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First Vice-President: Marta Altolaguirre;
Second Vice-President: Jose Zalaquett;
Commissioners: Robert K. Goldman, Julio Prado Vallejo, Clare K. Roberts,
Susana Villaran de la Puente.
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I. SUMMARY

1. On May 11, 1995, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or “the IACHR”) received a petition lodged by two Brazilian citizens, José Víctor Dos Santos and Waldemar Gerónimo Pinheiro (hereinafter “the petitioners”), in which they charge that the Republic of Paraguay (“the State”) has international responsibility for the delay in the legal action brought against them in 1985, and for the prolonged pretrial detention.

2. The petition states that Waldemar Gerónimo Pinheiro was imprisoned in Tacumbú National Penitentiary in Paraguay for over 10 years, in pretrial detention on suspicion of homicide, without ever being sentenced. It further alleges that his case file was lost on three occasions, that he was never granted parole, and that he did not have the economic resources needed to cover the cost of his defense.

3. José Víctor Dos Santos in turn reported that he had been the victim of torture and that he was imprisoned in Tacumbú National Penitentiary in Paraguay for over 10 years, in pretrial detention on suspicion of homicide, without ever being sentenced, that he was never granted parole, and that he did not have the economic resources for his defense. He further alleged that he was tortured at the time of his arrest and that, as a result, he was hospitalized for five months.

4. In its responses, the State denied the allegations of torture by Mr. Dos Santos. As far as the rest of the allegations were concerned, it confined its response to providing information on the relevant judicial proceedings.

5 The Inter-American Commission declared the present case admissible, finding that charges were made of possible violations of the rights embodied in the American Declaration on the Rights and Duties of Man (hereinafter the "American Declaration" and the American Convention on Human Rights (hereinafter "the American Convention" and that, owing to the unjustified delay in the processing of the case under domestic law, it was not necessary for the petitioners to exhaust domestic remedies.

6. After having examined the case, the IACHR concludes in this report that the prolonged pretrial detention and the delay in settlement of the cases against José Víctor Dos Santos and Waldemar Gerónimo Pinheiro cause the State of Paraguay to incur responsibility for the violation of the following rights protected by the American Declaration with respect to the acts that occurred prior to August 24, 1989: the right to protection from arbitrary arrest (Article XXV); and, the right to due process of law (Article XXVI). In addition, with regard to the acts which occurred subsequent to the entry into force of the American Convention, the State incurs responsibility for violation of the following rights: right to personal liberty (Article 7), and the right to a fair trial (Article 8), all in accordance with the obligation stipulated in Article 1(1) of that international instrument.

II. PROCESSING BY THE COMMISSION

7. On June 29, 1995, the IACHR sent to the State the pertinent parts of the petition. On September 14, 1995, it received the State's response, the pertinent parts of which were forwarded to the petitioners on November 3, 1995. On November 29, 1995 and on April 9, 1996, the IACHR requested additional information of the State, which was provided on May 23, 1996.

8. On September 27, 1999, during its 104th regular session, the Inter-American Commission declared that the present case was admissible. It found that it was not necessary for the petitioners to exhaust domestic remedies in view of the unjustified delay in processing the matter in the domestic courts. This report was transmitted to the parties on October 13, 1999.

9. On October 13, 1999, the IACHR placed itself at the disposal of the parties to initiate proceedings for a friendly settlement of this matter.

10. The State's response was received on February 4, 2000, and it was transmitted to the petitioner. In that communication, the State indicated its willingness to initiate a friendly settlement process in this case. The petitioners never responded to the proposal.

11. On March 15, 2001, the IACHR requested the State to provide additional information. Paraguay sent the additional information on September 7, 2001. The petitioners were informed of this communication.

III. POSITIONS OF THE PARTIES

A. Position of the Petitioners

12. The petitioners, Brazilian nationals, maintain that their rights were violated by the Paraguayan authorities, who arrested them in 1985 on suspicion of homicide, without any evidence against them. They further state that on the date that the petition was lodged, ten years had lapsed without settlement of their legal situation, since they had never been convicted of any crime whatsoever.

13. Mr. Dos Santos found himself in detention since 1988 because of suspicions that he had participated in a homicide somewhere in the hinterland of the country, where one of the individuals charged had the same surname. Mr. Dos Santos reported in his letter of April 4, 1995 that he did not understand the reasons for his detention, that he did not know if there was a criminal proceeding against him, and that he had no means for defending himself, since he had neither family nor economic resources to cover the cost of his defense. In addition, he reported that as a result of the torture he had received at the time he was arrested, he was seriously ill, and for that reason he had spent five months in a hospital.

14. In a letter of the same date, Waldemar Gerónimo Pinheiro stated for his part that he was a prisoner awaiting trial for ten years, on suspicion of having participated in a homicide, but that there was no evidence against him. He further alleged that his case file had been lost three times and that he did not have the economic resources to defray the cost of defense. He also denounced the poor prison conditions, and reported that he had not been granted parole.

