ORGANIZATION OF AMERICAN STATES
Inter-American Commission on Human Rights

Application to the Inter-American Court of Human Rights
In the case of Juan Carlos Chaparro and Freddy Hernán Lapo,
(Case 12.091)
against the Republic of Ecuador

DELEGATES:

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APPLICATION FILED BY THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS WITH THE INTER-AMERICAN COURT OF HUMAN RIGHTS AGAINST THE REPUBLIC OF ECUADOR

CASE 12.091
JUAN CARLOS CHAPARRO AND FREDDY HERNÁN LAPO

I. INTRODUCTION

1. The Inter-American Commission on Human Rights (hereafter "the Inter-American Commission", "the Commission", or "the IACHR") submits this application to the Inter-American Court on Human Rights (hereafter "the Inter-American Court" or "the Court") in respect of case 12.091, Juan Carlos Chaparro Alvarez and Hernán Lapo Iñiguez (hereafter "the victims" or "the injured party") against the Republic of Ecuador (hereafter "the State", "the Ecuadorian State", or "Ecuador") for its international responsibility arising from the arbitrary arrest of the victims, on November 15, 1997 in Guayaquil, and subsequent violations they suffered during proceedings against them, which resulted in pecuniary and non-pecuniary damages to both persons.

2. At the time of the events that gave rise to this application, Mr. Juan Carlos Chaparro was the owner of the "Aislantes Plumavit Compañía Limitada" factory (hereafter the "Plumavit factory"), which made Styrofoam packaging for the transport and export of various products, and Mr. Hernán Lapo was the manager of that factory. In the course of what was known as "Operation Rivera", officers of the antinarcotics squad of Guayas seized a shipment of fish, comprising 144 cardboard crates, from the seafood company "Mariscos Oceana Maror" on November 14 1997 at Simon Bolivar Airport in the city of Guayaquil. The boxes were located on the property of the AECA airline company, awaiting shipment to Miami. In those boxes were found thermally insulated Styrofoam containers with drugs (cocaine and heroin chlorhydrate). Because the Plumavit factory made Styrofoam containers, Mr. Juan Carlos Chaparro was suspected of belonging to an international crime syndicate of cocaine traffickers operating in Ecuador, on which grounds the 12th Criminal Judge of Guayas ordered a search of the Plumavit factory and the arrest of its owner, for investigation. Mr. Hernán Lapo was arrested, together with other employees of the Plumavit factory, during the search.

3. Although expert analyses concluded that the Styrofoam containers seized could not have been made in the Plumavit factory, and that there was no evidence at all to incriminate Mr. Chaparro and Mr. Lapo for drug trafficking, the victims were held in provisional detention for more than a year, pursuant to Article 116 of the Narcotic and Psychotropic Substances Act. That Article was ruled unconstitutional 16 days after the preventive arrest order was issued. Messrs. Chaparro and Lapo filed appeals to review the basis for their detention, but these were ineffective. The Plumavit factory was confiscated on November 15, 1997, after the search, and although no drugs were found it was restored to its owner, pursuant to the Narcotics and Psychotropic Substances Act, only after his acquittal, nearly 5 years after it was confiscated.

4. The Inter-American Commission requests the Court to determine the international responsibility of the State of Ecuador for violation of Articles 5 (right to humane treatment), 7 (right to personal liberty), 8 (right to a fair trial), 21 (right to property) and 25 (right to judicial protection) of the American Convention on Human Rights (hereafter the American Convention or the Convention), in connection with Article 1.1 (obligation to respect rights) of that treaty. In addition, the Commission requests the Court to declare that the State failed to comply with Article 2 of the Convention, to the detriment of Mr. Lapo.

5. The present case has been processed in accordance with the provisions of the American Convention, and is submitted to the Court pursuant to Article 33 of the Court's Rules of Procedure. Attached to this application, as an appendix, is a copy of report 6/06[1] prepared in observance of Article 50 of the Convention. The Commission adopted that report on February 28, 2006 and transmitted it to the State on March 23 of that year, giving it two months to present information on adoption of the recommendations contained therein.

6. Those two months elapsed without any information from the State, and on June 16, 2006 the Commission decided to submit the case to the Court, pursuant to Article 51.1 of the Convention and Article 44 of the Commission's Rules of Procedure. The submission to the Court is based on the need for a thorough investigation in order to determine the truth and to provide justice and reparations for the violations perpetrated against the victims. In addition, the Commission considers that the case is symptomatic of the problem of human rights violations in the administration of justice in Ecuador, a situation that the Commission has highlighted in its general reports since the late 1990s.[2]

II. PURPOSE OF THE APPLICATION

7. The purpose of this application is to request the Court to conclude and declare that the State of Ecuador has violated the victims' rights to humane treatment and personal freedom, to a fair trial, to judicial protection, and to property, in relation to the obligation of the State to respect the rights of the Convention, and in the case of Mr. Lapo, its obligation to adopt such legislative or other measures as may be necessary to give effect to those rights and freedoms.

8. Consequently, the Inter-American Commission requests the Court to order the State:

a. To conduct a thorough, impartial, effective and prompt investigation of the facts in order to identify and prosecute all persons responsible for the violations cited in this case.

b. To acknowledge publicly the international responsibility of the State with respect to the facts of the case and the injury to the victims.

c. To take all steps necessary within its domestic legislation to amend the law on habeas corpus (Article 28 of the Constitution) so that judges and not mayors shall decide the legality of an arrest, and take immediate steps to give effect to that amendment.

d. To take all measures necessary for appropriate reparations or mitigation of the damage caused the victims, including non-pecuniary as well as pecuniary aspects.

e. To pay the costs and legal expenses incurred by the victims in the pursuit of this case within the domestic system and those arising from its processing in the Inter-American system; and

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[1] Appendix 1, IACHR, Report 6/06, Case 12.091, Juan Carlos Chaparro and Freddy Hernán Lapo, Merits, Ecuador, February 28, 2006.

[2] Report on the Human Rights Situation in Ecuador, OEA/Ser.L/V/II.96/Doc.10 rev.1, 24 April 1997; Annual Report of the Inter-American Commission on Human Rights 1998, Chapter V, OEA/Ser.L/V/II.102,Doc.6 rev., 16 April 1999, among others, at: www.cidh.oas.org.

f. To take all legal, administrative and other measures necessary to prevent the occurrence of similar events in the future, in compliance with the duties of prevention and guarantee of the fundamental rights recognized by the American Convention.

III. REPRESENTATION

9. Pursuant to Article 22 and 33 of the Court's Rules of Procedure, the Commission has designated Commissioner Evelio Fernández Arévalos and Santiago A. Canton, the Commission's Executive Secretary, as its delegates in this case. The lawyers Ariel E. Dulitzky, Mario López Garelli, Víctor H. Madrigal Borloz and Lilly Ching Soto, specialists with the Executive Secretariat of the IACHR, have been designated as legal advisers.

IV. JURISDICTION OF THE COURT

10. The Court has jurisdiction to hear this case. The State ratified the American Convention on Human Rights on December 28, 1997. By Article 62.3 of the Convention, the Inter-American Court is competent to hear any case concerning the interpretation and application of the provisions of the Convention that are submitted to it, provided that the states parties to the case recognize or have recognized such jurisdiction. Ecuador accepted the contentious jurisdiction of the Court, pursuant to Article 62 of the Convention, on July 24, 1984. That recognition was accompanied by the following declaration, pursuant to Article 62.2 of the Convention:

11. In accordance with paragraph 1 of Article 62 of the Convention, the Government of Ecuador declares that it recognizes as binding, ipso facto, and not requiring special agreement, the jurisdiction of the Inter-American Court of Human Rights on all matters relating to the interpretation or application of the Convention. This recognition of jurisdiction is made for an indefinite period and under the condition of reciprocity. The Ecuadorian State reserves the right to withdraw its recognition of such jurisdiction when it sees fit.

12. The claims now presented to the Court refer to the facts surrounding the arrest, detention, processing and seizure of property of Messrs. Chaparro and Lapo, all of which occurred after the State's ratification of the Convention.

V. PROCEEDINGS BEFORE THE INTER-AMERICAN COMMISSION

A. Prior to the decision on admissibility

1. Petition of Mr. Juan Carlos Chaparro Alvarez

13. The Commission received the complaint presented by Mr. Juan Carlos Chaparro on September 8, 1998, and on January 15, 1999 it received additional information from his son. The following January 26, the Commission remitted the petition under case number 12.091 to the State, and requested it to respond within 90 days. On March 24, 1999 the Commission received the State's response, in which it argued that the petitioner had not exhausted domestic remedies, and that criminal case 370-97 was still pending decision by the 12th Criminal Judge of Guayas. The State's response was sent to the petitioners on April 16, 1999, with the request that they present their observations within 30 days.

14. On June 10, 1999, the Commission received the observations of Mr. Chaparro, which were sent to the State on August 24, 1999. On March 26, 2000, Mr. Oswaldo Zavala-Giler requested information on the status of the petition. On July 9, 2002 Mr. Chaparro advise the Commission that he had engaged the services of Mr. Xavier Zavala Egas, who was authorized to

delegate his powers to other persons of his confidence, to continue processing the case before the Commission.[3]

15. On August 19, 2002, Mr. Zavala-Giler filed an updated petition and a response was presented to the observations formulated by the State. On September 11, 2002 this additional information was submitted to the State with the request that any further information be presented within 30 days. The Commission received additional information from Mr. Chaparro dated September 26, 2002, which was transmitted to the State for its observations. On October 2, 2002 the Commission transmitted to the State additional information provided by the petitioner, and gave it 60 days to send all the reports on the matter to the Commission. The State did not present the requested observations within the time period indicated.

16. On June 23, 2003, Mr. Chaparro requested a hearing on the admissibility of the case. The Commission decided not to hold such a hearing, due to its work load and the large number of hearings scheduled for that session.

2. Petition of Mr. Freddy Hernán Lapo Iñiguez

17. The Commission received the complaint of Mr. Freddy Hernán Lapo on April 14, 1999. He named as his lawyer Mr. Edgar Freddy Espinoza and Mr. Juan Ferruloa to handle his case before the Commission. The Commission recorded the complaint under petition P-172/99.

18. On March 22 and on May 24, 2002, the Commission received additional information from Mr. Lapo, and on June 7 it transmitted this to the State and requested a response within two months. On October 2, 2002, the Commission received the State's response, in which it noted that judicial proceedings against Mr. Lapo had been conducted with full guarantees and had provided a fair trial, and that moreover the case against the petitioner was dismissed for lack of evidence that he had participated in the crimes being investigated. The State considered that, by virtue of the "fourth instance" formula, the Commission was not competent to review the decisions of national courts. Moreover, it denied any violations of the rights enshrined in the Convention.

19. The State's response was sent to Mr. Lapo on October 17, 2002, and he was asked to present his observations within 30 days. On November 25, 2002 the Commission received Mr. Lapo's observations. Those observations were remitted to the State on November 27.

B. Decision on admissibility and subsequent processing

20. The Commission considered the petitions concerning Messrs. Juan Carlos Chaparro and Freddy Hernán Lapo during its 118th regular session in October 2003. At that time, the Commission decided the following in its Admissibility Report 77/03:[4]

> 1. To join the two petitions, P12.091 and P172/99, in the same case, because they relate to the same facts, and to process them together.

[3] As of May 7, 2003, communications on behalf of Mr. Chaparro have been sent by Mr. Xavier A. Flores Aguirre, of the law firm Zavala Baquerizo, Zavala, Carmigniani, Illingworth and Vidal. On November 7, 2003 Mr. Chaparro confirmed his appointment of Messrs. Xavier Flores and Pablo Cevallos as his representatives in proceedings before the inter-American system, and canceled the powers granted to Mr. Zavala.

[4] Appendix 2, IACHR, Report 77/03, Case 12.091, Juan Carlos Chaparro Alvarez and Freddy Hernán Lapo Iñiguez, Admisibilidad, Ecuador, 22 October 2003. Also in: Annual Report of the Inter-American Commission on Human Rights 2003, OEA/Ser.L/V/II.118, Doc. 70 rev.2 of 29 de December 2003 (www.cidh.oas.org).

2. To declare this case admissible as regards Article 5, 7, 8, 21 and 25 of the American Convention read in conjunction with Article 1(1) as regards Mr. Chaparro, the first petitioner.

3. To declare this case admissible as regards Article 7, 8 and 25 of the American Convention read in conjunction with Article 1(1) as regards Mr. Lapo, the second petitioner.

4. To transmit this report to the two petitioners and to the State.

5. To continue with the analysis of the merits in this case.

6. To publish this report and to include it in its Annual Report to the OAS General Assembly.

21. Consistent with Article 38.1 of the IACHR Rules of Procedure, on October 29, 2003 the Commission sent report 77/03 to the State and to the petitioners, giving them two months to present any additional observations on the merits. Mr. Freddy Lapo sent his observations on December 8, 2003, indicating that he was prepared to initiate friendly settlement procedures pursuant to Article 48.1.f of the American Convention. Mr. Juan Carlos Chaparro submitted his observations on December 29, 2003, and asked the Commission to continue its analysis of the merits.

22. The Commission repeated its request to the State to present its observations on January 22, 2004, and again on February 5 of that year, the date on which the petitioners' observations were sent. In July 2004 negotiations began between the State and Mr. Chaparro to reach a friendly settlement. On July 22, 2004, Mr. Chaparro sent the State a friendly settlement proposal.

