequisite to any further action being taken by the Court.¹³³

Judge Vio Grossi then applied his discussion of the exhaustion of domestic remedies requirement to the facts at hand.¹³⁴ Judge Vio Grossi stated that the “approach taken by the Commission is not to decide on

125. *Id.* ¶ 22.

126. Galindo Cárdenas et al. v. Peru, Partially Dissenting Opinion of Judge Humberto Antonio Sierra Porto, ¶ 24.

127. Galindo Cárdenas et al. v. Peru, Preliminary Exceptions, Merits, Reparations, and Costs, Dissenting Opinion of Judge Eduardo Vio Grossi, Inter-Am. Ct. H.R. (ser.C) No. 301, “Dissenting Opinion” ¶ 2 (Oct. 2, 2015). (Available only in Spanish).

128. *Id.* “Dissenting Opinion” ¶ 2.

129. *Id.*

130. *See generally Id.* “Dissenting Opinion”.

131. *Id.* “Dissenting Opinion” ¶ 9.

132. *Id.* “Dissenting Opinion” ¶ 13.

133. Galindo Cárdenas et al. v. Peru, Preliminary Exceptions, Merits, Reparations, and Costs, Dissenting Opinion of Judge Eduardo Vio Grossi, “Dissenting Opinion” ¶ 14.

134. *Id.* ¶ 17.

compliance with the requirement of prior exhaustion of domestic remedies to when the petition is 'filed,' but at the moment [the Commission] pronounced on admissibility."¹³⁵

Next, Judge Vio Grossi outlined the grounds on which he disagreed with the Judgment, specifically for rejecting of the State's objection for failure to exhaust domestic remedies.¹³⁶ The Judgment only listed general statements as to the ineffectiveness of the *habeas corpus*, which were not sufficient to show that the remedy was inadequate or ineffective.¹³⁷ He argued that the victim only provided a single isolated incident to support a showing of ineffective remedies; the example provided being the arbitrary arrest.¹³⁸ The Judgment, however, does not indicate why *habeas corpus* would be ineffective in a state of emergency.¹³⁹ Judge Vio Grossi concluded by noting "there was [no] causal link between the prevailing situation in the State at the time of the facts [of] the case in question and the impossibility of filing the writ of habeas corpus by the petitioner."¹⁴⁰ Further, Judge Vio Grossi's dissent rested heavily on the timing of the exhaustion of domestic remedies.¹⁴¹ Judge Vio Grossi argues the domestic remedies must have been exhausted at the time of filing the petition, instead of the time the Commission deems the petition admissible, which in this case was eight years after filing.¹⁴²

IV. REPARATIONS

The Court ruled unanimously that the State had the following obligations:

A. Specific Performance (Measures of Satisfaction and Non-Repetition Guarantee)

1. Repeal the Repentance Law

The Court indicated that the State, within six months of the Judgment, must take all necessary measures to "ensure that the minutes

135. *Id.* ¶ 20.

136. *Id.*

137. *Id.* ¶ 21.

138. *Id.* ¶ 22.

139. Galindo Cárdenas et al. v. Peru, Preliminary Exceptions, Merits, Reparations, and Costs, Dissenting Opinion of Judge Eduardo Vio Grossi, ¶ 23.

140. *Id.* ¶ 24.

141. *Id.*

142. *Id.*

of repentance of from October 15, 1994 are deprived of all legal effects.”¹⁴³

2. Publish the Judgment

The Court ordered the State to publish the Court’s official summary, once in the “official gazette” and once in a nationally circulated newspaper.¹⁴⁴ The State was also compelled to, for a period of at least one year, publish the Judgment on an official judicial website, as well as the websites of the Ministry Official and Armed Forces.¹⁴⁵

3. Provide Adequate Care

The Court ordered the State to provide adequate care for Mr. Galindo Cárdenas, his wife, and their son, including psychological, psychiatric, and pharmaceutical care.¹⁴⁶

B. Compensation

The Court awarded the following amounts:

1. Pecuniary Damages

The State must pay Mr. Galindo Cárdenas damages in the amount of \$50,000.00 (USD).¹⁴⁷ This amount covered both pecuniary and non-pecuniary damages.¹⁴⁸

2. Non-Pecuniary Damages

The State was compelled to pay Mr. Galindo Cárdenas’s wife and child \$5,000.00 (USD) each for non-pecuniary damages.¹⁴⁹

143. Galindo Cárdenas et al. v. Peru, Preliminary Objections, Merits, Reparations and Costs, ¶ 297.

144. *Id.* ¶ 298.

145. *Id.*

146. *Id.* ¶ 300.

147. *Id.* ¶ 319.

148. *Id.*

149. Galindo Cárdenas et al. v. Peru, Preliminary Objections, Merits, Reparations and Costs, ¶ 319.

3. Costs and Expenses

The State must pay \$10,000 (USD) to the representative, Mr. Richard M. Roca, for the costs and expenses of handling the proceedings, including but not limited to airfare.¹⁵⁰

4. Total Compensation (including Costs and Expenses ordered):

\$70,000.00 (USD)

C. Deadlines

From the date the Court issued this Judgment, the State had six months to publish the official summary and the Judgment.¹⁵¹ The victims had a period of six months from the date the Court issued the Judgment to notify the State of their intent to receive the aforementioned medical care.¹⁵² All payments must be made to the victims and the representative within one year.¹⁵³

V. INTERPRETATION AND REVISION OF JUDGMENT

March 15, 2016: Representatives of the victim asked the Court to clarify four aspects of the October 2, 2015 Judgment: (1) the nullification of the November 4 and 9, 1994 Resolutions; (2) the scope of the psychological torture investigation; (3) the measures for rehabilitation; and (4) the pecuniary and non-pecuniary compensation.¹⁵⁴

A. Composition of Court¹⁵⁵

Roberto F. Caldas, President
Eduardo Ferrer Mac-Gregor Poisot, Vice President
Manuel E. Ventura Robles, Judge

150. *Id.*

151. *Id.* ¶ 298.

