

REPORT No. 33/13
CASE 11.576
ADMISSIBILITY AND MERITS
JOSÉ LUÍS GARCÍA IBARRA AND FAMILY
ECUADOR
July 10, 2013

I. SUMMARY

1. On November 8, 1994, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission,” “the Commission” or “the IACHR”) received a petition that the *Comisión Ecuménica de Derechos Humanos* [Ecumenical Human Rights Commission] (hereinafter “the petitioners”) filed against the Republic of Ecuador (hereinafter also “the Ecuadorian State,” “the State” or “Ecuador”) in which they alleged that the Republic of Ecuador was responsible for violation of various provisions of the American Convention on Human Rights (hereinafter also “the Convention” or “the American Convention”). According to the petitioners, José Luíz García Ibarra was arbitrarily deprived of his life by a shot fired by a police officer. The petition also alleged irregularities and an unwarranted delay in the internal processing of the investigation.

2. The Commission registered the petition as case 11,576 and, on March 13, 1995, ordered that the case be opened for processing in accordance with the Regulations then in force. Accordingly, the petition was forwarded to the Ecuadorian State. On April 11 and August 20, 2003, the Commission informed the parties that, in application of Article 37(3) of its Rules of Procedure then in force, it had decided to defer its treatment of admissibility until the debate and decision on the merits.

3. Throughout the processing of the case, the Ecuadorian State argued that the case should be declared inadmissible on the grounds that it had already been prosecuted by the domestic courts, which had imposed the corresponding penalties while observing all the judicial guarantees. It pointed out that the Commission does not have the authority to act as a higher court or as a court of fourth instance, or to review verdicts delivered by domestic courts acting in accordance with due process. It also argued that the right to life was protected by a number of constitutional guarantees of rights and that in this particular case, a verdict and sentence were handed down after a serious and effective investigation was conducted, thereby demonstrating the existence of an adequate and effective remedy.

4. After examining the positions of the parties, the Inter-American Commission has concluded that the Ecuadorian State is responsible for violation of the right to life and the child’s right to special protection, established in articles 4 and 19 of the American Convention, read in conjunction with Article 1(1) thereof, to the detriment of José Luíz García Ibarra. The Commission has also concluded that the Ecuadorian State is responsible for violation of the rights to humane treatment, judicial guarantees and judicial protection, established in articles 5, 8 and 25 of the American Convention, read in conjunction with Article 1(1) thereof, to the detriment of his next of kin: Pura Vicenta Ibarra Ponce (mother), Alfonso Alfredo García Macías (father), and Luis Alfonso (brother), Santo Gonzalo (brother), Ana Lucía (sister), Lorena Monserrate (sister), Alfredo Vicente (brother) and Juan Carlos (brother), all surnamed García Ibarra. The Commission made the recommendations that these findings dictated.

II. PROCESSING WITH THE COMMISSION

5. The Inter-American Commission received the original petition on November 8, 1994, and registered it as case number 11,576.

6. The Commission forwarded the relevant parts of the original petition to the Ecuadorian State on March 13, 1995, and asked that it present its observations within 90 days. On July 10, 1995, the Commission reiterated its request to the State and asked it to provide whatever information it deemed pertinent within 30 days.

7. On August 3, 1995, information was received from the State in which it reported that as of that date, it had not yet received from the national authorities the reports it needed to provide the information the Commission was requesting. On February 8 and July 9, 1996, the Commission again asked the State to provide information.

8. On April 10, 1996, the petitioners submitted additional information pertaining to the case. On August 15, 1996, the Commission forwarded that additional information to the State and asked that it present its observations within 60 days.

9. The State submitted its observations concerning the initial petition on September 5, 1996. On November 5, 1996, the Commission forwarded the relevant parts of the State's information to the petitioners and asked that they submit their observations within 45 days.

10. On January 31, 1997, a communication was received from the petitioners enclosing their observations on the information provided by the State. This communication was sent to the State on February 20, 1997, with the request that it present its observations within one month. On July 17, 2001, the Commission again asked the State to send its observations.

11. On September 27, 2001, the State filed its observations regarding the case's admissibility. On October 5, 2001, the Commission forwarded the State's observations to the petitioners and asked that they send any new or additional information they might have within 30 days.

12. On April 11, 2003, the Commission informed the petitioners that, in application of Article 37(3) of its Rules of Procedure then in force, it had decided to defer treatment of the case's admissibility until the debate and decision on the merits. The Commission therefore asked the petitioners to submit their observations on the merits within two months.

13. On August 12, 2003, the petitioners presented their observations on the merits. This communication was forwarded to the State on August 20, 2003. That same day, the State was informed that the case was being processed in accordance with Article 37(3) of the Rules of Procedure. The Commission therefore asked the State to submit whatever observations it deemed pertinent within two months.

14. On October 9, 2003, the State requested a 30-day extension. The Commission acceded to the State's request on October 15, 2003.

15. On November 6, 2003, a communication was received from the State in which it presented its observations on the merits of the case. This communication was sent to the petitioners on April 20, 2004, with the request that they file their observations within one month.

16. The petitioners submitted their observations on June 8, 2004. On July 19, 2004, the petitioners' observations were forwarded to the State, which was asked to present its observations within one month.

17. On April 21, 2009, the Commission asked the State and the petitioners to submit a copy of the most important documents and exhibits in the proceedings and updated information on the case. On June 19, 2009, the petitioners presented relevant documents from the judicial proceeding. On July 7, 2009, the pertinent parts of the information supplied by the petitioners were forwarded to the State, with the request that it present its observations within one month.

18. On August 14, 2009, the State requested an extension for presentation of its observations. The Commission granted the State a one-month extension on August 19, 2009.

19. The State presented its observations on October 26, 2009. On October 30, 2009, the information provided by the State was forwarded to the petitioners with the request for them to submit their observations within one month.

20. On December 29, 2009, the petitioners submitted their observations on the State's position. On January 5, 2010, the information presented by the petitioners was forwarded to the State, which was asked to present its observations within one month.

21. On March 4, 2010, a communication was received from the State in which it provided additional information. On April 26, 2010, the pertinent parts of the information supplied by the State were forwarded to the petitioners.

22. On June 23, 2010, the petitioners filed their observations on the information supplied by the State. On July 7, 2010, the petitioners' communication was forwarded to the State, with the request that it present its observations within one month.

23. The State submitted its observations on August 31, 2010, the pertinent parts of which were forwarded to the petitioners on September 15, 2012.

24. On August 22, 2012, the Commission requested additional information from the petitioners. On September 13, 2012, the petitioners presented the information requested, which was then forwarded to the State on September XX, 2012, with the request to present its observations within one month.

25. On December 17, 2012 the Commission received a complete copy of the record of the judicial proceedings at the domestic level from the petitioners, which was served to the State in January 29 2013, giving a one month deadline to present additional observations on such information. Up to the date of the approval of this report, the State has not presented a response.

III. THE PARTIES' POSITIONS

A. The petitioners

26. The petitioners allege that on September 15, 1992, José Luis García Ibarra, a 16 year-old child, was shot dead without provocation, by police officer Guillermo Segundo Cortez Escobedo, in the Codesa neighborhood of the city of Esmeraldas.

27. They pointed out that according to the statements of witnesses, the alleged victim was some 32 meters from his home, talking to friends, when a young man named Segundo Mosquera –who had recently undergone surgery- walked up to chat with them. According to the petitioners, it was at this moment that police officer Segundo Guillermo Cortez Escobeda arrived on the scene, intoxicated, in uniform and carrying his police-issued firearm. The petitioners noted that when the police officer recognized young Mosquera as someone with an alleged criminal record, he proceeded to beat him. The petitioners observed that when this happened, the boys who were present –José Luis García Ibarra among them- attempted to stand up, at which point the police officer fired his weapon and killed García Ibarra outright.

28. As for the admissibility and competence requirements, the petitioners asserted that the facts of the case occurred within the territory of the Republic of Ecuador, a State party to the American Convention since December 28, 1977. As for the Commission's competence *ratione materiae*, they argued that the actions and omissions committed by a police officer and by members of the justice system, respectively, constituted violations of the American Convention.

29. As for the rule requiring exhaustion of local remedies, the petitioners observed that the State was guilty of an unwarranted delay in reaching a final verdict in the criminal case prosecuted in the domestic courts. They pointed out that the case law of the organs of the inter-American system and of the United Nations Human Rights Committee has established that a delay in the proceedings is counted from the start of the case up through the final definitive verdict, and includes any motions and appeals that may be filed. They noted that on September 23, 1992, the First Police Precinct began the investigation, and the final verdict in the case was delivered on February 26, 2002, with the decision that the Second Criminal Chamber of the Supreme Court of Justice delivered on the cassation appeal filed in the case. In other words, the criminal case took nine years and five months, which the petitioners contend is proof of an unwarranted delay in rendering a final judgment in the case.

30. As for the rule requiring that the petition be filed within the prescribed period, the petitioners argue that it was filed on November 24, 1994, two years after the events. By that time, no lower-court ruling had as yet been delivered in the case. Based on the foregoing, the petitioners argue that the six-month time period is not prescribed in this case since the exceptions to the rule requiring exhaustion of domestic remedies apply.

31. Finally, the petitioners contend that this case is not pending with another international proceeding for settlement and does not essentially duplicate a petition pending or already examined and settled by the Commission or by another international governmental organization.

32. As for the State's fourth-instance argument, the petitioners make the point that they were not asking the Commission to review a judgment delivered in a domestic court; instead, their objective was to prove that the State violated the right to independent and impartial courts and the

right to have a court case settled within a reasonable period of time. They argued that from the manner in which the State prosecuted the case, its objective was to allow the crime to go unpunished, which in the petitioners' view violated the right to the truth, to the detriment of the victim's next of kin and society in general.

33. As for the right to life, the petitioners again cite the case law of the Inter-American Court of Human Rights concerning the State's duty to prevent its agents from violating that right. They mention that the State incurred responsibility in this case not simply because one of its agents arbitrarily deprived José Luis García Ibarra of his life, but also because the administration of justice failed to conduct a serious investigation of the crime and to impose adequate punishment.

34. In their arguments, the petitioners focus mainly on the prosecution of the case in the domestic courts, indicating that there was not an adequate judicial practice. To back up this assertion, the petitioners observe that at the start of the case, a number of motions for disqualification were filed and proceedings were conducted to ascertain whether a conflict of jurisdiction existed between police jurisdiction and ordinary jurisdiction. The petitioners go on to report that after the order for commencement of oral proceedings was issued, the Criminal Court of Esmeraldas issued three rulings based on three entirely different opinions written by the judges of that Court. The petitioners allege that two judges wrote opinions on the merits of the case, in which they acknowledged that a crime had been committed, but differed on the classification of the crime and, by extension, the severity of the penalty; the third judge who wrote an opinion did not go into the merits, but instead examined the jurisdictional issue and was of the view that the court should declare that it did not have jurisdiction over the case.

35. The petitioners report that the Public Prosecutor's Office filed a cassation appeal and the accused filed an appeal for the annulment of the verdict and a cassation appeal. As a result, on January 22, 1996, the case went to the Esmeraldas Superior Court for a decision on the appeal to vacate the judgment. The petitioners state that on May 15, 2000, the court dismissed that appeal and referred the case to the Supreme Court, which on February 26, 2002 confirmed the sentence imposed on the grounds that the doubt regarding the police officer's willfull intent should be decided in favor of the accused.

36. The petitioners observe that the private plaintiff and mother of the alleged victim, Vicenta Ibarra Ponce, withdrew from the case on July 25, 1996, as a result of a supposed financial settlement reached with the accused. They point out that this is not the first case in which the perpetrators reach financial settlements with the victim's next of kin; the petitioners contend that these settlements are the result of a lack of faith in the country's judicial institutions. The petitioners point out that perpetrators elude justice by offering financial settlements to get the accusing party to withdraw from a case.

37. The petitioners observe that the proceedings did not meet the legal deadlines established in the Code of Criminal Procedure, under which a case was not to last longer than 187 days. They point out that the case had dragged on for nine years and five months before being decided. They argue that should the Commission not accept their argument regarding the failure to comply with the deadlines established in domestic law, the analysis should take into account the following: a) the complexity of the case; b) the procedural activity of interested party, and c) the conduct of the judicial authorities.

38. As for the first element, the petitioners observe that this case did not demand large-scale or extensive investigation; all that was required was the willingness of the administration of justice and the prosecution to carry the case through to completion and ascertain the facts. Specifically they point out that the identity of the party responsible for the alleged victim's death was discovered on the very day the events occurred; thus, the perpetrator's identification was not a problem for the State. They add that from their first encounter with the administration of justice in the form of the private complaint, the victim's next of kin clearly described how the events occurred and the identity of the police officer responsible for the death of José Luis García Ibarra. As for the second element to consider the petitioners observe that nothing in the record suggests that the conduct of José Luis García Ibarra's family was not what it should have been as a party to the proceedings; all the family did was to file petitions asking that evidence be gathered to solve the case. The petitioners argue that nothing in the record suggests that the alleged victim's next of kin did anything to encumber the processing of the case or that they engaged in dilatory tactics. As for the third element, the petitioners contend that it has been demonstrated that the proceedings were not conducted in accordance with the law and that there were excessive delays attributable to the state authorities presiding over the case.

39. The petitioners also underscore the fact that in its ruling of February 26, 2002, the Supreme Court itself noted the irregularities in the case, including a lower-court ruling that the Supreme Court labeled *sui generis* as it was based on three differing findings. The petitioners state that the Supreme Court even gave instructions to have the Council of the Judiciary examine the conduct of the members of the Criminal Court, especially one of its members who did not have the authority to issue an opinion pertaining to jurisdiction at this stage. On this last point, the petitioners indicate that one year and five months before the member of the court issued his finding, that the police justice system had jurisdiction over this case, this issue had already been settled in favor of the ordinary courts. According to the petitioners, this demonstrates that the member in question failed to do a careful review of the case file.

40. The petitioners observe that the Supreme Court pointed to other irregularities, among them the fact that the Esmeraldas Superior Court took four years to issue its finding on the appeal for the annulment of the verdict. They also allege that the Public Prosecutor's Office mistakenly filed its appeal with the Supreme Court.

