

Institution:	Inter-American Court of Human Rights
Title/Style of Cause:	Rafael Ivan Suarez-Rosero v. Ecuador
Doc. Type:	Judgment (Merits)
Decided by:	President: Antonio A. Cancado Trindade Judges: Hernan Salgado-Pesantes; Hector Fix-Zamudio; Alejandro Montiel-Arguello; Maximo Pacheco-Gomez; Oliver Jackman; Alirio Abreu-Burelli
Dated:	12 November 1997
Citation:	Suarez-Rosero v. Ecuador, Judgment (IACtHR, 12 Nov. 1997)
Terms of Use:	Your use of this document constitutes your consent to the Terms and Conditions found at www.worldcourts.com/index/eng/terms.htm

In the Suárez Rosero Case,

the Inter-American Court of Human Rights, pursuant to Articles 29 and 55 of the Rules of Procedure (hereinafter "the Rules of Procedure"), renders the following judgment in the instant Case.

I.

Introduction of the Case

1. On December 22, 1995, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") submitted to the Inter-American Court of Human Rights (hereinafter "the Court" of "the Inter-American Court") an application against the Republic of Ecuador (hereinafter "the State" or "Ecuador") originating in a petition (No. 11.273) received at the Secretariat of the Commission on February 24, 1994. In its application the Commission invoked Articles 50 and 51 of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") and Articles 26 et seq. of the Rules of Procedure then in force. [FN1] The Commission submitted this Case for the Court to rule as to whether Ecuador had violated, to the detriment of Mr. Rafael Iván Suárez-Rosero, Articles 5 (Right to Humane Treatment), 7 (Right to Personal Liberty), 8 (Right to a Fair Trial), and 25 (Right to Judicial Protection), all in conjunction with Article 1 (Obligation to Respect Rights) of the Convention, resulting from

Mr. Suárez's arrest and detention in violation of a preexisting law; the failure to duly bring Mr. Suárez before a judicial official once he was in detention; the holding of Mr. Suárez in

incommunicado detention for 36 days; the failure to respond adequately and effectively to his attempt to invoke the domestic judicial guarantees, as well as the State's failure to release him or show any intention of so doing, within a reasonable time, or to guarantee that he would be tried within an equally reasonable time to substantiate the charges brought against him.

The Commission asked the Court to rule that Ecuador had violated Article 2 of the Convention with its failure to adopt the domestic legal provisions for the enjoyment of the aforementioned rights and that

- a. it must adopt such measures as are necessary to ensure Mr. Suárez-Rosero's release and guarantee an exhaustive and prompt trial of his Case;
- b. it must ensure that violations such as those denounced in the instant Case do not recur in future;
- c. it must initiate a prompt and thorough investigation in order to establish responsibility for the violations in this Case and punish those responsible; and
- d. must make reparation to Mr. Suárez-Rosero for the consequences of the violations committed.

[FN1] Rules of Procedure, approved by the Court at its XXIIIth Regular Session held on January 9 and 18, 1991; amended on January 23, 1993; July 16, 1993; and December 2, 1995.

2. The Commission also asked the Court to declare

[that t]he exclusion of all persons accused under the Law on Drugs and Psychotropic Substances from the provision that requires a prompt trial or release, introduced in Law 04, denies juridical protection to persons in that category, in violation of Article 2 of the American Convention[.]

II.

Jurisdiction

3. The Court is competent to hear the present Case. Ecuador has been a State Party to the American Convention since December 28, 1977, and recognized the compulsory jurisdiction of the Court on July 24, 1984.

III.

Proceedings before the Commission

4. The instant case was initiated by the Commission on March 18, 1994, as a result of a petition submitted on February 24 of that year. On April 8, 1994, the relevant information was transmitted to Ecuador and it was granted a period of 90 days to furnish whatever information it considered relevant. The State submitted its reply on August 2, 1994.

5. The State's reply was transmitted to the petitioners on August 12, 1994. On September 15 of that year the Commission held a hearing in the Case, which was attended by a representative of Ecuador.

6. On September 28, 1994, the Commission placed itself at the disposal of the parties to initiate the friendly-settlement proceeding provided for in Article 48(1)(f) of the Convention.

7. No friendly settlement having been reached, on September 12, 1995, the Commission adopted report 11/95 which established in its final paragraphs that:

1. On the basis of information produced and the observations made, the Commission decides that in the case of Mr. Iván Rafael Suárez-Rosero the State of Ecuador had not fulfilled the obligation set forth in Article 1 of the Convention to respect the rights and freedoms recognized therein.

2. The Commission maintains that in the present Case the State of Ecuador has violated and continues to violate Mr. Iván Suárez right to personal liberty established in clauses 1 to 6 of Article 7; his right to a fair trial pursuant to Article 8(2) in general, and clauses (d) and (e) in particular. The State has violated his right to humane treatment provided for in Article 5(1) and (2); and his right to judicial protection enshrined in Article 25. The State has also contravened Article 2 with the exclusionary provision of Article 114 (sic) of the Criminal Code.

3. The Commission also condemns Mr. Suárez's prolonged preventive detention and recommends that the Government:

- a. adopt such measures as may be necessary to release him without prejudice to the continuation of his trial;
- b. adopt effective measures to guarantee the thorough and prompt trial of this case, and the measures necessary to ensure that such violations are never repeated in future;
- c. institute forthwith a full inquiry to determine responsibility for the violations in this Case;
- d. award Mr. Suárez reparation for the injuries suffered; and
- e. adopt the necessary measures to amend Article 114 (sic) of the Criminal Code so as to comply with the American Convention and give full effect to the right to personal liberty.

8. This report was transmitted to the State on September 25, 1995, with the request that it inform the Commission of the measures taken, within 60 days of the date of notification.

9. On November 30, 1995, at the request of the State, the Commission granted a special extension of seven days for the submission of documents. Despite that extension, the Commission received no further communications from the State.

10. As decided at its 90th Regular Session (supra, para. 7), the Commission submitted the petition in this Case to the Inter-American Court.

IV.

Proceesings before the Court

11. The application before the Court was introduced on December 22, 1995. The Commission appointed Leo Valladares-Lanza as its delegate, David J. Padilla, Assistant Executive Secretary, and Elizabeth Abi-Mershed as its attorneys, and Alejandro Ponce-Villacís, William C. Harrell, Richard Wilson and Karen Musalo as their assistants. On March 12, 1996, the Inter-American Commission informed the Court that at its 91st Regular Session it had appointed Mr. Oscar Luján-Fappiano to replace Mr. Valladares-Lanza as its delegate in this Case.

12. The application was notified to the State by the Secretariat of the Court (hereinafter "the Secretariat"), together with its attachments, on January 16, 1996, following a preliminary examination by the President of the Court (hereinafter "the President"). On January 19, 1996, Ecuador asked the Court for a two-month extension for filing preliminary objections and answering the application. After consulting the other judges of the Court, on January 23, 1996, the President granted Ecuador a two-month extension for filing preliminary objections and a two-month extension for answering the application.

13. On January 29, 1996, the State informed the Court that

it [was to] be [understood] that it had received official notice of [the] application when it [was] received at its Ministry of Foreign Affairs in Spanish, which is its official language under its Political Constitution.

On the same day the President informed Ecuador that

the application in this case [was] duly and officially notified to the Republic of Ecuador on January 16, 1996, pursuant to Article 26 of the Rules of Procedure of the Court [and that ...] precisely in consideration of the fact that Spanish is the official language of Ecuador, this Court granted ... a two-month extension for replying to the petition and a two-month extension for filing preliminary objections.

14. On February 27, 1996, the State informed the Court that it had appointed Ambassador Mauricio Pérez-Martínez as its agent and on April 9 of that year it appointed Mr. Manuel Badillo-G. as its alternate agent. On April 3, 1997 Ecuador communicated its appointment of Counsellor Laura Donoso-de León as its agent to replace Ambassador Pérez-Martínez.