23. During its 122nd regular session, the Commission held a hearing in which it placed itself at the disposal of the parties to reach a friendly settlement. However, during the hearing, which was held on March 4, 2005, Mr. Chaparro asked the Commission to continue its analysis of the merits, because it had been impossible to reach an agreement on compensation.

24. On March 22, 2005, the State presented its response on the merits, a response that had been requested on October 29, 2003, January 22, 2004, and February 5, 2004.

25. On February 28, 2006, during its 124th session, the Commission approved the merits report 6/06, pursuant to Article 50 of the American Convention. In that report, the Commission concluded that the State of Ecuador is responsible for violating the rights of Messrs. Chaparro and Lapo with respect to humane treatment (Article 5), personal liberty (Article 7), a fair trial (Article 8), property (Article 21), and judicial protection(Article 25), in concordance with the general obligation to respect and guarantee rights, under Article 1.1 of the Convention. In addition, with respect to Mr. Lapo, the Commission determined that the State failed to comply with Article 2 of the Convention, on the duty to adopt internal legal provisions.

26. In its report 6/06, the Commission made the following recommendations to the State:

1. Proceed with full a reparation, which means granting compensation consistent with international standards to Messrs. Chaparro and Lapo for the pecuniary damage and economic harm they suffered.

2. Pay the costs of any psychological treatment received by the petitioners as a result of their arbitrary detention.

3 Delete the police file on Mr. Lapo, and any criminal records that might exist against the petitioners.

4. Conclude the pending judicial proceedings.

5. Order an investigation to determine the persons responsible for the violations that the Commission has found, and to prosecute them.

6. Take the steps necessary to reform domestic legislation on habeas corpus, in the terms set forth in this report, and take the necessary measures for its immediate enforcement.

27. The merits report was transmitted to the State on March 23, 2006, giving it two months to adopt the recommendations contained therein. On March 23 and on June 8, 2006, pursuant to Article 43.3 of its Rules of Procedure, the Commission notified the petitioners that it had adopted the merits report and transmitted it to the State, and asked them to explain their position with respect to submitting the case to the Inter-American Court.

28. On April 24 and on June 14, 2006, respectively, the victims presented their considerations. Among other things, they asked the Commission to refer the case to the Inter-American Court, because they considered this the only means of obtaining justice for the serious violations of their human rights.

29. At the end of the time period granted to Ecuador, the State had presented no observations. On June 16, 2006 the Commission decided, pursuant to Articles 51.1 of the Convention and 44 of its Rules of Procedure, to refer this case to the jurisdiction of the Inter-American Court.

VI. CONSIDERATIONS OF FACT

A. The deprivation of liberty of Messrs. Chaparro and Lapo

30. Upon the seizure of cocaine and heroin or Styrofoam coolers of the company Mariscos Oceana Maror on November 14, 1997 at the international airport of Guayaquil, during "Operation Rivera", the Chief Provincial Narcotics Officer of Guayas on that same day requested the 12th Criminal Judge of Guayas to issue arrest warrants for several persons, including Mr. Juan Carlos Chaparro. The Chief Narcotics Officer also requested a search of the Plumavit factory.[5]

31. On November 15, 1997 Mr. Juan Carlos Chaparro, a Chilean national, was arrested at his home in Guayaquil by the narcotics police of Guayas for investigation[6], in the presence of the

[5] See *Parte Informativa* presented to the Chief Provincial Narcotics Officer of Guayas on November 14, 1997, Annex 1.

[6] Article 172 of the Code of Criminal Procedure of Ecuador, in force at the time of the events, authorized provisional arrest in the following terms:

> *Before criminal action begins, the competent judge may order the arrest of a person, on the basis either of personal knowledge or of verbal or written reports from agents of the national police or the judicial police or any other person*.

12th Criminal Judge of Guayas.[7] When he was arrested he was shown no arrest warrant[8] nor was he advised of the grounds for his arrest, or of his right to consular assistance.[9] Once he was arrested, Mr. Chaparro was taken to the National Police headquarters.[10]

32. On November 15, the Plumavit factory, belonging to Mr. Chaparro, was searched by members of the National Police and the National Council on Narcotics and Psychotropic Substances (hereafter CONSEP), who did not exhibit the corresponding search warrant. The Plumavit factory and everything in it, including a Subaru automobile with license plate GDK-410 belonging to the factory's production manager, Mr. Freddy Lapo, were seized at that time and remained in police custody.[11] During the search, several employees of the company were also arrested, including Mr. Lapo, who was taken to the Headquarters of the National Police, where he was held incommunicado for three days until he gave a statement in the presence of a prosecutor and a public defender, officially appointed on November 19, 1997.[12]

33. Mr. Chaparro was held incommunicado in the Headquarters of the National Police for three days after his arrest. During that time, he was interrogated in the offices of the police and subsequently gave a statement on November 19, 1997, i.e. 3 days after his arrest, in the presence of a family friend who was visiting him and who was a lawyer, but who, on express instructions from the police, was not allowed to advise him during the interrogation.[13] At the time of his statement, Mr. Chaparro was orally informed by the police that he had been linked to a drug trafficking case, known as "Operation Rivera", as the alleged supplier of Styrofoam boxes in which, in the guise of fish for export, smaller plastic boxes filled with drugs were found.

34. After giving this first statement to the police, Messrs. Chaparro and Lapo remained under detention in the Headquarters of the National Police.

35. On November 24, 1997, at the insistence of Mr. Chaparro, the national investigations division of the provincial narcotics office of Guayas requested the Mechanical Engineering Faculty of the Escuela Superior Politécnica del Litoral (ESPOL) to perform an expert examination to determine whether the Styrofoam containers in which the drugs had been found could have been manufactured by the Plumavit company.[14] On that same day, the Chief Provincial

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[7] On November 14, 1997, the 12th Criminal Judge of Guayas ordered the arrest of Mr. Juan Carlos Chaparro and the search of the Plumavit factory, on the basis of a report submitted to the Chief Provincial Narcotics Officer of Guayas on November 14, 1997. Annex 2.

[8] Arrest warrant issued by the 12th Criminal Judge of Guayas on November 14, 1997, against Juan Carlos Chaparro. Annex 3.

[9] See Letter of Mrs. Maria Isabel Pavisic Soler, Honorary Consul of Chile in Guayaquil Ecuador, to Mrs. Cecelia Aguirre Chaparro, of March 5, 1998, advising that the Consulate General was aware, from various news reports, of the arrest of the Chilean citizen Juan Carlos Chaparro. Annex 4.

[10] See *Parte informativo* presented to the Chief Provincial Narcotics Officer of Guayas on November 151997, reporting on the outcome of the search and arrest of the Chilean citizen Juan Carlos Chaparro. Annex 5.

[11] See *Parte de Detención* (Arrest Report) presented to the Chief Provincial Narcotics Officer of Guayas on November 15, 1997 on the search conducted at the Plumavit factory on November 15, 1997 at 1 p.m. Annex 6

[12] See declaration of Freddy Hernán Lapo given in Guayaquil on Wednesday, November 19, 1997, in the presence of prosecutor Jorge Solórzano F., *Agente Fiscal 2do de Tránsito* of Guayas, lawyer Marlene Mazzani de Murillo, Public Defender of the Superior Court, and Lieutenant Ramiro Ortega Curipallo, Official Investigator. Annex 7

[13] See statement of Juan Carlos Chaparro, given in Guayaquil on November 19, 1997 in the presence of the prosecutor Gladis Murillo Gil, *Fiscal 5to de lo Penal* of Guayas, the Private Defender, Dr. Ramón Jiménez Carbo and the official investigator, Gonzálo G. Guevara Guerrero. Annex 8.

[14] See *Oficio* No. 3597 – JPAG – 97, addressed to Eduardo Rivadeneira, Dean of the Mechanical Engineering Faculty of ESPOL, from Police Colonel Luis Martínez Castillo, Provincial Chief of INTERPOL of Guayas, on November 24, 1997. Annex 9.

Narcotics Officer of Guayas sent to the 12th Criminal Judge of Guayas a preliminary report on the "persons arrested for investigation" during Operation Rivera, indicating that "the initial investigations lead to the conclusion that there is no compelling evidence"[15] of Mr. Chaparro's involvement in illegal drug trafficking.

36. On December 8, 1997, the 12th Criminal Judge of Guayas ordered the initiation of proceedings against the persons arrested in "Operation Rivera", and the preventive imprisonment of Messrs. Juan Carlos Chaparro and Hernán Lapo, on the grounds that, in her judgment, the requirements of Article 177 of the Code of Criminal Procedure[16] were fulfilled, and she ordered the "deposit" of all property seized during Operation Rivera in CONSEP, including the items found at the Plumavit factory, and the vehicle belonging to Mr. Lapo, because, according to the police report, all the goods seized had been identified.[17]

B. Proceedings against Messrs. Chaparro and Lapo

37. Before receiving the results of the expert analysis requested on November 24, 1997, the judge in charge of the case issued a preventive arrest warrant against Mr. Chaparro and Mr. Lapo on December 8, 1997, on charges of drug trafficking[18]. On that same day, the defendants were taken to the Social Rehabilitation Center for Men in Guayaquil.

38. The report of the expert analysis of December 8, 1997 was sent by the Chief of the Narcotics Office of Guayas to the 12th Criminal Judge of Guayas on December 10, 1997. That report found that the Styrofoam boxes in which the drug had been found were made from different molds, with a different technique, and to different dimensions than those produced by the Plumavit factory.[19]

39. On January 5, 1998 the Plumavit factory was inspected[20], under criminal case 370-97, and three new expert reports were produced showing that it was impossible for the boxes seized with the drug to have been manufactured with the molds used in that factory.[21] Before these inspections were conducted, the 12th Criminal Judge had granted authority for the boxes deposited in CONSEP as criminal evidence to be taken to the Plumavit factory for comparison with the molds used in the factory.[22]

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[15] See *Oficio* No. 3543-JPAG-97 of 24 November 1997. Annex 10.

[16] Article 177 of the Code of Criminal Procedure allowed the judge to order preventive imprisonment, at his discretion, in the following circumstances: 1. Indications that a crime has been committed that would merit deprivation of liberty; and 2. Indications that the suspect is the author or an accomplice of the crime being investigated.

[17] See *Auto cabeza del proceso de 8 December 1997, en la causa penal No. 370-97 por Tráfico de Drogas ante el Juzgado Duodécimo de lo Penal del Guayas*. (Order initiating proceedings) Annex 11.

[18] *Idem.*

[19] See document DEC-FIMCP-560-97 of 8 December 1997 signed by Ing. Eduardo Rivadeneira and addressed to Coronel Luis Martínez Castillo, Jefe Provincial de Antinarcóticos del Guayas. Annex 12.

[20] See Oficio Nº 4719-370-97 of the Juzgado Duodécimo de lo Penal del Guayas of 2 January 1998 addressed to the Jefe de la Policía Judicial del Guayas. Annex 13.

[21] See letter addressed to the Jueza Décimosegundo de lo Penal del Guayas of 7 January 1998, signed by Ricardo Delfíni Mechelli, in reference to Juicio No. 370 -97, Annex 14. Expert report signed by Daniel Burgos in Juicio Penal 370-97, Annex 15. Expert report on Styrofoam boxes in Juicio Penal 370-97, signed by Rodrigo Cevallos Salvador, Annex 16

[22] See Oficio Nº 4719-370-97 of the Juzgado Duodécimo de lo Penal del Guayas of 2 January 1998 addressed to the Jefe de la Policía Judicial del Guayas. Annex 13

40. Although four expert inspections were conducted in criminal case 370/97, on January 7, 1998 at 6:30 p.m. the 12th Criminal Judge of Guayas ordered an ion scanner test to be conducted at 10 a.m. on the following day at the premises of the Plumavit factory. The parties involved were unable to be present during this test, because they were notified of it only at 9 a.m. on January 8.[23]

41. The fifth inspection (with the ion scanner) found that there was "a positive reaction to the presence of cocaine in machine number 5 located in the Plumavit factory".[24] Although the two experts sworn in by the 12th Criminal Judge asked for five days to present their reports, the reports were never submitted. Instead, the Head of the Drug Enforcement Administration, DEA, wrote to the 12th Criminal Judge of Guayas on December 9, 1998, declaring that the two court-appointed experts and another person,

42. after many tests with the electrochemical equipment in the warehouse and the office area, chemist David Morello found a positive reaction to the presence of cocaine in machine number 5 (Styrofoam molding machine) located in the firm's warehouse. The electrochemical equipment indicated that the cocaine had been in the Styrofoam molding machine or near it.[25]

43. Subsequently, this expert report was dismissed on December 23, 1998 by a ruling of the Attorney General's Office, which found it to betray many irregularities including the "rushed" notification of the inspection to the interested parties, and the failure of the two court-appointed experts to submit their reports to the tribunal.[26] As well, the Fourth Criminal Chamber, in its provisional acquittal of Mr. Chaparro issued on October 30, 2001, declared that this report could not be admitted as evidence because due process had not been observed.[27]

44. On May 25, 1999 the Eighth Criminal Judge of Guayas opened plenary proceedings against Mr. Juan Carlos Chaparro, on the grounds that there was evidence of a crime, as defined by law, and of a causal relationship of responsibility with the defendants. In that same ruling, the Eighth Criminal Judge of Guayas ordered provisional dismissal of proceedings against Freddy Lapo[28] because there was insufficient evidence of his participation in the crime[29]. Mr. Lapo remained in preventive imprisonment for one year, five months and 17 days in the Social Rehabilitation Center for Men in Guayaquil.