41. The petitioners note that because the State had possession of the evidence and because murder is a crime that the State must prosecute *ex officio*, it was the State's obligation to prosecute the legal case and provide all the information necessary to determine guilt. They further observe that the delay in rendering a final judgment was due to the fact that the State did not practice the due diligence or devote the attention to the case, as it was its duty.

42. As for the State's argument that there was no violation of Article 25 of the American Convention, the petitioners contend that the victim's next of kin did not have an adequate and effective remedy. They emphasize the fact that in its February 26, 2002 ruling the Supreme Court established that the deficient investigation made it impossible to ascertain the procedural truth, generating confusion concerning the facts and the crime committed, all for the purpose of keeping the defendant's sentence to just 18 months. The petitioners describe the sentence as inadequate and completely unsuited to the nature of the crime, as this was the murder of an adolescent. The petitioners observe that even in cases involving "ordinary murders" the courts sentence the guilty parties to up to 16 years.

43. The petitioners also allege that once the police officer involved had served 18 months in prison for the death of José Luis García Ibarra, he rejoined the ranks of the police force, in violation of the Police Personnel Law, under which any police officer sentenced to prison must be dismissed. The petitioners indicate that the only explanation for this is that the public authorities either supported or at least tolerated the behavior of the police officer in question. They add that the same police officer had stood trial in 1985 for attempted murder and, subsequent to the case of José Luis García Ibarra, stood trial yet again for another attempted murder. The petitioners report that the police officer was finally dismissed as he was not deemed suitable for promotion to the next higher rank, but not because of the violations he had committed.

44. In their most recent communication, the petitioners presented the complete judicial file to sustain their allegations.

B. The State

45. The State argues that the case should be deemed inadmissible on the grounds that the facts alleged do not constitute a violation of human rights attributable to the State. It argues that what the petitioners want is for the Commission to review the proceedings in the domestic courts and determine whether its judgment contains errors of fact or of law. It observes that the Commission does not have the authority to act as a higher court or court of fourth instance or to review the rulings issued by domestic courts acting in accordance with due process. It also argues that whether favorable or unfavorable, the rulings handed down by the competent courts were the appropriate ones to resolve the petitioners' situation, and that courts were respectful of all the judicial guarantees.

46. The State mentions that the Commission is not competent to decide the guilt or innocence of the accused and underscores the fact that the inter-American human rights system is secondary to the domestic law of States, which is why if a violation has been redressed by the State internally, the Commission cannot take cognizance of the matter.

47. With regard to Article 1(1) of the American Convention, it contends that the State has complied with its obligations to conduct a serious investigation of the crime and to punish those responsible, since a conviction was handed down and the sentence was carried out against the citizen responsible for the death of José Luis García Ibarra.

48. It observes that the right to life has been protected on the basis of the constitutional provisions that guarantee rights, and argues that within its domestic legal system, the State has set up a complete system of criminal procedure whose purpose is to conduct effective investigations that succeed in punishing those guilty of violations. It observes that in this particular case, the sentence imposed and executed by the Esmeraldas Criminal Court following a serious investigation and a trial with the necessary guarantees, demonstrates the existence of an adequate and effective remedy for investigating a violation of the American Convention. It argues that international responsibility cannot be attributed to the State for a crime that, although committed by one of its agents, was not done with the State's tolerance or acquiescence, because it was determined the criminal responsibility of a "bad element" in the National Police Force.

49. As for the supposed violation of judicial guarantees, the State's contention is that the domestic courts got to the truth through a complex process that culminated with a sentence, which the guilty party effectively served. It adds that it was an impartial court that delivered a verdict in

accordance with the law and after weighing all the evidence and arguments. The State reasons that this alone should suffice to discard any argument relating to the sentence imposed and its potential effects. The State points out that while there was a delay in deciding the appeal seeking to have the annulment of the judgement, this in no way affected the process since the appeal did not prevent the sentence imposed from being served in full.

50. The State repeats that the requirements of due process set forth in the American Convention were observed. As for the right to be heard, it argues that the “ability to petition” was not denied and no personal or economic restriction was imposed. It adds further that the right to “allege” evidence, have evidence admitted and produce evidence was guaranteed and that the right to personal and juridical security was fully respected. It asserts that the right to a hearing by a competent judge was not simply preserved; but in addition claims could be elevated to higher courts by filing appeals. As for the so-called “*derecho a la utilidad de la sentencia*” [right to a judgment that serves a purpose], the State asserts that this right was observed irrespective of whether or not it served the petitioners’ interests or advanced their claims.

51. The State adds that to guarantee due process of law to the accused, the laws of Ecuador, like those of other countries, provide for the possibility of negative or positive conflicts of competence, in which a judge can either assert or deny jurisdiction over a case; a higher authority will have to resolve such a conflict.

52. As for the right to judicial protection, the State asserts that in the present case, the proper course of action was an investigation leading to prosecution of the party responsible for the violation. The State further asserts that the investigation culminated in a conviction and that no international responsibility can be attributed to the State if, once the police officer was convicted, the petitioners failed to avail themselves of the procedure for claiming civil reparations.

53. As for the petitioners’ allegation that the irregularities in the case were exposed in the Supreme Court’s findings, the State argues that the Supreme Court justices are independent and are free to interpret the law. It adds that even if delays in the criminal case were established, there are laws and procedures by which to impose sanctions; also, the National Council of the Judiciary is constantly scrutinizing the conduct of judges and courts.

IV. ANALYSIS OF ADMISSIBILITY

A. The Commission’s competence *ratione materiae*, *ratione personae*, *ratione temporis* and *ratione loci*

54. Under Article 44 of the American Convention, the petitioners are authorized to lodge petitions with the Commission on the alleged victims’ behalf. The latter were under the jurisdiction of the Ecuadorian State on the date the alleged events occurred. Furthermore, Ecuador has been a State party to the American Convention since December 28, 1977, the date on which it deposited its instrument of ratification. Therefore, the Commission has competence *ratione personae* to examine the petition.

55. The Commission has competence *ratione loci* to examine the petition inasmuch as it alleges violations of rights protected under the American Convention, violations said to have occurred within the territory of Ecuador.

56. The Commission also has competence *ratione temporis* because the obligation to respect and ensure the rights protected under the American Convention was already in effect for the State on the date on which the facts alleged in the petition were said to have occurred.

57. Finally, the Commission has competence *ratione materiae*, since the petition alleges possible violations of human rights protected by the American Convention.

B. Admissibility requirements

1. Exhaustion of domestic remedies

58. Article 46(1)(a) of the American Convention provides that in order for a complaint submitted to the Inter-American Commission under Article 44 of the Convention to be admissible, the remedies under domestic law must have been pursued and exhausted in accordance with generally recognized principles of international law. The purpose of this requirement is to afford the national authorities an opportunity to examine the alleged violation of a protected right and, if appropriate, resolve it before the violation is taken up by an international body.

59. The State made express mention of exhaustion of domestic remedies in its various briefs of observations. The petitioners, for their part, alleged that as of the date on which the petition was filed, two years after the events occurred, the lower court had not yet issued a ruling, which would trigger the exception for an unwarranted delay, set forth in Article 46(2)(c) of the American Convention.

60. As the Commission has observed, in order for it to examine compliance with the rule requiring exhaustion of domestic remedies, it must first determine what the appropriate remedy is for the petitioners to exhaust given the circumstances of the case; the appropriate remedy is the one capable of rectifying the violated right.¹ In cases of alleged arbitrary deprivation of the right to life, the proper course of action is investigation and a criminal proceeding instituted and prosecuted by the State *ex officio*, to identify the responsible parties and impose the corresponding penalties.²

61. The Commission notes that since the presentation of the initial petition there was an evolution in the internal proceeding of the cause. Indeed, the internal process got underway on September 23, 1992, with a police report prepared by the First Police Precinct. The petition was filed on November 8, 1994 and, while it was still being processed with the Inter-American Commission, the internal criminal case was finally resolved on February 26, 2002, with the ruling that the Second Criminal Chamber of the Supreme Court delivered on the cassation appeal. In situations where the evolution of facts initially presented at the domestic level implies a change in the compliance or noncompliance with

¹ IACHR. Report No. 51/08. Petition 299-07. Admissibility. Robert Ignacio Díaz Loreto *et al.*. Venezuela. July 24, 2008; and IACHR. Report No. 23/07. Eduardo José Landaeta Mejías *et al.*. Petition 435-2006, Admissibility, paragraph 43, March 9, 2007.

² IACHR, Report No. 23/07, Eduardo José Landaeta Mejías *et al.*, Petition 435-2006, Admissibility, paragraph 43, March 9, 2007; IACHR, Report No. 15/06, María Emilia González, Paula Micaela González and María Verónica Villar. Petition 618-01, Admissibility, paragraph 34, March 2, 2006; IACHR, Report No. 52/97, Case 11.218, Arges Sequeira Mangas, Annual Report 1997, paragraphs 96 and 97. See also Report No. 55/97, paragraph 392, and Report No. 55/04 paragraph 25.

admissibility requirements, the Commission has held that its analysis must be based on the situation as it stands when the time comes for the Commission to decide the question of admissibility.³

62. The Commission observes that as of the date of this ruling on admissibility, the criminal case has been definitively closed in the domestic courts, following the February 26, 2002 ruling by the Criminal Chamber of the Supreme Court on the appeal seeking to have the annulment of the judgement and the cassation appeal. Accordingly, the Commission deems it unnecessary to issue any pronouncement on the unwarranted delay originally alleged by the petitioners and declares that as of this date, the internal remedies have been definitively exhausted, in accordance with Article 46(1)(a) of the American Convention.

2. Deadline for filing a petition with the Commission

63. Article 46(1)(b) of the Convention provides that for a petition to be declared admissible, it must be lodged within a period of six months from the date on which the party alleging violation of his or her rights was notified of the final judgment that exhausted domestic remedies.

64. In the preceding section, the Commission established that the internal remedies were exhausted with the definitive ruling that the Criminal Chamber of the Supreme Court delivered on February 26, 2002. Compliance with the rule requiring exhaustion of domestic remedies occurred while the admissibility and merits of the present case were being processed. Under such circumstances, compliance with the filing period for the petition goes hand in hand with exhaustion of the domestic remedies, and the Commission therefore considers that this requirement has been met.⁴

3. Duplication of proceedings and *res judicata*

65. Article 46(1)(c) of the Convention provides that admission by the Commission of a petition shall be subject to the requirement that the subject matter “is not pending in another international proceeding for settlement”, while Article 47(d) provides that the Commission shall consider inadmissible any petition or communication that “is substantially the same as one previously studied by the Commission or by another international organization.” The parties have not claimed either of these two circumstances, nor is there anything in the case file to suggest that they are present in this case.

4. Characterization of the facts alleged

66. For admissibility purposes, the Commission must decide whether the facts described in the petition would tend to establish violations of the rights enshrined in the American Convention, as required under Article 47(b), or whether the petition is “manifestly groundless” or “obviously out of

³ IACHR. Report 2/08. Petition 506-05. José Rodríguez Dañín. Bolivia. March 6, 2008. Paragraph 57. Citing. IACHR, Report No. 20/05, Petition 714/00 (“Rafael Correa Díaz”), February 25, 2005, Peru, paragraph 32; IACHR., Report No. 25/04, Case 12.361 (“Ana Victoria Sánchez Villalobos *et al.*”), March 11, 2004, Costa Rica, paragraph 45; IACHR, Report No. 52/00. Cases 11.830 and 12.038. (Dismissed Congressional Employees), June 15, 2001, Peru. Paragraph 21.

⁴ See, for example: IACHR. Report 8/10. Case 12.374. Admissibility. Jorge Enrique Patiño Palacios *et al.* Paraguay. March 16, 2010. Paragraph 31; and IACHR. Report 20/05. Petition 716/00. Admissibility. Rafael Correa Díaz. Peru. February 25, 2005. Paragraph 34.

order,” as required under Article 47(c). The standard for assessing these particulars is different from the one required to decide the merits of a complaint. The Commission must conduct a *prima facie* evaluation to examine whether the complaint substantiates an apparent or potential violation of a right guaranteed by the Convention and not to establish the existence of a violation. This review is a summary analysis that does not involve any prejudgment or advanced opinion on the merits of the case.

67. Furthermore, neither the American Convention nor the Commission’s Rules of Procedure require petitioners to identify the specific rights alleged to have been violated by the State in a matter brought to the Commission’s attention, although the petitioners are free to do so. On the other hand, based on the case law of the system, in its admissibility reports the Commission is required to name which provisions of the relevant inter-American instruments apply; if the facts alleged are proven through sufficient means, it may rule that those instruments have been violated.

68. The State considered that the Commission is not a superior Tribunal to analyze factual or legal mistakes made by the domestic authorities within their jurisdictions and in accordance with the guarantees of a fair trial. In this respect, the Commission highlights that the aim of this petition is not to review the internal decisions but to determine if the alleged actions and omissions made by a variety of State’s authorities, including police officers and other authorities in charge of prosecution and investigation, would compromise the international responsibility of the State of Ecuador.

69. Regarding the State’s arguments related to the concept of “Fourth Instance”, in the *Cabrera Montiel v. Mexico* Case, the Inter-American Court indicated the following:

[...] It would be necessary that the petitioner asks the Court to review the decision of a domestic tribunal, without alleging at the same time, that the decision breached an international treaty, in regards to which the Tribunal has jurisdiction over⁵.

70. The Commission observes that this hypothesis is not proven in the present case because, as was said, the aim is not to review the final decision of the process of the criminal case, but to examine if the whole procedure that had this decision as a result was compatible with the obligation to prosecute and punish adequately in cases of extrajudicial executions. Besides this, the petitioners were consistent in arguing that it is precisely the criminal process as a whole, including the final decision, that constituted a violation of the rights to a fair trial and to judicial protection.

71. In this sense, the Commission would like to clarify in this section of legal characterization that the analysis on the merits regarding a fair trial and judicial protection, will be focused on if the criminal procedure that ended on February 26, 2002, constituted an effective judicial answer in light of the Inter-American standards regarding the duty to prosecute and punish human rights violations with due diligence and within a reasonable time. In this analysis, the Commission will take into consideration the specific standards that govern the use of force in cases that result in the death of a person. Besides this, the Commission will evaluate the facts transversally taking into account that the victim was a teenager, and that, the response of the State must be evaluated in light of the duty of special protection.

