

# Genie Lacayo v. Nicaragua

## ABSTRACT<sup>1</sup>

*In this case, members of the military murdered sixteen-year-old Jean-Paul Genie Lacayo when he attempted to pass a military convoy carrying the Commander-in-Chief of the Nicaraguan Army. Despite attempts by the Attorney General and Mr. Genie Lacayo's father, Mr. Raymond Genie Peñalba, to bring those responsible for Mr. Genie Lacayo's death to justice, as of the time of judgment, the State had not identified, prosecuted, or punished those responsible for Mr. Genie Lacayo's death.*

## I. FACTS

### A. Chronology of Events

**October 28, 1990:** Sixteen-year-old Jean-Paul Genie Lacayo is driving home to the Las Colinas subdivision of Managua, Nicaragua.<sup>2</sup> While driving on the road to Masaya he comes upon a military convoy transporting military personnel.<sup>3</sup> Unbeknownst to Mr. Genie Lacayo, the convoy is allegedly carrying General Humberto Ortega, a Commander in Chief of the *Ejército Popular Sandinista* (EPS), the official Nicaraguan army.<sup>4</sup> As Mr. Genie Lacayo tries to pass the convoy the transport's machine guns open fire on his car.<sup>5</sup> A total of fifty-one AK-47 ammunition cartridge shells are shot at Mr. Genie Lacayo's car.<sup>6</sup> Nineteen bullets hit the car while it is in motion and three

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2. *Genie Lacayo v. Nicaragua*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 30, ¶ 12 (Jan. 29, 1997).

3. *Id.*

4. International Secretariat, *Nicaragua: Further Information on the Case of Jean Paul Genie*, AMNESTY INT'L 1 (Nov. 1994), <http://www.amnesty.org/en/library/asset/AMR43/004/1994/en/4be85157-ebe4-11dd-8cf1-49437baee106/amr430041994en.pdf>.

5. *Genie Lacayo v. Nicaragua*, Merits, Reparations, and Costs, ¶ 12.

6. *Id.*

bullets are fired at short range after the car stops.<sup>7</sup> The firing stops and Mr. Genie Lacayo is still alive but bleeding.<sup>8</sup> He is left on the side of the highway until he dies from multiple organ failure.<sup>9</sup>

**February 15, 1991:** The Permanent Human Rights Commission of Nicaragua files a petition with the Commission.<sup>10</sup>

**July 23, 1991:** The Office of the Attorney General of Justice initiates domestic criminal action.<sup>11</sup>

**July 2, 1992:** The Seventh Court of the Criminal District of Managua determines that Mr. Genie Lacayo's death is a homicide, declines to proceed with the case on the grounds that the proper jurisdiction for the case is military jurisdiction, and transfers the case to the Military Advocate.<sup>12</sup>

**July 6, 1992:** Mr. Genie Lacayo's father, Mr. Raymond Genie Peñalba, appeals the decision of the Seventh Court of the Criminal District of Managua.<sup>13</sup>

**October 27, 1992:** The Court of Appeal, Region III, Criminal Chamber denies Mr. Genie Peñalba's appeal concerning the proper jurisdiction of the case and upholds the ruling of the Seventh Court of the Criminal District of Managua that the military court is the proper jurisdiction to hear the case.<sup>14</sup>

**November 6 and 9, 1992:** Mr. Genie Peñalba and the Assistant Attorney-General each file special applications for judicial review.<sup>15</sup>

**December 20, 1993:** The Supreme Court of Justice dismisses both applications for judicial review and refers the case to the Military Advocate.<sup>16</sup>

**June 7, 1994:** The Military Advocate dismisses the case due to

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7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.* ¶ 5.

11. *Id.* ¶ 14.