45. Mr. Chaparro was released on August 22, 1999, after having been held in preventive imprisonment for one year, six months and 11 days in the Social Rehabilitation Center of

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[23] See order of the Jueza Duodécima del Guayas to perform the ION-SCANNER test on 8 January 1998 at 10:00 in Juicio 370-97, issued 7 January 1998 at 18:30, and notified 8 January 1998. Annex 17

[24] See expert report on the ION-SCAN test in case 370-97 of 8 January 1998 signed by the Juez Décimo Segundo de lo Penal del Guayas, Dra. Guadalupe Manrique Rossi. Annex 18

[25] See letter sent by Victor Cortez, Jefe de la D.E.A. in Guayaquil to the Jueza Décimo Noveno de lo Penal del Guayas, Dra. Guadalupe Manrique, on 9 December 1998. Annex 19

[26] See *Dictamen del Ministerio Público* of 23 December 1998 in Juicio 370-97, bringing charges against certain persons arrested in "Operación Rivera" and abstaining from accusing Mr Chaparro, Annex 20

[27] See *Sentencia revocatoria* (Revocation order) of the Cuarta Sala de la Corte Superior de Justicia of the order opening proceedings issued by the lower court in Juicio 370-97, of 30 October 2001. Annex 21

[28] According to Article 249 of the Code of Criminal Procedure then in effect: "Provisional dismissal of the case suspends proceedings for five years; provisional dismissal of the defendant suspends proceedings for three years. These time limits shall run from the date of the respective order of dismissal. Within those time limits new evidence relating to the crime and to the guilt or innocence of the defendant may be submitted."

[29] See: Juzgado Duodécimo de lo Penal del Guayas, order opening plenary proceedings against Mr. Chaparro and provisional acquittal of Mr. Lapo in Juicio 370-97, of 25 May 1999. Annex 22

Guayaquil, under Article 24 (8) of the national Constitution, which came into force on August 11, 1998, and which imposed a series of limitations on the length of preventive imprisonment. Article 24 (8) provides as follows:

> Preventive custody shall not exceed six months in actions for crimes penalized with detention (*prisión*), or one year in actions for crimes penalized with imprisonment (*reclusión*). Should these terms not be observed, the order of preventive custody shall no longer be effective, under responsibility of the judge trying the case. In all cases, and without exception, once an order of dismissal or acquittal has been issued, the prisoner shall be released immediately, without prejudice to any pending consultation or appeal.

46. On October 30, 2001, the Fourth Chamber of the Superior Court of Justice ordered provisional dismissal of proceedings and of the defendant,[30] Mr. Chaparro, for lack of sufficient evidence of his involvement in the crime of drug trafficking.[31] The Fourth Chamber held that the ion scanner test conducted on January 8, 1998 could not be admitted as evidence because of lack of due process, recognizing that some days previously the experts who tested the Styrofoam box-producing machines and molds had manipulated the boxes provided by CONSEP in which the drug was found to see if they would fit the Plumavit machines, which would explain why the traces of cocaine found in those boxes had contaminated the machinery or had fallen near the Styrofoam molding machine, as noted in the ion scan report.[32] That same ruling ordered definitive dismissal of Mr. Lapo.

47. Finally, on February 23, 2006, the charges against Juan Carlos Chaparro were definitively dismissed, and the case against Juan Carlos Chaparro and Freddy Hernán Lapo was closed, thereby confirming their acquittal.[33]

C. The remedies pursued by the victims

48. Messrs. Chaparro and Lapo were deprived of their liberty as a result of application of Article 116 of the Narcotics Act,[34] which was declared unconstitutional by Resolution 119-1-97 of December 24, 1997 of the Constitutional Tribunal, because, in presuming the guilt of the defendant, it violated the constitutional principle of the presumption of innocence.[35]

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[30] According to Article 249 of the Code of Criminal Procedure then in effect: "Provisional dismissal of the case suspends proceedings for five years; provisional dismissal of the defendant suspends proceedings for three years. These time limits shall run from the date of the respective order of dismissal. Within those time limits new evidence relating to the crime and to the guilt or innocence of the defendant may be submitted."

[31] See Article 242 of the Code of Criminal Procedure: "If the judge considers that the existence of the crime has not been sufficiently demonstrated, or if, having been demonstrated, the guilty parties have not been identified, or if there is insufficient evidence of the defendant's participation, the judge shall order provisional dismissal of the case and of the defendant, and shall prohibit further prosecution of the case for the time being."

[32] *Sentencia revocatoria* (Revocation order) of the Cuarta Sala de la Corte Superior de Justicia of the order opening proceedings issued by the lower court in Juicio 370-97, of 30 October 2001. Annex 21.

[33] Judgment of the Juzgado Duodécimo de lo Penal del Guayas of 23 February 2006. Annex 23.

[34] Article 116 of the Narcotics Act: "The police report and the pre-trial statement given by the defendant in the presence of the prosecutor shall constitute a serious presumption of guilt, provided the existence of the crime has been demonstrated." (This Article was declared unconstitutional by the Constitutional Tribunal of Ecuador on December 24, 1997).

[35] See *Registro Oficial del Órgano del Gobierno del Ecuador*, Quito, Wednesday 24 December 1997, Resolución Nº 119-1-97 of the Tribunal Constitucional, page 3. Annex 24.

49. Mr. Juan Carlos Chaparro filed an appeal for habeas corpus[36] on May 20, 1998 before the Superior Court of Justice of Guayaquil, but this was rejected as out of order on May 21, 1998: the court held that it was not necessary to examine the preventive arrest warrant because to issue it fell within the legitimate discretion of the judge.[37]

50. Mr. Freddy Lapo applied for revocation of the preventive arrest warrant issued against him on December 26, 1997 before the 12th Criminal Judge of Guayas. He based his application, in part, on the police report of November 24, 1997, which cited the conclusion that there was no compelling evidence against those arrested during "Operation Rivera", and the fact that no drugs had been found in the factory or in his possession[38]. However, this application was rejected on January 12, 1998 by the 12th Criminal Judge of Guayas.[39]

51. Subsequently, Mr. Lapo filed an appeal for habeas corpus on April 13, 1998 before the Superior Court of Justice of Guayaquil[40], which was rejected by the president of that court on May 14, 1998[41], i.e. 28 days after expiry of the time limit stipulated in Article 458 of the Code of Criminal Procedure for deciding the appeal. The court held that the appeal lacked substance, because the process was being conducted in accordance with the rules of the Code of Criminal Procedure.[42]

52. On September 3, 1998 Mr. Freddy Lapo presented an appeal for habeas corpus[43] to the Mayor, pursuant to Article 28 of the Constitution of Ecuador[44], but this was rejected on September 4, 1998 with the unsubstantiated argument that it was out of order.

D. The return of the confiscated property

53. Pursuant to Article 110 of the Narcotics Act, it is only upon acquittal of the defendant to whom the seized goods belong that those goods may be restored, upon the decision of

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[36] Article 458 of the then-valid Code of Criminal Procedure developed the so-called *amparo de libertad*, stipulated in Article 31 of the Constitution. Article 458 of the Code of Criminal Procedure provided that if the prisoner applies to the competent judge to request his liberty, that judge must immediately order the prisoner to appear before him and, after evaluating the necessary information, must decide the application within 48 hours.

[37] See Corte Superior de Guayaquil, decision on the appeal for *amparo* brought against the Juez Decimo Segundo de lo Penal del Guayas of 21 May 1998. Annex 25.

[38] See letter addressed to the Jueza Duodécimo de lo Penal del Guayas in case 370-97 for drug trafficking against Freddy Hernán Lapo Iñiguez and Segundo Alberto Bermeo Rosado requesting revocation of the preventive arrest warrant issued against them on 26 December 1997. Annex 26.

[39] See Resolution of 12 January 1998 of the Jueza Duodécima de lo Penal del Guayas on the appeal for replication of the preventive arrest warrant filed by Freddy Hernán Lapo Iñiguez and Segundo Alberto Bermeo Rosado on 26 December 1997. Annex 27.

[40] See *Recurso de amparo de libertad* presented to the Presidente de la Corte Superior de Justicia de Guayaquil on 13 April 1998 by Freddy Hernán Lapo Iñiguez in case Nº 370-97. Annex 28.

[41] See Judgment of the Corte Suprema de Guayaquil on the *recurso de amparo* filed by Freddy Hernan Lapo Iñiguez against the Juez Duodécimo de lo Penal del Guayas in case 370-97 of 14 May 1998. Annex 29.

[42] See Presidencia de la Corte Superior de Justicia de Guayaquil, Resolution on the *amparo de libertad* filed by Freddy Hernán Lapo Iñiguez, Guayaquil, 14 May 1998. Annex 29.

[43] See *Recurso de Hábeas Corpus* filed by Freddy Hernán Lapo Iñiguez and Juan Gregorio Cobeña Tomalia before the Mayor of Cantón Santiago of Guayaquil, Ingeniero León Febres Cordero on 3 September 1998. Annex 30.

[44] The Political Constitution of Ecuador provides, in Article 28: "Any person who believes that he has been unlawfully deprived of his liberty may file an appeal for habeas corpus. This right may be exercised by the person himself or by his representative, without the need for a written mandate, before the mayor of the jurisdiction where the person is being held, or before the person representing the mayor. The municipal authority shall immediately order that the appellant be brought before him, and that the arrest warrant be produced."

a judge. In the present case, although the Fourth Chamber of the Superior Court of Justice of Guayaquil ordered provisional dismissal of Mr. Chaparro on October 30, 2001, which ruling was expanded on March 7, 2002 to order the return of the property to Messrs. Chaparro and Lapo[45], such return was not legally effected until June 18, 2002, on which date the Eighth Criminal Judge issued an order to the head of CONSEP to return the Plumavit factory to its owners. The Plumavit factory was actually turned over on October 10, 2002.[46]

54. The properties delivered are detailed in an inventory compiled at the time of the seizure, in which it was noted that some of the machinery was out of order and that certain items were missing, and that the factory had been received in this condition by the lessee of CONSEP, Mr. Chalver Alvarado[47]. The Plumavit factory was leased under a contract signed between the CONSEP and Mr. Alvarado on January 18, 1998, for a term of three years from the date of the contract[48], in violation of Article 12.4 of the Regulations for Application of the Narcotics Act,[49] which provides that the goods seized and deposited with CONSEP may be handed over provisionally to public institutions, following a report from the Executive Secretariat. In no case do the regulations allow these goods to be leased to private parties.

55. At the time of delivery, Mr. Chaparro declared in a notarized affadavit that a great many of the goods detailed in the inventory were missing from the factory at the time of its delivery, including all the documentation and accounts for the business over the previous seven years, which had been stored in the files and in the safe, as well as the portfolio of accounts receivable, totaling approximately $120,000, the entire feedstock, and products in progress and in stocks worth approximately $420,000.[50]

56. At the beginning of December 2002, CONSEP issued a statement of administrative expenses involved in returning the Plumavit factory. It showed a balance of US$10,444.77 in favor of the owner remaining from rental payments for the 45 months during which the factory was leased (from January 28, 1998 to September 16, 2002). The administrative expenses and other claims of CONSEP (6.75% of revenues) amounted to $14,349.04.[51] On July 2003, Mr. Chaparro's lawyers advised him against suing CONSEP for mismanagement, for fear of reprisals.

57. The vehicle belonging to Mr. Lapo, a Subaru with license plate number GDK410, was seized during the search of the Plumavit factory on November 15, 1997. The expansion of the ruling of October 30, 2001, dated March 7, 2002, ordered that any lien on that vehicle be lifted[52], and Mr. Lapo applied to the head of CONSEP on July 30, 2002[53] and on April 20, 2005[54] to have it

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[45] See *Auto* of 7 March 2002 issued by the Cuarta Sala de la Corte Superior de Justicia. Annex 31.

[46] See *Acta de Entrega-Recepción del inmueble Plumavit* – 10 October 2002. Annex 33.

[47] *Idem*.

[48] See leasing contract signed by CONSEP on 18 January 1998, renewed on 1 December 2001. Annex 34.

[49] See *Reglamento para la Aplicación de la Ley sobre Sustancias Estupefacientes y Psicotrópicas* published in the *Registro Oficial* of the Government of Ecuador, in Quito, 7 March 1991. Annex 35.

[50] See *Acta de Diligencia Notarial* issued 10 October 2002, testifying to the fact that many items listed in the CONSEP inventory were missing. Annex 36.

[51] See *Liquidación de gastos de administración del inmueble PLUMAVIT* – Annex 37.

[52] See *Auto* of 7 March 2002 issued by the Cuarta Sala de la Corte Superior de Justicia de Guayaquil. Annex 31.

[53] See application of Freddy Hernán Lapo to the Head of CONSEP, 5 July 2002, received at CONSEP on 30 July 2002. Annex 38.