15. On May 29, 1996, the State submitted to the Court

certified copies of note No. 861CSQP 96 of April 29, 1996, signed by the President of the Superior Court of Justice of Quito and the judicial decision issued on April 16, 1996, by the First Chamber of that Court, in which it [reported] that it [had] ordered the release of Mr. Rafael Iván Suárez-Rosero.

16. On June 7, 1996, Ecuador submitted its reply to the petition in this case, stating that the evidence it would invoke was "essentially instrumental" and asked the Court to

[r]efuse the petition and order it to be set aside, especially since it ha[d] been irrefutably prove[n] that Mr. Suárez-Rosero [had been] an accessory to such a serious crime which threatened not only the peace and security of the Ecuadorian State but, more particularly, the health of its population.

17. On June 10, 1996, the Secretariat, in accordance with the Order issued on February 2 of that year, in which it decided that it "[would] admit only such evidence as is indicated in the application and answer", requested the State to specify which "essentially instrumental" evidence it would produce in this case. On July 16, 1996, Ecuador presented thirteen documents as evidence.

18. On June 29, 1996, the Court asked the State and the Inter-American Commission to report whether they were wished to file, pursuant to Article 29(2) of the Rules of Procedure then in force, other written pleadings on the merits of the instant Case, for which it granted them until July 17, 1996. The Commission responded on July 18, 1996, stating that it did not wish to submit other pleadings at that stage in the proceedings. Ecuador did not respond to the Court's request.

19. On September 9, 1996, Ecuador submitted to the Court a brief in which it challenged three of the witnesses proposed by the Commission and asked for three new witnesses to be summoned to the hearings on merits in this case. On September 11, 1996, the Court issued an Order in which it decided to "[h]ear the statements of Mr. Rafael Suárez-Rosero, Ms. Margarita Ramadán de Suárez, and Mr. Carlos Ramadán, the value of which [would] be assessed in the final judgment." That same day, the President informed the State that the Court had deemed the proposal of oral evidence at this stage of the case to be time-barred and asked it to clarify whether any of the reasons that would justify the late presentation of evidence would be applicable to the proposal made.

20. On October 4, 1996, the State submitted a brief to the Court, in which it repeated its request that the evidence proposed be allowed, and enclosed a certified copy of the judgment issued on that date by the President of the Superior Court of Justice of Quito, in which he declared that Mr. Suárez-Rosero had been an accessory to the crime of illicit traffic in narcotic drugs and psychotropic substances and sentenced him to two years in prison and a fine of two thousand times the normal minimum living wage. On February 5, 1997, the Court rejected the State's proposal of oral evidence. [FN2]

[FN2] The organization Rights International, the Center for International Human Rights Law, Inc. dispatched to the Court a communication as an amicus curiae on June 14, 1997, and Mr. Raúl Moscoso-Álvarez submitted another to the Court on September 11, 1997.

21. On March 18, 1997, the President summoned the parties to a public hearing to be held at the seat of the Court on April 19 of that year in order to hear the statements of the witnesses and the expert report furnished by the Inter-American Commission. Likewise, the President instructed the Secretariat to inform the parties that they could, immediately after that evidence was received, present final oral arguments on the merits of the case.

22. On April 19, 1997, the Court heard the statements of the witnesses and the expert witness proposed by the Inter-American Commission.

There appeared before the Court,

for the Republic of Ecuador:

Laura Donoso-de León, agent; and
Manuel Badillo-G., alternate agent;

for the Inter-American Commission:

David J. Padilla, Assistant Executive Secretary;
Elizabeth Abi-Mershed, attorney;
Alejandro Ponce, assistant; and
Richard Wilson, assistant;

as witnesses proposed by the Inter-American Commission:

Margarita Ramadán de Suárez;
Carlos Ramadán;
Carmen Aguirre; and
Rafael Iván Suárez-Rosero;

and as expert witness proposed by the Inter-American Commission:

Ernesto Albán-Gómez.

23. The following is the Court's summary of the statements of the witnesses and the expert's report.

a. Testimony of Carlos Alberto Ramadán-Urbano, brother-in-law of Rafael Iván Suárez-Rosero

On the night of June 23, 1992, he was informed by telephone that Mr. Suárez-Rosero had been arrested by the police and was being detained at the Interpol offices in Quito. He did not know whether Mr. Suárez-Rosero had had any previous problems with the police. He was unable to see him personally until July 28, 1992, but took him clothes and food and exchanged brief notes with him through "pasadores". As of July 28, 1992, when he was able to see him for the first time, he took his sister Margarita to visit her husband twice a week. In addition to visiting his brother-in-law, he devoted all his time to arrangements for securing his release, such as retaining attorneys and seeing to other formalities. It being a drugs case, the attorneys were unwilling to take it on, so that numerous visits had to be made before he eventually found one who would.

b. Testimony of Margarita Ramadán de Suárez, wife of Rafael Iván Suárez-Rosero

In June 1992 she was living in Quito with her husband, who worked as a security agent at the firm of Challenge Air Cargo. They have one daughter born in 1994. On June 23, 1992, she learned that Mr. Suárez-Rosero had been arrested. She tried to contact a lawyer the next day and went to the Comisión Ecuémica de Derechos Humanos [Ecumenical Human Rights Commission] (CEDHU) to seek help and discover how her husband was. During one of her early visits to his place of detention, she wrote a few words in a note and gave it to an officer, who later handed her a very brief note in which she recognized her husband's handwriting. She received his clothes every night and was struck by the fact that they always smelled strongly of damp. During the entire month that her husband was held incommunicado she tried to find an attorney and did so three days before the official police report was issued. She was not aware that she could have had access to a public defender nor did she know how many public defenders there were in Quito in 1992. In her view, the attorney was not guilty of the delays in the case nor of lack of interest, and her brother helped with the arrangements. She was seldomly allowed to write to her husband between June 23 and July 28, 1992; she would scribble a few lines on the outside of the bag in which she sent his clothes. On July 28, 1992, she saw her husband for the first time since his arrest. She was allowed to visit him twice a week from then on. Mr. Suárez-Rosero was released on April 29, 1996; the order for his release had been ready 15 days before but was not executed because the officials charged with doing so kept forgetting and delaying matters. She has had a difficult time as a result of this Case; her husband is sometimes extremely depressed or suffers sudden mood swings.

c. Testimony of María del Carmen Aguirre-Charvet, former official of the Ecumenical Human Rights Commission (CEDHU)

In June 1992 she was working in the legal department of the Ecumenical Commission. Margarita Ramadán made contact with her on June 24, 1992 or thereabouts. She helped her look for Mr. Suárez-Rosero and, to that end, spoke with Leonardo Carrión, Adviser to the Minister of the Home Office. Since this yielded no results, she presented an official note to the Adviser, who told her that she could not even leave the note in his office since the case was drug-related and he informed her that Mr. Suárez-Rosero would be incommunicado for approximately one month.

d. Testimony of Rafael Iván Suárez-Rosero, alleged victim in this case

He never saw an arrest warrant. He was apprehended in the early hours of June 23, 1992, together with Mr. Nelson Salgado, by two hooded individuals traveling in an unmarked vehicle, who informed him that he was being arrested in connection with a report that the occupants of a "Trooper" were burning drugs in the Zámbriza ravine. They were taken to the Interpol offices, where they were placed in the cells at the back. He never saw or discovered the name of the person who had made the report. He had never taken part in the acts imputed to him. He was not allowed to inform his family of his arrest. He was imprisoned, and threatened in order to make him confess to his involvement. He was beaten throughout the afternoon; a bag was placed over his head and injected with tear gas; they threatened to place him in an electrified metal structure and a tank filled with water and accused him of trafficking in drugs; they threatened to summon his wife and put pressure on her to talk. Within 24 hours of his detention he gave a statement to

the Third Prosecuting Attorney, who did not inform him that he had the right to a public legal counsel. His cell, measuring some 15 square meters, in which there were 17 people, was situated in a basement about two and a half meters below the level of the courtyard; it was damp and had no windows, ventilation or bed. He slept on a newspaper for 30 days. He caught pneumonia and was given a pain-killer and, at the end of his period of isolation, he was administered penicillin provided by his family. On July 23, 1992, a group of policemen from the Intervention and Rescue Squad beat him all the way to the courtyard with other detainees, made him place his hands on the nape of his neck and go down on all fours, forced him to confess that he was a drug trafficker and beat him; he was threatened and, after being blindfolded, he was forced to run around the courtyard. They told him they were going to kill him. During the period in which he was held incommunicado he lost 30 to 40 pounds because he was afraid to eat the food; he became allergic to certain substances and foods. On July 28, 1992, he was allowed to see his family. He was held in preventive detention for four years in a cell approximately four meters by two; he was allowed into the courtyard for four hours each day. Interviews with his attorney were always conducted in the presence of a policeman. He never appeared before a court. Since his release he has been in constant fear, and becomes agitated by the mere sight of police officers.

