REPORT No. 9/14
CASE 12.700
MERITS
AGUSTIN BLADIMIRO ZEGARRA MARIN
PERU

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April 2nd, 2014

I. SUMMARY

1. On May 16, 2000, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission," "the Commission" or "the IACHR") received a petition, which was lodged by Mr. Agustín Bladimiro Zegarra Marín (hereinafter, also "the petitioner" or "the alleged victim"), on behalf of himself, alleging violation by the Republic of Peru (hereinafter "Peru," "the State" or "the Peruvian State") of the rights enshrined in Articles 5, 7, 8, 9, 10, 11, 24 and 25 of the American Convention on Human Rights (hereinafter also "the American Convention," "the Convention" or "the ACHR").

2. The petitioner states that charges were brought against him in 1994 and he was convicted in a criminal proceeding for alleged abuse of the authority to authenticate official documents (*delitos contra la fe pública*) in his capacity as a Commander of the Peruvian National Police (hereinafter "the PNP"). He alleges that, in the context of said proceeding, he was unlawfully deprived of his liberty and several of his fair trial rights were violated, particularly, the principle of the presumption of innocence. He further contended that, while the criminal proceeding was ongoing, the PNP decided to force him into retirement without first conducting any administrative proceeding or having any legal grounds to do so.

3. On March 19, 2009, the IACHR approved Admissibility Report No. 20/09, finding that the petition is admissible and that the facts alleged by the petitioner as to reversal of the burden of proof in the criminal proceeding and his conviction based on his inability to totally prove his innocence, could tend to establish violations of the rights provided for under Articles 8 and 25 of the American Convention in connection with the obligations set forth therein under Article 1.1. The Commission also found that the petition is inadmissible as to the alleged violation of the rights enshrined in Articles 5, 7, 9, 10, 11 and 24 of the American Convention.

4. During the merits stage, the petitioner has alleged that his conviction was based solely on a statement made by a co-defendant and did not take into consideration the many other testimonies and evidence proving his innocence. The petitioner emphasizes that the burden of proof was reversed in the judgment and that one of the legal grounds cited for the conviction was that he had not totally proven his innocence, in violation of the American Convention and the Constitution and laws of Peru. He contends that he challenged this conviction by filing a motion to set aside the conviction, but the conviction was upheld on December 17, 1997 by the Criminal Chamber of the Supreme Court and, on September 14, 1998, he filed a motion to review the conviction with the Chief Justice of the Supreme Court of Justice, which was denied on August 24, 1999, on technical procedural grounds.

5. In response, the State alleges that Mr. Agustín Bladimiro Zegarra Marín had the opportunity to clarify his bail status, which was set by the judiciary in keeping with criminal procedural law in effect at the time, the Political Constitution of Peru and the international human rights protection

instruments to which Peru is a State Party. It also contends that the alleged victim availed himself of all procedural remedies provided to him by the law and, therefore, the fact that Mr. Zegarra Marin has received an adverse judgment cannot be viewed as a denial of justice. In this regard, the State alleges that because of the subsidiary nature of the bodies of the Inter-American human rights protection system, the Commission may not intervene and sit in judgment of facts that are the subject of the complaint, inasmuch as this would amount to acting as a so-called "fourth instance," or fourth level of review.

6. After examining the position of the parties, the Inter-American Commission concludes that the Peruvian State is responsible for violation of the right to the presumption of innocence, the right to appeal the judgment before a higher judge or court and the right to judicial protection, as enshrined in Articles 8.2, 8.2h and 25.1 of the American Convention, in connection with Article 1.1 of this instrument, to the detriment of Mr. Agustín Bladimiro Zegarra Marín.

II. PROCEEDINGS BEFORE THE IACHR

A. Case Proceedings

7. The Commission examined the petition during the 134th regular session and approved Admissibility Report No. 20/09 of March 19, 2009, which was forwarded to the parties on April 1, 2009, placing itself at the disposal of the parties with a view to reaching a friendly settlement, as provided for in Article 48.1.f of the American Convention. Additionally, in keeping with Article 38.1 of the Rules of Procedure in effect at the time, the Commission requested the petitioner to submit additional observations on the merits. On April 20, 2009, the Commission received a communication from the petitioner expressing his willingness to reach a friendly settlement in the matter. On May 5, 2009, the IACHR forwarded this communication to the State and reiterated it had placed itself at the disposal of the parties with a view to reaching a friendly settlement in the matter. The State did not reply to the aforementioned offer.

8. On May 8, 2009, the IACHR received additional observations on the merits from the petitioner, which were forwarded to the State in a communication of May 22, 2009, granting it a two-month period to reply. The State filed a motion with the Commission to grant it an extension to submit its reply, which was denied by the IACHR on June 5, 2009, on the grounds that the original time period that was set for its reply would lapse on July 22, 2009.

9. The State submitted its additional observations on the merits in a communication dated July 22, 2009, which were forwarded to the petitioner on August 24, 2009, for him to submit any comments that he deemed appropriate within a period of one month. The petitioner submitted comments on September 21 and 29, 2009, which were forwarded to the State on September 30 and October 27, 2009, respectively, and it was given a one-month period to respond. The State submitted observations in communications dated October 30 and November 12, 2009, which were forwarded to the petitioner on January 4, 2010.

10. The Commission received two communications from the State on January 11 and 13, 2011, which were forwarded to the petitioner on March 4, 2011. The petitioner submitted information in a communication of March 24, 2011, which was forwarded to the State for its reference on June 6, 2011. Then, on September 14, 2011, the Commission received another communication from the petitioner and acknowledged receipt thereof on May 24, 2012. In a communication received on December 2011 the petitioner expressed his interest in the IACHR holding a hearing during the 144th

regular session, which it was unable to do because of the high number of requests for hearings. On September 3, 2012, the petitioner once again expressed his interest in the IACHR holding a hearing on his case during the upcoming regular session of the IACHR to be held in October 2012. In a communication of October 5, 2012, the Commission advised the petitioner that it was unable to grant his request. On December 19, 2012, the petitioner made another request to the IACHR to hold a hearing on his case during the 147th regular session, which was granted by the Commission and the petitioner was served notice thereof in a communication of February 11, 2013. On February 22, 2013, the IACHR received a communication from the petitioner, which was forwarded to the State on March 14, 2013. On March 4 and 25, 2013, the IACHR received additional information from the petitioner, which was forwarded to the State in a communication of June 6, 2013. The State submitted observations in a communication dated July 16, 2013, which were sent to the petitioner for his reference on September 17, 2013.

III. POSITIONS OF THE PARTIES

A. Petitioner

11. The petitioner states that in 1994, when he held the rank of National Police Commander, he was appointed Chief of the Deputy Directorship of Passports of the Office of Migration, which was headed by PNP Coronel José Matayoshi Matayoshi. He notes that the jurisdiction of the Chief of the Deputy Directorship of Passports was confined to the area of Lima and did not extend to the offices in charge of issuing passports in the provinces, inasmuch as these offices were functionally and administratively under the Deputy Directorship of Migratory Control, which was headed by PNP Commander Julio Lozada Castro.

12. The petitioner claims that over August and September 1994, the media published several news stories about forged passports seized from fugitives from justice, including Carlos Manrique Carreño, who was reputedly one of the biggest fraudsters ever in the history of Peru and was arrested in New York with a passport issued in someone else's name, which was supposedly issued in Lima bearing the signature and seal of the alleged victim, Commander Zegarra Marín.

13. Mr. Zegarra Marín recounts that when he learned of these news stories, after taking the pertinent steps to ascertain the veracity of the stories, he filed a complaint with the Director of Migration and the Minister of the Interior against PNP Captain Roberto Cárdenas Hurtado, Chief of the Migration Office of Tumbes, in order to defend his and his family's honor, as it was a fact proven in a judicial proceeding that the aforementioned irregularly issued passports came out of the Tumbes office, and not his.

14. The petitioner claims that as a result of his complaint, a police investigation was opened and Police Report No. 079 of October 21, 1994, was generated. In the report, the individuals who were probably responsible for the passport forgery were identified by name and they included police officers and civilian officials, though the petitioner's name did not appear among them. He also noted that this report set a judicial proceeding into motion. Based on the account of the petitioner, one of the co-defendants, "in collusion with the prosecuting attorney" and outside of the police investigations, allegedly gave "preliminary investigation statements," which were not included in the Police Report and were "maliciously" withheld by the Prosecuting attorney for 24 hours, until the criminal charges were formally brought on October 21, 1994, for the sole purpose of depriving the alleged victim of his right to a defense. He contends that in said statements, he was charged with acts he did not commit in order to

take revenge on him for reporting the passport business dealings with criminal rings. This was also a way for the high-ranking police officers to "shake off" the scandal made by the media, because from that point on, the media made it seem like the petitioner was the leader of the criminal ring.

15. The alleged victim claims that because the charges discredited the Office of Migration, which was under the Executive Branch of Government (Ministry of the Interior) and this was taking place when former President Fujimori's reelection campaign for president (1994) was in full swing, and because one of his campaign theme-banners was to crack down on corruption, the press was calling for jail terms for those involved and the head of one high-ranking police chief at the time. He contends that since the Director of Migration and the Deputy Director of Migratory Control at the time were protégées of President Fujimori and Montesinos, respectively, there was no other high-ranking police officer left to blame but him. He argues that these two high-ranking police officers were not named in the criminal indictment nor were they prosecuted.