[54] Application of Freddy Hernán Lapo to the Director of CONSEP, dated 20 April 2005. Annex 39.

returned. Nevertheless, the vehicle has not yet been restored to its owner, despite the fact that no drugs were found in it and there was no reason to seize it.

VII. CONSIDERATIONS OF LAW

A. Violation of the right to personal liberty (Article 7 of the American Convention, in connection with Article 1.1)

58. Article 7 of the American Convention provides that:

> [...]
>
> 2. 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.
>
> 3. No one shall be subject to arbitrary arrest or imprisonment.
> 4. Anyone who is detained shall be informed of the reasons for his detention and shall be promptly notified of the charge or charges against him.
>
> [...]

59. With respect to paragraphs 2 and 3 of Article 7 of the Convention, prohibiting unlawful or arbitrary detention or arrest, the Inter-American Court has held that:

> [a]ccording to the first of these regulatory provisions (Article 7.2 of the Convention), no one shall be deprived of his physical liberty, except for reasons, cases or circumstances specifically established by law (material aspect), but, also, under strict conditions established beforehand by law (formal aspect). In the second provision, we have a condition according to which no one shall be subject to arrest or imprisonment for causes or methods that - although qualified as legal - may be considered incompatible with respect for the fundamental rights of the individual because they are, among other matters, unreasonable, unforeseeable or out of proportion.[55]

60. Similarly, the United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment declares that "arrest, detention or imprisonment shall only be carried out strictly in accordance with the provisions of the law and by competent officials or persons authorized for that purpose", and that "any form of detention or imprisonment and all measures affecting the human rights of a person under any form of detention or imprisonment shall be ordered by, or be subject to the effective control of, a judicial or other authority."[56]

61. The United Nations Human Rights Committee has held that "pretrial detention must not only be legal but also necessary and reasonable, according to the circumstances of the case."[57]

62. The text of the Ecuadorian Constitution as it read at the time the victims were arrested established, in Article 22.19 (h):

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[55] I-A Court. *Acosta Calderón.* Judgment of 24 June 2005. Series C No. 129, para. 57; I-A Court, *Tibi.* Judgment of 7 September 2004. Series C No. 114, para. 98; I-A Court, *Hernános Gómez Paquiyauri.* Judgment of 8 July 2004. Series C No. 110, para. 83.

[56] United Nations, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by the General Assembly in Resolution 43/173 of 9 December 1988, Principles 2 and 4, respectively.

[57] United Nations Human Rights Committee, *Van Alphen versus the Netherlands*, Communication 305/1998 of 23 July 1990.

> No one shall be deprived of his liberty except upon the written order of the competent authority, under the circumstances, for the time and with the formalities prescribed by law, except where taken *in flagrante delicto*, in which case the person may not be held without charges for more than 24 hours. In neither case made a person be kept incommunicado for more than 24 hours.

63. Similarly, Article 22.19 (e) and 22.19 (i) of the Constitution guarantee, respectively, the right of defense for any person at any stage of the process, and the right of any person to be informed immediately of the reasons for his arrest.

64. The 1983 Code of Criminal Procedure of Ecuador, which was valid at the time of the events, provided in Article 172:

> For purposes of investigating the commission of a crime, before criminal proceedings begin,, the competent judge may order the arrest of a person, on the basis either of personal knowledge or of verbal or written reports from agents of the national police or the judicial police or any other person, establishing that a crime has been committed and identifying those presumably responsible.
>
> Such arrest shall be ordered by means of a warrant, which shall contain the following:
>
> 1. the grounds for arrest.
> 2. the place and date of issuance; and
> 3. the signature of the competent judge.
>
> Such warrant shall be delivered to an agent of the national police or the judicial police for execution.

65. In addition, under Ecuadorian law (Article 56 of the code of criminal procedure), a person could be arrested without a court order in case of "serious presumption of guilt". Thus, Article 56 (6) established the following among the functions of the judicial police:

To order and carry out the provisional arrest of persons surprised *in flagrante delicto* or against whom there are serious presumptions of guilt, and bring such persons before the competent investigating judge within 48 hours.

66. Mr. Chaparro was arrested on the basis of a warrant issued by Judge Guadalupe Manrique Rossi on November 14, 1997, as part of an investigation into an international drug trafficking ring, using the authority conveyed by Article 172 of the Code of Criminal Procedure.

67. His arrest was ordered solely for investigative purposes, for there was no evidence that could link him to the proceedings. He was never shown an arrest warrant, nor was he informed of the reasons for his arrest. Nor was he advised of his right to consular assistance, and his right to a technical defense was ignored. Despite domestic legislative provisions, the arrest and subsequent preventive imprisonment of Mr. Chaparro lasted for one year, six months and 11 days.

68. Moreover, because Mr. Chaparro was a Chilean citizen, the State should have informed him of his right to make contact with a Chilean consular office at the time he was arrested, and in any case before he gave his first statement to the authorities[58]. This obligation,

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[58] The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law, Advisory Opinion OC-16/99, October 1, 1999, Inter-Am. Ct. H.R. (Ser. A) No. 16 (1999).

established in the Vienna Convention on Consular Relations[59], which Ecuador ratified by Supreme Decree 2830 R/472 of April 5, 1965, and in the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, was not observed.[60]

69. Mr. Lapo was arrested following a search of the packaging factory where he worked as manager on November 15, 1997, as part of an investigation into an international drug trafficking ring, and under the presumption that the victim might have "information in the sense that the Styrofoam packages used to conceal the drug had been manufactured in that firm".[61]

70. The Commission understands that Mr. Lapo was arrested under the principle of "serious presumption of guilt", for the State has presented no argument or evidence to show that he was arrested *in flagrante delicto*, in which case he could have been detained without a court order.

71. With respect to the arbitrariness of the arrest, the IACHR has previously held that the term "arbitrary" is synonymous with "irregular, abusive, or contrary to law", and that an arrest is arbitrary when it occurs "(a) for reasons or according to procedures other than those prescribed by the law or (b) pursuant to a law the basic purpose of which is incompatible with respect for the individual's right to liberty and security."[62]

72. The doctrine of the Commission holds that the analysis of the compatibility of the deprivation of liberty with the provisions of Article 7(2 and 3) of the American Convention should be done in three phases.

> The first consists of determining the legality of the detention from a material and formal standpoint. To do so, it must be determined whether this action is compatible with the domestic legislation of the State in question. The second step involves the analysis of these domestic provisions within the context of the guarantees established by the American Convention, in order to determine whether they are arbitrary. Finally, if the detention meets the requirements of a domestic legal provision that is compatible with the American Convention, it should be determined whether the application of this law in this specific case was arbitrary.[63]

73. For its part, the United Nations Human Rights Committee has said that the notion of "arbitrariness" must not be equated with "against the law" but be interpreted more broadly to include such elements as inappropriateness and injustice. Furthermore, remand in custody could be

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[59] See Article 36.1 (b) of the Vienna Convention on Consular Relations: "1.With a view to facilitating the exercise of consular functions relating to nationals of the sending State:

> (*b*) if he so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner. Any communication addressed to the consular post by the person arrested, in prison, custody or detention shall be forwarded by the said authorities without delay. The said authorities shall inform the person concerned without delay of his rights under this subparagraph [...]."

[60] Principle 16.2: "If a detained or imprisoned person is a foreigner, he shall also be promptly informed of his right to communicate by appropriate means with a consular post or the diplomatic mission of the State of which he is a national or which is otherwise entitled to receive such communication in accordance with international law or with the representative of the competent international organization, if he is a refugee or is otherwise under the protection of an intergovernmental organization."

[61] See Annex 11.

[62] IACHR, Report 35/96, Caso 10832, *Luis Lizardo Cabrera*, República Dominicana, 7 April 1998, para. 66.

[63] IACHR, Report No. 53/01, Caso 11.565. *Ana, Beatriz y Celia González Pérez*. México, 4 April 2001, para. 23.

considered arbitrary if it is not necessary in the circumstances of the case, for example to prevent flight or interference with evidence.[64]

74. As noted earlier, the Ecuadorian Constitution formally establishes the circumstances required for making an arrest, that is by order of a competent authority, save in the case of *flagrante delicto*. The Constitution provides only one exception to the rules, and that is the case of an individual caught in the act of committing a crime, where a warrant issued by a competent authority is not necessary in order to make an arrest. The Code of Criminal Procedure, however, departs from the Constitution by establishing additional grounds for an arrest without a warrant. The Commission is of the view that the law does not set forth the objective circumstances that would constitute a "serious presumption of guilt," leaving the definition to the discretion of the arresting police officer.[65]

75. Moreover, the Commission considers that this provision also contravenes the Convention since it leaves the decision as to the appropriateness of the arrest to the subjective judgment of the arresting police officer, in violation of the right to presumption of innocence, which may only be waived by a judge in a process that observes all judicial guarantees. The Commission understands that the requirement for a statutory description of a crime set out in the obligation to "establish beforehand" the conditions of arrest, requires that the law establish precisely and in specific detail the reasons for which, and the conditions in which, an arrest may be made. Such a criterion is not satisfied by a vague and general prescription such as "serious presumption of guilt", as established in Ecuadorian legislation.[66]

76. Accordingly, and on the basis of the foregoing elements, the Commission considers that the State violated Article 7.2 and 7.4 of the Convention in connection with Article 1.1 to the detriment of Mr. Chaparro, because the method and procedure followed for his arrest and subsequent treatment (formal aspect) not only contradicts its internal provisions but also violates the right to personal liberty established in the American Convention.

77. The Commission also considers that, because Mr. Lapo was arrested on November 15, 1997 in circumstances that did not justify an exception to the constitutional requirement for a court order, and that he was not informed of the reasons for his arrest or granted the right to technical defense, the State of Ecuador has violated Article 7.3 and 7.4 in relation to Article 1.1 of the Convention, to the detriment of Mr. Lapo.

B. Violation of the right to humane treatment (Article 5 of the American Convention in connection with Article 1.1 thereof)

78. Article 5.1 of the American Convention enshrines the right to humane treatment:

> Every person has the right to have his physical, mental, and moral integrity respected.

79. On the issue of incommunicado detention, the Inter-American Court has held that:

> *Incommunicado* detention is an exceptional measure the purpose of which is to prevent any interference with the investigation of the facts. Such isolation must be limited to the period of time expressly established by law. Even in that case, the State is obliged to ensure that the

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[64] United Nations Human Rights Committee, Communication 560/1993, *A. versus Australia*, 30 April 1997, Section 9.2.

[65] IACHR; Report Nº 66/01, Case 11.992, Daría María Levoyer Jiménez, Ecuador, 14 June 2001, para. 36.

[66] IACHR; report Nº 66/01, Case 11.992, Daría María Levoyer Jiménez, Ecuador, 14 June 2001, para. 36, 37.

> detainee enjoys the minimum and non-derogable guarantees established in the Convention and, specifically, the right to question the lawfulness of the detention and the guarantee of access to effective defense during his incarceration.[67]

80. The Court has also declared that:

> Solitary confinement of the detainee must be exceptional, as it causes him or her moral suffering and psychological disturbances, as it places the detainee in an especially vulnerable situation and increases the risk of aggression and arbitrary treatment in prisons, and because it endangers strict observance of due legal process.[68]

81. Finally, and in light of the Court's jurisprudence, the Commission emphasizes that all persons deprived of their liberty have the right to be held in a situation of detention compatible with their personal dignity, and that solitary or incommunicado confinement constitutes a violation of personal integrity.[69] From the evidence supplied by the parties it is clear that both Mr. Chaparro and Mr. Lapo spent time in solitary confinement, including their provisional detention (23 days) at the police station.

82. In addition to the foregoing, and as the Inter-American Court has established, police stations are unsuitable premises for accommodating prisoners in preventive detention[70], and the State, being responsible for detention centers, must guarantee inmates conditions that respect their rights.[71]

83. By reason of the foregoing, the Commission considers that the solitary confinement of the victims, in violation of the Constitution itself, violates Article 5.1 of the Convention in connection with Article 1.1 thereof.

C. Violation of the right to personal liberty in relation to the presumption of innocence (Article 7.5 and 8.2 of the Convention in relation with Article 1.1)

84. Article 7.5 of the Convention declares that:

> 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.

85. This provision reflects the obligation of the State to reconcile its duty to guarantee the rule of law and the determination of criminal responsibility through the judiciary with the obligation to guarantee the fundamental rights of individuals accused of breaking the law. It is the State's task to strike a balance between the general interest of preventing a crime and of giving

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[67] I-A Court, *Suarez Rosero*, Judgment of 12 November 1997, Series C Nº 35, para. 51.

[68] See I-A Court, *Bámaca Velásquez.* Judgment of 25 November 2000. Series C No. 70; I-A Court, *Cantoral Benavides.* Judgment of 18 August 2000. Series C No. 69 and I-A Court, *Bulacio*, Argentina. Judgment of 18 September 2003, Series C Nº 100, para. 127.

[69] I-A Court, *Tibi.* Judgment of 7 September 2004. Series C No. 114, para. 150.

[70] I-A Court, *Suarez Rosero*, Judgment of 12 November 1997, Series C Nº 35, para. 51. para. 46.