e. Report of expert witness Ernesto Albán-Gómez, former Dean and Professor of Criminal Law at the Pontificia Universidad Católica of Ecuador

An arrest in Ecuador requires a warrant, with the sole exception of detention for investigative purposes and detention in flagrante delicto. Unlawful detention is an offense established as such in the Criminal Code. Ecuadorian law allows a 24-hour maximum period for holding a person incommunicado. The maximum period for a detained person to make a statement to a magistrate is 24 hours, which may be extended by a further twenty-four hours only at the request of the detainee or because the magistrate deems it necessary. There is a special law that limits the period of preventive detention to a ratio of the maximum penalty to which the detainee could be sentenced but, in discriminatory manner, this law is not applicable to persons accused of trafficking in drugs or narcotics. The Law on Narcotic and Psychotropic Substances establishes the presumption of guilt instead of the presumption of innocence. A police barracks is not the appropriate place to keep someone in lawful preventive detention, since the law provides that it is in the social rehabilitation centers established in the Code of Penalties that prisoners in preventive detention or serving final sentences are to be housed. The writ of habeas corpus must be filed in writing; the decision must be taken within 48 hours and, while the law does not set art the precise deadline within which the court must call and hear the person filing the writ, that period could also be 48 hours. In no circumstances does the law permit preventive detention of an accessory, and the maximum sentence for that crime is two years in prison. The judge has the obligation to appoint defense counsel at the preliminary stage of a criminal case; while public defenders do exist, detainees cannot be said to have effective access to them. Under Ecuadorian law, the criminal proceeding must be completed within approximately 180 days. There is systematic delay in the administration of justice, one of the grave problems of the Ecuadorian judicial administrative system, and even more so in criminal matters. Over 40 percent of the persons in Ecuador's jails have been detained for drug-related offenses. Article 20 of Ecuador's Political Constitution provides that all the political, civil, social, economic and cultural rights

established in the international Conventions, Covenants, or Declarations are applicable to all persons living in its territory.

* * *

24. On June 16, 1997, the Secretariat, on instructions from the President, informed the State and the Commission that it had set the deadline of July 18, for presentation of final written arguments on the merits of the case. On July 16, the Commission asked the President for a four-day extension of that deadline. On July 18, Ecuador asked for the deadline to be extended until July 31. On July 21, the Secretariat informed Ecuador and the Commission that the President had granted an extension until August 11, 1997.

25. The briefs containing the final arguments were submitted by the Commission and the State on July 22 and August 8, 1997, respectively.

V.

Urgent Measures Adopted in this Case

26. On March 15, 1996, the Commission requested the Court to "[t]ake such measures as are necessary to ensure that Mr. Iván Suárez-Rosero [was] released immediately, pending continuation of the procedures." In support of its request, it alleged that Mr. Suárez-Rosero had been held in preventive detention for approximately three years and nine months, that during that period he had not been housed separately from condemned prisoners and that a court order had been issued for his release. On April 12, 1996, the Commission requested the Court to expand the Urgent Measures to include Mr. Suárez-Rosero's wife, Mrs. Margarita Ramón de Suárez, and her daughter, Micaela Suárez-Ramón, owing to an alleged attempt on Mr. Suárez-Rosero's life on April 1, 1996, and the threats and harassment to which he and his family have been subjected.

27. By orders of April 12 and 24, 1996, the President asked the State to adopt, forthwith, such measures as may be necessary to effectively ensure the physical and moral integrity of Mr. Rafael Iván Suárez-Rosero, his wife, Ms. Margarita Ramón de Suárez, and their daughter, Micaela Suárez-Ramón.

28. On June 28, 1996, the Court decided to close the Urgent Measures inasmuch as the Commission had informed it that Mr. Suárez-Rosero had been released, so that his safety and that of his family was not at risk.

VI.

Evaluation of the Evidence

29. As attachments to its application, the Commission submitted copies of 32 documents connected with the Mr. Suárez-Rosero's detention and the criminal action brought against him by the State. For its part, Ecuador submitted certified copies of ten court documents referring to the

Case against Mr. Suárez-Rosero and the official authorized text of the Code of Criminal Procedure of the Republic of Ecuador, and, at the request of the Court, it submitted the official authorized text of Ecuador's Law on Narcotic Drugs and Psychotropic Substances and its Criminal Code. Those documents were not challenged or contested in the instant Case, nor was their authenticity questioned, for which reason the Court deems them to be valid.

30. No objections were made either to the statement of witness Ms. Carmen Aguirre or the expert report by Dr. Ernesto Albán-Gómez. The Court therefore deems the facts stated by the former and the expert's observations on Ecuadorian law to have been proven.

31. The State, invoking Article 38(1) of the Rules of Procedure then in force, objected to the Court's hearing the testimony of Mr. Rafael Iván Suárez-Rosero, Ms. Margarita Ramadán de Suárez and Carlos Ramadán in its brief of September 9, 1996. Ecuador advanced the following reasons for its objections:

first because he had been accused in criminal case No. 181 95 brought against Mr. Hugo Reyes-Torres for drug trafficking, and was a defendant in that case as an accessory to the crime. Second and third, on the ground that they were not qualified as they could not be independent, they being his wife and brother-in-law, who had a direct relationship with the principal perpetrator in the instant Case.

On September 11, 1996, the Court decided to "[h]ear the statements of Mr. Rafael Iván Suárez-Rosero, Margarita Ramadán de Suárez, and Carlos Ramadán, the value of which shall be assessed in the final judgment."

32. It is the well-settled jurisprudence of this Court that any interest which a witness may have in the outcome of a case, is not enough, per se, to disqualify such witness. This principle is eminently applicable to the evidence given by Margarita Ramadán de Suárez and Carlos Ramadán. Moreover, their statements were not contested by the State and referred to facts of which the witnesses had direct knowledge. Consequently, those statements must be admitted as suitable evidence in this Case.

33. With regard to the statement of Mr. Rafael Iván Suárez-Rosero, the Court considers that, since he is the alleged victim in this case and has a possible direct interest in it, his testimony should be assessed in the context of all the evidence in the Case. However, the Court deems it necessary to make one stipulation on the value of this testimony. The Commission argues that Mr. Suárez-Rosero was held incommunicado by the State from June 23 to July 28, 1992. If this were proven, it would necessarily imply that only Mr. Suárez-Rosero and the State would be aware of the treatment the former received during that period. Consequently, they would be the only ones entitled to present evidence on those conditions in the proceeding. In that regard, the Court has already established that in the exercise of its judicial functions and when ascertaining and weighing the evidence necessary to decide the cases before it, the Court may, in certain circumstances, make use of both circumstantial evidence and indications or presumptions on which to base its pronouncements when they lead to consistent conclusions as regards the facts of the case (Gangaram Panday Case, Judgment of January 21, 1994. Series C No. 16, para. 49).

In accordance with this principle, since it has been proven (*infra*, para. 34(d)) that Mr. Suárez-Rosero was held *incommunicado* during the period indicated by the Commission, his testimony on the conditions of his *incommunicado* detention acquires a highly presumptive value, especially when one considers that the State declared that it "could not confirm or guarantee anything" relating to the treatment meted out to Mr. Suárez-Rosero during the time he was held *incommunicado*.

VII.

