REPORT No. XX/14
CASE 11.438
ADMISSIBILITY AND MERITS
HERRERA ESPINOZA ET AL
ECUADOR
July 17, 2014

I. SYNOPSIS

1. On October 31, 1994, the Inter-American Commission on Human Rights (hereinafter "the Commission," the Inter-American Commission" or "the IACHR") received a petition lodged by Mrs. Elsie Monje, Director of the Ecumenical Human Rights Commission (hereinafter "the petitioner"), alleging international responsibility of the State of Ecuador (hereinafter "the State" or "Ecuador") for violation of several rights protected by the American Convention on Human Rights (hereinafter, "the Convention" or "the American Convention") to the detriment of Messrs. Jorge Eliécer Herrera Espinoza, Luis Alfonso Jaramillo González, Eusebio Domingo Revelles and Emmanuel Cano (hereinafter "the alleged victims").

2. The original petition stated that the alleged victims were arrested on August 2, 1994 in a sting operation conducted by the police targeting the reputed members of a drug trafficking ring in the city of Quito. It contended that, in the context of the operation, in which twelve individuals were arrested, the alleged victims were wrongfully deprived of their liberty and transferred to the offices of Interpol, where they were tortured in order to force them to sign confessions. Subsequently, the petitioner brought the claim that, during the criminal proceedings instituted against Mr. Eusebio Domingo Revelles, he was improperly held in pretrial detention and convicted based on statements given under duress. The petitioner also made allegations pertaining to the detention and supposed violations of the right to humane treatment of the four alleged victims and of the due process rights of Mr. Eusebio Domingo Revelles.

3. The State contended that the arrests and pretrial detention of the alleged victims were justified under the laws in force at the time and in light of the evidence of their guilt as members of an international drug trafficking ring. It argued that the alleged victims were not subjected to any duress at all in giving their statements, inasmuch as the statements were given in the presence of a deputy of the Office of the Public Prosecutor. It further claimed that the injuries described in the medical expert's certificates were not caused by agents of the State. It also asserted that the criminal proceedings instituted against Mr. Eusebio Domingo Revelles abided by all fair trial guarantees. Lastly, it argued that not all available domestic remedies to protect the rights claimed by the petitioner to be violated were exhausted.

4. After examining the basis in fact and law submitted by the parties, the Commission concludes that the State of Ecuador is responsible for violation of the rights to humane treatment and personal liberty, as established respectively in Articles 5 and 7 of the American Convention in connection with Article 1.1 thereof. The Commission also concludes that the State of Ecuador is responsible for violation of the obligations set forth in Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture to the detriment of Jorge Eliécer Herrera Espinoza, Luis Alfonso Jaramillo González, Eusebio Domingo Revelles and Emmanuel Cano. Furthermore, the Commission concluded that the State of Ecuador is responsible for violation of the right to a fair trial and judicial protection as provided for respectively in Articles 8 and 25 of the American Convention in connection with the obligations set forth in Articles 1.1 and 2 of said instrument, to the detriment of Mr. Eusebio Domingo Revelles.

II. PROCEEDINGS BEFORE THE COMMISSION

5. On October 31, 1994, the petitioner made the original filing of the petition. On March 13, 1995, the IACHR forwarded the relevant portions of the petition to the State of Ecuador requesting that it submit any information it deemed appropriate within a period of 90 days. On July 10, 1995, the request to the Ecuadorean State was resent. On August 3, 1995, the Ecuadorian State reported that it had requested information from the competent authorities but that, as of that date, the items it required in order to be able

to submit its reply had not been made available to it. On July 26, 1996, the Ecuadorian State submitted its response to the petition, which was forwarded to the petitioner. The petitioner submitted additional observations on October 15, 1996, May 12, 1997, December 11, 1998 and April 19, 1999. The State, in turn, submitted additional observations on January 29, 1997 and October 15, 1997.

6. In a communication of April 21, 2003, the Commission advised the petitioners of its decision to apply Article 37.3 of the Rules of Procedure in force at the time and, in so doing, put off addressing admissibility until the time of the examination and decision on the merits. On September 8, 2003, the Commission received observations on the merits from the petitioner. On January 15, 2004, the petitioner submitted additional information. On February 9, 2004, the Commission forwarded the relevant portions of the observations submitted by the petitioner to the State and advised the State of its decision to postpone addressing admissibility until the time of examination and decision on the merits, requesting its observations within a period of two months. On May 28, 2004, the State submitted its observations on the merits. The petitioner provided additional observations on the merits on March 8, 2005. The IACHR received a communication from the Ecuadorian State on November 3, 2005, moving for the case to be found inadmissible and archived without further delay and contending that any further communications between the petitioner and the State was inappropriate during said stage of the proceedings, and that the only appropriate thing was for "the Commission to rule on the merits."

7. On August 12, 2012, the Commission requested the petitioner to indicate whether or not the grounds for the petition still existed and what the current status of the alleged victims was. On September 6, 2012, the petitioner reported that the grounds for the petition still existed. Said information was transferred to the State in a note of October 3, 2012. On that same date, as well as on August 13, 2013, the Commission reiterated to the State its request for it to submit additional information on the merits, which has not been received as of the date of the instant report.

III. POSITIONS OF THE PARTIES

A. The Petitioner

8. She contended that based on classified information on the existence of an international drug trafficking ring, agents of the Pichincha Interpol office began tracking a woman named Alba Tinitana as of July 1994, ascertaining that she would meet with foreigners in different hotels. The petitioner alleged that on August 2, 1994, the police chief requested a search warrant for several properties and, during the course of that afternoon, Interpol agents arrested 12 individuals, including, Jorge Herrera and Luis Jaramillo, both Colombian nationals; Emmanuel Cano, a French national; and Eusebio Domingo, a Spanish national, the alleged victims in the instant case.

9. She claimed that on August 3, 1994, the Police Chief authorized the arrest of the alleged victims and ordered an investigation to be conducted within 48 hours without making any legal defense counsel available to any of them. She contended that on August 8, 1994, the Police filed a report based on self-incriminating statements given through torture and, on August 9, 1994, forensic medical experts confirmed torture-related injuries that the alleged victims presented. Notwithstanding, on August 19, 1994, the Twelfth Judge for Criminal Matters of Pichincha formalized criminal charges and instituted criminal proceedings ordering that the alleged victims be held in pretrial custody.

10. The petitioner asserted that during the preliminary investigation proceedings the alleged victims submitted medical reports as proof of the torture that was inflicted upon them. However, according to the petition, the Twelfth Judge for Criminal Matters of Pichincha closed the preliminary investigation on September 13, 1995 and ordered the representative of the Office of the Public Prosecutor to issue its decision to prosecute or not, as provided by law. The petitioner noted that, at that time, Jorge Eliécer Herrera Espinoza and Emmanuel Cano had escaped custody while being transferred to other detention facilities and, consequently, their proceedings were suspended.

11. She contended that because the same judge "does not preside" at the intermediate stage, in keeping with the statutory time periods, he was recused and the case was assigned instead to the Thirteenth Judge for Criminal Matters of Pichincha, who on August 14, 1996, issued the order to institute the trial stage of the proceedings, taking into account the statements given to the Interpol agents and noting that no evidence had been introduced that the presence of the alleged victims in Ecuador was legal and asserting that there was prima facie evidence of the charges leveled in the police report, since the drugs had been found in the possession of one of the defendants.

12. The petitioner also noted that Eusebio Domingo Revelles filed an appeal of the decision to institute trial proceedings, which was heard by the Fourth Chamber of the Superior Court of Quito, finding on November 18, 1997 that in denouncing that he was forced to plead guilty when he gave his initial statement to the judge, he was trying to circumvent his involvement in and his responsibility for the crime.

13. She contended that the trial proceeding was heard by the Second Court for Criminal Matters of Pichincha, which on April 1, 1998, convicted Domingo Revelles as an accomplice and sentenced him to a six-year prison term, ordering a review ('consultation of judgment') by the Fourth Chamber of the Superior Court. This review was completed on November 24, 1998, upholding the judgment of conviction and sentence.

14. The petitioner noted that because Mr. Eusebio Domingo Revelles believed that he had been held in custody for several years without a dispositive judgment having been handed down, in August 1998 he filed a petition for *habeas corpus* relief with the Office of the Mayor of Quito, which denied his petition on August 25, 1998. She indicated that the Constitutional Court heard the petition for relief on appeal and, on November 9, 1998, denied it.

15. She argued that the right to personal liberty was violated, inasmuch as the alleged victims were arrested without any of them being caught *in flagrante delicto*; they were held in solitary confinement and their detention was not made legal until the following day. The petitioner also asserted that on August 8, 1994, the police report was sent to the Twelfth Court for Criminal Matters of Pichincha yet the preliminary investigation opened nor was a pretrial custody order against them issued not until August 19, 1994. She argued that Eusebio Domingo Revelles remained in temporary custody for more than 4 years, which amounts to "arbitrary imprisonment," since the *habeas corpus* remedy was ineffective.

16. She contended that the right to humane treatment was violated on the grounds that the Interpol agents inflicted psychological damage and trauma on the alleged victims, and this constituted torture.

17. The petitioner alleged that the right to a fair trial and judicial protection was violated, because criminal responsibility was determined based on the pre-indictment statements (before the police) given through torture outside the presence of defense counsel, shifting the burden of proof to alleged victims to prove their innocence. She argued that the State never investigated whether the drugs belonged to the person who was charged or were placed on him by the police. She also contended that the authority presumed the guilt of the alleged victims.

18. She noted that even though they were foreign nationals, the alleged victims were not permitted to communicate with the consular officer of their countries, and even after several years had elapsed, the State has not investigated the police officers who illegally detained them and conducted interrogations of the detainees through torture. She argued that the proceedings did not take a reasonable period of time and exceeded all of the statutory deadlines set forth for the stages of the preliminary investigation.

19. As for the admissibility requirements, the petitioner argues that the exception set forth in Article 46.2.c of the Convention is applicable with regard to torture. Similarly, because the victims were undergoing a criminal proceeding, they were entitled to a disposition within a reasonable period of time, and because it took more than four years to be settled, said situation also meets the requirement for the exception of Article 46.2.c of the Convention.

20. As for the claim of the State regarding Eusebio Domingo Revelles' failure to exhaust the remedy of the petition for writ of reversal of judgment on cassation, the petitioner countered that said remedy was pursued against the judgment of the Second Court for Criminal Matters. She also argued that, notwithstanding, because said judgment was reviewed by the Fourth Chamber of the Superior Court of Justice of Quito, as required by the drug law, and the ruling on said petition took a long time, Mr. Domingo Revelles "was compelled to withdraw the petition for writ of reversal of judgment on cassation." She contended that according to the Code of Execution of Sentences, he could only benefit from a reduction of half of the prison term, if his judgment was already final and dispositive. As to the motion for review, she asserted that this remedy was not available to him, because pursuant to the "Law of Foreign Nationals," once his sentence is served, Mr. Domingo Revelles was immediately deported to Spain leaving him unable to pursue further recourse.

B. The State

21. The State argued that the alleged victims were arrested on August 2, 1994, as part of the drug enforcement sting operation known as "Linda," for which court proceedings were instituted on August 17, 1994, leading to a conviction for the crime of unlawful possession of narcotic substances.

22. As for the right to humane treatment, it contended that the claim of torture is only supported by the testimony of the alleged victims and reports written by the court-appointed forensic medical experts. Notwithstanding, it alleges "it is obvious" that it cannot be established based on said reports that the injuries were caused by any agent of the State or with the support or tolerance thereof.

23. As for the right to personal liberty, it argued that the victims were arrested for the purpose of conducting investigations into illegal activities in a sting operation known as "Operation Lindo," with a basis in many statements of witnesses and other individuals connected in some way, and therefore the legal requirements were satisfied just as they apply to any arrest.

24. The State contended that the fact that the police report on the investigation conducted by the National Police assigned to the Prosecuting Attorney was sent to the competent judge and to the Chief of Police of Pichincha on August 3, 1004, that is, one day after the arrest, proves that the report was submitted to the authorities without any of the provisions of Article 7 of the Convention being violated. It claimed that the two-day delay for the detainee to be brought before the judge cannot be deemed as excessive, particularly because of the "highly trying" circumstances given the number of persons arrested and the particular offenses involved.

25. With regard to the need to order pretrial detention, it claimed that this order was in line with the criteria for this purpose upheld by the Inter-American Commission, inasmuch as i) there was convincing evidence of their responsibility and the alleged victims "were suspects" of committing criminal offenses that were classified as such prior to the arrest; ii) the seriousness and potential severity of the punishment must be taken into account to assess the chance of the defendant attempting to abscond in order to evade justice; iii) the "evident risk that exists that these citizens continue to commit their illegal acts; and iv) there was a need to investigate the facts.

26. The State argued that the court proceeding took a reasonable period of time because i) the matter was complex due to the need to prosecute around thirty-three suspects, the size of the case file –six hundred pages – and the complexity in and of itself of the crimes they were charged with; ii) the petitioner never cooperated with the investigation activities; and iii) the judicial authorities acted expeditiously "despite the complexity and characteristics of the matter." The State requested the Commission to take into consideration the circumstances involved in the case and to adopt the criterion held by the European Court with regard to "non-responsibility of the State" for a temporary case backlog in the courts of justice.

27. As for the right to judicial protection, the State argued that the alleged victims had unlimited access to each and every remedy provided by Ecuadorian law to safeguard the right to personal liberty and other fundamental rights. Nonetheless, the remedies available in the State were not properly exhausted

inasmuch as no i) motion to review; ii) petition for writ of reversal of judgment on cassation; and iii) petition for writ of *habeas corpus,* were pursued as provided for in the Constitution.

IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

A. Competence of the Commission *ratione personae, ratione loci, ratione temporis* and *ratione materiae*

28. The petitioner is entitled under Article 44 of the American Convention to lodge petitions before the Commission. The petition identifies as the alleged victims individuals, for whom the Ecuadorian State undertook to respect and ensure the rights enshrined in the American Convention. Ecuador has been a State Party to the American Convention since December 28, 1977, when it deposited the respective instrument of ratification. Therefore, the Commission is competent *ratione personae* to examine the petition. The Commission is also competent *ratione loci* to hear the petition, inasmuch as violations of rights protected in the American Convention are alleged therein to have taken place within the territory of Ecuador, a State Party to this instrument.

29. The Commission is competent *ratione temporis* because the obligation to respect and ensure the rights protected in the American Convention was already in effect on the State when the facts alleged in the petition took place. Additionally, in view of the allegations set forth in the petition, the Commission notes that the Inter-American Convention to Prevent and Punish Torture went into effect in Ecuador on December 9, 1999, that is, subsequent to the time when the alleged victims were claimed to have been tortured. Notwithstanding, the Commission is competent *ratione temporis* to apply the Inter-American Convention to Prevent and Punish Torture as to the obligation to investigate and punish the alleged acts of torture and purported denial of justice for acts occurring subsequent to the ratification thereof.

B. Exhaustion of Domestic Remedies

30. Article 46.1.a of the American Convention provides that in order for a petition lodged before the Inter-American Commission to be admissible in accordance with Article 44 of the same instrument, the requirement that remedies under domestic law have been pursued and exhausted must be met in keeping with generally recognized principles of international law. However, Article 46.2 of the Convention provides that the prior exhaustion rule shall not apply when (i) the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated; (ii) the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or (iii) there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

31. This requirement of prior exhaustion of domestic remedies is designed to enable national authorities to hear cases on an alleged violation of a protected right and, when appropriate, settle it before it is heard by an international body. On this issue, the Inter-American Court has held that only remedies which are adequate to cure the allegedly committed violations need be exhausted.

> Adequate domestic remedies are those which are suitable to address an infringement of a legal right. A number of remedies exist in the legal system of every country, but not all are applicable in every circumstance. If a remedy is not adequate in a specific case, it obviously need not be exhausted. A norm is meant to have an effect and should not be interpreted in such a way as to negate its effect or lead to a result that is manifestly absurd or unreasonable.[1]

[1] IA Court of HR, *Case of Velásquez Rodríguez v. Honduras*. Judgment of July 29, 1988. Series C No. 4, paragraph 63; IA Court of HR, *Case of Fairén Garbi and Solís Corrales*. Judgment March 15, 1989. Series C No. 6, paragraph. 88; IACHR Report No. 3/10 *Segundo Norberto Contreras Contreras*, paragraph. 38.

32. The Commission reiterated that it is not its task to identify *ex officio* which domestic remedies shall be exhausted, but it is instead the duty of the State to point out in a timely manner the domestic remedies that must be exhausted and their effectiveness.[2] As the Court has held, "the State raising this objection must specify the domestic remedies that have not yet been exhausted. It must also demonstrate that such remedies were available to the victim and were adequate, suitable and effective."[3]

33. In the case instant petition, the State claimed that three remedies were not exhausted: i) the petition for writ of reversal of judgment on cassation, which would be in order "in the event that judges or courts have committed errors of substance or of procedure (*in indicando* or *in procedendo*);" and this way, should "judges commit errors, this remedy shall vacate the judgment and a new one is issued;" ii) the motion for review of judgment regulated by Article 385 of the Code of Criminal Procedure, which can be filed once a "judgment is executed;" and iii) the "Constitutional Relief of Habeas Corpus," regulated by Article 93 of the Constitution and "Chapter I of Title II of the Law of Constitutional Enforcement," which provides for determining the legality of detentions. The State noted that such remedies are effective and suitable for the claims raised in this case.

34. In response, the petitioner contended that i) since the alleged torture was not investigated, the exception set forth in Article 46.2.c of the Convention is applicable; ii) because it took more than four years for the criminal proceeding to be settled, "this situation falls under the same exception;" iii) even though Mr. Eusebio Domingo Revelles filed a petition for writ of reversal of judgment on "cassation," he was compelled to withdraw" it in order to make it possible for the judgment to be executed and obtain the benefit of release; and iv) the motion for review of judgment was not available inasmuch as, under the law of foreign nationals, once his sentence was served, Mr. Domingo Revelles was immediately deported back to his country.

35. Taking into account the positions of the parties, the Commission shall address hereunder the requirement of prior exhaustion with regard to the following claims that constitute the object of the instant petition: i) arrests of the alleged victims and their pretrial detention; ii) purported torture, beatings and mistreatment by the Interpol agents of Pichincha and alleged failure to investigate; and iii) alleged violations of right to a fair trial and judicial protection throughout their criminal proceedings.

1. Arrests of the alleged victims and their pretrial detention

36. The Commission notes that the petition for *habeas corpus* relief is one of the remedies raised by the State, which could be filed with "the Mayor under whose jurisdiction it is to decide whether the detention is or was legal." However, while the State noted that it is regulated by the "Constitution" and Chapter II of the "Law of Constitutional Enforcement," beyond that general reference, it failed to cite the relevant provisions of the law, or any evidence of the suitability and effectiveness thereof.

37. Based on the claims of the State, this remedy must be filed with an administrative authority, namely, the Office of the Mayor. On this score, the Inter-American Court has set the legal precedent that the requirement for persons held in custody to have to file for this remedy with the mayor and then have to file an appeal for a judicial authority to be able to entertain the petition, puts roadblocks up for a remedy that is supposed to be, by its very nature, simple.[4]. Both the Commission[5] and the Court have held that filing a

[2] IA Court of HR. *Case of Reverón Trujillo v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of June 30, 2009. Series C No. 197, para. 23.

[3] IA Court of HR. *Case of Usón Ramírez v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 20, 2009. Series C No. 207. Para. 19. Citing. *Case of Velásquez Rodríguez*, para. 91; *Case of Garibaldi v. Brazil. Preliminary Objections, Merits, Reparations and Costs.* Judgment of September 23, 2009. Series C No. 203, para. 46, and *Case of Escher et al v. Brazil*. *Preliminary Objections, Merits, Reparations and Costs. Judgment* of July 6, 2009. Series C No. 199, para. 28.

[4] IA Court of HR, *Case of Chaparro Álvarez and Lapo Íñiguez*. Judgment of November 21, 2007. Series C No. 114, para. 129.

[5] IACHR, Report No. 139/10, P-139-10, Admissibility, Luis Giraldo Ordóñez Peralta, Ecuador, November 1, 2010, para. 29; IACHR, Report No. 66/01, *Dayra María Levoyer* Jiménez, Ecuador, June 14, 2001, paras. 78-81; IACHR, Report No. 91/13, P-910-07, Admissibility, *Daria Olinda Puertocarrero Hurtado*, Ecuador, November 4, 2013.

petition for a writ of habeas corpus before an administrative authority does not constitute in principle an effective remedy under the standards of the American Convention[6] and, therefore, the Commission finds that it is not required to be exhausted.[7]

38. Therefore, for the purposes of admissibility of this claim, the Commission finds that the remedy of *habeas corpus* argued by the State does not constitute *prima facie* an effective remedy to protect the rights of the alleged victims and, therefore, the exception provided for in Article 46.2.a of the Convention is applicable.

39. Without prejudice to the foregoing, with regard to Eusebio Domingo Revelles, the remedy of *hábeas corpus* was filed with the Office of the Mayor and, subsequently, the decision was appealed before the Constitutional Court, which upheld the denial of the petition for the writ. Therefore, though Mr. Eusebio Domingo Revelles was not obligated to exhaust it, in his case, the Commission deems this claim of the petition does meet the requirements set forth in Article 46.1 of the Convention.

2. Purported torture, beating and mistreatment of the four alleged victims by Interpol agents of Pichincha and purported failure to investigate

40. In cases in which violations of humane treatment are alleged, the Inter-American Court and the Commission have consistently affirmed that the adequate mechanism to investigate, and when appropriate, punish those responsible and provide reparation to the family members of the victims, when the perpetrators are agents of the State, is a criminal investigation, which should be opened *ex officio* by the State and undertaken with due diligence in order to be deemed effective.[8] The Commission reemphasizes that in cases in which there is evidence or probable cause to believe that acts of torture or other cruel, inhuman and degrading treatment or punishment have been committed, it is the duty of the State to open the criminal investigation on its own initiative *sua sponte,* and the State may not use as an excuse that the victims failed to provide the appropriate evidence.[9]

41. In the instant matter, even though the State argued that the alleged torture or abuses were not perpetrated by police officials, it has not disputed the fact that the allegations of physical and psychological coercion inflicted upon the alleged victims -during their pre-indictment declarations- were made in their initial statements before the judge in the preliminary investigation and the alleged injuries are mentioned in medical reports, which were seen by several different State authorities.[10] The initial statements before the judge did not trigger any response from the judicial authorities overseeing the case. Even in the appeal filed by Mr. Domingo Revelles to prevent the trial proceedings from being instituted, the judicial authority responded that the appellant was merely seeking "to evade his responsibility."

42. Based on the evidence in the case file, 20 years after the judicial authorities in the criminal proceeding have learned of these claims, the State has not opened the pertinent criminal investigation.

---

[6] IA Court of HR, *Case of Chaparro Álvarez and Lapo Íñiguez*. Judgment November 21, 2007. Series C No. 114, para. 128.

[7] IACHR, Report No. 91/13, P-910-07, Admissibility, *Daria Olinda Puertocarrero Hurtado*, Ecuador, November 4, 2013, para.30.

[8] See as example: IA Court of HR, *Case of Ximenes Lopes.* Judgment July 4, 2006. Series C No. 149, para. 148; *Case of Baldeón García,* Judgment April 6, 2006. Series C No. 147, paras. 92 and 93; IACHR, Report Nº 14/04, Case 11.568, Luís Antonio Malando Cardanas (Peru), February 27, 2004, para. 41; IACHR, Report Nº 24/04, Petition 723/01, Tirso Román Valenzuela Ávila (Guatemala), February 26, 2004, paras. 30 and 31; IACHR, Case 11.509, Manuel Manríquez (Mexico), Report No. 2/99 February 23, 1999, para. 58.

[9] IACHR, Petition 40-03, Report No. 84/08 October 30, 2008, para. 59.

[10] In this regard, see the references to the content of the alleged victims' initial statements before the judge in Annex *. Final Report of the Twelfth Prosecutor for Criminal Matters of Pichincha, received on November 30, 1995 by the Office of the Clerk of the Tenth Court for Criminal Matters of Pichincha. Annex to the petitioner's communication of November 13, 1998, as well as in Annex *. Twelfth Court for Criminal Matters of Pichincha, Order instituting of trial proceeding stage, June 14, 1996. Annex to petitioner's submissions of November 13, 1998. With regard to the medical examination reports, see Annex *. Medical Examination Reports of Messrs. Emmanuel Cano, Luis Alfonso Jaramillo, Eusebio Domingo Revelles and Jorge Eliécer Herrera of August 9, 1994. Annex to petitioner's communication of October 26, 1994.

Accordingly, the Commission finds that the State has caused unwarranted delay in providing the victims with an effective remedy, that is, to investigate *ex officio* the incidents that were reported to it. Based on the foregoing, the Commission finds that the exception set forth under Article 46.2.c of the American Convention is applicable to this claim.

3. Alleged violations of the right to a fair trial and judicial protection throughout their criminal proceedings

43. As to the alleged due process violations in the context of the criminal proceedings, the Commission deems that the remedies that must be exhausted are those that enable the alleged victim to expose the alleged violations of the right to a fair trial during the proceedings. These mechanisms include ordinary recourse against particular judgments that are issued in the course of said proceedings.