⁵ I/A Court H.R., *Case of Cabrera-García and Montiel-Flores v. Mexico*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of November 26, 2010. Series C No. 220, par. 18.

72. Based on the arguments and evidence submitted by the parties, the Commission deems that as described, the facts surrounding the death of the adolescent José Luis García Ibarra could characterize a violation of the right to life and children's right to special protection, set forth in articles 4 and 19 of the American Convention, read in conjunction with Article 1(1) thereof. The Commission also considers that the facts described could characterize a violation of the rights to humane treatment, judicial guarantees, and judicial protection, established in articles 5, 8 and 25 of the American Convention, read in conjunction with the obligations established in Article 1(1) thereof, to the detriment of the deceased adolescent's next of kin.

V. FINDINGS OF FACT

A. The death of José Luis García Ibarra

73. José Luis García Ibarra, son of Pura Vicenta Ibarra Ponce and Alfonso Alfredo García Macias, was 16 years old at the time of his death.⁶ He was pursuing his high-school degree.⁷

74. José Luis García Ibarra died on September 15, 1992⁸ in the neighborhood known as Codesa, in the city of Esmeraldas.⁹ According to the autopsy report, the cause of death was an "intracranial hemorrhage with encephalic laceration and multiple skull fractures produced by a projectile from a firearm."¹⁰

75. No one contests the fact that the person who fired the shot that caused the adolescent's death was National Police officer Guillermo Segundo Cortez Escobedo,¹¹ who used a Smith and Wesson 38 caliber long barrel revolver, number AEB 5495.¹²

⁶Appendix 1. Identification of the Deceased, mentioned in the Prosecution's Filing (Attachment to the original petition); Appendix 2. Statement from the alleged victim's mother, Vicenta Ibarra Ponce, made at the First National Police Precinct on September 16, 1992, (Attachment to the original petition of November 8, 1994); see also, Appendix 3. Forensic examination and autopsy (attachment to the petitioner's brief of June 19, 2009).

⁷Appendix 2. Statement from the alleged victim's mother, Vicenta Ibarra Ponce, made at the First National Police Precinct on September 16, 1992. Attached to the statement were a certificate from Mr. Eduardo Bolaños Piñeda, the police record, and a copy of his identification card (Attachment to the original petition of November 8, 1994).

⁸Appendix 2. Statement from the alleged victim's mother, Vicenta Ibarra Ponce, made at the First National Police Precinct on September 16, 1992, (Attachment to the original petition of November 8, 1994); Appendix 4. Statement by Segundo Rafael Mosquera Sosa to the First National Police Precinct, September 15, 1992 (Attachment to the petitioner's brief of June 19, 2009); Appendix 5. Statement by Hugo Enrique Menendez to the Third Criminal Court of Esmeraldas, December 3, 1992 (attachment to the petitioner's brief of June 19, 2009); Appendix 6. Statement by Susana Arminda Perea Quintero to the Third Criminal Court of Esmeraldas, December 3, 1992 (Attachment to the petitioner's brief of June 19, 2009); Appendix 7. Statement by Cristian Cristóbal Rivadeneira to the Third Criminal Court of Esmeraldas, December 3, 1992 (Attachment to the petitioner's brief of June 19, 2009); Appendix 8. Out-of-court testimony of Guillermo Segundo Cortez Escobedo, mentioned in the Prosecution's Filing of January 7, 1995 (Attachment to the original petition of November 8, 1994); Appendix 9. Prosecution's Filing (Attachment to the original petition of November 8, 1994); See also: Appendix 3. Forensic examination and autopsy (Attachment to the petitioner's brief of June 19, 2009).

⁹ Appendix 9. Prosecution's Filing (Attachment to the original petition). See also: Statements by eyewitnesses to the Police Precinct, in the Prosecution's Filing and to the Third Criminal Court of Esmeraldas.

¹⁰Appendix 3. Forensic examination and autopsy (Attachment to the petitioner's brief of June 19, 2009).

¹¹ Appendix 2. Statement from the alleged victim's mother, Vicenta Ibarra Ponce, made at the First National Police Precinct on September 16, 1992, (Attachment to the original petition of November 8, 1994); Appendix 4. Statement by Segundo Rafael Mosquera Sosa to the First National Police Precinct, September 15, 1992 (Attachment to the petitioner's brief of June 19, 2009).
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76. Regarding the mandate given to Mr. Cortez by the National Police during the date, time and place when and where Jose Luis Garcia Ibarra lost his life, on October 20th, 1992, the Provincial Command Secretary of the National police of "Esmeraldas" No. 14, issued a certificate indicating that:

In memorandum Nro-92-349-CO-14 of December 10, 1992, the Provincial Command of Esmeraldas Nro. 14 determines that Mister Police Officer Segundo Guillermo Cortez Escobedo, presents himself on September the 14th at 7:00 at the police headquarters of Esmeraldas, for him to reinforce security in the central square for 15 days

During the 15 days of concentration, starting from the 14th of September, 1992, Mister National Police Officer Segundo Guillermo Cortez de Escobedo, was providing his services in his command, 24 hours a day¹³.

77. This information was confirmed by Police Officer Guillermo Cortez who in the framework of the criminal investigation, explained to the substantive judge that he had been assigned to reinforce security in the square since the day before the facts took place (September 14) by 24 hour shifts and for 15 days.

78. The statements from the witnesses present at the scene and from the shooter himself concur that on September 15, 1992, teenager José Luis García Ibarra was in his neighborhood, sitting under a tree chatting with two friends, also teenagers, and identified as Byron Rolando Saa Macías and Cristian Cristóbal Rivadeneira.¹⁴ At approximately 8:30 p.m., a youth by the name of Segundo Rafael Mosquera Sosa, age 19¹⁵ and nicknamed "zapatón", approached the teens to chat. At that very moment, police officer Guillermo Segundo Cortez Escobedo appeared, walking with a friend by the name of Jhonny Mendoza Salazar.¹⁶

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of June 19, 2009); Appendix 5. Statement by Hugo Enrique Menendez to the Third Criminal Court of Esmeraldas, December 3, 1992 (attachment to the petitioner's brief of June 19, 2009); Appendix 6. Statement by Susana Arminda Perea Quintero to the Third Criminal Court of Esmeraldas, December 3, 1992 (Attachment to the petitioner's brief of June 19, 2009); Appendix 7. Statement by Cristian Cristóbal Rivadeneira to the Third Criminal Court of Esmeraldas, December 3, 1992 (Attachment to the petitioner's brief of June 19, 2009); Appendix 8. Out-of-court testimony of Guillermo Segundo Cortez Escobedo, mentioned in the Prosecution's Filing of January 7, 1995 (Attachment to the original petition of November 8, 1994); Appendix 9. Prosecution's Filing (Attachment to the original petition of November 8, 1994); Appendix 10. Copy of the order for commencement of oral proceedings, from the Esmeraldas Superior Court, paragraph 4 (Attachment to the original petition of November 8, 1994); Appendix 11. Office of Criminal Investigation, Report of Corporal Lupo Quiñonez. (Attachment to the State's briefs of September 5, 1996).

¹²Appendix 9. Prosecution's Filing (Attachment to the original petition).

¹³ Appendix 12. Record of the judicial proceedings (Supplied by the petitioners on January 10, 2013), Volume II, p. 52.

¹⁴Appendix 7. Statement by Cristian Cristóbal Rivadeneira to the Third Criminal Court of Esmeraldas, December 3, 1992 (attachment to the petitioner's brief of June 19, 2009); Appendix 13. Statement by Byron Rolando Saa Macias in the Prosecution's Filing (attachment to the original petition of November 8, 1994).

¹⁵ Appendix 14. Review of the Forensic examination conducted on November 19, 1992 (attachment to the petitioners' brief of June 19, 2009).

¹⁶ Appendix 2. Statement from the alleged victim's mother, Vicenta Ibarra Ponce, made at the First National Police Precinct on September 16, 1992 (Attachment to the original petition of November 8, 1994); Appendix 4. Statement by Segundo Rafael Mosquera Sosa to the First National Police Precinct, September 15, 1992 (attachment to the petitioner's brief of June 19, 2009); Appendix 5. Statement by Hugo Enrique Menendez to the Third Criminal Court of Esmeraldas, on December 3, 1992 (Attachment to the petitioner's brief of June 19, 2009); Appendix 6. Statement by Susana Arminda Perea Quintero to
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79. Regarding the physical conditions of the youngster Segundo Rafael Mosquera Sosa, there is proof within the files about him being recovering from two surgeries, an exploratory laparotomy and a colectomy, that had been performed 60 days before, the 12th of July of 1992, as a consequence of bullet wounds in his colon made by a fire arm¹⁷. The physical examination performed in the context of the investigation two months after the facts, November 19, 1992, showed that:

[...] Colectomy with a gathering covering the left flank. Queloid scars, one in the middle abdominal line of the exploratory laparotomy: on the left flank a 3 cm scar. And another one of 1 cm; in the lumbar cavity, another irregular scar of about 7 cm. [...] over four months earlier, the patient in question had sustained a bullet wound that perforated his large intestine. As a result, he underwent surgery done through an abdominal laparoscopic cholecystectomy. These lesions should have left him incapacitated for thirty days.¹⁸

80. The Commission notes that there are varying versions of what happened after the police officer arrived on the scene of the events.

81. In the file there are 7 testimonies from witnesses that were placed around one and fifteen meters from the place where the facts took place¹⁹ that assure that the policeman shot intentionally. In this manner, there are three different versions of people that were between twenty and fifty meters away from where the events took place that declared to have seen a fight between the policeman and a young man, and having heard a shot²⁰. Finally, in his declaration, the policeman Guillermo Segundo Cortez, assured that the death of Jose Luis Garcia Ibarra was accidental because a young man attacked him to rob him and his weapon was accidentally fired when he was struggling to defend himself.

82. The first group of declarations given by first hand witnesses that are in the file were taken three months after the events had taken place in December, 1992, and indicate that Jose Luis Ibarra was gathered with a group of young men when police officer Guillermo Cortez came close to the

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the Third Criminal Court of Esmeraldas, on December 3, 1992 (Attachment to the petitioner's brief of June 19, 2009); Appendix 7. Statement by Cristian Cristóbal Rivadeneira to the Third Criminal Court of Esmeraldas, December 3, 1992 (attachment to the petitioner's brief of June 19, 2009); Appendix 8. Out-of-court testimony by Guillermo Segundo Cortez Escobedo, mentioned in the Prosecution's Filing of January 7, 1995 (attachment to the original petition of November 8, 1994); Appendix 9. Prosecution's Filing (Attachment to the original petition of November 8, 1994); See also: Appendix 3. Forensic examination and autopsy (attachment to the petitioner's brief of June 19, 2009).

¹⁷ Appendix 14. Forensic examination carried out on November 19, 1992 (Attachment to the petitioners' brief of June 19, 2009); Appendix 4. Statement by Segundo Rafael Mosquera Sosa to the First National Police Precinct, September 15, 1992 (attachment to the petitioner's brief of June 19, 2009).

¹⁸ Appendix 14. Review of the Forensic examination conducted on November 19, 1992 (attachment to the petitioners' brief of June 19, 2009); Appendix 4. Statement by Segundo Rafael Mosquera Sosa to the First National Police Precinct, September 15, 1992 (attachment to the petitioner's brief of June 19, 2009).

¹⁹ See statements by Cristin Cristóbal Rivadeneira, Byron Rolando SAA Macías, Vicenta Ibarra, Arminda Perea Quintero, Hugo Enrique Menéndez, Lilian Solany Cortez, and Segundo Rafael Mosquera. Witnesses situated between 1 and 15 meters from where the facts occurred, in the chapter on investigative procedures.

²⁰ Appendix 12. Record of the judicial proceedings (Supplied by the petitioners on January 10, 2013). Statements in Volume II, pp. 84-90.

group in a state of intoxication²¹ and attacked Segundo Rafael Mosquera Sosa punching him with his fist and then pulling out his gun and hitting him with the back of it and kicking him repeatedly. Mosquera tried to show the policeman that he had just had surgery but the policeman did not stop beating him and the young man could not oppose any resistance. In this sense, these declarations confirm that when the policeman finished beating Mosquera, he turned his sight towards youngster Jose Luis Garcia Ibarra, who was close to the store and he deliberately shot at him, without any provocation²².

83. On the other hand, police officer Guillermo Cortez indicated that he had a fight with youngster Segundo Rafael Mosquera Sosa because he tried to rob him, and that he was struggling with him when he heard a shot that had hit Jose Luis Garcia Ibarra²³. Policeman Guillermo Segundo Cortez Escobedo indicated that this shot was accidental and was a result of the struggling²⁴. The state agent justified the situation stating that it was a group of “gangsters” and that young Mosquera Sosa had tackled him for no apparent reason to rob him and steal his gun²⁵.

B. Investigations and judicial proceedings instituted into the death of José Luis García Ibarra

84. On September 16, 1992, Pura Vicenta Ibarra Ponce, mother of José Luis García Ibarra, appeared at Esmeralda’s First National Police Precinct and filed a complaint against police officer Guillermo Segundo Cortez Escobedo for her son’s murder.²⁶ In addition, the members of the Taxi Cooperative “Su Amigo” sent a telegram to the National Congress, the Police Command, the Ecumenical Human Rights Commission, to several representatives and to the Governor of Esmeraldas, denouncing that young Jose Luis Garcia Ibarra had been murdered the day before by a policeman that was not in

²¹ Appendix 2. Statement by the mother of the alleged victim, Vicenta Ibarra Ponce, to the First National Police Precinct, September 16, 1992 (Attachment to the original petition of November 8, 1994). Appendix 5. Statement by Hugo Enrique Menendez, mentioned in the judgment of Judge Eugenio Guerrero, Esmeraldas Criminal Court, November 17, 1995.