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.*

insufficient evidence.<sup>17</sup>

**August 29, 1994:** Mr. Genie Peñalba files another application for judicial review with the Supreme Court of Justice.<sup>18</sup>

**February 12, 1997:** The Supreme Court of Justice of Nicaragua dismisses Mr. Genie Peñalba's application for judicial review.<sup>19</sup>

### *B. Other Relevant Facts*

Throughout the domestic preliminary proceedings, the Nicaraguan military authorities obstruct or fail to cooperate adequately in the investigations conducted by the Attorney General's Office and the Seventh Judge of the Criminal District of Managua.<sup>20</sup> During the investigation, dozens of Government agents continually refuse to appear in court to testify and crucial evidence disappears, such as the t-shirt worn by the deceased at the time of his death.<sup>21</sup> Additionally, Lieutenant Harold Meza kills National Nicaraguan Police Subcommander Mauricio Aguilar Somarriba, who is in charge of the investigation into Mr. Genie Lacayo's death.<sup>22</sup> The State denies that Somarriba has ever been in charge of the investigation, although his parents contend otherwise.<sup>23</sup> The State maintains that Lieutenant Meza has been sentenced to three years in prison for his crime.<sup>24</sup>

Mr. Genie Peñalba and the Assistant Attorney-General repeatedly file briefs, from their first appeal through the summer of 1994, claiming the courts have long passed the deadline for delivering a judgment on the case.<sup>25</sup>

## II. PROCEDURAL HISTORY

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17. International Secretariat, *Nicaragua: Further Information on the Case of Jean Paul Genie*, AMNESTY INT'L 2 (Nov. 1994), <http://www.amnesty.org/en/library/asset/AMR43/004/1994/en/4be85157-ebe4-11dd-8cf1-49437baee106/amr430041994en.pdf>.

18. *Genie Lacayo v. Nicaragua*, Merits, Reparations, and Costs, ¶ 80.

19. *Genie Lacayo v. Nicaragua*, Petition to the Court, Inter-Am. Comm'n. H.R. Case No. 10.792, ¶ 4(b) (Sept. 13, 1997).

20. *Genie Lacayo v. Nicaragua*, Merits, Reparations, and Costs, ¶ 68.

21. *Id.* ¶ 15(b).

22. *Id.* ¶ 13.

23. *Id.*

24. *Id.*

25. *Id.* ¶ 14.

*A. Before the Commission*

**February 15, 1991:** The Permanent Human Rights Commission of Nicaragua files a petition with the Commission on Mr. Genie Lacayo's behalf.<sup>26</sup> The petition is transmitted to the government of Nicaragua requesting information to determine whether all of the domestic legal measures had been exhausted.<sup>27</sup> The application states that the lack of access to domestic remedies constitutes an exception to the rule of exhaustion of domestic remedies.<sup>28</sup>

**March 10, 1993:** The Commission issues Merits Report No. 2/93.<sup>29</sup> The Commission finds that the State violated Article 2 (Obligation to Give Domestic Legal Effect to Rights), Article 8 (Right to a Fair Trial), Article 24 (Right to Equal Protection), and Article 25 (Right to Judicial Protection) in relation to Article 1(1) (Obligation to Respect Rights) of the American Convention.<sup>30</sup> The Commission recommends that the Nicaraguan government punish the authors, accomplices, and accessories for the crime of homicide; pay compensatory damages to the direct relatives of the victim; accept the jurisdiction of the Court in the case; and inform the Commission within three months of the measures taken in accordance with these recommendations.<sup>31</sup>

**May 21, 1993:** Nicaraguan government asserts that the domestic remedies had not been exhausted and requests the Commission review Report No. 2/93.<sup>32</sup>

**October 7, 1993:** The Commission confirms Report No. 2/93.<sup>33</sup>

*B. Before the Court*

**January 6, 1994:** The Commission submits the case to the Court after the State failed to adopt its recommendations.<sup>34</sup>

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26. *Id.* ¶ 5.

27. *Id.*

28. *Id.* ¶ 15.

29. Jean Paul Genie v. Nicaragua, Report on Merits, Report No. 2/93, Inter-Am. Comm'n H.R., Case No. 10.792, ¶ 1 (Mar. 1, 1993).

30. Genie Lacayo v. Nicaragua, Merits, Reparations, and Costs, ¶ 11.

31. *Id.* ¶ 8.

32. *Id.* ¶ 9.

33. *Id.*

34. *Id.* ¶ 1.