44. In the instant case, Mr. Eusebio Domingo Revelles appealed the order to institute trial proceedings. The Commission notes that in the ruling on said appeal, it was noted that Mr. Eusebio Domingo Revelles's declaration before the judge contradicted his initial statement in the proceedings (before the police). According to the claims of the petitioner, it was precisely in their initial statements before a judge that the alleged victims exposed the physical and psychological coercion they were subjected to in order to get them to sign a pre-indictment confession. Consequently, the Commission finds that, as a result of this appeal, the State became aware of the alleged violations of their fair trial rights stemming from the use of this evidence and, therefore, it was able to remedy the consequences it had on the proceedings.

45. The Commission further notes that the Judgment of the Second Court for Criminal Matters of Pichincha, which found Mr. Eusebio Domingo Revelles criminally responsible, was required by law to be reviewed, that is, mandatorily subject to a "consultation" by the Superior Court of Justice. Based on a reading of said review Judgment, it is evident that the Fourth Chamber of the Superior Court of Justice decided that "in this proceeding, the formal requirements of substance inherent to this type of trial have been observed and, therefore, the validity of the case proceeding declared by the Criminal Court is upheld." It also noted that "through the introduction of prima facie evidence during the initial investigation stage, the material existence of the crime under inquiry has been proven" and it decided "with the Chamber being absolutely certain that the defendant is criminally responsible." [11] Therefore, in view of the fact that there was a ruling on the validity of the proceeding, the Commission deems that by means of the review or "consultation," the Superior Court of Justice had the opportunity to remedy the alleged due process violations in the case of Mr. Eusebio Domingo Revelles.

46. As for the remedies listed by the State, the Commission recalls that the Court has denied objections of failure to exhaust domestic remedies on "lack of arguments regarding the availability, suitability and effectiveness" [12] of the remedies that the State claims should have been exhausted.

47. In the instant case, while the State did mention the petition for writ of reversal of judgment on cassation, arguing that such remedies were suitable and effective, it did not provide any information that would prove it so, and instead only provided a verbatim transcription of Article 385 from the Code of Criminal Procedure as an example of one of the remedies, the motion for review of judgment.[13] As for the writ of reversal on cassation, the Commission recalls that even though in some instances special remedies of a discretionary nature may be tailored to address human rights violations, as a general standard in these types

[11] Annex 1. Superior Court of Justice, Fourth Chamber, Judgment of November 24, 1998. Annex to petitioner's communication received on April 19, 1999.

[12] IA Court of HR, *Case of Usón Ramírez v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 20, 2009. Series C No. 207. Para. 23.

[13] The State noted "Article 385. The motion for review of any judgment of conviction shall be admissible, and shall be filed before the Supreme Court of Justice in the following instances …".

of cases, the remedies that must be exhausted are ordinary not extraordinary.[14] The Commission has noted that when the petitioners allege irregularities throughout the different stages of the proceeding, an extraordinary motion for relief need not be exhausted inasmuch as it is not the purpose of those remedies to cure supposed irregularities during the stages of investigation or formalization of charges in a criminal proceeding. [15]

48. In view of the fact that the State had a chance to cure the alleged violations in the proceedings against Mr. Eusebio Domingo Revelles both by means of the appeal of the decision to institute trial proceedings and by means of the "consultation" or review of judgment by the Superior Court of Justice, the Commission finds that it was not necessary to exhaust any additional remedies and that the requirement set forth in Article 46.1.a of the Convention has been satisfied. With regard to the withdrawal of the petition for writ of reversal of judgment on cassation, the Commission finds that it would not be reasonable to make admissibility of the claim contingent upon exhaustion of this extraordinary remedy, which required Mr. Domingo Revelles to remain deprived of his liberty while it was being decided, precluding him from benefitting from prison release that would result from a dispositive judgment. And, all of this was despite the fact that the alleged violations had previously been brought to the attention of the authorities through other mechanisms.

49. As for the criminal proceedings against Jorge Eliécer Herrera Espinoza and Emmanuel Cano, the information provided by the petitioner indicates that these proceedings were suspended as a result of their status as fugitives of justice. The petitioner, however, did not submit information about the current status of the case against Mr. Alfonso Jaramillo. Therefore, the Commission has no information available to it in order to deem the requirement of prior exhaustion of domestic remedies as satisfied with regard to the claims pertaining to the alleged violations of fair trial rights during the criminal proceedings against these three individuals.

C. Timeliness of the Petition

50. Pursuant to Article 46.1.b of the American Convention, in order for a petition to be admitted by the Commission, it must be lodged within a period of six months from the date on which the alleged victim was notified of the final judgment exhausting domestic remedies. This rule is not applicable, when the Commission finds that any exception to the requirement of prior exhaustion of domestic remedies has been met, as provided for in Article 46.2 of the Convention. In such instances, the Commission must determine whether the petition was lodged within a reasonable period of time in accordance with Article 32 of the Rules of Procedure.

51. With regard to the reputedly arbitrary detention and the allegations of torture, beatings and abuse that was inflicted on the alleged victims, the Commission has established above in the instant claim that the exception to the rule of prior exhaustion of domestic remedies provided under Article 46.2.a and 46.2.c, respectively, of the American Convention, are applicable. Taking into account that the alleged victims were detained on August 2, 1994 and the petition was lodged on October 31, 1994, after the alleged victims reported the reputed torture, beatings and abuse in their initial statements before a judge, with no investigation being launched as a consequence thereof, the Commission finds that the petition was lodged within a reasonable period and that the admissibility requirement pertaining to the timeliness of the petition must be considered satisfied.

52. As to the claims relating to the excessively protracted pretrial custody of Eusebio Domingo Revelles, as well as the violations that were committed during the case proceedings, the Commission notes that the remedies pursued with regard to these claims were settled subsequently to the date of the lodging of the original petition. The Commission notes that during the processing of the petition, the petitioner reported

[14] IACHR, Report No. 51/03, petition 11.819, Admissibility, Christian Daniel Domínguez Domenichetti, Argentina, October 24, 2003, para. 45.

[15] IACHR, Report No. 51/03, petition 11.819, Admissibility, Christian Daniel Domínguez Domenichetti, Argentina, October 24, 2003, para. 45.

to the Commission on the outcome of these proceedings and the State was made aware of it. The Commission reiterates its doctrine according to which analysis of the requirements provided for under Article 46 and 47 of the Convention must be conducted in light of the situation in effect at the time the ruling is issued on admissibility of the case.[16] Accordingly, as to these aspects of the petition, the Commission finds that the requirement set forth in Article 46.1.b of the Convention regarding timeliness of the petition has been satisfied.

D. Duplication of International Proceedings and *Res Judicata*

53. Article 46.1.c of the Convention provides that in order for petitions to be admissible they must meet the requirement that the subject "is not pending in another international proceeding for settlement." Additionally, Article 47.d of the Convention establishes that the Commission shall not admit any petition that is substantially the same as one previously studied by the Commission or by another international organization. In the instant case, the parties have not put forward any arguments for either of these two circumstances, nor can either of them be surmised from the information in the case file.

E. Colorable Claim

54. For purposes of admissibility, the Commission must decide whether the petition states facts that could tend to establish a violation, as provided by Article 47.b of the American Convention, whether the petition is "manifestly groundless" or whether it is "obviously out of order," as provided in subparagraph "c" of the same Article. The standard for evaluating these factual requirements is different from the requirement for deciding on the merits of a petition. The Commission must conduct a *prima facie* evaluation to determine whether the petition establishes grounds for the apparent or potential violation of a right guaranteed by the Convention, but not to establish the existence of a violation. In this evaluation, a summary analysis should be performed, which does not involve any prejudgment or advance opinion on the merits.

55. Neither the American Convention nor the IACHR Rules of Procedure require the petitioner to identify the specific rights that are allegedly violated by the State in the matter submitted to the Commission, even though the petitioners may do so. It is the job of the Commission, based on the legal precedents of the system, to determine in its admissibility reports, what provision of the relevant Inter-American instruments is applicable and could tend to establish a violation thereof if the alleged facts are proven by means of sufficient evidence.

56. The IACHR considers that, should the facts alleged by the petitioner prove to be true, these acts could constitute violations of the rights to humane treatment, personal liberty, a fair trial and judicial protection, enshrined in Articles 5, 7, 8 and 25, in connection with Articles 1.1 and 2 of the American Convention. By the same token, the Commission considers that the alleged failure to investigate the alleged acts of torture after said Convention took effect could tend to establish potential violations of Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture.

V. PROVEN FACTS

A. Police Investigation into Operation "Linda"

57. The report of the Interpol Office of Pichincha pertaining to the sting operation known as "Operación Linda" states that "through classified information" attention was brought to "illegal activities," which were conducted by a woman whose last name is Tinitana Ludeña, prompting execution of "Basic

[16] IACHR, Report No. 24/07, Petition 661-03, Admissibility, Liakat Ali Alibux, Surinam, March 9, 2007; IACHR, Report No. 67/11, Case 11.157, Admissibility and Merits, Gladys Carol Espinoza Gonzales, Peru, March 31, 2011, para. 44; IACHR, Report No. 108/10, Petition 744-98 et al, Admissibility, Orestes Auberto Urriola Gonzáles et al, Peru, August 26, 2010, para. 54; Report No. 2/08, Petition 506-05, Inadmissibility, José Rodríguez Dañín, Bolivia, March 6, 2008, para. 56; and Report No. 20/05, Petition 716-00, Admissibility, Rafael Correa Díaz, Peru, February 25, 2005, para. 32.

Intelligence Operations work."[17] From July 28 to August 2, 1994, the agents of the Interpol Office of Pichincha conducted several operations in order to identify activities of individuals in Quito of Colombian, Peruvian and Spanish nationality, including the alleged victims of the case.[18]

B. Detention of the alleged victims and the initial statements at the Interpol Offices of Pichincha

58. After conducting intelligence gathering, on August 2, 1994, and filing a request with the Investigating Officer, the Provincial Police Chief for Drug Enforcement and Interpol of Pichincha requested permission from the Office of the Police Chief of Pichincha to execute a search warrant on buildings and issue "the appropriate arrest warrants for the individuals, who are involved in these illegal acts."[19] On that same day, the Chief ordered execution of the search warrant on several buildings, including a warehouse located in Carcelen Alto, owned by Mrs. Alba Tinitana, on the grounds of "presumptions" that in these locations "weapons, ammunition and drugs" were being stashed. The owners of the properties were warned that in the event the public security forces are prevented from conducting the search, they would proceed "to break down the doors and break open the locks." Notice was also given that should weapons and ammunition be found, it would all be seized and, if individuals were arrested, Articles 172 and 173 of the Code of Civil Procedure would be enforced.[20]

---

[17]Annex 2. Report submitted to the Provincial Chief of Drug Enforcement and Interpol of Pichincha, July 28- August 2, 1994. Annex 1 to the Report of the Polica 134-JEIP-94, Case P1-201-JPEIP-94, August 8, 1994, Pages 33-36. Anexx to the communication of the State of May 28, de 2004.

[18]A summary is provided hereunder of the intelligence work that was conducted: on July 28, 1994, the Police performed surveillance operations on Mrs. Tinitana Ludeña, who had driven in her automobile to the sector of the "Mariscal" Hotel and met with Jorge Herrera Espinoza, a Colombian national, with whom she drove "to another sector." Later, Mrs. Tinitana returned to the hotel to pick up Alfonso Jaramillo Gonzalez, a Colombian national, and a little girl. From there, the individuals headed to the "Toro Partido" Restaurant, where they ate dinner for an hour. Then Mrs. Tinitana dropped off the people that were accompanying her at the hotel and she returned to her residence. Likewise, on July 29, 1994, Alfonso Jaramillo and Jorge Herrera, along with two Peruvian citizens, headed to Amazonas and Roca Avenue, where they boarded two taxis. The taxi carrying the Peruvian citizens headed to the "G de Oro" Hotel, where they were staying as guests from July 27 to 29, 1994, while the taxi that was carrying the Colombian citizens headed to an import-export office "IMEXPRODI," owned by Mrs. Tinitana Ludeña. Subsequently, the Colombian nationals returned to the "Mariscal" hotel and on July 30, 1994, the Peruvian national suspects boarded an airplane to the city of Guayaquil. On August 1, 1994, the Colombian citizens traveled to the "Oro Verde" hotel and then returned to the "Mariscal" hotel. Later, two suspects of Spanish nationality identified as Eusebio Domingo Revelles and Emmanuel Cano or Alfonso Garcia, went into the rooms of Jorge Herrera and Alfonso Jaramillo and remained there for an hour. Then the four individuals took a taxi and were taken to the "Oro Verde" hotel where they met with Eusebio Domingo, while the other three people continued on to the offices of "IMEXPRODI" to meet with Mrs. Alba Tinitana, in the company of her daughter. Together with Messrs. Jorge Herrera and Emmanuel Cano or Alfonso García, Mrs. Alba Tinitana boarded a van and drove to some warehouses, owned by Alba Tinitana, where they stayed for around 10 minutes and returned to the offices of "IMEXPRODI." At said location, the foreign citizens picked up Mr. Alfonso Jaramillo and returned to the "Mariscal" Hotel. Messrs. Emmanuel Cano or Alfonso Garcia and Jorge Herrera remained in that hotel. At that time, the Colombian nationals Pablo Vargas Vera, Fabio Carrero Lara and Oscar Hernando Acosta Ramirez were guests at the hotel. The same day, at 17:00 hours, Messrs. Jorge Herrera, Alfonso Jaramillo and Emmanuel Cano left the hotel, and in a taxi travelled to the "Oro Verde" Hotel and met with Eusebio Domingo Revelles. Subsequently, the Colombian nationals Pablo Vargas, Oscar Acosta, Fabio Carrero and a little girl arrived. After a 40-minute meeting, Messrs. Oscar Acosta, Jorge Herrera, Pablo Vargas, Fabio Carrero and Emmanuel Cano went to room number 620 and remained there for an hour after which they all met up again at the hotel bar. On August 2, 1994, at 8:30 AM, Mrs. Alba Tinitana arrived in the "Mariscal" hotel and picked up Jorge Herrera with whom she headed to the "Oro Verde" Hotel. Then, Mrs. Tinitana picked up Emmanuel Cano or Alfonso García and continued on to her residence, where she picked up her son, Bayron Calderon Tinitana. From there, they drove to Mrs. Tinitana's warehouse and Jorge Herrera, Emmanuel Cano or Alfonso García, and Alba Tinitana went inside, carrying with them a "mineral water bottle" and plastic bags. In the meantime, outside of the warehouse, Byron Calderón was conducting "security rounds." The individuals remained inside the warehouse for thirty minutes and then returned to Alba Tinitana's residence and, subsequently, to the "Mariscal" Hotel. Pablo Vargas, Eusebio Domingo Revelles and Fabio Carrero were inside the hotel. Once he was inside the premises, Mr. Alfonso Jaramillo left to buy "Ajax Clorox." At 11:00 AM, Colombian nationals Sánchez Yepez Carlos Vicente and Sánchez Ojeda Carlos Vicente arrived in the "Mariscal" Hotel, accompanied by Oscar Acosta Ramírez, who entered the Hotel and stayed there for a period of one hour. Then they headed to the northern part of the city where an automobile was located, which apparently he [Mr. Acosta Ramirez] owned. Annex 2. Report submitted to the Provincial Chief of Drug Enforcement and Interpol of Pichincha, July 28- August 2, 1994. Annex 1 to the Report of the Police 134-JEIP-94, Case P1-201-JPEIP-94, August 8, 1994, Pages 33-36. Anexx to the communication of the State of May 28, de 2004.

[19]Annex 3. Communication of the Chief of Police of Pichincha to the Office of the Police Chief of Pichincha. Annex 3 to the Report of the Police 134-JEIP-94, Case P1-201-JPEIP-94, August 8, 1994. Anexx to the communication of the State of May 28, de 2004.

[20]Annex 4. Resolution of the Office of the Chief of Police of Pichincha of August 2, 1994. Page 40. Annex 4 to the Report of the Police 134-JEIP-94, Case P1-201-JPEIP-94, August 8, 1994. Anexx to the communication of the State of May 28, de 2004.

59. According to the briefing report of the operation, at 16:00 hours, by "order of the Command," the Office of Interpol of Pichincha executed a search warrant of the warehouse of Mrs. Alba Tinitana, where 200 packets of cocaine were seized. Accordingly, "all suspects involved in the instant case were indiscriminately detained."[21]

60. On the same day, the Investigating Officer briefed the Provincial Chief of Police for Drug Enforcement and Interpol of Pichincha about the detention of Messrs. Jorge Eliecer Herrera Espinoza, a Colombian national; Alfonso Jaramillo González, a Colombian national; and Eusebio Domingo Revelles, a Spanish national, who were under investigation for their "possible involvement in international cocaine hydrochloride trafficking activities."[22] He was also briefed on the detention of French national Emmanuel Canno, among other individuals, for "their possible involvement in international cocaine hydrochloride trafficking, as members of an organization in the business of this illegal activity."[23]

61. The Investigating Officer reported that the offices of the company IMEXPRODI, managed by Mrs. Tinitana Ludeña, was the subject of a search, because "there exists documentary evidence that leads to the presumption that it is the property of the drug trafficker, now a fugitive from justice, MANUEL AGUDELO,"[24] in particular, a letter was found written by Nexi Calderón and Byron Calderón, the children of Mrs. Tinitana, addressed to Mr. Manuel Agudelo, in his capacity as CEO of "IMEXPRODI."[25] It was reported in the police report, among other pieces of evidence, that a letter sent to Mrs. Tinitana on November 4, 1993 by "The Manager" was found at her residence, wherein it states:

> 1. That the deal conducted with said person was not to his liking because of a lot of things. 2. You were given this deal from one day to another and you accepted it without my authorization. [....]3.- You were asked for a huge advantage, which I don't like because I do not need any partner but only transportation. It is also mentioned that of about "five" possibly kilos they have a price of 3,000 each one possibly dollars, and that he has problems and ask JORGE whether he can take charge of the whole job [....]. PEOPLE HAVE TO ANSWER TO ME FOR EVERYTHING AND I DON'T WANT PROBLEMS."[26]

62. According to the detailed account of the police report describing the evidence collected in the operation, on August 2, 1994, there was found in the warehouse 200 packets of cocaine hydrochloride, a metal box for a van with part of the drugs hidden in it; a plastic tank with a substance in it that smelled like acetone; three planks of particle board where the drugs were found; a white precision scale and a logbook of the people who came into the warehouse.[27]

---

[21]Annex 2. Report submitted to the Provincial Chief for Drug Enforcement and Interpol of Pichincha, July 29 to August 2, 1994. Pages 33-36. Annex 1 to the Report of the Police 134-JEIP-94, Case P1-201-JPEIP-94, August 8, 1994. Anexx to the communication of the State of May 28, de 2004.

[22]Annex 5. Report submitted to the Provincial Chief for Drug Enforcement and Interpol of Pichincha, August 2, 1994. Page 33-36. Annex 1 to the Report of the Police 134-JEIP-94, Case P1-201-JPEIP-94, August 8, 1994. Anexx to the communication of the State of May 28, de 2004.

[23]Annex 6. Report submitted to the Provincial Chief for Drug Enforcement and Interpol of Pichincha, August 2, 1994. Page 44. Annex 4 to the Report of the Police 134-JEIP-94, Case P1-201-JPEIP-94, August 8, 1994. Anexx to the communication of the State of May 28, de 2004.

[24]Annex 7. Report submitted to the Provincial Chief for Drug Enforcement and Interpol of Pichincha, August 2, 1994. Page 59. Annex 10 to the Report of the Police 134-JEIP-94, Case P1-201-JPEIP-94, August 8, 1994. Anexx to the communication of the State of May 28, de 2004.

[25]Annex 8. Report of the Police 134-JEIP-94, Case P1-201-JPEIP-94, August 8, 1994, page 14.

[26]Annex 8. Report of the Police 134-JEIP-94, Case P1-201-JPEIP-94, August 8, 1994, pages 17-18. Annex to the communication of the State of May 28, de 2004.

[27]Annex 9. Report to the Provincial Chief of Drug Enforcement and Interpol of Pichincha, August 2, 2++5. Pages 65-66. Annex 17 to the Report of the Police 134-JEIP-94, Case P1-201-JPEIP-94, August 8, 1994. Annex to the communication of the State of May 28, de 2004.

63. In official letter 94-802-LCPN of August 3, 1994, it was determined that "technically" the samples of the substances found in the possession of Eusebio Domingo Revelles matched for "chemical substances known as pesticides: insecticides, herbicides, fungicides, rodenticides and an injectable one for veterinarian use.[28] Additionally, the substance found in the tank in the warehouse of Mrs. Tinitana was indeed "impure acetone," with mention in the report that "acetone is a chemical precursor, which can be used in cocaine processing." [29]

64. On August 3, 1994, the Provincial Chief for Drug Enforcement and Interpol of Pichincha reported to the Chief of Police the detention of twelve individuals, including the alleged victims, and he requested the Chief to authorize the detentions of the people listed on the grounds that they were the targets of "an investigation into alleged international drug trafficking of cocaine."[30] That same day the Office of the Police Chief of Pichincha determined that "presumptions of criminal responsibility" could be surmised from the report submitted by the police and he ordered the detention for the investigation of the individuals listed for a period of 48 hours.[31]

65. On August 3, 1994, the National Police Health Office of the Provincial Office for Drug Enforcement and Interpol of Pichincha certified the health status of the alleged victims. In this regard, it noted:

a. Jorge Herrera, "upon physical examination, presents normal vital signs, does not have hematomas, or trauma and functions apparently normal, in interview, lucid, conscious, oriented, sad, melancholic, depressed, stressed."
b. Emmanuel Cano or García Alfonso, upon physical examination, presents vital signs, does not present hematomas, or trauma, and functions apparently normal, in interview, lucid, conscious, oriented, nervous, tense. Emotional tension.
c. Eusebio Domingo Revelles, upon physical examination, presents normal vital signs, does not present "hematomas or trauma," and functions apparently normal, in interview "lucid, conscious, oriented, sad, depressed, nervous."
d. Luis Jaramillo on August 3, 1994, it was reported that, he presented normal vital signs, he does not have hematomas, or trauma, upon "physical examination and functions" apparently "normal, lucid, conscious, oriented, nervous, tense, stressed. Emotional tension."[32]

66. From August 4 to 5, 1994, the alleged victims gave statements to the Investigating Officer and the Duty Prosecuting Attorney at the Offices of Interpol. Said declarations revealed some degree of acceptance of their direct or indirect connection to the international drug trafficking operation, consisting of shipping the cocaine "camouflaged" or concealed in furniture that was located in Mrs. Alba Tinitana's warehouse, bound for Barcelona, Spain.[33] As is noted hereinafter, the alleged victims denounced that these statements given over these days took place under physical and psychological duress.

---

[28]Annex 8. Report of the Police 134-JEIP-94, Case P1-201-JPEIP-94, August 8, 1994. Page 41. Annex to the communication of the State of May 28, de 2004.

[29]Annex 8. Report of the Police 134-JEIP-94, Case P1-201-JPEIP-94, August 8, 1994. Page 41. Annex to the communication of the State of May 28, de 2004.

[30]Annex 10. Communication from Provincial Chief of Drug Enforcement and Interpol of Pichincha to the General Office of the Police, August 3, 1994. Page 4. Annex to the Report of the Police 134-JEIP-94, Case P1-201-JPEIP-94, August 8, 1994. Page 41. Annex to the communication of the State of May 28, de 2004.

[31]Annex 11. Decision of the Chief of Police of Pichincha, August 2, 1994. Pages 22. Annex to the Report of the Police 134-JEIP-94, Case P1-201-JPEIP-94, August 8, 1994. Page 41. Annex to the communication of the State of May 28, de 2004.

[32]Annex 12. Health Office of the National Police, Office of the Provincial Police Chief for Drug Enforcement and Interpol of Pichincha, August 3, 1994. Annex to petitioner's communication of October 26, 1994. Pages 366-370-374 and 377. Annex to the Report of the Police 134-JEIP-94, Case P1-201-JPEIP-94, August 8, 1994. Page 41. Annex to the communication of the State of May 28, de 2004.

