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REPORT No. 40/17
CASE 12.197

REPORT ON MERITS

RAMÓN ROSENDO CARRANZA ALARCÓN
ECUADOR

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Organización de los Estados Americanos

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I. SUMMARY

1. On April 5, 1998, the Inter-American Commission on Human Rights (hereinafter the "Commission," "Inter-American Commission," or "IACHR") received a petition lodged by José Leonardo Obando Laaz (hereinafter "the petitioner") alleging that the Republic of Ecuador was responsible for the unlawful and arbitrary detention of Ramón Rosendo Carranza Alarcón in November 1994 by State agents, as well as for his unreasonably long pretrial detention in the framework of an investigation and criminal proceeding for the crime of murder.

2. The State argued that Mr. Carranza's arrest and the length of his pretrial detention were consistent with the provisions of its domestic system of laws and international standards. It held that Mr. Carranza had access to an array of adequate and effective remedies in order to challenge any supposed violation of his rights.

3. Having analyzed the available information, the Commission has concluded that the State is responsible for violation of the rights to personal liberty and a fair trial recognized in Articles 7(1), 7(3), 7(5), 8(1) and 8(2) of the American Convention, taken in conjunction with the obligations established in Articles 1(1) and 2 of that instrument, to the detriment of Ramón Rosendo Carranza Alarcón.

II. PROCEEDINGS BEFORE THE COMMISSION

4. The IACHR received the original petition on April 5, 1998. A detailed account of the processing of the petition up to the decision on admissibility is found in Report on Admissibility 154/11 adopted on November 2, 2011.[1]

5. On November 10, 2011, the Commission notified the parties of that report and placed itself at their disposal with a view to reaching a friendly settlement. On June 30, 2014, the petitioners informed the IACHR that they had no additional comments to submit. The State submitted its additional comments on merits on July 15, 2016.

III. POSITIONS OF THE PARTIES

A. The petitioner

6. The petitioner alleged that the Republic of Ecuador was responsible for the unlawful and arbitrary detention of Ramón Rosendo Carranza Alarcón in November 1994 by State agents, as well as for his unreasonably long pretrial detention in the framework of his criminal prosecution for murder. The petitioner said that Mr. Carranza was kept in pretrial detention until his conviction in December 1998. The petitioner also claimed that the State was responsible for the violation of Mr. Carranza's physical integrity due to the fact that, despite having tuberculosis while in detention, he did not receive proper medical attention. The details about the facts and domestic proceedings will be addressed in the "Proven Facts" section of this report, based on information provided by both parties.

[1] IACHR, Report on Admissibility No. 154/11, Case 12.197, Ramón Rosendo Carranza Alarcón, Ecuador, November 2, 2011.

7. In relation to the alleged violation of the **right to personal liberty**, the petitioner alleged that Mr. Carranza was detained by police without a court order or being caught in the act of committing an offense. The petitioner said that the agents did not inform him of the reasons for his arrest. The petitioner added that he was held in pretrial detention for approximately four years, which was an unreasonably long time.

8. In relation to the alleged violation of the rights to a **fair trial and judicial protection**, the petitioner said that the criminal proceeding instituted against him did not meet the requirements of a fair trial. The petitioner argued that the sentence was not proportionate, in that he was not granted the reductions envisaged in domestic law in accordance with international standards. The petitioner said that Mr. Carranza was sentenced to six years' imprisonment even though he had already spent four years in pretrial detention.

B. The State

9. The State argued that Mr. Carranza's arrest and the length of his pretrial detention were consistent with the provisions of its domestic system of laws and international standards.

10. With regard to Mr. Carranza's detention, Ecuador argued that at no point did he file an application for habeas corpus in order to challenge his arrest. The State argued that his detention was lawful because there was a judicial order for his arrest as a result of the fact that he had been a fugitive from justice for almost a year. It added that after his arrest, Mr. Carranza was duly turned over to the relevant authorities for his case to be heard. The State also said that the duration of the pretrial detention was reasonable given that its purpose was to ensure Mr. Carranza's appearance at trial, bearing in mind that he had evaded justice for almost a year.

11. As regards Mr. Carranza's criminal trial, Ecuador stated that it was conducted in accordance with the rules of due process. It held that Mr. Carranza's conviction was handed down in accordance with its national law and international obligations. The State said that the duration of the proceedings was reasonable. Their duration was due to the complexity of the matter and the fact that Mr. Carranza had evaded justice for almost a year. It added that Mr. Carranza had access to all the remedies that the law afforded him, such as appeal, cassation, or review, but that he did not have recourse to them.