## 1. Violations Alleged by Commission

Article 2 (Obligation to Give Domestic Legal Effect to Rights)

Article 8 (Right to a Fair Trial)

Article 24 (Right to Equal Protection)

Article 25 (Right to Judicial Protection)

*all in relation to:*

Article 1(1) (Obligation to Respect Rights) of the American Convention.<sup>35</sup>

2. Violations Alleged by Representatives of the Victims:<sup>36</sup>

Same Violations Alleged by Commission.

**May 23, 1994:** The State submits a preliminary objection.<sup>37</sup> The State contests that Government agents obstructed the judicial process;<sup>38</sup> that there was undue delay in the administration of justice;<sup>39</sup> and that the State applied laws, Military Decrees 591 and 600, incompatible with the object and purpose of the American Convention.<sup>40</sup>

**November 17, 1994:** International Legal Advisors Esq. and the Foundation for the Development of International Law presents an *amicus curiae* alleging the non-exhaustion of domestic remedies during the phase of preliminary objections.<sup>41</sup>

**January 27, 1995:** The Court unanimously dismisses the preliminary objections of the State.<sup>42</sup> In the judgment on the preliminary objections the Court finds that it will not determine the compatibility of Decrees 591 and 600 of Nicaragua with the Inter-American Convention.<sup>43</sup> The Court also determined that the State's objection regarding the non-exhaustion of domestic remedies, and the State's opposition to the Commission's assertions would be resolved in the merits judgment.<sup>44</sup>

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35. *Id.* ¶ 11.

36. Dr. Lino Hernández, Executive Secretary of the Human Rights Permanent Commission in Nicaragua, represented the petitioner.

37. *Id.* ¶ 18.

38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.* ¶ 41.

42. Genie Lacayo v. Nicaragua, Preliminary Objections, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 21 (Jan. 27, 1995).

43. Genie Lacayo v. Nicaragua, Merits, Reparations, and Costs, ¶ 22.

44. *Id.*

## III. MERITS

A. *Composition of the Court*<sup>45</sup>

Héctor Fix-Zamudio, President  
Hernán Salgado Pesantes, Vice President  
Rafael Nieto Navia, Judge  
Alejandro Montiel Argüello, Judge  
Máximo Pacheco Gómez, Judge

Manuel E. Ventura Robles, Secretary  
Victor M. Rodríguez Rescia, Interim Deputy Secretary

B. *Decision on Merits*

**January 29, 1997:** Court issued its Judgment on Merits, Reparations and Costs.<sup>46</sup>

The Court found unanimously that the State had violated:

Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal), in relation to Article 1(1) of the Convention, to the detriment of Mr. Genie Peñalba,<sup>47</sup> because:

*Military authorities obstructed or refused to collaborate in the investigations of the Attorney General, and the investigation exceeded a reasonable time.<sup>48</sup> A reasonable time to conduct a trial under Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) is determined by taking into account the complexity of the matter, the judicial activity of the interested party, and the behavior of the judicial authorities.<sup>49</sup> The matter was deemed sufficiently complex to justify the fact that the trial would take longer than others.<sup>50</sup> However, the Court found that the last stage of the proceedings, wherein the Attorney General and Mr. Genie Peñalba applied for judicial review before the Supreme Court of Justice, was*

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45. The Merits judgment did not indicate which judges abstained from the decision on the merits or why they were absent from the decision.

46. Genie Lacayo v. Nicaragua, Merits, Reparations, and Costs.

47. *Id.* "The Court" ¶ 2.

48. *Id.* ¶¶ 76, 77.

49. *Id.* ¶ 77.

50. *Id.* ¶¶ 78-79.