[33] A synopsis of these initial statements is provided below:

Continúa…

…continuación

Mr. Emmanuel Cano or Alfonso García stated that he has documentation "both as a Spaniard and as a Frenchman" and that he met in Spain Mr. Hugo Guzmán, a Colombian, and he offered to provide help in "receiving the drugs in Spain." He noted that he made a trip to Bogota and there he got in contact with Hugo Guzman, who introduced him in Cali to Alfonso Jaramillo and, while speaking with him, he explained his "true intention to get into the drug business." After around a month and a half, Alfonso Jaramillo introduced him to Jorge Herrera, Pablo Vargas and Favio Carrero. He stated that while in Spain, he received another call from Alfonso Jaramillo, who mentioned to him the possibility of a business deal. That time Pablo Vargas also called him and told him that the drugs would go inside some wooden furniture for which he provided the receiving-side information of a "ghost company" that would be used to receive the drugs. He decided to travel to Quito in the company of Eusebio Domingo Revelles "who was coming along for the purpose of [….] introducing him to Jorge Herrera and Pablo Vargas, as cattle ranchers and farmers because he had a plant and animal poison business [….], so Eusebio Domingo did not know the real objective that was the drug business [….]. Mr. Emmanuel Cano or Alfonso García also stated that when arriving in the hotel "Oro Verde," he got in contact with Jaramillo and, "since Eusebio Revelles was there and he did not know anything about the drugs, he told Jaramillo and Vargas to not talk to anyone about the matter [of the] drugs in his presence." Then, they departed to eat and left Eusebio Domingo at the hotel. The other three individuals met with Mrs. Tinitana, who drove them in a van to Jorge Herrera and him, dropping off Jaramillo in the office. He noted that as he arrived in the warehouse he observed the panels and corroborated that they were not good enough to take [the drugs…] to Spain, and therefore "he decided to not participate in this operation." Afterwards they went to the "Oro Verde" hotel where there arrived Favio Carrero, Pablo Vargas, Oscar Acosta and also a minor girl who they introduced as Jorge Herrera's niece. He stated that "since Eusebio Domingo, who didn't know anything, was present; we did not speak about the matter," but later Pablo Vargas, Alfonso Jaramillo, Jorge Herrera, Oscar Acosta and Favio Carrerothey went up to his room and he mentioned that he could not participate in this operation and therefore it was suggested to find another system of camouflage and to verify the quality of the drugs. The next day, Mrs. Alba Tinitana and Jorge Herrera arrived with whom they went to the warehouse. When they arrived there, Herrera, the lady and he went inside of it and took the sample. He stated that at the Hotel "Mariscal," Jorge Herrera sent for a bottle of "lemon-scented Ajax Clorox" to be bought and, after conducting the test, it was said that the drugs were in good condition. Then they left with Favio Carrero and Pablo Vargas to make some telephone calls and they took a taxi, that is when the Police arrived and "proceeded to arrest them." He explained that his presence in Ecuador was "to see if the furniture justified its importation in Spain." He stated that Eusebio Domingo "had no connection to this case, he came along with me to look into the possibility of a poison [pesticide] business deal, as has been proven that he has not been there in any of the conversations about the drug matter." Annex 13. Statement of Emmanuel Cano or Alfonso García, August 4, 1994. Pages 117- 120. Annex 23 to the Report of the Police 134-JEIP-94, Case P1-201-JPEIP-94, August 8, 1994. Page 41. Annex to the communication of the State of May 28, de 2004.

Mr. Luis Alfonso Jaramillo Gonzalez, a Colombian national, stated that seven or eight months earlier he contacted Hugo Guzmán who introduced him to Alfonso García, a Spanish citizen who "let him know that [….] he was interested in getting into the drug business." Subsequent to that, he mentioned to Jorge Herrera Espinoza the possibility of "starting up in that business." Likewise, he had another conversation with "Uriel," who told him that he has contact with a person that could be in charge of the transportation of the drugs to Spain. He stated that he called Alfonso García by telephone in Spain so he would come to meet the contacts that he had found him and when he came, they located each other and held a meeting with Pablo Vargas, Favio Carrero, Jorge Herrera and the Spaniard in a hotel in Cali. Based on what was agreed to, "in addition to put up the capital for the purchase of the drugs, Alfonso García would receive [them] in Barcelona Spain, and would take charge of sales, Pablo Vargas would be in charge of finding the contacts for the transportation of the drugs either by plane or by boat. Jorge Herrera was the one who would be in charge of the shipping, and I had already accomplished my mission which consisted of putting this group of people in touch with each other and once the drugs came, they would divide up the money and I would be given a commission of 10% of the profits." He stated that Jorge Herrera told him that he had to accompany him to Quito to make a shipment of drugs, he called Pablo Vargas and also Alfonso García in Spain to tell him to come to Quito to make this first shipment. "The owner [of the drugs] Carlos Alberto Restrepo" was giving them a million and a half Colombian pesos for each kilo. He stated that on August 1 the Spaniard Alfonso García arrived with another Spaniard, and Jorge Herrera went with Alfonso García and him to the office of Mrs. Rosario Tinitana, from there the lady left with Herrera and García to see the drugs, then they picked him up and went to the hotel "without mentioning anything about the matter," but on that same date at night Herrera, García, Carrero, Pablo and Oscar Acosta, who came with Pablo Vargas, got together, without him finding out what they discussed because that meeting was in Alfonso García's room at the Oro Verde hotel. He stated that on Friday he remained in his room but learned that Jorge Herrera was going to see the drugs with Alfonso García and take samples to test the quality, after returning, Pablo Vargas gave him money to buy a bottle of Clorox to test the drug quality, but he was not present when the test was conducted. Afterwards, he went with Jorge Herrera and the Spaniard Eusebio García to take a walk, and that is when "Eusebio Domingo mentioned to him that he had products like pesticides, fungicides and other inputs for premature fattening of livestock that he could send me from Spain, that that was his business […]", at that point the Police arrived and arrested them. He stated that "he came to Quito specifically to purchase some spare parts and, after the commission that he was going to earn in the sale of the drugs." He declared that he was giving his statement "freely and voluntarily without physical and psychological pressure." Annex 14. Statement of Luis Alfonso Jaramillo, August 5, 1994. Pages 124-127.Annex 23 to the Report of the Police 134-JEIP-94, Case P1-201-JPEIP-94, August 8, 1994. Page 41. Annex to the communication of the State of May 28, de 2004.

Mr. Jorge Eliecer Herrera Espinoza, a Colombian national, stated that six or seven moths earlier, he met with Luis Alfonso Jaramillo in Cali, who told him he could get into the drug business with a Spanish friend, who could be in charge of receiving the drugs in Spain, and that said person was about to come. He noted that a person would be needed to be in charge of transportation to Spain and for this, Alfonso Jaramillo recommended Pablo Vargas. After a month and a half, Alfonso Jaramillo informed him that "the Spaniard had come" and they had to get in touch with him and that Pablo Vargas would also go to that meeting, then they met at the Imperial Hotel in Cali, where they got in contact with Emmanuel Cano, who he knew as Alonso, who informed him about the possibility of shipping drugs to Spain and selling them. Afterwards, he stated that on one occasion casually he had a meeting with Jose Luis López, who told him that he had some drugs in Quito he was at risk of losing. He stated that he told him about the contact with the Spaniard and told him that he could give him two million pesos for each kilo. Then he got in touch with Alfonso Jaramillo to let him know about the possibility of the

Continúa…

67. Pre-indictment statements were also received at the Offices of Interpol from detainees Carlos Vicente Sánchez Yepez; Carlos Vicente Sánchez Ojeda; Byron Nairovin Calderón Tinitana; Oscar Hernando Acosta Ramírez; Nexi Irene Calderón Tinitana; Carrero Lara Favio Hugo; Pablo Vargas Vera and Alba Rosario Tinitana. The statement of Islandia Marisol Cedeño Cajas, caretaker of the warehouse managed by Mrs. Tinitana, was also received. Several of these statements also evince some degree of acceptance of the link of these individuals with the drug trafficking operation.[34]

68. On August 5, 1994, the National Police Health Office of the Provincial Office for Drug Enforcement and Interpol of Pichincha reported again on the health status of the alleged victims:

a. With regard to Emmanuel Cano "he presents normal vital signs, he has no hematomas, or trauma, upon physical examination and normal functions, in interview, lucid, conscious, oriented, tense, nervous, disturbed emotional situation. Emotional tension."

…continuación
deal, and that he would make sure to let Pablo Vargas know that he was in charge of the transportation. He stated that on Wednesday July 27, 1994, he had the telephone number contact of Mrs. Alba Rosario Tinitana, he went to Quito accompanied by Alfonso Jaramillo and by a niece of his and stayed at the hotel "Mariscal" where he telephoned Mrs. Rosa Tinitana saying he had come "on behalf of Jose Luis López." On Friday morning, the Peruvians Memo Alegría and Sebastián N. arrived in the "Mariscal" hotel in order to learn the contact information of the individuals who they were supposed to pay an amount that their [his] cousin asked him to do the favor to pay. He stated that at around two [PM], the four of them left the hotel. He stated that Alfonso Jaramillo and he went to the office of Mrs. Rosario Tinitana to speak about the drug matter. Mr. Herrera Espinoza also stated that on Monday the Spaniard Alfonso García or Emmanuel Cano arrived with another friend of his, Eusebio Domingo Revelles and, that same day Pablo Vargas arrived from Colombia. He stated that on Monday he got in touch with Rosario Tinitana together with Alfonso Jaramillo and with the Spaniard Alonso García or Emmanuel Cano, and Alfonso García left with him and the lady for the warehouse, dropping Alfonso Jaramillo off at the office of Mrs. Tinitana's company. At the warehouse, Mrs. Tinitana showed them the four panels where the drugs were and Alfonso García called the furniture rustic and [said] that it [the furniture] was no good to take the drugs to Spain. Next, they stopped off at the office, dropping off the lady and picking up Alfonso Jaramillo. When they arrived in the hotel, it was discovered that Pablo Vargas had spoken with Oscar Acosta and Favio Carrero. On Monday night, Pablo Vargas, Alfonso García, Eusebio Domingo, Alfonso Jaramillo, Favio Carrero, my niece, the little girl and he had a meeting at the Oro Verde hotel bar, but the only "served some refreshments" and then went up to room 620 of that same hotel, where "Pablo Vargas, Alfonso García, Oscar Acosta, Favio Carrero and [he]" met. At said meeting, they decided to speak about the matter of the drugs and that the next day Alfonso García and he would go to the warehouse to sample the drug quality. On Tuesday morning, Mrs. Tinitana came, she picked them up and Alonso García or Emmanuel Cano went with him to her house, picking up Mrs. Tinitana's son to drive the car, they arrived in the warehouse and Mrs. Tinitana's son went "I don't know where." She started to sweep, and Alfonso García entered with him and with a little pickaxe broke open one of the panels and took out the drugs. Then they left to drop off Mrs. Tinitana and they went to the hotel where a bottle of Clorox was purchased. He stated that he left with Alfonso Jaramillo and Eusebio Domingo, they were drinking "some refreshments" when they were arrested by the Police. He stated "that's right, there was no physical or psychological pressure, or ill-treatment, I am testifying freely and voluntarily […]".Annex 15. Statement of Jorge Eliecer Herrera Espinoza, August 4, 1994. Pages 128-131. Annex 23 to the Report of the Police 134-JEIP-94, Case P1-201-JPEIP-94, August 8, 1994. Page 41. Annex to the communication of the State of May 28, de 2004.

Mr. Eusebio Domingo Revelles stated he was a Spanish national and that his occupation was "chemist advisor." He stated that he worked as an advisor to the company "Productos Ecológicos" and that four to six years ago he met in Barcelona Emmanuel Cano who bought chemical products for hand washing and vehicle maintenance. He stated that about four to five months earlier, Emmanuel Cano introduced him to the Colombian Alfonso Jaramillo, with whom he agreed that he would prepare products used for farm pests, fertility and "artificial fattening" of livestock. He stated that when the samples were ready, Emmanuel Cano told him that he had to travel to Ecuador and "it is true that he told him that in Ecuador there are pieces of furniture that had cocaine hidden inside." He stated that "shortly before learning that it was drugs," he found out in a conversation from Cano that it was furniture for import and "since [Emmanuel Cano] asked him for the name and more details about the company PROECO which is owned by his brother, [....] he provided it to him and afterwards he found out it was drugs." He decided to travel to Ecuador to leave samples with Alfonso Jaramillo and, additionally, for "the drug deal." On Monday August 1, 1994, they arrived in the "Oro Verde" Hotel. He stated that after he met with the whole group of those now in custody, in other words with JORGE HERRERA, PABLO VARGAS, FAVIÓ CARRERO EMMANUEL CANO, OSCAR ACOSTA, ALFONSO JARAMILLO." In that conversation and, because of the poor quality of the furniture, he decided to back out of the operation. He stated that "he was not participating in those endeavors, but EMMANUEL CANO revealed to him what he had done with regard to the shipping of the drugs." He stated that on Tuesday August 2, they left with Jorge Herrera and Alfonso Jaramillo for the terrace of a bar and when they were there the Police arrived and arrested them. He stated that "he never directly was involved in the negotiation but he was aware because he started to accept the job of shipping of the drugs and then it was communicated to him by EMMANUEL CANO that because of the poor quality of the furniture they were not accepting them." Lastly, he declared that his statement "Is free and voluntary." Annex 16. Statement of Eusebio Domingo Revelles, August 5, 1994. Pages 121-123. Annex 23 to the Report of the Police 134-JEIP-94, Case P1-201-JPEIP-94, August 8, 1994. Annex to the communication of the State of May 28, de 2004.

[34] Annex 17. Pre-indictment statements. Annex 23 to the Report of the Police 134-JEIP-94, Case P1-201-JPEIP-94, August 8, 1994. Page 41. Annex to the communication of the State of May 28, de 2004.

b. With regard to Mr. Domingo Eusebio Revelles, he presents "normal vital signs, he has no signs of beating," "[…] lucid, conscious, oriented, sad, depressed, melancholic. Depressive reaction."

c. With regard to Mr. Luis Jaramillo, he presents normal vital signs, strained, sad, emotionally reactive to situation upon examination functions apparently normal, lucid, conscious, oriented.

d. With regard to Mr. Jorge Herrera "he presents normal vital signs, depressed, melancholic, fragile, *afalea,* lucid, conscious, oriented, no organic pathology of importance to report." [35]

69. The State clarified in its submission of January 27, 1997 that this medical certificate of August 5, 1994, was for a "exit examination" from the detention facility at the Interpol offices.[36] This is consistent with information provided by the State in its submission of July 26, 1996, wherein it noted that "as a general rule, every detainee at this Police Office undergoes a medical check up, and a medical certificate is even issued prior to their transfer to other Social Rehabilitation Facilities."[37]

70. Based on a certificate of the Central Archive of the National Police, dated August 6, 1994, none of the alleged victims had any criminal record at said office.[38]

71. On August 8, 1994, the Chief of the Crime Scene Investigation Lab of the National Police reported on the chemical analysis of the drug samples, indicating that evidence found is 40 "little plastic bags" containing a white powder substance. All of these packets, except for the one marked number 29, tested "positive for cocaine hydrochloride."[39]

72. As a result of the police investigation on August 8, 1994, the Investigating Officer submitted report 134-JEIP-CP1-94 to the Provincial Chief for Drug Enforcement and Interpol of Pichincha.[40] In said report, it was determined that the detainees were members of an international drug trafficking ring, "which has been in the business of exporting cocaine hydrochloride" and "they were all apprehended when they were engaged in the contact prior to shipment of the drugs."[41]

73. The report established the reasons why he considered Messrs. Jorge Eliécer Herrera Espinoza;[42] Emmanuel Cano or Alfonso García;[43] Luis Alfonso Jaramillo González[44] and Eusebio Domingo

---

[35]Annex 18. National Police Health Office, Provincial Police Chief's Office for Drug Enforcement and Interpol of Pichincha, August 5, 1994. Pages 354, 355, 356 and 362. Annex to the Report of the Police 134-JEIP-94, Case P1-201-JPEIP-94, August 8, 1994. Annex to the communication of the State of May 28, de 2004.

[36]Annex 19. Report of the Chief of the Drug Enforcement Police of the First District Office of Interpol of Pichincha, annex to State's communication of January 27, 1997, received by the IACHR on January 29, 1997.

[37]Annex 20. Report of the Chief of the Provincial Police Chief's Office for Drug Enforcement and Interpol of Pichincha of June 3, 1996. Annex to State's communication of July 26, 1996.

[38]Annex 21. Certification from the Central Archive of the National Police, August 6, 1994. Pages 378. Annex to the Report of the Police 134-JEIP-94, Case P1-201-JPEIP-94, August 8, 1994. Annex to the communication of the State of May 28, de 2004.

[39]Annex 22. Communication of the Chief of Crime Scene Investigation Laboratory of the National Police, August 8, 1994. Pages 380-378. Annex to the Report of the Police 134-JEIP-94, Case P1-201-JPEIP-94, August 8, 1994. Annex to the communication of the State of May 28, de 2004.

[40]Annex 8. Report of the Police 134-JEIP-94, Case P1-201-JPEIP-94, August 8, 1994. Annex to the communication of the State of May 28, de 2004.

[41]Annex 8. Annex to the Report of the Police 134-JEIP-94, Case P1-201-JPEIP-94, August 8, 1994. Annex to the communication of the State of May 28, de 2004. .

[42]It was determined that he was responsible for the "international trafficking of cocaine hydrochloride" because: a) It is on the record from his freely given statement in the presence of a deputy prosecutor that he was a member of this criminal ring of drug traffickers who were bringing the drugs […] from Colombia to Ecuador to ship it from here to Spain […]; b) He was […] the person whose mission it was to contribute with the capital in proportional parts with the persons in custody as well Pablo Vargas Vera and Emmanuel Cano or Alfonso García García for the purchase of the drugs in Colombia, the payment of the transportation thereof to Quito and from here to Spain […]. C) He testified that he was the person who in one contact with […] Luis Alfonso Jaramillo they thought up the idea of forming the drug trafficking ring […] and according to the statements of the other detainees […] the same individual was the owner of the

Continúa…

Revelles,[45] as well as the other persons taken into custody to be responsible for "international drug trafficking of cocaine hydrochloride." Additionally, the report noted that Mr. Emmanuel Cano or Alfonso García García was responsible for the "crime of falsification of documents and impersonation" inasmuch as "held dual identity."[46]

…continuación
seized drugs […]. d) Seeking a market for the drugs […] he made contact with […] Peruvians […], to whom he was unsuccessful at selling the drugs because they were unable to agree on the price […] even though […] he argues that this contact was only to run an errand for a cousin […]. In this regard, among the evidence in the case file, there is a handwritten document whereby the detainee explains the true purpose of the contact with the Peruvians was for him to provide to these men and telephone numbers […]; e) According to the attached statements, the detainee […] claims that he bought the drugs from José Luis López together with Pablo Vargas Vera and Emmanuel Cano or Alfonso García García […]; Accordingly, on August 1 and 2, in the company of Emmanuel Cano or Alfonso García and Alba Tinitana Ludeña, they went to the warehouse to check on the drugs and to take samples to ascertain the quality thereof, and there is a bottle of lemon-scented Ajax Clorox as evidence and the glass in which said test was conducted […]; f) According to the fax […] sent by Pablo (Pablo Vargas Vera) to Arturo Garzón to the attention of Jorge Herrera, it is a copy of the fax sent by Emmanuel Cano or Alfonso García requesting the specifications of the wooden furniture […] in order to prepare for the paperwork for receiving these drugs in Spain […]. Annex 8. Report of the Police 134-JEIP-94, Case P1-201-JPEIP-94, August 8, 1994. Annex to the communication of the State of May 28, de 2004.

[43]He is responsible for the "international trafficking of cocaine hydrochloride" because of the following reasons: a) He is the person who travels from Spain to Colombia seeking to become a member of an international drug trafficking ring […]; b) When manages to make contacts with Alfonso Jaramillo González and through him as an intermediary with Jorge Eliecer Herrera, Pablo Vargas Vera, Favio Carrero Lara and other Colombian drug traffickers, they agree that in addition to receiving the drugs and marketing them, the same suspect Cano or García was the capital financier who provided the money for the purchase of the drugs and the transportation thereof from Colombia to Spain […]; c) The two earlier trips to Colombia, and this last one to Ecuador has been exclusively for the purpose of carrying out the export of cocaine hydrochloride from Quito to Barcelona […], he came to ascertain the technical specifications, the quality of the furniture and to give his approval […]; d) He is the person who, by means for a fax sent from Spain to Colombia, provided the names, addresses and other information about the receiving company and warehouse of the "furniture" with the drugs in Barcelona, Spain, so that they would appear on record as the addressee on the shipping documents; d) The detainee […]is found in possession of more than six thousand dollars, eight hundred and fifty thousand Spanish pesetas in cash and a check for one million pesetas, money which was to be used for payment of the transportation of the drugs and that was two thousand dollars for each kilo shipped, whereby he was doing his job as the financier for these drug trafficking operations; f) He admits in his statements that on August 1 and 2 […]that he went to the warehouse owned by Alba Rosario Tinitana Ludeña para check the quality of the panels containing the drugs, which were going to be shipped to Spain as samples without any commercial value, and he is the one who rejects the camouflage [the way the drugs are hidden] […] and when he enters this warehouse on August 2, he takes samples to test the quality of the drugs. […].Annex 8. Report of the Police 134-JEIP-94, Case P1-201-JPEIP-94, August 8, 1994. Annex to the communication of the State of May 28, de 2004

[44]He is responsible for the "international trafficking of cocaine hydrochloride" because: a) Jointly with Jorge Herrera Espinoza he thinks up the idea of forming the ring to engage in international drug trafficking […]; b) He is the person who on a trip to Spain, makes contact with suspect Emmanuel Cano or Alfonso García and […] successfully put together the organization […]. For this purpose, he set up a meeting of the ring in Cali, at the Hotel Imperial, where the duties that each one of them will perform in the international drug trafficking are established […]; c) His mission was to coordinate with the different members when conditions were ripe for the export of the drugs […]. In exchange for this coordination role, he would earn 10% of the profits d) According to his statement […] he was present along with Jorge Eliecer Herrera Espinoza in the negotiations that were held with the Peruvians Alciviades Alegría Soto AKA Memo Alegría and Sebastián N. who came from Lima to purchase drugs, but that the deal did not materialize […]. In this way, direct involvement of the detainee is established […] in addition to the coordination role he also was involved in the commercialization of the drugs […].Annex 8. Report of the Police 134-JEIP-94, Case P1-201-JPEIP-94, August 8, 1994. Annex to the communication of the State of May 28, de 2004.

[45]He is responsible "in international trafficking of cocaine hydrochloride" because: a) In association with Emmanuel Cano he has provided the name of the company PROECO owned by his brother […] for it to be the receiving company […] of the drug shipment […]; b) He claims he was not aware of the activities of Emmanuel Cano or Alfonso García García, but he is the person who finances all of the travel expenses of Emmanuel Cano or Alfonso García García from Barcelona[…] without being able during the investigation to provide any logical and convincing justification for doing so; c) From the time he enters the country Eusebio Domingo Revelles does not engage in any activity other than stay in touch with Emmanuel Cano or Alfonso García García and through him as an intermediary, with the other members this ring […], and, furthermore, along with Emmanuel Cano he visits on two occasions the drug traffickers staying as guests at the hotel Mariscal; d) In his statement, he tries to mask the facts claiming to have come with samples of chemical products […] but he is the only one making that claim because according to his own statement, he came for the drug negotiation and even though he did not participate in the test of the panels containing the alkaloid, he was always aware of what was happening because Emmanuel Cano was the person in charge of informing him, making it look like he was a superior to Cano within this drug crime activity. Annex 8. Report of the Police 134-JEIP-94, Case P1-201-JPEIP-94, August 8, 1994. Annex to the communication of the State of May 28, de 2004.

[46]Annex 8. Report of the Police 134-JEIP-94, Case P1-201-JPEIP-94, August 8, 1994. Annex to the communication of the State of May 28, de 2004.

74. Pursuant to a supplemental police report, the persons who were arrested "were placed under the custody of the Office of the Police Chief of Pichincha, under Report No. 134-JEIP-CP1-94 of August 8, 1994."[47]

C. Medical Examinations Reports of August 9, 1994

75. On August 9, 1994, after a request was filed by an attorney,[48] a legal medical expert and a medical expert of the National Office of Forensic Medicine performed forensic medical examinations and drafted the corresponding reports on the alleged victims at Men's Rehabilitation Center No. 3 of Quito,[49] which were submitted to the Eighth Judge for Criminal Matters of Pichincha.[50]

76. With regard to Mr. Emmanuel Cano, the experts reported that

> […]he recounts that around eight days earlier, he suffered multiple abuses and traumas by the INTERPOL investigators who came in and beat him, right in front of the Prosecuting Attorney, who pretended not to see it, that he was threatened with death if he confessed that the statements that he was forced to sign were as a result of abuses and psychological torture. That they kept him on his knees for several hours with his arms held high […].[…]He recounts that four days earlier he had suffered otorrhagia of his right outer ear as a result of being hit with a flat hand on his outer ear, creating a vacuum, but we found no visible traces (he claims that he took a bath); in the right posterior hemithorax, there is an area of violaceous ecchymosis two centimeters in diameter; on the right side region of the thorax, there are four areas of violaceous ecchymosis, two of them are rounded and two and three centimeters diameter, respectively, and the other two are elongated, horizontally, four by one and a half and three by one centimeter at their widest dimensions, respectively, on the left side of the thorax, there is an area of violaceous ecchymosis of four by three centimeters at its widest dimensions; on the right flank of the abdomen a violaceous ecchymosis is visible of two centimeters in diameter that is painful to the touch. The injuries described are a result of the traumatic action of a hard blunt body and of abuse received which prompted three days of illness and physical incapacity to be counted from the day it was caused in addition to psychological trauma, which has appeared and lasted up until the present time.) Photographs were attached hereto.[51]

77. With regard to Mr. Alfonso Jaramillo González, the experts reported that:

> […] He recounted that eight days earlier at the offices of INTERPOL, he suffers multiple traumas, that his eyes had to be bandaged, was subjected to psychological torture by death threats frequently by the investigators; […] in the left malar region there is a rounded one centimeter diameter scarred excoriation, rounded, the scab of which is breaking off; in the right […] region there is an area of yellowish eechymosis seven by four centimeters at its widest dimensions; another area of yellowish elongated eechymosis seventeen by three centimeters at its widest dimension is visible from the height of the first dorsal vertebra downward toward the right of the thorax; in the left scapular region we see another slightly

[47]Annex 23. Report of the Police 134-JEIP-94, Case P1-201-JPEIP-94, August 8, 1994. Page 521 y ss. Annex to the communication of the State of May 28, de 2004.