²² Appendix 2. Statement by the mother of the alleged victim, Vicenta Ibarra Ponce, to the First National Police Precinct, September 16, 1992 (Attachment to the original petition of November 8, 1994); Appendix 4. Statement by Segundo Rafael Mosquera Sosa to the First National Police Precinct, September 15, 1992 (attachment to the petitioner’s brief of June 19, 2009); Appendix 5. Statement by Hugo Enrique Menendez to the Third Criminal Court of Esmeraldas, December 3, 1992 (Attachment to the petitioner’s brief of June 19, 2009); Appendix 6. Statement by Susana Arminda Perea Quintero to the Third Criminal Court of Esmeraldas, December 3, 1992 (Attachment to the petitioner’s brief of June 19, 2009); Appendix 7. Statement by Cristian Cristóbal Rivadeneira to the Third Criminal Court of Esmeraldas, December 3, 1992 (Attachment to the petitioner’s brief of June 19, 2009); Appendix 9. Prosecution’s Filing (attachment to the original petition); Appendix 15. Esmeraldas Superior Court, Order for commencement of oral proceedings, par. 7, October 31, 1994 (attachment to the original petition).

²³ Appendix 16. Statement by Luis Enrique Quiñonez Canga and Vistor Omar Bueno Hinostrosa, hearing at Esmeraldas Criminal Court on September 5, 1995 (Attachment to the petitioner’s brief of April 10, 1996). See also, Appendix 17. Statement by Aracey Cobeña Moreira in the Prosecution’s Filing (attachment to the original petition).

²⁴ Appendix 8. Out-of-court testimony by Guillermo Segundo Cortez Escobedo, mentioned in the Prosecution’s Filing of January 7, 1995 (attachment to the original petition).

²⁵ Appendix 8. Out-of-court testimony by Guillermo Segundo Cortez Escobedo, mentioned in the Prosecution’s Filing of January 7, 1995 (attachment to the original petition); Appendix 18. Statement by Eddy Rogrigues contained in the police report, mentioned in the Prosecution’s Filing.

²⁶ Appendix 19. Complaint filed by the alleged victim’s mother, Vicenta Ibarra Ponce, with the First National Police Precinct, dated September 16, 1992 (Attachment to the original petition dated November 8, 1994).

service and who had often attacked peaceful citizens, and expressing their worry and indignation for the impunity and deterioration of the image and prestige of the members of the National Police²⁷.

85. On September 17, 1992, a forensic examination and autopsy were done on adolescent José Luis García Ibarra at the municipal cemetery morgue. The autopsy found that the cause of death was an “intracranial hemorrhage with encephalic laceration and multiple skull fractures produced by a projectile from a firearm.”²⁸

86. On September 23, 1992, the First National Police Precinct issued an order for investigation of the crime.²⁹

87. On September 30, 1992, the First National Police Precinct declined jurisdiction on the grounds that it did not have competence; instead, it referred the case to a National Police Court in the city of Quito, which came under police jurisdiction.³⁰

88. On October 8, 1992, the same First National Police Precinct rescinded the order declining jurisdiction.³¹ It then ordered that the investigation and prosecution of the case was to continue and that the case was to be sent to the case docketing/management office of the Esmeraldas Superior Court, where it was assigned to the Third Criminal Court of Esmeraldas.³²

89. On October 14, 1992, the Third Criminal Court of Esmeraldas took cognizance of the case, confirmed the order of detention pending trial against the accused Guillermo Segundo Cortez Escobedo and ordered various measures. Among these measures was that the Commandant of Esmeraldas Police Force No. 14 be instructed to have the individual in custody transferred to the Social Rehabilitation Center. The court also ordered that the corresponding Constitutional Notice of Incarceration be issued and that a copy of all the proceedings be sent to the accused at his place of confinement. The Court also requested the criminal records of the accused on file with the district’s criminal courts.³³

90. On October 15, 1992, the Third Criminal Tribunal requested the First and Second Criminal Tribunals of Esmeraldas to send a copy of the criminal background certificates of the police officer involved³⁴.

²⁷ Appendix 12. Record of the judicial proceedings (Supplied by the petitioners on January 10, 2013). Statements on p. 39, Vol. II). See also, p. 36, Vol. II)

²⁸ Appendix 3. Report on the forensic examination of and autopsy on José Luis García Ibarra. (Attachment to the petitioners’ brief of June 19, 2009).

²⁹ Appendix 20. Order for investigation of the crime (Attachment to the petitioners’ brief of June 19, 2009).

³⁰ Appendix 20. Order setting the matter for trial (Attachment to the petitioners’ brief of June 19, 2009).

³¹ Appendix 21. Petitioners’ brief of August 12, 2003 and June 19, 2009.

³² Appendix 22. November 17, 1995 judgment of the Esmeraldas Criminal Court, delivered by Dr. Thelmo Palomeque Medina (Attachment to the petitioners’ brief of April 10, 1996).

³³ Appendix 23. October 14, 1992 order issued by the Third Criminal Court of Esmeraldas (Attachment to the petitioners’ brief of June 19, 2009).

³⁴ Appendix 12. Record of the judicial proceedings (Supplied by the petitioners on January 10, 2013), p. 47, Vol. II.

91. In this same date, this police officer, Guillermo Cortez, sent a communication to the Third Criminal Judge requesting him to overturn the transfer order because it had not been taken into account that he had represented the national police, and as such, he had participated permanently in the suppression of crime.³⁵ This same day, the Third Criminal Judge issued a decision annulling the transfer and keeping Mister Cortez under Police custody³⁶.

92. Also, in this same date, Jose Luis Garcia Ibarra's mother sent a document to the substantive judicial authority showing him that police officer Guillermo Cortez had a criminal background and a record of police brutality. Mrs. Ibarra added that this officer had shot a civilian hurting his spinal chord, making him paralytic. On this fact, Mrs. Ibarra provided a photographic document.³⁷ On October 27, 1992 Mrs. Ibarra reiterated this information³⁸.

93. On October 29, 1992 the Judicial Inspection Act of the Crime Scene was performed, where the information on the location of nearby houses was registered, a solar, a white wooden cross and the tree where young Jose Luis Garcia Ibarra died³⁹.

94. On November 6, 1992 the Criminal Judge ordered the forensic medical recognition of Segundo Rafael Mosquera Sosa⁴⁰ that was performed more than two months after the events on November 19, 1992⁴¹.

95. On December 28, 1992 the closing of the first phase of the proceedings was about to take place but this was objected by police officer Cortez and was later revoked on January 4, 1993⁴².

96. On January 8, 1993 police officer Cortez requested that the judicial recognition of the scene of the crime be made once again and that different experts be designated⁴³.

97. On January 13, 1993 the First Judge of the First District of the National Police ordered that the judicial recognition of the scene of the crime be performed again⁴⁴ and in a separate document, he ordered the expert witness recognition of the firearm⁴⁵.

³⁵ Appendix 12. Record of the judicial proceedings (Supplied by the petitioners on January 10, 2013), p. 48, Vol. II.

³⁶ Appendix 12. Record of the judicial proceedings (Supplied by the petitioners on January 10, 2013), p. 49, Vol. II.

³⁷ According to the petitioners brief to the IACHR of March 11, 1996, in the shooting of Luis Evangelista Marquez, Guillermo Cortez was acquitted by a police court.

³⁸ Appendix 12. Record of the judicial proceedings (Supplied by the petitioners on January 10, 2013), p. 59, Vol. II.

³⁹ Appendix 12. Record of the judicial proceedings (Supplied by the petitioners on January 10, 2013), p. 63, Vol. II.

⁴⁰ Appendix 12. Record of the judicial proceedings (Supplied by the petitioners on January 10, 2013), p. 64, Vol. II.

⁴¹ Appendix 14. Forensic examination order for Segundo Mosquera Sosa (Attachment to the petitioners' brief of June 19, 2009).

⁴² Appendix 12. Record of the judicial proceedings (Supplied by the petitioners on January 10, 2013), p. 79, Vol. II; and Appendix 12. Record of the judicial proceedings (Supplied by the petitioners on January 10, 2013), p. 82, Vol. II

⁴³ Appendix 12. Record of the judicial proceedings (Supplied by the petitioners on January 10, 2013), p. 83, Vol. II.

⁴⁴ Appendix 12. Record of the judicial proceedings (Supplied by the petitioners on January 10, 2013), p. 84, Vol. II.

⁴⁵ Appendix 12. Record of the judicial proceedings (Supplied by the petitioners on January 10, 2013), p. 86, Vol. II.

98. On January 14, 1993 the First Court of the First National Police District, part of police jurisdiction, issued a new order setting the matter for trial against the accused, and asked the ordinary court judge to decline jurisdiction in the case and to desist from any further consideration of the case⁴⁶.

99. On January 29, 1993 the Third Criminal Tribunal of Esmeraldas declared itself inhibited to continue knowing of this cause and ordered to send these proceedings to the Police Justice⁴⁷, based on article 455.1 of the Criminal procedure Code that established jurisdiction over crimes committed by the armed forces and that mentions that when dealing with crimes committed by members of the armed forces in active service, in the exercise of their specific functions or during this service, they will be known and prosecuted by the specialized judges, in accordance with the Military Criminal Code and the Procedural Criminal Military Code, the National Police Criminal Code and the National Police Procedural Criminal Code.

100. The same court issued a decision on February 4, 1993 in which it ordered the case file sent to the higher court for a ruling on the issue of jurisdiction⁴⁸. The Sixth Chamber of the Superior Court described the proceedings in the Third Criminal Court of Esmeraldas as follows:

[..] Without any review and based solely on the transcript prepared for him pursuant, he says, to Article 455 of the Code of Criminal Procedure, the third criminal judge of Esmeraldas declines jurisdiction, excuses himself from further consideration of the case and then orders all the proceedings sent to the First Judge of the First National Police District. At page 98, plaintiff Vicenta Ibarra Ponce asks that the measure be rescinded. Without even issuing a decision on her request, the judge in question issues a court order on February 4, 1993, in which he switches his position and states the following: "... In keeping with Article 865 of the Code of Civil Procedure, all the proceedings are hereby sent to the Superior Court to decide the jurisdictional issue [...]."⁴⁹

101. On March 25, 1993, the Esmeraldas Superior Court remanded the case to the Third Criminal Court so that the case file might be handed over in the "legal manner" prescribed in paragraph 7 of Article 23 of the Organic Law of the Judicial Function.⁵⁰

102. On April 19, 1993, the Third Criminal Court of Esmeraldas sent the case file to the Quito Superior Court for a ruling on the jurisdictional issue.⁵¹

103. On October 4, 1993, after analyzing the jurisdiction-related arguments entered by the Third Criminal Court of Esmeraldas, the Quito Superior Court ruled that there was no jurisdictional issue

⁴⁶ Appendix 24. Official Letter from the First Court of the First National Police District to the Judge of Esmeraldas Third Criminal Court (Attachment to the petitioners' brief of June 19, 2009).

⁴⁷ Appendix 24. Official Letter from the First Court of the First National Police District to the Judge of Esmeraldas Third Criminal Court (Attachment to the petitioners' brief of June 19, 2009).

⁴⁸ Appendix 25. October 4, 1993 decision of the Quito Superior Court (Attachment to the petitioner's brief of June 19, 2009).

⁴⁹ Appendix 25. October 4, 1993 decision of the Quito Superior Court (Attachment to the petitioner's brief of June 19, 2009).

⁵⁰ Appendix 26. Order from the Esmeraldas Superior Court (Attachment to the petitioner's brief of June 19, 2009).

⁵¹ Appendix 25. October 4, 1993 decision of the Quito Superior Court (Attachment to the petitioner's brief of June 19, 2009).

to be settled, and ordered the case returned to the Third Criminal Court of Esmeraldas. The main basis for this decision was that the legal requisites for a true conflict of jurisdiction, as defined in the applicable domestic law, were not present. In the words of the Quito Superior Court:

1) There is no positive statement on the part of the First Judge of the First National Police District, set out in a well-reasoned memorandum sent to announce to the Third Criminal Judge of Esmeraldas that the First Judge of the First National Police District is asserting jurisdiction, which is the required procedure under Article 863 of the Code of Civil Procedure; 2) Nor is there any reply from the requested judge either ceding or claiming jurisdiction, as required under Article 864 of the aforementioned Code; 3) therefore, no judge has initiated proceedings and asserted jurisdiction; that being the case, the Third Criminal Judge of Esmeraldas could hardly decline jurisdiction in the case. Therefore, the Chamber is not competent to settle this question (a view shared by the Prosecutor), since the jurisdictional issue has been neither adequately prepared nor argued, as Article 865 of the Code of Civil Procedure and the other articles herein cited require [...].⁵²

104. On February 2, 1994 it was performed again the recognition of the scene of the events in order for identification of the scene where it was described again the location of the houses, the three where José Luis Ibarra died, a white wood cross, the description of a wooden house has a roof of zinc and another that has brick walls⁵³.

105. On February 8, 1994, the Court declared that the preliminary proceedings had come to a close and ordered the private plaintiff to bring formal charges.⁵⁴ On March 16, 1994, the Public Prosecutor's Office filed charges accusing defendant Guillermo Segundo Cortez Escobedo of the crime of murder.⁵⁵ In the filing, the prosecution concluded that police officer Cortez Escobedo acted "willfully and deliberately" in firing the shot, and explained that:

(...) a police officer knows that he is carrying a 38 caliber gun, a powerful and dangerous weapon; he decided to use it when Mosquera's resistance had already been sapped –assuming there was any resistance-; there was no cause to fire his weapon on a 16-year-old minor who had nothing to do with the matter... Intent does not require days of preparation; it is instantaneous; it happens in minutes, seconds. And that's what happened here: he decided to use his weapon; he wanted to prevail and he wanted to inflict harm (...)⁵⁶.

106. On February 10, 1994 the petitioners sent a communication to the Criminal Judge of Esmeralda expressing their concern for the delay of the process, more than a year and a half of the facts. Furthermore, they stated that under the Criminal Code the investigation phase could not be extended more than 60 days (2 months). Additionally, they indicated that they had received complaints that the

⁵² Appendix 25. October 4, 1993 decision of the Quito Superior Court (Attachment to the petitioner's brief of June 19, 2009).

⁵³ Appendix 12. Record of the judicial proceedings (Supplied by the petitioners on January 10, 2013), pp. 129 and 136.