16. The petitioner alleges that, because of the foregoing reasons, the prosecuting attorney named him in the criminal indictment and sought to take him into custody, even though he had not been summoned in advance in order to defend himself against the charges brought against him, and the preliminary investigation judge ordered his arrest. The petitioner contends that he turned himself in to the court and, even though he filed three motions for conditional release, he was deprived of his liberty for 8 months until, under an order of June 22, 1995, the Fifth Chamber for Criminal Matters granted him conditional release, on the grounds that the charges against him were unsubstantiated in light of the evidence that had been introduced.

17. The petitioner claims that on November 8, 1996, the Fifth Chamber for Criminal Matters of the Superior Court of Justice of Lima, paradoxically, sentenced him to 4 years in prison for abuse of the authority to authenticate official documents, crimes against the administration of justice and corruption of public officials, and then suspended execution of the sentence. He contended that the only basis for this conviction was the accusatory statement made by a co-defendant, even though no additional corroborating evidence had been introduced in support of that statement and many other testimonial statements and evidence proving his innocence were not taken into consideration. The petitioner emphasized that the burden of proof had been reversed in the judgment and that part of the legal reasoning behind his conviction was that he had been unable to totally prove his innocence.

18. He also notes that he challenged this conviction by filing a motion to set it aside (*recurso de nulidad*) before the Criminal Chamber of the Supreme Court, which upheld it on December 17, 1997, providing no explanation of the legal basis for the ruling. He asserts that, on September 14, 1998, he filed a motion to review the conviction (*recurso de revisión*) with the Chief Justice of the Supreme Court of Justice, which was denied on August 24, 1999, on procedural grounds. The petitioner contends that this ruling was based on a report written by two Supreme Court Justices, in which it is clearly explained that, even though the motion was found inadmissible on procedural grounds, both the deprivation of liberty and the conviction of the petitioner were arbitrary, inasmuch as they violated the most fundamental principles of due process rights and of constitutional and legal human rights provisions.

19. The alleged victim also reports that, on December 13, 2000, he filed a criminal complaint for the crime of abuse of authority and malfeasance in office against the three members of the court who convicted him. He noted that the complaint was dismissed. He contended that one of the members of the court charged in the complaint sent him a threatening note to try to get him to pay US$100,000 for bringing the charges against him.

20. The petitioner alleges that the right to the presumption of innocence, enshrined in Article 8.2 of the American Convention, has been violated in the instant case, because he was convicted without any corroborating evidence whatsoever, as noted by the two justices of the Supreme Court in the report issued by them in response to the motion for review of conviction filed by him. He also alleges that the conviction was handed down in violation of Article 139.5 of the Political Constitution and Article 285 of the Code of Criminal Procedure of Peru, which require judges to base criminal convictions on evidence proving the guilt of the defendant, as well as to lay out a proper basis in the facts and the law for the conviction.

21. The alleged victim argues that, in his particular case, he was presumed guilty, was not provided the opportunity to defend himself, was deprived of his liberty solely on the basis of a co-defendant's accusation, and was held in custody even though there was no risk of flight, inasmuch as the he was an active-duty, high-ranking police chief, with a brilliant service record, was gainfully employed and lived at a known place of residence, was married and had 5 minor children, and appeared before the court on his own accord in order to be investigated.

22. The petitioner requests the IACHR to [have the Peruvian State]: 1) declare the conviction against him null and void and issue an acquittal; 2) investigate and punish those responsible for these arbitrary acts, including the prosecuting attorneys who investigated him and found him responsible; 3) reinstate him to the National Police within a reasonable period of time and with a rank equivalent to PNP Commander; 4) order the Ministry of Justice, the Ministry of the Interior and the National Police of Peru to personally and publically issue an apology; and 5) provide adequate reparation for material and moral damages caused by the human rights violations perpetrated against him.

23. The Commission notes that during the merits stage of the case the petitioner argued on several occasions about the alleged violation of other rights enshrined in the American Convention, which were found inadmissible by this Commission in Admissibility Report No. 20/09 and, accordingly, these alleged violations will not be addressed in this report.

B. State

24. The State asserts that the Fifth Chamber for Criminal Matters of the Superior Court of Justice of Lima convicted Agustín Bladimiro Zegarra Marín in a judgment of November 8, 1996, as a co-perpetrator in crimes against the administration of justice (aiding in the escape of a fugitive from justice), abuse of authority to authenticate official public documents (forgery of documents in general) and corruption of public officials, to the detriment of the State, and sentenced him to a 4-year jail term as punishment, suspending execution of the sentence, provided that he abides by predetermined conditions and rules of conduct. It contends that the conviction was based on the evidence that was introduced, debated and examined during the proceedings and that there is no basis for any claim that the petitioner's right to the presumption of innocence was violated, by taking a phrase used in the judgment of conviction out of context, which would seem that the alleged victim is being punished because he failed to prove his own innocence. The State contends that the following phrase appearing in the judgment of conviction, "(…) inasmuch as no compelling exculpatory evidence has emerged that makes him innocent of the offenses he is charged with (…)," is meant to express that none of evidence out of the entire body introduced and examined by the judges in the case led them to rule in favor of Zegarra Marín, inasmuch as based on the evidence before them, which was evaluated during the course of the criminal proceeding, respecting all due process rights provided for in the criminal law in effect at

the time and the Political Constitution of Peru, it was proven that the petitioner was criminally responsible for the crimes.

25. In this regard, the State asserts that it was established as an irrefutable fact in the proceeding against the alleged victim that Mr. Zegarra Marín was fully aware of the irregularities that were taking place in the Office of Migration of Tumbes and of the illegal passport trafficking. It specifically claims that Mr. Agustín Zegarra Marín had the opportunity to appoint defense counsel, introduce evidence, object to or challenge any decisions that he deemed improper and notes that he filed a motion to set aside the conviction of 1996, though it was upheld by the Supreme Court on December 17, 1997. The State also notes that the petitioner filed a motion for review of conviction, which was denied on August 24, 1999 and, lastly, he filed a criminal complaint against the judges of the Fifth Chamber for Criminal Matters of the Superior Court of Justice for the crimes of procedural fraud, malfeasance in office and overall dishonesty to the detriment of the State, and his claim was found groundless.

26. Consequently, the State alleges that the circumstances prompting legal proceedings to be instituted against PNP Commander Agustín Bladimiro Zegarra Marín and prompting his imprisonment and subsequent release, unfolded under a framework of judicial proceedings, which were reviewed on appeal by the highest level of the judiciary and, therefore, the means to challenge any rulings deemed by the petitioner to be contrary to his interests were available to him under the domestic legal system.

27. The State notes that Article 159 of the Political Constitution of Peru sets forth the powers of the Office of the Public Prosecutor, which include "instituting legal proceedings ex officio, or at the request of a party, to defend legality and public interests protected by law." It also asserted that these powers include "to safeguard the independence of the bodies of the judiciary and proper administration of justice" and "to conduct investigations into criminal offenses from the preliminary stage. For this purpose, the National Police is obligated to fulfill the mandates of the Office of the Public Prosecutor within the scope of its duty."

28. In light of the foregoing, the State alleges that the fact that the petitioner had been included as a target in the investigation, even though he had not been named in the police report, does not amount to a violation of his rights, since investigation reports produced by the National Police are merely for reference and do not constitute conclusive evidence against the subjects of the investigation.

29. The State also argues that the fact that the petitioner was granted conditional release on bail during the proceeding cannot be considered proof of his innocence, inasmuch as this release order was issued because none of the requirements under Article 135 of the Criminal Procedural Code were met for holding him in custody, and not as a direct consequence of his innocence.

30. Lastly, the State contends that given the subsidiary nature of the bodies of the Inter-American human rights protection system, the Commission may not engage in an examination of the facts, which are the subject of the domestic legal proceeding, because this would amount to acting as a so-called "fourth instance."

31. The Commission notes that the State argued on many occasions during the merits stage about the petitioner's claims of alleged violations of other rights enshrined in the American Convention, which were found inadmissible by this Commission in Admissibility Report No. 20/09 and, accordingly, these rights shall not be addressed in this report.

IV. PROVEN FACTS

32. In 1994, Peruvian National Police Commander Agustín Bladimiro Zegarra Marín, who was married and the father of 5 minor children, was serving as the Deputy Director of Passports of the Office of Migration and Naturalization of Peru, which had jurisdiction over Lima and Callao.[1] Pursuant to the hierarchical organizational structure of the Office of Migration and Naturalization at that time, the Offices of the Chiefs of Migration were located outside of Lima (in the provinces), and were under the Office of the Deputy Directorship of Migratory Control[2] and, therefore, they did not have any functional or hierarchical relationship with Mr. Zegarra Marín.

33. In 1994, it was reported in the media that passports had been issued irregularly, including the passport of Mr. Carlos Manrique Carreño, the former president of the organization once-known as CLAE, for whom an international arrest warrant had been issued because he had been convicted in 1993 to a five-year prison term for property crimes. Mr. Carlos Manrique Carreño was apprehended in New York (USA) traveling on an irregularly issued passport, allegedly signed by Commander Zegarra Marín.

