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Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 64/99; Case 11.778
Title/Style of Cause: Ruth Rosario Garces Valladares v. Ecuador
Doc. Type: Report
Decided by: Chairman: Professor Robert K. Goldman;
First Vice-Chairman: Dr. Helio Bicudo;
Second-Vice Chairman: Dean Claudio Grossman;
Members: Prof. Carlos Ayala Corao, Dr. Jean Joseph Exume, Dr. Alvaro Tirado Mejia.
Dated: 13 April 1999
Citation: Garces Valladares v. Ecuador, Case 11.778, Inter-Am. C.H.R., Report No. 64/99, OEA/Ser.L/V/II.106, doc. 6 rev. (1999)
Represented by: APPLICANT: the Comision Ecumenica de Derechos Humanos
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I. BACKGROUND

1. On March 3, 1997, the Inter-American Commission of Human Rights (hereinafter the Commission) received a petition from the Comisión Ecuémica de Derechos Humanos (CEDHU) filed against the Republic of Ecuador (hereinafter "the State" "the Ecuadorian State" or "Ecuador"). The petition dealt with the alleged violation of Articles 1, 5, 7, 8, 11, 24 and 25 of the American Convention on Human Rights (hereinafter "the American Convention") against Mrs. Ruth Garcés Valladares. The petitioner requested the release of the alleged victim who at that time was under preventive detention, and the adoption of legislative measures to ensure respect for the standards of due process established in the Convention.

2. On July 28, 1997, the Commission proceeded to open case 11.778. On March 2, 1998, after conducting the corresponding procedures, the Commission issued a report declaring the case admissible.[FN1]

[FN1] Report 14/98, Case 11778, Ecuador, Annual Report of the Inter-American Commission of Human Rights 1997, OEA/Ser.L/VIII.98 doc.6 rev., p.121.

II. PROCESSING BEFORE THE COMMISSION

3. In its Report 14/98 on admissibility, the Commission placed itself at the disposal of the parties to reach a friendly settlement of the case, pursuant to the principles established in the American Convention, and gave them 30 days to forward their observations.

4. On March 13, 1998, the petitioner stated that it was not possible to resort to the friendly settlement procedure as long as Mrs. Garcés Valladares remained deprived of her liberty. The petitioner also made comments regarding the merits of the case which were duly transmitted to the State. The State did not take a position on the possibility of resolving the case in a friendly manner within the deadline stipulated by the Commission.

5. On May 30, 1998, the petitioner submitted additional information on the case. The petitioner also informed the Commission that the alleged victim had been released. That information was duly communicated to the State.

6. On July 21, 1998, the State expressed its willingness to initiate the friendly settlement procedure contemplated in the Convention. In a communication dated July 30, 1998, the petitioner stated that it had no interest in settling the case amicably.

III. FACTS

7. Ruth Garcés Valladares was detained on June 22, 1992 as part of the so called "Operation Cyclone." In that operation, the Ecuadorian National Police proceeded to detain several persons presumably connected to activities allegedly violating the Act on Narcotics and Psychotropic Substances. The alleged victim was working as the assistant manager for foreign trade of the Ruminahui Bank.

8. On November 1992, she was formally charged by two different courts.

9. After two judges withdrew from the process due to conflict of interests, she was charged by the President of the Superior Court of Quito. Three parallel processes were instituted against her: unjust enrichment;[FN2] testaferrismo (meaning appearing as a "front" in commercial transactions) and conversión de bienes (fraudulent transfer of property). The President ordered her preventive detention in the last two processes.

[FN2] On November 22, 1996, Ruth Garcés Valladares was provisionally acquitted in the process involving unjust enrichment in which she was subjected to no precautionary measure whatsoever.

10. Meanwhile, on November 11 1992, the Fourth Criminal Judge of Pichincha charged her, once again, for the offense of fraudulent transfer of property. The trial concluded on October 31, 1994, with an acquittal. The decision was put forward for consultation and confirmed by the Third Chamber of the Superior Court on May 20, 1996.

11. On April 21, 1993, the President of the Superior Court lifted the order of preventive detention in the process instituted for testaferrismo. On March 26, 1996, the First Chamber of the Superior Court confirmed that decision.

12. On September 30, 1996, Ruth Garcés Valladares was provisionally acquitted in the opening decision of the plenary phase on the process for fraudulent transfer of property instituted by the President of the Superior Court. This dismissal was brought before the Fourth Chamber for consultation. On April 29, 1998 the Chamber dismissed the case on fraudulent transfer of property on the grounds that there was no conclusive evidence that Ruth Garcés Valladares was responsible for committing such an offense.

13. After five years and eleven months of preventive detention, during which she was acquitted from all charges against her, Ruth Garcés Valladares was released.

IV. ANALISYS ON THE MERITS

14. The Commission will now examine whether the rights to liberty and personal integrity, fair trial and access to a simple and effective remedy, as embodied in Articles 1, 5, 7, 8, and 25 of the American Convention, were violated in this case.