B. Position of the State

15. As far as the reported events are concerned, the State of Paraguay responded as follows in its various communications:

16. That it was not aware of the supposed mistreatment and torture, and it categorically denied the statements to that effect contained in the petition filed by José Víctor Dos Santos. With regard to Waldemar Pinheiro, the State maintained that he has been imprisoned since June 6, 1985 in the national penitentiary of Tacumbú, charged with the crime of homicide related to robbery, that his trial was located in the judicial district of Ciudad del Este and that on March 17, 1995, he was convicted to 30 years in prison in a judgment issued by the court presided over by Dr. Doctor Justo Salvador Reyes. The State also maintained that since the case was pending appeal, the matter was still being litigated, so that domestic remedies had not been exhausted.

17. In the case against José Víctor Dos Santos, the State also reported that he had been in pretrial detention at Tacumbú National Penitentiary since 1988 on charges of double homicide. By virtue of a corrective habeas corpus motion filed with the Supreme Court of Justice, the Supreme Court ordered his release. That order was executed in July 1995.

18. In addition, the State indicated that although there is a card on prisoner José Víctor Dos Santos in the Tacumbú National Penitentiary, there is no case file on him there, or in the judicial district of Ciudad del Este, or in any other court.

19. The State also provided various documents related to the detention and later processing of the petitioners.

IV. EXAMINATION OF THE MERITS

A. Analysis of the facts

20. The following acts and events are considered as proven by the information provided by the State and the petitioners:

1. Waldemar Gerónimo Pinheiro

21. On July 1, 1985, the police chief [Alcalde Policial] of General Patricio Colmán Town Hall prepared a police report in which he reported that on June 6, 1985, Cledirio Teleken, his wife, Alice de Teleken, and their children Nelci and Nerio Teleken were murdered. In that report he stated that the investigations showed that the perpetrators of the homicide were Waldemar Gerónimo Pinheiro, José Mairoso Dos Santos, and a third person known as "Joasinho", and that the first two were being detained at the police station.

22. On July 5, 1985, the Chief of Police referred the police report to the judge of the lower criminal court of Presidente Strossner City, along with information to the effect that Waldemar Gerónimo Pinheiro and José Mairoso Dos Santos were being held in preventive detention.

23. On November 10, 1987, the lower criminal court of Presidente Strossner City, with Dr. Artemio Benitez Vásquez presiding, ordered that the file labeled "Waldemar Pinheiro and José Mairoso Dos Santos S/Homicide in Santa Lucía" be reconstructed, since it had been lost, and decided to advise a court in the capital to take the signed statement [declaración indagatoria] of the two defendants. On February 29, 1988, that same court converted the preventive detention of Mr. Pinheiro and Mr. Dos Santos into pretrial imprisonment [prisión preventiva], and ordered that they continue to be confined at the General Penitentiary of the capital.

24. On July 10, 1988, that court issued a decision in which it resolved to allow the incidental plea for revocation of the imprisonment order presented by José Mairoso Dos Santos, and to notify the General Penitentiary in the capital to comply with that decision.

25. On May 16, 1990, the court issued A.I. N° 451 in which it established that in taking stock of its records, in view of the fact that a new judge, Dr. Ruben Candia Amarilla, had taken possession of the court, it noted that the aforesaid file had been lost. As a result, the court decided once again to carry out preliminary criminal proceedings, confirm the preventive detention of defendant Waldemar Gerónimo Pinheiro, give notice of a hearing so that the defendant could render his signed statement, and issue an arrest warrant for José Mairoso Dos Santos, to which end it ordered that notice be given to the police in the capital and to the regional police.

26. On May 19, 1990, the court was constituted at Tacumbú National Penitentiary and the signed statement of Mr. Pinheiro was taken. The pertinent record indicates that he was not in condition to testify, but it does not indicate why.

27. On May 21, 1990, Mr. Pinheiro appointed two defenders. On May 22, 1990, the court decided to convert the preventive detention of defendant Waldemar Gerónimo Pinheiro into pretrial imprisonment [prisión preventiva], and ruled that the defendant would remain in detention.

28. On August 27, 1991, the lower court, with its new presiding judge, Dr. Juan G. Arguello, responded to a request from the Public Prosecutor for Criminal Matters, which resulted in designation of a public defender for the defense of Waldemar Pinheiro.

29. On September 21, 1991, Mr. Pinheiro rendered his signed statement, in which he claimed that he was innocent of the crime with which he was charged. He stated that on June 6, 1985, he had arrived in Paraguay by land from Brazil, for the purpose of working on a property his father had leased. When he stopped at a police station to ask directions, the police detained him, tortured him, and made him confess to the crimes for which he was being prosecuted.

30. The pertinent case file was lost from September 1992 to September 1994. On September 27, 1994, the court, which at that point was under the authority of Dr. Justo Salvador Reyes, declared the summary or preliminary hearing closed, whereupon the trial proceeded to the second stage of oral arguments.