12. As to the proportionality of the sentence imposed on Mr. Carranza, the State said that the court that sentenced him accepted his plea of mitigating circumstances and modified the sentence that the law mandated (8 to 12 years). Ecuador said that the court sentenced Mr. Carranza to the "special term of imprisonment of six years, precisely for his good behavior."

IV. PROVEN FACTS

A. Mr. Carranza's arrest in August 1993

13. On August 16, 1993, Segundo Mariño Gamboa filed a complaint at the National Police Station in Yaguachi Canton, Guayas Province.[2] Mr. Mariño said that his brother, Samuel Evaristo, had been murdered the previous day at an establishment that sold alcoholic beverages.[3] He said that according to witnesses, were Ramón Rosendo Carranza Alarcón and Alfredo Vargas Recalde were at the scene and that they got into a

[2] Complaint filed with the National Police Station in Yaguachi Canton by Mr. Segundo Mariño Gamboa, brother of Samuel Mariño, August 16, 1993. Enclosed with the State's communication of July 15, 2016.

[3] Complaint filed with the National Police Station in Yaguachi Canton by Mr. Segundo Mariño Gamboa, brother of Samuel Mariño, August 16, 1993. Enclosed with the State's communication of July 15, 2016.

quarrel with his brother.[4] He added that Mr. Carranza shot his brother with his rifle and that both he and Alfredo Vargas fled the scene.[5]

14. The next day, the captain (*comisario*) in command of the police station ordered a preliminary inquiry to be opened and proceedings instituted against Messrs. Carranza and Vargas.[6] An order was also issued for the arrest of both.[7] The order was based on the following rationale: "(…) the pretrial detention of the suspects is hereby ordered under Article 177 of the Code of Criminal Procedure." The order added that because they were fugitives, the police were requested to apprehend them.

15. On October 1, 1993, the police captain notified the 11th Lower Criminal Court of Guayas of the proceeding for murder instituted against Messrs. Carranza and Vargas.[8] On October 28, 1993, the 11th Lower Criminal Court of Guayas took up the criminal proceeding.[9] The court also confirmed the detention orders issued for both individuals and requested the National Police to take steps to ensure their capture.[10] As for the grounds for that decision, the court reiterated that [since] "all the conditions established in Article 177 of the Code of Criminal Procedure are met, the pretrial detention orders that the investigator has issued are hereby confirmed."

16. In the original petition submitted to the IACHR, Mr. Carranza said that he was arrested by police in November 1994.[11] The Commission does not have information on the exact date on which he was detained. Mr. Carranza said the following about his arrest:

> (…) I was unlawfully apprehended without being caught in the act of committing any crime by members of the Ecuadorian Rural Police, who did not show me the detention order ...; in spite of that, I was accused of the murder of [Samuel Evaristo].[12]

B. The criminal proceeding against Mr. Carranza

17. In the original petition submitted to the IACHR, Mr. Carranza said that after he was arrested, he was held incommunicado for more than 24 hours without the assistance of counsel.[13] He added that he was interrogated while being subjected to psychological pressure.[14] The Commission does not have any other information in relation to those submissions.

18. On December 6, 1994, Mr. Rosendo Carranza submitted a brief to the 11th Lower Criminal Court of Guayas in which he named his attorney and offered the following statement:

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[4] Complaint filed with the National Police Station in Yaguachi Canton by Mr. Segundo Mariño Gamboa, brother of Samuel Mariño, August 16, 1993. Enclosed with the State's communication of July 15, 2016.

[5] Complaint filed with the National Police Station in Yaguachi Canton by Mr. Segundo Mariño Gamboa, brother of Samuel Mariño, August 16, 1993. Enclosed with the State's communication of July 15, 2016.

[6] Order to open a preliminary inquiry and institute proceedings by Yaguachi Canton National Police Station, August 17, 1993. Enclosed with the State's communication of July 15, 2016.

[7] Order of Pretrial Detention by Yaguachi Canton National Police Station, August 17, 1993. Enclosed with the State's communication of July 15, 2016.

[8] Order of Yaguachi Canton National Police Station, October 1, 1993. Enclosed with the State's communication of July 15, 2016.

[9] Order of the 11th Lower Criminal Court of Guayas, October 28, 1993, Enclosed with the State's communication of July 15, 2016.