A. Personal liberty and security

1. The legality of the detention

15. According to the information and the documentary evidence produced by the parties, Ruth Garcés Valladares was arrested by the Ecuadorian National Police on June 22, 1992, at 6:45 p.m.,[FN3] without an arrest warrant. On June 23, 1992, Police Colonel Efraín Ramírez Echeverría requested the "legalization" of the detention from the First National Commander of Police of Quito (official letter 8877-OIDP). On that same date, Commander Rodrigo King Yerovi issued a police arrest warrant. Such warrant is silent on the grounds of the arrest (official letter 3274-CPNCQ).

[FN3] Report of the Office of the National Director of Investigations of the National Police to the Provincial Chief of Narcotics and Interpol of Pichincha (080-JPIP-CP1-92).

16. The petitioner alleges that these actions constitute an illegal detention under the Ecuadorian law and under the provisions of the American Convention.

17. In response, the State presented a report from the National Police Office of Investigations[FN4] stating the following:

In this case there was no arbitrary detention; the petitioner was tried in accordance with the basic rules of the criminal proceeding and she was accorded the guarantees of the Pact of San José, Costa Rica, referring to due process and to the publicity of the police and the courts actions.

[FN4] Report from the Office of the National Director of Investigations of the National Police dated June 17, 1997, official letter 97-1355-DNI, forwarded to the Commission.

18. The aforementioned report maintains that the arrest was carried out as part of the pretrial investigation contemplated in Article 54(6) of the Code of Criminal Procedure. This provision empowers the Police to:

Order and execute the provisional detention of a person caught committing a crime or against whom serious presumptions of responsibility exists, and to place such person, within the next 48 hours, under the jurisdiction of the competent judge.

19. In response, the petitioner alleged that such a rule violates the standards established by the Political Constitution of Ecuador, according to which persons arrested in the act of committing a crime should be placed at the disposal of the competent judge within a term of 24 and not 48 hours. The petitioner also argues that, in any event, both time limits--the one established by the Code of Procedure and the one established by the Constitution--were violated in this case.

20. The Commission notes that the text of the Political Constitution of Ecuador in force at the moment in which the detention took place, provided in Article 22(19)(h):

No one shall be deprived of their liberty except under the terms of a written order from the competent authority in the cases, for the time and in accordance with the formalities prescribed by law, unless the arrest takes place during the commission of the crime, in which case the person shall not be held without a warrant for more than 24 hours. In no case, the person shall be held incommunicado for more than 24 hours.

21. In turn, the American Convention establishes in Article 7(2):

No one shall be deprived of his liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto.

22. In this case, both the Constitution and the law establish, in the first place, that a person can only be arrested without a warrant if caught committing the criminal act or under so called serious presumptions of responsibility. Second, they both establish that, once arrested, the person must be placed at the disposal of the competent judge within 48 hours.

23. The State has not argued or proved that the alleged victim was apprehended during the commission of the crime, in which case, an arrest based on an order issued by the Police itself would have sufficed. In this case, the less strict standard of "serious presumptions of responsibility" is not applicable either. The alleged victim was either dismissed or acquitted from all the charges.

24. The evidence shows that Mrs. Garcés Valladares was arrested under circumstances that do not fall within the exceptions to the obligation of conducting arrests pursuant to a warrant as established in the Constitution. Therefore, it must be concluded that her detention was not carried

out for the reasons and under the conditions established in the domestic legislation, as Article 7(2) of the American Convention requires.

25. As for the second element, the involvement of a competent judge, the State also has failed to provide evidence indicating that the alleged victim appeared before the judicial authorities within either 24 or 48 hours.

26. The State produced transcripts of a statement dated June 22, a confrontation with witnesses dated June 23, and a second statement dated July 14, 1992. These instruments state that members of the Police and representatives of the ministerio público were present during the interrogations but not a competent judge.

27. The police report dated July 17, 1997, presented by the State in response of the initial petition, states the following:

Having complied with the pretrial requirements of the Code of Procedure of Ecuador, the police placed the suspects (detained in Operations Cyclone) under the jurisdiction of the Fourth Criminal Judge of Pichincha, who issued a preventive detention order against all the persons charged, pursuant to the power conferred by Article 177 of the Criminal Procedural Code, and issued the pertinent constitutional arrest warrant concerning the complainant[...]

28. The report did not specify on what date the police "placed the suspects under the jurisdiction of the judge." The petitioner maintains that the courts were informed of the arrests by means of police report 080-JPEIP-CP1-92 of July 17, 1992, in other words, almost one month after the detentions took place. The copy of the report dated July 17, 1992, provided by the State, however, does not state that the report was sent to the court but to the Provincial Chief of Narcotics and Interpol of Pichincha. The State has neither confirmed nor refuted the petitioner's statement.

29. On November 30, 1992--after two successive withdrawals by the competent judges--the President of the Superior Court of Quito charged the alleged victim with the commission of three offenses.