*excessively delayed as it was still pending two years after its initial application.*<sup>51</sup> *The Court applied the “global analysis of the proceeding” test employed by the European Court of Human Rights to determine that five years was not a reasonable time period.*<sup>52</sup> *As a result, the Court found that the State violated Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal).*<sup>53</sup>

The Court found unanimously that the State did not violate:

Article 2 (Obligation to Give Domestic Legal Effect to Rights) to the detriment of Mr. Genie Peñalba,<sup>54</sup> because:

*The Commission asserted that the State applied Decrees 591 and 600 entitled “Law on the Organization of the Military Judge Advocate and Military Criminal Procedure” and “Provisional Law on Military Crimes” to this case, and these laws violated the requirements of the American Convention.*<sup>55</sup> *The Court, however, declined to consider the provisions of Decrees 591 and 600 entitled “Law on the Organization of the Military Judge Advocate and Military Criminal Procedure” and “Provisional Law on Military Crimes” because those decrees had not been actually enforced in this case.*<sup>56</sup> *As a result, the Court found that the State did not violate Article 2 (Obligation to Give Domestic Legal Effect to Rights).*<sup>57</sup>

Article 24 (Right to Equal Protection), in relation to Article 1(1) of the Convention, to the detriment of Mr. Genie Peñalba,<sup>58</sup> because:

*The Court found that Mr. Genie Peñalba’s rights were not per se violated because the proceedings occurred before a military court.*<sup>59</sup> *Furthermore, the Commission and Mr. Genie Peñalba’s Representatives did not prove that Mr. Genie Peñalba was in an inferior situation when he appeared as the accusing party before a*

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51. *Id.* ¶ 80.

52. *Id.* ¶ 81.

53. *Id.* “The Court” ¶ 2.

54. *Id.* “The Court” ¶ 3.

55. *Id.* ¶ 51.

56. *Id.* ¶ 91.

57. *Id.* “The Court” ¶ 3.

58. *Id.*

59. *Id.* ¶ 83.

*military court.*<sup>60</sup>

Article 25 (Right to Judicial Protection) in relation to Article 1(1) of the Convention, to the detriment of Mr. Genie Peñalba,<sup>61</sup> because:

*The Commission failed to prove that the State violated Article 25 because the Commission did not show that the right to “simple and prompt recourse” was ineffective or non-existent in this case.*<sup>62</sup>

### *C. Dissenting and Concurring Opinions*

#### 1. Dissenting Opinion of Judge Máximo Pacheco Gómez

In Judge Máximo Pacheco Gómez's dissent, he argued that the Court should not have ordered the State to pay reparations to Mr. Genie Peñalba without first conducting a separate reparations hearing to establish the amount of compensation.<sup>63</sup>

## IV. REPARATIONS

The Court ruled that the Nicaragua had the following obligations:

### *A. Specific Performance (Measures of Satisfaction and Non-Repitition Guarantee)*

#### 1. Ensure the Free and Full Exercise of Human Rights

The Court required the State restore the violated rights, provide prompt domestic remedies to cure the violations, and ensure the free and full exercise of Human Rights.<sup>64</sup>

### *B. Compensation*

The Court awarded the following amounts:

#### 1. Pecuniary Damages

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60. *Id.* ¶ 88.

61. *Id.* “The Court” ¶ 3.

62. *Id.* ¶ 89.

63. Genie Lacayo v. Nicaragua, Merits, Reparations, and Costs, Dissenting Opinion of Judge Máximo Pacheco-Gómez, Inter-Am. Ct. H.R. (ser. C) No. 30 (Jan. 29, 1997).

64. Genie Lacayo v. Nicaragua, Merits, Reparations, and Costs, ¶ 96.



The Court ordered the State to pay \$20,000 to Mr. Genie Peñalba, the father of the victim for the State's obstruction of the investigation and undue delay in the procedures.<sup>65</sup>

2. Non-Pecuniary Damages

[None]

3. Costs and Expenses

[None]

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

\$20,000

*C. Deadlines*

The State may pay pecuniary damages were to be paid to the father of the victim, Mr. Genie Peñalba, within six months of the date of the Judgment.<sup>66</sup>

V. INTERPRETATION AND REVISION OF JUDGMENT

**April 30, 1997:** Mr. Genie Peñalba and the Commission requested a revision of the judgment.<sup>67</sup> Mr. Genie Peñalba and the Commission argued that the judgment of the Supreme Court of Justice of February 12, 1997, that dismissed Mr. Genie Peñalba's application for judicial review, constituted "a new fact that deprived the victim of prompt, simple and effective recourse for protection of his rights" against the military judgment.<sup>68</sup> Mr. Genie Peñalba and the Commission also asserted that the Government of Nicaragua did not bring its domestic laws in line with the Convention.<sup>69</sup>

*A. Composition of the Court*<sup>70</sup>

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65. *Id.* ¶ 95.