[48]Annex 24. Communication from the Attorney of the Courts of the Republic to the Judge for Criminal Matters of Pichincha, August 5, 1994. Annex to petitioner's communication of October 26, 1994.

[49]Annex 25. Tenth Judge for Criminal Matters of Pichincha, Request for a Medical Examination, August 5, 1994. Annex to petitioner's communication of October 26, 1994.

[50]Annex 26. Medical Examination Reports of Messrs. Emmanuel Cano, Luis Alfonso Jaramillo, Eusebio Domingo Revelles and Jorge Eliécer Herrera of August 9, 1994. Annex to petitioner's communication of October 26, 1994.

[51]Annex 26. Medical Examination Reports of Messrs. Emmanuel Cano, Luis Alfonso Jaramillo, Eusebio Domingo Revelles and Jorge Eliécer Herrera of August 9, 1994. Annex to petitioner's communication of October 26, 1994.

yellowish area of eechymosis five by three centimeters at its widest dimensions; in the right lateral region of the thorax we see two rounded areas of eechymosis, three centimeters in diameter each and another one elongated two and a half by one centimeter at its widest dimension, all of them slightly yellowish colored. He feels pain in the left lateral region of the thorax upon deep pressing, though no exterior trace of trauma is visible. The injuries described, which are in a final process of reabsorption, because they were inflicted more or less eight days earlier, are from the traumatic action of a hard blunt body and abuses received which prompted three days of illness and physical incapacity to be counted from the day it was caused, but we must note that they are painful and stressful.[52]

78. With regard to Mr. Eusebio Domingo Revelles, it was reported that:

He recounts that around eight days ago he was the victim of torture from different methods in the Offices of INTERPOL by investigators. He was subjected to night time cold baths, they held him on his knees for around five hours, with his arms raised, his calves and feet were stepped on and, consequently, he claims to have vomited blood on several occasions and that he stills suffers from epigastric pain for injuries received in the abdomen. [...] In the right hemithorax there are three areas of yellowish ecchymosis measuring three by two, one and a half by two and two centimeters respectively at their widest dimension; in the posterior face of the right hemithorax there is an area of ecchymosis three and a half by two and a half centimeters at its widest dimension; in the superior third of the right leg, there is a slightly visible yellowish area of ecchymosis two and a half centimeters in diameter. All of these injuries are in the final process of reabsorption, that is to say, that they had to have been inflicted more or less around eight days earlier, they are from the traumatic action of a hard blunt body and abuses received which prompted three days of illness and physical incapacity to be counted from the day it was caused, but also constitute impactful psychological traumas. A photograph is attached.[53]

79. With regard to Jorge Eliecer Herrera Espinoza, it was reported that:

He recounts that eight days earlier he was the victim of multiple traumas at the INTERPOL offices by their investigators. [...] He complains of suffering post traumatic cephalea; the right lower eyelid shows ecchymosis; purplish colored; he complains of pain on the right side of the chin; in the right lateral region of the thorax, from top to bottom, there are four areas of ecchymosis from contusion, yellowish green in color, measuring respectively five by two, four and one half by three, two and a half by one and a half, and three by three centimeters at their widest dimensions; in the left lateral region of the thorax, we see two greenish yellow areas of ecchymosis, four by two and three by one and a half centimeters in their widest dimensions; on posterior external face of the right elbow joint, there is an area with contusions, violaceous ecchymosis seven by three centimeters in its widest dimensions; an area of violaceous ecchymosis fourteen by five centimeters long at its widest dimension extends downward from the anterior face of the superior third of the right forearm to the inferior third and is painful to the touch; on the posterior face of the superior third of the left thigh, there is an area of ecchymosis six by three centimeters long at its widest dimensions; on the anterior face of the right leg, we see two scarred excoriations, the scabs of one half and one centimeter in diameter respectively, which are breaking off. He complains of suffering abdominal pain and frequent nausea, as a result of beating that he claims to have received at said level, but we did not ascertain any detectable external traces. The injuries described are from the traumatic action of a hard blunt body and abuses received which prompted four and no more than eight days of illness and physical incapacity, to be counted from the day it was caused, which based on the characteristics thereof, were inflicted, more or less eight days earlier.[54]

Annex 26. Medical Examination Reports of Messrs. Emmanuel Cano, Luis Alfonso Jaramillo, Eusebio Domingo Revelles and Jorge Eliécer Herrera of August 9, 1994. Annex to petitioner's communication of October 26, 1994.

[53]Annex 26. Medical Examination Reports of Messrs. Emmanuel Cano, Luis Alfonso Jaramillo, Eusebio Domingo Revelles and Jorge Eliécer Herrera of August 9, 1994. Annex to petitioner's communication of October 26, 1994.

[54]Annex 26. Medical Examination Reports of Messrs. Emmanuel Cano, Luis Alfonso Jaramillo, Eusebio Domingo Revelles and Jorge Eliécer Herrera of August 9, 1994. Annex to petitioner's communication of October 26, 1994.

80. In the original petition of October 31, 1994, a description of the account of each one of the alleged victims was provided.[55]

81. With regard to Jorge Eliecer Espinoza, it was noted that "he was punched and kicked, his testicles received electric shocks, and his head was covered with a bad and filled with gas and he was threatened with death if ever filed a complaint." As for Eusebio Domingo Revelles, it stated that "he was punched and kicked all over his body, his testicles received electric shocks, his head was covered with a bad and it was filled with gas, he was subjected to cold water baths at night, he was kept on his knees with arms held high for several hours, his calves and feet were stepped on, he was beaten in the stomach causing him to vomit blood. He was also threatened with death if he filed a complaint."

82. As for Emmanuel Cano it noted that "he was punched and kicked, his testicles received electric shocks, his head was covered with a bag and was filled with gas, he was kept for several hours on his knees with his arms high, and he was also threatened if he testified about what had been done to him." Regarding Luis Alfonso Jaramillo, it stated that "they proceeded to punch and kick him, giving electric shocks on his testicles, covering his head with a bag and filling it with gas, they covered his eyes, and threatened to kill him if he ever filed a complaint."

83. At the time of the processing of the petition, on March 13, 1995, these descriptions were brought to the attention of the State.

D. Criminal proceedings against the alleged victims

84. On August 11, 1994, the Office of the Police Chief of Pichincha ordered that Report 134-JEIP-CP1-94 be submitted to the Chief of the Random Selection Section of the Judiciary.[56] On that day, supplemental report 124-JEIP-CP1 was also submitted to the Office of the Provincial Chief of Interpol of Pichincha with regard to alleged responsibility of other defendants.[57]

85. Based on the statements made in police report 134-JPEIP-CP1-94, on August 17, 1994, the Twelfth Judge for Criminal Matters issued an "order to institute the trial proceedings stage" stating that "the facts constitute a punishable offense subject to investigation ex officio." Additionally, he appointed a public defender to the alleged victims, and to other detainees, whom he charged "inasmuch as all of the requirements of Article 177 of the Code of Criminal Procedure have been met." [58] In said ruling, the Judge ordered the alleged victims, among others, to be held in pretrial detention at the Men's Center for Social Rehabilitation of Quito. The Judge ordered, among other things, to take the initial statements of the defendants beginning on August 22.[59]

86. In a "Decision of August 24, 1995," "the escape of Jorge Herrera Espinoza and Emmanuel Cano" was reported and "the Judicial Technical Police was ordered to recapture them."[60] According to the

[55] Annex 27. Original petition lodged on October 31, 1995.

[56] Annex 28. Submission from the Office of the Police Chief of Pichincha. August 11, 1994. Page 518. Annex to the communication of the State of May 28, de 2004.

[57] Annex 29. Submission of the Report 142-JPEIP-CP1-94, August 11, 1994. Page 520. Annex to the communication of the State of May 28, de 2004.

[58] Annex 30. Decision of the Twelfth Judge for Criminal Matters of Pichincha of August 17, 1994. Annex to petitioner's submission of November 13, 1998.

[59] Annex 30. Decision of the Twelfth Judge for Criminal Matters of Pichincha of August 17, 1994. Annex to petitioner's submission of November 13, 1998.

[60] Annex 31. Charging document by the Twelfth Judge for Criminal Matters of Pichincha of November 30, 1995. Pages 1519 - 1564. Annex to petitioner's submission of November 13, 1998.

Center for Social Rehabilitation, Mr. Jorge Herrera Espinoza had been a fugitive from justice since December 15, 1994.[61]

87. On November 30, 1995, Office of the 12th Prosecuting Attorney for Criminal Matters issued his "final charging document." Among other charges, it indicted Emmanuel Cano or Alfonso García, in his capacity as accomplice to the crime codified in Article 64 of the Law on Narcotic and Psychotropic Substances and in keeping with Article 43 of the Criminal Procedural Code; Jorge Eliecer Herrera Espinoza; Alfonso Jaramillo Gonzalez, and Eusebio Domingo Revelles as accessories after the fact of a crime codified in Article 64 of the Law on Narcotic and Psychotropic Substances and in keeping with Article 44 of the Code of Criminal Procedure.[62]

88. In said charging document, the Office of the Prosecutor referred to reports on medical examinations conducted on August 9, 1994, which were collected as evidence in the investigation[63] and a medical record which "certifies that after she [Jorge Herrera's niece] has been treated and examined, she presents ecchymosis and luxation in the genital area consistent with rape inflicted in the City of Quito […]."[64]

89. In the same charging document of the Office of the Prosecutor, it is noted that in their initial declarations before the judge, Eusebio Domingo Revelles, Jorge Eliécer Espinoza and Luis Alfonso Jaramillo González stated that their initial pre-indictment statements were extracted under different forms of coercion and that their stay in Ecuador was related to livestock and farming-related business deals.[65] In this charging

[61]Annex 32. Document from the Center for Social Rehabilitation regarding Mr. Jorge Eliécer Herrera Espinoza. Annex to petitioner's communication of September 24, 1994.

[62] Annex 31. Charging document by the Twelfth Judge for Criminal Matters of Pichincha of November 30, 1995. Pages 1519 - 1564. Annex to petitioner's submission of November 13, 1998.

[63] It is noted in these examination reports "[…] they state that signs of areas of violaceous ecchymosis are apparent in certain parts of the body of the petitioners" which "possibly were inflicted around eight days earlier," as well as "17 photographs wherein you can see the parts of the bodies of the persons listed, with injuries and ecchymosis clearly visible." Annex 31. Charging document by the Twelfth Judge for Criminal Matters of Pichincha of November 30, 1995. Pages 1519 - 1564. Annex to petitioner's submission of November 13, 1998.

[64] Annex 31. Charging document by the Twelfth Judge for Criminal Matters of Pichincha of November 30, 1995. Pages 1519 - 1564. Annex to petitioner's submission of November 13, 1998.

[65]Specifically, Eusebio Domingo Revelles stated that he was unaware of the crimes [of the charge] and that "only when he was detained was he told what they were by Interpol agents." He stated "that he was physically and psychologically mistreated" and "he was forced to sign what he believed was in his best interests" in addition to the fact that "there is a forensic examination of the injuries he received." He claimed that the reason for his visit to Ecuador, "was strictly professional" and that Mr. Jaramillo "went to Spain to be given samples of the products that he came to provide and that he knows the other men because they were introduced to him in Ecuador and "the rest of them he met when he was in custody."

Jorge Eliecer Herrera Espinoza stated that "he was mistreated and that he was smacked right in front of prosecuting attorney on duty." He also claimed that "he had to sign the statement before the National Police with everything they wanted, because otherwise they would mistreat me again." He contended that he came to Ecuador along with his niece "who has been raped by the investigators," and that he knew Alfonso Jaramillo, for 15 years because "they are buddies," and "they had talked about the possibility of forming a group of cattle rancher friends." He claimed that Alfonso Jaramillo knew some businessmen [who were] "ready to travel and to know the South American market," and they decided to come to Ecuador since it is "the closest country" and because of "how favorable the rate of exchange is." He claimed that one of his friends "had […] given him a business card of an attorney named Carmen Tinitana, to help them with the legal paper work." In the meantime, his buddy got in touch with Spain and they decided "to travel both from Colombia and from Spain;" Pablo Vargas, a cattle rancher and agronomist, who could also bring two friends who knew a lot about agricultural inputs and import and export paper work procedures. He stated that Alfonso Jaramillo and his niece traveled with him, and the next day they got together in the office of "Carmen Tinitana," where they found out that he had passed away and he got in touch with Mrs. Alba Tinitana who claimed "to not have any experience" and "instead offered them taxi service the days they are in Quito." He stated that "the Spaniards" arrived and they met at the Hotel Oro Verde to discuss the project. Subsequently, he left with Mr. "Emmanuel Cano" in Mrs. Alba Tinitana's taxi, going to different businesses. He stated that on Tuesday August 2, 1994, after introducing these projects, he left to have lunch when he was arrested. Lastly he stated that "at that office they were mistreated and beaten" and "the Police doctor has not performed a check up on him," even though "there are medical certificates in the case proceedings."

Luis Alfonso Jaramillo Gonzalez stated that "he rejects everything in the order instituting the criminal proceedings as false and that it is the product of psychological, physical and emotional torture." He claimed that Mr. Emmanuel Cano offered him to be the representative for South America of his agrochemical products and livestock raising inputs, and therefore he proposed "this concern to some of his cattle rancher friends," Jorge Herrera and Pablo Vargas. He stated that they decided to travel to Spain to verify the existence of the products, before obtaining the business visa. He claimed that he received a call from Pablo Vargas, who told him that Emmanuel

Continúa…

document it also refers to the fact that Pablo Vargas;[66] Óscar Hernando Acosta Ramírez;[67] Favio Hugo Carrero Lara;[68] Nexi Irene Calderón Tinitana;[69] and Alba Rosario Tinitana Ludeña[70] denied their involvement in the crimes and claimed their pre-indictment initial statements were obtained by beatings and abuses. A statement was also received from Islandia Marisol Cedeño Cajas, who retracted "everything she said, at the office of Interpol," because she had been threatened by the investigators who told her that "if she didn't say it was these men, the ones in the photos who they were showing to her, she would stay in for the rest of her life." [71] In the final charging document, it is also noted that a complaint to the Ecumenical Human Rights Commission "CEDHU" appears in the case file, lodged by the alleged victims decrying "the way in which they have been treated by the Interpol investigators."[72]

90. In the case file of the criminal proceedings there is a submission of July 2, 1996 from Mr. Eusebio Domingo Revelles addressed to the Chief Justice of the Supreme Court of Justice claiming that he had been beaten in order to get him to say that he had committed criminal activities and that the prosecutor had intimidated him so he would sign a declaration in which there appear "things he never heard of."[73]

…continuación
Cano and Eusebio Domingo were arriving in Quito with a niece of Jorge Herrera. The report states that "on this same point of the same version of the pre-indictment statement of defendant Jorge Herrera." Annex 31. Charging document by the Twelfth Judge for Criminal Matters of Pichincha of November 30, 1995. Pages 1519 - 1564. Annex to petitioner's submission of November 13, 1998.

[66] Pablo Vargas claimed that "the order instituting the trial proceedings is totally false" and "the Interpol report is also false because he has been physically and psychologically abused, being subjected to beatings electric shocks and that they would put a bag over his head and fill it with gas." He stated that it was "a three day ordeal of torture because they would kick him, they would have him get down on his knees holding a chair in each hand for periods of a half an hour." Annex 31. Charging document by the Twelfth Judge for Criminal Matters of Pichincha of November 30, 1995. Pages 1519 - 1564. Annex to petitioner's submission of November 13, 1998.

[67] He stated that "he challenges the police report" and that "said report is not true because it was made on the bases of physical and psychological torture." He stated that he did not know anything about this drug problem. Annex 31. Charging document by the Twelfth Judge for Criminal Matters of Pichincha of November 30, 1995. Pages 1519 - 1564. Annex to petitioner's submission of November 13, 1998.

[68] He stated that "he challenges the statements given at the Offices of Interpol of Pichincha because they are not true and were taken under physical and psychological duress." He claimed "to have been tortured and that the statement was made at the convenience of the investigating people." Annex 31. Charging document by the Twelfth Judge for Criminal Matters of Pichincha of November 30, 1995. Pages 1519 - 1564. Annex to petitioner's submission of November 13, 1998.

[69] She stated that "everything that has been read in the order instituting the trial proceedings is false, as is the Interpol report." She claimed "to have been subjected to every type of physical and psychological torture and that they were trying to implicate her at any cost. Annex 31. Charging document by the Twelfth Judge for Criminal Matters of Pichincha of November 30, 1995. Pages 1519 - 1564. Annex to petitioner's submission of November 13, 1998.

[70] She stated "that she challenges the Police Report inasmuch as it was made under psychological and physical duress." She claimed that "she had been taken to a prison cell […], abusing her, putting a bag over her head to suffocate her, she was hung by her thumbs and placed her in front of her two sons telling her if she didn't cooperate they would go to jail." Annex 31. Charging document by the Twelfth Judge for Criminal Matters of Pichincha of November 30, 1995. Pages 1519 - 1564. Annex to petitioner's submission of November 13, 1998.

[71] Annex 31. Charging document by the Twelfth Judge for Criminal Matters of Pichincha of November 30, 1995. Pages 1519 - 1564. Annex to petitioner's submission of November 13, 1998.

[72] Annex 31. Charging document by the Twelfth Judge for Criminal Matters of Pichincha of November 30, 1995. Pages 1519 - 1564. Annex to petitioner's submission of November 13, 1998.

[73]He stated that when he was "arrested he thought it was an abduction or something like that, because of the beatings and the covered faces I was put into a vehicle and the persons who intimidated him never identified themselves, he was taken to a location and that was where, when I was asked questions along with being beaten, he thought that they could be policemen, they wanted me to tell them that I was aware of criminal activities, I was held in custody for 4 days and vomited blood for 3 of the 4 days because of the beatings that had been inflicted upon me." He stated that "the doctor who in theory is there to safeguard the integrity of the detainees refused to pay any attention to the state I was in (I attach a copy of the forensic examination report and a photograph which was introduced as a complaint at Court No. 8) and "instead of saying that the initial statement had been extracted by force the prosecutor himself intimidated him to sign the statement in which things I never heard of appeared." He also stated that he was held "in solitary confinement, without being able to speak, with his family, an attorney or anyone to be able to clarify the misunderstanding." He stated he called that "kidnapping, defenselessness, torture, failure of justice and that the prosecutors and doctors that are supposed to be present during the interrogation (logically an attorney) are accomplices to the torturers, the judges with irrefutable evidence of torture before them hid their heads, either out of fear or because they too are accomplices to the torture, the State of Ecuador itself tries to hide this shamelessness by not communicating to its investigators about the complaints of torture before the Inter-American Commission on HR."
Continúa…

91. On June 14, 1996, the Thirteenth Court for Criminal Matters of Pichincha issued an order to institute trial proceedings. In said order, it refers to "the examination conducted by the forensic medical experts on Alfonso García [Emmanuel Cano], Alfonso Jaramillo González, Eusebio Domingo and Jorge Herrera, in which it is certified that the above listed individuals have injuries"[74] and that in their initial testimony before a judge in the judicial proceedings, Eusebio Domingo Revelles, Jorge Eliecer Herrera Espinoza, Alfonso Jaramillo González and Emmanuel Cano, as well as other detainees, claimed that their statements at the Interpol office were given under different forms of coercion.[75]

92. With regard to the pre-indictment statements, the initial declarations before the judge and the certificates of the forensic medical experts, the judge noted that based on his examination he concluded that:

> a) The corpus delicti or the offense that is under investigation is duly justified by the documents examined and described […]. b) With regard to responsibility of the defendants […] in the police report it is determined that the drugs came from the Republic of Colombia to Ecuador, in order to be transported to the European continent. c) In their pre-indictment statements, the defendants indicate the form, the mechanism that was used for the transportation of the drugs to Ecuador, […] [and] they describe the system to be used […]. d) In these same pre-indictment statements they tell the investigating officer the camouflage that was being used […]. e) The property that has been seized, as a result of direct involvement in the crime, from the owners thereof, as described during the processing of the case, they have only justified their economic power, their activities in the Republic of Colombia, but no evidence has been introduced of their lawful presence in Ecuador. g) The existence of the drugs in the possession of one of the defendants supports the police report and makes it prima facie evidence […]. h) Inasmuch as the conclusions of the police report have not been proven otherwise, it [the report] is accepted in its entirety, therefore, international trafficking in cocaine hydrochloride, an offense codified and punished under the Law of Narcotic and Psychotropic Substances is supported, and therefore, partially accepting the Final Charging Document of the Representative of the Office of the Public Prosecutor, I issue an order to institute trial proceedings […] as accomplices because it is found […] that there is serious evidence of responsibility for being the perpetrators of the crime punished and codified under Article 62 of the Law on Narcotic and Psychotropic Substances, in keeping with Article 43 of the Code of Criminal Procedure and orders: the custody orders to be confirmed […]. The defendants to appoint defense counsel in two days. To perform a psychiatric evaluation of their personalities with the involvement of two experts from the Institute of Chronology of the

…continuación
Annex 33. Communication of Mr. Eusebio Domingo Revelles to the Chief Justice of the Supreme Court of Justice of July 2, 1996. Annex to petitioner's communication received on April 19, 1999.

[74]Annex 34. Twelfth Court for Criminal Matters of Pichincha, Order instituting trial proceedings, June 14, 1996, Pages 1519 - 1564. Annex to petitioner's submission on November 13, 1998.

[75]In this regard, it is noted "in these initial statements defendants Eusebio Domingo Revelles, Pablo Vargas, Oscar Acosta Ramírez, Favio Carrero […] claim not to be aware of the crime they are being charged with, that their coming to Ecuador was prompted only by professional business matters, that most of them were introduced in Ecuador, that their objective was to form a company, that their statements were made under threat ….that they are innocent […]. Nexi Calderon Tinitana, claims to be the CEO of IMEXPRODI, that she is unaware of the crimes with which she is being charged, that she was not aware of the personal activities of her mother, that the facts recounted in her pre-indictment initial statement were made under physical and psychological duress. Alba Rosario Tinitana Ludeña claims that she accepted responsibility for the drugs because she was threatened, for the sake of the lives of her sons, that she does not know the members of the ring, that she knew Mr. Argudo Mora, […] that the Interpol report is false. […]. Jorge Eliécer Herrera Espinoza, claims to be astonished over the content of the order to institute trial proceedings, that he came to Ecuador to form a agricultural products business, operating throughout South America, that he does not know the reason why he is being charged, that he has been abused. Emmanuel Cano[…] in his initial statement he says: that the statement given at the Interpol office is false, that he was tortured, that he does not know the perpetrators of the offense with which he is charged. The witness Islancia Marisol Cedeño, claims to be the caretaker of the warehouse, that she does not know any of the detainees […]" Annex 34. Twelfth Court for Criminal Matters of Pichincha, Order instituting trial proceedings, June 14, 1996. Annex to petitioner's submission on November 13, 1998.

> Central University of Ecuador. An injunction against transfer or disposal of the property of the defendants […]"[76].

93. On November 18, 1997, the Fourth Chamber for Criminal Matters of the Superior Court of Justice ruled on the appeal filed by Eusebio Domingo Revelles and another defendant against the order instituting trial proceedings. With regard to Eusebio Domingo Revelles, it stated that:

> In giving his initial statement before a judge […]he attempted to circumvent his involvement in and responsibility for the criminal offense that is the subject of the instant trial, by claiming facts and circumstances that totally contradict his pre-indictment statement given in the presence of and with the personal participation of the Representative of the Office of the Public Prosecutor, who endorses the veracity of its content and the probative value thereof which, corroborated by the investigation report, [is] the grounds for the instant criminal action, constitutes a serious presumption of guilt, as provided for in Article 116 of the Special Law on the Subject Matter. Based on the foregoing, in keeping with Article 347 of the Code of Criminal Procedure, inasmuch as the defendant is the only one who has appealed the order to institution trial proceedings issued by the [appellate] Judge *a quo,* as responsible for the offense that has been codified as a crime, that is, provided for and punished by Article 62 of the Law on Narcotic and Psychotropic Substances, in his capacity as an accomplice, under the provision set forth in Article 43 of the Criminal Code.[77]

94. On April 1, 1998, the Second Court for Criminal Matters of Pichincha which heard the trial proceeding found "Eusebio Domingo Revelles […] to be the perpetrator responsible for the crime as described and punished under Article 62 of the Law on Narcotic and Psychotropic Substances, as an accomplice, pursuant with Article 43 of the Criminal Code" sentencing him to a 6 year Ordinary Minor Prison Term "with credit for the time served deprived of his liberty for this case and a fine of one hundred general minimum wages […]"[78].