30. On the other hand, the trial instituted by the Fourth Criminal Judge of Pichincha was initiated as a consequence of a notification from the Ministerio Fiscal of Pichincha, based on a letter from the Superintendent of Banks dated October 30, 1992.[FN5]

[FN5] Letter N° 8B-92-2217, provided by the State and quoted in the decision of the Third Chamber of the Superior Court, March 20, 1996.

31. The charges instituted by the Fourth Criminal Judge of Pichincha and corresponding arrest warrant, copies of which have been provided by the State, are dated November 11 and 18, 1992, respectively.[FN6] It should be noted that in the arrest warrant produced by the State it

reads that the ground for preventive detention is the alleged commission of forgery of a public instrument and not that of testaferrismo or fraudulent transfer of property.

[FN6] The above-mentioned charges and the constitutional arrest warrant must be issued in accordance with the requirements of Article 177 of the Procedural Code. The provision reads: "The judge may issue a preventive detention order whenever it is deemed to be necessary provided that the following procedural information exist: signs that lead to the presumption of the existence a crime that warrants a punishment involving deprivation of liberty; and signs leading to the presumption that the accused is either the perpetrator or an accomplice in the crime object of the trial. The grounds of the order of imprisonment should be specified."

32. In brief, the evidence provided by the State indicates that Ruth Garcés Valladares was kept in prison for almost six months without formal charges or an arrest warrant issued against her.

33. The Commission concludes that Ruth Garcés Valladares was deprived of her liberty in conditions that are not consistent with the provisions of domestic legislation, that she was not brought immediately before a judge and had no access to a court that could decide without delay on the legality of her detention and order her release, all of which constitute a violation of Article 7(2),(3),(5) and (6) of the American Convention.

2. Personal liberty and physical integrity

34. The petitioner argued in its initial complaint that the alleged victim was held incommunicado for five days at Interpol facilities. The State did not contest this allegation.

35. The petitioner attached to its response a press article published in El Comercio related to the case. The article states that the alleged victim had been held incommunicado for 55 days at a police facility. The State did not object to the contents of this article.

36. In its reply of March 13, 1998, the petitioner alleged that the victim had been held incommunicado for "more than one month." The State was silent on the veracity of this allegation.

37. The Commission notes that the State provided the transcripts of three statements made by the alleged victim while detained at the office of Interpol. The last of these transcripts was dated July 14, 1992. The State also presented a document certifying her admission to the Women's Social Rehabilitation Center of Quito dated November 19, 1992.

38. Based on these elements, the Commission concludes that the alleged victim was arrested on June 22 but was not transferred to a detention center until November 19, 1992. These elements though are not enough to conclude that she remained incommunicado for four months, particularly when the petitioner has referred, in an inconsistent manner, to shorter periods of

isolation. However, it has been established that she was held at a facility controlled by the police at least between June 22 and July 14, 1992, that is, more than 22 days.

39. The Inter-American Court has stated:

Incommunicado detention is an exceptional measure the purpose of which is to prevent any interference with the investigation of the facts. Such isolation must be limited to the period expressly established by the law. Even in this case the State is obliged to ensure that the detainee enjoys the minimum and non derogable guarantees established in the Convention and, specifically, the right to question the lawfulness of the detention, and the guarantee of access to effective defense during his incarceration.[FN7]

[FN7] I/A Court HR, Suarez Rosero Case, Judgment of November 12, 1997, para. 51.

40. The Commission notes that the domestic legislation provides for a maximum period of isolation during detention. Article 22(19)(h) of the Political Constitution of Ecuador states that such period shall not exceed 24 hours.

41. The State has failed to present information challenging the petitioner's claim on the unlawfulness of the isolation. This is equivalent to admitting that the alleged victim in fact remained in that state beyond the time limit provided by the law.

42. The information provided by the parties also reveals that the alleged victim was kept incommunicado at the Interpol office. The Inter-American Court has established that police facilities are unsuitable to accommodate persons held in preventive detention.[FN8]

[FN8] Ibidem, para. 46.

43. As a result, the Commission concludes that Ruth Garcés Valladares was held incommunicado beyond the time limits contemplated by the law in violation of Article 7(2) of the American Convention.

44. The petitioner has also argued that holding the alleged victim incommunicado for such a long period constitutes cruel and inhuman treatment under the terms of Article 5(2) of the American Convention. This provision reads:

No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.

45. The Inter-American Court has established that the mere verification that a person has been held incommunicado for a long period is indicative of the fact that such person has been

subjected to cruel and inhuman treatment. This is more so when it is determined that isolation for such a period is contrary to domestic law.[FN9]

[FN9] Ibidem, para. 91.

46. In this regard the Inter-American Court has said:

One of the reasons for which lack of communications is conceived as an exceptional instrument is for the grave effects it has on the detained person. In effect, isolation from the outside world produces in any person moral suffering and psychological disturbance and puts that person in a situation of particular vulnerability[...]

47. The Commission concludes that the length of the incommunicado detention to which Ruth Garcés Valladares was subjected to, violated Article 5(2) of the American Convention.

3. Personal liberty

48. According to the information provided by the parties, the alleged victim was detained on June 22, 1992, and was deprived of her liberty until May 22, 1998. The petitioner alleges that this constitutes a violation of Article 7 of the American Convention.