34. On October 21, 1994, the Peruvian National Police issued report No. 079-IC-DIVISE, providing an account of the steps taken in the investigation into crimes allegedly committed by agents of the PNP against public administration, against the administration of justice, and in abuse of authority to authenticate public documents, to the detriment of the State (passport forgery), which took place from April to October 1994, in Lima and in Tumbes (border with Ecuador).[3] In said report, an account is also given about the arrest of 7 individuals, which did not include Mr. Zegarra Marín, as alleged participants in the commission of the aforementioned crimes. As for the examination of the facts, the report notes, among other things, that "since the beginning of the investigations, PNP Captain Roberto Martín Cárdenas Hurtado fully cooperated in clarifying the facts," he stated that 81 passports were not processed or issued under the law, and that together with PNP member Luis Augusto Moreno Palacios, who had been previously contacted by another member of the PNP in Lima, they sold him the 81 blank passports for him to fill them out with the names of Chinese citizens and undocumented foreign nationals, drug traffickers, or common criminals, in order for them to be able to enter the US and elude criminal liability.[4]

35. Additionally, on October 21, 1994, Ad Hoc Prosecutor Tony Washington García Cano brought criminal charges against 6 members of the PNP, including PNP Commander Agustín Zegarra

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[1] Annex 5. Case File Nº 987-94 5th Chamber for Criminal Matters, Submission of May 2, 1996, signed by Mario Armando Caverio Vlaochaga, Prosecuting Attorney before the Superior Court, 5th Office of the Prosecutor for Criminal Matters before the Superior Court of Lima. Annex to State's submission of April 29, 2005; and Annex 4. Case File No. 987-94, Superior Court of Justice of Lima, Fifth Chamber for Criminal Matters, Judgment of November 8, 1997, signed by Príncipe Trujillo, Chief Justice and D.D [Doctors in Law], Díaz Mejía, Member of the Court, Ruiz Cueto, Member of the Court, and Darcy Zegarra Molina, Clerk of the Court. Annex to petitioner's submission received on November 6, 2001.

[2] Annex 4. Case File No. 987-94, Superior Court of Justice of Lima, Fifth Chamber for Criminal Matters, Judgment of November 8, 1997, signed by Príncipe Trujillo, Chief Justice and D.D, Díaz Mejía, Member of the Court, Ruiz Cueto, Member of the Court, and Darcy Zegarra Molina, Clerk of the Court. Annex to petitioner's submission received on November 6, 2001.

[3] Annex 13. Peruvian National Police. Report No. 079-IC-DIVISE of October 21, 1994. Annex to petitioner's submission of November 6, 2001.

[4] Annex 13. Peruvian National Police. Report No. 079-IC-DIVISE of October 21, 1994. Annex to petitioner's submission of November 6, 2001.

Marín, a Peruvian Army Major and 3 civilians, as alleged perpetrators of the crime against the Administration of Justice (aiding in the escape of a fugitive from justice), abuse of the authority to authenticate public documents (forgery of documents in general), and corruption of public officials (taking of bribes by the members of the Police Force and bribing public officials by the civilians charged), to the detriment of the State.[5]

36. Pursuant to the charging document issued by the prosecutor's office, PNP Captain Roberto Cárdenas Hurtado, and a PNP First Class Warrant Officer, who worked at the Office of Migration of the city of Tumbes, illegally issued approximately 81 passports, many of which were handed over to different individuals, including a member of the PNP, who handed them over to the other co-defendants.[6] As for Mr. Zegarra Marín, the criminal complaint indicates that he was aware of the irregularities that were taking place in the Office of Migration of Tumbes and he had "obligated or induced" PNP Captain Cárdenas Hurtado to pay him US$5.00 for every passport he issued, and he received liquor and a watch from him [the Captain].[7] It also indicates that on April 6, 1994, he sent 500 passports to the Office of Migration of Tumbes, instead of the 525 he was supposed to have sent, and when the PNP Captain asked him to account for the missing ones, Commander Zegarra told him he did not have to pay him anything anymore and for him to replace the missing passports with old ones.[8] It notes that in order to provide support documentation for the unlawful granting of the passports, case files were put together using records that were not necessarily legal and then the passports were granted in exchange for economic advantages.[9] The charging document indicates that one of the passports sent to the Office of Migration of Tumbes was the one used by Carlos Remo Manrique Carreño in New York City on October 17, 1994, when he provided identification documentation to the police.[10]

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[5] Annex 1. Office of the Public Prosecutor, Office of the Attorney General of the Nation, Office of the Ad Hoc Prosecutor for the Alleged Illegal Departure from the Country of Carlos Manrique Carreño, signed by Tony Washington García Cano, Provincial Prosecutor for Criminal Matters, October 21, 1994. Annex to petitioner's submission received on November 6, 2001, and Annex to State's submission of July 1, 2003.

[6] Annex 1. Office of the Public Prosecutor, Office of the Attorney General of the Nation, Office of the Ad Hoc Prosecutor for the Alleged Illegal Departure from the Country of Carlos Manrique Carreño, signed by Tony Washington García Cano, Provincial Prosecutor for Criminal Matters, October 21, 1994. Annex to petitioner's submission received on November 6, 2001, and Annex to State's submission of July 1, 2003.

[7] Annex 1. Office of the Public Prosecutor, Office of the Attorney General of the Nation, Office of the Ad Hoc Prosecutor for the Alleged Illegal Departure from the Country of Carlos Manrique Carreño, signed by Tony Washington García Cano, Provincial Prosecutor for Criminal Matters, October 21, 1994. Annex to petitioner's submission received on November 6, 2001, and Annex to State's submission of July 1, 2003.

[8] Annex 1. Office of the Public Prosecutor, Office of the Attorney General of the Nation, Office of the Ad Hoc Prosecutor for the Alleged Illegal Departure from the Country of Carlos Manrique Carreño, signed by Tony Washington García Cano, Provincial Prosecutor for Criminal Matters, October 21, 1994. Annex to petitioner's submission received on November 6, 2001, and Annex to State's submission of July 1, 2003.

[9] Annex 1. Office of the Public Prosecutor, Office of the Attorney General of the Nation, Office of the Ad Hoc Prosecutor for the Alleged Illegal Departure from the Country of Carlos Manrique Carreño, signed by Tony Washington García Cano, Provincial Prosecutor for Criminal Matters, October 21, 1994. Annex to petitioner's submission received on November 6, 2001, and Annex to State's submission of July 1, 2003.

[10] Annex 1. Office of the Public Prosecutor, Office of the Attorney General of the Nation, Office of the Ad Hoc Prosecutor for the Alleged Illegal Departure from the Country of Carlos Manrique Carreño, signed by Tony Washington García Cano, Provincial Prosecutor for Criminal Matters, October 21, 1994. Annex to petitioner's submission received on November 6, 2001, and Annex to State's submission of July 1, 2003.

37. In the charging document, a request was made to open an investigation and issue the respective arrest warrants and for several individuals, including PNP Commander Agustín Bladimiro Zegarra Marín, to be prevented from leaving the country under the warrant.[11]

38. On October 21, 1994, the order was issued to open an ordinary investigation of several different individuals, including Mr. Agustín Bladimiro Zegarra Marín, for crimes against the administration of justice (aiding in the escape of a fugitive from justice), abuse of the authority to authenticate official public documents (forgery of documents in general), and corruption of public officials (passive bribery by members of the Police and active bribery of public officials by the civilians charged), to the detriment of the State, and arrest warrants were issued for some of the defendants and nationwide capture orders were issued for other defendants, including Agustín Zegarra Marín. An injunction against the sale of the property was also issued for all of the defendants and an order was issued to take the initial statements of different public officials.[12]

39. On January 5, 1995, the Fifth Chamber for Criminal Matters of the Superior Court of Lima ruled on the motion to appeal the arrest warrant filed by Mr. Agustín Bladimiro Zegarra Marín, keeping that order in effect.[13] The Court found that:

> (…) the appellant is charged with the commission of crimes which, in addition to giving rise to harm to several legally protected interests under the respective criminal statutes, are of a serious nature, inasmuch as a high-ranking public official is involved; the accusations leveled against the appellant by his now co-defendants, PNP Captain Roberto Cárdenas Hurtado and Warrant Officer Luis Moreno Palacios, by means of statements made in the course of the preliminary investigation, which are copied herein (…), because the statements were made before an Agent of the Office of the Public Prosecutor, it [the statement] has evidentiary value; that, consequently, it can be gathered that there is evidentiary material that links him as a participant in the intentional commission of the crimes that are the subject matter of the open investigation; that, accordingly, it is possible to determine that the punishment to be imposed on him will be longer than four years of deprivation of liberty; (…)[14]

40. On June 30, 1995, the Fifth Chamber for Criminal Matters of the Superior Court of Lima issued an order for the conditional release of Mr. Agustín Zegarra Marín, in finding that:

> …based on the examination of the evidence on record in the instant motion, it can be concluded that the bail situation of the defendant filing the motion [for conditional release] has obviously changed inasmuch as, based on cross-examination of the testimony conducted in the investigation of co-defendant Roberto Martín Cárdenas Hurtado, as well as contradictions regarding the accusations leveled by Mr. Cárdenas Hurtado against the appellant in the

[11] Annex 1. Office of the Public Prosecutor, Office of the Attorney General of the Nation, Office of the Ad Hoc Prosecutor for the Alleged Illegal Departure from the Country of Carlos Manrique Carreño, signed by Tony Washington García Cano, Provincial Prosecutor for Criminal Matters, October 21, 1994. Annex to petitioner's submission received on November 6, 2001, and Annex to State's submission of July 1, 2003.

[12] Annex 2. Lima, October 21, 1994, signature illegible. Annex to petitioner's submission received on November 6, 2001.