31. On December 14, 1993, Mr. Pinheiro designated Dr. Jorge Valdéz Bavera, a public defender, to defend him.

32. On March 17, 1995, the court handling the case, which at that time was called the “Juzgado de Primera Instancia en lo Criminal y Correccional del Menor del Segundo Turno de la Circunscripción Judicial del Alto Paraná y Canindeyú” [Trial Court for Criminal Matters and Correctional Matters involving Minors of the Second Rotation of the Judicial District of Alto Paraná and Canindeyú], with Dr. Justo Salvador Reyes as presiding judge, issued a final judgment in which it convicted Waldemar Gerónimo Pinheiro to 30 years in prison for the crimes of which he was accused.

33. On May 22, 1995, said judgment was communicated to Dr. Jorge Valdéz Bavera, the public defender in charge of Mr. Pinheiro’s defense, who appealed it on that same date. On October 19, 1995, the aforesaid public defender presented to the Chamber of Appeals a well-founded brief in justification of the appeal. In that document, he maintained that there was absolutely no evidence in the file against Mr. Pinheiro, and that “the only valid piece of evidence appearing in the record is the signed statement of my defendant,” in which he denied on good grounds any participation in the events under investigation.

34. On April 12, 1996, the Court of Appeals for Civil, Commercial, Labor, Criminal, Guardianship and Correctional Matters of the First Chamber of the Judicial District of Alto Paraná and Canindeyú issued Decision and Judgment N° 3, in which it declared Final Judgment N° 11 of March 17, 1995 to be null and void. In that decision, the superior court took into consideration that the lower court decision was handed down without an accusatory instrument or a response from the defense, so that “technically, there was no trial, because the principal

foundations for arriving at a conclusion, namely the accusation and the defense, were absent.” On this basis, it annulled the conviction.

35. On October 29, 1996, the director of Tacumbú National Penitentiary reported to the court that defendant Waldemar Gerónimo Pinheiro had fled the Juan Max Boettner Medical Center, where he was being treated for T.B.C. pneumonia. The flight took place on October 27, 1996.

36. On November 1, 1996, a warrant for the arrest of Waldemar Gerónimo Pinheiro was issued. Subsequent to that date, neither of the parties contributed any new information on the status of the proceedings.

2. José Víctor Dos Santos

37. In 1988, José Víctor Dos Santos was arrested for his presumed participation in a double homicide. On this point, it should be noted that the Commission takes 1988 as the date of arrest, since that is the date that appears in the court records, and the petitioner has not proven his contention that he was in detention as of 1995.

38. On June 9, 1995, the Supreme Court of Justice handed down a judgment in a habeas corpus appeal filed in favor of José Víctor Dos Santos. In that judgment, the Court found that the records of the case did not contain any orders for deprivation of freedom issued by a competent authority against the defendant, and so on those grounds it ordered his release. On that date Mr. Dos Santos was freed.

39. The State never provided any information in any of its communications that explained or justified the reasons for the detention of José Víctor Dos Santos.

B. Analysis based on the law

40. The Commission then proceeded to ascertain whether in the present case, the following rights, enshrined in Articles XXV and XXVI of the American Declaration and Articles 1, 5, 7, and 8 of the American Convention, were violated: the right to personal liberty; the right to humane treatment; the right to a fair trial; and access to a simple and effective judicial remedy.

1. The right to personal liberty (Article 7)

a. The legality of the arrest – Violation of Article XXV of the American Declaration and Article 7(2) and 7(3) of the Convention

41. From the information provided by the parties and the documents in the possession of the Commission, it is apparent that Waldemar Gerónimo Pinheiro was detained between July 1 and 5, 1985 at the Town Hall of General Patricio Colmán. This detention was reported to the judge of the lower court for criminal matters of Presidente Strossner City on July 5, 1985. As the grounds for the arrest, there is a police report in which the accused is charged with four homicides that occurred on June 6 of that year.

42. As regards José Víctor Dos Santos, there is a record of his admittance to Tacumbú National Penitentiary in 1988, apparently on charges of two homicides. However, there is no further information on the charges on which Mr. Dos Santos was detained or on the legal proceedings on which said detention was based, but there seems to be some confusion concerning the name of another person charged in the same homicides, José Mairoso Dos Santos.

43. The petitioners allege that they were imprisoned without any foundation, which constitutes illegal and arbitrary arrest in violation of the provisions of Article XXV of the Declaration and Article 7(2) and 7(3) of the American Convention.

44. In its written arguments, the government did not refer to the detention, but it did provide a copy of the police report in which Waldemar Gerónimo Pinheiro and another person named José Mairoso Dos Santos were accused of the homicides. At the same time, they supplied a copy of the corrective habeas corpus judgment in favor of José Víctor Dos Santos, which indicated that the organs of the State of Paraguay had no knowledge of any criminal charges against Mr. Dos Santos.