49. Article 7(5) of the Convention reads:

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

50. This provision reflects the duty of the State to harmonize its obligation to guarantee the rule of law and the determination of the criminal responsibility through the judiciary, with that of guaranteeing the fundamental rights of persons accused of violating the law. The State has the delicate task of maintaining proportionality between the general interest to repress crime and provide effective access to justice to the victims, and the interest, also of a general nature, to respect the safeguards that the law itself provides in favor of those who are either in the process of proving their innocence or having their guilt determined in a fair trial.

51. As a general principle, those accused of committing a crime can only be punished by means of a sentence established as a result of a trial during which they had the opportunity to defend themselves. Such trial must be conducted within a reasonable time so as not to disregard the right to security and liberty of these persons. Restricting these rights beyond the parameters established by the law and beyond the margins of reasonableness in order to allegedly protect the effectiveness of the investigation, results in favoring the presumption that those preventively detained will be found guilty.[FN10]

[FN10] Report 12/96, Gimenez case, Argentina, Annual Report of the IACHR 1995, para. 76, 77 and 78.

52. A presumption of this kind is not only against the letter of the American Convention but also against the general principles of law codified in the Treaty and incorporated in Ecuadorian domestic law. The respect for the Rule of Law requires that when applying the law the courts protect the balance between interests that may appear to be in conflict. It involves the effective functioning of a justice system on which all citizens, in any circumstance, can rely.

53. Article 7(5) of the Convention enshrines the right to trial within a reasonable time as a parameter for restricting personal liberty within the context of a criminal proceeding. The determination of the period during which the precautionary measure can reasonably be maintained requires a case by case examination.[FN11] The Commission has developed a test according to which it must be determined first, whether the deprivation of liberty without a sentence is justified in the light of pertinent and sufficient criteria and, second, whether the authorities have proceeded with special diligence in the judicial investigation. If it is found that the detention and the duration of the court proceedings are not justified, the accused person must be released, at least on a temporary basis.[FN12]

[FN11] Report 12/96, *Ibid.*, para. 70. See also Euro. Court H.R., *Stogmuller v. Austria*, Series A9 (1969).

[FN12] See Report 12/96, *ibid.*, para. 83. See also Euro Court H.R., *Kenmache v. France*, Series A 218 (1991); *Neumeister v. Austria*, Series A 8 (1968).

54. As far as the criteria on pertinence and sufficiency are concerned, preventive detention is justified whenever it is proportional to the risk that the accused will abscond without taking notice of other measures--not involving deprivation of liberty--that could be adopted to secure his/her appearance in court during trial.

55. The seriousness of the violation and the severity of the sentence are elements that can be taken into account at the moment of evaluating the risk of non-appearance. Deprivation of liberty without a sentence, however, must not be based exclusively on the fact that the detainee has been accused of a particularly objectionable crime from a social point of view. The adoption of a precautionary measure involving deprivation of liberty should not be used as a substitute for a prison sentence.[FN13]

[FN13] Report 12/96, *ibidem*, paras. 86 and 89.

56. In the instant case, the State has not provided elements justifying the adoption of a precautionary measure involving deprivation of liberty based on the risk of evading justice, the severity of the crime or the punishment provided by the law.

57. The Commission and the Inter-American Court have established in their case-law that the reasonableness of the temporal extension of the precautionary measure should be evaluated in the light of the complexity of the matter involved, the procedures invoked by the interested parties and the conduct of the judicial authorities.[FN14]

[FN14] Report 12/96, *ibid*; I/A Court HR, Suarez Rosero Case, Judgment of November 17, 1997, para. 25; Genie Lacayo Case, Judgment of January 29, 1997, para. 77. See also Euro Court H.R., Motta Case, Series A 195; Ruiz Mateos v. Spain, Series A 262 (1993).

58. As for the first factor, the State produced a letter signed by the President of the Supreme Court of Justice referring to the complexity of the case, the investigations and the participation of experts. The letter referred to the fact that an important number of persons were arrested and charged as a result of Operation Cyclone.

59. Regarding the conduct of the accused, the letter signed by the President of the Supreme Court of Justice indicates, in general terms, that delays were usually created by the accused themselves with their motions and requests for habeas corpus. However, the letter does not state or present elements indicating that such presentations had any purpose other than invoking the procedures directed to exercise the right to defense or other fundamental right.

60. In a case such as this, it is necessary to draw a distinction between the right of the accused to invoke the procedures available, their lack of cooperation in trial and the commission of deliberate acts to impede the process.[FN15] The Commission has already established that a delay can be attributed to the accused only when they have abused the right to avail themselves of the remedies contemplated by the law with the intention of delaying the proceedings.[FN16]

[FN15] Report 12/96, *ibid.*, para. 103.

[FN16] *Ibidem*, para. 103.

61. In the case under examination, there has been no express allegation nor evidence produced to show that the alleged victim used the procedural mechanisms established by the law for the purpose of obstructing the development of the trial.