As to the Facts

34. From an examination of the documents, the witnesses' statements, the expert's report, and the remarks of the State and the Commission in the course of the proceedings, the Court deems the following facts to have been proven:

a. Mr. Rafael Iván Suárez-Rosero was arrested at 2:30 a.m. on June 23, 1992, by officers of the National Police of Ecuador, in connection with police Operation "Ciclón", the aim of which was to "disband one of the largest international drug-trafficking organizations", by a police order issued when residents of the Zábiza sector of Quito reported that the occupants of a "Trooper" were burning what appeared to be drugs (police report of the Pichincha criminal investigation office of June 23, 1992; statement of Rafael Iván Suárez-Rosero during the inquiry proceedings of June 23, 1992; answer to the application; testimony of Rafael Iván Suárez-Rosero);

b. Mr. Suárez-Rosero was arrested without a warrant from the competent authority and not in *flagrante delicto* (statement by the alternate agent of the State during the public hearing; testimony of Rafael Iván Suárez-Rosero; constitutional warrant of imprisonment No. 158 IGPP 04 of July 22, 1992; warrant authorizing preventive detention, of August 12, 1992);

c. on the day of his arrest, Mr. Suárez-Rosero gave an initial statement to police officers in the presence of three prosecutors from the Ministry of Public Affairs. No defense attorney was present during the questioning (statement of Rafael Iván Suárez-Rosero during the inquiry proceedings of June 23, 1992; police report of the Special Investigations Unit of July 7, 1994; official communication No. 510 CSQ P 96 of the President of the Superior Court of Justice of Quito; testimony of Mr. Rafael Iván Suárez-Rosero; order Number Seven delivered by the First Chamber of the Superior Court of Justice of Quito at 10:00 a.m. on April 16, 1996, seventh paragraph);

d. from June 23 to July 23, 1992, Mr. Rafael Iván Suárez-Rosero was held *incommunicado* at the "Quito Number 2" Police Barracks situated at Montúfar and Manabí streets in the city of Quito, in a damp and poorly ventilated cell measuring five meters by three, together with sixteen other persons (police report of the Special Investigations Unit of July 7, 1994);

e. on July 22, 1992, the Commissioner-General of Police of Pichincha ordered the Director of the Men's Social Rehabilitation Center to keep Mr. Suárez-Rosero and other persons in detention until a court had issued an order to the contrary (constitutional warrant of imprisonment Number 158 IGPP 04 of July 22, 1992);

f. on July 23, 1992, Mr. Suárez-Rosero was transferred to the Men's Social Rehabilitation Center of Quito (former García Moreno Prison), where he remained *incommunicado* for five more days (constitutional warrant of imprisonment Number 158 IGPP 04 of July 22, 1992);

testimony of Rafael Iván Suárez-Rosero; order delivered by the President of the Superior Court of Justice of Quito at 10.00 a.m. on July 10, 1995);

g. during the entire period of his incommunicado detention, from June 23 to July 28, 1992, Mr. Suárez-Rosero was not allowed to receive visits from his family or communicate with an attorney. During that time, his only contact with his relatives was limited to the exchange of clothes and scribbled notes, which were censored by the security staff. This exchange was made possible through "pasadores", civilians with the means to deliver such things to prisoners (police report of the Special Investigations Unit of July 7, 1994; testimonies of Rafael Iván Suárez-Rosero, Margarita de Suárez, and Carmen Aguirre);

h. from July 28, 1992, onwards Mr. Suárez Rosero was allowed to receive his family, lawyer and members of human rights organizations on his days of visitors. The interviews with his lawyer were conducted in the presence of police officers (testimonies of Rafael Suárez Rosero, Margarita Ramadán de Suárez and Carlos Ramadán);

i. on August 12, 1992, the Third Criminal Court of Pichincha issued an order of preventive detention against Mr. Suárez-Rosero (constitutional warrant of imprisonment Number 125 of August 12, 1992);

j. on September 3, 1992, the Third Criminal Court of Pichincha declined to try the case against Mr. Suárez-Rosero and the other persons detained in Operation "Ciclón," inasmuch as one of the accused in that case was promoted to the rank of Infantry Major, and transferred the file to the Superior Court of Justice of Quito (order of the Third Criminal Court of Pichincha issued at 3:00 p.m. on September 3, 1992);

k. on two occasions, on September 14, 1992, and January 21, 1993, Mr. Suárez-Rosero requested that the order authorizing his preventive detention be revoked (written statement of Rafael Iván Suárez-Rosero of September 14, 1992, and written statement of Rafael Iván Suárez-Rosero of January 21, 1993);

l. on November 27, 1992, the President of the Superior Court of Justice of Quito ordered the initiation of the first phase of the pre-trial proceedings. In that order, Mr. Suárez-Rosero was charged with transporting drugs for the purpose of destroying them and hiding the evidence (initiating order of November 27, 1992);

m. on December 9, 1992, the President of the Superior Court of Justice of Quito ordered investigative proceedings to be instituted in connection with the case; these were held between December 29, 1992, and January 13, 1993 (statements by Marcelo Simbana, Carlos Ximénez, Rolando Vásquez-Guerrero, Lourdes Mena, Luz María Feria, and José Raúl Páez; judicial record of September 31, 1992; expert report of December 31, 1992; judicial record of January 4, 1993; judicial record of January 5, 1993; expert report of January 8, 1993, and expert report of January 13, 1993);

n. on March 29, 1993, Mr. Suárez-Rosero filed a writ of habeas corpus with the President of the Supreme Court of Justice of Ecuador, under the provisions of Article 458 of the Code of Criminal Proceedings of Ecuador (communication from Rafael Iván Suárez-Rosero of March 29, 1993);

o. on August 25, 1993, the President of the Superior Court of Justice of Quito requested the Public Prosecutor of Pichincha to render his opinion on Mr. Suárez-Rosero's request to have his detention order revoked (order, subparagraph m., of the President of the Superior Court of Justice of Quito of 11.00 a.m. on August 25, 1993);

p. on January 11, 1994, the Prosecutor of Pichincha rendered an opinion on the request for abrogation of Mr. Suárez-Rosero's detention order (supra, subparagraph o.), stating that for the

time being, the police report which serves as the basis for initiation of the instant criminal case, as well as the preliminary statements, suggests that the accused ... : Iván Suárez-Rosero ... appear[s] to be responsible, so that it would be improper to revoke the order for [his] preventive detention

(report of Dr. José García-Falconí, Public Prosecutor of Pichincha of January 11, 1994, line 16);

q. on January 26, 1994, Mr. Suárez-Rosero's request to have the preventive detention order against him revoked was denied (*supra*, subparagraph k.) (order of the President of the Superior Court of Justice of Quito of 10:00 a.m. on January 26, 1994, subparagraph h.). That same day, the officers who had arrested him were summoned to give statements, but did not appear, nor did they do so when they were again summoned on March 3 and May 9, 1994 (order of the President of the Superior Court of Justice of Quito of 1:30 p.m. on March 3, 1994, lines six to 10, and order of the President of the Superior Court of Justice of Quito of 11:00 a.m. on May 9, 1994, subparagraph e.);

r. on June 10, 1994, the President of the Supreme Court of Justice denied the writ of habeas corpus filed by Mr. Suárez-Rosero (*supra*, subparagraph n.), on the ground that [t]he petition presented [.] did not provide any information showing the category or nature of the proceeding indicating that he was deprived of his liberty, the district in which the President of the Superior Court of Justice that had issued the order was located, the place of detention, the date on which he was deprived of his liberty, the reason, etc., so that it cannot be processed and is therefore denied and ordered to be struck from the list.