95. In the judgment, the Court noted that "there was no failure to observe the formal requirements of substance in any way so as to influence the decision in the case and, therefore, the proceeding is valid and is so declared." It further stated that the material existence of the offense or corpus delicti was proven by evidence relating to the drugs that were found and, after describing the content set forth in his pre-indictment statement, the Court held that in 'giving his initial statement before a judge (pgs. 670) [Mr. Eusebio Domingo Revelles] attempted to circumvent his involvement in and responsibility for the crime that is the subject of the instant proceedings by claiming facts and circumstances that totally contradict the content of his statement pre-indictment statement […]".

96. The foregoing judgment, pursuant to legislation in effect at the time, is reviewed by operation of law by the Superior Court of Justice.[79]

97. On June 11, 1998, the Prosecutor's Office of Pichincha filed a motion with the Fourth Chamber of the Superior Court of Quito, submitting its final charging document and requesting "the reviewed judgment undergo an amendment, inasmuch as the punishment imposed is inconsistent with the procedural

---

[76]Annex 34. Twelfth Court for Criminal Matters of Pichincha, Order instituting trial proceedings, June 14, 1996, Pages 1519 - 1564. Annex to petitioner's submission on November 13, 1998.

[77]Annex 35. Fourth Chamber for Criminal Matters of the Superior Court of Justice, Motion for Appeal, November 25, 1997. Annex to petitioner's submission on November 13, 1998.

[78]Annex 36. Second Court for Criminal Matters of Pichincha, Judgment of April 1, 1998. Annex to petitioner's submission on November 13, 1998.

[79]Annex 1. Superior Court of Justice, Fourth Chamber, Judgment of November 24, 1998. Annex to petitioner's communication received on April 19, 1999.

reality."[80] In said communication, the Office of the Prosecutor claimed that even though the medical experts concluded that there were injuries in the process of reabsorption stemming from traumatic action of a hard blunt body and abuses received, they are "facts that are refuted in the statements given by [Eusebio Domingo Revelles] to the Representative of the Prosecutor's Office, before whom it is on record that his statement is free and voluntary and, he replies to the question posed by this official, which […] leads to the presumption of the misrepresentation of his statement that he was forced to sign said statement, finding that his only aim is to evade his responsibility in the crime under investigation.""[81].

98. On November 24, 1998, the Fourth Chamber of the Superior Court of Justice handed down judgment regarding the "review" of the judgment issued by the Second Court for Criminal Matters. The Chamber found Eusebio Domingo Revelles to be an "accomplice to the crime of illegal trafficking of cocaine, upholding the reviewed judgment, sentencing him "to a SIX YEAR ORDINARY MINOR PRISON TERM […] in addition to imposing the FINE OF ONE HUNDRED GENERAL MINIMUM SALARIES, as well as the FORFEITURE of all of his property, money, securities and other items that may have been seized by the Criminal Court Judge […]"[82]. After establishing the existence of the drugs, the grounds for the decision of the Superior Court of Justice are supported in the pre-indictment statements of both Mr. Eusebio Domingo Revelles himself and other defendants. All of the statements upon which this decision is based were denounced during the proceedings as obtained under beatings, torture and abuses.[83]

E. H*ábeas corpus* Relief sought by Eusebio Domingo Revelles with regard to pretrial custody

99. Mr. Eusebio Domingo Revelles filed a petition for *hábeas corpus* relief for being held in pretrial detention, which was denied by the Mayor of Metropolitan District of Quito on August 25, 1998. As is identified in the ruling denying the appeal of this decision to deny, the Mayor's Office ordered the detainee to be brought before her on August 25, 1998 along with the custody order. The motion was denied on the grounds of Official Letter No. 42-98 of August 24, 1998, sent by the Second Court for Criminal Matters of Pichincha, which advised that:

> […] judgment be imposed on him on April 1, 1998 […] sentencing him to an ordinary minor six-year prison term, automatically sending up the judgment for review as provided by law to the Fourth Chamber of the Superior Court of Justice of Quito, which, in Official Letter No. 141-98 CSJQS, of August 25, 1998 […] [reported] that the proceeding is at the stage of the Chamber issuing the appropriate ruling […].[84]

100. Mr. Eusebio Domingo Revelles appealed the above-cited ruling basing his motion on Article 24, subsection 8, of the Constitution, before the Second Chamber of the Constitutional Court, which ruled on November 9, 1998 upholding the decision of the Mayor.[85] Pursuant to the judgment, "the case has been heard in keeping with the relevant provisions of the law and, therefore, it cannot be vacated." Additionally, as the Constitutional Court explained with regard to the petition for *hábeas corpus*:

---

[80]Annex 37. Submission of the Office of the Prosecutor before the Fourth Chamber of the Superior Court of Quito, Received on June 12, 1998. Annex to petitioner's submission of November 13, 1998.

[81]Annex 37. Submission of the Office of the Prosecutor before the Fourth Chamber of the Superior Court of Quito, Received on June 12, 1998. Annex to petitioner's submission of November 13, 1998.

[82]Annex 1. Superior Court of Justice, Fourth Chamber, Judgment of November 24, 1998. Annex to petitioner's communication received on April 19, 1999.

[83]Annex 1. Superior Court of Justice, Fourth Chamber, Judgment of November 24, 1998. Annex to petitioner's communication received on April 19, 1999.

[84]Annex 38. Constitutional Court, Second Chamber, Judgment of November 09, 1998. Annex to petitioner's communication received on April 19, 1999.

[85]Annex 38. Constitutional Court, Second Chamber, Judgment of November 09, 1998. Annex to petitioner's communication received on April 19, 1999.

> Article 32 of the Law of Constitutional Enforcement sets forth that a petition for habeas corpus relief may also be filed with the Mayor of the Canton where the filer deprived of liberty is located as provided for in Article 114 of the Criminal Code […]the first unnumbered article, second subsection of which, was found unconstitutional by the Constitutional Court in decision 109-1-97, published in R.O.222 of December 24, 1997, wherein it excluded from those provisions defendants being tried for crimes punished under the Law on Narcotic and Psychotropic Substances. As a result of that amendment, individuals that have remained in custody without their case either being dismissed or trial proceedings instituted for a period of time equal to or greater than one third of the maximum prison term established by the Criminal Code for the offense that they were being tried for, shall be immediately released by the judge hearing the case" and "individuals who remain in custody awaiting judgment, for a period of time equal to or greater than one half of the maximum prison term for the crime they are being tried for, shall be immediately released by the criminal court hearing the case […].
>
> […]The appellant has been tried in a criminal case for the offense set forth in Article 62 of the Law on Narcotic and Psychotropic Substances and has been sentenced to a prison term of eight years as a co-perpetrator […], which is currently under consideration." It noted that "the punishment for the crime of illegal trafficking, under Article 62 of the Law on Narcotic and Psychotropic Substances is from 12 to 16 years; Eusebio Domingo Revelles has been in custody since August 2, 1994, in other words, for a period of four years and three months and seven days, and consequently, his situation is not covered in subsection two of Article 114 (as amended) of the Criminal Code."[86]

101. With respect to subsection 8 of Article 24 of the Political Constitution, which establishes that pretrial detention may not exceed six months, in cases for crimes punished with minor prison terms, nor [may it exceed] one year, for crimes punished with longer terms of imprisonment, the Court held that

> This provision of the Constitution may take effect as of August 11, 1999 (…) by express mandate of the forty-fifth transitional provision which reads verbatim "the periods of time established in this Constitution shall count as of the date it takes effect, unless it is expressly determined otherwise." The twenty eighth transitional provisional may not apply either, because it is only applicable for those individuals in custody for crimes punished with shorter jail terms and not longer prison terms as is [the term in] this case."[87]

V. LEGAL ANALYSIS

102. Next, the Commission shall conduct the legal analysis based on the three claims brought by the petitioner: Firstly, the arrest and pretrial detention of the alleged victims; secondly, the facts purported to be violations of the right to humane treatment of the alleged victims and the investigation into these facts; and thirdly, the facts alleged to be violations of the right to a fair trial and judicial protection of Mr. Eusebio Domingo Revelles.

103. As to the third point, the Commission will only examine the situation of Eusebio Domingo Revelles, with regard to whom the criminal proceeding continued and about which information is available. Regarding the other alleged victims, the Commission has already concluded that not enough information is available to be able to find that the requirement of prior exhaustion of domestic remedies has been met with respect to the criminal proceedings brought against Messrs. Emmanuel Cano, Jorge Eliécer Herrera and Luis Alfonso Jaramillo.

---

[86]Annex 38. Constitutional Court, Second Chamber, Judgment of November 09, 1998. Annex to petitioner's communication received on April 19, 1999.

[87]Annex 38. Constitutional Court, Second Chamber, Judgment of November 09, 1998. Annex to petitioner's communication received on April 19, 1999.

A. Deprivation of liberty of the alleged victims and remedies pursued by Mr. Eusebio Domingo Revelles in order to regain his liberty.

104. The Inter-American Court has held that Article 7 of the Convention contains two distinct types of regulation: one type is of a general nature and the other, of a specific nature. The general type is set forth under Article 7.1: "Every person has the right to personal liberty and security;" while the specific type is made up of several guarantees protecting the right not to be deprived of liberty unlawfully (Article 7.2) or in an arbitrary manner (Article 7.3), to be informed of the reasons for the detention and the charges brought against the person taken into custody (Article 7.4), to judicial control of the deprivation of liberty and to a reasonable length of time of the remand in custody (Article 7.5), to contest the lawfulness of the arrest (Article 7.6) and not to be detained for debt (7.7).[88]

105. The Court has established that "any violation of subparagraphs 2 to 7 of Article 7 of the Convention necessarily entails the violation of Article 7.1 thereof, because the failure to respect the guarantees of the person deprived of liberty leads to the lack of protection of that person's right to liberty."[89]

1. Right not to be unlawfully deprived of liberty

106. Article 7.2 of the Convention establishes that "No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto." Based on a holding of the Court, this subparagraph of Article 7 recognizes the main guarantee of the right to physical liberty: the legal exception, according to which the right to personal liberty can only be affected by a law.[90]

107. Next, the Commission will examine whether the arrests of the alleged victims were conducted in keeping with provisions of Ecuadorian law.

108. The legislation used in Ecuador to regulate arrests in the context of investigations into allegedly drug-related offenses has been addressed by the bodies of the Inter-American system on several occasions. As for the Commission, it is fitting to mention its *Report on the Human Rights Situation in Ecuador*,[91] as well as merits reports it issued in the cases of *Dayra María Levoyer Jiménez*[92] and *Ruth Rosario Garcés Valladares.*[93] The IACHR has also referred several cases to the Court wherein it has had the opportunity to examine Ecuadorian legislation on this subject matter. Particularly, the Court has ruled on this issue in the cases of *Chaparro Álvarez and Lapo Iñiguez; Acosta Calderón; Tibi* and *Suárez Rosero,* all of them, against the State of Ecuador.[94]

109. Article 19 of the Ecuadorian Constitution in force at the time of the arrests of the alleged victims established:

---

[88] IA Court of HR. *Case of Chaparro Álvarez and Lapo Íñiguez. v. Ecuador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 21, 2007. Series C No. 170, para. 51.

[89] IA Court of HR., *Case of Barreto Leiva v. Venezuela.* Merits, Reparations and Costs. Judgment of November 17, 2009. Series C No. 206. Para. 11.

[90] IA Court of HR. *Case of Chaparro Álvarez and Lapo Íñiguez. v. Ecuador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 21, 2007. Series C No. 170, para. 55.

[91] IACHR, *Report on the Human Rights Situation in Ecuador,* OEA/Ser.L/II.96, Doc. 10 rev.1 of April 24, 1997. See Chapter VII Right to Personal Liberty. Available at: http://www.cidh.org/countryrep/Ecuador-sp/Capitulo%207.htm

[92] IACHR, Merits Report 66/01.Case 11.992 Dayra María Levoyer Jiménez (Ecuador), June 14, 2001.

[93] IACHR, Merits Report 64/99, Case 11.778 Ruth del Rosario Garcés Valladares, April 13, 1999.

[94] IA Court of HR. Case of *Chaparro Álvarez and Lapo Íñiguez. v. Ecuador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 21, 2007. Series C No. 170; *Case of Acosta Calderón v. Ecuador*. Judgment of June 24, 2005. Series C No. 129; and *Case of Tibi v. Ecuador*. Judgment of September 7, 2004. Series C No. 114; IA Court of HR. *Case of Suárez Rosero v. Ecuador*. Merits. Judgment of November 12, 1997. Series C No. 35.

No one shall be deprived of his liberty except under written order from a competent authority, as appropriate, for the length of time and in keeping with the formal requirements set forth by the law, except in instances of flagrante delicto, in which case he may not be held for more than 24 hours without formal charges, in any case, he may not be held in solitary confinement for more than 24 hours; [...][95]

110. Likewise, the 1983 Code of Criminal Procedure[96] established:

Art. 172.- In order to investigate the commission of a criminal offense, prior to bringing the respective criminal action, the competent Judge may remand an individual in custody, either as a result of personal knowledge or of oral or written reports from National Police or Judicial Police agents or from any other person, which establish proof of the crime and the appropriate presumption of responsibility.
This arrest shall be ordered by means of a warrant that shall meet the following requirements in setting forth:
1.- The grounds for the arrest;
2.- The place and date in which it is issued; and
3.- The signature of the competent Judge.
In order to execute the arrest warrant, said document shall be handed over to an Agent of the National Police or the Judicial Police.

Art. 173.- The arrests taken up in the article above shall not exceed forty-eight hours, and within that period of time, should it be found that the detainee has not been involved in the crime under investigation, he shall immediately be released. Otherwise, the respective criminal proceeding shall be instituted, and when appropriate, a pretrial detention order shall be issued.

111. The aforementioned Code further provides in Article 174 thereof that:

In instances of flagrante delicto, any person may apprehend the perpetrator and take him before a competent Judge or an Agent of the National Police or of the Judicial Police.

112. The Commission notes that Article 54 of the Code of Criminal Procedure additionally sets forth as one of the functions of the Judicial Police: "to order and execute temporary detention of persons caught in flagrante delicto, that is in the act of a crime, or against whom there are serious presumptions of guilt and bring them within 48 hours before the respective investigating magistrate."

113. The inter-American Court has established that, under the provisions of the Constitution and the Code of Criminal Procedure of Ecuador, in order for a detention to be legal, a court warrant is required, except when the person has been apprehended in the act of committing a crime, i.e. *in flagrante delicto*.[97]

---

[95]The Commission notes that at the time of the arrest of the alleged victims on August 2, 1994, the 1978 Constitution was in effect which was codified in 1993. Law Number 25.RO/183 of May 5, 1993. Available at: http://www.cortenacional.gob.ec/cnj/images/pdf/constituciones/45%201978%202da%20Codificacion.pdf. Said statute was regarded by the Commission as applicable in the merits report of the case of Dayra María Levoyer Jiménez, who was arrested in June 1992. See IACHR, Merits Report 66/01.Case 11.992 Dayra María Levoyer Jiménez (Ecuador), June 14, 2001, para. 29. The Court, in turn, found the statute applicable in the case of *Daniel Tibi*, who was arrested in 1995. See IA Court of HR, *Case of Tibi v. Ecuador*. Judgment of September 7, 2004. Series C No. 114, para. 99.

[96] 1983 Ecuadorian Code of Criminal Procedure. (L. 134-PCL. RO 511: 10-jun-1983). The Commission has addressed application of Articles 54 and 172 of said Code as provisions of law regulating arrests and remand in custody in Merits Reports 64/99, Case 11.778 Ruth del Rosario Garcés Valladares, April 13, 1999 and 66/01.Case 11.992 Dayra María Levoyer Jiménez (Ecuador), June 14, 2001; additionally, it addressed Articles 172, 173 and 174 in its *Report on the Human Rights Situation in Ecuador,* OEA/Ser.L/II.96, Doc. 10 rev.1 of April 24, 1997. See Chapter VII Right to Personal Liberty. Available at: http://www.cidh.org/countryrep/Ecuador-sp/Capitulo%207.htm. Likewise, the Court considered Articles 172, 173 and 174 of the Code of Criminal Procedure in examining the Case of *Tibi v. Ecuador*. Judgment of September 7, 2004. Series C No. 114, para. 99.

114. In the instant case, the Commission has considered it proven fact that on August 2, 1994 the Provincial Chief of the Drug Enforcement Police and Interpol of Pichincha, at the behest of the Investigating Official, filed a request with the Chief of Police of Pichincha to execute search warrants of buildings and to issue "the appropriate arrest warrants for anyone involved in these crimes." However, in response to that request, the Police Chief authorized the searches and explained that "should any persons be arrested, the provisions of Articles 172 and 173 of the code of criminal procedure would be enforced" which, as has been explained above, require that detentions be based on court-issued arrest warrants, except when offenders are caught *in flagrante delicto.*

115. The Commission notes that after executing the search warrant of the warehouse, owned by Mrs. Alba Tinitana, where the drugs were found, "all of the suspects were indiscriminately arrested." It was the next day, August 3, 1994, when the Provincial Chief of the Drug Enforcement Police and Interpol of Pichincha reported to the Police Chief the arrest of 12 individuals, including the alleged victim victims, and requested that their arrest be authorized as legal.

116. The Commission notes that when the alleged victims were arrested there were no individually identified arrest warrants issued against them by a judicial authority, as required under article 172 of the Code of Criminal Procedure.

117. As for the element of being caught *in flagrante delicto,* the State has not raised these grounds. Based on a reading of the official records pertaining to the search warrants and the arrests, it is not apparent either that it has raised these grounds. It must be noted that at the time of the arrest the suspects were not in possession of any illegal substance and the drugs that have been identified were located in the warehouse belonging to another person, Mrs. Alba Tinitana.

118. However, the Commission notes that Article 54 of the Code of Criminal Procedure "departs from the constitutional standard," by establishing "additional grounds for an arrest without a warrant from a competent authority," which is a "serious presumption of responsibility."[98]

119. Should these have been the grounds for the arrest, the Commission cites a holding of the Court that the strict requirement for making an exception under the law curtailing the right to personal liberty in keeping with Article 7.2 of the Convention is to issue a statutory description of the criminal offense, as specifically as possible and "establish beforehand" the "reasons" for which, and the "conditions" in which, a person may be physically deprived of their liberty. Consequently, any requirement established under domestic law that is not abided by when an individual is deprived of his or her liberty, renders such a deprivation illegal and a violation of the American Convention.[99]

120. As the Commission stated in Merits Report 66/01 *Dayra María Levoyer Jiménez,*[100] the grounds of "serious presumption of responsibility" is not set forth in the Constitution. Moreover, it opens the door to the subjective judgment of the police officer as to what he or she understands as "serious presumption of responsibility" leaving "the definition to the discretion of the police officer making the arrest." [101]

…continuación

[97] IA Court of HR. *Case of Acosta Calderón v. Ecuador*. Judgment of June 24, 2005. Series C No. 129, para.. 61; and *Case of Tibi v. Ecuador*. Judgment of September 7, 2004. Series C No. 114, para. 103.

[98] IACHR, Merits Report 66/01.Case 11.992 Dayra María Levoyer Jiménez (Ecuador), June 14, 2001. par- 36.

[99] IA Court of HR. *Case of Chaparro Álvarez and Lapo Íñiguez. v. Ecuador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 21, 2007. Series C No. 170, para. 55.

[100] IACHR, Merits Report 66/01.Case 11.992 Dayra María Levoyer Jiménez (Ecuador), June 14, 2001.

[101] IACHR, Merits Report 66/01.Case 11.992 Dayra María Levoyer Jiménez (Ecuador), June 14, 2001, para. 36.

121. In said report, the Commission considered that this provision "contravenes the Convention" since "it leaves the decision as to the appropriateness of the arrest to the subjective judgment of the police officer carrying out the arrest." The Commission understood that the requirement for a statutory description of a crime in order to restrict personal liberty, "is not satisfied by a vague and general prescription such as 'serious presumption of responsibility.'"[102]

122. The Commission concludes that: i) the State has not provided an explanation regarding the specific legal grounds under which the arrests were conducted indiscriminately in violation of provisions of the law; and ii) if the basis for the arrests was the serious presumption of guilt, the Commission reiterates that said provision is in and of itself inconsistent with the principle of legality as it pertains to personal liberty. Based on the foregoing, the Commission finds that the State of Ecuador violated the right not to be deprived unlawfully of liberty, as established in Article 7.2, in connection with the obligations set forth in Articles 1.1 and 2. Of the American Convention, to the detriment of the victims of the case.

2. Pretrial detention

123. The Court has ruled that preventive or pretrial detention is limited by the principles of legality, the presumption of innocence, need and proportionality, all of which are strictly necessary in a democratic society.[103] It has also held that it is a precautionary rather than a punitive measure[104] and that it is the most severe one that could be imposed on a defendant and, therefore, it should be used as on an exceptional basis. In the view of the Court, the rule must be the defendant's liberty while a decision is being made regarding his criminal responsibility.[105] The Court has emphasized that particular circumstances of the alleged perpetrator and the seriousness of the offense he is charged with are not, in and of themselves, sufficient grounds for preventive detention.[106]

124. As for the reasons to warrant preventive detention, the bodies of the system have construed Article 7.3 of the American Convention to the effect that evidence of responsibility are an essential requirement but insufficient on their own to impose such a measure. In the words of the Court,

> There must be sufficient evidence to allow reasonable supposition that the person committed to trial has taken part in the criminal offense under investigation.[107] Nevertheless, "even in these circumstances, the deprivation of liberty of the accused cannot be based on general preventive or special preventive purposes, which could be attributed to the punishment, but can only be based on [...] a legitimate purpose, which is, to ensure that the accused does not prevent the proceedings from being conducted or elude the system of justice."[108]

---

[102] IACHR, Merits Report 66/01.Case 11.992 Dayra María Levoyer Jiménez (Ecuador), June 14, 2001, para. 37.

[103] IA Court of HR, *Case of López Álvarez*. Judgment of February 1, 2006. Series C No. 141, para. 67; *Case of García Asto and Ramírez Rojas*. Judgment of November 25, 2005. Series C No. 137, para. 106; *Case of Palamara Iribarne*. Judgment of November 22, 2005. Series C No. 135, para. 197; and *Case of Acosta Calderón*. Judgment of June 24, 2005. Series C No. 129, para. 74.

[104] IA Court of HR, *Case of Suárez Rosero v. Ecuador*. Judgment November 12, 1997. Series C No. 35, para. 77.

[105] IA Court of HR, *Case of López Álvarez*. Judgment of February 1, 2006. Series C No. 141, para. 67; *Case of García Asto and Ramírez Rojas*. Judgment of November 25, 2005. Series C No. 137, para. 106; *Case of Palamara Iribarne*. Judgment of November 22, 2005. Series C No. 135, para. 196; and *Case of Acosta Calderón*. Judgment of June 24, 2005. Series C No. 129, para. 74.

[106] IA Court of HR, *Case of López Álvarez*. Judgment of February 1, 2006. Series C No. 141, para. 60; *Case of García Asto and Ramírez Rojas*. Judgment of November 25, 2005. Series C No. 137, para. 106; *Case of Palamara Iribarne*. Judgment of November 22, 2005. Series C No. 135, para. 196; and *Case of Acosta Calderón*. Judgment of June 24, 2005. Series C No. 129, para. 75; and *Case of Tibi.* Judgment of September 7, 2004. Series C No. 114, para. 180.

[107] IA Court of HR, *Case of Barreto Leiva v. Venezuela.* Merits, Reparations and Costs. Judgment of November 17, 2009. Series C No. 206. Para. 111. Citing. *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador. Preliminary Objections, Merits, Reparations and Costs.* Judgment of November 21, 2007. Series C No. 170, para. 101 and *Case of Servellón García et al v. Honduras. Merits, Reparations and Costs.* Judgment of September 21, 2006. Series C No. 152, para. 90.

[108] IA Court of HR, *Case of Barreto Leiva v. Venezuela.* Merits, Reparations and Costs. Judgment of November 17, 2009. Series C No. 206. Para. 111. Citing. *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador. Preliminary Objections, Merits, Reparations and Costs.*

Continúa...

125. This also entails an obligation to give sufficient reasons regarding the achievement of a legitimate purpose, in line with these standards, upon the issuance of the preventive detention order. Otherwise, it must be considered arbitrary.[109]

126. Likewise, the Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, approved by the IACHR, lay out under Principle III, subparagraph 2, that:

> […]Preventive deprivation of liberty is a precautionary measure, not a punitive one, which shall additionally comply with the principles of legality, the presumption of innocence, need, and proportionality, to the extent strictly necessary in a democratic society. It shall only be applied within the strictly necessary limits to ensure that the person will not impede the efficient development of the investigations nor will evade justice, provided that the competent authority examines the facts and demonstrates that the aforesaid requirements have been met in the concrete case.[110]

127. Regarding the use of pretrial detention while ensuring the right to the presumption of innocence, in its *Report on the Use of Pretrial Detention in the Americas,* the IACHR noted that:

> […] observance of the right to the presumption of innocence entails, above all, that the accused is able to stand trial in liberty. This means that pretrial detention must truly be used as an exception; and in any instance when it is ordered to be used, the right to the presumption of innocence must be respected by giving legitimate reasons to warrant its use. As with all limitations on human rights, deprivation of liberty before sentencing must be interpreted strictly in keeping with the *pro homine* principle, pursuant to which, when the recognition of rights is involved, the most favorable interpretation to the person must be followed, and when the restriction or suppression thereof is involved, the most restrictive interpretation.[111]

128. The Court has reiterated some of the foregoing standards in stating that:

> […] the principle of the presumption of innocence – inasmuch as it lays down that the person is innocent until proven guilty – is founded upon the existence of judicial guarantees. Article 8.2 of the Convention establishes the obligation of the State not to restrict the liberty of a detained person beyond the limits strictly necessary to ensure that he will not impede the efficient development of an investigation and that he will not evade justice; preventive detention, therefore, is a precautionary rather than a punitive measure. This concept laid down in a goodly number of instruments of international human rights law, including the International Covenant on Civil and Political Rights, which provides that preventive detention should not be the normal practice, in relation to persons who are to stand trial (Article 9.3). It would be a violation of the Convention to deprive of liberty for a disproportionate period of time persons, whose criminal responsibility has not been

…continuación
Judgment of November 21, 2007. Series C No. 170, para. 103 and *Case of Servellón García et al v. Honduras. Merits, Reparations and Costs.* Judgment of September 21, 2006. Series C No. 152, para. 90.