62. The conduct of the courts will be examined below, in the section devoted to establishing whether there has been a violation of the right to be tried within a reasonable time, as established by the Convention in Article 8(1).

63. Notwithstanding the reasonableness of the preventive detention in this case, domestic law contemplates a number of time limits. Ecuadorian law is amongst those expressly providing for a maximum period of preventive detention.

64. Article 114 of the Ecuadorian Criminal Code in force at the time of the detention of Ruth Garcés Valladares, provided:

Persons who have been detained without having received an order of dismissal or an order of opening of plenary proceeding for a time equal to or greater than one-third of that established by the Penal Code as the maximum sentence for the crime for which they were indicted shall be released immediately by the judge who hears the case.

Similarly, persons who have been detained without having been sentenced for a time equal to or greater than half of that established by the Penal Code as a maximum term for the crime for which they were indicted shall be released by the criminal court that hears the case.

Excluded from these provisions are persons indicted for crimes sanctioned by the Law on Narcotics and Psychotropic Substances.

65. The Commission notes that Ecuadorian law provides a penalty of four to eight years imprisonment for the crimes of money laundering, fraudulent transfer of property and testaferrismo.[FN17] Ruth Garcés Valladares was detained on June 22, 1992 and remained deprived of her liberty for more than five years and eleven months, namely, more than one-third, and more than one-half, of the maximum sentences.

[FN17] Articles 77 and 78 of the Law on Narcotics and Psychotropic Substances.

66. However, the processes instituted against the alleged victim fall within the exception provided for in Article 114 in fine of the Criminal Code and thus she could not take advantage of the maximum terms of preventive detention established in the first part of the Article.

67. The exclusion established in Article 114 in fine, however, has already been questioned both at the domestic and the international level. In its judgment of November 17, 1997 in the Suárez Rosero Case, the Inter-American Court declared that the contents of the last paragraph of Article 114 of the Criminal Code constituted a de jure violation of the conventional obligation to take all necessary measures under domestic law to implement the right to personal liberty enshrined in Article 7(5) of the American Convention.[FN18]

[FN18] I/A Court H.R. Suárez Rosero Case, Judgment of November 12, 1997, para. 99.

68. As the Inter-American Court noted, even though this provision establishes objective conditions for release of persons imprisoned without sentence, the exception established in fine

deprives a percentage of detainees of the enjoyment of a fundamental safeguard merely on the ground of having allegedly committed a specific crime.[FN19]

[FN19] Ibid., para. 98.

69. Although the State has not presented the fact during the processing of the present case, the Commission has taken note that on December 16, 1997, the Constitutional Court of Ecuador declared Article 114 in fine of the Criminal Code unconstitutional. This declaration of unconstitutionality extended the application of the maximum term of preventive imprisonment provided in Article 114, at least in theory, to cases such as that of Mrs. Garcés Valladares.

70. With respect to the parameters of Article 7(5), the Commission finds that given that the preventive detention exceeded the time limits established by the domestic legislation, it can only be considered prima facie illegitimate, regardless of the nature of the crime involved and the complexity of the case. In cases such as these, the burden of justifying the delay falls on the State.[FN20]

[FN20] Report 12/96, ibidem, para. 101.

71. However in this case, the precautionary measure remained in place even after the finding that Article 114 in fine was incompatible with the Ecuadorian Constitution. Moreover, the alleged victim remained deprived of her liberty until the three processes were completed. Although she was acquitted she remained in custody. In brief, the terms of Article 114 and the interpretation introduced by the Constitutional Tribunal had no impact on the detention of Ruth Garcés Valladares.

72. The information presented by the parties show that the alleged victim remained detained until the Third Chamber of the Constitutional Tribunal decided upon her immediate release, in response to a habeas corpus filed by the petitioners on May 20, 1998. The petitioners grounded their request on the fact that almost one month had elapsed since April 29, 1998 –the date on which the Fourth Chamber of the Superior Court acquitted the alleged victim in the last of the consultations pending in her case— and Ruth Garcés Valladares was still detained. Even though the Third Chamber of the Constitutional Court invoked Article 114 of the Criminal Code in its decision of May 22, 1998 calling for release of the alleged victim, Mrs. Garcés Valladares was released as a result of a remedy sought after her acquittal was confirmed. In other words, this decision did not lift an illegal restriction of liberty that had been in force for an unreasonable period. The Third Chamber terminated a situation where the alleged victim was virtually detained in violation of Article 7(3) of the Convention providing that nobody may be subjected to arbitrary arrest or imprisonment.

73. As a result, the Commission concludes that the preventive detention suffered by Ruth Garcés Valladares violated the guarantees established in Article 7(5) and became arbitrary deprivation of liberty in the terms of Article 7(3) of the American Convention.

B. Right to a fair trial

74. The petitioner has expressed the view that, from the moment of her detention in June of 1992, the State failed to protect the right of the alleged victim to a fair trial as established in Article 8 of the American Convention.

75. The Commission will now examine the facts in the light of the right to a speedy trial, and the general principles of presumption of innocence and non bis in idem, as set forth in the American Convention.