[13] Annex 6. Case File 987-94-D, Judicial notification of January 5, 1995, signed by Raul Guevara Burga, Clerk, Fifth Criminal Chamber of the Superior Court of Lima. Annex to the petitioner's submission of April 27, 2009.

[14] Annex 6. Case File 987-94-D, Court notice of January 5, 1995, signed by Raul Guevara Burga, Clerk, Fifth Criminal Chamber of the Superior Court of Lima. Annex to the petitioner's submission of April 27, 2009.

> preliminary statement of Mr. Cárdenas Hurtado; defendant Cárdenas Hurtado also claims that it was Commander Zegarra Marín who personally handed over the 525 passports to him, but this claim was disproven when it was ascertained that said bunch of passports was received by civilian employee Victor Salcedo Silva of the Office of the Deputy Directorship of Migratory Control headed by Commander Julio Lozada Castro; defendant Cárdenas Hurtado himself claims that he was the one who said to replace the missing passports with old case files, and then later he denies it in his initial statement claiming that he called him from the offices of ENTEL and that he also called him from the Office of the Deputy Director of Migratory Control, but that he was unable to get in touch either with Zegarra Martín or with the migratory control officials; additionally, based on the record of the proceedings, defendants Cárdenas Hurtado and Moreno Palacios, in their hierarchical positions in the Office of Migration of Tumbes and Chief of passports of said office, respectively, had no reason to contact their co-defendant Zegarra Marín in performing their duties, inasmuch as both officials were administratively and functionally under the Office of the Deputy Directorship of Migratory Control headed by Commander Julio Lozada Castro; additionally, based on the Handwriting Expert's Report drawn up by the Technical Criminal Investigation Laboratory of the Peruvian National Police, submitted in the Attached Notebook on page 79, passport number 0415818 in the name of Daniel Enrique Vega Acha bears the forged signature of defendant Zegarra Marín, and consequently, the basis for the charges against the defendant appealing his bail status that gave rise to the custody warrant is rendered groundless…"[15]

41. The Commission notes that Mr. Zegarra Marín was held in preventive detention from October 1994 until June 1995, that is, for 8 months.

42. On May 2, 1996, the Fifth Office of the Attorney General for Criminal Matters before the Superior Court of Lima found that there was merit to holding an oral trial and brought formal charges against more than 13 individuals, including Mr. Zegarra Marín. The following was asserted, with regard to the petitioner:

> (…) it appears in the preliminary investigation statement of AGUSTIN BLADIMIRO ZEGARRA MARIN, who served in the position of Deputy Director of passports of the Office of Migration and Naturalization until September 28, 1994, whose duty was to supervise, organize the duties of the personnel and officials, sign passports, advise the Office on the matters under his purview; he knows Cárdenas Hurtado, Moreno Palacios, he testifies he was not aware of the forged passport that the Chinese national apprehended at "Jorge Chavez" International Airport was carrying, which was a document issued in Tumbes, he claims that PNP Commander, Murazzo Castillo, never reported to him the irregularities that had been taking place in Tumbes, he claims he has received no communication from Cárdenas Hurtado, he does not agree with his version [Mr. Cárdenas Hurtado's version], who claimed that he [Zegarra Marín] charged five dollars for every passport illegally issued, nor does he agree with Cárdenas Hurtado's statement as to "Zegarra Marín was in cahoots with President Fujimori's brother," clarifying that he as not had any contact with the latter [Fujimori's brother] since 1986; with regard to the 525 passports, it must be PNP Captain Ramiro Araujo Sanchez and Victor Salcedo, who are responsible for them, he claims that Peceros Vargas forged his signature and had his seals in his possession.[16]

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[15] Annex 3. Case File 987-94-K. Court notice of the motion for conditional release. Defendant: Agustín. B. Zegarra Marín. Signed by Saul Guevara Burga, Clerk, Fifth Chamber for Criminal Matters of the Superior Court of Lima, June 30, 1995. Annex to the petitioner's submission received on November 6, 2001.

[16] Annex 5. Case File. Nº 987-94 Fifth Chamber for Criminal Matters, Submission of May 2, 1996, signed by Mario Armando Caverio Vlaochaga, Attorney General for Matters before the Superior Court, Fifth Office of the Attorney General for Criminal Matters before the Superior Court of Lima, pg. 6. Annex to State's submission of April 29, 2005.

> …the cross-examination is being conducted between the testimonies of Zegarra Marín and Cárdenas Hurtado, where Zegarra Marín categorically denies Cárdenas Hurtado's story about him being aware of the illegal issuing of passports in the Office of Migration in Tumbes, it [this version of the events] is reconfirmed by Cardenas Hurtado, who also claimed he delivered gifts and paying US$5.00 for every passport that they issued and that he never mentioned it to the police because he was promised help, as for the passport that was found on the Chinese national, he [Cardenas Hurtado] conducted his own investigation, concluding that said passport was issued in Tumbes; as for the theft of passports, he reported it to Zegarra and he [Zegarra] did not report this crime.[17]

43. As to petitioner's responsibility, the aforementioned charging document states that:

> Based on the record of the proceedings, it can be concluded that the commission of the crimes under investigation has been proven, whereby Carlos Manrique Carreño was provided new passport No. 0415913, with a dark cherry red cover in light of the fact that the previous one with a green cover had expired and couldn't be used and because it was absolutely essential for Carlos Manrique Carreño to obtain said passport in order to leave Peru, and thus evade prosecution of Justice, Violeta Mori Chavez was also delivered a dark cherry covered passport, under which they have travelled and identified themselves (…); with respect to Cárdenas Hurtado, Moreno Palacios, Villanueva Aguido,…, Zegarra Marín,…, it has been proven that in their capacity as members of the Police Forces in collusion with civilians…they have participated in the commission of the crimes under investigation, taking advantage of their positions that they have been holding in strategic places facilitating the issuing of passport No. 0415913, which Carlos Manrique Carreño used to leave the country, which was a document obtained in exchange for sums of money that these individuals received.[18]

44. On November 8, 1996, the Fifth Chamber for Criminal Matters of the Superior Court of Justice of Lima convicted 13 individuals, including Agustín Bladimiro Zegarra Marín, as a perpetrator of crimes against the administration of justice (aiding the escape of a fugitive from justice), abuse of authority to authenticate official public documents (forgery of documents in general), and corruption of public officials, to the detriment of the State, and imposed a prison term of four years of deprivation of liberty on him.[19]

45. With regard to Mr. Agustín Bladimiro Zegarra Marín, the judgment states in the thirteenth whereas clause:

> [Whereas] defendant Agustín Bladimiro Zegarra Marín, Peruvian National Police Commander, is accused of being aware of the irregularities that were taking place in the Office of Migration of Tumbes, inducing defendant Cárdenas Hurtado to pay five US dollars for every passport issued,

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[17] Annex 5. Case File. Nº 987-94 Fifth Chamber for Criminal Matters, Submission of May 2, 1996, signed by Mario Armando Caverio Vlaochaga, Attorney General for Matters before the Superior Court, Fifth Office of the Attorney General for Criminal Matters before the Superior Court of Lima, pg. 9. Annex to State's submission of April 29, 2005.

[18] Annex 5. Case File. Nº 987-94 Fifth Chamber for Criminal Matters, Submission of May 2, 1996, signed by Mario Armando Caverio Vlaochaga, Attorney General for Matters before the Superior Court, Fifth Office of the Attorney General for Criminal Matters before the Superior Court of Lima, pgs. 12 and 13. Annex to State's submission of April 29, 2005.

[19] Annex 4. Case File No. 987-94, Superior Court of Justice of Lima, Fifth Chamber for Criminal Matters, Judgment of November 8, 1997, signed by Príncipe Trujillo, Chief Justice and Doctors of Law [D.D], Díaz Mejía, Member of the Court, Ruiz Cueto, Member of the Court, and Darcy Zegarra Molina, Clerk of the Court. Annex to petitioner's submission received on November 6, 2001.