⁵⁴ Appendix 27. Order from the Third Criminal Court, dated February 8, 1994 (Attachment to the petitioner's brief of June 19, 2009).

⁵⁵ Appendix 9. Prosecution's Filing, dated March 16, 1994 ((Attachment to the petitioner's brief of June 19, 2009).

⁵⁶ Appendix 9. Prosecution's Filing dated March 16, 1994 ((Attachment to the petitioner's brief of June 19, 2009).

accused, despite the order of preventive detention he has been seen in public, and therefore requested the Judge to verify that the orders issued were met by both civilian and military⁵⁷.

107. On April 26, 1994, the Provincial Commandant of the Esmeraldas National Police informed the Third Criminal Judge of Esmeraldas that Police Officer Guillermo Segundo Cortez Escobedo was in detention pending trial at the Pechicha Provincial Command Post No. 1, Southern Headquarters, on orders from the First Judge of the First National Police District, for the crime of murdering the child José Luis García Ibarra.⁵⁸

108. On May 30, 1994, the Third Criminal Court of Esmeraldas issued an order setting the matter for trial and confirmed the order of detention pending trial.⁵⁹

109. Both the accused and the next of kin of the adolescent García Ibarra filed appeals that the Superior Court of Esmeraldas was called upon to hear. The appeal was decided on February 14, 1995. The Esmeraldas Superior Court wrote that after a thorough review of all the circumstances of the case and the procedural documents, it had established that the deed committed constituted a crime for which the accused bore responsibility. The Court wrote that it shared the view of the Public Prosecutor's Office to the effect that the order should be amended and that the accused should be ordered to stand trial for the crime of qualified murder, based on Article 450, subparagraph 1 of the Criminal Code.⁶⁰

110. The case went to criminal court on May 10, 1995. At this point in the proceedings, the private plaintiff officially withdrew from the case that she had brought for her son's death. The Commission does not have any information about the reasons why she withdrew. According to the petitioners, a financial settlement had been reached between the plaintiff and the defendant.⁶¹

111. The trial hearing began on September 5, 1995,⁶² the date on which pronouncement of the verdict was deferred on the grounds that new evidence had to be taken to examine the scene of the events.

112. On October 4, 1995 the process was suspended and it was ordered a recognition of the scene of the events for the third time⁶³. The recognition of the scene of the events was performed again

⁵⁷ Appendix 12. Record of the judicial proceedings (Supplied by the petitioners on January 10, 2013), p. 140, Vol. II.

⁵⁸ Appendix 28. Memorandum No. 94-356-CP-14 from the Esmeraldas Provincial Command, No. 14, April 26, 1994.

⁵⁹ Appendix 29. Decision of the third criminal judge, May 30, 1994 ((Attachment to the petitioner's brief of June 19, 2009).

⁶⁰ Appendix 30. February 14, 1995 decision of the Esmeraldas Superior Court. See also: Appendix 31. March 6, 1995 decision of the Esmeraldas Superior Court (Attachment to the petitioner's brief of June 19, 2009).

⁶¹ Appendix 22. Judgment of Dr. Thelmo Palomeque Medina of the Esmeraldas Criminal Court, delivered on November 17, 1995 (Attachment to the petitioners' brief of April 10, 1996). See also: Appendix XX. Petitioners' brief of April 10, 1996.

⁶² Appendix 32. Record of the September 5, 1995 hearing of the Esmeraldas Criminal Court (Attachment to the petitioners' brief of April 10, 1996).

⁶³ Appendix 12. Record of the judicial proceedings (Supplied by the petitioners on January 10, 2013), p. 48. (Contained in the volume after p. 168).

on October 11, 1995 where it was described again the houses of the block, two new houses, the tree and the white wood cross⁶⁴.

113. Oral arguments resumed on November 14, 1995. When the report on the examination of the scene of the events –which was the reason for deferring the verdict- and the experts’ report were read, the prosecutor and the defense counsel stated their opinions. The prosecutor rejected and challenged the experts’ report, which he argued did not accurately portray the facts of what transpired when gathering the evidence.⁶⁵

114. Once the trial hearings were over, and when time came to issue a ruling, three rulings were issued on November 17, 1995, one from each of the three members of the First Criminal Court of Esmeraldas. The rulings were not consistent in their findings.

115. The Third Member of the Criminal Court was of the view that the accused was guilty of the crime of unintentional homicide, and therefore sentenced police officer Cortez Escobedo to 18 months in prison. In his reasoning, this member of the court wrote the following:

[..] because of a lack of foresight or precaution, the argument or discussion that the defendant had with Segundo Rafael Mosquera Sosa caused the weapon he was carrying to discharge and fatally wound José Luis García.⁶⁶

116. For his part, the President of the Criminal Court was in favor of sentencing the defendant to eight years in prison, since in his view he was guilty of the crime of simple homicide. The President based his verdict on the following:

The bullet that claimed the life of the boy José Luis García was not fired as a result of the police officer’s pistol whipping of Segundo Mosquera Sosa; instead, when he was done thrashing the youth with the handgrip of his gun, he was staring at the young boy who was sitting with two other friends and this was when he fired his weapon, shooting the boy in the eye and killing him (...) The police issue weapon of officer Guillermo Cortez Escobedo was a 38 caliber revolver, which he had on his person at the time of the events being prosecuted here, as stated in the investigations report. That weapon cannot be discharged (the hammer hits the primer, which explodes and ignites the propellant) except by releasing the trigger. This can never happen simply by pistol whipping a person with a revolver.⁶⁷

117. Finally, the Second Member of the Criminal Court was of the view that the court did not have jurisdiction and therefore he disqualified himself. This member asserted that:

The fact at issue in the present case was the work of National Police officer Guillermo Cortez

⁶⁴ Appendix 12. Record of the judicial proceedings (Supplied by the petitioners on January 10, 2013), p. 50. (Contained in the volume after p. 168).

⁶⁵ Appendix 33. Record of the November 14, 1995 hearing of the Esmeraldas Criminal Court (Attachment to the petitioners’ brief of April 10, 1996).

⁶⁶ Appendix 22. November 17, 1995 judgment of the Esmeraldas Criminal Court (Attachment to the petitioner’s brief of April 10, 1996).

⁶⁷ Appendix 22. November 17, 1995 judgment of the Criminal Court of Esmeraldas (Attachment to the petitioner’s brief of April 10, 1996).

Escobedo, who was carrying out his duties at the time of the events and, as a law enforcement officer, is considered to be on duty 24 hours a day. Hence, the proper authorities to hear and decide this case are the jurisdictional bodies of the National Civil Police. [...].⁶⁸

118. The Commission does not have any additional information concerning the legal grounds for three separate judges in the same collegiate body to each issue different rulings. The references to this proceeding appear in the February 26, 2002 decision (infra) of the Criminal Chamber of the Supreme Court, which it described as “*sui generis*”;⁶⁹ references to this proceeding also appear in the notification of the three judgments, which states that based on the principle of *in dubio pro reo*, the verdict that stands is one that imposes the least severe sentence, which in this case is a sentence of 18 months in prison for unintentional homicide.

119. On January 2, 1996, police officer Cortez Escobedo was released on the grounds that he had served the sentence imposed, as he had already been in detention for three years and three months.⁷⁰

120. The police officer filed a cassation appeal challenging the “rulings” of the First Criminal Court of Esmeraldas. For her part, the defense counsel representing the police officer filed an appeal to have the annulment of the verdict, arguing that the case should have been heard in police court.⁷¹

121. On May 15, 2000, the Esmeraldas Superior Court issued a decision denying the appeal filed by the convicted police officer and confirming the guilty verdict.⁷²

122. When it received this most recent ruling by the Esmeraldas Superior Court on June 16, 2000, the Esmeraldas Criminal Court ordered the case file to be sent up to the Supreme Court for a ruling on the cassation appeal filed by the convicted police officer and by the provincial prosecutor.⁷³

123. On February 26, 2002, the Second Criminal Chamber of the Supreme Court denied the appeals filed and, in application of the principle of *in dubio pro reo*, confirmed the sentence of 18 months in prison. The Chamber wrote that:

[...] from a review of the verdict being appealed and the *sui generis* manner in which the ruling is put together, there are reasonable doubts regarding the existence of the distinctive elements that define simple homicide which are, according to Article 449 of the Penal Code, first, a willful intent, in other words, the direct intent of the offending party’s conduct must be unmistakable,

⁶⁸ Appendix 22. November 17, 1995 judgment of the Criminal Court of Esmeraldas (Attachment to the petitioner’s brief of April 10, 1996).

⁶⁹ Appendix 34. Judgment of the Second Criminal Chamber of the Supreme Court, February 26, 2002 (Attachment to the petitioner’s brief of June 19, 2009).

⁷⁰ Appendix 35. August 8, 1996 National Police Report (Attachment to the State’s brief of September 5, 1996).

⁷¹ Appendix 34. Judgment of the Second Criminal Chamber of the Supreme Court, February 26, 2002 (Attachment to the petitioner’s brief of June 19, 2009).

⁷² Appendix 36. The Superior Court’s Decision on the May 15, 2000 appeal filed by defendant Guillermo Cortez Escobedo to have his verdict vacated (Attachment to the petitioner’s brief of June 19, 2009).

⁷³ Appendix 37. June 16, 2000 order from the First Criminal Court of Esmeraldas sending the case to the Supreme Court (Attachment to the petitioner’s brief of June 19, 2009).

which is to kill; and second, the absence of the circumstances that attend murder as defined in Article 450 of the same Penal Code; in the instant case, a study of the evidence as reported in the judgment being appealed establishes doubt as to whether there was a direct intent to kill. Therefore, that doubt must be settled in the convicted man's favor [...].⁷⁴

124. In this ruling the Second Criminal Chamber of the Supreme Court addressed a number of "irregularities" in the processing of the case, as follows:

The Chamber has detected a number of irregularities in the instant case, such as the fact that by the time the Superior Court of Esmeraldas delivered its ruling on the appeal to set aside the judgment, there had been an unwarranted delay of almost four years; that ruling "confirms the verdict" handed down by the First Criminal Court of Esmeraldas, which does not correspond to a ruling that addresses the legality of the procedure followed. Furthermore, this Chamber finds another irregularity in the opinion written by Dr. Joel Arias Velez for the Criminal Court, as this member of the court had no authority to render the opinion he wrote, which was his view that the court did not have jurisdiction in the case. Finally, the Prosecutor erred in filing the appeal, which in this case should have been done according to the Code of Criminal Procedure and not by invoking the Civil Cassation Law as the representative of the Public Prosecutor's Office did in this case.⁷⁵

125. On February 28, 2000, through General Order No. 049, the Council of Police Trainees and Police Officers dismissed police officer Guillermo Segundo Cortez Escobedo from the ranks of the police force, on grounds that he was included in the elimination quota for 1999⁷⁶ and had served out his transitional period.⁷⁷

VI. THE LAW

126. Based on the findings of fact, the Commission will now examine their legal consequences under the American Convention, in the following order: i) the right to life and the right of children to special protection; ii) the rights to judicial guarantees and to judicial protection in the

⁷⁴ Appendix 34. Judgment of the Second Criminal Chamber of the Supreme Court, February 26, 2002 (Attachment to the petitioner's brief of June 19, 2009)

⁷⁵ Appendix 34. Judgment of the Second Criminal Chamber of the Supreme Court, February 26, 2002 (Attachment to the petitioner's brief of June 19, 2009).

⁷⁶ Appendix 38. Memorandum No. 2000-140-CCP from the President of the Council of Police Trainees and Police Officers, issued on May 3, 2000 (Attachment to the State's brief of November 6, 2003).

⁷⁷ Appendix 39. General Order No. 049 from the General Command of the National Police for Thursday, March 2, 2000 (Attachment to the State's brief of November 6, 2003). The available information on the dismissal of Mr. Cortez from the police force indicates that on April 19, 2000 the legal counsel of the Board of Classes and Police wrote the following to its President:

Article 95 of the National Police Personnel Law states: "The annual list of terminations in each rank consists of police personnel in one or more of the following situations: ...c) Not rated suitable for promotion to the immediately superior rank." Police constable GUILLERMO SEGUNDO CORTEZ ESCOBEDO has not only been disqualified once for promotion but, indeed, has been rated as unsuitable for promotion on three occasions. This occurred on the dates and for the reasons set out below and are noted in his professional record [...]. An analysis of his professional record shows that the claimant is a repeat offender in terms of disciplinary faults, for which he has been punished, accumulating a total of 188 days of arrest, which number exceeds the limit set for the promotion of a police constable to corporal, second grade, which is 180 days of arrest, itself a highly forgiving number. Moreover, the claimant has been brought up on charges in criminal proceedings for conduct unbecoming of a member of the police; thus, his record states that he has been prosecuted for the homicide of a minor and for attempted murder.

investigations and proceedings instituted into the death of José Luis García Ibarra; and iii) the right to human treatment in the case of José Luis García Ibarra's next of kin.

A. The right to life and the right of children to special protection

127. The pertinent part of Article 4 of the American Convention reads as follows:

1. Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.

128. For its part, Article 1(1) of the American Convention provides that:

The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

129. As for the right to life, the *jurisprudence constante* of the Inter-American Court is that the right to life is a fundamental right the full exercise of which is a prerequisite for the enjoyment of all other human rights.⁷⁸ The Court has also held that this means that States have the obligation to guarantee the creation of the conditions required in order that violations of this basic right do not occur and, in particular, the duty to prevent its agents or private citizens from violating it.⁷⁹ As the Court wrote, the object and purpose of the Convention, as an instrument for the protection of the human being, requires that the right to life be interpreted and enforced so that its guarantees are truly practical and effective (*effet utile*).⁸⁰

130. The Court has repeatedly held that "compliance with the duties imposed by Article 4 of the American Convention, in conjunction with Article 1(1) thereof, not only presupposes that no person can be arbitrarily deprived of his life (negative duty) but also requires, pursuant to their obligation to guarantee the full and free exercise of human rights, that the States adopt any and all necessary measures to protect and preserve the right to life (positive duty) of the individuals under their jurisdiction."⁸¹ Therefore, in the words of the Court,

⁷⁸ I/A Court H.R., *Case of Zambrano Vélez et al. v. Ecuador*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166, Paragraph 78; I/A Court H.R., *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala*. Judgment of November 19, 1999. Series C No. 63, paragraph 144.