152. It is unclear from the text of the judgment whether the State must provide actual medical services, or just cover the costs of any medical expenses. *Id.* ¶ 300.

153. *Id.* ¶ 326.

154. Galindo Cárdenas et al. v. Peru, Interpretation on the Judgment of Preliminary Objections, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 336, ¶ 2.

155. Judge Diego García-Sayán, of Peruvian nationality, did not participate in the knowledge and deliberation of the case, in accordance with the provisions of Article 19.1 of the Rules of Procedure of the Court.

Alberto Pérez Pérez, Judge
Eduardo Vio Grossi, Judge
Humberto Antonio Sierra Porto, Judge

Pablo Saavedra Alessandri, Secretary
Emilia Segares Rodríguez, Deputy Secretary

B. Merits

November 21, 2016: The Court unanimously decided to:

Declare the request for interpretation of judgment admissible,¹⁵⁶
because:

*The victim's representative filed the request for interpretation of the Judgment within the ninety-days required by Article 67 of the American Convention.*¹⁵⁷

Dismiss the requests regarding the rehabilitation measures and pecuniary and non-pecuniary compensation,¹⁵⁸ because:

*In the Judgment, the Court clearly identified the criteria used to make its decision regarding rehabilitation measures and calculating damages.¹⁵⁹ Therefore, the representative's request for the Court to interpret the rehabilitation measures and compensation considering Article 68.2 which would eliminate the Court as a middle man in requesting authorization and demanding payment would introduce a new criterion into the analysis, so the Court refrained from interpreting this request.*¹⁶⁰

Clarify the requirement to nullify the resolutions from November 4 and 9, 1994 and any resulting legal effects,¹⁶¹ because:

The Court intended that nullifying the resolutions from November 4 and 9, 1994 also meant nullifying any leftover legal effects from those

156. *Id.* “Operative Paragraphs” ¶ 1.

157. *Id.* ¶ 9.

158. *Id.* “Operative Paragraphs” ¶ 2.

159. *Id.* ¶ 27.

160. *Id.*

161. Galindo Cárdenas et al. v. Peru, Interpretation of Judgment, “Operative Paragraphs” ¶ 3.

resolutions.¹⁶² *Therefore, the reparation must be read to nullify any legal effects in favor of Mr. Galindo Cárdenas.*¹⁶³

Clarify the scope of the requirement to investigate the psychological torture,¹⁶⁴ because:

*The Court determined in the Judgment that the uncertainty caused by Mr. Galindo Cárdenas's detention affected his psychological integrity and could arise to the level of psychological torture.*¹⁶⁵ *Therefore, the State's investigation to the violations suffered by Mr. Galindo Cárdenas must include investigating Mr. Galindo Cárdenas's deprivation of liberty.*¹⁶⁶

C. Dissenting and Concurring Opinions

[None]

VI. COMPLIANCE AND FOLLOW-UP

[None]

VII. LIST OF DOCUMENTS

A. Inter-American Court

1. Preliminary Objections

[None]

2. Decisions on Merits, Reparations and Costs

[Galindo Cárdenas et al. v. Peru, Preliminary Objections, Merits, Reparations, and Costs, Inter-Am. Ct. H.R. \(ser.C\) No. 301 \(Oct. 2, 2015\). \(Available only in Spanish\).](#)

162. *Id.* ¶ 30.

163. *Id.*

164. *Id.* "Operative Paragraphs" ¶ 4.

165. *Id.* ¶ 33.

166. *Id.*

Galindo Cárdenas et al. v. Peru, Partially Dissenting Opinion of Judge Eduardo Vio Grossi, Inter-Am. Ct. H.R. (ser.C) No. 301 (Oct. 2, 2015). (Available only in Spanish).

[Galindo Cárdenas et al. v. Peru, Partially Dissenting Opinion of Judge Humberto Antonio Sierra Porto, Inter-Am. Ct. H.R. \(ser.C\) No. 301 \(Oct. 2, 2015\). \(Available only in Spanish\).](#)

[Galindo Cárdenas et al. v. Peru, Abstract of Judgment, Inter-Am. Ct. H.R. \(ser.C\) No. 301 \(Oct. 2, 2015\).](#)

3. Provisional Measures

[None]

4. Compliance Monitoring

[None]

5. Review and Interpretation of Judgment

[None]

B. Inter-American Commission

1. Petition to the Commission

[Not Available]

2. Report on Admissibility

[Galindo Cárdenas et al. v. Peru, Admissibility Report, Report No. 14/04, Inter-Am. Comm'n H.R., Case No. 11.568 \(Feb. 27, 2014\). \(Available only in Spanish\).](#)

3. Provisional Measures

[None]

4. Report on Merits

[Galindo Cárdenas et al. v. Peru, Report on Merits, Report No. 57/12, Inter-Am. Comm'n H.R., Case No. 11.568 \(Mar. 21, 2012\).](#)

5. Application to the Court

[Not Available]

VIII. BIBLIOGRAPHY

[None]