(order of the President of the Supreme Court of Justice of Ecuador of 9:00 a.m. on June 10, 1994);

s. on November 4, 1994, the President of the Superior Court of Justice of Quito declared the preliminary proceedings to be at an end and referred the case to the Public Prosecutor of Pichincha for his final pronouncement (order of the President of the Superior Court of Justice of Quito of 11.45 a.m. on November 4, 1994). The prosecutor was to make a determination, within six days, but there is no record of the date in which he did so (Art. 235 of the Code of Criminal Proceeding of Ecuador);

t. on July 10, 1995, the President of the Superior Court of Justice of Quito declared open the plenary phase of the case against Mr. Suárez-Rosero, on a charge of being accessory to the crime of drug trafficking. That court also decided that in Mr. Suárez-Rosero's case the requirements of preventive detention had not been met, and ordered his release (order of the President of the Superior Court of Justice of Quito of 10:00 a.m. on July 10, 1995);

u. on July 13, 1995, the Public Prosecutor of Pichincha requested the President of the Superior Court of Pichincha to expand his order of July 10, 1995, so as not to release any person until that order [had been] referred to the Superior Court, in strict compliance with Article 121 of the Law on Narcotic Drugs and Psychotropic Substances

(communication from the Public Prosecutor of Pichincha of July 13, 1995, and communication Number 510 CSQ P 96 of the President of the Superior Court of Justice of Quito);

v. on July 24, 1995, the President of the Superior Court of Justice of Quito ruled [the] petition [of the Public Prosecutor of Pichincha of July 13, 1995] to be in order, inasmuch as the norm previously invoked in this type of violation is mandatory, since it deals with the crime of drug trafficking, governed by the Special Law on Narcotic Drugs and Psychotropic Substances [... and that] the order of release granted to accessories and to those whose cases were provisionally suspended should also be reviewed.

Consequently, the units were revised by the First Chamber of the Superior Court of Justice of Quito on July 31, 1995 (order of the President of the Superior Court of Justice of Quito of 10:00 a.m. on July 24, 1995; order of the President of the Superior Court of Justice of Quito of 10:00 a.m. on July 31, 1995);

w. on April 16, 1996, the First Chamber of the Superior Court of Justice of Quito ordered Mr. Suárez-Rosero's release (order of the First Chamber of the Superior Court of Justice of Quito of 10.00 a.m. on April 16, 1996). That order was complied with on April 29, 1996 (official communication Number 861 CSQ P 96 of the President of the Superior Court of Justice of Quito on April 29, 1996; testimonies of Rafael Iván Suárez-Rosero, Margarita Ramadán, and Carlos Ramadán);

x. the President of the Superior Court of Justice of Quito, in his judgment of September 9, 1996, decided that Mr. Suárez-Rosero is an accessory [.] to the crime of illegal trafficking in narcotic and drugs and psychotropic substances, defined and punishable under Art. 62 of the Law on Narcotic Drugs and Psychotropic Substances, and that, pursuant to the provisions of Arts. 44 and 88 of the Criminal Code, he was [.] sentenced to two years' imprisonment which he [was to] serve at the Men's Social Rehabilitation Center in [the] city of Quito, and that the time he has remained in preventive [.] detention would be deducted from that sentence.

Mr. Suárez-Rosero was also fined two thousand times the minimum living wage (judgment of the President of the Superior Court of Justice of Quito of 4.00 p.m. on September 9, 1996), and

y. at no time was Mr. Suárez-Rosero summoned to appear before a competent judicial authority to be informed of the charges brought against him (testimony of Rafael Iván Suárez-Rosero).

VIII.

Preliminary Considerations on the Merits

35. Once the Court has indicated the proven facts it regards as significant, it must examine the arguments of the Inter-American Commission and of the State in order to determine the State's international responsibility for the alleged violation of the American Convention.

36. The Court deems it necessary to conduct a preliminary review of a statement made by the State in its answer to the application to the effect that Mr. Suárez-Rosero was tried on a charge of "grave crimes against Ecuadorian children, youth, and the public at large." The State requested that, for the above reasons, the petition be rejected and that it be struck from the list,

especially since it has been irrefutably proven that Mr. Iván Rafael (sic) Suárez-Rosero was an accessory to a crime as serious as drug trafficking, which impairs not only the peace and security of the State, but more especially the health of its population.

The State repeated that request in its brief containing its final arguments.

37. On the above-mentioned argument by the State, the Court deems it pertinent to point out that the instant proceeding is not concerned with Mr. Suárez-Rosero's innocence or guilt in the crimes imputed to him by the Ecuadorian courts. The duty to adopt a decision on those matters lies exclusively with Ecuador's domestic courts, inasmuch as this Court is not a criminal tribunal

before which an individual's responsibility for crimes committed may be debated. Therefore, the Court considers Mr. Suárez-Rosero's innocence or guilt to be unrelated to the merits of the instant Case. In the light of the foregoing, the Court declares the State's request inadmissible and will determine the legal consequences of the facts that have been proven.

IX.

Violation of Article 7(2) and 7(3)

38. In its application the Commission asked the Court to declare that Mr. Suárez-Rosero's initial detention was unlawful and arbitrary, in violation of Article 7(2) and 7(3) of the American Convention, since both this instrument and the Ecuadorian laws require such acts to be performed by order of the competent authority in accordance with the procedures and terms established by law. A further requirement, according to the Commission, is that the detention be necessary and reasonable, which has not been proven in this case. Lastly, the Commission argued that during the initial period of Mr. Suárez-Rosero's arrest, he was held in facilities unsuitable for persons in preventive detention.

39. The State, for its part, contended that Mr. Suárez-Rosero's arrest "was carried out in connection with a lawful inquiry and as a result of actual events, of which he was one of the protagonists."

40. In its brief of closing arguments the Commission stated that, in the course of the proceeding, not only had Ecuador not denied that Mr. Suárez-Rosero had been arrested in violation of Ecuadorian law, but that, on the contrary, the alternate agent of the State had admitted at the public hearing before the Court that Mr. Suárez-Rosero's arrest had been arbitrary.

41. Ecuador maintained in its closing arguments, on the subject of Mr. Suárez-Rosero's arrest, that "[i]t is surprised ... that the defendant has described a frightful scenario of detention and arrest and yet he is the only person to have appealed to the Commission to demonstrate such monstrous facts."

42. Article 7(2) and (3) of the American Convention on Human Rights establishes that

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

3. No one shall be subject to arbitrary arrest or imprisonment.

43. The Court has said that no one may be

deprived of personal liberty except for reasons, or in cases or circumstances expressly described in the law (material aspect), but, moreover, with strict adherence to the procedures objectively defined by it (formal aspect) (Gangaram Panday Case, Judgment of January 21, 1994. Series C No. 16, para. 47).

With regard to the formal requirements, the Court observes that the Political Constitution of Ecuador provides in Article 22(19)(h) that:

[n]o one shall be deprived of his liberty except by written order of the competent authority, as appropriate, for the period and according to the procedures prescribed by law, save in the case of flagrante delicto, in which case he may not either be held without a trial order for more than twenty-four hours. In either case, he may not be held incommunicado for more than twenty-four hours

and that, pursuant to Article 177 of the Code of Criminal Procedure of Ecuador,

[t]he court may issue a writ of preventive imprisonment when it deems it to be necessary, provided the following procedural data are presented:

1. Evidence leading to a presumption of the existence of a crime that warrants the punishment of deprivation of liberty; and,
2. Evidence leading to a presumption that the accused is the author of or accomplice in the crime in question.

The evidence on which the order of imprisonment are based shall be stated in the records.

44. It was not demonstrated in the instant Case that Mr. Suárez-Rosero was apprehended in flagrante delicto. His arrest should therefore have been effected with a warrant issued by a competent judicial authority. However, the first judicial proceeding relating to his detention only took place on August 12, 1992 (*supra*, para. 34(i)), that is, over a month after his arrest, in violation of procedures previously established by the Political Constitution and the Code of Criminal Procedure of Ecuador.

45. The Court deems it unnecessary to voice an opinion on the evidence or suspicions that may have led to a detention order. The relevant point is that such an order was only produced in this case long after the victim's arrest. This was expressly acknowledged by the State during the public hearing, when it said that "Mr. Suárez was the victim of arbitrary detention."

46. As to the place in which Mr. Suárez-Rosero was held incommunicado, the Court deems it to have been proven that he spent from June 23 to July 23, 1992, at a police station unsuitable as accommodation for a prisoner, according to the Commission and the expert (*supra*, para. 34(d)), in addition to all the violations of the right to liberty to the detriment of Mr. Suárez-Rosero.