[10] Order of the 11th Lower Criminal Court of Guayas, October 28, 1993, Enclosed with the State's communication of July 15, 2016.

[11] Original petition lodged with the IACHR on April 5, 1998.

[12] Original petition lodged with the IACHR on April 5, 1998.

[13] Original petition lodged with the IACHR on April 5, 1998.

[14] Original petition lodged with the IACHR on April 5, 1998.

> I hereby reject the charge made by Segundo Mariño Gamboa as having no basis in the reality of the facts, given that I never fired the weapon that he claims I discharged; furthermore, I do not know who fired the shot that killed Samuel Evaristo Mariño Gamboa; however, I do wish to state that the only person who was carrying a small rifle that day was Juan N., also known as *"Loco Juan"* (Crazy John); nevertheless, I did not see if it was he who shot at Samuel Mariño because he was at the other end from where the deceased Mariño Gamboa was positioned.[15]

19. The State said that on February 23, 1995, the 11th Lower Criminal Court of Guayas ordered that Mr. Carranza be taken from the court to Guayaquil Prison (*Centro de Rehabilitación Social de Varones de Guayaquil*), in order to receive his testimony in response to questioning.[16] Mr. Carranza gave his testimony in response to questioning on August 25, 1995, and stated the following:

> I do not know ... the deceased. That day, August 15, 1993, I was in Durán Canton ..., and I have committed no crime.[17]

20. On September 11, 1995, Mr. Carranza presented a brief to the 11th Lower Criminal Court of Guayas, in which he stated the following:

> I have been confined in the prison for 10 months, blamed for an act that I never committed ... I have always devoted myself to farm work ... I have been confused with someone else because of a mistake and I am being blamed for a crime that I never committed. I ask the court ... to release me so that I can help my family and carry on being of use to society.[18]

21. The IACHR notes that the petitioner stated that no response was ever made to that request. The state presented no evidence to the contrary.

22. On September 30, 1996, the 11th Lower Criminal Court of Guayas closed the preliminary inquiry and ordered the record of the proceeding to be transferred to the Seventh Prosecutor for Traffic Matters for indictment.[19]

23. On March 4, 1997, the Seventh Prosecutor for Traffic Matters of Guayas issued his indictment in which he stated the following:

> Based on a careful and in-depth study of each part of the proceedings, I find that there are sufficient grounds to consider that Ramón Carranza Alarcón participated directly in the case under investigation, inasmuch as there is nothing in the record to show that the suspect has disproved the charges against him or that he has managed to show where and with whom he was on the day of the criminal acts ...; therefore, the behavior of the suspect Ramón Rosendo Carranza Alarcón is consistent with the unlawful and culpable conduct of perpetrator of the offense classified in Article 449 of the Criminal Code. I refrain from accusing Alfredo Vargas Recalde because there are insufficient grounds to do so.[20]

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[15] Brief submitted by Mr. Ramón Rosendo Carranza Alarcón to the 11th Lower Criminal Court of Guayas, December 6, 1994. Enclosed with the State's communication of July 15, 2016.

[16] State's communication of July 15, 2016.

[17] Testimony of Mr. Ramón Rosendo Carranza in response to questioning at the 11th Lower Criminal Court of Guayas, August 25, 1995. Enclosed with the State's communication of July 15, 2016.

[18] Brief to the 11th Lower Criminal Court of Guayas, September 11, 2005. Enclosed with the initial petition.

[19] Closure of the preliminary inquiry at the 11th Lower Criminal Court of Guayas. September 30, 1996, Enclosed with the State's communication of July 15, 2016.

[20] Office of the Attorney General, Indictment, March 4, 1997. Enclosed with the State's communication of July 15, 2016.

24. On April 14, 1997, the 11th Lower Criminal Court of Guayas issued a decision in which it accepted the prosecutor's indictment and opened trial proceedings.[21] In that decision, the court ordered Mr. Vargas' provisional acquittal.[22]

25. On December 1, 1998, the public hearing in the trial proceedings was held before the Fourth Criminal Tribunal of Guayas.[23] At that hearing, Mr. Carranza's defense counsel stated the following:

> (...) my client did not act with malice aforethought ..., in other words, his conduct is consistent with what [Article] 449 [of the Criminal Code] provides, which is 8 to 12 years. Unfortunately, your honors, the State has violated Article 7 of the American Convention on Human Rights, by not trying the accused within a reasonable time, given that, to date, he has spent four years in prison.[24]