66. *Id.*

67. *Id.* ¶ 2.

68. *Id.* ¶ 14(a).

69. *Id.* ¶ 14(b).

70. *Id.* at 1.

Hernán Salgado Pesantes, President  
Antônio A. Cançado Trindade, Vice President  
Héctor Fix-Zamudio, Judge  
Alejandro Montiel Argüello, Judge  
Máximo Pacheco Gómez, Judge  
Oliver Jackman, Judge  
Alirio Abreu Burelli, Judge

Manuel E. Ventura Robles, Secretary  
Victor M. Rodríguez Rescia, Interim Deputy Secretary

### *B. Merits*

The Court found (by six votes to one) that the application for revision was not justified.<sup>71</sup> The Court found that new fact at issue did not exist at the time of the judgment and did not have an influence on the outcome of the proceeding.<sup>72</sup> As such, the Court determined that it was not appropriate to amend the judgment.<sup>73</sup>

### *C. Dissenting and Concurring Opinions*

#### 1. Dissenting Opinion of Judge Antônio Augusto Cançado Trindade

Judge Antônio A. Cançado Trindade dissented from this opinion.<sup>74</sup> He asserted that the judgment of the Supreme Court of Justice was issued only thirteen days after the judgment of the Court.<sup>75</sup> The judgment of the Supreme Court of Justice was not an isolated fact, but a fact demonstrating the existence of a continuing situation that existed before the Court issued its judgment.<sup>76</sup> Furthermore, Judge Cançado Trindade asserted that the judgment of the Supreme Court of Justice was a new fact of decisive influence that the Court could have concluded the appeal was well founded.<sup>77</sup>

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71. *Id.* at 6.

72. *Id.* ¶ 15.

73. *Id.*

74. *Genie Lacayo v. Nicaragua, Application for Review of the Judgment of Merits, Dissenting Opinion of Judge Antônio Augusto Cançado Trindade, Inter-Am. Ct. H.R. (ser. C) No. 45 (Sept. 13, 1997).*

75. *Id.* ¶ 8.

76. *Id.* ¶ 16.

77. *Id.* ¶ 17.

## VI. COMPLIANCE AND FOLLOW-UP

[None]

## VII. LIST OF DOCUMENTS

*A. Inter-American Court*

## 1. Preliminary Objections

[Genie Lacayo v. Nicaragua, Preliminary Objections, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 21 \(Jan. 27, 1995\).](#)

## 2. Decisions on Merits, Reparations, and Costs

[Genie Lacayo v. Nicaragua, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 30 \(Jan. 29, 1997\).](#)

[Genie Lacayo v. Nicaragua, Merits, Reparations, and Costs, Dissenting Opinion of Judge Máximo Pacheco-Gómez, Inter-Am. Ct. H.R. \(ser. C\) No. 30 \(Jan. 29, 1997\).](#)

## 3. Provisional Measures

[None]

## 4. Compliance Monitoring

[None]

## 5. Review and Interpretation of Judgment

[Genie Lacayo v. Nicaragua, Application for Review of the Judgment of Merits, Order of the Court, Inter-Am. Ct. H.R. \(ser. C\) No. 45 \(Sept. 13, 1997\).](#)

[Genie Lacayo v. Nicaragua, Application for Review of the Judgment of Merits, Dissenting Opinion of Judge Antônio A. Cançado Trindade, Inter-Am. Ct. H.R. \(ser. C\) No. 45 \(Sept. 13, 1997\).](#)

*B. Inter-American Commission*

## 1. Petition to the Commission

[Not Available]

## 2. Report on Admissibility

[None]

## 3. Provisional Measures

[None]

## 4. Report on Merits

Genie Lacayo v. Nicaragua, Report on Merits, Report No. 2/93, Inter-Am. Comm'n H.R., Case No. 10.792 (Mar. 1, 1993).

## 5. Application to the Court

Genie Lacayo v. Nicaragua, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 10.792 (Mar. 21, 1994).

## VIII. BIBLIOGRAPHY

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