45. Article XXV of the Declaration, entitled Right of Protection from Arbitrary Arrest, states as follows:

No person may be deprived of his liberty except in the cases and according to the procedures established by pre-existing law.

46. Article 7(2) of the Convention establishes that:

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

47. Article 7(3) holds that:

No one shall be subject to arbitrary arrest or imprisonment.

48. Now, in order to ascertain whether or not there was a violation of these legal provisions, we need to be familiar with the Paraguayan legislation in force at the time of the arrest, so that we can establish what the “conditions established beforehand by law” were and determine whether these conditions were fulfilled in the arrests of Waldemar Gerónimo Pinheiro and José Víctor Dos Santos.

49. As for the scope of the provisions established in Article 7(2) (which are the same as those appearing in Article XXV of the Declaration), the Inter-American Court of Human Rights has stated that “no person may be deprived of personal liberty except for the reasons and in the cases or circumstances expressly described in the law (material aspect), and then only in strict observance of the procedures objectively defined by the law (procedural aspect).”[FN1]

[FN1] Inter-American Court of Human Rights, Gangaram Panday Case, Judgment of January 21, 1994, Series C N° 16, para. 45-51.

50. The Commission has followed the practice of analyzing whether a case of deprivation of liberty is consistent with the norms of paragraphs 2 and 3 of Article 7 of the American Convention, on the basis of a three-step procedure. The first step consists in determining the legality of the arrest in a material and procedural sense, for which purpose the compatibility of the arrest with the national laws of the state in question must be ascertained. The second step involves an analysis of the relevant domestic law in the light of the guarantees established in the American Convention, in order to determine whether it is arbitrary. Finally, if the detention complies with the requirements of a national law that is compatible with the American Convention, then it must be determined whether application of the law to the specific case in point was arbitrary.[FN2]

[FN2] IACHR Report N° 53/01, Case 11.565 - Ana, Beatriz y Celia González Pérez, Mexico, April 4, 2001, para. 23 and 27. In further support of this finding, the Working Group on Arbitrary Arrests of the United Nations Organization has established that there are three circumstances in which an arbitrary arrest can occur, as follows:

When it is evidently impossible to invoke a legal basis of any kind that justifies it, such as maintaining a person in detention after that person has completed his sentence or in spite of an applicable amnesty law;

When deprivation of freedom is the result of prosecution or conviction for exercise of the rights or freedoms set forth in Articles 7, 13, 14, 18, 19, 20, and 21 of the Universal Declaration of Human Rights and, with respect to the States Parties, in Articles 12, 18, 19, 21, 22, 25, 26, and 27 of the International Covenant of Civil and Political Rights;

When total or partial noncompliance with international law on the right to a fair trial, established in the Universal Declaration of Human Rights and in pertinent international instruments accepted by the affected states, is so serious in nature that it makes the deprivation of freedom, in whatever form it may take, arbitrary in nature (Category III).

i. The arrest of Waldemar Gerónimo Pinheiro

51. As far as procedural aspects are concerned, the Commission notes that the Paraguayan Constitution in effect at the time of the arrest established in Article 59 that:

The arrest of persons may take place only by reason of a written order issued by a competent authority, except in the case of being caught in the act of committing a crime.

52. The Code of Criminal Procedure in force on the date that the events occurred[FN3] stipulate in its Articles 6 and 7 as follows:

[FN3] Code of Criminal Procedure, Law of November 15, 1890.

Article 6. No person may be detained or confined in prison, except in the case of flagrante delicto, or when there is prima facie evidence or very strong circumstantial evidence of his/her culpability.

Article 7. In the latter case, no person may be apprehended unless there is a written order issued by the competent judicial authority.

53. Article 8 of the same Code of Criminal Procedure establishes three criteria to be used to determine when it is a case of flagrante delicto:

1. When the perpetrator of the act is seen at the time of committing it.
2. When immediately after the act is executed, the person is designated as the responsible party for having fled and hidden.
3. When the person is surprised with property, weapons, instruments, or other objects that lead one to presume his/her participation in the crime, provided these circumstances occur immediately after execution of the crime.

54. From the records in the file, it is apparent not only that the arrest of Waldemar Gerónimo Pinheiro did not take place in flagrante delicto, but that the homicides with which he was charged were committed on June 6, whereas the first notice of his arrest appears in the police report dated July 1, or in other words, nearly a month after the events occurred. Furthermore, the State never argued that the arrest took place in flagrante delicto.

55. Once we have established that the arrest of Waldemar Gerónimo Pinheiro did not occur in flagrante delicto, we need to analyze whether the procedural requirements established in Paraguayan law were fulfilled, or in other words, whether the arrest took place by reason of a written order issued by a competent authority.