26. Mr. Carranza, for his part, stated the following at the hearing:

> I had no intention of killing him; I was only trying to protect myself; the man came after me with a machete and what I did was in defense of my life; I shot him but I did not want to; I ask that I be released.[25]

27. The IACHR also notes that the original petition lodged with the Commission contained the following statement by Mr. Carranza:

> I was accused of committing the murder of Samuel Mariño, without consideration of the fact that I acted in legitimate defense of my own life, which was being gravely threatened by the deceased; there was never any evidence that I acted with premeditation or malice aforethought. During the hearing ... I admitted to firing the shot that killed the aforesaid person.[26]

28. On December 15, 1998, the Fourth Criminal Tribunal of Guayas returned judgment, convicting Mr. Carranza.[27] The tribunal found him guilty of perpetrating the crime of homicide, as defined in Article 449 of the Criminal Code.[28] The tribunal sentenced him to six years' imprisonment due to the existence of mitigating factors.[29]

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[21] Opening of trial proceedings by the 11th Lower Criminal Court of Guayas, April 14, 1997. Enclosed with the State's communication of July 15, 2016.

[22] Opening of trial proceedings by the 11th Lower Criminal Court of Guayas, April 14, 1997. Enclosed with the State's communication of July 15, 2016.

[23] Public Hearing by the Fourth Criminal Tribunal of Guayas, December 1, 1998. Enclosed with the State's communication of July 15, 2016.

[24] Public Hearing by the Fourth Criminal Tribunal of Guayas, December 1, 1998. Enclosed with the State's communication of July 15, 2016.

[25] Public Hearing by the Fourth Criminal Tribunal of Guayas, December 1, 1998. Enclosed with the State's communication of July 15, 2016.

[26] Original petition lodged with the IACHR on April 5, 1998.

[27] Judgment of the Fourth Criminal Tribunal of Guayas, December 15, 1998 Enclosed with the State's communication of July 15, 2016.

[28] Judgment of the Fourth Criminal Tribunal of Guayas, December 15, 1998 Enclosed with the State's communication of July 15, 2016.

[29] Judgment of the Fourth Criminal Tribunal of Guayas, December 15, 1998 Enclosed with the State's communication of July 15, 2016.

29. The tribunal added that the sentence was to be served at Guayaquil Prison and that the time that he had already spent deprived of his liberty should be deducted from the sentence, in accordance with Article 54 of the Sentences and Social Rehabilitation Code.[30]

30. The IACHR notes that Mr. Carranza filed no appeal to challenge that judgment.

V. ANALYSIS OF LAW

31. Having regard to the submissions of the parties and the proven facts, the Commission's legal analysis is presented in the following order: A. Matter precedent concerning the scope of the case; B. The right to personal liberty and the right to be presumed innocent; and C. The right to a trial within a reasonable time.

A. Matter precedent concerning the scope of the case

32. Taking into account the various arguments formulated by the petitioner, the Commission considers it pertinent first to refer to the scope of this case.

33. In that connection, the petitioner argued that his arrest was illegal and arbitrary, that his detention was unreasonable, that he received inadequate medical attention for the tuberculosis that he suffered, that violations of due process occurred, and that the sentence imposed was not proportional since he was not granted the reductions provided under domestic law.

34. The Commission recalls that in Report on Admissibility No. 154/11 it outlined the object of this case. Specifically, upon analyzing the requirement of exhaustion of domestic remedies, the Commission noted that Mr. Carranza did not appeal against his conviction. In that regard, the analysis as to exhaustion of domestic remedies centered exclusively on Mr. Carranza's pretrial detention.[31] Likewise, in the section on "colorability" of the petition in said admissibility report, the Commission focused solely on the pretrial detention, finding that "the facts alleged by the petitioner regarding the extended [pretrial] detention of Ramón Rosendo Alarcón could characterize possible violations [of] the rights to personal liberty, [a fair trial], and judicial protection.[32] In that same section, the Commission found that the petitioner presented no arguments from which to find *prima facie* a possible violation of Article 5 of the Convention.[33]

35. In light of the foregoing, the following analysis of law will be confined to Mr. Carranza's pretrial detention. Furthermore, since the two matters are intertwined, the Commission will pronounce on whether his right to a trial within a reasonable time was violated in the criminal proceeding.