47. For the above reasons, the Court finds that the Mr. Suárez-Rosero' arrest and his subsequent detention from June 23, 1992, were carried out in violation of the provisions contained in Article 7(2) and (3) of the American Convention.

* * *

48. The Commission requested the Court to find that the fact that Mr. Suárez-Rosero's incommunicado detention for 36 days generated a violation of Article 7(2) of the American Convention, inasmuch as it violated Ecuadorian law, which establishes that such detention may not exceed 24 hours.

49. Ecuador did not challenge that argument in its answer to the application.

50. The Court observes that, pursuant to Article 22(19)(h) of the Political Constitution of Ecuador, the incommunicado detention of a person may not exceed 24 hours (*supra*, para. 43). Nevertheless, Mr. Suárez-Rosero was held incommunicado from June 23 to July 28, 1992 (*supra*, para. 34(d)), that is, for a total of 35 days in excess of the maximum period established by the Constitution.

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

52. The Court, bearing in mind the maximum limit established in the Ecuadorian Constitution, finds that Mr. Rafael Iván Suárez-Rosero's incommunicado detention from June 23 to July 28, 1992, violated Article 7(2) of the American Convention.

X.

Violation of Article 7(5)

53. The Commission argued in its application that the State had not fulfilled its obligation to bring Mr. Suárez-Rosero before a competent judicial authority, as required by Article 7(5) of the Convention, for, according to the arguments of the petitioner not contested by the State before the Commission, Mr. Suárez-Rosero never appeared in person before such an authority to be informed of the charges against him.

54. In its answer to the application in that regard, Ecuador stated that "Mr. Suárez-Rosero has been exercising his legal rights to express his views and make his legitimate claims during his legal process."

55. Article 7(5) of the American Convention provides that

[a]ny 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.

56. The State did not contest the Commission's claim that Mr. Suárez-Rosero never appeared before a judicial authority during the proceeding. The Court therefore deems that claim to have been proved and rules that this omission on the part of the State constitutes a violation of Article 7(5) of the American Convention.

XI.

Violation of Articles 7(6) and (25)

57. The Commission asked the Court to rule that Mr. Suárez-Rosero's incommunicado detention violated Article 7(6) of the American Convention in that it denied him contact with the outside world and did not permit him to exercise his right of habeas corpus.

58. With regard to the aforementioned guarantee, Article 7(6) of the Convention provides that

[a]nyone who is deprived of his liberty shall be entitled to recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful. In States Parties whose laws provide that anyone who believes himself to be threatened with deprivation of his liberty is entitled to recourse to a competent court in order that it may decide on the lawfulness of such threat, this remedy may not be restricted or abolished. The interested party or another person on his behalf is entitled to seek these remedies.

59. The Court has already ruled that a detained person must be guaranteed the right of habeas corpus at all times, even when he is being held in exceptional circumstances of incommunicado detention established by law. That guarantee is doubly entrenched in the law in Ecuador. Article 28 of the Political Constitution provides that

[a]ny person who believes that he is being unlawfully deprived of his liberty may seek the remedy of habeas corpus. He may exercise this right himself or through another person without the need for written mandate ...

The Code of Criminal Procedure of that State establishes in Article 458 that

[a]ny person who is charged with infringing the precepts contained in [that] Code and is kept in detention may apply to be released to a higher Court than the one that has ordered the deprivation of his liberty.

...

The application shall be made in writing.

...

Immediately upon receipt of the application, the Judge who is to hear it shall order the detained person to be brought before him and shall hear his statements, which shall be included in a record which shall be signed by the Judge, the Secretary and the applicant, or, should the applicant be unable to sign, by a witness on his behalf. Thereupon, the Judge shall seek to obtain all the information he deems necessary for the purpose of arriving to a conclusion and ensuring the lawfulness of his decision and shall, within forty-eight hours, decide what he deems to be lawful.

60. The Court observes, first of all, that the aforesaid articles do not restrict access to the remedy of habeas corpus to the persons who are held incommunicado; in addition, the Constitution allows that remedy to be sought by any person "without the need for written mandate." It also points out that no evidence has been submitted to it to show that Mr. Suárez-Rosero attempted to file such an appeal with a competent authority during his incommunicado detention, nor did any other person attempt to do so on his behalf. Consequently, the Court deems the Commission's claim in that regard not to have been proven.

* * *

61. The Commission claimed that Ecuador violated Articles 7(6) and 25 of the American Convention when it denied Mr. Suárez-Rosero the right of habeas corpus. On that point, the Commission claimed that the inordinate time of fourteen and a half months between Mr. Suárez-Rosero's filing the writ of habeas corpus on March 29, 1993, and the ruling on the writ is patently incompatible with the reasonable time provided for in Ecuador's own legislation. It further claimed that the State had therefore failed in its obligation to provide effective judicial recourse. Lastly, the Commission maintained that such recourse was denied for purely procedural reasons, that is, because the petitioner had not indicated the nature of the proceeding or the location of the court that had ordered the detention, nor the place, date or cause of the detention. Such formal requirements are not established in Ecuadorian Law.

62. Ecuador did not contest those arguments in its answer to the application.

63. This Court shares the Commission's view that the right enshrined in Article 7(6) of the American Convention is not exercised with the mere formal existence of the remedies it governs. Those remedies must be effective, since their purpose, in the terms of Article 7(6), is to obtain without delay a decision "on the lawfulness of [his] arrest or detention," and, should they be unlawful, to obtain, also without delay, an "order [for] his release". The Court has also held that

[i]n order for habeas corpus to achieve its purpose, which is to obtain a judicial determination of the lawfulness of a detention, it is necessary that the detained person be brought before a competent judge or tribunal with jurisdiction over him. Here habeas corpus performs a vital role in ensuring that a person's life and physical integrity are respected, in preventing his disappearance or the keeping of his whereabouts secret and in protecting him against torture or other cruel, inhuman or degrading punishment or treatment (Habeas Corpus in Emergency Situations (Arts. 27(2), 25(1) and 7(6) American Convention on Human Rights), Advisory Opinion OC 8/87 of January 30, 1987. Series A No. 8, para. 35).

64. As indicated above (*supra*, para. 34.(r)), the Court deems it to have been proven that the writ of habeas corpus filed by Mr. Suárez-Rosero on March 29, 1993, was disposed of by the President of the Supreme Court of Justice of Ecuador on June 10, 1994, that is, more than 14 months after it was filed. This Court also deems it to have been proven that the application was ruled inadmissible, on the ground that Mr. Suárez-Rosero had omitted certain information, whereas, under Ecuadorian Law, such information is not a prerequisite for admissibility.

65. Article 25 of the American Convention provides that everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal. The Court has ruled that this provision

constitutes one of the basic pillars not only of the American Convention, but of the very rule of law in a democratic society in the sense of the Convention.

Article 25 is closely linked to the general obligation contained in Article 1(1) of the American Convention, in assigning protective functions to the domestic law of States Parties. The purpose of habeas corpus is not only to ensure respect for the right to personal liberty and physical integrity, but also to prevent the person's disappearance or the keeping of his whereabouts secret and, ultimately, to ensure his right to life (Castillo Páez Case, Judgment of November 3, 1997. Series C No. 34, paras. 82 and 83).

66. On the basis of the foregoing, and especially since Mr. Suárez-Rosero did not have access to simple, prompt and effective recourse, the Court finds that the State violated the provisions of Article 7(6) and 25 of the American Convention.

XII.

Violation of Articles 8(1), 8(2), 8(2)(c), 8(2)(d) and 8(2)(e)

67. The Commission contended that by subjecting Mr. Suárez-Rosero to prolonged preventive detention, the State violated:

- a. his right to be tried within a "reasonable time", as established in Article 7(5) of the Convention,
- b. his right to be brought before a competent tribunal, as established in Article 8(1) of the Convention, and
- c. the principle of presumption of innocence, as established in Article 8(2) of the Convention.