56. The only grounds for the arrest presented by the State was a police report in which it stated that the petitioner was a material accomplice in the homicides committed for the purpose of robbery. In the documents in the possession of the Commission, there is no arrest warrant issued by any judicial authority or any other authority, as required by the Code of Criminal Procedure in force. Consequently, the Commission finds that since the procedural requirements for arrest established in Paraguayan law were not met, the arrest of Waldemar Pinheiro was illegal and therefore contrary to Article XXV of the American Declaration and Article 7(2) and (3) of the American Convention.

ii. The arrest of José Víctor Dos Santos

57. As far as the circumstantial evidence in the case of Mr. Dos Santos is concerned, that is the circumstantial evidence or suspicions that could have been the grounds for his arrest, he argues that there is no evidence against him. The State for its part has not provided information in this regard. Moreover, the Commission has a judgment in which the competent courts of the

State acknowledged that there has been no legal action brought against him, which did not prevent him from being detained for eight years.

58. There is no knowledge of the existence of an arrest warrant or the existence of a crime in which Mr. Dos Santos might have participated. On the contrary, there is a charge of double homicide against an individual with the same surnames, whose first names are José Mairoso. This indicates that Mr. Dos Santos' detention was due to mistaken identity, which makes the situation even more serious since he remained in detention for eight years without the existence of any type of proceeding to justify it.

59. Therefore, since there is no objective material evidence to support the arrest of José Víctor Dos Santos, to such an extent that he was released once it was acknowledged that there were no charges against him, his arrest is found to be an arbitrary arrest, in violation of the provisions of Article XXV of the Declaration and Article 7(2) and (3) of the American Convention.

60. Based on this argument, it is concluded that since this case does not meet the first of the conditions in the analysis referred to in paragraph 57 above, the Paraguayan State is responsible for a violation of the right to personal liberty and security protected by the American Convention, to the detriment of José Victor Dos Santos.

b. Period of pretrial imprisonment. Violation of Article XXV, paragraph 3 of the American Declaration and Article 7(5) of the American Convention

61. From the information provided by the parties, it appears that Waldemar Gerónimo Pinheiro was arrested in 1985 and that from that time until October 27, 1996, when he escaped, he was a prisoner in pretrial or preventive detention at the Tacumbú National Penitentiary, without a final judicial decision to justify that detention ever being pronounced. It is likewise evident that José Victor Dos Santos entered Tacumbú National Penitentiary in 1988, and remained in detention there until June 9, 1995, without a judicial decision to justify that detention. Moreover, not only was there no judicial decision, but there were also no logical grounds for his imprisonment. In other words he was deprived of his freedom for a period of eight years, without cause of any kind. The petitioners allege that the aforesaid acts are a violation of their rights.

62. Paragraph three of Article XXV of the American Declaration states as follows:

Every individual who has been deprived of his liberty has the right to have the legality of his detention ascertained without delay by a court, and the right to be tried without undue delay or, otherwise, to be released. He also has the right to humane treatment during the time he is in custody.

63. Article 7(5) of the Convention establishes that:

Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released

without prejudice to the continuation of the proceedings. His release may be subject to guarantees to assure his appearance for trial.

64. The provisions cited include three principles regarding preventive or pretrial detention. In the first place it must be special in nature, or in other words it must occur on an exceptional basis. Secondly, at the time it is ordered, it must be justified by the State, based on the specific circumstances of each case. In the third place, excessive prolongation of pretrial detention must be prevented.[FN4]

[FN4] Report N° 12/96, Case 11.245 Jorge A. Giménez, Argentina, March 1, 1996, paragraph 83.

65. As far as the special nature of pretrial imprisonment is concerned, as a general principle, deprivation of liberty should be limited to those persons for whom there is a conviction, since otherwise preventive imprisonment could be considered as an advance sentence, which is contrary to the principle of presumption of innocence established in Article XXVI, paragraph 1 of the Declaration and Article 8(2) of the Convention. However, pretrial imprisonment is a measure accepted by the Convention consisting in deprivation of liberty prior to a conviction by the courts. Hence it is appropriate when a person is legally innocent. Therefore, pretrial imprisonment is exclusively an exceptional measure.

66. The requirement imposed by the Convention is that preventive imprisonment is used only to guarantee the trial, or in other words its only purpose is to guarantee the legal proceedings, such as preservation of evidence, or to guarantee the presence of the accused at all stages of the proceedings, as long as the same objectives cannot be achieved by any other less restrictive means. Since guarantee of the trial is the only purpose of pretrial imprisonment, any other objective sought with deprivation of liberty, such as prevention of new crimes, is part of imposition of the sentence. Therefore, its use prior to conviction is contrary to the American Declaration and the American Convention, and especially to the principle of presumption of innocence.

67. The Inter-American Court has ruled in the same way that states are required not to restrict the freedom of the detainee “beyond the limits strictly necessary to ensure that he will not impede the efficient development of the investigations and that he will not evade the court action, since preventive imprisonment is a precautionary and not a punitive measure.” [FN5]

[FN5] Inter-American Court of Human Rights, Suárez Rosero Case, Judgment of November 12, 1997, Series C N° 35, para. 77.