[109] IA Court of HR, *Case of Barreto Leiva v. Venezuela.* Merits, Reparations and Costs. Judgment of November 17, 2009. Series C No. 206. Para. 116.

[110] Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas. Principle III, subparagraph 2. Document approved by the Commission at the 131st regular session thereof, March 3 to 14, 2008.

[111] IACHR, *Report on the Use of Pretrial Detention in the Americas,* December 30, 2013, para. 134. Available at: http://www.oas.org/es/cidh/ppl/informes/pdfs/informe-pp-2013-es.pdf

established. This would be tantamount to anticipating a sentence, which is at odds with universally recognized general principles of law.[112].

129. As to the length of preventive detention, the Court has established that Article 7.5 of the Convention guarantees the right of every person to be tried within a reasonable time or to be released without prejudice to the continuation of the proceedings. This right imposes temporal limits on the duration of pre-trial detention and, consequently, on the State's power to protect the purpose of the proceedings by using this type of precautionary measure.[113] In the Court's own words, "When the duration of pre-trial detention exceeds a reasonable time, the State can restrict the liberty of the accused by other measures that are less harmful than deprivation of liberty by imprisonment and that ensure his presence at the trial. This right also imposes the judicial obligation to process criminal proceedings in which the accused is deprived of his liberty with greater diligence and promptness."[114]

130. Lastly, the Court has addressed the notion of proportionality in preventive detention as follows:

> [...] The preventive detention is limited by the principle of proportionality,[115] by virtue of which a person that is presumed innocent cannot be treated equal to or worse than a convicted person. The State must avoid that the measure of procedural coercion be equal to or more harmful for the defendant than the punishment in case of conviction. This means that it should not be appropriate to authorize the preventive detention in cases where it is not possible to impose a prison term, and that such prison term must cease when the detention period has exceeded a reasonable time.[116] The principle of proportionality implies, also, a rational relationship between the precautionary measure and the purpose sought, so that the sacrifice inherent in the restriction of the right to liberty is not exaggerated or excessive compared to the advantages obtained from this restriction and the achievement of the purpose sought.[117]

131. In short, in keeping with the interpretation conducted by the two bodies of the Inter-American system on Articles 7.3 and 7.5 of the American Convention, in the Commission's *Report on the Use of Pretrial Detention in the Americas,* it has identified the following standards with regard to pretrial detention:

> i) Pretrial detention must be the exception and not the rule; ii) the legitimate and permissible purposes of pretrial detention must be of a procedural nature, such as avoiding the risk of flight or impeding the proceedings; iii) consequently, the existence of evidence of responsibility does not constitute sufficient reason to order the pretrial detention of a person; iv) even though there are procedural purposes, pretrial detention must be absolutely necessary and proportional, to the extent that there may not be any other less harsh ways to achieve the procedural purpose that is sought and that does not

---

[112] IA Court of HR. *Case of Acosta Calderón*. Judgment of June 24, 2005. Series C No. 129, para. 111; IA Court of HR. *Case of Tibi*. Judgment of September 7, 2004. Series C No. 114, para. 180; and IA Court of HR. *Case of Suárez Rosero*. Judgment of November 12, 1997. Series C No. 35, para. 77.

[113] IA Court of HR, *Case of Barreto Leiva v. Venezuela.* Merits, Reparations and Costs. Judgment of November 17, 2009. Series C No. 206. Para. 119.

[114] IA Court of HR, *Case of Barreto Leiva v. Venezuela.* Merits, Reparations and Costs. Judgment of November 17, 2009. Series C No. 206. Para. 120.

[115] IA Court of HR, *Case of Barreto Leiva v. Venezuela.* Merits, Reparations and Costs. Judgment of November 17, 2009. Series C No. 206. Para. 122. Citing. See: *Case of "Juvenile Reeducation Institute" v. Paraguay. Preliminary Objections, Merits, Reparations and Costs.* Judgment of September 2, 2004. Series C No. 112, para. 228.

[116] IA Court of HR, *Case of Barreto Leiva v. Venezuela.* Merits, Reparations and Costs. Judgment of November 17, 2009. Series C No. 206. Para. 122.

[117] IA Court of HR, *Case of Barreto Leiva v. Venezuela.* Merits, Reparations and Costs. Judgment of November 17, 2009. Series C No. 206. Para. 122.

disproportionately affect personal liberty; v) all of the above-listed standards require a reason based on the individual's particular circumstances and may not be based on presumption; vi) pretrial detention must be ordered for the strictly necessary period of time to fulfill the procedural purpose, which entails periodic review of the evidence giving rise to the appropriateness thereof; and vii) holding a person in pretrial detention is tantamount to an advanced sentencing to a jail term.[118]

132. The Commission notes that Article 170 of the Code of Criminal Procedure of Ecuador provides for judges to order precautionary custodial measures only "in order to ensure the immediate participation of the accused in the proceedings," while Article 177 provides that "when the [judge] deems it necessary," he or she may order preventive detention provided that the following procedural requirements are met: a) evidence that leads to the presumption that a criminal offense warranting punishment of a prison term has been committed; and b) evidence that leads to the presumption that the defendant is the perpetrator of or accomplice to the criminal offense that is the subject of the proceedings. This same article also provides that "in the warrant, the evidence that is the grounds for the preventive detention order must be laid out in detail."[119]

133. In the instant case, the Commission notes that the decision of the Twelfth Judge for Criminal Matters to issue the "order instituting trial proceedings," and the preventive detention warrant of the alleged victims is based on acts that constituted "a punishable offense subject to investigation ex officio," and that "all of the requirements of Article 177 of the Code of Criminal Procedure" were met.

134. The Commission notes that Article 177 of the aforementioned Code established that the existence of evidence of responsibility and of a criminal offense punishable with a prison term were sufficient grounds to order a precautionary custodial measure of preventive detention. Therefore, this provision and any decision issued on these grounds are, in and of themselves, incompatible with the American Convention. This provision of the law essentially reverses the exceptional nature of preventive detention and makes it the rule, instead of the exception, in cases of offenses in which a punishment of deprivation of liberty is at stake, inasmuch as it is sufficient to order preventive detention if a crime is involved that is punishable with deprivation of liberty and there is "evidence of responsibility."

135. Consequently, the Commission finds that the State violated the right of the victims not to be deprived arbitrarily of their liberty, as provided for in Article 7.3 of the American Convention in connection with the obligations established in Articles 1.1 and 2 of the Convention.

136. The Commission also notes that Mr. Eusebio Domingo Revelles remained arbitrarily deprived of his liberty throughout the entire criminal proceedings. In this regard, his preventive detention spanned more than four years, which is, more than twice as long as what he was sentenced to in the end. Article 114 of the Criminal Code, under which pretrial release was precluded for drug-related offenses, was in force for at least the first three years of his preventive detention.[120] This provision of the code regulates preventive detention and the admissibility of motions for release and specifically lays out that "defendants standing trial for offenses punished under the Law on Narcotic and Psychotropic Substances are excluded from these provisions." This particular provision, which was declared unconstitutional on December 24, 1997, made it possible to prolong indefinitely the preventive detention in criminal proceedings when these offenses were involved.

---

[118] IACHR, *Report on the Use of Pretrial Detention in the Americas,* December 30, 2013, para. 21. Available at: http://www.oas.org/es/cidh/ppl/informes/pdfs/informe-pp-2013-es.pdf

[119] Article 177 of the Code of Criminal Procedure of Ecuador of 1983. (L. 134-PCL. RO 511: 10-jun-1983). See IA Court of HR, *Case of Suárez Rosero v. Ecuador*. Judgment of November 12, 1997. Series C No. 35, para. 146; *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador. Preliminary Objections, Merits, Reparations and Costs.* Judgment of November 21, 2007. Series C No. 170, para. 104.

[120] In this regard, in the Constitutional Court Judgment ruling on the petition for habeas corpus relief filed by him, it was noted that said provision of the code was found unconstitutional in a decision published on December 24, 1997. See Annex 38. Constitutional Court, Second Chamber, Judgment of November 9, 1998. Annex to petitioner's communication received on April 19, 1999.

137. Pursuant to the standards described above, the Commission finds that, because no review was conducted of the length of the preventive detention in this instance nor of the need to hold him therein, until the petition for *habeas corpus* relief was filed, it was excessive and became punitive in nature, in violation of Articles 7.5 and 8.2 of the American Convention, in conjunction with Article 1.1 of this same instrument.

3. Judicial Control over the Detention of the Alleged Victims

138. Article 7.5 of the Convention provides that when any person is detained, he or she is entitled to be promptly brought before a judicial authority for review of said detention, as a suitable means of control to prevent arbitrary and unlawful arrests. Immediate judicial control is a measure aimed at preventing arbitrary or illegal detention, insomuch as under the rule of law it is the task of the judge to act as guarantor of the rights of the person in custody, and to authorize the adoption of precautionary custodial measures or measures of coercion, only when it is strictly necessary, and to ensure, in general, that the defendant is treated in such a way that is consistent with the presumption of innocence.[121]

139. With respect to this guarantee, in its *Report on the Situation of Persons Deprived of Liberty in the Americas,* the Commission has argued that "the single most important protection of the rights of a detainee is prompt appearance before a judicial authority responsible for overseeing the detention. And that the right to request a decision on the lawfulness of the detention is the fundamental guarantee of the constitutional and human rights of the detainee deprived of his liberty by agents of the State.[122]

140. Likewise, the Inter-American Court has held that "the terms of the guarantee established in Article 7.5 of the Convention are clear in what refers to the fact that the person arrested must be taken before a competent judge or judicial authority, pursuant to the principles of judicial control and procedural immediacy" and in order to provide for "protection of the right to personal liberty and to grant protection to other rights, such as life and personal integrity." The Court has further held that "the simple awareness of a judge that a person is detained does not satisfy this guarantee, since the detainee must appear personally and give his statement before the competent judge or authority." [123]

141. In the case before us, the Commission notes that the alleged victims were arrested on August 2, 1004 and the next day, August 3, 1994, the Chief of Police of Pichincha ordered them to be held in custody for 48 hours. There is no evidence in the case file that any of the alleged victims has given their initial statements to a judge but rather to the Investigating Officer of the Office of Interpol of Pichincha and a prosecuting attorney, and that no defense counsel was present at the time. The Commission notes that it was not until the order to institute trial proceedings was issued on August 17, 1994, and preventive detention was ordered, that the judge ordered that the initial statements of the alleged victims be taken on August 22, 1994.

142. With respect to the fact that the pre-indictment statements are made before a prosecuting attorney, the Commission recalls that based on the holding of the Court in the case of *Acosta Calderón v. Ecuador,* in this type of case, the representative of the office of the public prosecutor:

> Does not have the attributes to be considered an "officer authorized to carry out judicial functions," in the sense of Article 7.5 of the Convention, since the Political Constitution itself, in force at that time, stated in its Article 98 which were the bodies that had the power to carry out judicial function and it did not grant that competence to prosecutors.[124]

---

[121] IA Court of HR. *Case of Acosta Calderón v. Ecuador*. Judgment of June 24, 2005. Series C No. 129, para. 61; and *Case of Tibi v. Ecuador*. Judgment of September 7, 2004. Series C No. 114, para. 76.

[122] IACHR, *Report on the Situation of Persons Deprived of Liberty in the Americas,* December 31, 2011, para. 120.

[123] IA Court of HR. *Case of Acosta Calderón v. Ecuador*. Judgment of June 24, 2005. Series C No. 129, para. 61; and *Case of Tibi v. Ecuador*. Judgment of September 7, 2004. Series C No. 114, para. 78.

[124] IA Court of HR. *Case of Acosta Calderón v. Ecuador*. Judgment of June 24, 2005. Series C No. 129, para. 61; and *Case of Tibi v. Ecuador*. Judgment of September 7, 2004. Series C No. 114, para. 80.

143. Information is not available to the Commission regarding the exact date when the victims first appeared before a judge. Nonetheless, all indications available point to it first being when they were cited to appear before the judge 20 days after being arrested in order give their initial statements. Additionally, their pre-indictment statements were given to an assistant prosecuting attorney who was not suitable to ensure the right to personal freedom and security of the alleged victims. These two elements of fact enable us to reach the conclusion that the State violated the guarantee set forth in Article 7.5 of the American Convention in connection with the obligations provided for under Article 1.1 thereof.

4. Right to recourse to contest the detention

144. Article 7.6 of the American Convention provides that:

> Anyone who is deprived of his liberty shall be entitled to recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful. In States Parties whose laws provide that anyone who believes himself to be threatened with deprivation of his liberty is entitled to recourse to a competent court in order that it may decide on the lawfulness of such threat, this remedy may not be restricted or abolished. The interested party or another person on his behalf is entitled to seek these remedies.

145. The Court has established that this guarantee as provided for in Article 7.6 of the American Convention has its own legal content, consisting of the protection of personal or physical freedom, by means of a judicial decree ordering the appropriate authorities to bring the detained person before a judge so that the legality of the detention may be determined and, if appropriate, order the release of the detainee.[125] The Court has specifically held that Article 7.6 of the Convention clearly establishes that the authority which decides on the legality of an 'arrest or detention' must be 'a judge or court.' The Convention is therefore ensuring that there is judicial control over the deprivation of liberty.[126] On this point, the Commission has established in *Report 66/01 Dayra María Levoyer* that:

> The review of the legality of a detention implies confirming, not only formally but also substantively, that the detention conforms to the requirements of the judicial system and that it does not violate any of the detained person's rights. That such confirmation is carried out by a judge, invests the proceeding with certain guarantees that are not duly protected if the decision is in the hands of an administrative authority, which lacks the proper legal training and the authority to exercise judicial functions.[127]

146. The Commission notes that it has information to the effect that only one of the victims, Eusebio Domingo Revelles, was held in preventive detention and pursued a remedy in order to be released. This is consistent with the claim of the petitioner, who confined her arguments regarding effectiveness of the remedy of *habeas corpus* to the case of this victim. As has been deemed proven by the Commission, Mr. Eusebio Domingo Revelles filed a petition for *hábeas corpus* relief with the Office of the Mayor and, subsequently, appealed this decision to the Constitutional Court of Ecuador, which upheld the denial. The Commission notes that on the date when the petition for *habeas corpus* before the Office of the Mayor was decided, which was on August 25, 1998, this remedy was regulated under the 1998 Constitution,[128] which

---

[125] IA Court of HR. Case of Vélez Loor v. Panamá. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2010 Series C No. 218, para. 124. See IA Court of HR, Habeas Corpus under Suspension of Guarantees (Articles 27.2, 25.1 and 7.6 American Convention on Human Rights). Advisory Opinion Corte OC-8/87 of January 30, 1987. Series A No. 8, para. 33.

[126] IA Court of HR. Case of Vélez Loor v. Panamá. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2010 Series C No. 218, para. 126.

[127] IACHR, Merits Report 66/01.Case 11.992 Dayra María Levoyer Jiménez (Ecuador), June 14, 2001, para. 79.

[128] The Constitution of 1998 was approved on June 5, 1998, and it was established it would come into force on the day that the President of the Republic took office, which took place on August 10, 1998.

establishes in Article 93 that petitions for *habeas corpus* relief shall be brought "… before the mayor under whose jurisdiction it is, or before whoever is acting on his or her behalf …"[129]

147. With regard to the fact that the petition for *habeas corpus* relief was filed with a Mayor instead of a judicial authority, the Court has held that Article 7.6 of the Convention "is clear when it establishes that the authority who must decide on the lawfulness of the 'arrest or detention' must be a 'judge or court.' As explained by the Court, "although he may have been granted competence by law, a mayor is not a judicial authority," but rather "part of the Administration,"[130] and therefore does not qualify under the requirements set forth in Article 7.6 of the Convention.

148. While the Commission notes that said recourse may be appealed before a judicial authority, the Constitutional Court of the State, in the exact words of the Court:

> By requiring that those detained must appeal the mayor's decisions in order for their case to be heard by a judicial authority, the State is placing obstacles to a recourse that should, due to its nature, be simple. In addition, the law established that the mayor was obliged to decide the recourse within 48 hours, and forward the case documents to the Constitutional Court if the latter requested this, within a similar period. This means that the detained person had to wait at least four days for the Constitutional Court to hear his case. If you add to this the fact that law did not establish a time limit for the Constitutional Court to take a decision on the appeal, and that this court was the only judicial body competent to hear appeals from the entire country against the denial of habeas corpus, we can conclude that the requirement that the recourse be decided "without delay" established in Article 7.6 of the Convention is not respected. Lastly, the detained person is not brought before the Constitutional Court; consequently this body cannot verify his situation and, thus, guarantee his rights to life and personal integrity.[131]

149. In the instant case, the Commission notes that the recourse of *habeas corpus* was heard by an administrative authority and the Constitutional Court only ruled on the appeal that was not brought until November 9, 2009, more than two months after the denial of the petition for *habeas corpus* relief by the Office of the Mayor, and therefore the State has not provided for judicial control "without delay."

150. Additionally, the Commission notes that when the Constitutional Court heard the appeal on the decision of the petition for *habeas corpus,* it did not examine the requirements set forth under the Convention in order for a person to be held in pretrial detention. On this issue, the Commission has ruled earlier in this report that evidence of responsibility of a person in the commission of a criminal offense is insufficient on its own, but that care must be taken so that this custodial measure of preventive detention serves a legitimate purpose, which is, to ensure that the accused shall not impede the development of the proceeding or evade justice. (See paragraphs 124 et sq. above).

151. The Constitutional Court ruled on the basis of two arguments: i) that Mr. Eusebio Domingo Revelles had remained in custody for four years and three months and seven days, in other words, a shorter period of time than one half of the time prescribed in the Criminal Code as the maximum jail term for the crime of illicit trafficking, which is eight years; and ii) that the provision of Article 24 of the Constitution, establishing a maximum period of preventive detention of 6 months, did not apply to his situation, inasmuch as this deadline would count from the time the 1998 Constitution took effect, which was August of 1998, and did not apply to crimes with punishments of "longer duration prison terms," such as the case of the crime for which Eusebio Domingo Revelles was under investigation.

---

[129] Available at: http://www.oas.org/juridico/spanish/mesicic2_ecu_anexo15.pdf

[130] IA Court of HR, *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador. Preliminary Objections, Merits, Reparations and Costs.* Judgment of November 21, 2007. Series C No. 170, para. 128.

[131] IA Court of HR, *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador. Preliminary Objections, Merits, Reparations and Costs.* Judgment of November 21, 2007. Series C No. 170, para. 129.

152. The Commission notes that in reviewing the detention, the Constitutional Court did so exclusively on the basis of the number of years of detention and the nature of the potential punishment for the criminal offense charged in the case. Neither the Office of the Mayor or the Constitutional Court examined whether the procedural purposes that they are called upon to ascertain in keeping with the provisions of the American Convention were achieved or not, thus making it possible that Mr. Eusebio Domingo Revelles was being held arbitrarily in preventive detention for more than four years. In light of the foregoing considerations, the Commission concludes that the State violated Article 7.6 of the American Convention in connection with the obligations set forth in Articles 1.1 and 2 of said instrument.

B. Acts alleged to be violations of the right to humane treatment and the investigations into these acts

1. Allegation of torture and violations of the personal integrity of the alleged victims

153. The IACHR has emphasized that the American Convention provides for the absolute prohibition of torture or cruel, inhuman or degrading treatment or punishment of people in any circumstance. The Commission has noted that "an essential aspect of the right to personal security is the absolute prohibition of torture, a peremptory norm of international law creating obligations *erga omnes.*"[132]

154. Similarly, the Court has consistently held that "International Human Rights Law strictly prohibits torture and cruel, inhuman or degrading punishment or treatment. The absolute prohibition of torture, both physical and psychological, is currently part of the domain of international *jus cogens.*"[133]. In addition, the Court has noted that various universal and regional instruments set forth said prohibition and the indergoable right of all human beings not to be tortured.[134]

155. Based on the legal precedents of the Inter-American system, for torture to exists three elements have to be combined: i) an intentional act committed by an agent of the State or with its authorization or acquiescence; ii) it must cause severe physical or mental suffering, and iii) it must be committed with a given purpose or aim.[135]

156. In the context of a criminal investigation, the Inter-American Court has held that torture can be defined as "acts that have been prepared and carried out deliberately against the victim to break down his mental resistance and force him to incriminate himself or to confess to a particular criminal behavior or to subject him to means of torture in addition to the deprivation of liberty itself."[136]

---

[132] IACHR, *Report on Terrorism and Human Rights,* OEA/SER.L/V/II.116, Doc. 5 rev. 1, corr., October 22, 2002. Citing. IACHR, Report on the Human Rights Situation of Asylum Seekers within the Canadian Refugee Determination System, OEA/Ser.L/V/II.106, Doc. 40 rev., February 28, 2000, para. 118.

[133] IA Court of HR, *Case of Bueno Alves*. Judgment of May 11, 2007. Series C. No. 164, para. 76; IA Court of HR, *Case of the Miguel Castro Castro Prison***.** Judgment of November 25, 2006. Series C No. 160, para. 271; and IA Court of HR. *Case of Baldeón García*. Judgment of April 6, 2006. Series C No. 147, para. 117.

[134] IA Court of HR, *Case of Bueno Alves*. Judgment of May 11, 2007. Series C. No. 164, para. 77. Citing: International Covenant on the Civil and Political Rights, Article. 7; Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Article 2; Convention on the Rights of the Child, Article 37; International Convention on the Protection of All Migrant Workers and Members of Their Families, Article 10; Inter-American Convention to Prevent and Punish Torture, Article 2; African Charter on Human and Peoples' Rights, Article 5; African Charter on the Rights and Welfare of the Child, Article 16; Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará) Article 4; and European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 3; Body of Principles for the Protection of all Persons under any Form of Detention or Imprisonment, Principle 6; Code of Conduct for Law Enforcement Officials, Article 5; United Nations Rules for the Protection of Juveniles Deprived of their Liberty, rule 87(a); Declaration on the Human Rights of Individuals who are not nationals of the country in which they live, Article 6; United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The *Beijing Rules*"), Rule 17.3.

[135] IACHR, Report No. 5/96, Case 10.970, Merits, Raquel Martin Mejía, Peru, March 1, 1996, section 3. Analysis and IA Court of HR, *Case of Bueno Alves*. Judgment of May 11, 2007. Series C. No. 164, para. 79.

[136] IA Court of HR, *Case of Suárez Rosero v. Ecuador*. Judgment of November 12, 1997. Series C No. 35, para. 146.

157. The Commission recalls that when torture is alleged, such as in the case before us, no mechanism is available to the person to prove the acts of violence inflicted upon him.[137]

158. In the instant case, the Commission notes that based on the statements of the alleged victims, the days they were at the offices of the Drug Enforcement Police and Interpol of Pichincha, they were the targets of several different acts of violence against their physical integrity. These acts include: i) beatings on their abdomen; ii) death threats; iv) cold baths in the middle of the night; v) being held on their knees with their arms held above them; and v) being stepped on their calves and feet. Said acts are described in the statements that were given both in the medical certification reports of August 9, 1994 (see paragraphs 75-83 above), and in the initial statements before a judge (see paragraphs 89 and 91 above).

159. With respect to these statements, the Commission notes that medical certification reports are found in the court case file attesting to the existence of areas of ecchymosis on several parts of the body of every one of the alleged victims (see paragraphs 76-79 above). In these certification reports, specific information is provided as to the consequences of the injuries endured by each of the detainees as follows: i) "a psychological trauma" that "has appeared and lasted until the present time" has been caused in Mr. Emmanuel; ii) in the case of Mr. Luis Alfonso Jaramillo González, these injuries "are painful and stress-producing;" iii) regarding Mr. Eusebio Domingo Revelles, said injuries "also constitute impactful psychological trauma;" and iv) Mr. Jorge Herrera Espinoza "complains of suffering post-traumatic headaches [cephalea]." As has been put on the record in said certification reports, the injuries inflicted on them were the result of "traumatic action of a hard blunt body and of abuses received." The Commission notes as well that there is consistency between the conclusions and the date of origin of the alleged torture.

160. The Commission notes that the State has not denied the authenticity of the certificate reports of August 9, 1994, and therefore the Commission fully accredits the findings on the injuries endured by them. The State's contention is that these injuries were not caused by agents of the State at the time the alleged victims gave their pre-indictment statements based on two arguments: i) that there are medical certificates in the police file, according to which the alleged victims did not present "hematomas" and "traumas;" and ii) that the pre-indictment statements were made before a prosecutor.