[71] I-A Court, *Bulacio*, Argentina. Judgment of 18 September 2003, Series C Nº 100, para. 126.

victims effective access to justice, and the interest, also general, of ensuring that the guarantees that the law itself provides in favor of those accused of crimes are safeguarded.[72]

86. The Inter-American Court has interpreted Article 7.5 of the Convention to mean that prompt judicial review is a proper means of control for avoiding arbitrary and unlawful arrest:

> ... immediate judicial control [is a] measure that seeks to prevent arbitrary treatment or illegality, taking into account that under the rule of law the judge must guarantee the rights of the detainee, authorize taking precautionary or coercive measures, when strictly necessary, and generally seek a treatment that is consistent with the presumption of innocence in favor of the accused.[73]

87. Both the Inter-American Court and the European Court of Human Rights have accorded special importance to the prompt judicial supervision of detentions. A person deprived of his freedom without judicial supervision must be released or immediately brought before a judge.[74]

88. Moreover, according to Article 173 of the Code of Criminal Procedure valid at the time of the events, detention in such cases was not to exceed 48 hours, at the end of which the prisoner must be released or a preventive arrest warrant issued against him:

> The detention referred to in Article 172 shall not exceed 48 hours, and within that time, if it is found that the detainee was not involved in the crime under investigation, he shall be immediately released. Otherwise, the respective criminal proceedings shall begin and, if appropriate, a preventive arrest warrant shall be issued.

89. Both victims, Mr. Chaparro and Mr. Lapo, were arrested on November 15, 1997 and brought before a prosecutor on November 19, 1997 to give their "pretrial statement", and they appeared before the judge responsible for the case on December 8, 1997, i.e. 23 days after their arrest.

90. The Commission considers it relevant to quote the jurisprudence of the Inter-American Court on this point:

> The fact that a judge is aware of the case or receives the corresponding police report, as the State argued, does not satisfy this guarantee because the detainee must appear personally before the judge or competent authority.[75] In the second place, "a judge or other officer authorized by law to exercise judicial power" must meet the requirements established in the first paragraph of Article 8 of the Convention.[76] In the circumstances of the present case, the Court understands that the prosecutor who took the pretrial statement from Mr. Tibi, pursuant to Article 116 of the Narcotics Act, did not have the attributes of an "officer authorized to exercise judicial power", within the meaning of Article 7.5 of the Convention, because the then-valid Constitution, in its Article 98, specified the bodies that were empowered to

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[72] IACHR; Report Nº 66/01, Case 11.992, Daría María Levoyer Jiménez, Ecuador, 14 June 2001, para. 36, para. 43.

[73] I-A Court, *Tibi.* Judgment of 7 September 2004. Series C No. 114, para. 114; I-A Court, *Hernános Gómez Paquiyauri.* Judgment of 8 July 2004. Series C No. 110, para. 96 and I-A Court, *Bulacio*. Judgment of 18 September 2003. Series C No. 100, para. 129.

[74] I-A Court, *Tibi.* Judgment of 7 September 2004. Series C No. 114, para. 115, I-A Court, *Hernános Gómez Paquiyauri.* Judgment of 8 July 2004. Series C No. 110, para. 95 and I-A Court, *Caso Maritza Urrutia*. Judgment of 27 November 2003. Series C No. 103, para. 73. See also Eur. Court H.R., Brogan and Others, judgment of 29 November 1988, Series A no. 145-B, paras. 58-59; Kurt vs Turkey, No. 24276/94, paras. 122, 123 y 124, ECHR 1998-III.

[75] I-A Court, *Tibi.* Judgment of 7 September 2004. Series C No. 114, para. 118.

[76] I-A Court, *Cantoral Benavides.* Judgment of 18 August 2000. Series C No. 69, paras. 74 & 75.

> exercise judicial functions and did not grant that power to prosecutors. As well, the prosecutor did not have sufficient powers to guarantee the alleged victim's right to liberty and to humane treatment.[77]

91. For the foregoing reasons, the Commission considers that in bringing the two petitioners before a judge on December 8, 1997, i.e. 23 days after their arrest, the State violated Article 7.5 of the Convention in connection with Article 1.1 thereof, for this was the first time since their arrest that they were brought before an authority with the power to release them or to order preventive detention. The Commission considers that the 23-day period during which the petitioners were held in "provisional detention" violated the right recognized in Article 7.5 of the Convention to be brought "promptly" before a judge.

92. Article 7.5 of the Convention also establishes that the arrested person "shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings". The Inter-American Court has held that "the purpose of the principle of '*reasonable time*' to which Articles 7(5) and 8(1) of the American Convention refer is to prevent accused persons from remaining in that situation for a protracted period and to ensure that the charge is promptly disposed of."[78]

93. According to the facts proven by the Commission, Mr. Chaparro was held in preventive detention from December 8, 1997 and was only released on August 22, 1999, under Article 24.8 of the Constitution which came into force on August 11, 1998, and which set limits on the duration of preventive detention. Subsequently, the Fourth Chamber of the Superior Court of Justice issued a provisional acquittal of the defendant, Mr. Chaparro, on October 30, 2001, for lack of evidence of his participation in the crime of drug trafficking. Mr. Lapo was deprived of his liberty from November 15, 1997 until May 25, 1999, at which time the Eight Criminal Judge of Guayas ordered provisional dismissal of the proceedings against him for lack of evidence of his involvement in the crime under investigation.

94. Moreover, in light of the right to presumption of innocence contained in Article 8.2 of the Convention, the State has the obligation:

> ... 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 is, therefore, a precautionary rather than a punitive measure. This concept is 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 (Art. 9(3)). To do otherwise would be an injustice because it would deny liberty, for a term disproportionate to the penalty for the alleged crime, to persons whose guilt has not been established. This would be tantamount to imposing punishment before sentence, which is at odds with universally recognized general principles of law.[79]

95. The Commission maintains, as it has on other occasions, that it is not legitimate to invoke "the needs of the investigation" in a general and abstract way to justify preventive detention. Such justification must be based on an effective threat that the defendant's release would pose for the investigation process.

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[77] I-A Court, *Tibi.* Judgment of 7 September 2004. Series C No. 114, para. 119 and I-A Court. *Acosta Calderón.* Judgment of 24 June 2005. Series C No. 129, para. 8.

[78] I-A Court, *Suárez Rosero*. Judgment of 12 November 1997. Series C No. 35, para. 70.

[79] I-A Court, *Suárez Rosero*. Judgment of 12 November 1997. Series C No. 35, para. 77.

96. Moreover, the Inter-American Court has emphatically stressed that "preventive detention is the most severe measure that can be applied to the persona accused of a crime, reason for which its application must have an exceptional nature, since it is limited by the principles of legality, the presumption of innocence, need, and proportionality, all of which are strictly necessary in a democratic society."[80]

97. The Commission notes that the seriousness of the offense and the severity of the penalty are elements that may be taken into account when evaluating the risk that the accused will evade justice. Deprivation of liberty without a sentence, however, must not be based exclusively on the fact that the detainee has been accused of a particularly objectionable crime from the social viewpoint. Precautionary detention must not become a substitute for a prison sentence[81]. According to the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules)[82], "pretrial detention shall be used as a means of last resort in criminal proceedings, with due regard for the investigation of the alleged offense and for the protection of society and the victim."[83]

98. The 12th Criminal Judge of Guayas ordered the pretrial arrest of Messrs. Chaparro and Lapo on December 8, 1997, and accused them of belonging to a drug trafficking ring, despite the fact that, as noted above, the Chief Provincial Narcotics Officer of Guayas had sent a preliminary report on the "investigated detainees" on November 24, 1997, indicating that the initial investigations had concluded that there was no compelling evidence against the prisoners, and recommending that the matter be resolved according to law.

99. Moreover, according to the expert report by the Faculty of Mechanical Engineering of the Escuela Superior Politecnica del Litoral, prepared on December 5, 1997 and received by the 12th Criminal Judge on December 10, 1997, it was determined that the boxes containing the drug were made from different molds and techniques and to different dimensions than those produced by Plumavit. Moreover, the inspection conducted on January 5, 1998 concluded that the boxes were not manufactured from the molds of the Plumavit factory.

100. The Commission has examined two factors to determine whether preventive detention in a specific case constitutes a violation of the right to personal freedom and the judicial guarantees set forth in the American Convention[84]. In the first place, the national legal authorities must justify the measure cited pursuant to one of the criteria established by the Commission. In the second place, when the Commission decides that such justification exists, it must proceed to ascertain whether those authorities have exercised the requisite diligence in discharging the respective duties in order to ensure that the duration of such confinement is not unreasonable.[85] The Commission firmly believes that the universal principles of presumed innocence and respect for the right to physical liberty should be taken into consideration in each case.[86]

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[80] I-A Court. *Acosta Calderón.* Judgment of 24 June 2005. Series C No. 129, para. 74 and I-A Court, *Tibi.* Judgment of 7 September 2004. Series C No. 114, para. 106.

[81] IACHR; Report Nº 66/01, Case 11.992, Daría María Levoyer Jiménez, Ecuador, 14 June 2001, para. 51 and European Court of Human Rights, Kenmache v. France, Series A, paras. 86 and 89.

[82] United Nations Standard Minimum Rules for Non-custodial Measures (Tokyo Rules) adopted by the General Assembly Resolution 45/110 of 14 December 1990.

[83] *Idem*, rule 6.1.

[84] IACHR, Report 2/97 (Argentina), in IACHR Annual Report 1997, OEA/Ser.I/II.98 Doc.6, 17 February 1998, para. 23.

[85] *Idem*, para. 24.

[86] *Idem*, para 25.

101. In any specific case, the Commission has held that the first aspect to be analyzed is the justification on which the petitioners' detention was based: (a) the presumption that the accused has committed an offense; (b0 danger of flight; (c) the risk that new offenses may be committed; (d) the need to investigate and the possibility of collusion; (e) the risk of pressure on the witnesses; and (f) the preservation of public order.[87]

102. With respect to the first consideration, the presumption that the accused has committed an offense, the State maintains that each and every one of the persons detained and then sentenced were suspected of crimes that were specified in legislation before their arrest, and there was compelling evidence of their responsibility". As it emerges from the facts proven before the Commission, the 12th Criminal Judge of Guayas issued a preventive arrest warrant against the petitioners on December 8, 1997,[88] pursuant to Article 177 of the Code of Criminal Procedure, which allowed the judge to order preventive imprisonment, at his or her discretion, in the following circumstances: "1. Indications that a crime has been committed that would merit deprivation of liberty; and 2. Indications that the suspect is the author or an accomplice of the crime being investigated."

103. With respect to the second portion of Article 177 of the code, i.e., the presumption that the suspect is the author or an accomplice of the crime, in this case international drug trafficking, the preventive arrest warrant was based on Article 116 of the Narcotics Act. That Article was declared unconstitutional by Resolution 119-1-97 of the Constitutional Tribunal on December 24, 1997, on the grounds that it entailed a serious presumption of guilt on the part of the accused, contrary to the Constitutional principle of presumption of innocence, by treating the police report and the pretrial statement of the accused as serious presumption of guilt.[89]

104. The Commission therefore concludes that the preventive detention of the victims, for one year, eight months and 14 days in the case of Mr. Chaparro and for one year, five months and 17 days in the case of Mr. Lapo, exceeded the right to be tried "within a reasonable time or to be released without prejudice to the continuation of the proceedings" recognized in Article 7.5 of the Convention. The Commission also concludes that such detention violates the right to the presumption of innocence enshrined in Article 8.2 in connection with Article 1.1 of that instrument, because their detention was based on a rule that was declared unconstitutional 16 days after the preventive arrest warrant was issued.

D. Violation of the right to personal liberty and to judicial protection (Article 7.6 and 25.1 of the Convention in relation with Article 1.1 thereof)

105. 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,

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[87] *Idem*, paras 26-42.

[88] See Annex 11.

[89] Article 116 of the Narcotics Act provided:

> Evidentiary value of pretrial statements. The police report and the pretrial statement given by the accused in the presence of the prosecutor shall constitute a serious presumption of guilt, if it is demonstrated that a crime has been committed.

this remedy may not be restricted or abolished. The interested party or another person in his behalf is entitled to seek these remedies.

106. Article 25 of the Convention provides that:

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

107. In its admissibility report[90], the Commission held, with respect to the victims, that "an alleged arbitrary detention that is not cured by available domestic remedies may implicate violations of Articles 8 and 25 as regards the failure to afford access to a simple and prompt remedy for the detention and the guarantees of due process."[91]

108. The Commission recalls that the jurisprudence of the Court has held that Article 25.1 of the Convention establishes, in broad terms, the obligation of states to offer to all persons subject to their jurisdiction an effective judicial recourse against acts that violate their fundamental rights[92]. From this perspective, the Court has held that it is not sufficient that the recourse exist formally: it must be effective[93]. In other words, all persons must have access to a simple and rapid recourse that will achieve the required protection. This guarantee "is one of the basic mainstays, not only of the American Convention, but also of the rule of law in a democratic society, in the sense set forth in the Convention."[94]

109. At the time of the events in the present case, according to Ecuadorian legislation, the victims had available two remedies for seeking review of the preventive arrest warrant issued against them: the remedy of *amparo de libertad* and the remedy of habeas corpus.