B. The right to personal liberty and the right to be presumed innocent

36. The pertinent portions of Article 7 of the American Convention provide:

1. Every person has the right to personal liberty and security.
(…)
3. No one shall be subject to arbitrary arrest or imprisonment.
(…)

[30] Judgment of the Fourth Criminal Tribunal of Guayas, December 15, 1998 Enclosed with the State's communication of July 15, 2016.

[31] IACHR, Report on Admissibility No. 154/11, Case 12.197, Ramón Rosendo Carranza Alarcón, Ecuador, November 2, 2011, pars. 20-22.

[32] IACHR, Report on Admissibility No. 154/11, Case 12.197, Ramón Rosendo Carranza Alarcón, Ecuador, November 2, 2011, par. 27.

[33] IACHR, Report on Admissibility No. 154/11, Case 12.197, Ramón Rosendo Carranza Alarcón, Ecuador, November 2, 2011, par. 29.

> 5. Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings. His release may be subject to guarantees to assure his appearance for trial.
> (…)

37. For its part, the pertinent portion of Article 8(2) of the American Convention provides:

> 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.

1. General considerations on pretrial detention

38. The Inter-American Commission and Court have held that pretrial detention is limited by the principles of legality, presumption of innocence, necessity, and proportionality.[34] The Court has also stated that it is a precautionary, rather than a punitive[35], measure, and that, as the most severe measure that can be imposed on an accused, it should only be used exceptionally. In the view of both organs of the inter-American system, the rule should be for the accused to be on release until a decision is reached on their criminal responsibility.[36]

39. The Court and the Commission have underscored that the personal characteristics of the alleged perpetrator and the seriousness of the offense with which they are charged are not, in themselves, sufficient justification for pretrial detention.[37] With respect to the reasons that may justify pretrial detention, the organs of the system have interpreted Article 7(3) of the American Convention in the sense that circumstantial evidence of guilt are a necessary condition but not sufficient alone 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.[38] 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 […] 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."[39]

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[34] IACHR, Report on the Use of Pretrial Detention in the Americas, OEA/Ser.L/V/II. December 30, 2013, par. 20; I/A Court H.R., Case of López Álvarez v. *Honduras,* Judgment of February 1, 2006, Series C No. 141, par. 67; *Case of García Asto and Ramírez Rojas v. Peru*, Judgment of November 25, 2005, Series C No. 137, par. 106; *Case of Palamara Iribarne v. Chile,* Judgment of November 22, 2005, Series C No. 135, par. 197; and *Case of Acosta Calderón v. Ecuador,* Judgment of June 24, 2005, Series C No. 129, par. 74.

[35] I/A Court H.R., *Case of Suárez Rosero v. Ecuador*. Merits. Judgment of November 12, 1997. Series C No. 35, párr. 77.

[36] IACHR, Report on the Use of Pretrial Detention in the Americas, OEA/Ser.L/V/II. December 30, 2013, par. 21; I/A Court H.R., *Case of López Álvarez v. Honduras,* Judgment of February 1, 2006, Series C No. 141, par. 67; I/A Court H.R., *Case of Palamara Iribarne v. Chile,* Judgment of November 22, 2005, Series C No. 135, par. 196; and I/A Court H.R., *Case of Acosta Calderón v. Ecuador,* Judgment of June 24, 2005, Series C No. 129, par. 74.

[37] IACHR, Report on the Use of Pretrial Detention in the Americas, OEA/Ser.L/V/II. December 30, 2013, par. 21; I/A Court H.R., *Case of López Álvarez v. Honduras,* Judgment of February 1, 2006, Series C No. 141, par. 69; *Case of García Asto and Ramírez Rojas v. Peru,* Judgment of November 25, 2005, Series C No. 137, par. 106; *Case of Acosta Calderón v. Ecuador,* Judgment of June 24, 2005, Series C No. 129, par. 75; and *Case of Tibi v. Ecuador,* Judgment of September 7, 2004, Series C No. 114, par. 180.

[38] I/A Court H.R., *Case of Barreto Leiva v. Venezuela,* Merits, Reparations and Costs, Judgment of November 17, 2009, Series C No. 206. par. 111.

[39] I/A Court H.R., *Case of Barreto Leiva v. Venezuela,* Merits, Reparations and Costs, Judgment of November 17, 2009, Series C No. 206. par. 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, par. 103; and *Case of Servellón García et al. v. Honduras,* Merits, Reparations and Costs, Judgment of September 21, 2006, Series C No. 152, par. 90.