68. In that regard, Ecuador maintained in its brief of final arguments that

one cannot ignore the important fact that the courts acted with the greatest speed, given the Judiciary's personnel and financial constraints. Its workload has been increasing with the expansion of the docket, which contains over forty-three volumes comprising more than four thousand three hundred substantive pages owing to the large number of persons implicated in the so-called Operation "Ciclón".

...

There may have been some breaches of the terms and periods established for the substantiation of an accusation, or non-observance at some time of the formalities in the courts, but let it be said that in no way did the Ecuadorian State curtail Mr. Suárez's action, since he was able at all times adequately to exercise his legitimate right of defense. His inalienable rights were not violated nor was his sentence unjust; it is, after all, deserved, as the First Chamber of the Superior Court of Justice of Quito found.

69. Article 8(1) of the Convention establishes that

[e]very 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.

70. The purpose of the principle of "reasonable time" to which Articles 7(5) and 8(1) of the American Convention refer is to prevent accused persons from remaining in that situation for a protracted period and to ensure that the charge is promptly disposed of. In the instant case, the first act of the proceeding was Mr. Suárez-Rosero's arrest on June 23, 1992, and, therefore, the time must be calculated from that moment.

71. The Court considers the proceeding to be at an end when a final and firm judgment is delivered and the jurisdiction thereby ceases (cf. Cour eur. D.H., arrêt Guincho du 10 juillet 1984, Serie A n° 81, para. 29) and that, particularly in criminal matters, that time must cover the entire proceeding, including any appeals that may be filed. On the basis of the evidence contained in the Case before it, the Court considers that the proceeding against Mr. Suárez-Rosero ended in the Ecuadorian jurisdiction on September 9, 1996, the date on which he was convicted by the President of the Superior Court of Justice of Quito. Although at the public hearing Mr. Suárez-Rosero referred to an appeal of that conviction, his statement was not substantiated.

72. This Court shares the view of the European Court of Human Rights, which in a number of decisions analyzed the concept of reasonable time and decided that three points should be taken into account in determining the reasonableness of the time in which a proceeding takes place: a) the complexity of the case, b) the procedural activity of the interested party, and c) the conduct of the judicial authorities (cf. Genie Lacayo Case, Judgment of January 29, 1997. Series C No. 30, para. 77; and cf. Eur. Court H.R., Motta judgment of 19 February 1991, Series A No. 195 A, para. No. 30; Eur. Court H.R., Ruiz-Mateos case v. Spain judgment of 23 June 1993, Series A No. 262, para. 30).

73. On the basis of the above considerations, after comprehensive analysis of the proceeding against Mr. Suárez-Rosero in the domestic courts, the Court observes that that proceeding lasted more than 50 months. In the Court's view, this period far exceeds the reasonable time contemplated in the American Convention.

74. Likewise, the Court considers that the fact that an Ecuadorian tribunal has found Mr. Suárez-Rosero guilty of complicity in a crime does not justify his being deprived of his liberty for more than three years and ten months, when two years is the maximum in Ecuadorian law for that offense.

75. In view of the foregoing, the Court finds that the State of Ecuador violated, to the detriment of Mr. Rafael Iván Suárez-Rosero, the right to be tried within a reasonable time or be released, as established in Articles 7(5) and 8(1) of the American Convention.

* * *

76. The Court now turns to the argument put forward by the Commission to the effect that the proceeding against Mr. Suárez-Rosero was in breach of the principle of the presumption of innocence, enunciated in Article 8(2) of the American Convention. That Article provides that

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

77. This Court is of the view that the principle of the presumption of innocence -inasmuch as it lays down that a person is innocent until proven guilty- is founded upon the existence of judicial guarantees. Article 8(2) of the Convention establishes the obligation of the State not to restrict the liberty of a detained person beyond the limits strictly necessary to ensure that he will not impede the efficient development of an investigation and that he will not evade justice; preventive detention is, therefore, a precautionary rather than a punitive measure. This concept is laid down in a goodly number of instruments of international human rights law, including the International Covenant on Civil and Political Rights, which provides that preventive detention should not be the normal practice in relation to persons who are to stand trial (Art. 9(3)). This would be tantamount to anticipating a sentence, which is at odds with universally recognized general principles of law.

78. The Court considers that Mr. Suárez-Rosero's prolonged preventive detention violated the principle of presumption of innocence, in that he was detained from June 23, 1992, to April 28, 1996, and that the order for his release issued on July 10, 1995, was only executed a year later. In view of the above, the Court rules that the State violated Article 8(2) of the American Convention.

* * *

79. The Commission requested the Court to rule that Mr. Suárez-Rosero's incommunicado detention for 36 days violated Articles 8(2)(c), 8(2)(d) and 8(2)(e) of the American Convention, inasmuch as it prevented him from exercising his right to consult an attorney. The Commission further pointed out that at other times during the proceeding, Mr. Suárez-Rosero was unable to communicate freely with his lawyer, which also violated the guarantee laid down in Article 8(2)(d).

80. Ecuador did not contest those arguments in its answer to the petition.

81. In the brief containing its final arguments, the Commission once more raised the matter of incommunicado detention, maintaining that the exchange of a few scribbled notes does not allow a detained person to communicate with the outside world, to seek legal counsel, or to invoke legal guarantees.

82. Article 8(2)(c), (d) and (e) of the American Convention establishes minimum guarantees to which every person is entitled, with full equality,

[a]dequate time and means for the preparation of his defense;

[t]he right of the accused to defend himself personally or to be assisted by legal counsel of his own choosing, and to communicate freely and privately with his counsel;

[and] the inalienable right to be assisted by counsel provided by the state, paid or not as the domestic law provides, if the accused does not defend himself personally or engage his own counsel within the time period established by law [.]

83. Owing to his having been kept incommunicado for 36 days of his detention, Mr. Suárez-Rosero was denied adequate opportunity to prepare his defense, since he did not have the legal assistance of a public defender and, once he was able to obtain legal counsel of his own choosing, he was unable to communicate with him freely and privately. Hence, the Court considers that Ecuador violated Article 8(2)(c), 8(2)(d) and 8(2)(e) of the American Convention.

XIII.

Violation of Article 5(2)

84. The Commission requested the Court to find that the incommunicado detention to which Mr. Suárez-Rosero was subjected for 36 days violated Article 5(2) of the American Convention, in that his isolation constituted cruel, inhuman and degrading treatment.

85. Ecuador did not contest that argument in its answer to the application.

86. In its closing arguments, the Commission again raised this matter, claiming that communication through a third party did not enable Mr. Suárez-Rosero's family to ascertain his physical, mental or emotional state.

87. In its closing arguments, Ecuador maintained that Mr. Suárez-Rosero received adequate medical treatment during his incarceration, "as attested to by the official medical records included in the docket".

88. Article 5(2) of the American Convention provides that

[n]o 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.

89. As the Court has stated (*supra*, para. 51), incommunicado detention is an exceptional measure the purpose of which is to ensure the results of an investigation; it may not be applied except in the conditions previously established by law, in the sense attributed to it by Article 30 of the American Convention (The Word "Laws" in Article 30 of the American Convention on Human Rights, Advisory Opinion OC 6/86 of May 9, 1986. Series A No. 6, para. 38). In the instant Case, those conditions are established in Article 22(19)(h) of the Political Constitution of Ecuador, which states that "[i]n any case [the detained person] may not be held incommunicado for more than 24 hours". This precept is applicable by virtue of the reference to domestic law in Article 7(2) of the American Convention (*supra*, para. 42).

90. One of the reasons that incommunicado detention is considered to be an exceptional instrument is the grave effects it has on the detained person. Indeed, isolation from the outside world produces moral and psychological suffering in any person, places him in a particularly vulnerable position, and increases the risk of aggression and arbitrary acts in prisons.