⁷⁹ I/A Court H.R., *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala*. Judgment of November 19, 1999. Series C No. 63, paragraph 144.

⁸⁰ I/A Court H.R., *Case of Zambrano Vélez et al. v. Ecuador*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166, paragraph 79; I/A Court H.R., *Case of Baldeón García v. Argentina*. Judgment of April 6, 2006. Series C No. 147, paragraph 83.

⁸¹ I/A Court H.R., *Case of Zambrano Vélez et al. v. Ecuador*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166. Paragraph 80; I/A Court H.R., *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala*. Judgment of November 19, 1999. Series C No. 63. Paragraph 144.

States must adopt all necessary measures to create a legal framework that deters any possible threat to the right to life; establish an effective legal system to investigate, punish, and redress deprivation of life by State officials or private individuals; and guarantee the right to unimpeded access to conditions for a dignified life. Especially, States must see that their security forces, which are entitled to use legitimate force, respect the right to life of the individuals under their jurisdiction.⁸²

131. Given the nature of the facts in the present case, the Commission deems it necessary to recall the relevant standards regarding the use of force by state law-enforcement agencies.

132. The IACHR has written that while States have the right and the obligation to provide protection against threats and, to that end, may use lethal force under certain circumstances, that authority must be limited to what is strictly necessary and proportionate. Unless such exigencies exist, however, the lethal use of force may constitute an arbitrary deprivation of life or a summary execution; that is to say, the lethal use of force must necessarily be justified by a state's right to protect the security of all.⁸³

133. The Commission has also observed that the use of force may be justified, for example, in a case of self-defense or when necessary to neutralize or disarm individuals involved in armed conflict. However, if an individual loses his or her life as a result of the use of excessive or disproportionate force by law enforcement agents, that would be tantamount to an arbitrary deprivation of life.⁸⁴

134. In this regard the Court has written that the use of force by governmental security forces must be premised on the existence of exceptional circumstances and should be planned and proportionally limited by the authorities. Here, the Court has established that force or coercive means can only be used once all other methods of control have been exhausted and failed.⁸⁵

135. The Court held that the use of firearms and lethal force by law enforcement against persons -which must be generally forbidden- is only justified in even more extraordinary cases. The exceptional circumstances under which firearms and lethal force may be used shall be determined by the law and narrowly construed, so that in any case they are used to the minimum extent possible, but

⁸² I/A Court H.R., *Case of Zambrano Vélez et al. v. Ecuador*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166, paragraph 81; I/A Court H.R., *Case of Montero Aranguren et al. (Detention Center of Catia) v. Venezuela*. Judgment of July 5, 2006. Series C No. 150, paragraph 66.

⁸³ IACHR. *Report on Terrorism and Human Rights*. OEA/Ser.L/V/II.116, doc. 5, paragraph 88.

⁸⁴ IACHR. Report No.1/96, Case 10.559, Chumbivilcas (Peru). March 1, 1996; IACHR. Report No. 34/00, Case 11.291, Carandiru (Brazil). April 13, 2000, paragraphs 63, 67, 91.

⁸⁵ I/A Court H.R., *Case of Montero Aranguren et al. (Detention Center of Catia) v. Venezuela*, Judgment of July 5, 2006. Series C No. 150, paragraph 67.

never exceeding what is "absolutely necessary" given the force or threat to be repelled.⁸⁶ When excessive force is used, any deprivation of life is arbitrary.⁸⁷

136. When a death is claimed to be the result of the excessive use of force, the Inter-American Court has established clear rules regarding the burden of proof. As the Court wrote:

whenever the use of force [by state agents] results in death or injuries to one or more individuals, the State has the obligation to give a satisfactory and convincing explanation of the events and to rebut allegations over its liability, through appropriate evidentiary elements.⁸⁸

137. More specifically, when providing its explanation of the use of force, the State must show that its authorities attempted less lethal means of intervention that were unsuccessful, and that the action of its security forces was both necessary and proportional in relation to the exigencies of the situation, particularly the threat the situation posed to the victim.⁸⁹

138. The Court has also held that the State's obligation to respect the right to life of every person under its jurisdiction has special connotations in the case of children, as evident from the provisions regarding protection of children set forth in the American Convention and in the Convention on the Rights of the Child. The right of the child to special protection creates an obligation for the State, which is to prevent situations that might lead, either by action or omission, to a violation of the child's right to special protection.⁹⁰ The State, therefore, must take on the special role of guarantor with even greater care and an even greater sense of responsibility, and must take special measures to that end.⁹¹

139. For its part, the European Court of Human Rights has described what an effective investigation capable of evaluating the legality of the lethal use of force must involve. According to that Court,

⁸⁶ Cf. ECHR, *Case of Erdogan and Others v. Turkey*. Judgment of 25 April, 2006. Application No. 19807/92, para. 67; ECHR, *Case of Kakoulli v. Turkey*. Judgment of November 22, 2005. Application No. 38595/97, para. 107-108; ECHR, *Case of McCann and Others v. the United Kingdom*. Judgment of September 27, 1995. Series A No. 324, paras. 148-150 and 194; *Code of Conduct for Law Enforcement Officials*, adopted by the General Assembly of the United Nations, Resolution 34/169, dated December 17, 1979, Article 3.

⁸⁷ I/A Court H.R., *Case of Montero Aranguren et al. (Detention Center of Catia) v. Venezuela*, Judgment of July 5, 2006. Series C No. 150, paragraph 68. Similarly see also: the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, August 27 to September 7, 1990, Principle 9.

⁸⁸ I/A Court H.R., *Case of Zambrano Vélez et al. v. Ecuador*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166, paragraph 108; I/A Court H.R. *Case of Montero Aranguren et al. (Detention Center of Catia) v. Venezuela*, Judgment of July 5, 2006. Series C No. 150, paragraph 80; I/A Court H.R., *Case of Baldeón García v. Argentina*. Judgment of April 6, 2006. Series C No. 147, paragraph 120.

⁸⁹ I/A Court H.R., *Case of Zambrano Vélez et al. v. Ecuador*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166, paragraph 108.

⁹⁰ I/A Court H. R., *Bulacio v. Argentina Case*. Judgment of September 18, 2003. Series C No. 100, pars. 138.

⁹¹ I/A Court H. R., *Gómez Paquiyauri Brothers v. Peru Case*. Judgment of July 8, 2004. Series C No. 110, pars. 124, 163-164, and 171; I/A Court H. R., *Bulacio v. Argentina Case. Judgment of September 18, 2003*. Series C No. 100, pars. 126, 133 and 134; and I/A Court H. R., *Juridical Condition and Human Rights of the Child*. Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, par. 60.

[t]he essential purpose of such investigation is to secure the effective implementation of the domestic laws which protect the right to life and, in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility [...]. For an investigation into alleged unlawful killing by State agents to be effective, it may generally be regarded as necessary for the persons responsible for and carrying out the investigation to be independent from those implicated in the events. [...] The next-of-kin of the victim must be involved in the procedure to the extent necessary to safeguard his or her legitimate interests. [...] A requirement of promptness and reasonable expedition is implicit in this context [...] The investigation must also be effective in the sense that it is capable of leading to a determination of whether the force used in such cases was or was not justified in the circumstances [or was] unlawful [...] There must be a sufficient element of public scrutiny of the investigation or its results to secure accountability in practice as well as in theory.⁹²

140. In the instant case, the Commission has taken as proven fact that José Luis García Ibarra, age 16, was killed on September 15, 1992, by a bullet fired from a weapon in the hands of police officer Guillermo Segundo Cortez Escobedo. As the Commission explained earlier, there are essentially two main versions of the events surrounding the death of the adolescent García Ibarra. The version given by the victim's mother and the majority of the eyewitnesses indicates that the shot was fired deliberately and aimed at the adolescent; on the hand, the version given by the police office and a smaller group of witnesses is that there was a struggle between the police officer and young Segundo Rafael Mosquera Sosa. According to the police officer, this struggle caused the gun to accidentally fire, killing José Luis García Ibarra.

141. The Commission observes that no one contests the fact that the person who fired the shot that killed José Luis García Ibarra was an agent of the State who used his official weapon against the adolescent. The Commission notes that at some point of the investigation it was referred to the fact that officer Cortez was drunk which could lead that he was not on duty. However, on this point, the Commission notes that the State itself in its communications during the Inter-American procedure expressly acknowledged that Mr. Cortez had been on duty for the day and time of the incident. Also, as noted in the finding facts, during the domestic investigation it was provided a certificate from the Police Command stating that at the time of the child's death García Ibarra was on duty for 24 hours.

142. In any case, the Commission emphasizes that the possible situation of inebriate of a police officer does not modify the analysis of the State's international responsibility.

143. On this point, in the case *Bugara v. Ukraine*, the European Court of Human Rights indicated that while private acts of a police officer could not at first engage the State's responsibility under the right to life, there are certain cases in which it could declare its responsibility⁹³. For example, the European Court stated in the case cited that when a police officer is not wearing a uniform and is off duty, its condition of State's agent is activated if it is involved in a police operation or spontaneous

⁹² ECHR. *Hugh Jordan v. the United Kingdom*, no. 24746/94, §§ 105-109, 4 May 2001; *Douglas-Williams v. the United Kingdom* (dec.), no. 56413/00, 8 January 2002.

⁹³ ECHR. *Gorovenky and Bugara v. Ukraine*. 12 April 2012. Citando. ECHR. *Celik v. Turkey (No. 2)*. 27 May 2010; *Enukidze and Girgvliani v. Georgia*. 26 April 2011.

persecution⁹⁴. Specifically, the state of inebriate or not of a police officer was considered irrelevant by the European Court in order to analyze the international responsibility of the State⁹⁵.

144. Moreover, in the case *Sašo Gorgiev v. "The Former Yugoslav Republic of Macedonia"*, the European Court analyzed a situation in which a police officer in a bar used his service weapon to shot a person. In this case, the European Court took into account that regardless of where the official is, being on duty, using his service weapon, and being perceived as a police officer by the people around activates the international responsibility of the State⁹⁶.

145. Of particular relevance to the analysis of this case, the European Court analyzed the merits of the case notwithstanding there was a sentence in a domestic court for unintentional "serious bodily injury with life-threatening damage". The analysis of the Commission on this point will be made in the section related to articles 8 and 25 of the Convention⁹⁷.

146. It has been established that the police office was on duty and that his alleged inebriate is irrelevant in this analysis. Therefore, according to the rules of burden of proof related to the use of lethal force, the State must provide a satisfactory explanation of what happened as well as the strict compliance with those requirements in the instant case.

147. The Ecuadorian State has not provided any explanation that would suggest that the death of José Luís García Ibarra was a legitimate use of force. The State has focused their arguments on the nature of the offense as intentional or unintentional. In this regard, the Commission considers important to note that the analysis of the possible international responsibility of a State is not based on the need to verify the agent's subjective intention. Under international law the elements of analysis of State's international responsibility are different. Those elements are based on the exceptional nature of the use of force, and they require an analysis of the necessity, precaution and proportionality when using it. In the instant case, being proven that it is a situation of use of lethal force, it will be analyzed under those standards.

148. Furthermore, from the evidence in the case file, there is no information to justify what happened. Quite the contrary, the testimony and other documentary evidence analyzed in the section on findings of fact provide sufficient information to conclude that the use of force in this case was unnecessary and disproportionate.

149. Recapitulating, José Luís García Ibarra was sitting under a tree, chatting with other teenagers and posed no threat to anyone nearby. The eyewitness statements presented to the Ecuadorian courts and attached to the case file, including the statement made by police officer Guillermo Segundo Cortez Escobedo, are all in agreement on this point.

⁹⁴ ECHR. Gorovenky and Bugara v. Ukraine 12 April 2012, citing ECHR. *Enukidze and Girgvliani v. Georgia*. 26 April 2011.

⁹⁵ ECHR. *Enukidze and Girgvliani v. Georgia*. 26 April 2011.

⁹⁶ ECHR. *Sašo Gorgiev v. "the Former Yugoslav Republic of Macedonia"*. 19 July 2012. Application No. 49382/06.

⁹⁷ *Sašo Gorgiev v. "the Former Yugoslav Republic of Macedonia"*. 19 July 2012. Application No. 49382/06.

150. Even if the story of a struggle with another youth and of an “accidental” shot being fired that killed the child García Ibarra was true, there is not a single element in that version of the events that would justify the police officer’s recourse to violence by pistol whipping an unarmed youth who was, as has been established, physically weakened as a result of the surgery he had recently undergone. Assuming for the sake of argument that the police officer’s version of the events is true, the use of a lethal means like a firearm to beat an unarmed and physically debilitated youth posed a risk that the firearm might discharge and injure others nearby –including three teenagers whom the police officer had a special duty to protect. This alone is sufficient to conclude that the police officer did not act with the due diligence and caution that the principles of last resort, necessity and proportionality dictate. This assertion is consistent with the conviction ultimately upheld in the domestic courts, which found that José Luis García Ibarra’s death was the result of the police officer’s lack of foresight and caution.

151. One more element indicative of the police officer’s irregular conduct is the fact that he immediately fled the scene. The Commission considers that this conduct does not comport with a legitimate use of force in the exercise of one’s authority under the constitution and the law.

152. The testimonial statements that support the two versions described in the section on findings of fact differ on two basic points: the question of whether any struggle occurred between the police officer and another youth at the scene of the events, and the question of whether the shot that caused José Luís García Ibarra’s death was fired accidentally or intentionally. The Commission need not settle this debate, as it is not relevant to determining whether the police officer’s use of force was a legitimate use of force and, by extension, whether the deprivation of life was or was not arbitrary in the sense of Article 4 of the Convention. As previously observed, this analysis examines compliance with the principles of last resort, necessity and proportionality. Here, the IACHR has already concluded that in the instant case, those requirements were not satisfied.