1. Speedy trial

76. The petitioner argued in the initial complaint that the State and its organs failed to comply with the obligation to examine the charges brought against the alleged victim within a reasonable time.

77. The State responded with a police report dated July 17, 1997. Such report states that the detention of the alleged victim was carried out pursuant to the Code of Procedure and that she was tried in conformity with domestic law, the standards of the Pact of San Jose and the principle of publicity of judicial and police actions.

78. In its response, the petitioner argued that the statements presented by the State were false. That the alleged victim had been detained and held incommunicado beyond the time limit of 24 and 48 hours established in the Constitution and the Code of Procedure, before being placed at the disposal of a competent judge. That once the summary stage was initiated, it extended for three and four years respectively, when Article 231 of the Procedural Code provides a maximum term of 60 days. Finally, that consultations were completed within three years, in one process, and in more than one year in another. These terms considerably surpass the 15-day time limit established in Article 491 of the Procedural Code.

79. The State presented a letter where the office of the President of the Supreme Court of Justice admitted that delays had occurred in the handling of these criminal cases.

80. The aforementioned letter explained that the delays were the result of multiple charges, investigations, participation of experts and delays created by the accused themselves with their motions and requests for habeas corpus.

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

Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him[...]

82. The principle of reasonable time to which this provision refers has the purpose of ensuring that persons accused of committing a crime do not remain in that condition indefinitely. In criminal matters, this term covers the entire proceedings, including any investigations that may take place.[FN21]

[FN21] I/A Court HR, Suárez Rosero Case, Judgment of November 12, 1997, para. 70 and 71.

83. In the case under examination, the arrest of the alleged victim on June 22, 1992, triggered a number of processes based on the same facts and evidence, that ended with the consultation of April 29, 1998, confirming the final dismissal of the trials pending against her.

84. The Commission believes that 71 months does not constitute a reasonable time to resolve a proceeding based on abundant documentary and testimonial evidence that ended with the acquittal of a person who was awaiting sentence in prison.

85. Therefore, the Commission concludes that Ruth Garcés Valladares suffered violation of her right to be judged within a reasonable time as established in Article 8(1) of the American Convention.

2. The principle of presumption of innocence

86. The petitioner maintains that the deprivation of liberty to which the alleged victim was subjected constitutes a violation of the principle of presumption of innocence established in the American Convention. The petitioner states that in this case the imposition of preventive detention for a prolonged period turned into punishment without conviction, which is not consistent with the purpose of a precautionary measure.

87. The State has not presented its position regarding observance of the principle of presumption of innocence in this case.

88. Article 8(2) of the American Convention provides:

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

89. The Inter-American Court considered that the very purpose of the right to a fair trial rests on the principle that a person is innocent until proven guilty.[FN22] The universally recognized principles of law rule out the possibility of punishment in advance of the sentence. By ignoring this principle, as occurred in the case under review, States would be running the risk of restricting for an unreasonable time the liberty of a person whose guilt has not been established. In this case the victim was deprived of her liberty for a period that was more than half of the maximum sentence established for the crimes for which she was charged and acquitted, and she was kept under arrest even after her acquittal was confirmed.

[FN22] Ibidem, para. 77.

90. The Commission concludes that Ruth Garcés Valladares was a victim of a flagrant violation of the principle of presumption of innocence embodied in Article 8(2) of the American Convention.

3. Non bis in idem

91. The petitioner argues that the trial of the alleged victim for the same events and the same offense by two different courts, simultaneously, constitutes a violation of the American Convention.

92. As aforementioned, on November 11, 1992, the alleged victim was charged with fraudulent transfer of property by the Fourth Criminal Judge of Pichincha. Such process concluded on October 31, 1994, with her acquittal. The decision was submitted for consultation and confirmed by the Third Chamber of the Superior Court on May 20, 1996.

93. Meanwhile, on November 30, 1992 the President of the Superior Court of Quito charged the alleged victim with three offenses, including that of transfer of property for which an order of preventive detention was issued.

94. Ergo, the alleged victim was charged and tried simultaneously for the same offense – fraudulent transfer of property-- based on the same facts before two separate courts: the Fourth Criminal Judge of Pichincha and the President of the Superior Court of Quito.

95. The Commission believes that this situation, apart from defying the principle of procedural economy, prejudiced the victim who had to defend her case simultaneously before two separate courts and their corresponding instances of appeal during the course of both processes. The Commission considers that in this case, the existence of parallel processes constituted a serious interference with the exercise of the right to defense and legal certainty of the process.

96. As for the alleged violation of the American Convention, Article 8(4) provides:

An accused person acquitted by a judgment that cannot be appealed shall not be subjected to a new trial for the same cause.

97. This codification of the principle of non bis in idem has the purpose of establishing a safeguard to protect persons who have been acquitted at trial so that they may not be subjected to a new trial based on the facts examined in the previous trial.