as well as to provide in-kind gifts; [whereas] he is also accused of sending Cárdenas Hurtado five hundred and twenty-five passports of which twenty-five were missing and, consequently, in collusion with him, concealed the crime, whereas in this group of passports which range from number (…) there was the forged passport number (…), which was used by defendant Carlos Remo Manrique Carreño when he was apprehended by the police in New York, United State of America; whereas during the proceeding, defendant Roberto Martín Cárdenas Hurtado has testified that his co-defendant Agustín Bladimiro Zegarra Marín was aware of the stolen passports, [and] that when the case of the passport found on the Chinese national happened, he was even called by Coronel José Matayoshi Matayoshi, who ordered him to bring the respective documentation, but once he arrived in Lima, he was only able to meet with Commander Zegarra Marín who told him that he was a friend of Coronel Matayoshi, and who asked him for five dollars for every passport that was issued; in response, Peruvian National Police Coronel José Matayoshi Matayoshi, Director of Migration and Naturalization, in his testimony of (…) pages stated that he never made any call at all to defendant Cárdenas Hurtado when the passport was seized from a Chinese immigrant in Jorge Chavez Airport, but instead he had ordered Commander Lozada Castro to conduct a thorough investigation into it; whereas defendant Cárdenas Hurtado also has stated that of the bunch of five hundred and twenty-five passports that were sent to him on April 6, 1994, there were only five hundred, having reported this fact, by means of a telephone call to his co-defendant Agustín Bladimiro Zegarra Marín, who answered him according to the report, that he should proceed as he has done on other occasions, that is, to replace the missing documents with old requests; that defendant Zegarra Marín has denied the charges that were made about him by his co-defendant Cárdenas Hurtado maintaining that he never learned of the irregular actions that were taking place in the Office of Migration of Tumbes, and that Peruvian National Police Captain Ramiro Araujo Sanchez and civilian Victor Salcedo Silva must make a statement with regard to the missing 25 passports; that in his testimony on pages (…), civilian Victor Salcedo Silvaque has testified that he delivered the 525 passports to defendant Cárdenas Hurtado directly, and that he even counted them and verified them, and this was why he signed to accept responsibility; in addition to that, there is also the testimony of Peruvian National Police Commander Julio Lozada Castro, Deputy Director of Migratory Control, who in his testimony of (…) pages, has testified that he cannot account for the claim made by Cárdenas Hurtado with regard to the 525 passports bound for Tumbes, because he signed with his own handwriting that he accepted and that they [the passports] had even been counted; that these statements square with the copies of the official letters in the case record on pages (…); based on the hierarchical organizational structure and the Manual of Organization and Functions of the Office of Migration and Naturalization (…), the Offices of the Chiefs of Migration are bodies that fall under the Office of the Deputy Directorship of Migratory Control and, therefore, the immediate superior of defendant Cárdenas Hurtado in his capacity as Chief of the Office of Migration of Tumbes was Commander Julio Lozada Castro; that according to the Handwriting Expert's Report (…), it is concluded that the deep cherry colored Peruvian passport number (…) which appears with the name of Carlos Remo Manrique Carreño has been fraudulently authorized with regard to the signature and the post-signature of the person authenticating it, in other words, Commander Agustín Bladimiro Zegarra Marín; however, these additional pieces of evidence, do not fully disprove the charges made against him by his co-defendants Cárdenas Hurtado and Moreno Palacios, inasmuch as the fact that these two individuals who are defendants in the proceedings have stood firmly by their accusations up through cross-examination conducted in the oral hearing leads this panel of judges to conclude that, even though it is true that there is no direct functional or administrative link between Cárdenas Hurtado and Zegarra Marín, it is also perfectly feasible that these defendants have departed from such parameters in order to act in collusion in carrying out the criminal acts such as the irregular issuance of the passports to obtain illegal economic benefits, all the more so because it has not been fully proven that Zegarra Marín was not aware of these events inasmuch as no compelling exculpatory evidence has emerged to make him totally innocent of the offenses

> that he is charged with, while the expert handwriting report and the functional organizational structure evidence are the only evidence introduced in order to grant his conditional release.[20]

46. The judgment concludes, based on the foregoing considerations, that with regard to defendant Zegarra Marín

> (…) we have been able to establish that he was fully aware of the irregularities that were occurring in the Office of Migration of Tumbes, as is confirmed by his co-defendant Cárdenas Hurtado who has directly accused him and asserts as well that he is responsible for the crimes, therefore it must also be the case with Zegarra Marín who was fully aware of the passport trafficking and even managed to profit, thus constituting complicity of this agent in the materialization of the criminal offense, corroborating the accusations made through the statements of his co-defendant Moreno Palacios; (…).[21]

47. Mr. Zegarra Marín filed a motion to set aside the conviction (judgment)[22] of November 8, 1996.[23] Pursuant to Article 298 of the Code of Criminal Procedure in effect at the time, the grounds for setting aside a judgment are confined to:

> 1) When during the preliminary investigation, or the trial proceedings, there are serious procedural and due process irregularities and omissions as established by Criminal Procedural Law;
> 2) When the judge who conducted the preliminary investigation or the Court that conducted the trial was not competent to do so;

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[20] Annex 4. Case File No. 987-94, Superior Court of Justice of Lima, Fifth Chamber for Criminal Matters, Judgment of November 8, 1997, pgs. 19 to 23, signed by Príncipe Trujillo, Chief Justice and Doctors of Law [D.D], Díaz Mejía, Member of the Court, Ruiz Cueto, Member of the Court, and Darcy Zegarra Molina, Clerk of the Court. Annex to petitioner's submission received on November 6, 2001.

[21] Annex 4. Case File No. 987-94, Superior Court of Justice of Lima, Fifth Chamber for Criminal Matters, Judgment of November 8, 1997, pgs. 33 and 34, signed by Príncipe Trujillo, Chief Justice and Doctors of Law [D.D], Díaz Mejía, Member of the Court, Ruiz Cueto, Member of the Court, and Darcy Zegarra Molina, Clerk of the Court. Annex to petitioner's submission received on November 6, 2001.

[22] Article 292 of the Code of Criminal Procedure in effect at the time read that: ".-A motion to set aside a judgment (conviction) is admissible:

1 Against judgments in regular proceedings;

2 Against the granting and revocation of a sentence of probation;

3 Against rulings on objections and preliminary or pretrial motions;

4 Against dispositive rulings which extinguish the action or put an end to the proceeding or the appeal;

5 Against final rulings in *Habeas Corpus* actions;

6 In any instances in which the law expressly provides for said remedy.

As an exception, the Supreme Court, by means of a petition in error because of denial of appeal [i.e. refusal to grant leave to appeal], may grant a motion to set aside a judgment when a violation of the Constitution or a serious violation of substantive or procedural provisions of criminal law are involved."

[23] Annex 8. Office of the Public Prosecutor, Preliminary Investigation Nº 987-94, C.S. Nº 1720, Superior Court of Lima, Ruling Nº 1985-97-2FSP-MP, signed by Dr. Juan Efraín Chil, Interim Prosecutor before the Supreme Court of the Second Office of the Attorney General before the Supreme Court for Criminal Matters, May 20, 1997. Annex to State's submission of July 1, 2003.

> 3) When there has been a conviction for a crime that was not the subject matter of the investigation or the oral trial, or when there has been a failure to investigate or prosecute a crime that appears in the complaint, in the preliminary investigation or the charging document.

48. On May 20, 1997, the Interim Prosecuting Attorney before the Supreme Court of the Second Office of the Attorney General for Criminal Matters before the Supreme Court issued a decision on the motion to set aside the judgment filed by Mr. Zegarra Marín, arguing that that the appealed judgment should not be set aside, based on the arguments put forth in the charging document filed on May 2, 1996.[24]

49. On December 17, 1997, the First Transitional Chamber for Criminal Matters of the Supreme Court of Justice ruled there were no grounds for setting the judgment aside, based on the following:

> HAVING REVIEWED AND CONSIDERED THE MOTION; partly agreeing with the Prosecuting Attorney's decision; based on the grounds of the judgment at issue; and WHEREAS: the defendants' criminal responsibility has been proven as well as the commission of the crimes that are the subject of the preliminary investigation, the punishment imposed on them is lawful; (…).[25]

50. On September 14, 1998, Mr. Agustín Bladimiro Zegarra Marín filed a motion for review of conviction[26] with the Chief Justice of the Supreme Court of the Republic, against the final judgment of the Supreme Court of December 17, 1997, denying the motion to set aside the conviction, arguing that it had been based on erroneous facts and inaccuracies, inasmuch as the sole grounds for his conviction was a co-defendant's accusation, which was uncorroborated with evidence, and it did not take into account any of the exculpatory evidence introduced at trial.[27]

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[24] Annex 8. Office of the Public Prosecutor, Preliminary Investigation Nº 987-94, C.S. Nº 1720, Superior Court of Lima, Ruling Nº 1985-97-2FSP-MP, signed by Dr. Juan Efraín Chil, Interim Prosecutor before the Supreme Court of the Second Office of the Attorney General before the Supreme Court for Criminal Matters, May 20, 1997. Annex to State's submission of July 1, 2003.

[25] Annex 7. Supreme Court of Justice, First Chamber for Transitional Criminal Matters, Case File No. 1720-97, judgment of December 17, 1997. Annex to petitioner's submission of November 6, 2001.

[26] Pursuant to Article 361 of the Code of Criminal Procedure in effect at the time, "A conviction must be reviewed by the Supreme Court, regardless of the jurisdiction in which the case was heard or regardless of the punishment that has been imposed:

1 When, after a conviction for homicide, sufficient evidence is produced that the alleged victim of the crime is alive or lived after the act was committed that was the basis for the conviction;

2 When the conviction is mainly based on the testimony of a witness, who is subsequently convicted as providing false testimony in a criminal trial;

3 When after a conviction is handed down, another one is handed down convicting someone else other than the [original] defendant for the same crime; and since both convictions cannot stand, proof of the innocence of one of those convicted emerges from the contradiction;

4 When the conviction has been issued against another prior one [conviction] with the status of res judicata; and

5 When subsequent to the conviction, events are proven by means of evidence that was not introduced at the trial, that may be able to establish the innocence of the person convicted."

[27] Annex 9. Case File No. 1720-97 (1ra. SSP), received on September 14, 1998 at the Supreme Court of the Republic. In-take Desk for Administrative Matters. Annex to petitioner's submission of November 6, 2001.