68. As for the duration of pretrial imprisonment, the Inter-American Court has established that the principle of a reasonable time referred to in Articles 7(5) and 8(1) of the Convention “is

designed to prevent the accused from remaining a long time under accusation and ensuring that the accusation is decided on promptly.”[FN6]

[FN6] Inter-American Court of Human Rights, Suárez Rosero Case, Judgment of November 12, 1997, Series C N° 35, para. 70. The principle of reasonable time is also found in Article XXV, paragraph 3, of the Declaration.

69. In the case under consideration, José Víctor Dos Santos was a prisoner in preventive detention for eight years. From the information appearing in the file, there is no evidence that the State of Paraguay ever justified the need for this measure, since there were no arguments at all to show that the petitioner was even accused of a crime. Neither did the State allege or prove the need to keep Mr. Dos Santos in detention for eight years.

70. In the case of Waldemar Gerónimo Pinheiro, he was a prisoner in preventive detention for ten years, and despite the fact that the State provided information that the petitioner was subject to legal action, the deprivation of liberty was incompatible with the provisions of the Declaration and the Convention. The Commission is of the opinion that ten years exceed all limits of reasonability required by the Declaration and the Convention. The Commission would also point out that the court files were lost on several occasions, which shows negligence on the part of the State in resolving the legal situation, and which resulted in an unjustified prolongation of the pretrial imprisonment.

71. At no time did Paraguay provide proof for the exceptional circumstances that would justify the order for pretrial imprisonment. Neither did the State provide any arguments in support of the eight and ten year periods as being reasonable periods of time pursuant to Article XXV of the Declaration and Article 7 of the Convention. On the contrary, from the body of evidence in the case, it is apparent that the judicial authorities acted in an indifferent, negligent manner, resorting automatically to the institution of pretrial imprisonment in a clear contradiction to conventional requirements.

72. This being the case, the State did not demonstrate the need to maintain Waldemar Gerónimo Pinheiro and José Víctor Dos Santos in a state of deprivation of freedom for the purposes of the trial. On the contrary, the trial was delayed a number of years without the prisoners being released. Consequently, the State violated, to the detriment of the accused, the rights set forth in Article XXV, paragraph 3 of the Declaration and Article 7(5) of the Convention.

2. The right to a fair trial (Article 8)
 - a. The right to a hearing within a reasonable time Article 8(1)

73. The right to a trial within a reasonable time is also established in Article 8(1) of the Convention, and in Article XXV(3) of the Declaration. Article 8(1) of the Convention states as follows:

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.

74. In the present case, the petitioners remained in detention at the Tacumbú National Penitentiary for eleven and seven years, respectively, without a final judgment against them in either of the two cases.

75. Although on March 17, 1995, a judgment against Waldemar Gerónimo Pinheiro was issued by the lower court convicting him to 30 years in prison, the Inter-American Court has indicated that “the proceedings are over when a final, firm judgment is issued in the matter, thereby exhausting jurisdiction, and that particularly in criminal matters, this period should cover the entire legal process, including any appeals that may be filed.”[FN7]

[FN7] Inter-American Court of Human Rights, Suárez Rosero Case, Judgment of November 12, 1997, Series C N° 35, para. 71.

76. The mere passage of time does not necessarily mean that a reasonable time has been exceeded. In order to determine whether a period of time is reasonable, the organs of the inter-American system have decided to accept the view of the European Court of Human Rights, which establishes that three elements in the process have to be analyzed: a) the complexity of the case; b) the procedural activities of the interested party; and c) the conduct of the judicial authorities.[FN8]

[FN8] Inter-American Court of Human Rights, Genie Lacayo Case, Judgment of January 29, 1997, Series C N° 30, para. 77; Inter-American Court of Human Rights, Suárez Rosero Case, Judgment of November 12, 1997, Series C N° 35, para. 72, Eur. Court H.R., Motta judgment of 19 February 1991, Series A N° 195-A, para. 30; Eur. Court H.R., Ruiz Mateos v. Spain, judgment of 23 June 1993, Series A N° 262.

77. As regards the first element, the case in question does not appear to be overly complex, primarily because there are few elements of proof in the file and they date from the time at which the arrest was made.

78. With respect to the second element, there is no evidence that the petitioners delayed the proceedings. The only procedural acts on record are the appointments of the defense and the request that the procedures be defined.

79. As for the third element, consideration must be given to the fact that, in the case of Waldemar Gerónimo Pinheiro, the court file was lost three times, and in the case of José Víctor

Dos Santos, he was simply detained without a case file or an accusation of any kind against him. On these grounds, it is apparent that in the case in point, the conduct of the judicial authorities was negligent, to the detriment of the petitioners.