110. Article 28 of the Political Constitution of Ecuador establishes habeas corpus:

> Any person who believes that he has been unlawfully deprived of his liberty may file an appeal for habeas corpus. This right may be exercised by the person himself or by his representative, without the need for a written mandate, before the mayor of the jurisdiction where the person is being held, or before the person representing the mayor. The municipal authority shall immediately order that the appellant be brought before him, and that the arrest warrant be produced.
>
> "Once he is informed of the background, the mayor shall order the immediate release of the claimant, if the prisoner was not presented or the warrant not produced, or if the warrant does not meet legal requirements, or if there have been any procedural irregularities or, in the end, if the substance of the appeal has been upheld."

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[90] Report Nº 77/03 Juan Carlos Chaparro Álvarez and Freddy Hernan Lapo Iñiguez (Ecuador), OEA/Ser.L/V/II.118 Doc.70 rev.2 of 29 December 2003.

[91] *Idem*, para. 46.

[92] I-A Court, *Maritza Urrutia*. Judgment of 27 November 2003. Series C No. 103, para. 116; I-A Court, *Cantos*. Judgment of 28 November 2002. Series C No. 97, para. 52 and I-A Court, *Tibi.* Judgment of 7 September 2004. Series C No. 114, para. 130.

[93] I-A Court, *Maritza Urrutia*. Judgment of 27 November 2003. Series C No. 103, para. 117; I-A Court, *Juan Humberto Sánchez.* Judgment of 7 June 2003. Series C No. 99, para. 121 and I-A Court, *Tibi.* Judgment of 7 September 2004. Series C No. 114, para. 131.

[94] I-A Court, *Tibi.* Judgment of 7 September 2004. Series C No. 114, para. 131.

111. Article 458 of the then-valid Code of Criminal Procedure developed the so-called *Amparo de libertad*, also known as "constitutional habeas corpus", enshrined in Article 31 of the Constitution. Article 458 established that whenever a prisoner appeals for release to the competent judge, the judge must immediately order the prisoner to be brought before him and, after evaluating the necessary information, must decide the appeal within 48 hours.

112. On May 20, 1998 Mr. Chaparro presented an appeal for *amparo de libertad* before the Superior Court of Justice of Guayaquil, but that court ruled the appeal out of order, declaring it was not necessary to examine the preventive arrest warrant because to issue it fell within the legitimate discretion of the judge. Mr. Freddy Lapo applied for revocation of the preventive arrest warrant issued against him on December 26, 1997 before the 12th Criminal Judge of Guayas. He based his application on the police report of November 24, 1997, which concluded that there was no compelling evidence against those arrested during "Operation Rivera", and the fact that no drugs had been found in the factory or in his possession

113. Subsequently, Mr. Lapo filed for *amparo de libertad* on April 13, 1998 before the Superior Court of Justice of Guayaquil[95], but the appeal was rejected by the president of that court on May 14, 1998. The court held that the process was being conducted in accordance with the rules of the Code of Criminal Procedure.[96] On September 3, 1998 Mr. Freddy Lapo presented an appeal for habeas corpus[97] to the Mayor, pursuant to Article 28 of the Constitution of Ecuador, but this was rejected with the unsubstantiated argument that it was out of order.

114. In the present case, the Commission considers that the appeal for *amparo* filed by Mr. Chaparro and the various remedies pursued by Mr. Lapo were ineffective, for at no time was the basis of the arrest warrant reviewed. As the Commission has held, "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."[98]

115. The case of Mr. Lapo is compounded, moreover, by the fact that there was no arrest warrant issued, nor was he taken *in flagrante delicto*. This fundamental question should have been reviewed in deciding the appeal for *amparo* filed on April 13, 1998, which was resolved nearly a month later, in violation of Article 458 of the Code of Criminal Procedure which set a maximum time limit of 48 hours, as well as in the decision on the appeal for habeas corpus of September 3, 1998, since, according to Article 28 of the Constitution, the claimant must be immediately released in the absence of an arrest warrant.

116. Mr. Chaparro regained his freedom upon entry into force of the Political Constitution of Ecuador on August 11, 1998, and Mr. Lapo was released on May 25, 1999, after the case against him was provisionally dismissed. The Commission therefore concludes that in this case the remedies established in Ecuadorian legislation were not effective with respect to the victims. On the basis of its assessment of the evidence provided by the parties to this case, the IACHR concludes that the State violated the right of Messrs. Chaparro and Lapo to a simple and effective remedy for protecting their fundamental rights, under the terms of Articles 7.6 and 25 of the American Convention.

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[95] See Annex 28.

[96] See Annex 29.

[97] See Annex 30.

[98] IACHR; Report Nº 66/01, Caso 11.992, Daría María Levoyer Jiménez, Ecuador, 14 June 2001, para. 79.

117. With respect to the remedy of habeas corpus enshrined in Article 28 of the Constitution of Ecuador, the Commission reiterates that this constitutional provision violates Article 7.6 of the American Convention, for it makes the mayor, i.e. an administrative authority, responsible for deciding the legality of the arrest. The confirmation, both formal and substantial, that a detention is consistent with the juridical system and does not violate any right of the detainee must be made by a judge, for mayors do not necessarily have adequate legal training, and in no case do they have the power to exercise judicial functions.[99]

118. The Commission considers it essential for the State of Ecuador to take the necessary steps to reform its legislation in this area and to take whatever action is necessary to implement it.

E. Violation of the right to a fair trial (Article 8.1 and 8.2 of the Convention in relation with Article 1.1 thereof)

119. The Commission has previously held that Article 8 of the Convention "includes different rights and guarantees flowing from a common juridical asset or good and which considered as a whole constitute a single right not specifically defined but whose unequivocal purpose is definitely to ensure the right of everyone to a fair trial"[100]

120. As well, the Inter-American Court has ruled that "Article 8 recognizes the concept of 'due process of law,' which includes the prerequisites necessary to ensure the adequate protection of those persons whose rights or obligations are pending judicial determination".[101]

1. Determination of responsibility within a reasonable time: violation of Article 8.1

121. Article 8.1 of the American Convention provides that:

> 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...

122. Consistent with the jurisprudence of the Inter-American Court, the Commission considers that, in determining whether there has been a violation of the right to a hearing within a reasonable time, consistent with Article 8.1 of the Convention, it must take into account the time elapsed from the moment the victims were arrested, i.e. November 15, 1997, until the time when a final and firm judgment is delivered and jurisdiction thereby ceases, and that, "particularly in criminal matters, that time must cover the entire proceeding, including any appeals that may be filed".[102]

123. As stated in the Inter-American Court's jurisprudence, the right to be judged within a reasonable time, recognized in Article 8.1 of the American Convention, is not a principle that is easy to define. Nevertheless, the Commission and the Court have developed a jurisprudence which holds that the reasonableness of the duration of a case must be evaluated in light of the three following

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[99] *Idem*, paras. 78-81.

[100] Annual Report 1995. OEA/Ser.L/V/II.91, Doc 7 rev, 28 February 1996, Chapter III: Peru 10.970, 5/96, Raquel Martín de Mejía.

[101] I-A Court, "Judicial Guarantees in States of Emergency (Articles 27.2, 25 and 8 of the American Convention on Human Rights), Advisory Opinion OC-9/87, October 6, 1987, Series A, No. 9, para 28..

[102] I-A Court, *Suárez Rosero*. Judgment of 12 November 1997. Series C No. 35, para.71.

criteria: the complexity of the matter, the procedural activity of the individual concerned, and the conduct of the judicial authorities.[103]

124. Article 231 of the Code of Criminal Procedure in effect at the time of the events provided that in no case may summary proceedings last for more than 60 days, "under penalty of fine that the Superior Court shall impose, under its pecuniary responsibility, on the negligent judge". The code did not establish any exceptions to this term to reflect the complexity of the matter, but imposed a fine on the judge for negligent conduct. In the present case, the summary stage exceeded the legally established term by a wide margin, from which it may be inferred that, consistent with Article 231 of the Code of Criminal Procedure, the judge hearing the case acted negligently and indeed violated Ecuadorian criminal law.

125. The Commission notes that the only evidence produced against Mr. Chaparro in all those years was from the ion scanner test, which was declared invalid because of numerous irregularities. In the case of Mr. Lapo, there was never any evidence to justify prosecution. On the contrary, there was ample evidence that the victims were innocent. Despite this, a final judgment in the two cases was issued only on February 23, 2006, i.e. after eight years, three months and seven days of proceedings.

126. Consequently, on the basis of the evidence supplied by the parties to the case, the Commission concludes that the State violated the right of Messrs. Chaparro and Lapo to be tried within a reasonable time, as established in Article 8.1 of the Convention in relation to Article 1.1 thereof.

2. Right to defense: violation of Article 8.2 (c and d) of the Convention

127. Article 8.2 (c and d) of the Convention provides as follows:

> During the proceedings, every person is entitled, with full equality, to the following minimum guarantees:
>
> [...]
>
> c. adequate time and means for the preparation of his defense;
>
> d. 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;

128. Article 22 (19.e) of the Ecuadorian Constitution in effect at the time of the events guaranteed the right of defense to all persons at every stage of the process. Despite that rule, and as indicated above, neither of the victims was accompanied by a defense lawyer of his choice at the time of the initial investigation by the police and the prosecutors. The State presented no evidence to the contrary.

129. Moreover, with respect to the ion scanner test conducted on January 8, 1998, the file contains evidence submitted by the parties that the 12th Criminal Judge failed to provide sufficient notice of the test to the victims and their attorneys. Consequently, they were unable to be present at the test. The Commission again notes that the outcome of that test, in which drug residues were found, constituted the only evidence against the petitioners in the proceedings

[103] IACHR; Report Nº 66/01, Caso 11.992, Daría María Levoyer Jiménez, Ecuador, 14 June 2001 and I-A Court, *Suárez Rosero*. Judgment of 12 November 1997. Series C No. 35, para. 25. See also Eur. Ct. of H.R., Series A 195; Ruiz Mateos v Spain, Series A 262 (1993).

against them for drug trafficking, and was rejected both in the statement of the prosecutor of the December 23, 1998, for its many irregularities, and in the order quashing proceedings against Mr. Chaparro and confirming the final acquittal of Mr. Lapo on October 30, 2001, for lack of due process.

130. The Commission considers that the victims were restricted in their right to defense, and that if they and their attorneys had been present during the test they could have challenged its validity, without having to wait nearly 4 years for it to be nullified.

131. With respect to Mr. Chaparro, a Chilean citizen, the Chilean Consulate became aware of his arrest through press reports. The Commission maintains that, in cases where a State party to the Vienna Convention on Consular Relations fails to fulfill its obligation to provide consular notification when a foreigner is arrested, the State has the special obligation to provide information indicating that the proceedings against that person have met the requirements of a fair trial.[104]

132. As the Inter-American Court has already declared, "the individual right to request consular assistance from their country of nationality must be recognized and considered within the framework of the minimum guarantees to offer foreigners the opportunity to adequately prepare their defense and have a fair trial."[105]

133. From its analysis of the evidence provided by the parties to the case, the Commission concludes that the State violated Article 8.2 (c and d) of the Convention in connection with Article 1.1, to the detriment of the victims.

F. Violation of the right to property (Article 21 of the Convention in connection with Article 1.1)

134. Article 21.1 of the American Convention provides that:

> Everyone has the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment to the interest of society.

135. The 1996 codification of the Constitution of Ecuador declares, in Article 63, that:

> Property in whatever form constitutes a right that the State recognizes and guarantees for the organization of its economy, provided it fulfills its social function.

136. The Narcotics Act of Ecuador provides as follows:

> Article 104. Seizure. The national police, through its specialized technical agencies, shall be responsible for controlling and investigating the crimes specified in this law, the discovery and detention of violators, the controlled delivery of controlled goods or substances, and the immediate apprehension of:
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> [...]

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[104] IACHR, Report 1/05, Roberto Moreno Ramos, Case 12.430 (USA), 2005, paragraph 63; *The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law*, Advisory Opinion OC-16/99, October 1, 1999, Inter-Am. Ct. H.R. (Ser A) No. 16.

[105] I-A Court, T*ibi.* Judgment of 7 September 2004. Series C No. 114, para. 195 and I-A Court. *Acosta Calderón.* Judgment of 24 June 2005. Series C No. 129, para. 125.

> Goods and objects used for the storage and conservation of controlled substances, and of the vehicles and other means used to transport them;
>
> [...]
>
> Money, valuables, monetary instruments, bank documents, financial or commercial documents and other goods that are deemed to be the product of the crimes stipulated in this law.
>
> Article 105. Those conducting the seizure shall identify all the movable and immovable goods, substances, money, valuables, monetary instruments, banking, financial or commercial documents, and the presumed owners, in separate reports, which they shall submit to the judge within 24 hours. In initiating the process, the judge shall order that all goods seized be deposited in CONSEP.... These goods and materials shall be kept under the orders of the judge for verifying the material evidence of the crime.
>
> Article 110. Restitution of property. If the owner of the seized goods is absolved, they shall be returned by CONSEP when the judge so orders, once the precautionary measures have been canceled.
>
> The institutions to which the properties may have been delivered shall return them in the state in which they were found at the time of their reception, except for normal wear and tear. If there is any damage, the judge shall order that it be repaired or compensated, except in cases of fortuitous circumstances or force majeure.
>
> The money or value of monetary instruments or banking, financial or commercial documents seized shall be returned in national currency, at the free market rate for the purchase of the currency seized at the date of its return, with the corresponding legal interest as fixed by the Monetary Board.
>
> Action may be taken for compensation for any damages.