51. In a communication dated November 5, 1999,[28] the Supreme Court of Justice served Mr. Zegarra Marín notice of the August 24, 1999 decision denying the motion to review the conviction because the instance argued by the appellant for the Court to grant it under Article 361 of the Code of Criminal Procedure in effect at the time, was actually not included under that Article.[29] Notwithstanding, in the Report issued on November 2, 1998 by Supreme Court Justices Jose Bacigalupo Hurtado and Ismael Paredes Lozano, in support of the previous decision, it is noted that:

> As of the date of the filing of the motion for review of conviction and at the present time, Article 361 of the Code of Criminal Procedure is still in force, which regulates the procedure for a Motion to Review Conviction and sets limits on the instances in which it is in order, but the instance claimed by the appellant, unfortunately is not set forth in this provision of the code; however, it must be noted that in examining the conviction before us under challenge by the appellant, it has been noticed indeed that not all of the evidence introduced has been examined or evaluated, particularly that [the evidence] listed in annex 9 of this notebook, which is favorable to the situation of the appellant, and is fundamentally grounded in the accusation made by the co-defendants, even though no other corroborating evidence exists in support of this accusation, and it is even argued in this Decision in finding Zegarra Marín responsible (Whereas Clause 13) that he has not introduced any exculpatory evidence to totally prove his innocence, thus violating the due process protection for failure to provide sufficient basis in law and fact in the aforementioned decision, which entails examining and evaluating every piece of evidence introduced in the proceedings, even though this is required under Article 139, subsection 5 of the Constitution of the State[30] and Article 285 of the Code of Criminal Procedure,[31] and also because the principle of the presumption of innocence as a fundamental right of every person has been reversed in violation of Article 2, paragraph 24 of our fundamental charter, and these omissions and transgressions were not noted in the Final Judgment of the Supreme Court copied on pg. 74; this situation has given rise to the appellant's motion to review the conviction, which calls for justice after being arbitrarily convicted and, in light of the evidence, the plenary of this highest body of justice may adopt some measure.[32]

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[28] Annex 10. Supreme Court of Justice of the Republic. Official Letter Nº 509-99-SG-CS/PJ, signed by Roberto Quezada Romero, General Clerk of the Supreme Court of Justice of the Republic. Annex to petitioner's submission of November 6, 2001.

[29] Annex 11. Supreme Court of Justice of the Republic A.A. Nº 170-98, ruling of August 24, 1999, signed by Víctor R. Castillo Castillo, Chief Justice, and Roberto Quezada Romero, General Clerk of the Supreme Court of Justice of the Republic. Annex to petitioner's submission of November 6, 2001.

[30] Article 139.5 of the Political Constitution of the Republic of Peru: "The following are principles and rights of the judicial function:

> 5. Written basis in fact and law of judicial decisions at every level of the courts, except for decrees of mere procedure, with express mention of applicable law and of the basis in fact upon which they are supported."

[31] Article 285 of the Code of Criminal Procedure: "A conviction must specifically name the offender, state the criminal act, the evaluation of the testimony of the witnesses or other evidence upon which guilt is based, the circumstances of the crime, and the main sentence that the convict must serve, the date when it begins to run, the day it lapses, the place where it must be served and the accessory punishments, or any security measures that may be appropriate to order in substitution of the sentence; the amount of civil reparation, the person who shall collect it and those obligated to pay it, citing the articles of the Criminal Code that may be applicable."

[32] Annex 12. Administrative Matter No. 170-98, Report of November 2, 1998 signed by Supreme Court Justices José Bacigalupo Hurtado and Ismael Paredes Lozano. Annex to petitioner's submission of November 6, 2001.

52. The same report of November 2, 1998 concludes as follows:

> 1- The Motion to Review Conviction of one page formally and in keeping with the provisions of Article 361 of the Code of Criminal Procedure, is denied.
> 2- The aforementioned motion could be granted under article 363 subsection 2 of the new Code of Criminal Procedures, but this provision is not in force and cannot be applied.
> 3- The Plenary Supreme Court must request prompt enactment of the Code of Criminal Procedures, in order to provide a solution to cases such as the one that is the subject of this report and other similar ones and [the Court] must even suggest other grounds to be able to file a motion to review conviction.[33]

A. Legal Analysis

1. Preliminary consideration as to State's allegation of "fourth instance"

53. Before proceeding to the legal analysis of the case, the Commission wishes to address the State's "fourth instance" allegation in its merits observations. Regarding this point, after an analysis of the positions of the parties, the Commission previously explained in its Admissibility Report 20/09, that the petitioner's allegation regarding "the alleged inversion of the burden of proof during his criminal trial, together with his conviction on the grounds that he did not fully establish his innocence", implied an analysis at the merits stage because the referred allegation could result in violations of the rights enshrined in Articles 8 and 25 of the Convention[34].

54. This time, the Commission reminds that pursuant to the principles regulating the determination of States' responsibility, which have been repeatedly fleshed out by the bodies of the Inter-American system:

> [I]n order to clarify whether the State has violated its international obligations owing to the acts of its judicial organs, the Court may have to examine the respective domestic proceedings. In light of the above, the domestic proceedings must be considered as a whole, including the rulings of the appellate courts, and the role of the international court is to establish whether the proceedings as a whole, as well as the way evidence was produced, were in accordance with international provisions.[35]

55. In this regard, the fact that the State's act alleged to be in violation of the Convention is a domestic judicial proceeding, and even a judicial ruling, does not render the organs of the Inter-American system incompetent to examine it under States' obligations as set forth in the Convention.

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[33] Annex 12. Administrative Matter No. 170-98, Report of November 2, 1998 signed by Supreme Court Justices José Bacigalupo Hurtado and Ismael Paredes Lozano. Annex to petitioner's submission of November 6, 2001.

[34] IACHR, Admissibility Report No. 20/09, Agustín Bladimiro Zegarra Marín (Perú), March 19 ,2009, par. 69

[35] IA Ct. of HR, *Case of Zambrano Vélez et al v. Ecuador*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166, para. 142 [para. 58?]. IA Ct. of HR. *Case of Lori Berenson Mejía v. Peru*. Merits, Reparations and Costs. Judgment of November 25, 2004. Series C No. 119, par. 133; IA Ct. of HR. *Case of Myrna Mack Chang v. Guatemala*. Merits, Reparations and Costs. Judgment of November 25, 2003. Series C No. 101, para. 200; and IA Ct. of HR. *Case of Juan Humberto Sánchez v. Honduras*. Preliminary Objection, Merits, Reparations and Costs. Judgment of June 7, 2003. Series C No. 99, para. 120.

56. Specifically, in the case of *Cabrera y Montiel v. Mexico*, the Inter-American Court issued the following ruling as to whether the "fourth instance" argument could be admissible:

> […] it would be necessary for the claimant to seek the Court to review the judgment of a domestic court, without alleging, at the same time, that such a ruling constituted a violation of international treaties with regard to which the Court has competence.[36]

57. Based on the foregoing and in view of the scope of the instant case, which goes directly to whether or not Mr. Zegarra Marín's conviction violated the protected right to the presumption of innocence, the Commission deems it pertinent to first establish that the "fourth instance" argument is groundless. Accordingly, the Commission will examine the proven facts in the following order: 1. The right to the presumption of innocence (Article 8.2 of the Convention in connection with Article 1.1 thereof); and 2. The right to appeal the judgment and to judicial protection (Articles 8.2.h and 25 of the Convention), in connection with Article 1.1 thereof.

a. The right to the presumption of innocence (Article 8.2 of the Convention in connection with Article 1.1 thereof)

58. Article 8.2 of the American Convention establishes:

> Every person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law.
>
> (…)

59. The right to a fair trial, as established in Article 8 of the American Convention, encompasses all of the requirements, which must met in procedural bodies, whatever their nature may be, in order to ensure that the individual may defend himself adequately with regard to any act of the State, which may affect his rights.[37]. The presumption of innocence is a foundation of these protected rights to a fair trial.[38]

60. The Inter-American Court has noted that this principle implies that the defendant is not required to prove that he has not committed the offence of which he is accused, because the *onus probandi* is on the those who accuse.[39] Hence, irrefutable proof of guilt is an absolutely essential requirement for criminal punishment, and the burden of proof rests on the prosecution not the defense.[40]

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[36] IA Ct. of HR, *Case of Cabrera García and Montiel Flores v. Mexico*. Objection, Merits, Reparations and Costs. Judgment of November 26, 2010. Series C No. 220. Para. 18.

[37] IA Ct. of HR, *Case of Genie Lacayo* v*. Nicaragua*. Judgment of January 29, 1997. Series C No. 30, para. 74; IA Ct. of HR, *Case of Claude Reyes et al v. Chile*. Judgment of September 19, 2006. Series C No. 151, para. 116; and IA Ct. of HR, *Judicial Guarantees in States of Emergency (Articles 27.2, 25 and 8 American Convention on Human Rights)*. Advisory Opinion OC-9/87. October 6, 1987. Series A No. 9, para. 27.

[38] IA Ct. of HR, *Case of Suárez Rosero v. Ecuador*. Judgment of November 12, 1997. Series C No. 35, para. 77; IA Ct. of HR, *Case of García Asto and Ramírez Rojas v. Peru.* Judgment of November 25, 2005. Series C No. 137, para. 160; and IA Ct. of HR, *Case of Chaparro Álvarez and Lapo Íñiguez. v. Ecuador*. Judgment of November 21, 2007. Series C No. 170, para. 145.

[39] IA Ct. of HR, *Case of Ricardo Canese v. Paraguay.* Judgment of August 31, 2004. Series C No. 111, para. 154.

[40] IA Ct. of HR, *Case of Cabrera García and Montiel Flores v. Mexico*. Judgment of November 26, 2010. Series C No. 220, para. 182.