40. Thus, any decision to restrict the right to personal liberty through the imposition of pretrial detention must be justified by sufficient grounds in each instance to determine if said detention meets the requirements for its application.[40]

41. At the same time, Article 7(5) of the American Convention imposes time limits on pretrial detention and, consequently, on the power of the State to protect the purposes pursued by the proceeding with this type of precautionary measure. As the Inter-American Court has held, "[w]hen 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."[41] The Court has indicated that even when there are reasons to keep someone in pretrial detention, the period of detention should not exceed what is reasonable.[42]

42. As regards the need for periodic review of the grounds for pretrial detention and its duration, the Court has stated that:

> pretrial detention or imprisonment should be subject to periodic review, so that it is not prolonged when the reasons that supported it no longer exist .... Whenever it appears that pretrial detention does not meet those conditions, release should be ordered, without prejudice to the continuation of the proceedings.[43]

43. Besides its effects on the exercise of the right to personal liberty, both the Commission and the Court have stated that improper use of pretrial detention may undermine the principle of presumption of innocence contained in Article 8(2) of the American Convention. In that connection, the Commission has underscored the importance of the criterion of reasonableness, since to keep someone deprived of liberty beyond a time that is reasonable to accomplish the ends that justified their detention would be tantamount, in effect, to a premature punishment.[44]

44. The IACHR has said the following with respect to unreasonably long pre-trial detention:

> In addition, the risk of inverting the presumption of innocence increases with an unreasonably prolonged pre-trial incarceration. The guarantee of presumption of innocence becomes increasingly empty and ultimately a mockery when pre-trial imprisonment is prolonged unreasonably, since presumption notwithstanding, the severe penalty of deprivation of liberty which is legally reserved for those who have been convicted, is being visited upon someone who is, until and if convicted by the courts, innocent.[45]
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> (…)

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[40] IACHR, *Report on the Use of Preventive Custody in the Americas,* OEA/Ser.L/V/II. Doc. 46/13. December 30, 2013 par. 21.

[41] I/A Court H.R., *Case of Barreto Leiva v. Venezuela,* Merits, Reparations and Costs, Judgment of November 17, 2009, Series C No. 206, par. 120.

[42] I/A Court H.R., *Case of Argüelles et al. v. Argentina,* Preliminary Objections, Merits, Reparations, and Costs, Judgment of November 20, 2014. Series C No. 288, par. 122.

[43] I/A Court H.R., *Case of Argüelles et al. v. Argentina,* Preliminary Objections, Merits, Reparations, and Costs, Judgment of November 20, 2014. Series C No. 288, par. 121.

[44] IACHR, Report No. 2/97, Case 11.205, Merits, Jorge Luis Bronstein et al., Argentina, March 11, 1997, par. 12; IACHR, Third Report on the Situation of Human Rights in Paraguay, OEA/Ser./L/VII.110. Doc. 52, adopted on March 9, 2001, Ch. IV, par. 34. See also: I/A Court H.R., *Case of López Álvarez v. Honduras,* Judgment of February 1, 2006. Series C No. 141, par. 69; I/A Court H.R., *Case of Acosta Calderón v. Ecuador,* Judgment of June 24, 2005, Series C No. 129, par. 111; I/A Court H.R., *Case of Tibi v. Ecuador,* Judgment of September 7, 2004, Series C No. 114, par. 180; I/A Court H.R., *Case of the "Juvenile Reeducation Institute" v. Paraguay,* Judgment of September 2, 2004, Series C No. 112, par. 229; I/A Court H.R., *Case of Suárez Rosero v. Ecuador,* Judgment of November 12, 1997, Series C No. 35, par. 77.

[45] IACHR, Report No. 12/96. Argentina. Case 11.245, March 1, 1996, par. 80.

> If the State fails to issue a judgment establishing blame justifies further holding the accused in pre-trial incarceration, based on the suspicion of guilt, then it is essentially substituting pre-trial detention for the punishment.[46]

45. Respect for the right to be presumed innocent also requires that the State demonstrate with clear and reasoned arguments in each specific case the existence of valid rules governing the applicability of pretrial detention.[47] Accordingly, the principle of presumption of innocence is also violated when pretrial detention is imposed arbitrarily, or when its application is essentially determined by such factors as the nature of the crime, the expected punishment, or the mere existence of reasonable indicia implicating the accused.[48]

2. Analysis of the case

46. In this case, the Commission has taken it as a proven fact that Mr. Carranza Alarcón was held in pretrial detention from November 1994 to December 1998, when he was convicted in a judgment that became final. The order for that pretrial detention was given in the order to institute proceedings of August 17, 1993, and confirmed on October 28, 1993. The Commission recalls that the length of pretrial detention must be counted until the date of the final judgment.[49]

47. As to justification, as was mentioned in the establish facts, the basis cited for the propriety of pretrial detention in both decisions was Article 177 of the Code of Criminal Procedure.

