

CONCURRING OPINION OF JUDGE EDUARDO VIO GROSSI

INTER-AMERICAN COURT OF HUMAN RIGHTS

CASO VELÁSQUEZ PAIZ ET AL. V. GUATEMALA,

JUDGMENT OF NOVEMBER 19, 2015

(Preliminary objections, merits, reparations and costs)

This concurring opinion to the judgment in reference is issued to leave express record that the undersigned supports the decision indicated therein to reject the preliminary objection filed by the State concerning the alleged failure to exhaust domestic remedies, basically because, on the one hand, the initial petition lodged in this case had already asserted the non-applicability of the requirement to file and exhaust such remedies before lodging the petition and, on the other hand, the State's answer to the petition, when arguing that this requirement had not been complied with, made no mention of which remedies had not been exhausted, nor demonstrated whether they were available and adequate, appropriate and effective.

Thus, in the opinion of the undersigned, these facts were sufficient to reject the objection filed by the State. Moreover, as I have affirmed in other separate opinions on the same issue,¹ this is based on the fact that the ruling of the Inter-American Commission on Human Rights concerning the petition's admissibility should be made, in accordance with the provisions of Article 46(1) of the American Convention on Human Rights and its own Rules of Procedure, on the basis of the petition "*lodged*"; in other words, just as it was and not based on what may have happened subsequently.

And this is so because, if it were to be accepted that the ruling on the petition's admissibility was made in relation to what had happened after it was lodged and after the corresponding answer by the State, this could constitute an incentive – that could be perverse – for submissions to be made to the Inter-American Commission even when

¹ Dissenting opinion of Judge Eduardo Vio Grossi, *Case of the Santa Bárbara Campesino Community v. Peru*, Judgment of September 1, 2015 (preliminary objections, merits, reparations and costs); Dissenting opinion of Judge Eduardo Vio Grossi, *Case of Wong Ho Wing v. Peru*, Judgment of June 30, 2015 (preliminary objection, merits, reparations and costs); Dissenting opinion of Judge Eduardo Vio Grossi, *Case of Cruz Sánchez et al. v. Peru*, Judgment of April 17, 2015 (preliminary objections, merits, reparations and costs); Dissenting opinion of Judge Eduardo Vio Grossi, *Case of Liakat Ali Alibux v. Suriname*, Judgment of January 30, 2014 (preliminary objections, merits, reparations and costs), and Dissenting opinion of Judge Eduardo Vio Grossi, *Case of Díaz Peña v. Venezuela*, Judgment of June 26, 2012 (preliminary objection, merits, reparations and costs).

the said requirement had not been met as mandated by the aforementioned article of the Convention, in the hope that it could be met subsequently; in other words, prior to the Commission's ruling on admissibility. In addition, situations of evident injustice or arbitrariness would arise insofar as the proper moment to comply with the said requirement would depend not on the victim or the petitioner, as provided for in Article 46(1)(a) of the American Convention, but rather on the decision of the Commission when determining the admissibility or inadmissibility of the petition.

Eduardo Vio Grossi
Judge

Pablo Saavedra Alessandri
Secretary