80. By virtue of this line of reasoning, the Commission concludes that Paraguay has, to the detriment of the petitioners, violated the requirement of a reasonable time referred to in Article XXV of the American Declaration and Article 8(1) of the American Convention.

b. The right to presumption of innocence. (Article 8(2) of the American Convention and Article XXVI of the Declaration)

81. Article XXVI, paragraph 1, of the American Declaration states that:

Every accused person is presumed to be innocent until proved guilty.

82. Article 8(2) of the American Convention establishes the following:

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.

83. In this case, the petitioners were detained for years while awaiting judgment on the charges of homicide against them. That is, they remained in prison seven and eleven years, respectively, during which time they were legally innocent.

84. As we have said earlier, the delay in judgment in the criminal proceedings against Waldemar Gerónimo Pinheiro and José Víctor Dos Santos is attributed to the organs of the State. Moreover, it has also been established that the State did not provide evidence of the need to maintain the petitioners in deprivation of liberty for such a long time.

85. The Inter-American Court has found that depriving a person of liberty for a disproportionate time “would be the same as serving a sentence in advance of the judgment.”[FN9]

[FN9] Inter-American Court of Human Rights, Suárez Rosero Case, judgment of November 12, 1997, Series C N° 35, para. 77.

86. Consequently, if the deprivation of liberty did not meet needs inherent in the proceedings, but instead was applied as a sanction, prior to issuance of judgment, the Commission concludes that Waldemar Jerónimo Pinheiro and José Víctor Dos Santos were criminally punished by presuming their guilt, in violation of the principle of presumption of innocence established in Article 8(2) of the Convention and Article XXVI of the American Declaration.

3. The right to humane treatment (Article 5 of the American Convention and Article I of the Declaration)

87. José Víctor Dos Santos maintained that he was tortured at the time of his arrest, as a result of which he was hospitalized for five months.

88. This statement by one of the petitioners is the only reported event disputed by the State, which said in its initial communication that it was unaware of the supposed mistreatment and torture and that consequently it denied “categorically the statements contained in the petition regarding the supposed events.”

89. Throughout the processing of the petition in this matter, the petitioner never presented any evidence to support his statement, and neither did the State ever accept it. On the contrary, it categorically rejected it.

90. By virtue of these findings, the Commission concludes that it cannot declare Paraguay in violation of Article 5 of the American Convention and Article I of the American Declaration.

V. PROCEEDINGS SUBSEQUENT TO REPORT N° 26/02

91. The Commission approved Report N0 26/02 on the merits of this case on February 28, 2002, during the Commission’s 114th regular session. It was sent, together with the Commission’s recommendations, to the Paraguayan State on March 13, 2002. Paraguay was given two months to implement the recommendations from the date the report was transmitted. On May 15, 2002, in a message to the IACHR, the State referred to difficulties it had encountered in attempting to fulfill some of the recommendations of the Commission and it mentioned the steps it had taken to implement some of the others. The Paraguayan State pointed out that:

(...) The IACHR continued processing the case, completed its analysis of the merits, and made recommendations. They include a requirement, under points 1, 2, and 3, that the Paraguayan State compensate the petitioners. However, such reparation requires a court judgment, a law, or some kind of official procedure in the presence of the parties concerned. It is of the utmost importance to point out that Waldemar Gerónimo Pinheiro escaped and has been on the run since October 29, 1996, as the IACHR itself mentioned in paragraph 35 of its report, while José Victor Dos Santos was released on June 9, 1995. Thus, it would be somewhat imprudent of the State to initiate compensation proceedings when the petitioners are not even parties to a friendly settlement procedure or even in the country.

As for investigations, the Public Prosecutor’s office has received the IACHR report, with a view to it determining, through the prosecutors assigned to the case, who was responsible for the crimes committed. The findings of the Public Prosecutor’s office will shortly be forwarded to the IACHR. At this time, the prosecutors have the documents concerned and they are currently deciding which of the prosecutors in the Human Rights Unit of the Office of the Public Prosecutor shall be in charge of the case (...)

Finally, to prevent similar cases from occurring in future, the State has introduced major changes to criminal and criminal suit law, which the IACHR is familiar with. Moreover, the State is

currently engaged in an effort to consolidate its human rights protection mechanisms through a “State human rights network, in which several government departments will play a part, including the National Police.