61. In this same vein, the Human Rights Committee has characterized the principle of the presumption of innocence as follows:

> The presumption of innocence, which is fundamental to the protection of human rights, imposes on the prosecution the burden of proving the charge, guarantees that no guilt can be presumed until the charge has been proved beyond reasonable doubt, ensures that the accused has the benefit of doubt, and requires that persons accused of a criminal act must be treated in accordance with this principle. It is a duty for all public authorities to refrain from prejudging the outcome of a trial, e.g. by abstaining from making public statements affirming the guilt of the accused.[41]

62. Moreover, the Inter-American Commission has held that:

> The principle of presumption of innocence demands "that the conviction and, therefore, the application of the penalty may only be founded upon the assurance of the court regarding the existence of a punishable act attributable to the accused. The judge upon whom it devolves to take cognizance of the indictment is under obligation to address the case without prejudgment and must on no account assume *a priori* the accused to be guilty. On the contrary, the American Convention requires that, in accordance with due process of law and with universally accepted principles of criminal law, the judge confine himself to determining criminal responsibility and to sentencing the accused based on his appraisal of the evidence at hand.[42]

> In this context, another fundamental concept of criminal procedural law, the purpose of which is to preserve the principle of innocence, is the burden of proof. In a criminal proceeding, the *onus probandi* of innocence does not fall on the defendant; on the contrary, the burden of proof rests on the State to prove the defendant guilty. Thus, modern doctrine holds that "the defendant does not need to prove his innocence, construed in advance by the presumption of innocence that protects him, but instead, those who convict must completely construe that position, arriving at certainty regarding the commission of the punishable act.[43]

63. Pursuant to the foregoing, international human rights law establishes that a person cannot be convicted unless there is clear evidence of his criminal liability. In the words of the Court, "if the evidence presented is incomplete or insufficient, he must be acquitted, not convicted."[44] Consequently, the Court has held that a failure to present full evidence of criminal liability in a judgment of conviction constitutes a violation of the principle of the presumption of innocence.[45]

64. Prior to proceeding to examine the facts of the case based on the standards described above, the Commission reiterates that it is the duty of domestic authorities and, in cases such as this,

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[41] Human Rights Committee. General Comment No. 32. Article 14. The right to equality before courts and tribunals and to a fair trial. CCPR/C/GC/32. August 23, 2007, para. 30.

[42] IACHR, Case 11.298, Reinaldo Figueredo Planchart v. Bolivarian Republic of Venezuela, Report Nº 50/00 of April 13, 2000, para. 119.

[43] IACHR, Case 10.970, Fernando Mejía Egocheaga and Raquel Martín de Mejía v. Peru, Report Nº 5/96 of March 1, 1996.

[44] IA Ct. of HR, *Case of Cantoral Benavides v. Peru*. Judgment of August 18, 2000. Series C No. 69, para. 120; and IA Ct. of HR, *Case of Ricardo Canese v. Paraguay*. Judgment of August 31, 2004. Series C No. 111, para. 153.

[45] IA Ct. of HR, *Case of Cantoral Benavides v. Peru*. Judgment of August 18, 2000. Series C No. 69, para. 121.

criminal court judges, to appraise the evidence in a criminal case proceeding and the effects thereof on the determination of the respective liability. Accordingly, the examination as to whether the State is in breach of the principle of the presumption of innocence may require a review of how the court in question dealt with and assessed the evidence within the framework of due process protections. This exercise is separate from the one criminal court judges must engage in and is exclusively focused on determining whether in performance of their duties, they enforced or overlooked the minimum safeguards, which are provided for under the principle of the presumption of innocence.

65. As established as proven fact, Mr. Zegarra Marín was convicted on November 8, 1996, by the Fifth Chamber for Criminal Matters of the Superior Court of Justice of Lima. Said judgment included an analysis of criminal liability of several persons, with whereas clause 13 specifically addressing the alleged victim's situation. The Commission notes that in cases in which there is an allegation of violation of the principle of the presumption of innocence in a conviction, the basis in law and fact of the judgment is essential to be able to understand whether the way the evidence was dealt with in the domestic court was consistent with said principle. Consequently, the Commission will analyze the court's basis in law and fact in whereas clause thirteen of the judgment of conviction.

66. Based on a simple reading of the considerations set forth in said section of the judgment, the Fifth Chamber for Criminal Matters appears to have taken as the basis for its analysis the statements of a co-defendant, Mr. Roberto Cárdenas Hurtado, who essentially claimed that Mr. Zegarra Marín was aware of the irregular issuance of passports. Immediately after the reference to the accusation of the co-defendant named above, the judicial authority noted that Mr. Zegarra Marín denied the facts. Then right after that, the Fifth Chamber for Criminal Matters lists the evidence favoring the position of Mr. Zegarra Marín, to wit, that co-defendants Cárdenas Hurtado and Moreno Palacios were not functionally or administratively under Commander Zegarra Marín; that contrary to the claims made by Mr. Cárdenas Hurtado, the testimonial evidence indicates that Commander Zegarra Marín did not send out the 525 passports; and that, according to the Expert Handwriting Analysis Report, the Peruvian passport in the name of Carlos Remo Manrique Carreño - the focus of the criminal investigation – had been fraudulently authorized as to the signature authenticating it, in other words, Mr. Zegarra Marín's signature had been forged.

67. After noting the accusatory statements of the co-defendants as the only evidence against Mr. Zegarra Marín and listing the evidence supporting his claim, the Fifth Chamber for Criminal Matters makes the following considerations regarding its decision on Mr. Zegarra Marín's criminal responsibility:

> (…) however, these additional pieces of evidence, do not fully disprove the charges made against him by his co-defendants Cárdenas Hurtado and Moreno Palacios, inasmuch as the fact that these two individuals who are defendants in the proceedings have stood firmly by their accusations up through cross-examination conducted in the oral hearing leads this panel of judges to conclude that, even though it is true that there is no direct functional or administrative link between Cárdenas Hurtado and Zegarra Marín, it is also perfectly feasible that these defendants have departed from such parameters in order to act in collusion in carrying out the criminal acts (…) all the more so because it has not been fully proven that Zegarra Marín was not aware of these events inasmuch as no compelling exculpatory evidence has emerged to make him totally innocent of the offenses that he is charged with (…).

68. The Commission finds that a fundamental corollary to the principle of the presumption of innocence is that judicial authorities put on the record the evidence that they considered sufficient to

overcome said presumption. Furthermore, in light of the existence of favorable evidence, the principle of the presumption of innocence calls for judicial authorities to lay out the reasoning why said favorable evidence does not elicit a doubt about the criminal liability of the person in question.

69. In the instant case, from the reading of the judgment of conviction, the Commission notes that neither of these two minimum safeguards described above were fulfilled. Thus, as to the first element, the Fifth Chamber was explicit in noting that the only evidence against Mr. Zegarra Marín was the statements of his co-defendants. After establishing the statement of one of the co-defendants, the judicial authority did not indicate the specific reasons to consider this statement itself sufficient to rebut his presumption of innocence. Moreover, as to the second element, the Commission observes that, nevertheless the existence of favorable evidence that directly contradicted the statements of Mr. Cárdenas Hurtado, the judicial authority did not record the grounds why such evidence did not generate at least doubt about its criminal responsibility, merely indicating, with no analysis, that the accusations of the co-defendants were "feasible."

70. The Commission considers that the conviction of a person based only on the "feasibility" of the facts stated in the declaration of a co-defendant can be itself contrary to the principle of presumption of innocence. More over, in this case is the reversal of the burden of proof in the sense that Mr. Zegarra has to prove his innocence, which was reflected in the language cited above in the assessment made by the Fifth Chamber in noting that "no compelling exculpatory evidence has emerged to make him totally innocent of the offenses that he is charged with." [46]

71. Based on the foregoing considerations, the Commission concludes that the State of Peru violated the principle of the presumption of innocence and the duty to provide a basis in law and fact for judgments, as established in Articles 8.1 and 8.2 of the Convention, in connection with the obligations set forth in Article 1.1 thereof, to the detriment of Mr. Zegarra Marín.

b. The right to appeal judgment and to judicial protection (Articles 8.2.h and 25 of the Convention in connection with Article 1.1 thereof)

72. Article 8.2.h of the American Convention provides that:

> 2. (…) During the proceedings, every person is entitled, with full equality, to the following minimum guarantees:
>
> h. the right to appeal the judgment to a higher court.

73. Article 25 of the American Convention provides that:

[46] The Commission notes, based on the proven facts, that the violation of the principle of the presumption of innocence was established by two members of the Supreme Court in the Report of November 2, 1998. These Court Members considered that the judgment of conviction of November 8, 1996 did not take into account all of the evidence in the proceedings, especially the evidence favorable to the situation of Mr. Zegarra Marín, and that it was based on the accusatory statements of his co-defendants, even though there was no other corroborating evidence to this claim, in violation of Article 139.5 of the Constitution and 285 of the Code of Criminal Procedure and, especially, of the principle of the presumption of innocence. Additionally, in this report, reference is made to the reversal of the burden of proof. As is examined *infra* in the section pertaining to the right to judicial protection, despite this finding, no steps were taken to remedy said violation.