137. The evidence contributed by the parties shows that the Plumavit factory was seized on November 15, 1997, after a search of its facilities and the arrest of some of its workers. However, the police report of the search does not indicate the grounds for seizing the factory, nor does it indicate that any drug or narcotic substance was found that would justify such a measure.

138. Consistent with Article 21 of the American Convention and the Ecuadorian Constitution, the Commission notes that, while the right to private property is recognized and guaranteed in Ecuador, this right can be subordinated to the general interest. Nevertheless, the second sentence of Article 21 of the Convention must be interpreted in light of the general principles set forth in the first sentence of that Article, and consequently there must be a relation of proportionality between the means employed and the objective pursued when a person's right to the use of his property is restricted in a concrete case, as the European Court of Human Rights declared in its analysis of Article 1 of Protocol 1 to the European Convention on Human Rights.[106]

139. In the present case, it has already been shown that the search of the Plumavit factory on November 15, 1997 produced no evidence, and from the outset of proceedings it was never determined that the Styrofoam packages used for transporting the drug had been manufactured in that establishment. This is apparent from the preliminary report by the Chief Provincial Narcotics Officer of Guayas dated November 24, 1997, which indicated that following the preliminary investigations there was no compelling evidence against the persons arrested during "Operation Rivera". It is also apparent from the expert report provided by the mechanical

[106] ECHR, Agosi v. The UK, judgment of 24 October 1986, Series A No. 108 14/1984/86/133, para. 52.

engineering faculty of the Escuela Superior Politecnica del Litoral, which was given to the 12th Criminal Judge of Guayas on December 10, 1997. Likewise, the three expert reports of January 5, 1998, prepared during the search of the Plumavit factory, showed that the Styrofoam packages containing the drug could not have been manufactured in that factory.

140. The only evidence produced during the proceedings that found residues of drugs in the factory, and that served to keep the victims imprisoned and under prosecution, was the ion scanner test conducted on January 8, 1998. As already indicated, that test was dismissed as evidence by the Fourth Chamber of the Superior Court of Justice of Guayaquil on October 30, 2001, because of failure to observe due process.

141. For the foregoing reasons, and because no direct evidence was ever produced against Mr. Chaparro to link the Plumavit factory with the crime of international drug trafficking, the Commission considers that the principle of proportionality between the means employed by the State and the objective pursued was not observed. In fact, the factory was placed under the administration of CONSEP as of December 8, 1997, the date on which proceedings began, until October 10, 2002, the date on which the factory was returned to its owner, i.e. for nearly 5 years.

142. The Commission considers that in this case the State's tardiness in returning the Plumavit factory to Mr. Chaparro exceeded any reasonable time and resulted in the serious violations of due process suffered by Mr. Chaparro since, according to Article 110 of the Narcotics Act, the seized goods could only be returned once the owner was absolved and the judge issued the restitution order.

143. For the foregoing reasons, the Commission considers that the State violated Mr. Chaparro's right to property recognized in Article 21 of the Convention in connection with Article 1.1.

144. With respect to Mr. Lapo, he declared that his Subaru automobile, with license plates GDK-410, was seized during a search of the Plumavit factory. Although the extension of the acquittal ruling of October 30, 2001 ordered that any precautionary measure taken against that vehicle should be lifted, it has not been returned to its owner. The Commission considers that, in light of the principle of proportionality that must be respected when restricting a person's right to property, the State of Ecuador violated the right to property enshrined in Article 21 of the American Convention in relation with Article 1.1 to the detriment of Mr. Lapo, because the State has kept the confiscated vehicle for nearly 8 years, linking it to a proceeding in which the victim's right to a fair trial, among others, was violated.

VIII. REPARATIONS AND COSTS

145. In light of the facts alleged in this application, and the constant jurisprudence of the Inter-American Court, which has held that "it is a principle of International Law that any violation of an international obligation that has caused damage entails the duty to provide adequate reparation"[107], the IACHR submits to the Court its position on reparations and costs that the State of Ecuador should bear as a result of its responsibility for the violations committed to the detriment of Messrs. Chaparro and Lapo.

[107] I-A Court, *Hernános Gómez Paquiyauri,* Judgment of 8 July 2004. Series C No. 110, para. 187; *Myrna Mack Chang,* Judgment of 25 November 2003. Series C No. 101, para. 141; *Bulacio*, Judgment of 18 September 2003. Series C No. 100, para. 72; *Juan Humberto Sánchez,* Judgment of 7 June 2003. Series C No. 99, para. 147.

146. By virtue of the Court's Rules of Procedure, which grant independent representation to the individual, the Commission will confine itself to arguing the general criteria governing reparations and costs that it considers should be applied by the Court in the present case. The Commission understands that it is up to the victims and their representatives to present their claims, in accordance with Article 63 of the American Convention and Article 23 and related articles of the Court's Rules of Procedure. If the victims do not avail themselves of this right, the Commission asks the Court to give it an opportunity to quantify the pertinent claims.

A. Obligation and measures of reparation

147. Article 63.1 of the American Convention provides that:

If the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party.

148. This provision recognizes a customary rule "which constitutes one of the fundamental principles of contemporary international law on the responsibility of states"[108]. Reparation for damages caused by the breach of an international obligation requires, whenever possible, full restitution (*restitutio in integrum*), which consists in reestablishing the situation prior to the breach (*status quo ante*). If this is not possible, it is up to the Court to order measures that will guarantee respect for the rights violated and will repair the consequences of the violations, through payment of compensation for the damages occasioned[109]. Reparations have the additional but no less essential objective of avoiding and discouraging future violations.

B. Measures of reparation

149. The Court has held that reparation involves measures that are intended to eliminate the effects of the violation that was committed.[110] Reparations is a generic term that covers the various ways a State can redress the international responsibility it has incurred, which according to international law include measures of restitution, payment of compensation, satisfaction, and guarantees that the violations will not be repeated.[111]

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[108] I-A Court, *Carpio Nicolle et al*. Judgment of 22 November 2004. Series C No. 117, para. 86; I-A Court, *Masacre Plan de Sánchez*. Judgment of 19 November 2004. Series C No. 116, para. 52; I-A Court, *De la Cruz Flores*. Judgment of 18 November 2004. Series C No. 115, para. 139.

[109] I-A Court, *Hernános Gómez Paquiyauri, supra*, para. 189; *19 Merchants, supra*, para. 221; *Molina Theissen*. *Reparations (Art. 63.1 of the American Convention on Human Rights)*, Judgment ofl 3 July 2004, Series C Nº 108, para. 42.

[110] I-A Court, *Carpio Nicolle et al*. Judgment of 22 November. 2004. Series C No. 117, para. 89; I-A Court, *De la Cruz Flores*. Judgment of 18 November 2004. Series C No. 115, para 141; I-A Court, *Hernános Gómez Paquiyauri*. Judgment of 8 July 2004. Series C No. 110, para. 190.

[111] See United Nations*, Final report submitted by Theo Van Boven, Special Rapporteur for Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Humanitarian Law, E/CN.4/Sub.2/1990/10, July 26, 1990*. See also, I/A Court H.R., *Blake. Reparations* (Art. 63(1) American Convention on Human Rights), Judgment of January 22, 1999, Series C No. 48, para. 31; *Suárez Rosero, Reparations (Art. 63(1) American Convention on Human Rights),* Judgment of January 20, 1999, Series C No. 44, para. 41; and *Castillo Páez, Reparations* (Art. 63(1) American Convention on Human Rights), Judgment of November 27, 1998, Series C No. 43.

1. Measures of compensation

150. The Court has established the essential criteria that should guide fair, adequate and effective economic compensation for the damages suffered as a result of human rights violations.[112]

i. Pecuniary damages

151. In its jurisprudence on reparations, the Court has consistently held that pecuniary damages include consequential damages and lost earnings, as well as non-pecuniary or moral damages both to the victims and to their family circle in certain cases.[113]

152. Consequential damages are understood as the direct and immediate financial consequence of the events. This concept considers the financial effect flowing immediately and directly from the events in relation to the expenses incurred by the victims in their pursuit of justice with respect to their arbitrary detention, their denial of a fair trial, the violation of their right to property, and all the subsequent damages.[114]

153. Lost earnings, by contrast, is understood as the loss of economic income or profits foregone as a result of a specific event, and which can be quantified by certain measurable and objective indicators.[115]

154. In the present case, it must be remembered that the victims were not only deprived of their liberty and ceased working, but they also suffered the loss of the properties that were seized; indeed, despite the dismissals, the Plumavit factory was not returned immediately, but only after a series of actions taken by Mr. Chaparro, and in conditions that caused an additional economic loss. Mr. Chaparro was not only unlawfully imprisoned but he also had to pay for the administration of his factory when it was unlawfully confiscated. As for Mr. Lapo, his automobile has still not been returned to him, nor has he been paid any compensation for it.

ii. Non-pecuniary damages

155. On this point, the Court has held that non-pecuniary damages

may include the pain and suffering caused to the direct victims and their associates, the depreciation of values of great significance to the individuals, as well as changes of a non-pecuniary nature in the victim's or his family's living conditions. It is not possible to assign a precise monetary equivalent to non-pecuniary damages: they can only be the subject of compensation, for purposes of integral reparations to the victims, and this can be provided in two ways. First, through the payment of a sum of money or the delivery of goods or services of identifiable monetary value which the Court may determine in reasonable application of judicial discretion and the concept of equity. In the second place, through the performance of acts or works of public scope or impact that have the effect of restoring the memory of the victims, recognizing their dignity, consoling their

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[112] See I-A Court., *Hilaire, Constantine & Benjamin et al., supra*, para. 204; *"Panel Blanca" (Paniagua Morales et al.). Reparations*, supra, para. 80; *Castillo Páez. Reparations, supra*, para. 52 and *Garrido and Baigorria. Reparaciones*. Judgment of 27 August 1998, Series C Nº 39, para. 41.

[113] I-A Court, *Tibi.* Judgment of 7 September 2004. Series C No. 114, para. 237; I-A Court, *El Caracazo. Reparations*. Judgment of 29 August 2002, Series C No. 95; and I-A Court, *Hilaire, Constantine and Benjamin et al*. Judgment of 21 June 2002. Series C No. 94.

[114] I-A Court, *Loayza Tamayo. Reparations*. Judgment of 27 November 1998. Series C Nº 42, para. 147; *Aloeboetoe et al. Reparations*. Judgment of 10 September 1993. Series C Nº 15, para. 50.

[115] *Idem*.

surviving relatives, or sending a message of official disapproval of the human rights violations in question and a commitment to ensure that they do not recur.[116]

156. In the present case, the non-pecuniary damages are obvious: the victims suffered from being deprived of their liberty, they had to resort to the ordinary courts and to the human rights protection system, and even so they have been unable to obtain justice for the actions perpetrated against them by the Ecuadorian State. The victims have undergone intense psychological suffering, anxiety, uncertainty, pain and alteration of their life plans, because of the failure to provide justice within a reasonable time, with respect to all those involved in the events that gave rise to this case.

2. Satisfaction and guarantees of non-repetition

157. Satisfaction has been understood as any measure that the perpetrator of a violation must adopt in accordance with international instruments or customary law, in recognition of an unlawful act.[117] Satisfaction involves three, generally cumulative acts: apology, or any other gesture recognizing responsibility for the act in question; trial and punishment of the individuals responsible; and measures to avoid repetition of the damage.[118]

158. With respect to the reparation measures that the State should adopt, the Commission considers that these should include the measures necessary to provide legislation that will satisfactorily regulate the judicial guarantees accorded persons deprived of their liberty, specifically with respect to preventive detention ordered as an exceptional measure against persons accused of a crime in the Ecuadorian system, so that this does not become a form of advance punishment not covered by law. In particular, the State must implement mechanisms that will not jeopardize the rights of prisoners for an indefinite or prolonged period of time, bearing in mind the juridical good that is to be protected, the severity of the offense, and the personal situation of the accused, limiting the use of such measures as far as possible.

159. In the Commission's view, a public apology and publication of the decision of the Inter-American Court would be one means of affording reparation to the victims.

160. As well, the Court has previously held that in cases where a State's legislation is found to be incompatible with the provisions of the American Convention and to have been invoked or implied in such a way as to cause damage to a victim, those requirements oblige the State to adopt the internal legal measures necessary to amend the legislation in question and bring it into line with the American Convention.[119]

C. The beneficiaries of the reparations owed by the State

161. Article 63.1 of the American Convention requires reparations for the consequences of a violation and stipulates that "fair compensation be paid to the injured party". The persons entitled to such compensation are generally those directly injured by the violation in question.

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[116] I-A Court, *Masacre Plan de Sánchez*. Judgment of 19 November 2004. Series C No. 116, para. 80; I-A Court, *De la Cruz Flores*. Judgment of 18 November 2004. Series C No. 115, para 155; *See also*, I-A Court, *Carpio Nicolle et al*. Judgment of 22 November 2004. Series C No. 117, para. 117.

[117] Brownlee, *State Responsibility, Part 1*, Clarendon Press, Oxford, 1983, page 208.

[118] *Idem.*

[119] See for example I-A Ct. *Loayza Tamayo*, *Reparations*, Judgment of 27 November 1998, paras. 162-164, 192(5).