98. It has been established that the alleged victim was subject to two trials based on the same facts for the offense of fraudulent transfer of property. The alleged victim was charged

simultaneously by both courts, and such courts decided the merits of the case in succession, thus violating the principle enshrined in the Convention on two occasions. The first violation occurred when the President of the Superior Court failed to dismiss the case before it once the Third Chamber confirmed the acquittal issued by the Fourth Judge on May 20, 1996. The second violation took place two years later, when the Fourth Chamber of the Superior Court--at the moment of confirming the decision of the President--once more re-examined the merits of the case in its decision dated April 29, 1998.

99. The Fourth Chamber of the Superior Court of Quito expressly acknowledged that:

Besides, and in support of the reasons explained above, it is necessary to bear in mind that the Third Chamber of this same Superior Court of Quito decided to confirm the decision of October 31, 1994 of the First [sic] Criminal Judge of Pichincha by which [...] Ruth Garcés Balladares [sic] and other members of staff of the Banco Rumiñahui were also charged with fraudulent transfer of property and tried for the same facts as in this process as described in the police report prepared for the so called "Operation Cyclon". The above mentioned acquittal was based on the fact that despite the voluminous documentary evidence produced during the different stages of the process it was not possible to determine, as required by law, that the funds deposited with the aforementioned Bank had been illegally acquired. [Emphasis added].

100. The Fourth Chamber of the Superior Court's statement confirms that it was fully aware of the fact that the charge of transfer of property had already been examined by the Fourth Criminal Judge of Pichincha and the corresponding appeals court, namely, the Third Chamber of the same Superior Court. However, after acknowledging the validity of the acquittal, the Fourth Chamber re-examined the merits of the case, now in the context of the trial instituted by its President. Thus, far from considering the final decision as *res judicata*, the Fourth Chamber continued with the trial of Ruth Garcés Valladares in order to establish her responsibility in the commission of the same offense for which she had been acquitted by the Third Chamber. The Fourth Chamber decision of April 29, 1998 dismisses the case against the accused based on the analysis of whether the available evidence lead to the conclusion that, in the light of the requirements established by law, the offense of fraudulent transfer of property had been committed or not. Such analysis is tantamount to double jeopardy in terms of the general principle established in Article 8(4) of the Convention.

101. Therefore, the Commission, based on the analysis of the evidence produced by the parties, concludes that the right of Ruth Garcés Valladares not to be subjected to trial twice for the same offence, as enshrined in Article 8(4) of the American Convention, has been violated in the instant case.

E. Access to a simple and effective remedy to determine the legality of the arrest and the deprivation of liberty

102. The petitioner alleges that the undue delay in considering the requests for habeas corpus in favor of the victim violates the guarantees set forth in Articles 7(6) and 25 of the American Convention.

103. The State has not contested this allegation.

104. Article 7(6) of the Convention provides:

Any person who is deprived of his liberty shall be entitled to recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful.

Article 25 of the Convention provides:

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.

105. Article 458 of the Code of Criminal Procedure provides that once a detainee files a request for his liberty, the competent judge must order immediately that such person be brought to his presence and rule on the request within the next 48 hours.

106. The guarantee of access to a simple and effective remedy, as set forth in these provisions of the Convention, is not satisfied by the mere existence of suitable remedies to secure a release order. As the Court has pointed out, these remedies must be effective, given their purpose of securing a prompt decision on the question of legality of the arrest or the detention.[FN23]

[FN23] Ibid., para. 63.

107. These rights constitute one of the basic pillars of the rule of law in a democratic society.[FN24]

[FN24] I/A Court H.R. Castillo Páez Case, Judgment of November 3, 1997, para. 82.

108. As shown by the documentary evidence, the petitioner sought to represent the alleged victim before the competent judges on many occasions with the request that the precautionary measure be lifted or that her illegal detention be terminated. In all of the cases--with the exception of the decision of May 22, 1998 which ordered her release--the requests for habeas corpus were ignored or rejected with undue delay.

109. Therefore, on the basis of the evidence provided by the parties, the Commission concludes that the State violated the right of Ruth Garcés Valladares to have access to a simple and effective remedy for the protection of her fundamental rights according to Articles 7(6) and 25 of the American Convention.

V. APPROVAL OF ARTICLE 50 REPORT AND CONSIDERATIONS ON COMPLIANCE WITH THE RECOMMENDATIONS

110. On September 29, 1998, during its 100^o Regular Session, the Commission approved Report 52/98 according to Article 50 of the American Convention. Such Report concluded that Articles 5(2), 7(2), 7(3), 7(4), 7(5), 7(6), 8(1), 8(2), 8(4) y 25 of the American Convention had been violated and recommended the State: 1) to determine the responsibilities for the violations established in the conclusion of this Report committed by the police and the judiciary; 2) to compensate the victim for the moral and material damage caused by her arbitrary and prolonged detention; 3) to adopt legislative, judicial and any other measures needed to apply the standards regarding personal liberty enshrined in the American Convention, to cases relating preventive detention as interpreted in the inter-American case law. Report 52/98 was transmitted to the State on October 20, 1998 with a three month period to comply with the above mentioned recommendations.

