SEPARATE OPINION OF JUDGE ALBERTO PÉREZ PÉREZ
IN THE CASE OF LIAKAT ALI ALIBUX v. SURINAME

1. My disagreement is based solely on the rejection of the objection regarding the lack of exhaustion of domestic remedies with respect to the restriction of the right to leave the country that occurred on January 3, 2003, which was subsumed in the overall decision that dismissed all of the objections that had been raised (paragraph 21 and operative para. 1).

2. The Court found that "regarding the lack of exhaustion of domestic remedies in regard to the restriction of the right to leave the country of January of 2003 […], the alleged victim did not file any remedy before the domestic tribunals," (para. 20) and that "[t]here is no indication that this decision was contested or challenged by any means." (para. 44) It further held that "the alleged victim did not specifically address the lack of exhaustion of domestic remedies in regard to the restriction of the right to leave the country," (para. 13) and that "Mr. Alibux did not appeal this in domestic courts." (para. 130) Moreover, for the record, of the five objections raised by the alleged victim before the High Court of Justice, which were dismissed in the Interlocutory Order of June 12, 2003, none of them referenced the restriction of the right to leave the country (para. 46).

3. The Commission argued that the objection should be rejected because "[it had not been] brought forth at the admissibility stage of the petition, but was instead raised for the first time during the proceedings before the Court," and it "considered that, pursuant to the principle of estoppel, the State had the opportunity to challenge the admissibility of the point at issue, and in not doing so, the preliminary objection must be rejected." (para. 12)

4. The Court based its decision on the grounds that "the State did not contravene its admissibility in the early stages of the proceedings before the Commission, nor did it indicate the remedies that the alleged victim should have exhausted, and this information was not provided to the Court." (para. 20) As is indicated later on, when the State was asked to provide "as evidence to facilitate adjudication," *inter alia*, "the regulations governing the restriction of the right to leave the country by persons charged or accused of a criminal offense," "[t]he required regulations were not submitted in their entirety. However, the Court will take into consideration, where relevant, the articles that were mentioned in the briefs of the parties, and this will be assessed in the corresponding paragraphs." (para. 26)

5. Notwithstanding the foregoing, let it be known that the State invoked domestic provisions contained in the Constitution and the Code of Criminal Procedure (that the Court transcribed), pursuant to which the measures adopted were within the jurisdiction of the Procurator General. A reading of the Constitution shows that "Everyone shall have, in case of infringement of one's rights and freedoms, a claim to an honest and public treatment of his complaint within a reasonable time by an independent and impartial judge,"[1] and that "Interested parties shall have the right to submit to the court for reassessment any final and enforceable act by agencies of public administration, which is believed to be unlawful."[2] The lack of arguments in this regard on the part of the alleged victim does not allow this Court to ascertain whether in domestic law there were exceptions that would render the provisions on the restriction of the right to leave the country inadmissible.

6. Given these circumstances, I consider that the procedural arguments set forth in the Judgment are insufficient to justify the dismissal of this preliminary objection.

Alberto Pérez Pérez
Judge

Pablo Saavedra Alessandri
Registrar

[1] Article 10: Everyone shall have, in case of infringement of one's rights and freedoms, a claim to an honest and public treatment of his complaint within a reasonable time by an independent and impartial judge.

[2] Article 158, paragraph 2: "Interested parties shall have the right to submit to the court for reassessment any final and enforceable act by agencies of public administration, which is believed to be unlawful."