48. Article 177 of that Code, invoked as the grounds in both decisions, provided that the judge, "when he believes it necessary," could order pretrial detention provided that there existed: (i) indicia to presume the existence of a criminal offense that would warrant deprivation of liberty as punishment; and (ii) indicia to presume that the accused had committed or was complicit in the commission of the offense that the proceeding concerned. That provision also required that "[t]he order shall specify the evidence supporting the incarceration order."[50]

49. The Commission observes that this provision did not require the existence of procedural needs for ordering pretrial detention. On the contrary, it provided that it was sufficient for there to exist indicia of responsibility for a crime that would warrant deprivation of liberty as punishment. The Commission has held that, in practice, this norm inverts the exceptionality of pretrial detention and makes it the rule in cases punishable by imprisonment, since to order it, it is sufficient for there to exist a crime punishable by deprivation of liberty and "indicia of responsibility."[51]

50. The justification for the decisions to impose pretrial detention on Mr. Carranza was essentially based on the evidence that pointed to his responsibility. In that regard, both the applicable norm and the decisions adopted on the basis thereof are arbitrary and, therefore, incompatible with the American Convention. While mention was made of the fact that the alleged victim was evading justice, from its examination of both decisions the Commission finds that the only effect of that reference was to order the police to apprehend him; it was not the basis for imposing pretrial detention from the point of view of procedural need.

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[46] IACHR, Report No. 12/96. Argentina. Case 11.245, March 1, 1996, par. 114.

[47] I/A Court H.R., *Case of Usón Ramírez v. Venezuela,* Preliminary Objections, Merits, Reparations and Costs, Judgment of November 20, 2009, Series C No. 207, par. 144.

[48] IACHR, *Report on the Use of Pretrial Detention in the Americas*, OEA/Ser.L/V/II. December 30, 2013 par. 137.

[49] IACHR, *Report on the Use of Pretrial Detention in the Americas*, OEA/Ser.L/V/II. December 30, 2013 par. 132.

[50] Ecuadorian Code of Criminal Procedure of 1983, Article 177. (L. 134-PCL. RO 511: 10-jun-1983). *Cf.* I/A Court H.R., *Case of Suárez Rosero v. Ecuador,* Judgment of November 12, 1997, Series C No. 35, par. 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, par. 104.

[51] IACHR, Report No. 40/14, Case 10.438, Report on Merits, Herrera Espinoza *et al.* Ecuador, July 17, 2015, par. 135.

51. As for the duration of Mr. Carranza's pretrial detention, the Commission notes that it lasted a little over four years: November 1994 to December 1998. The Commission notes that at no point during that time was there any periodic review to determine the ongoing propriety of the pretrial detention, despite the fact that Mr. Carranza requested his release. The foregoing is consistent with the above-cited provision of the Code of Criminal Procedure, whose logical consequence is that so long as the indicia of responsibility remain, pretrial detention is justified without any review of its duration in the light of the conventionally accepted needs. The Commission considers therefore, that the period of more than four years exceeded any criteria of reasonableness.

52. Consequently, from the moment that it began and throughout the more than four years that it lasted, that pretrial detention was arbitrary and, based on the above-cited standards, was a punitive rather than a precautionary measure, in violation both of the right to personal liberty and of the right to be presumed innocent. Therefore, the Commission concludes that the State of Ecuador is responsible for the violation of Articles 7(1), 7(3), 7(5), and 8(2) of the American Convention, taken in conjunction with the obligations established in Articles 1(1) and 2 of that instrument, to the detriment of Ramón Rosendo Carranza Alarcón.

C. The right to a trial within a reasonable time

53. Article 8(1) of the American Convention provides:

> Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

54. One of the elements of a fair trial is that tribunals reach a decision on cases submitted for their consideration within a reasonable time. The fulfillment of that guarantee implies not only that the remedies were decided in accordance with the rules of due process, but also that they were effective and offered due judicial protection from possible violations of human rights.