111. On January 11 and 19, 1999 the State presented information regarding the steps taken to comply with the recommendations issued in the Report. As far as the determination of individual responsibility is concerned, the State informed the Commission that the Ministerio Fiscal General decided to carry out a special examination of the procedural actions of the representatives of the Ministerio Público in the criminal trials followed against the victim. The State presented a statement signed by the Fiscal General which reads:

I direct the Dirección Nacional de Auditoría del Patrocinio Público to examine the actions of the representatives of the Ministerio Público during the criminal proceedings, and to establish whether the law has been broken as well as the corresponding responsibilities. Such examination must be carried out within thirty days.[FN25]

[FN25] Statement dated January 12 1999 signed by Guillermo Mosquera Soto, Ministro Fiscal General.

112. As far as compensation for the material and moral damages suffered by the victim, the State reported that it is in the process of directly negotiating a monetary arrangement with Mrs. Garcés Valladares.

VI. CONCLUSIONS

113. The Commission notes with satisfaction that the Ecuadorian State has shown signs of being engaged in activities directed to comply with the recommendation regarding compensation. However, the information presented to the date of adoption of the Article 51 Report does not indicate that the State has fully and effectively complied with the recommendations issued in Report 52/98.

114. Based on the factual and legal arguments set out above, the Commission ratifies its conclusion that in the case of Ruth Garcés Valladares the Ecuadorian State is responsible for the

violation of the rights and guarantees relating to personal integrity and liberty, trial within a reasonable time, due process and access to an effective remedy, as established in Articles 5(2), 7(2), 7(3), 7(4), 7(5), 7(6), 8(1), 8(2) and 25 of the Convention, in conjunction with the obligation to take the necessary measures to guarantee the rights protected, as established in Article 1(1).

VII. RECOMMENDATIONS

Based on the foregoing considerations

THE INTER-AMERICAN COMMISSION OF HUMAN RIGHTS REITERATES TO THE ECUADORIAN STATE THE FOLLOWING RECOMMENDATIONS:

1. To determine the responsibilities for the violations established in the conclusion of this report committed by the police and the judiciary.
2. To compensate the victim for the moral and material damage caused by her arbitrary and prolonged detention.
3. To adopt legislative, judicial and any other measures needed to apply the standards regarding personal liberty enshrined in the American Convention to cases relating preventive detention as interpreted in the Inter-American case law.

VIII. PUBLICATION

115. On February 24, 1999, the Commission transmitted Report 8/99 adopted in the present case (see chapters I to VII supra) to the State pursuant to Article 51(1) and (2) of the American Convention, and fixed a period of one month to adopt all necessary measures to comply with the recommendations at issue.

116. On March 23, 1999, the State informed the Commission that it had reached an agreement with the victim on compliance with Report 8/99. Pursuant to this agreement, the State acknowledges its international responsibility for the violations of Articles 5(2), 7(2), 7(3), 7(4), 7(5), 7(6), 8(1), 8(2), 8(4), 25 and 1(1) of the American Convention on Human Rights and agrees to "repair the damage caused to the victim".

117. The State undertook to pay compensation in the amount of US\$73,000 (seventy three thousand US dollars), tax free, with the exception of the duties imposed on capital circulation, for the moral and material damages suffered by Ruth Garcés Valladares. The State formally undertook to take all necessary steps to make effective payment within 90 days from the date of signature of the agreement. The State also acceded to add to the amount of any arrears the corresponding interest calculated according to the rate employed by the three leading banking institutions in Ecuador.

118. Regarding the prosecution of the State agents responsible for the violations found, the General Attorney formally undertook to "urge the competent public or private organs to produce information leading to the prosecution of such persons."

119. The State has notified the conclusion and the terms of this agreement to the Commission for its "entire approval and ratification". It has also requested that the Commission supervise compliance with its terms and, to that effect, has undertaken to report every three months.

120. The Commission considers that the agreement above described constitutes a formal undertaking to comply with the recommendations made in Report 8/99 and that its terms are compatible with such Report and with the object and purpose of the American Convention. The Commission sincerely welcomes the Republic of Ecuador's commitment to comply with the recommendations issued.

121. Therefore, the Commission takes note of the agreement reached by the Ecuadorian State and Mrs. Ruth Garcés Valladares and approves its terms. In view of the foregoing considerations, and in accordance with Article 51(3) of the American Convention and Article 48 of its Regulations, the Commission decides to make the present Report public and include it in its Annual Report to the General Assembly of the OAS. Pursuant to its mandate, the Commission shall continue evaluating the measures adopted by the Ecuadorian State regarding the aforementioned recommendations until they have been fully complied with.

Done and signed by the Inter-American Commission on Human Rights in the city of Washington D.C., on the 13 day of the month of April 1999. (Signed): Robert K. Goldman, Chairman; Hélio Bicudo, First Vice Chairman; Claudio Grossman, Second Vice Chairman; Commissioners Alvaro Tirado Mejía; Jean Joseph Exumé and Carlos Ayala Corao.