161. In this regard, the Commission firstly notes that the certificates of August 5, 1994, to which the State is referring, are from the Health Section of the National Police of the Provincial Office for the Drug Enforcement Police and Interpol of Pichincha, which is an entity that is administratively part of the National Office for Drug Enforcement and Interpol of Pichincha, the same office where the officials who inflicted the injuries on the alleged victims come from. Therefore, these certificates, in principle, were not issued by an independent entity. Furthermore, it is not clear what type of evaluation was conducted by the office listed as "Health" or whether it meets the minimum qualification standards to be able to identify potential signs of torture. Additionally, the Commission notes that based on the August 9, 1994 certifications, the period of incapacity inflicted on the alleged victims was up to three days –in the cases of Messrs. Emmanuel Cano, Luis Alfonso Jaramillo González and Eusebio Domingo Revelles- and, from four to eight days, in the case of Mr. Jorge Eliécer Herrera Espinoza, all of these periods "counted from the date of when they occurred." In view of the foregoing, the Commission finds that it is reasonable to infer that these injuries were inflicted at a time consistent with the same time that the alleged victims gave their pre-indictment statements, which is August 4 and 5, 1994.

162. The Commission also finds that the fact that the statements were given before a prosecuting attorney does not constitute in and of itself evidence refuting the medical examinations reports of August 9, 1994, which are consistent with the initial statements of the victims. It must be noted that, as for the actions

[137] IA Court of HR, *Cabrera García and Montiel Flores v. Mexico*. Judgment of November 26, 2010. Series C No. 220, para. 128.

of the prosecutor, one of the victims, Jorge Eliecer Herrera Espinoza, claimed that he was abused and that in front of the prosecutor was smacked in the face."[138]

163. Another aspect to be taken into account is that, according to the documentation provided, other individuals detained in the same operation also filed complaints of having been subjected to beatings and abuses: Pablo Vargas; Óscar Hernando Acosta Ramírez; Favio Hugo Carrero Lara; Nexi Irene Calderón Tinitana; and Alba Rosario Tinitana Ludeña. What particularly caught the attention of the Commission is that in his statement Mr. Jorge Herrera claimed that his niece had "been raped by the investigators" and in the case file there are medical records that she "presents ecchymosis and luxation in the genital area which is consistent with rape received in the City of Quito […]"[139]

164. In addition to the foregoing, the Sate did not open any investigation to enable it to account for the origin of the injuries appearing in the medical certification reports of August 9, 1994. In this regard, the Commission reiterates that the State is the guarantor of the human rights of persons deprived of their liberty, which involves, among other things, the obligation to explain what happens to persons who are under its custody.[140] In other words, in the absence of said explanation, since persons confined in a State detention facility are involved, State responsibility must be presumed as to what happens to persons under its custody.[141]

165. In light of the foregoing, the Commission attaches probative value to the testimony given as initial statements of the victims before a judge in the judicial proceedings, as well as to the acts that were alleged in their petitions before the IACHR, which the State has been aware of. The Commission finds that these injuries, as described, and which went un-refuted by the State and for which no satisfactory explanation was provided, make it possible to find that intense and severe damage was involved.

166. As to the elements of intent and the existence of a given purpose or aim, the Commission notes that as can be surmised from the victims' statements, the acts of violence were perpetrated intentionally by agents of the State with the purpose of impairing the physical and mental capacity of the alleged victims and to make them sign their pre-indictment statements and plead guilty to a crime, out of fear for their lives and safety.

167. The Commission concludes that there is sufficient evidence to find that the acts meet the requirements for torture. Based on the foregoing, the Commission finds that the State violated the right to humane treatment as established in Article 5 of the American Convention in connection with Article 1.1 of the same instrument, to the detriment of the four victims.

2. Investigations conducted into these acts

168. Pursuant to the guarantee set forth in Article 1.1 of the Convention, States have the obligation to prevent, investigate and seriously punish violations of the Convention that come to its attention.[142] The component of investigation of the duty to ensure rights is closely linked to the right to effective remedies. On this topic, the Inter-American Court has established that:

---

[138]See reference to initial statement of Jorge Eliécer Herrera in Annex 31. Charging document by the Twelfth Judge for Criminal Matters of Pichincha of November 30, 1995. Pages 1519 - 1564. Annex to petitioner's submission of November 13, 1998.

[139] Annex *. Final Charging Document of the Twelfth Prosecutor for Criminal Matters of Pichincha, received on November 30, 1995 by the Office of the Clerk of the Twelfth Court for Criminal Matters of Pichincha. Annex to petitioner's communication of November 13, 1998.

[140] IA Court of HR, *Case of Bulacio v. Argentina*. Judgment of September 18, 2003. Series C No. 100. Para. 126.

[141] IA Court of HR, Case of the Urso Branco Prison. Precautionary Measures. Decision of the Inter-American Court of Human Rights of June 18, 2002. Whereas clause 8. IA Court of HR, *Case of Neira Alegría et al v. Peru*. Judgment of January 19, 1995. Series C No. 20. Para. 65.

[142] IA Court of HR, *Case of Velásquez Rodríguez v. Honduras***.** Judgment of July 29, 1988. Series C No. 4, para. 174.

> […] The States Parties are obligated to offer the victims of human rights' violations effective judicial recourses (Article 25), that must be substantiated pursuant to the rules of the due process of law (Article 8.1), all this within the general obligation, of the same States, to guarantee the free and full exercise of the rights acknowledged by the Convention to everyone under its jurisdiction (Article 1.1).[143]

169. The Inter-American Court has established that once a crime of a human rights violation comes to the attention of State authorities, particularly of the right to humane treatment,[144] it is their duty to open a serious, impartial and effective investigation *ex officio* and without delay,[145] which must be carried out within a reasonable period of time.[146] In keeping with the duty to investigate with due diligence, a violation of the right to humane treatment, States are obligated to act, as of the beginning of the investigation, with the utmost urgency.[147]

170. Particularly, in cases involving allegations of torture or abuse, the Court has emphasize that "the time elapsed till the performance of the pertinent medical examinations is essential in order to unquestionably determine the existence of damage, especially when there are no witnesses other than the perpetrators and the victims themselves, and consequently the evidence may be scarce."[148]

171. Regarding said investigation, the Inter-American Convention to Prevent and Punish Torture establishes that States are obligated to adopt effective measures to "punish torture" (Articles 1 and 6) and that if there is an accusation or well-grounded reason to believe that an act of torture has been committed within their jurisdiction, "States Parties shall guarantee that their respective authorities will proceed properly and immediately to conduct an investigation into the case […]."

172. Similarly, the United Nations Committee against Torture has established that when allegations of torture are made, an independent medical examination must be conducted in every instance in keeping with the Istanbul Protocol.[149] Pursuant to said instrument, the medical assessment must include: i) case information; ii) clinician's qualifications (for judicial testimony); iii) Statement regarding veracity of testimony (for judicial testimony); iv) background information; v) allegations of torture and ill-treatment; vi) physical symptoms and disabilities; vii) psychological history/examination; viii) photographs; ix) diagnostic test results; x) consultations; xi) interpretation of findings; xii) conclusions and recommendations; xiii) statement of truthfulness; n) statement of restrictions on the medical evaluation/investigation; xiv) clinician's signature, date, place; xv) relevant annexes.[150]

---

[143] IA Court of HR, *Case of Miguel Castro Castro Prison Vs. Peru.* Judgment November 25, 2006. Series C No. 160. para. 381; IA Court of HR, *Case of Goiburú et al v. Paraguay*. Judgment of September 22, 2006. Series C No. 153, para. 110; IA Court of HR, *Case of Servellón García et al v. Honduras*. Judgment of September 21, 2006. Series C No. 152, para. 147; and IA Court of HR, *Case of Ximenes Lopes v. Brazil* Judgment of July 4, 2006. Series C No. 149, para. 175.

[144] IA Court of HR, *Case of Cantoral Huamaní and García Santa Cruz v. Peru.* Judgment of July 10, 2007. Series C No. 167, para. 100.

[145] IA Court of HR, *Case of García Prieto et al v. El Salvador.* Judgment of November 20, 2007. Series C No. 168, para. 101; IA Court of HR, *Case of the Gómez Paquiyauri Brothers v. Peru.* Judgment of July 8, 2004. Series C No. 110, para. 146; IA Court of HR, *Case of Cantoral Huamaní and García Santa Cruz v. Peru.* Judgment of July 10, 2007. Series C No. 167, para. 130.

[146] IA Court of HR, *Case of Bulacio v. Argentina*. Judgment of September 18, 2003. Series C No. 100, para. 114; IA Court of HR, *Case of la Rochela Massacre v. Colombia*. Judgment of May 11, 2007. Series C. No. 163, para. 146; and IA Court of HR, *Case of the Miguel Castro Castro Prison v. Peru*. Judgment of November 25, 2006. Series C No. 160, para. 382.

[147] IA Court of HR, *Case of Zambrano Vélez et al v. Ecuador.* Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166. Para. 121.

[148] IA Court of HR, *Case of Bueno Alves*. Judgment of May 11, 2007. Series C. No. 164, para.111.

[149] Committee against Torture. Examination of reports submitted by States Parties under Article 19 of the Convention. CAT/c/MEX/CO/4. February 6, 2007. para. 16(a).

[150] See: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment "Istanbul Protocol." Office of the United Nations High Commissioner for Human Rights, New York and Geneva, 2001.

173. In the instant case, the Commission notes that, based on the evidence and records in the case file, no State authority has undertaken any serious and diligent investigation into the acts of torture that were the subject of complaints, even though at several different points in time agents of the State and many authorities became aware of these acts throughout the proceedings.

174. The Commission notes that i) the medical experts of the National Office of Forensic Medicine and Rehabilitation directly assessed and identified the injuries endured by the alleged victims (see paragraphs 76-79 above); ii) these examination reports were brought to the attention of the Eighth Judge for Criminal Matters of Pichincha (see paragraph 75 above); iii) the Judge who took the initial statements of the alleged victims was informed that these pre-indictment statements were obtained from injuries for the purpose of forcing them to self-incriminate (see paragraphs 89 and 91 above); iv) both the Second Court for Criminal Matters of Pichincha and the Fourth Chamber of the Superior Court of Justice and the Office of the Public Prosecutor of Pichincha also heard the initial statements of the alleged victims before the judge and had before them the judicial case file containing the findings of the medical examinations of August 9, 1994; v) lastly, in the case file of the criminal proceedings, the Commission notices that there is a submission of July 2, 1996 from Mr. Eusebio Domingo Revelles addressed to the Chief Justice of the Supreme Court of Justice claiming that he had been beaten to get him to say that he had committed criminal activities and that the prosecuting attorney had intimidated him so he would sign a statement in which there appeared "things that he never heard of" (see paragraph 90 above).

175. Even though several agents of the State were aware of the acts, the State failed to undertake an investigation on its own initiative, violating the right to a fair trial and judicial protection, as established in Articles 8 and 25 of the American Convention, in connection with the right to humane treatment and Article 1.1 of the same instrument to the detriment of Jorge Eliécer Herrera Espinoza, Alfonso Jaramillo González, Eusebio Domingo Revelles and Emmanuel Cano.

176. Additionally, since the Inter-American Convention to Prevent and Punish Torture came into force in Ecuador on December 9, 1999, the Commission notes that in keeping with the legal precedents of the Court, as of that date "the State is demandable regarding compliance with the obligations set forth in that treaty."[151] Accordingly, the Commission finds that the failure to investigate in this case also constitutes a violation of the obligations set forth in Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, as of the time said instrument came into force.

C. Criminal Proceedings against Mr. Eusebio Domingo Revelles

177. The Commission recalls that it is a basic principle of the law of international responsibility of the State, as established in International Human Rights Law, that every State is internationally responsible for acts and omissions of any of its branches of government or bodies in violation of internationally enshrined rights, under Article 1.1 of the American Convention.[152] Furthermore, Articles 8 and 25 of the Convention specify the scope of the above-cited principle with regard to the acts and failure to act of domestic judicial bodies,[153] as well as non-judicial bodies charged with the task of investigation prior to judicial proceedings.[154]

178. In this regard, the Commission deems it fitting to recall that:

---

[151] IA Court of HR, *Case of Tibi v. Ecuador*. Judgment of September 7, 2004. Series C No. 114, para. 159.

[152] IA Court of HR, *Case of Ximenes Lopes v. Brazil*. Judgment of July 4, 2006. Series C No. 149, para. 172; IA Court of HR, *Case of Baldeón García v. Peru*. Judgment of April 6, 2006. Series C No. 147, para. 140; IA Court of HR, *Case of the Pueblo Bello Massacre v. Colombia*. Judgment of January 31, 2006. Series C No. 140, paras. 111-112; and IA Court of HR, *Case of the "Mapiripán Massacre" v. Colombia*. Judgment of September 15, 2005. Series C No. 134, para. 108.

[153] IA Court of HR, *Case of López Álvarez v. Honduras*. Judgment of February 1, 2006. Series C No. 141, para. 28; and IA Court of HR, *Case of Herrera Ulloa v. Costa Rica*. Judgment of July 2, 2004. Series C No. 107, para. 109.

[154] IA Court of HR, *Case of Cantoral Huamaní and García Santa Cruz v. Peru.* Judgment of July 10, 2007. Series C No. 167, para. 133.

> In order to clarify whether the State violated its international obligations owing to acts of its judicial organs, the Court and the Commission 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. The role of the international court is to establish whether the proceedings as a whole, as well as the way evidence was incorporated, were in accordance with the Convention.[155]

179. In light of the petitioner's allegations, the Commission shall rule on the following points pertaining to the proceedings against Mr. Eusebio Domingo Revelles: i) the rule on the exclusion of evidence obtained through coercion; ii) right to a defense; iii) principle of presumption of Innocence; iv) principle of the "presumption of innocence" and v) the relief sought in the criminal proceedings.

1. Rule on the exclusion of evidence obtained through coercion

180. The Inter-American Court has recognized that the rule on exclusion of evidence obtained by torture or cruel and inhuman treatment has been enshrined in several different international instruments[156] and human rights protection bodies,[157] as has the "absolute and inderogable nature" of that rule.[158]

181. In the IACHR *Report on the Situation of Human Rights in Mexico (1998),* the Commission has held that:

> In the case of a statement or testimony in which there is a well-founded suspicion or presumption that it was obtained by some type of coercion, be it physical or psychological, the judicial bodies must […] determine whether such coercion did actually exist. In the event that a statement or testimony obtained in these circumstances is admitted and used during the trial as an element of evidence or proof, that State may incur international responsibility.[159]

182. Likewise, the Inter-American Court has explained that because there is a guaranteed right not to be forced to confess without coercion of any nature as established under Article 8.3 of the Convention, "annulment of procedural documents resulting from torture or cruel treatment is an effective measure to halt

---

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

[156] Article 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment establishes that "Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made." Likewise, Article 10 of the Inter-American Convention to Prevent and Punish Torture sets forth that "No statement that is verified as having been obtained through torture shall be admissible as evidence in a legal proceeding, except in a legal action against a person or persons accused of having elicited it through acts of torture, and only as evidence that the accused obtained such statement by such means."

[157] In this regard, the Committee against Torture has held that "the obligations in Articles 2 (whereby no exceptional circumstances whatsoever…may be invoked as justification of torture'), 15 (prohibiting confessions extorted by torture being admitted in evidence, except against the torturer), and 16 (prohibiting cruel, inhuman or degrading treatment or punishment) are three such provisions that must be observed in all circumstances." See United Nations. Committee against Torture. General Comment No. 2, 'Implementation of Article 2 by States Parties,' January 24, 2008 (CAT/C/GC/2), para. 6. Likewise, the Human Rights Committee has held the following: "The guarantees of fair trial may never be made subject to measures of derogation that would circumvent the protection of non-derogable rights. (…) no statements or confessions or, in principle, other evidence obtained in violation of this provision may be invoked as evidence in any proceedings covered by Article 14, including during a state of emergency, except if a statement or confession obtained in violation of Article 7 is used as evidence that torture or other treatment prohibited by this provision occurred." United Nations. Human Rights Committee. General Comment No. 32, Right to equality before courts and tribunals and to a fair trial (HRI/GEN/1/Rev.9 (vol. I), par 6.

[158] IA Court of HR. *Case of Cabrera García and Montiel Flores v. México*. Supervision of Compliance with Judgment. Decision of the Inter-American Court of Human Rights of August 21, 2013, para. 165.

[159] IACHR, Report on the Situation of Human Rights in Mexico, Chapter IV: Right to Humane Treatment, OEA/Ser.L/V/II.100, Doc. 7. rev. 1, September 24, 1998, para. 320.

the consequences of a violation of judicial guarantees."[160] Said measure not only encompasses confessions extracted by means of torture and cruel treatment but "extends to any form of duress" capable of interfering with "the spontaneous expression of a person's will," which entails "the obligation to exclude that evidence from the judicial proceeding."[161] As established by the Court, this obligation does not only include evidence that has been obtained directly by coercion, "but also evidence derived from such action." [162] The purpose of the exclusionary rule is precisely to discourage and prevent the use of unlawful practices under the Convention such as torture and, therefore, it is absolutely essential to abide by said rule.

183. In light of the above, the Commission shall next examine whether the pre-indictment statement given by Mr. Eusebio Domingo Revelles through coercion – deemed above in this report as torture – was used during the proceedings or if it was properly excluded therefrom.

184. The Commission notes firstly that the pre-indictment statements before the police of all of the persons taken into custody were incorporated into police report 134-JEIP-CP1-94. In said report, the Investigating Officer established the involvement of Mr. Eusebio Domingo Revelles as a member of an international drug trafficking ring based on his pre-indictment statement. In view of the report 134-JEIP-CP1-94, the Twelfth Judge for Criminal Matters ordered the "instituting of trial proceedings" noting that the facts reflected therein "constitute a punishable offense subject to investigation *ex officio*."

185. After issuing the order to institute trial proceedings, two consequential events took place for the purposes of the instant analysis: i) initial statements before the judge were given in which the victims of this case asserted that their pre-indictment statement were given under physical and psychological ill-treatment; and ii) the medical certification reports of August 9, 1994, were incorporated into the case file. As was commented above, these events did not trigger the opening of any investigation. Concurrently with this failure to act, the proceedings against Mr. Eusebio Domingo Revelles continued, assigning full probative validity to the pre-indictment statements given by him as well as those by his co-defendants, who also denounced that acts of torture were committed when the statements were given. Furthermore:

a. The Office of the Prosecutor referred in his decision to charge (final charging document) of November 30, 1995 to the medical certificates of August 9, 1994; nonetheless, he brought the formal charges against Mr. Eusebio Domingo Revelles on the basis of his pre-indictment statements.

b. In the decision of the Thirteenth Court for Criminal Matters of Pichincha of June 14, 1996, whereby the order to open trial proceedings was issued, in subparagraph 'c' thereof, the Court found that "in their pre-indictment statements, the defendants indicated the form, the mechanism that was used to transport the drugs to Ecuador;" also, in subparagraph 'd' the Court took note that "in these same pre-indictment statements it was told to the investigator the method of concealment [camouflage] that was being used […]".

c. In the Judgment of the Second Court for Criminal Matters of Pichincha of April 1, 1998, which disposed of the trial, the content of the pre-indictment statement of Mr. Domingo Revelles was described and it noted that with his initial statement to the judge "he is attempting to circumvent his involvement in and responsibility for the criminal offense which is the subject of the instant proceeding by claiming facts and circumstances that totally contradict the content of his testimony in the proceedings […]."

[160] IA Court of HR. *Case of Cabrera García and Montiel Flores v. Mexico.* Supervision of Compliance with Judgment. Decision of the Inter-American Court of Human Rights of August 21, 2013, para. 166. IA Court of HR. *Case of García Cruz and Sánchez Silvestre v. Mexico*. Merits, Reparations and Costs. Judgment of November 26, 2013. Series C No. 273, para. 58, see specifically footnote 73.

[161] IA Court of HR. *Case of Cabrera García and Montiel Flores v. Mexico.* Supervision of Compliance with Judgment. Decision of the Inter-American Court of Human Rights of August 21, 2013, para. 166.

[162] IA Court of HR. *Case of Cabrera García and Montiel Flores v. Mexico.* Supervision of Compliance with Judgment. Decision of the Inter-American Court of Human Rights of August 21, 2013, para. 166.

d. In the communication of June 11, 1999, from the Office of the Prosecutor of Pichincha, the pre-indictment statement was not excluded, but instead was validated noting that even though the medical experts concluded that there were injuries, these facts "contradicted the statement made by [Eusebio Domingo Revelles] to the Representative of the Office of the Public Prosecutor."

e. Lastly, on November 24, 1998, the Fourth Chamber of the Superior Court of Justice, which issued its decision on the "confirmation" of the Judgment of the Second Court for Criminal Matters of Pichincha, in its considerations of fact noted that "the pre-indictment evidence, in particular the statements given in this proceeding by this defendant and his fellow members of the drug trafficking ring lead to the inference that Domingo Revelles acted on his own free will and conscience." It was also noted that "the defendant himself recognized in the pre-indictment stage […][that] he was directly involved in the meetings of the group in which they dealt with the amount and quality of existing cocaine […]."

186. The Commission finds that the exclusionary rule means that when there is any denunciation of any evidence or statement obtained through torture, the authorities conducting the investigation and criminal proceedings must immediately open a serious investigation to clarify what has happened and, when appropriate, exclude such evidence or statement. To proceed with a criminal trial, assigning full validity to evidence and statements that are alleged to have obtained though torture, without opening an investigation into it, constitutes clear disregard for the exclusionary rule.

187. The Commission notes that in the instant case, the different authorities that ruled on the guilt of Mr. Eusebio Domingo Revelles, did so not only taking into account but attaching a heavy probative value to his pre-indictment statement given through coercion. None of the judicial authorities, who heard the case, examined the complaint of coercion or the requirement, stemming therefrom, to exclude such confessions.

188. In addition to the denunciation made in the initial statement before the judge and the medical certificates of August 9, 1994, Mr. Domingo Revelles contested the order to institute trial proceedings by challenging the content of the pre-indictment statement, in reply to which the Fourth Chamber for Criminal Matters of the Superior Court of Justice ruled noting that Mr. Eusebio Domingo Revelles "[…] attempted to circumvent his participation and responsibility for the unlawful criminal offense which is the subject of the instant proceeding, by claiming facts and circumstances that totally contradict the content of his pre-indictment statement." The Fourth Chamber asserted that this pre-indictment statement, "corroborated by the investigation report in the instant criminal action, constitutes a serious presumption of guilt, as provided for under Article 116 of the Special Law on the Subject Matter."

189. Based on all evidence introduced thus far, the pre-indictment statements of both Mr. Eusebio Domingo Revelles, and the other detainees, which also claim that their pre-indictment statements were given though coercion, were not excluded as evidence from the case. In the case of Mr. Eusebio Domingo Revelles, the statements were used as the basis to establish his criminal responsibility and, even though remedies for relief were pursued, he was unsuccessful at getting his statement excluded from the case. Consequently, the Commission finds that the State violated the rights set forth in Articles 8.3 and 25 of the American Convention in connection with Article 1.1 of the same instrument.

2. Right to a Defense

190. Article 8.2.d. of the American Convention establishes the right of the accused to defend himself personally or to be assisted by legal counsel of his own choosing, and to communicate freely and privately with his counsel." Additionally, Article 8.2e establishes "the inalienable right to be assisted by counsel provided by the state, paid or not as the domestic law provides, if the accused does not defend himself personally or engage his own counsel within the time period established by law."

191. The Court has previously held that this right must necessarily be exercised from the moment a person is accused of perpetrating or participating in an unlawful action and only ends when the proceeding concludes.[163] In addition, it emphasized that a public defender must be effective, for which purpose the State must adopt all the appropriate measures.[164]

192. The Inter-American Commission, the Human Rights Committee and the European Court have agreed that the State cannot be held responsible for all deficiencies in the conduct of State-funded defense counsel.[165] Nonetheless, the simple appointment of a public defender does not ensure the right to effective legal assistance.[166] As noted by the Court, the appointment of a defense counsel for the sole purpose of complying with a procedural formality would be tantamount to not having a technical legal representation; therefore, it is imperative that the defense counsel act diligently in order to protect the procedural guarantees of the accused and thereby prevent his rights from being violated.[167] Thus the State is responsible if the public defender fails to act or is inept in his conduct in such a way that makes it easy to draw the conclusion that effective legal representation was not provided.[168]

193. In the case of *Chaparro Álvarez and Lapo Íñiguez v. Ecuador*, the Court found that the State violated the right to a defense since the victims' attorneys' failed to show up for an essential proceeding in the trial against the victims for the crime of drug trafficking.[169] Similarly, in the case of *Luca v. Italy* before the European of Human Rights, a person was convicted on the basis of a statement from a witness, which was given during the investigation, out of the presence of the defendant's legal counsel. In these circumstances, the European Court found that the State violated the right to a defense and the right to the presumption of innocence inasmuch as said evidence could not be contested by the defense and was a substantial piece of evidence for conviction of the victim.[170]

194. In the instant case, the Commission has found as proven fact that Mr. Eusebio Domingo Revelles was arrested on August 2, 1994 and was not appointed a defense attorney until August 17, 1994, when the Twelfth Judge for Criminal Matters issued the "order to institute trial proceedings." There is no evidence in the case file that the victims had a defense attorney at the time of giving their pre-indictment statement at the Offices of the Drug Enforcement Police and Interpol of Pichincha, which as has been noted above, was obtained through coercion and served as the basis for police report 134-JPEIP-CP1-94, which in turn was used by the courts, whose job it was to rule on the guilt of Mr. Eusebio Domingo Revelles. The Commission notes as well that on June 14, 1996, the Thirteenth Court for Criminal Matters of Pichincha issued an order to begin trial proceedings and, specifically, requested that "the defendants appoint defense counsel within two days."