91. The mere fact that the victim was for 36 days deprived of any communication with the outside world, in particular with his family, allows the Court to conclude that Mr. Suárez-Rosero was subjected to cruel, inhuman and degrading treatment, all the more so since it has been proven that his incommunicado detention was arbitrary and carried out in violation of Ecuador's domestic laws. The victim told the Court of his suffering at being unable to seek legal counsel or communicate with his family. He also testified that during his isolation he was held in a damp underground cell measuring approximately 15 square meters with 16 other prisoners, without the necessary hygiene facilities, and that he was obliged to sleep on newspaper; he also described the beatings and threats he received during his detention. For all those reasons, the treatment to which Mr. Suárez-Rosero was subjected may be described as cruel, inhuman and degrading.

92. For the above reasons, the Court rules that the State violated Article 5(2) of the American Convention.

XIV.

Violation of Article 2

93. The Commission requested the Court to find that the unnumbered Article which follows Article 114 of the Ecuadorian Criminal Code (hereinafter "Article 114 bis") violates "the right to judicial protection" enshrined in Article 2 of the Convention. According to the Commission, it is an obligation of a State to organize its judicial apparatus in such a way as to ensure "to every person subject to its jurisdiction the free and full exercise of the rights established therein."

94. In the brief containing its final arguments, Ecuador stated that it had

initiated the pertinent procedures for making that law conform to its Political Constitution, which is the Supreme Law to which all other lesser laws and provisions are subordinated.

95. The aforementioned Article 114 bis provides that

[p]ersons who, having been kept in detention for a time equal to or greater than one-third of the period established in the Criminal Code as the maximum sentence for the offense with which they are charged, have neither had their case discontinued nor been committed to trial, shall be immediately released by the judge hearing the case.

Likewise, persons, who have been kept in detention without sentence for a time equal to or greater than half the period established by the Criminal Code as the maximum sentence for the offense with which they are charged, shall be released by the criminal court hearing the case.

These provisions do not include persons charged with offenses punished under the Law on Narcotic Drugs and Psychotropic Substances.

96. Article 2 of the Convention establishes that

[w]here the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights and freedoms.

97. As the Court has maintained, the States Parties to the Convention may not order measures that violate the rights and freedoms recognized therein (International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention (Arts. 1 and 2 American Convention on Human Rights), Advisory Opinion OC 14/94 of December 9, 1994. Series A No. 14, para. 36). Whereas the first two provisions of Article 114 bis of the Ecuadorian Criminal Code accord detained persons the right to be released when the conditions indicated exist, the last paragraph of the same article contains an exception to that law.

98. The Court considers that this exception deprives a part of the prison population of a fundamental right, on the basis of the crime of which it is accused and, hence, intrinsically injures everyone in that category. This rule has been applied in the specific case of Mr. Suárez-Rosero and has caused him undue harm. The Court further observes that, in its opinion, this law violates per se Article 2 of the American Convention, whether or not it was enforced in the instant case.

99. In conclusion, the Court points out that the exception contained in the aforementioned Article 114 bis violates Article 2 of the Convention in that Ecuador has not taken adequate measures under its domestic law to give effect to the right enshrined in Article 7(5) of the Convention.

XV.

On Articles 11 and 17

100. The Commission contended that Mr. Suárez-Rosero's 36-day incommunicado detention constituted an unwarranted restriction of his family's right to be informed of his situation, thus impairing the rights established in Articles 11 and 17 of the American Convention.

101. The State did not contest this argument in its answer to the application.

102. The Court is of the opinion that the effects that Mr. Suárez-Rosero's incommunicado detention may have had on his family would derive from the violation of Articles 5(2) and 7(6) of the American Convention. Those consequences may be taken up by this Court at the Reparations Stage.

XVI.

Application of Article 63(1)

103. Article 63(1) of the American Convention provides that

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

104. In the application, the Commission requested the Court to decide

- a. that Ecuador must release Mr. Suárez-Rosero forthwith, without prejudice to the continuation of the case against him;
- b. that Ecuador must guarantee an exhaustive and prompt trial of the case against Mr. Suárez-Rosero, and adopt effective measures to ensure that this type of violation does not recur in future;
- c. that Ecuador must conduct an investigation to determine those responsible for the violations in the instant case and punish them; and
- d. that Ecuador must make reparation to Mr. Suárez-Rosero for the consequences of the violations committed.

105. There is no point to the Commission's first request inasmuch as it was made prior to Mr. Suárez-Rosero's release.

106. With regard to the Commission's second request, Ecuador presented the Court with documents to prove that the case against Mr. Suárez-Rosero had already been adjudicated (*supra*, para. 71). The Commission did not contest this fact and, although during the public hearing held at the Court Mr. Suárez-Rosero mentioned the existence of an appeal of that judgment, there is no evidence to support his statement (*supra*, para. 71). It is therefore unnecessary for the Court to refer to the first part of that request. Regarding the second part, the Court declares that

Ecuador is obliged, in accordance with the general duties to respect rights and adopt provisions under domestic law (Article 1(1) and (2) of the Convention), to adopt such measures as may be necessary to ensure that violations such as those established in the instant case never again occur in its jurisdiction.

107. In view of the above, the Court is of the opinion that Ecuador must order an investigation to identify and, as appropriate, punish those responsible for the human rights violations referred to in this Judgment.

108. It is obvious that in the instant case the Court cannot determine that the injured party be guaranteed the enjoyment of his right or freedom that has been violated. However, it is proper that reparation be made for the consequences of the situation that constituted the violation of the specific rights in this Case, which must include fair compensation and reimbursement of any expenses which the victim and his relatives may have incurred in their representations in connection with this proceeding.

109. In order to determine the reparations, the Court will require sufficient information and evidence, for which purpose it orders that the appropriate stage of the procedure be initiated, and, to this end, authorizes its President to adopt in due course such measures as may be necessary.

XVII.

Operative Paragraphs

110. Now, therefore,
THE COURT,

unanimously

1. Finds that the State of Ecuador violated, to the detriment of Rafael Iván Suárez-Rosero, Article 7 of the American Convention on Human Rights, in relation to Article 1(1) of the same, in the terms indicated in paragraphs 38 to 66 of this Judgment.

unanimously

2. Finds that the State of Ecuador violated, to the detriment of Rafael Iván Suárez-Rosero, Article 8 of the American Convention on Human Rights, in relation to Article 1(1) of the same, in the terms indicated in paragraphs 57 to 83 of this Judgment.

unanimously

3. Finds that the State of Ecuador violated, to the detriment of Rafael Iván Suárez-Rosero, Article 5 of the American Convention on Human Rights, in relation to Article 1(1) of the same, in the terms indicated in paragraphs 84 to 92 of this Judgment.

unanimously

4. Finds that the State of Ecuador violated, to the detriment of Rafael Iván Suárez-Rosero, Article 25 of the American Convention on Human Rights, in relation to Article 1(1) of the same, in the terms indicated in paragraphs 61 to 66 of this Judgment.

unanimously

5. Finds that the final paragraph of the unnumbered article after Article 114 of the Criminal Code of Ecuador violates Article 2 of the American Convention on Human Rights, in relation to Articles 7(5) and 1(1) of the same.

unanimously

6. Decides that Ecuador must order an investigation to determine the persons responsible for the human rights violations referred to in this judgment and, where possible, punish them.

unanimously

7. Decides that Ecuador is obliged to pay a fair indemnity to the victim and his relatives and to compensate them for any expenses incurred in their representations relating to this proceeding.

unanimously

8. Orders the initiation of the Reparations Stage, for which purpose it authorizes the President to adopt in due course such measures as may be necessary.

Done in Spanish and English, the Spanish text being authentic, in San José, Costa Rica, on this twelfth day of November, 1997.

Antônio A. Cançado Trindade
President

Hernán Salgado-Pesantes
Héctor Fix-Zamudio
Alejandro Montiel-Argüello
Máximo Pacheco-Gómez
Oliver Jackman
Alirio Abreu-Burelli

Manuel E. Ventura-Robles
Secretary

Read at a public session at the seat of the Court in San José, Costa Rica, on November 15, 1997.

So ordered,

provided by worldcourts.com

Antônio A. Cançado Trindade
President

Manuel E. Ventura-Robles
Secretary