153. Finally, the Commission notes that at various times during the internal investigation, the police officer refers to the adolescents as a group of gang members. The Inter-American Court has already referred to this issue, saying that:

"the State cannot allow that its agents, nor can it promote in the society practices that reproduce the stigma that poor children and youngsters are conditioned to delinquency, or necessarily related to the increase in public insecurity. That stigmatization creates a climate propitious so that those minors in risky situations are constantly facing the threat that their lives and freedom be illegally restrained.⁹⁸

154. Based on the above considerations, the Commission concludes that the State of Ecuador violated the right to life and the right of the child to special protection, established in articles 4 and 19 of the American Convention, read in conjunction with the obligation to respect and ensure the Convention-protected rights, established in Article 1(1) of that instrument, to the detriment of José Luís García Ibarra. In the next section, the Commission will examine whether the State complied with its obligation to investigate, prosecute, punish and redress these violations.

⁹⁸ I/A Court H. R., *Case of Servellón García et al. v. Honduras. Merits, Reparations and Costs*. Judgment of September 21, 2006. Series C No. 152, par. 112.

B. The rights to judicial guarantees and to judicial protection in the investigations and proceedings instituted into the death of José Luis García Ibarra

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

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

156. Article 25(1) of the Convention states that:

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

157. Article 1(1) of the American Convention provides that:

The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

158. By way of introduction, the Commission recalls the *jurisprudence constante* of the Inter-American Court regarding the possibility of the organs of the system examining domestic proceedings. In the words of the Inter-American Court:

[i]n order to determine whether the State has violated its international obligations owing to the acts of its judicial organs, the Court [and the Commission] may have to examine the respective domestic proceedings. In light of the above, the domestic proceedings must be considered as a whole, including the rulings of the appellate courts, and the role of the international court is to establish whether the proceedings as a whole were in accordance with international provisions.⁹⁹

159. In this section the Commission will examine the rights upheld in articles 8(1) and 25(1) of the American Convention, to determine whether the State complied with its duty to guarantee the substantive rights protected under the Convention, which in this case is the right to life. As the Court has written, the positive measures that States must adopt to guarantee the rights recognized in articles 8(1) and 25(1) of the American Convention include not just the duty to prevent, but also the duty to investigate violations of the human rights recognized in that instrument, such as the violations alleged in the present case. They must also endeavor to restore the violated right, where possible, and, where

⁹⁹ I/A Court H.R., *Case of Zambrano Vélez et al. v. Ecuador*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166, paragraph 142; *Case of Lori Berenson Mejía v. Peru*. Merits, Reparations and Costs. Judgment of November 25, 2004. Series C No. 119, paragraph 133; *Case of Myrna Mack Chang v. Guatemala*. Merits, Reparations and Costs. Judgment of November 25, 2003. Series C No. 101, paragraph 200; and *Case of Juan Humberto Sánchez v. Honduras*. Preliminary Objection, Merits, Reparations and Costs. Judgment of June 7, 2003. Series C No. 99, paragraph 120.

necessary, redress the harm caused by the violations of human rights.¹⁰⁰ Articles 8(1) and 25(1) of the American Convention also recognize the right of the next of kin of the victims of these violations to be heard in the domestic proceedings and to learn the truth of what happened, and secure adequate punishment of the guilty parties and full reparations.

160. The Court has written that, under the American Convention,

States Parties have an obligation to provide effective judicial remedies to victims of human rights violations (Art. 25), remedies that must be substantiated in accordance with the rules of due process of law (Art. 8 (1)), all in keeping with the general obligation of such States to guarantee the free and full exercise of the rights recognized by the Convention to all persons subject to their jurisdiction (Art. 1(1)).¹⁰¹

161. The Commission will now examine whether, in the instant case, the Ecuadorian State conducted a serious and diligent investigation, within a reasonable time, as one means to guarantee José Luis García Ibarra's right to life and to ensure his next of kin's rights to the truth, to justice and to redress.

162. The case law of the Inter-American System has established that while the obligation to investigate is one of means and not results, it must nonetheless be undertaken by the State as its own legal duty and not as a mere formality preordained to be ineffective.¹⁰² Nor must it be viewed as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof.¹⁰³

163. The Court has held that investigations undertaken by the State must be carried out with the necessary due diligence, using all the legal means available and geared toward a determination of the truth.¹⁰⁴ Here, the Inter-American Commission has observed that

[...] the fact that no one has been convicted in the case or that, despite the efforts made, it was impossible to establish the facts, does not constitute a failure to fulfill the obligation to investigate. However, in order to establish in a convincing and credible manner that this result was not the product of a mechanical implementation of certain procedural formalities

¹⁰⁰ I/A Court H.R., *Case of García Prieto et al. v. El Salvador*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 20, 2007. Series C No. 168. Paragraph 99.

¹⁰¹ I/A Court H.R., *Cf. Case of Godínez Cruz, Preliminary Objections*. Judgment of June 26, 1987. Series C No. 3, paragraph 93. See also *Case of the La Rochela Massacre, supra* note 7, paragraph 145, and *Case of the Miguel Castro Castro Prison*, Judgment of November 25, 2006. Series C No. 160, paragraph 183.

¹⁰² I/A Court H.R., *Case of Velásquez Rodríguez*. Judgment of July 29, 1988. Series C No. 4, paragraph 177; I/A Court H.R., *Case of Cantoral Huamani and García Santa Cruz v. Perú*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167, paragraph 131; and I/A Court H.R., *Case of Zambrano Vélez et al. v. Ecuador*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166, paragraph 120.

¹⁰³ I/A Court H.R., *Case of Velásquez Rodríguez*. Judgment of July 29, 1988. Series C No. 4, paragraph 177; I/A Court H.R., *Case of Zambrano Vélez et al. v. Ecuador*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166, paragraph 120.

¹⁰⁴ I/A Court H.R., *Case of García Prieto et al. v. El Salvador*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 20, 2007. Series C No. 168, paragraph 101.

without the State genuinely seeking the truth, the State must show that it carried out an immediate, exhaustive and impartial investigation.¹⁰⁵

164. In specific cases involving the lethal use of force by state agents, the Court has written that “[t]he general prohibition against arbitrarily depriving someone of his life, which state officials must observe, would be ineffective without proceedings to verify the legality of the lethal use of force by state officials”¹⁰⁶.

165. Thus, the general obligation to ensure rights “is particularly important in cases involving the lethal use of force”¹⁰⁷. As the Court wrote:

Upon learning that firearms have been used by members of its security forces and that such use had lethal consequences, the State has the obligation to initiate, *ex officio* and without delay, a serious, independent, impartial and effective investigation¹⁰⁸. This obligation is a fundamental and determining element of the protection of the right to life which is affected in such situations¹⁰⁹.

166. In like manner, the United Nations Special Rapporteur on Extrajudicial, Summary and Arbitrary Executions has written that:

Human rights standards on the use of force derive from the understanding that the irreversibility of death justifies stringent safeguards for the right to life, especially in relation to due process. A judicial procedure, respectful of due process and arriving at a final judgment, is generally the *sine qua non* without which a decision by the State and its agents to kill someone will constitute an “arbitrary deprivation of life” and, thus, violate the right to life¹¹⁰.

¹⁰⁵ IACHR, Annual Report 1997, Report No. 55/97, Case 11.137 (Juan Carlos Abella et al.), Argentina, paragraph 412. On this same topic, see: IACHR, Annual Report 1997, Report No. 52/97, Case 11.218 (Arges Sequeira Mangas), Nicaragua, paragraph 96 y 97.

^[54] The Inter-American Court has written, for example, that “the American Convention guarantees everyone access to justice to enforce their rights, and the States Parties have the obligation to prevent, investigate, identify and punish the masterminds and accessories of human rights violations.” I/A Court H.R., *Case of the Constitutional Court*, Judgment of September 29, 1999. Series C No. 71, paragraph 123. See also, I/A Court H.R., *Blake Case*, Reparations, Judgment of January 22, 1999, Series C No. 48, paragraph 65.

¹⁰⁶ I/A Court H.R., *Zambrano-Vélez et al. v. Ecuador Case*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166, par. 88, citing Detention Center of Catia, pars. 79-83.

¹⁰⁷ I/A Court H.R., *Zambrano-Vélez et al. v. Ecuador Case*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166, par. 88.

¹⁰⁸ I/A Court H.R., *Zambrano-Vélez et al. v. Ecuador Case*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166, par. 88, citing. *Cfr. Juan Humberto Sánchez v. Honduras Case*, *supra* note 75, par. 112. See also *Miguel Castro-Castro Prison v. Peru Case*, *supra* note 14, par. 256, and *Vargas-Areco v. Paraguay Case*, *supra* note 64, par. 77. In a similar sense, see also ECHR, *Erdogan and Others v. Turkey*, *supra* note 66, pars. 88-89; ECHR, *Kakoulli v. Turkey*, *supra* note 66, pars. 122-123, and ECHR, *Nachova and Others v. Bulgaria [GC]*, nos. 43577/98 and 43579/98, pars. 111-112, 6 July 2005.

¹⁰⁹ I/A Court H.R., *Zambrano-Vélez et al. v. Ecuador Case*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166, par. 88.

¹¹⁰ *Cfr. Interim report on the worldwide situation in regard to extrajudicial, summary or arbitrary executions submitted by Philip Alston, Special Rapporteur*. United Nations General Assembly. (Doc. A/61/311), Sixty-first session, 5 September 2006, para. 36.

167. The Court has written that in fulfillment of their duty to investigate a violation of the right to life with the necessary due diligence, States have an obligation to act with rigorous attention to detail from the very outset of the investigation.¹¹¹ Here, the Inter-American Court has taken into consideration the United Nations Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, and wrote that:

At a minimum, state authorities conducting an inquiry shall seek, *inter alia*: a) to identify the victim; b) to recover and preserve evidentiary material related to the death in order to aid in any potential prosecution of those responsible; c) to identify possible witnesses and obtain statements from them concerning the death; d) to determine the cause, manner, location and time of death, as well as any pattern or practice that may have brought about the death; and e) to distinguish between natural death, accidental death, suicide and homicide. The Court further notes that: a) the crime scene must be exhaustively investigated and b) autopsies, as well as analyses of skeletal remains, must be rigorously performed by competent professionals, employing the most appropriate procedures.¹¹²

168. The Court has also held that the authorities must take reasonable measures to preserve the evidence necessary to conduct the investigation.¹¹³

169. As for the importance of the conduct of the authorities in charge of the first steps in an investigation, the Court has held that the requisite due diligence and “independence and impartiality also extend to the non-judicial bodies responsible for the investigation prior to the judicial proceedings, conducted to determine the circumstances of a death and the existence of sufficient evidence. In the absence of these requirements, the State cannot subsequently exercise effectively and efficiently its authority to bring charges and the courts cannot conduct the judicial proceedings that this type of violation calls for.”¹¹⁴

170. As for the duration of the investigations, the Commission is reminded that one of the judicial guarantees that Article 8(1) of the Convention establishes is that courts are to decide cases within a reasonable time.

171. The Inter-American Court has held that a long delay may *per se* constitute a violation of the principle of due process.¹¹⁵ It is for the State to explain and prove why it has required more time

¹¹¹ I/A Court H.R., *Case of Zambrano Vélez et al. v. Ecuador*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166, paragraph 121.

¹¹² I/A Court H.R., *Case of the Moiwana Community v. Suriname*. Judgment of June 15, 2005. Series C No. 124, paragraph 149; I/A Court H.R., *Case of the Miguel Castro Castro Prison v. Peru*. Judgment of November 25, 2006. Series C No. 160, paragraph 383. Citing the United Nations Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, Doc. E/ST/CSDHA/.12 (1991).

¹¹³ I/A Court H.R., *Case of Zambrano Vélez et al. v. Ecuador*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166, paragraph 122.

¹¹⁴ I/A Court H.R., *Case of Cantoral Huamaní and García Santa Cruz v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167. Paragraph 133.

¹¹⁵ I/A Court H.R., *Case of García Asto and Ramírez Rojas v. Peru*. Judgment of November 25, 2005. Series C No. 137, paragraph 166; *Case of Gómez Palomino v. Peru*. Judgment of November 22, 2005. Series C No. 136, paragraph 85; *Case of the Moiwana Community v. Suriname*. Judgment of June 15, 2005. Series C No. 124, paragraph 160.

than would be reasonable, in principle, to deliver a final judgment in a specific case.¹¹⁶ The total duration of the criminal proceeding must be factored in when determining whether the length of time was reasonable. In criminal matters this period of time starts with the first procedural act taken against a specific person deemed to be the party likely responsible for a certain crime, and ends when a final judgment is handed down.¹¹⁷

172. The *jurisprudence constante* of the organs of the inter-American system has taken into consideration three elements that are relevant to the examination of the present case, namely: a) the complexity of the case; b) the conduct of the judicial authorities, and c) the procedural activities of the interested party.¹¹⁸

173. In the instant case, the Commission has evaluated all of the procedural documents that comprise the case file provided by the petitioners and not disputed by the State. The finding facts show that the criminal case took nine years and five months which ended with a sentence of 18 months in prison for unintentional homicide. It is important to clarify that in the following analysis, the Inter-American Commission will focused on determine whether the said period is compatible with the guarantee of reasonable time according to the Inter-American standards on the subject, as well as well as whether the investigation and criminal proceeding as a whole were carried out with due diligence to properly clarify the facts and impose appropriate sanctions. Thus, the Commission emphasizes that in this second point its analysis does not constitute a review of the sentence for the crime of unintentional homicide under the realization that what happened was accidental, but an evaluation of the process that lead to such judicial decision in order to verify if it was due to a serious and thorough investigation, or if it took place as a result of a lack of diligence in the investigations that prevented evaluate in an adequate manner the divergent versions of what happened.

174. With this clarification on the scope and content of the evaluation to be conducted by the Commission, and taking into account the facts established on the investigation and criminal proceeding, it will analyzed the fulfillment of the State's obligation related to justice in the following order: i) the duration of the investigation and criminal proceedings; and ii) the due diligence practiced in the investigation.

1. The duration of the investigation and criminal proceedings

175. From the documents it has available from the file of the case in the domestic courts, the Commission observes that the First Police Precinct began the investigation on September 23, 1992,, and the final verdict in the case was delivered on February 26, 2002, with the decision that the Second Criminal Chamber of the Supreme Court of Justice delivered on the cassation appeal filed in the case. In

¹¹⁶ I/A Court H.R., *Case of Ricardo Canese v. Paraguay*. Judgment of August 31, 2004. Series C No. 111, paragraph 142.