92. Pursuant to Article 51(1) of the American Convention on Human Rights, what the Commission must determine at this stage of the proceedings is whether the State has settled the matter or not. Accordingly, and even though so far the IACHR recommendations have not been implemented, the Commission notes, with regard to the compensation recommendations, the State’s claim that it has not been able to contact the victims or their relatives to effect such reparation. The Commission is not unaware of the fact that neither the victims nor their relatives can be located. For its part, the Commission has sent several messages to the address originally supplied by the petitioners, but they were returned by the Post Office because it could not discover their whereabouts. That factor was in fact the main reason why the IACHR decided not to bring this case before the Inter-American Court of Human Rights, given that on March 13, 2002, the IACHR sent them a message to the address registered in the file, notifying them of the approval of a report on the merits and requesting their views on possible presentation of the case to the Inter-American Court of Human Rights. No reply to that message was received. The Commission thus considers that the State should make a reasonable effort to locate the victims. At the same time, with respect to the Commission’s recommendation that the Paraguayan State conduct investigations to determine who was responsible for the violations referred to in its report and to punish them, and also with respect to the recommendation regarding measures to be taken to stop such violations recurring, the IACHR considers that some progress has been made, even though so far those recommendations have not been implemented. The Inter-American Commission trusts that the Paraguayan State will shortly demonstrate that it has complied with the recommendations contained in Report N° 26/02 and ratified in this one.

93. Finally, the Commission wishes to report that on March 13, 2002 it notified the victims at the address given in the file of the adoption of a report on the merits and requested their opinion regarding a possible submission of the case to the Inter-American Court of Human Rights. There was no response to that message, just as there had been no response to previous messages from the IACHR to the victims. Accordingly, and given the specific circumstances of the instant case, including ignorance of the whereabouts of the victims and their next-of-kin, the Inter-American Commission decided, pursuant to its Rules of Procedure, not to submit this case to the Inter-American Court of Human Rights.

VI. CONCLUSIONS

94. Based on these considerations of fact and of law set forth above, the Inter-American Commission ratifies its conclusion that, to the detriment of Waldemar Gerónimo Pinheiro and José Víctor Dos Santos, the State of Paraguay violated the right to personal liberty and the right to a fair trial, enshrined in Articles 7 and 8 of the American Convention, insofar as the events occurring after August 24, 1989 are concerned. The IACHR further concludes that the State of Paraguay, to the detriment of Waldemar Gerónimo Pinheiro and José Víctor Dos Santos, violated the right to protection from arbitrary detention and the right to due process of law, established in Articles XXV and XXVI of the American Declaration of the Rights and Duties of Man, by reason of the events which took place prior to August 24, 1989. Finally, the IACHR concludes

that Paraguay did not, to the detriment of José Víctor Dos Santos, violate the right to humane treatment embodied in Article 5 of the American Convention and in Article I of the American Declaration.

VII. RECOMMENDATIONS

95. Based on the foregoing analysis and conclusions, the Inter-American Commission reiterates the following recommendations to the Paraguayan State:

1. Make full reparation to Mr. Waldemar Gerónimo Pinheiro, which includes appropriate compensation.
2. Make full reparation to Mr. José Víctor Dos Santos, which includes appropriate compensation.
3. Such reparation should be commensurate with the harm done, which implies that compensation should be greater for Mr. José Víctor Dos Santos, given that he spent eight years in prison, with no legal justification for his detention.
4. Order an investigation to determine who was responsible for the violations ascertained by the Commission and punish them.
5. Take the necessary steps to prevent such violations from recurring.

VIII. PUBLICATION

96. On October 28, 2002, the Commission transmitted report 60/02—the text of which is transcribed above—to the Paraguayan State, in accordance with Article 51(2) of the Convention, and granted it extra time to comply with the foregoing recommendations. On November 27, 2002, Paraguay requested an extension of the deadline. The Commission acquiesced and gave it until December 13, 2002. On December 11, 2002, during a working visit to the country, the Rapporteur for Paraguay, Dr. José Zalaquett, had a meeting with senior government officials in Asunción, who informed the Commission of the problems the Paraguayan State had locating the victims to address the subject of the financial reparation recommended by the Commission in this report. Also, on December 17, 2002, after the deadline and its extension had expired, the State replied reiterating the difficulties it faced with respect to making the aforesaid financial reparation and stating that it would “look into ways to make contact with the petitioners.” It also said it would inform the judges of the international repercussions associated with the cases presented in their jurisdiction if arrests are excessive or unwarranted. Finally, it said that, in order to avoid similar occurrences in future, the State had made amendments to substantive and procedural criminal law. The Commission appreciates the State’s assurances that it will continue to take steps to comply with the recommendations contained in this report.

97. For these reasons, and in keeping with Articles 51(3) of the American Convention and 45 of the Rules of Procedure of the Commission, it is the decision of the Commission to reaffirm the conclusions and recommendations contained, respectively, in Chapters VI and VII supra; to publish this report; and to include it in its annual report to the OAS General Assembly. In compliance with its mandate, the Commission will continue to assess the measures taken by the Paraguayan State regarding the recommendations put forward, until they have been implemented.

Done and signed at the headquarters of the Inter-American Commission on Human Rights, in the city of Washington, D.C., December 27, 2002. (Signed): Juan E. Méndez, President; Marta Altolaguirre, First Vice-President; José Zalaquett, Second Vice-President; and Commissioners Robert K. Goldman, Julio Prado Vallejo, Clare K. Roberts, and Susana Villarán de la Puente.