---

[163] IA Court of HR, *Cabrera García and Montiel Flores v. México*. Judgment of November 26, 2010. Series C No. 220, para. 154; IA Court of HR, *Case of Barreto Leiva v. Venezuela.* November 17, 2009. Series C No. 206, para. 29; IA Court of HR, *Case of Suárez Rosero v. Ecuador.* Judgment of November 12, 1997. Series C No. 35, para. 71; IA Court of HR, *Case of Heliodoro Portugal v. Panama.* Judgment of August 12, 2008. Series C No. 186, para. 148; IA Court of HR, *Case of Bayarri v. Argentina.* Judgment of October 30, 2008. Series C No, 187, para. 105; and IA Court of HR, *Case of Barreto Leiva v. Venezuela.* November 17, 2009. Series C No. 206, para. 62.

[164] IA Court of HR, *Cabrera García and Montiel Flores v. México*. Judgment of November 26, 2010. Series C No. 220, para. 154; IA Court of HR, *Case of Barreto Leiva v. Venezuela.* November 17, 2009. Series C No. 206, para. 154.

[165] IACHR, Report No. 41/04, Case of 12.417, Merits, Whitley Myrie, Jamaica, October 12, 2004, para. 62. Human Rights Committee. *Byrong Young v. Jamaica*. Decision of December 17, 1997, para. 5.5; and *Michael Adams v. Jamaica.* Decision of November 20, 1996, para. 8.4. European Court of Human Rights. *Kamasinsky v. Austria*. Application no. 9783/82. Judgment of 19 December 1989, para. 65.

[166] European Court of Human Rights. *Artico v. Italy*, Application no. 6694/74. Judgment of 13 May 1980, para. 33.

[167] IA Court of HR, *Cabrera García and Montiel Flores v. México*. Judgment of November 26, 2010. Series C No. 220, para. 154; IA Court of HR, *Case of Barreto Leiva v. Venezuela.* November 17, 2009. Series C No. 206, para. 155.

[168] IACHR, Report No. 41/04, Case of 12.417, Merits, Whitley Myrie, Jamaica, October 12, 2004, para. 62.

[169] IA Court of HR, *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador*. Judgment of November 21, 2007, para. 154.

[170] European Court of Human Rights, *Luca v. Italy*. *Application no. 33354/96.* Judgment of 27 February 2001, para. 40.

195. There is no information available to the Commission as to whether from August 17, 1994 to June 14, 1996, Mr. Eusebio Domingo Revelles had a defense attorney. Notwithstanding, since it has been proven that Mr. Domingo Revelles did not have defense counsel during his pre-indictment statement, when he was already considered a suspect of committing a crime, the Commission finds that the State of Ecuador violated the right of defense established in Article 8.2.d and 8.2.e of the American Convention, in connection with Article 1.1 of the same instrument, to the detriment of Mr. Eusebio Domingo Revelles.

3. Right to Information on Consular Assistance

196. In its advisory opinion on *The Right to Information on Consular Assistance in the Framework of the Guarantees of Due Process of Law,* the Inter-American Court ruled that the right of a foreign national detainee to information on consular assistance, as established in Article 36 of the Vienna Convention on Consular Relations, is an individual right and a minimum guarantee protected within the Inter-American system.[171]

197. In the case of *Vélez Loor v. Panama,* the Inter-American Court held that from the standpoint of the rights of the detained person, there are three essential components of this right: 1) the right to be informed of his rights under the Vienna Convention;[172] 2) the right to have effective access to communicate with a consular official; and 3) the right to the assistance itself.[173]

198. The foregoing components have been examined by the Court as they pertain to Articles 7.4 and 8.2 of the American Convention. In this regard the Court has held that in order "to prevent arbitrary detentions," the person detained must be notified "of the right to establish contact with a third party, such as a consular official, to inform them that he is in the State's custody. This must be carried out in conjunction with the obligations under Article 7.4 of the Convention."[174]

199. Additionally, with respect to Article 8.2 of the Convention, the Court has established that when the arrested person is not a national of the State in which he is held in custody, the notification to consular assistance is based on a fundamental guarantee of the access to justice and allows the effective exercise of the right to defense, given that the consul may assist the detainee in various aspects of defense, such as granting or hiring legal counsel, obtaining evidence in the country of origin, corroborating the conditions under which legal assistance is provided and observing the situation of the accused while he is in prison." [175]

200. With regard to the right to information on consular assistance, the Court has reiterated that the detainee must be notified of this right "at the time he is deprived of his freedom and before he makes his

---

[171] See IA Court of HR, *The Right to Information on Consular Assistance under Guarantees of Due Process of the Law,* Advisory Opinion OC-16/99 of October 1, 1999. Series A No. 16, paras. 84 and 124.

[172] Thus in the case of *Vélez Loor v. Brazil* the Court held that a detained foreign national has the right to be informed of his right: 1) for the host State to advise the competent consular office about his situation; and 2) for the host State to convey without delay —any communication addressed to the consular office - by the detained person. See: Article 36.1.b of the Vienna Convention on Consular Relations. Document (A/CONF.25/12) (1963) of April 24, 1963, in force as of March 19, 1967, and has been in effect for Ecuador since that date (as it ratified it on March 11, 1965). This notification must be given to him prior to making his first statement. The right to Information on Consular Assistance in the Framework of the Guarantees of Due Process of Law, Advisory Opinion OC-16/99 of October 1, 1999. Series A No. 16, para. 106. As well as other rights that someone who is deprived of his liberty has, —this constitutes a mechanism to prevent illegal or arbitrary detentions from the very moment the person is deprived of his liberty and, additionally, guarantees the right to a defense of the individual."

[173] IA Court of HR. *Case of Vélez Loor v. Panamá*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2010 Series C No. 218, para. 153.

[174] Vienna Convention on Consular Relations. Document (A/CONF.25/12) (1963) of April 24, 1963, in force as of March 19, 1967, and has been in effect for Ecuador since that date (as it ratified it on March 11, 1965). IA Court of HR. *Case of Vélez Loor v. Panamá*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2010 Series C No. 218, para. 154.

[175] IA Court of HR. *Case of Vélez Loor v. Panamá*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2010 Series C No. 218, para. 154.

first statement before the authorities."[176] In addition, with regard to effective access to consular communication, the Vienna Convention provides that the detainee should be permitted to: 1) freely communicate with consular officials and 2) be visited by consular officials.[177]

201. In the instant case, the Commission notes that no evidence whatsoever can be found in the case file and records of the proceedings to indicate that, after being taken into custody, the State notified Mr. Eusebio Domingo Revelles, as a detained foreign national, of his right to communicate with a consular official from his country, in order to seek assistance. Furthermore, the case file contains no evidence either that the State of Ecuador has ensured the right of Eusebio Domingo Revelles to request assistance from the consulate of his country in order to prepare his defense or that he has had effective access to consular communication.

202. Based on the foregoing reasons, the Commission finds that the failure to inform Mr. Eusebio Domingo Revelles about his right to communicate with the consulate of his country and the lack of effective access to consular assistance, constituted a violation of the rights established in Articles 7.4 and 8.2.d of the American Convention, in connection with Article 1.1 thereof.

4. Principle of the Presumption of Innocence

203. Article 8.2 of the 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.
> (…)

204. The right to a fair trial, as established in Article 8 of the American Convention, encompasses several requirements that must observed by adjudicatory bodies, whatsoever their nature, to ensure that the individual may defend himself adequately with regard to any act of the State that may affect his rights.[178] The principle of the presumption of innocence constitutes a cornerstone of the right to a fair trial.[179]

205. The Inter-American Court has held that this right implies that the defendant does not have to prove that he has not committed the offense of which he is accused, because the *onus probandi* is on those who have made the accusation.[180] Thus, the convincing demonstration of guilt is an essential element for a criminal sanction, so that the burden of proof falls on the prosecutor and not on the accused.[181] On this score, the Human Rights Committee has established that:

> 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 a 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 the duty for all public

[176] IA Court of HR. *Case of Chaparro Álvarez and Lapo Íñiguez. v. Ecuador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 21, 2007. Series C No. 170, para. 164.

[177] Vienna Convention on Consular Relations. Articles 36.1.a) y 36.1.b). IA Court of HR. *Case of Vélez Loor v. Panamá*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2010 Series C No. 218, para. 158.

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

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

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

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

authorities to refrain from prejudging the outcome of the trial, e.g. by abstaining from making public statements affirming the guilt of the accused.[182]

206. Similarly, the Inter-American Commission has held that

> Under the principle of presumption of innocence, a conviction of a crime and, consequently, the application of the punishment, must only be based on the certainty of the court as to the existence of a punishable offense that is attributable to the accused. It is the obligation of the judge assigned to hear a criminal proceeding, to address the case without bias and under no circumstance should he assume *a priori* that the accused is guilty. On the contrary, the American Convention requires that, in keeping with due process of law and the universally accepted principles of criminal law, a judge must confine himself to determining criminal responsibility and apply the punishment to a defendant based on an examination of the evidence available to him.[183]

> In this context, another elementary concept of criminal procedural law, the objective of which is to preserve the principle of innocence, is the burden of proof. In criminal proceedings, the *onus probandi* does not lie with the accused; on the contrary, it is the State that has to demonstrate the accused's guilt. Modern doctrine accordingly maintains that "the accused does not need to prove his innocence, which has already been constructed by the presumption protecting him, but rather the accuser has to fully construct his position, leading to certainty that a punishable act was committed."[184]

207. Based on the foregoing, international human rights law establishes that no person can be convicted as long as there is no clear evidence of his criminal responsibility. In the words of the Court, "if the evidence presented is incomplete or insufficient, he must be acquitted, not convicted."[185] Consequently, the Court has held that a lack of clear evidence of criminal responsibility in a judgment of conviction constitutes a violation of the principle of the presumption of innocence.[186]

208. Additionally, pursuant to the standard established by the European Court, then readdressed by the Inter-American Court, the principle of the presumption of innocence implies that judges should not start a proceeding with a preconceived idea that the accused has committed the crime as charged; the burden of proof is on the prosecutor, and any doubt that arises must benefit the accused.[187]

209. Precisely with respect to the principle of presumption of innocence, the Court has held that in each particular case, in determining the appropriate responsibility of the defendant, it must be examined whether or not he was "treated as one who is innocent."[188] It is the task of domestic authorities and, in cases such as the one before us, criminal court judges, to weigh the evidence in the criminal case file and the effects thereof in determining respective responsibility.

---

[182] 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.

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

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

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

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

[187] ECHR, Case of Barberá, Messegué and Jabardo v Spain, Judgment of 6 December 1988, App. Numbers 10588/83, 10589/83, 10590/83, paras. 77 and 91, citing in IA Court of HR. Case of Cabrera García and Montiel Flores v. México. Supervision of Compliance with Judgment. Decision of the Inter-American Court of Human Rights August 21, 2013, para. 184.

[188] IA Court of HR, *Case of Tibi v. Ecuador*. Judgment of September 7, 2004. Series C No. 114, para. 98.

210. Notwithstanding, the analysis as to whether or not the State has breached the principle of the presumption of innocence, may call for a review of how the court in question managed and assessed the evidence in the framework of the guarantees of due process of law. This is a separate task from that of criminal judges and focuses exclusively on assessing whether in performance of their duties, they upheld or failed to uphold the minimum safeguards that are imposed by the principle of the presumption of innocence.

211. The Commission considers that in conducting this analysis, which is an essential corollary of the principle of the presumption of innocence, judicial authorities have made a record of the evidence deemed by them to be sufficient to undermine said presumption. Likewise, when there is favorable evidence, the analysis of the presumption of innocence requires that it be ascertained that the judicial authorities provided a legal and factual basis for the reasons why said favorable evidence does not cast a doubt on the criminal responsibility of the person in question.

212. In this vein, the Court has held that pursuant to Article 8.1 of the Convention, the State must "exteriorize" [explicitly state] the "the reasoned justification that allows a conclusion to be reached."[189] Said duty "protects the right of citizens to be tried for the reasons provided by Law," [190] and affords "credibility to the legal decisions adopted in the framework of a democratic society."[191]

213. The Commission has established above in the instant report that the authorities conducting the investigation and the criminal proceedings attached full validity to the pre-indictment statements, ignoring the complaints of coercion and the medical certificates of the injuries. In addition to infringing the exclusionary rule, as established hereinbefore, the Commission finds that this conduct is at odds with the principle of the presumption of innocence. The Commission provides hereunder a synopsis of the different points in time when it is clear that domestic authorities gave precedence to unfavorable information elicited in the pre-indictment statements, over information indicating that such information was given under duress and that, consequently, the truthfulness thereof was questionable. These can be summed up as follows:

a. From the opening of the case, when the "order to institute trial proceedings" was issued, on August 17, 1994, even though the medical examination reports of August 9, 1994 had been issued before that time, they were not taken into consideration or weighed in issuing this decision.

b. When the order to "open the full trial proceedings" on June 14, 1996, was issued, the Thirteenth Court for Criminal Matters of Pichincha also failed to take into consideration the statements before the judge and the medical examination reports of August 9, and opened the full trial stage based on the existence of drugs and the pre-indictment statements of the detainees.

c. In ruling on the motion of appeal brought against the above order, the Fourth Chamber for Criminal Matters of the Court dismissed the content of Mr. Revelles' initial statement before a judge noting that through the statement "[…] he attempted to circumvent his involvement in and responsibility for the criminal offense that is the subject of the instant proceedings." These allegations were not examined in light of the medical examination reports and only his pre-indictment statement was validated without further basis than having been given before a representative of the Office of the Public Prosecutor.

---

[189] IA Court of HR, *Case of Apitz Barbera et al ("First Court of Administrative Disputes") v. Venezuela.* Preliminary Objections, Merits, Reparations and Costs. Judgment of August 5, 2008. Series C No. 182. Para. 77. Citing. *Case of Chaparro Álvarez and Lapo Íñiguez. v. Ecuador.* Preliminary Objections, Merits, Reparations and Costs. Judgment November 21, 2007. Series C No. 170, para. 107.

[190] IA Court of HR, *Case of Apitz Barbera et al ("First Court for Administrative Matters") v. Venezuela.* Preliminary Objections, Merits, Reparations and Costs. Judgment of August 5, 2008. Series C No. 182. Para. 77.

[191] IA Court of HR, *Case of Apitz Barbera et al ("First Court for Administrative Matters") v. Venezuela.* Preliminary Objections, Merits, Reparations and Costs. Judgment of August 5, 2008. Series C No. 182. Para. 77.

d. When the Second Court for Criminal Matters of Pichincha conducted the full trial proceeding, it found Mr. Eusebio Domingo Revelles guilty and only reiterated verbatim what the Fourth Chamber for Criminal Matters of the Superior Court of Justice had previously held to the effect that in giving the initial statement before the judge "he attempted to circumvent his involvement in and responsibility for the criminal offense that is the subject of the instant proceeding [...]".

e. Lastly, in ruling on the "confirmation" of judgment, the Fourth Chamber of the Superior Court of Justice found responsibility based on its consideration that the pre-indictment testimonial evidence made it possible to infer Mr. Domingo Revelles' responsibility in the offenses, and even though in his initial testimony before a judge "[...]he claims to not know about any of the facts appearing in the police report and in the order instituting trial proceedings [...]," there are versions of the facts in the "pre-indictment statements" implicating Mr. Revelles.

214. The Commission notes that the conduct of the authorities in validating the pre-indictment statements to establish the responsibility of Mr. Revelles is explained by the way in which the principle of the presumption of innocence is defined within the framework of criminal proceedings in Ecuador, which at that time, regulated drug-related offenses. Thus, the Commission notes that when Mr. Eusebio Domingo Revelles contested the order opening the full trial proceedings, the Fourth Chamber of the Superior Court of Justice noted that Article 116 of the Law on Narcotic and Psychotropic Substances was applicable to this instance, and this provision of the law established a "presumption of guilt, as long as the body of the crime [corpus delicti] was justified."

215. The Commission notes that said provision of the law, which inverts the burden of proof placing it on the defendant, was examined by expert witness Reinaldo Cavacci before the Inter-American Court in the case of *Acosta Calderón v. Ecuador*, establishing that under this provision "the indictee was imposed the duty of proving their innocence" and that "while this norm was in force, it meant the violation of the presumption of innocence of many people prosecuted for crimes related to the trafficking and possession of narcotics and psychotropic substances ."[192]

216. The Commission is aware that the situation of incompatibility of this norm with the principle of the presumption of innocence was subsequently recognized by the Constitutional Court of Ecuador in finding it unconstitutional.[193] However, said norm was applied by the Fourth Chamber of the Superior Court of Justice to this specific case in violation of the principle of the presumption of innocence set forth in Article 8.2 of the American Convention in connection with the obligations established in Articles 1.1 and 2 of the same instrument, to the detriment of Mr. Eusebio Domingo Revelles.

3. Reasonable period of time for the criminal proceedings

217. The Court has established that "the reasonableness of the period of time mentioned in Article 8.1 of the Convention must be assessed in relation to the total time demanded by criminal proceedings. This time period runs from the first procedural act addressed to a specific person allegedly responsible for a given offense, until final and non-appealable judgment is rendered."[194] In order to determine whether a criminal proceeding was conducted within a reasonable period of time, as defined under Article 8.1 of the Convention, the Inter-American Court has taken into account four elements: a) the complexity of the matter; b) the judicial

[192]IA Court of HR, *Case of Acosta Calderón v. Ecuador*. Judgment of June 24, 2005. Series C No. 129, para. 44. a).

[193]In Judgment of December 16, 1997. See in this regard, IA Court of HR, *Case of Acosta Calderón v. Ecuador*. Judgment of June 24, 2005. Series C No. 129, para. 44. a).

[194] IA Court of HR, *Case of Bayarri v. Argentina.* Judgment of October 30, 2008. Series C No, 187, para. 107; Case of Baldeón García v. Peru. Merits, Reparations and Costs. Judgment of April 6, 2006. Series C No. 147, para. 150; IA Court of HR, *Case of Genie Lacayo v. Nicaragua*, Judgment of January 29, 1997, para. 77.

activity of the interested party; c) the behavior of the judicial authorities;[195] and, d) the effects that the delay in the proceedings may have on the judicial situation of the victim.[196]. In this regards the Commissions notes that the case must be studied taking into consideration its particular circumstances.

218. In the case before us, the Commission notes that Mr. Eusebio Domingo Revelles was arrested on August 2, 1994 and the Judgment of the Fourth Chamber of the Superior Court of Justice, which settled the case "on review," was handed down on November 24, 1998. This means that the length of the criminal proceedings against Mr. Domingo Revelles was 4 years and three months. The Commission will proceed to analyze the above mentioned period of time in accordance with the criteria earlier described.

219. Firstly, and regarding the complexity of the case, the Commission notes the State indicated that it was a complex case, since it involved around thirty-three suspects, the size of the case file –six hundred pages – and the complexity of the crimes themselves for which the suspects were indicted. In this regards, the Commission notes that even though the case was related to an alleged cocaine hydrochloride trafficking operation, for which twelve individuals were taken into custody, the investigation files available to the Commission indicate that an individualized process was finally instituted exclusively in relation to Mr. Eusebio Sunday Revelles. The Commission also observes that since the beginning of the investigation until the final judgment of the Fourth Chamber of the Superior Court of Justice, the evidences used as basis to stablish the criminal liability of the accused were at the disposal of the judicial authorities from the initial stage of the process and included the declaration of the detainees made during the preliminary investigations and the existence of drugs and evidences found in a wine vault and hotels where the accused were staying, The above mentioned evidences were described in the police report that was issued just 6 days after the detentions of the victims. The Commission is not aware of subsequent complex proceedings which have been taken into account to determine the criminal responsibility of Mr. Revelles. Therefore, the Commission finds that the complexity argument made by the State in general terms regarding the initial operative bears no link with the facts and law that were finally analyzed in order to stablish the individual responsibility of Eusebio Domingo Revelles.

220. Secondly, and regarding the procedural activity of the victim, the Commission notes the State claimed that Mr. Eusebio Domingo Revelles "never cooperated with the investigation activities." On this aspect, the Commission notes that it was precisely the duty of the state, by conducting an investigation, to determine whether there was evidence undermining the presumption of innocence of the defendant. In any case, the Commission notes that at no time was the conduct of Mr. Eusebio Domingo Revelles did not aim to obstruct the progress of the proceedings, and the record shows that he only filed a single motion to contest the order to open the full trial stage.

221. Finally, regarding the conduct of the judicial authorities, the Commission observes that in the present case the authorities who dealt with the process from the beginning placed Mr. Domingo Revelles in a situation of illegal and arbitrary freedom deprivation, in which he remained throughout the duration of the process. Nevertheless they imposed that measures against the victim, measure that should have been exceptional, the judicial authorities delayed more than four years to establish criminal responsibility. Even though since the beginning they had at their disposal the totality of the evidences that finally were used to condemn Mr. Domingo Revelles, they delayed that long.

222. The Commission notes that the State justified the delay through the work load of the Ecuadorian courts at the time and, it moved for the Commission to apply a criterion used by the European Court of Human Rights in the *Deumeland* case, in which it was determined that "a temporary backlog of court business" does not engage the international responsibility of the State.

---

[195] IA Court of HR, *Case of Bayarri v. Argentina.* Judgment of October 30, 2008. Series C No, 187, para. 72; *Case of Baldeón García v. Peru*. Merits, Reparations and Costs. Judgment of April 6, 2006. Series C No. 147, para. 151.

[196] IA Court of HR, *Case of Valle Jaramillo v. Colombia.* Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 192, para. 155.

223. In this regards, the Commission notes that the case of *Deumeland v. Germany*[197] cited by the State addresses different subject matter from that of the instant case and while the European Court did note that "a temporary backlog of court business does not engage international responsibility of the State concerned, provided that the State takes remedial action with the requisite promptness," it did take into account the argument of the State of Germany pertaining to potential buildup of cases as a consequence of the creation of a new Chamber, as a result of the delay in hearing the cases before the Social Court of Berlin. The IACHR notes that, without prejudice to this argument, in the referenced case, the European Court ruled there was a violation of reasonable time. In this sense, the Commission considers that the argument pertaining to the workload of the courts is out of order inasmuch as it is the duty of the State itself to organize its institutions in order for it to be able to meet the demands of justice of the persons under its jurisdiction. In addition, the Commission has no information about any aspect of structural nature that could reasonably have obstructed the progress in the process.

224. In conclusion, after a comprehensive study of the criminal proceedings, the arguments invoked by the State do not justify the period time the case against Mr. Eusebio Domingo Revelles lasted. Considering the characteristics analyzed in the present case, the Commission considers that the period of 4 years and 3 months that the authorities delayed establishing the responsibility of Mr. Domingo Revelles, during which he suffered a measure of arbitrary deprivation of liberty, exceeded the limits of reasonable time stablished in article 8.1 of the Inter-America Convention in conjunction with Article 1.1 of the same instrument.

VI. CONCLUSIONS

225. In view of the preceding findings of fact and law, the Commission concludes that the State of Ecuador is responsible for violation of Articles 5 and 7 of the American Convention Human Rights in connection with Articles 1.1 and 2 of the same instrument, as well as Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture to the detriment of Jorge Eliécer Herrera Espinoza, Luis Alfonso Jaramillo González, Eusebio Revelles and Emmanuel Cano. The Commission also concludes that the State of Ecuador is responsible for violation of Article 8 and 25 of the American Convention on Human Rights to the detriment of Mr. Eusebio Domingo Revelles in connection with Articles 1.1 and 2 of said instrument.

VII. RECOMMENDATIONS

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, RECOMMENDS THE STATE OF ECUADOR,

1. To provide full reparation to the victims in the instant case covering both tangible and intangible damages.

2. To conduct a serious, diligent and effective investigation, within a reasonable period of time, in order to clarify the acts of torture described in the instant report, individually identify those responsible and impose the appropriate punishments.

3. To order the administrative, disciplinary and criminal measures, as appropriate, for actions and omissions of State officials (police agents, prosecutors, public defenders and judges of the different levels of the judiciary), who contributed with their conduct to the violation of the rights to the detriment of the victims of the case.

4. To adopt the measures necessary to prevent similar acts from happening in the future. Specifically, to develop training programs for public security forces, judges and prosecutors, on the absolute prohibition of acts of torture and cruel, inhuman and degrading treatment or punishment, as well as the

[197] ECHR, Case of Deumeland v. Germany. Application no. 9384/81. Judgment of 29 May 1986 (only available in English at: http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57468)

obligations emanating from the exclusionary rule. Additionally, to strengthen the accountability mechanisms for the officials responsible for the treatment of persons deprived of liberty.

Firmado en el original
Mario Lopez-Garelli
Por autorización del Secretario Ejecutivo