162. Given the nature of the present case, the beneficiaries of the reparations that the Court may order as a consequence of the human rights violations perpetrated by the Ecuadorian State are Juan Carlos Chaparro Alvarez and Freddy Hernán Lapo Iñiguez.

D. Costs and expenses

163. Consistent with the constant jurisprudence of the Court, costs and expenses must be understood as part of the concept of reparations enshrined in Article 63.1 of the Convention, because the actions taken by the injured parties, their attorneys or their representatives in accessing international justice imply outlays and commitments of an economic nature that must be compensated[120]. As well, the Court has considered that the costs referred to in Article 55.1 (h) of the Court's Rules of Procedure include necessary and reasonable expenses for accessing the supervisory organs of the American Convention, including the fees of legal counsel.

164. The Inter-American Commission requests that the Court, after hearing the victims' representatives, order the Ecuadorian State to pay the duly demonstrated costs and expenses incurred by the victims.

IX. CONCLUSIONS

165. On the basis of the considerations set forth in this application, the Commission requests the Court to conclude and declare that the State of Ecuador has violated, to the detriment of Messrs. Lapo and Chaparro, Articles 5 (right to humane treatment), 7 (right to personal liberty), 8 (right to a fair trial), 21 (right to property) and 25 (right to judicial protection), in concordance with the general obligation to respect and guarantee those rights, stipulated in Article 1.1 of the Convention. In addition, with respect to Mr. Lapo, the State failed to observe Article 2 of the Convention, relating to the duty to adopt domestic legal provisions.

X. PETITION

166. The Inter-American Commission requests the Court to conclude and declare that the State of Ecuador has violated, to the detriment of Messrs. Lapo and Chaparro, Articles 5 (right to humane treatment), 7 (right to personal liberty), 8 (right to a fair trial), 21 (right to property) and 25 (right to judicial protection), in concordance with the general obligation to respect and guarantee those rights, stipulated in Article 1.1 of the Convention. In addition, with respect to Mr. Lapo, the State failed to observe Article 2 of the Convention, relating to the duty to adopt domestic legal provisions.

167. By reason of the foregoing, the Inter-American Commission requests the Court to order the Ecuadorian State:

a. To conduct a thorough, impartial, effective and prompt investigation of the facts in order to identify and prosecute all persons responsible for the violations cited in this case.

b. To acknowledge publicly the international responsibility of the State with respect to the facts of the case and the injury to the victims.

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[120] I-A Court, *Carpio Nicolle et al*. Judgment of 22 November 2004. Series C No. 117, para. 143; I-A Court, *Masacre Plan de Sánchez*. Judgment of 19 November 2004. Series C No. 116, para. 115; I-A Court, *De la Cruz Flores*. Judgment of 18 November 2004. Series C No. 115, para. 177.

c. To take all steps necessary within its domestic legislation to amend the law on habeas corpus (Article 28 of the Constitution) so that judges and not mayors shall decide the legality of an arrest, and take immediate steps to give effect to that amendment.

d. To take all measures necessary for appropriate reparations or mitigation of the damage caused the victims, including non-pecuniary as well as pecuniary aspects.

e. To pay the costs and legal expenses incurred by the victims in the pursuit of this case within the domestic system and those arising from its processing in the inter-American system; and

f. To take all legal, administrative and other measures necessary to prevent the occurrence of similar events in the future, in compliance with the duties of prevention and guarantee of the fundamental rights recognized by the American Convention.

XI. SUPPORTING EVIDENCE

A. Documentary evidence

168. In support of the arguments of fact and of law formulated in this application, the Commission attaches the following documentary evidence:

Appendix 1. IACHR Report 06/06, Case 12.091, Juan Carlos Chaparro and Freddy Hernán Lapo, Merits, Ecuador, February 28, 2006

Appendix 2. IACHR, Reports 77/03, Case 12,091, Juan Carlos Chaparro and Freddy Hernán Lapo, Admissibility, Ecuador, October 22, 2003.

Appendix 3. The record of the case before the Inter-American Commission.

Annex 1. *Parte Informativa* presented to the Chief Provincial Narcotics Officer of Guayas on November 14, 1997

Annex 2. Decision for the arrest of Mr. Juan Carlos Chaparro and the search of the Plumavit factory issued on November 14, 1997 by the 12th Criminal Judge of Guayas.

Annex 3. Arrest warrant issued by the 12th Criminal Judge of Guayas on November 14, 1997, against Juan Carlos Chaparro.

Annex 4. Letter from Mrs. Maria Isabel Pavisic Soler, Honorary Consul of Chile in Guayaquil Ecuador, to Mrs. Cecelia Aguirre Chaparro, of March 5, 1998

Annex 5. *Parte informativo* presented to the Chief Provincial Narcotics Officer of Guayas on November 151997, reporting on the search conducted at the Plumavit factory.

Annex 6. *Parte de Detención* (Arrest Report) presented to the Chief Provincial Narcotics Officer of Guayas on November 15, 1997 on the search conducted at the Plumavit factory

Annex 7. Statement of Freddy Hernán Lapo given in Guayaquil on November 19, 1997.

Annex 8. Statement of Juan Carlos Chaparro, given in Guayaquil on November 19, 1997.

Annex 9. *Oficio* No. 3597 – JPAG – 97 of November 24, 1997.

Annex 10. *Oficio* No. 3543-JPAG-97 of 24 November 1997.

Annex 11. *Auto cabeza del proceso de 8 de diciembre de 1997, en la causa penal No. 370-97 por Tráfico de Drogas ante el Juzgado Duodécimo de lo Penal del Guayas*. (Order initiating proceedings)

Annex 12. Document DEC-FIMCP-560-97 of 8 December 1997 signed by Ing. Eduardo Rivadeneira and addressed to Coronel Luis Martínez Castillo, Jefe Provincial de Antinarcóticos del Guayas.

Annex 13. *Oficio* Nº 4719-370-97 of the Juzgado Duodécimo de lo Penal del Guayas of 2 January 1998 addressed to the Jefe de la Policía Judicial del Guayas.

Annex 14. Letter addressed to the Jueza Décimosegundo de lo Penal del Guayas of 7 January 1998, signed by Ricardo Delfíni Mechelli, in reference to Juicio No. 370 -97

Annex 15. Expert report signed by Daniel Burgos in Juicio Penal 370-97.

Annex 16. Expert report on Styrofoam boxes in Juicio Penal 370-97, signed by Rodrigo Cevallos Salvador.

Annex 17. Order of the Jueza Duodécima del Guayas to perform the ION-SCANNER test on 8 January 1998 at 10:00 in Juicio 370-97, issued 7 January 1998 at 18:30, and notified 8 January 1998.

Annex 18. Expert report on the ION-SCAN test in case 370-97 of 8 January 1998 signed by the Juez Décimo Segundo de lo Penal del Guayas, Dra. Guadalupe Manrique Rossi.

Annex 19. Letter sent by Victor Cortez, Jefe de la D.E.A. in Guayaquil to the Jueza Décimo Noveno de lo Penal del Guayas, Dra. Guadalupe Manrique, on 9 December 1998.

Annex 20. *Dictamen del Ministerio Público* of 23 December 1998 in Juicio 370-97, bringing charges against certain persons arrested in "Operación Rivera" and abstaining from accusing Mr Chaparro,

Annex 21. *Sentencia revocatoria* (Revocation order) of the Cuarta Sala de la Corte Superior de Justicia of the order opening proceedings issued by the lower court in Juicio 370-97, of 30 October 2001.

Annex 22. Juzgado Duodécimo de lo Penal del Guayas, order opening plenary proceedings against Mr. Chaparro and provisional acquittal of Mr. Lapo in Juicio 370-97, of 25 May 1999.

Annex 23. Judgment of the Juzgado Duodécimo de lo Penal del Guayas of 23 February 2006.

Annex 24. *Registro Oficial del Órgano del Gobierno del Ecuador*, Quito, Wednesday 24 December 1997, Resolución Nº 119-1-97 of the Tribunal Constitucional, page 3.

Annex 25. Corte Superior de Guayaquil, decision on the appeal for *amparo* brought against the Juez Decimo Segundo de lo Penal del Guayas of 21 May 1998.

Annex 26. Letter addressed to the Jueza Duodécimo de lo Penal del Guayas in case 370-97 for drug trafficking against Freddy Hernán Lapo Iñiguez and Segundo Alberto Bermeo Rosado requesting revocation of the preventive arrest warrant issued against them on 26 December 1997.

Annex 27. Resolution of 12 January 1998 of the Jueza Duodécima de lo Penal del Guayas on the appeal for replication of the preventive arrest warrant filed by Freddy Hernán Lapo Iñiguez and Segundo Alberto Bermeo Rosado on 26 December 1997.

Annex 28. *Recurso de amparo de libertad* presented to the Presidente de la Corte Superior de Justicia de Guayaquil on 13 April 1998 by Freddy Hernán Lapo Iñiguez in case Nº 370-97.

Annex 29. Judgment of the Corte Suprema de Guayaquil on the *recurso de amparo* filed by Freddy Hernan Lapo Iñiguez against the Juez Duodécimo de lo Penal del Guayas in case 370-97 of 14 May 1998.

Annex 30. *Recurso de Hábeas Corpus* filed by Freddy Hernán Lapo Iñiguez and Juan Gregorio Cobeña Tomalia before the Mayor of Cantón Santiago of Guayaquil on 3 September 1998.

Annex 31. *Auto* of 7 March 2002 issued by the Cuarta Sala de la Corte Superior de Justicia.

Annex 32. Oficio No. 439-J-12º of the Juzgado Doce de lo Penal del Guayas dated 18 June 2002.

Annex 33. *Acta de Entrega-Recepción del inmueble Plumavit* – 10 October 2002.

Annex 34. Leasing contract signed by CONSEP on 18 January 1998, renewed on 1 December 2001.

Annex 35. *Reglamento para la Aplicación de la Ley sobre Sustancias Estupefacientes y Psicotrópicas* published in the *Registro Oficial* of the Government of Ecuador, in Quito, 7 March 1991.

Annex 36. *Acta de Diligencia Notarial* issued 10 October 2002, testifying to the fact that many items listed in the CONSEP inventory were missing.

Annex 37. *Liquidación de gastos de administración del inmueble PLUMAVIT*

Annex 38. Application of Freddy Hernán Lapo to the Head of CONSEP, 5 July 2002, received at CONSEP on 30 July 2002.

Annex 39. Application of Freddy Hernán Lapo to the Director of CONSEP dated 20 April 2005.

Annex 40. Powers of Attorney granted by Mr. Juan Carlos Chaparro Alvarez to the lawyers Xavier Andrés Flores Aguirre and Pablo José Cevallos Palomeque to represent him before the Inter-American Court of Human Rights, given in Guayaquil, 18 April 2006 and received in the Commission on 24 April 2006.

Annex 41. Letters sent by Mr. Freddy Hernan Lapo to the Inter-American Commission, dated 12 June 2006, ratifying Juan Ferrusola Pereira as his attorney.

Annex 42. Curriculum vitae of Jorge Vicente Fantoni Camba, expert presented by Mr. Juan Carlos Chaparro.

Annex 43. Curriculum vitae of Yazmín Kuri Gonzalez, expert presented by Mr. Juan Carlos Chaparro.

Annex 44. Designation of the common representative for proceedings before the Inter-American Court of Human Rights, 23 June 2006.

169. In addition, the Commission requests the Court to order the State to present certified complete copies of the judicial records with respect to the present case.

B. Testimonial and expert evidence

a. Witnesses

170. The Commission presents the following list of witnesses:

1. **Juan Carlos Chaparro**, victim. The Commission presents this witness before the Court in order to give testimony about his arrest, the actions taken in the pursuit of justice, the confiscation of his property and its subsequent return, and the judicial actions pursued, and about his experience in general and the consequences of the judicial proceedings against him, among other aspects relating to the object and purpose of this application. The address to which correspondence may be sent is that of his representative, provided below.

2. **Freddy Hernán Lapo**, victim. The Commission presents this witness before the Court in order to give testimony about his arrest, the actions taken in the pursuit of justice, the confiscation of his property and its subsequent return, and the judicial actions pursued, and about his experience in general and the consequences of the judicial proceedings against him, among other aspects relating to the object and purpose of this application. The address to which correspondence may be sent is that of his representative, provided below.

b. Experts

171. The Commission presents the following list of experts:

1. **Jorge Fantoni Camba.** The Commission offers his testimony with respect to the nature and enforcement, in general terms and with respect to the case covered by this application, of the Narcotics and Psychotropic Substances Act, which governs criminal proceedings in cases involving the crime of narcotics trafficking.

2. **Yazmín Kuri González.** The Commission offers her testimony on matters relating to the economic damages suffered and the corresponding reparations.

XII. DATA ON THE ORIGINAL COMPLAINANTS, THE VICTIMS AND THEIR RELATIVES

172. Consistent with Article 33 of the Court's Rules of Procedure, the Inter-American Commission informs the Court that the original complainants are Messrs. Juan Carlos Chaparro Alvarez and Freddy Hernán Lapo Iñiguez.

173. Messrs. Chaparro and Lapo have appointed the lawyers Xavier Flores Aguirre and Pablo Cevallos Palomeque as their joint legal representatives for purposes of proceedings before the Inter-American Court, pursuant to Article 23 of its Rules of Procedure. Their address is [redacted].

Washington, DC.
June 23, 2006