> 1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

74. The right to appeal the judgment to another or higher court is a fundamental guarantee of due process, whose purpose is to avoid a miscarriage of justice from becoming *res judicata.* Under the case law of the inter-American system, the purpose of this right is to make it possible for an adverse judgment to be reviewed by another and higher court[47] and prevent a flawed ruling, containing errors unduly prejudicial to a person's interests, from becoming final.[48] Due process of law would lack efficacy without the right of defense in a trial and the opportunity to defend oneself against an adverse decision by means of adequate review of judgment.[49] The Inter-American Court has held that the right to review by a higher court, expressed by means of the complete review of conviction, ratifies the grounds thereof and provides more credibility to the judicial acts of the State and, at the same time, offers more security and protection to the rights of the accused.[50]

75. The Commission must underscore the point that the efficacy of a remedy is closely linked to the scope of the review. This is so because judicial authorities are fallible and can make mistakes that result in injustice. Judicial error is not confined to the application of the law, but may happen in other aspects of the process such as the determination of the facts or the weighing of evidence. Hence, the remedy of appeal will be effective in accomplishing the purpose for which it was conceived if it makes possible a review of such issues without determining *a priori* that review will only be allowed with respect to certain aspects of the courts proceedings.[51]

76. These standards regulating the right to appeal the judgment, were recently upheld by the Inter-American Court in the case of *Mendoza et al v. Argentina.* Particularly, with regard to the scope of the review, the Court held that regardless of the rules or system of appeal adopted by States Party and of the name given by them to the means of contesting a conviction, in order for this remedy to be effective, it must constitute an adequate means to pursue the rectification of an erroneous conviction.[52] The Court also explicitly established, along the same lines as the Commission, that the remedy must respect any of the minimum procedural guarantees which, under Article 8 of the

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[47] IA Ct of HR, *Case of Mendoza et al v. Argentina*. Preliminary Objects, Merits and Reparations. Judgment May 14, 2013. Series C No. 260, para. 242; *Case of Herrera Ulloa v. Costa Rica.* Preliminary Objections, Merits, Reparations and Costs. Judgment July 2, 2004. Series C No. 107, para. 158, and *Case of Mohamed v. Argentina.* Preliminary Objections, Merits, Reparations and Costs. Judgment November 23, 2012. Series C No. 255, para. 97.

[48] IA Ct. of HR, *Case of Herrera Ulloa v. Costa Rica*. Preliminary Objections, Merits, Reparations and Costs. Judgment July 2, 2004. Series C No. 107, para. 158.

[49] IACHR, Report No. 55/97, Case 11.137, Merits, Juan Carlos Abella (Argentina), November 18, 1997, para. 252.

[50] IA Ct of HR, *Case of Mendoza et al v. Argentina*. Preliminary Objections, Merits and Reparations. Judgment May 14, 2013. Series C No. 260, para. 242; *Case of Barreto Leiva v. Venezuela.* Preliminary Objections, Merits, Reparations and Costs. Judgment November 17, 2009. Series C No. 206, para. 89; and *Case of Mohamed v. Argentina.* Preliminary Objections, Merits, Reparations and Costs. Judgment November 23, 2012. Series C No. 255, para. 97.

[51] IACHR, Report No. 172/10, Case 12.561, Merits, César Alberto Mendoza et al (Juveniles Sentenced to Life Time Imprisonment), Argentina, November 2, 2010, para. 186.

[52] IA Ct of HR, *Case of Mendoza et al v. Argentina*. Preliminary Objections, Merits and Reparations. Judgment May 14, 2013. Series C No. 260, para. 245.

Convention, may be relevant and necessary to resolve the alleged lower court error raised by the appellant, which does not mean necessarily that a new trial must be held.[53]

77. Additionally, as for the right to judicial protection, the Inter-American Court has established that safeguarding the individual from the arbitrary exercise of public power is the fundamental purpose of international human rights protection. Failure to provide for effective domestic remedies places individuals in a position of defenselessness.[54]

78. The Court has also consistently held that the protection provided for in said provisions is not confined to the rights enshrined in the American Convention, but also encompass claims before domestic courts pertaining to other rights enjoyed by individuals as recognized in the Constitution as well as in domestic law. The Court has ruled on said scope as follows:

> The terms of Article 25.1 of said instrument [the Convention] imply the obligation of the States to provide to all persons within their jurisdiction, an effective judicial remedy for violations of their fundamental rights and for the application of the guarantee recognized therein not only to the rights contained in the Convention, but also to those recognized by the Constitution or laws.[55]

79. The Court also has held that domestic remedies must be made available to the interested party, and result in an effective and justified decision on the matter raised, as well as potentially providing adequate reparation.[56]

80. In the instant case, the Commission notes that Mr. Zegarra Marín filed two appeals of the conviction, which as was found, constituted violations of the principle of the presumption of innocence.

81. Thus, he filed the motion to set aside the judgment (*recurso de nulidad*), which was the only remedy that was admissible to bring against the judgment of conviction handed down by the trial court at the time the facts took place. On December 17, 1997, this motion was ruled upon upholding the conviction that was being contested. The grounds provided by the court were confined to the following:

> WHEREAS: the defendants' criminal responsibility has been proven as well as the commission of the crimes that are the subject of the preliminary investigation, the punishment imposed on them is lawful.

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[53] IA Ct. of HR, *Case of Mohamed v. Argentina.* Preliminary Objections, Merits, Reparations and Costs. Judgment November 23, 2012. Series C No. 255, para. 101; *Case of Mendoza et al v. Argentina*. Preliminary Objections, Merits and Reparations. Judgment May 14, 2013. Series C No. 260, para. 245.

[54] IA Ct of HR, *Case of Claude Reyes*. Judgment of September 19, 2006. Series C No. 151. Para. 129; IA Ct of HR, *Case of García Asto and Ramírez Rojas*. Judgment of November 25, 2005. Series C No. 137. Para. 113; IA Ct of HR, *Case of Palamara Iribarne*. Judgment of November 22, 2005. Series C No. 135. Para. 183.

[55] IA Ct of HR, *Case of the Dismissed Congressional Employees (Aguado Alfaro et al)*. Judgment on Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2006. Series C No. 158. Para. 122; IA Ct of HR, *Case of Claude Reyes et al*. Judgment of September 19, 2006. Series C No. 151. Para. 128; IA Ct. of HR, *Case of Yatama*. Judgment of June 23, 2005. Series C No. 127. Para. 167.

[56] IA Ct of HR, *Case of the Dismissed Congressional Employees (Aguado Alfaro et al)*. Judgment on Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2006. Series C No. 158. Para. 126.

82. The rest of the basis for the judgment pertains to imposition of accessory punishment and, therefore, is not relevant to this analysis.

83. The Commission finds that this basis for the judgment shows that the Criminal Chamber of the Supreme Court did not engage in a review of the trial court judgment pursuant to the requirements set forth in Article 8.2.h of the American Convention, which were described above in the instant report. The judicial authority did not provide the reasons why it considered that, based on its review of the judgment, responsibility continued to be proven nor did it individually refer by specific name to the different defendants, even though a separate and distinct assessment of each one of them was laid out in the trial court judgment. The Criminal Chamber of the Supreme Court did not rule on the procedural violations either, specifically on whether the judgment of the court was consistent with the principle of the presumption of innocence.

84. Subsequently, Mr. Zegarra Marín filed a motion to review the conviction on November 5, 1999 with the Supreme Court of Justice for the alleged violation of the principle of the presumption of innocence in the judgment of conviction of November 8, 1996. Based on the proven facts, the Supreme Court denied the motion because the grounds were not covered in the criminal procedural law, specifically, in Article 361 of the Code of Criminal Procedure, as valid for the admissibility of a motion to review conviction. The Commission notes the two Supreme Court members who were called upon to examine the admissibility of the motion for review and to issue a report on it with regard to the basis upon which it was denied, put on the record that that it had constituted a violation of the principle of the presumption of innocence and of reversal of the burden of proof with respect to Mr. Zegarra Marín, even noting the specific provisions of the Constitution and the law that were violated by the Fifth Chamber for Criminal Matters. Notwithstanding, they noted that there was a legal limitation on granting the motion and that there needed to be legislative reforms to remedy this. Hence, the judicial authorities took note of the violation of the constitutional protections, and did not order any measures to remedy it in violation of the right to judicial protection.

85. In conclusion, the Commission considers that: i) the motion to set aside judgment filed by Mr. Zegarra Marín did not meet the standards of the right to appeal the judgment; and ii) Mr. Zegarra Marín did not have an effective remedy available to him either through the motion to set aside the judgment or by means of the motion for review of judgment, vis-à-vis the violation of the principle of the presumption of innocence caused by the trial court judgment of conviction.

86. Based on the foregoing considerations, the Commission concludes that the State violated the right to appeal the judgment and the right to judicial protection as established in Articles 8.2.h and 25 of the American Convention, in connection with the obligations established in Article 1.1 thereof, to the detriment of Mr. Zegarra Marín.

V. CONCLUSIONS

87. Based on the considerations of fact and law set forth above, the Commission concludes that the State of Peru is responsible for the violation of the right to the presumption of innocence and of the right to appeal the judgment and to judicial protection as established in Articles 8.1, 8.2 and 25 of the American Convention, in connection with the obligations set forth in Article 1.1 of thereof, to the detriment of Mr. Zegarra Marín.

VI. RECOMMENDATIONS

88. Based on the analysis and the conclusions of the instant report, and taking into account the current procedural and bail status of Mr. Zegarra Marín, the Inter-American Commission on Human Rights recommends the Peruvian State:

1. To order the necessary measures, should Mr. Zegarra Marín so request, to vacate the judgment of conviction and to conduct a new assessment of the evidence based on the principle of the presumption of innocence, under the standards set forth in the instant report. As the case may warrant, based on the result of said assessment, the State shall expunge the criminal record and any other effect of the conviction on Mr. Zegarra Marín; and

2. To order full reparation in favor of Mr. Zegarra Marín for the violations declared in the instant report.