¹¹⁷ I/A Court H.R., *Case of López Álvarez v. Honduras*. Judgment of February 1, 2006. Series C No. 141, paragraph 129; *Case of Acosta Calderón v. Ecuador*. Judgment of June 24, 2005. Series C No. 129, paragraph 104; and *Case of Tibi v. Ecuador*. Judgment of September 7, 2004. Series C No. 114, paragraph 168.

¹¹⁸ IACHR, Merits Report No. 77/02, Waldemar Gerónimo Pinheiro and José Víctor dos Santos (Case 11.506), December 27, 2002, paragraph 76. See also: I/A Court H.R., *Case of López Álvarez*. Judgment of February 1, 2006. Series C No. 141, paragraph 132; *Case of García Asto and Ramírez Rojas*. Judgment of November 25, 2005. Series C No. 137, paragraph 166; and *Case of Acosta Calderón*. Judgment of June 24, 2005. Series C No. 129, paragraph 105; UN Doc. CCPR/C/GC/32 of August 23, 2007, Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, paragraph 35.

other words, the criminal case –the investigation and criminal court proceedings- took nine years and five months.

a. The complexity of the case

176. Given the criteria mentioned above for evaluating the reasonableness of the time taken to investigate and prosecute the case, the Commission observes that for purposes of the case in the domestic courts, there was just one victim whose identity was easy to determine; the facts were immediately brought to the State’s attention, and the person who fired the shot was identified on the very day of the events. Likewise, the appropriate authorities had unimpeded access to the scene of the events. Given the circumstances,¹¹⁹ the Commission considers that this was not a particularly complex case.

b. Conduct of the judicial authorities

177. As for the conduct of the judicial authorities, the Commission notes first that there was confusion as to which jurisdiction had competence over this case and the time taken to settle this matter protracted the process. The investigation formally began on September 23, 1992, with issuance of the order for an investigation of the crime following the complaint filed by Mrs. Ibarra Ponce. The information available indicates that while some evidentiary measures were taken early in the case, during the first 13 months of investigation, on several occasions the case file went back and forth between the authorities in the police jurisdiction and authorities in the ordinary jurisdiction, who disqualified themselves and then retracted their own disqualifications. Thus, it was not until October 4, 1993, more than a year after the death of the child García Ibarra, that the Quito Superior Court ordered the ordinary courts to take jurisdiction in the case.

178. In addition, a series of unwarranted delays occurred in the criminal proceedings, which the Supreme Court described as “irregularities” in a ruling it delivered on February 26, 2002. The Supreme Court underscored the fact that the Esmeraldas Superior Court had taken four years to issue its ruling on an appeal filed to have a judgment set aside. Compounding the problem was the fact that the Second Criminal Chamber of the Supreme Court took more than 18 months to decide the cassation appeal.

179. Summarizing, the Commission considers that sufficient elements are present to conclude that the judicial authorities did not act with the necessary due diligence in the domestic prosecution of this case; quite the contrary, the case was encumbered by a series of needless procedural problems and unwarranted delays.

c. Procedural activity of the interested party

180. As for the last of the three standards, the procedural activity of the interested party, the Commission notes that on September 16, 1992, Mrs. Vicenta Ibarra Ponce filed a complaint against police officer Guillermo Segundo Cortez Escobedo accusing him of the murder of her teenage son José Luis García Ibarra. Nothing in the case file suggests that the adolescent’s family engaged in any

¹¹⁹ For a judgment along the same lines, see: I/A Court H.R., *Case of Vargas Areco v. Paraguay*. Judgment of September 26, 2006. Series C No. 155, paragraph 103.

procedural activity that would have affected the progress of the investigation. While there is information concerning the withdrawal of the private accusation, because this case was one that the State had a duty to investigate *ex officio*, that information is irrelevant for purposes of the analysis of the reasonableness of the time taken to investigate and prosecute the case.

2. The due diligence practiced in the investigation

a. The impact that the confusion over the question of jurisdiction had, both on the initial stage of investigation and on the trial phase.

181. As for the matter of due diligence, the Commission begins by observing that the initial jurisdictional debate not only caused unwarranted delays in the terms described above, but also affected the diligence and rigor of the investigation.

182. The fact that it was not until October 4, 1993 that the ordinary courts were given jurisdiction in the case indicates that at the most vital stages of the investigation, the authorities were focusing their attention on the question of jurisdiction, and not on exhausting all the measures necessary for and pertinent to a clarification of the facts. Here, the Commission must once again emphasize how important diligence is in the early stages of the investigation and that irregularities committed in these stages can undermine the chances of getting to the truth of what happened.

183. Apart from their impact on the initial stages of the investigation, the Commission observes that the jurisdictional questions also took a toll on the trial phase as well. One member of the First Criminal Court of Esmeraldas disqualified himself on jurisdictional grounds – since in his view the case belonged in police jurisdiction. As a result, this member did not rule on the merits of the case. As observed in the section on findings of fact, the sentence finally imposed, which was 18 months in prison for unintentional homicide, was a function of the procedural situation created by this self-disqualification and by the two conflicting rulings issued by the two remaining members of the court, with the result that there was no majority decision. Furthermore, this member’s self-disqualification, which had a direct impact on the final determination of the facts, was described by the Supreme Court as an irregularity.¹²⁰

184. The Commission does not have sufficient information to determine whether the sentence ultimately imposed in this case was adequate. However, without entering into the question of the severity or lack of severity of the sentence, the Commission considers that a basic corollary for access to the truth and to justice in cases such as this demands that the sentence be determined on the basis of the decision that the judicial authorities reach after serious and diligent deliberation. In the present case, the sentence ultimately imposed was not the product of a serious and diligent determination of the facts; instead, it was the result of one judge’s self-disqualification on jurisdictional grounds and the two conflicting opinions of the two remaining judges who presided over the criminal proceedings. In short, the response that the next of kin of adolescent Garcia Ibarra finally got from the

¹²⁰ In its February 26, 2002 ruling, the Supreme Court wrote the following “Furthermore, another irregularity by the Criminal Court was the opinion written by Dr. Joel Arias Velez, as this member of the court had no authority to issue any opinion asserting that the Criminal Court did not have jurisdiction. One year and five months earlier the police courts had declined jurisdiction in favor of the ordinary jurisdiction and had sent the entire case file to the ordinary court judge.”

courts was due to a combination of procedural circumstances; one factor was the confusion over the jurisdictional issue.

185. Therefore, while the case was finally heard in the ordinary courts, which is the proper venue for a case involving violation of human rights and not police discipline, the time taken to settle the jurisdictional issue took a toll both on the investigative phase and on the trial phase.

b. The failure to gather evidence essential for a clarification of the facts

186. The Commission also notes that there were several versions of the events in the instant case. Determining the veracity of one version as opposed to the others makes a judicial resolution possible. But in the instant case, establishing which version was accurate would have also determined what the nature of the crime committed was and, by extension, what sentence should be imposed, thereby securing justice that fit the crime. The Inter-American Court has held that an improper determination of the nature of the crime and a sentence that does not fit the crime, may contribute to impunity in cases of human rights violations.¹²¹ Hence, when states fail to exhaust every possible effort to ensure that the legal classification of the crime and the sentence imposed are the proper ones and proportional, they may compromise their international responsibility under the rights established in articles 8 and 25 of the American Convention.

187. Given the many doubts concerning the details of what happened, a reading of all the available documents from the file of the case in the domestic courts indicates that the State did not undertake the investigation as its own legal responsibility, and exhaust even means available to it to eliminate any doubts that emerged from the testimony. Using the previously cited United Nations Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions as a tool of interpretation, nothing in the case file indicates that ballistics or other tests were done to determine whether a fully identified firearm could have discharged as a result of the pistol whipping known as “cachazos”. Taking into account that the different versions of the facts were focused on an aspect that could have been clarified reasonably through a test on the trajectory of the shot, technical tests were very important. This clarification could also have a significant impact on the assessment of the facts as unintentional or intentional homicide and, consequently, in the penalty imposed.

188. The diligences during the investigation were minimal and were focused on the recognition of the scene of the events. This evidentiary procedure was repeated three times, collecting the same exact information. However, it was not done any ballistics or other tests related with the weapon used, and the prospects that had been shot in the circumstances described by the police. All of these tests may have contributed to a clarification of which of the two versions of the facts were adjusted to what really happened. The judicial file shows that there were no other tests performed.

189. Nor is there anything in the case file to suggest that witnesses whose statements were inconsistent with each other were questioned and confronted. Furthermore, in the record of the hearing conducted by the Esmeraldas Criminal Court on November 14, 1995, reference is made to a

¹²¹ I/A Court H.R., *Trujillo Oroza v. Bolivia Case*. Compliance with Judgment. Order of the Court of November 16, 2009, par. 39. I/A Court H.R., *Barrios Altos v. Peru Case*. Compliance with Judgment. Order of the Court of September 7, 2012, considering 55.

series of questions raised by the prosecution concerning the credibility of an expert's findings, but there is no indication as to whether those questions were resolved.

190. Finally, the Commission notes that in the case file it was provided information regarding alleged records of an arbitrary use of force. The Commission considers that despite the fact that the investigation and criminal procedure was limited to a concrete fact, the duties to monitor and exercise an effective control of agents with the authority to use force implies that the information regarding alleged records should have been considered in the investigation and criminal procedure in order to clarify the possible existence of a pattern of conduct.

c. Conclusion

191. Based on the above considerations, the Commission concludes that the State of Ecuador did not provide an adequate and effective remedy, with the guarantees of a due process, to the next of kin of José Luis García Ibarra for a clarification of his death. The final decision in the criminal procedure regarding the sentence of unintentional homicide was not the result of a serious and diligent investigation according to the standards applicable to the State's response regarding lethal use of force by police officers. It was the consequence of the non-compliance of those standards due to a number of omissions that prevented clarify effectively inconsistencies in the versions and, therefore, were the reason why it was not achieved clarification and an effective punishment for what happened.

192. Consequently, the State is responsible for violation of the rights to judicial guarantees and judicial protection, established in articles 8 and 25 of the American Convention, read in conjunction with the obligations established in Article 1(1) thereof, to the detriment of Pura Vicenta Ibarra Ponce (mother), Alfonso Alfredo García Macias (father), and his siblings Luis Alfonso, Santo Gonzalo, Ana Lucía, Lorena Monserrate, Alfredo Vicente and Juan Carlos, all surnamed García Ibarra.

C. The right to humane treatment with respect to the next of kin of José Luis García Ibarra

193. On a number of occasions the Inter-American Court has held that the next of kin of victims of certain human rights violations may themselves be victims.¹²² Specifically, the Court wrote that the right to mental and moral integrity of the next of kin of victims may have been violated as a consequence of the suffering they have endured as a result of the particular circumstances of the violations perpetrated against their loved ones and as a result of the subsequent acts or omissions of the State authorities in relation to the facts.¹²³

194. In the instant case, the Commission considers that the mother, father and siblings of the adolescent José Luis García Ibarra endured profound suffering as a result of their loved one's extrajudicial execution. The Commission places particular emphasis on the suffering that Mrs. Ibarra Ponce endured as an eye witness who, from her home, saw her own son shot and killed.

195. The suffering of the next of kin of the child José Luis García Ibarra was compounded in the years that followed, when the criminal case was repeatedly and excessively delayed and, in the end, was never able to explain what happened. As was indicated in the previous section of this report, the final outcome of the criminal case was the result of a procedural irregularity, labeled as such by Ecuador's highest court, which nonetheless provided no means to correct that irregularity.

196. The Commission therefore concludes that State violated the right to mental and moral integrity recognized in Article 5 of the American Convention, read in conjunction with the obligations established in Article 1(1) thereof, to the detriment of Pura Vicenta Ibarra Ponce (mother), Alfonso Alfredo García Macias (father), and the victim's siblings Luis Alfonso, Santo Gonzalo, Ana Lucía, Lorena Monserrate, Alfredo Vicente and Juan Carlos, all surnamed García Ibarra.

VII. CONCLUSIONS

197. Based on the considerations of fact and of law set forth in this report, the Inter-American Commission concludes that the State of Ecuador is responsible for:

a) Violation of the right to life and the child's right to special protection, established in articles 5 and 19 of the American Convention, read in conjunction with Article 1(1) thereof, to the detriment of José Luis García Ibarra.

b) Violation of the rights to humane treatment, judicial guarantees and judicial protection, recognized in articles 5, 8 and 25 of the American Convention, read in conjunction with Article 1(1) thereof, to the detriment of Pura Vicenta Ibarra Ponce (mother), Alfonso Alfredo García Macias (father),

¹²² I/A Court H.R., *Case of Cantoral Huamani and García Santa Cruz v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167, paragraph 112; I/A Court H.R., *Case of Bueno Alves v. Argentina*. Judgment of May 11, 2007. Series C. No. 164, paragraph 102.

¹²³ I/A Court H.R., *Case of Cantoral Huamani and García Santa Cruz v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167, paragraph 112; I/A Court H.R., *Case of Vargas Areco*. Judgment of September 26, 2006. Series C No. 155, paragraphs 103 and 96.

and the victim's siblings Luis Alfonso, Santo Gonzalo, Ana Lucía, Lorena Monserrate, Alfredo Vicente and Juan Carlos García Ibarra.

VIII. RECOMMENDATIONS

198. Based on the foregoing conclusions,

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

1. Conduct a thorough and effective investigation of the human rights violations established in this report.

2. Make adequate material and moral reparations for the human rights violations established herein.

3. Order measures of non-repetition that include the following: i) training programs for the National Police in international human rights standards in general, and with respect to children and adolescents in particular; ii) measures to ensure effective accountability in the criminal, disciplinary or administrative jurisdictions, in cases of alleged abuse of power by state law-enforcement agents; and iii) legislative, administrative or other measures to investigate, with the necessary due diligence and in keeping with relevant international standards, the necessity and proportionality of the lethal use of force by police officers, so that there are effective protocols in place by which to implement proper mechanisms to monitor the conduct of police officers and hold them accountable for their actions.