55. The Commission recalls that the elements that the organs of the inter-American system have considered in determining a reasonable time in the circumstances of each case are (i) the complexity of the matter; (ii) the procedural activity of the interested party; (iii) the conduct of the judicial authorities, and (iv) the general effects on the legal situation of the person involved in the proceeding.[52] The Inter-American Court has found that a prolonged delay may constitute, in itself, a violation of the right to a fair trial,[53] and that, therefore, it is for the State to explain and prove why it has required more time than would be reasonable to deliver final judgment in a specific case.[54]

56. The proceedings in this case began with the order to institute proceedings issued on August 17, 1993, and concluded on December 15, 1998, with the final judgment that convicted Mr. Carranza, against which he did not lodge any appeal. Therefore, in all, the proceeding lasted five years and four months.

57. As to the complexity of the matter, the Commission notes that the case concerned a solitary victim and two accused. Based on the information available, there is nothing to suggest that the investigation

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[52] IACHR, Report No. 111/10, Case 12.539, Merits, Sebastián Claus Furlan and family, Argentina, October 21, 2010, par. 100. I/A Court H.R., *Case of the Massacre of Santo Domingo v. Colombia,* Preliminary Objections, Merits and Reparations, Judgment of November 30, 2012, Series C No. 259, par. 164.

[53] I/A Court H.R., *Case of García Asto and Ramírez Rojas v. Peru,* Judgment of November 25, 2005, Series C No. 137, par. 166; *Case of Gómez Palomino v. Peru,* Judgment of November 22, 2005, Series C No. 136, par. 85; *Case of the Moiwana Community v. Suriname,* Judgment of June 15, 2005, Series C No. 124, par. 160.

[54] I/A Court H.R., *Case of Ricardo Canese v. Paraguay,* Judgment of August 31, 2004, Series C No. 111, par. 142.

was especially complex, such as to justify the length of time that the proceeding lasted. Moreover, the Ecuadorian State did not advance any specific arguments as to the complexity of the matter or how any such complexities related to the actual delays in the proceeding.

58. Regarding the conduct of the judicial authorities, the Commission finds that the progress of the proceeding was hampered by significant delays. For example, when February 23, 1995, by which time Mr. Carranza was already in custody, the judge ordered his transfer to present his testimony in response to questioning, which only occurred on August 25. In addition, for the space of one year from September 11, 1995, when Mr. Carranza presented a brief, to September 13, 1996, the preliminary proceeding was closed while the case was referred to the prosecutor for an opinion. The Commission also notes that an additional period of a year and nine months elapsed between the issuance of the opinion in March 1997 and the public hearing in December 1998. The State did not justify those delays.

59. Finally, concerning the activity of the person on trial, the Commission observes that while it is true that Mr. Carranza did not appear for trial during the first year of the proceeding, the delays mentioned in the preceding paragraph occurred when he was in custody. Therefore, his initial failure to appear has no bearing on those delays. In this case, the uncertainty of having a criminal trial pending against him aside, the delay had a decisive impact on his right to personal liberty.

60. Based on the foregoing, the Commission concludes that the Ecuadorian State violated the right of Ramón Rosendo Carranza Alarcón to a trial within a reasonable time recognized at Article 8(1) of the American Convention, taken in conjunction with Article 1(1) of the same instrument.

VI. CONCLUSIONS

61. Based on the considerations of fact and law set out above, the Commission concludes that the State of Ecuador is responsible for violation of the rights to personal liberty, a fair trial, and judicial protection recognized in Articles 7(1), 7(3), 7(5), 8(1) and 8(2) of the American Convention, taken in conjunction with the obligations established in Articles 1(1) and 2 of that instrument, to the detriment of Ramón Rosendo Carranza Alarcón.

VII. RECOMMENDATIONS

62. Based on the foregoing conclusions,

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

1. Make comprehensive reparation to Mr. Ramón Rosendo Carranza Alarcón through measures that include material and nonpecuniary damages to the victim for the injuries caused by the violations established in this report.

2. Adopt the necessary measures to ensure that both the applicable norms and the respective practices in relation to pretrial detention are compatible with the standards established in this report.

Done and signed in Buenos Aires, Argentina, on the 23rd day of the month of May, 2017. (Signed): Francisco José Eguiguren, President; Margarette May Macaulay, First Vice-President; Esmeralda E. Arosemena Bernal de Troitiño, Second Vice-President; José de Jesus Orozco Henríquez, Paulo Vannuchi, James L. Cavallaro, and Luis Ernesto Vargas Silva, Commissioners.