In the Case of Chaparro Álvarez and Lapo Íñiguez,

the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court"), pursuant to Articles 62(3) and 63(1) of the Inter-American Convention on Human Rights (hereinafter "the Convention" or "the Inter-American Convention") and Articles 29, 31, 53(2), 55, 56 and 58 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure"), delivers this judgment.

I. INTRODUCTION OF THE CASE AND MATTER IN DISPUTE

1. On June 23, 2006, in accordance with the provisions of Articles 51 and 61 of the Inter-American Convention, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") lodged before the Court an application against the Republic of Ecuador (hereinafter "the State" or "Ecuador"), arising from petitions Nos. 12,091 and 172/99, forwarded, respectively, by Juan Carlos Chaparro Álvarez on September 8, 1998, and by Freddy Hernán Lapo Iñiguez on April 14, 1999. On October 22, 2003, the Commission adopted Report No. 77/03, in which it decided to joinder the petitions of Mr. Chaparro and Mr. Lapo in a single case, and to declare them admissible. Subsequently, on February 28, 2006, the Commission adopted Report on Merits No. 6/06 in the terms of Article 50 of the Convention, which included specific recommendations for the State. This report was notified to the State on March 23, 2006. On June 16, 2006, the Commission decided to submit the instant case to the jurisdiction of the Court [FN1] in view of the lack of response from the State.

[FN1] The Commission appointed Evelio Fernández Arévalos, Commissioner, and Santiago A. Canton, Executive Secretary, as delegates, and the lawyers Ariel E. Dulitzky, Mario López Garelli, Víctor H. Madrigal Borloz and Lilly Ching Soto as legal advisers.

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2. The Commission indicated that, at the time of the facts, Mr. Chaparro, a Chilean national, was the owner of the "Aislantes Plumavit Compañía Limitada" factory (hereinafter "the factory" or "the Plumavit factor"), which manufactured ice chests for transporting and exporting different products, while Mr. Lapo, an Ecuadorean national, was the manager of the factory. According to the application, as a result of the "Rivera anti-narcotics operation," on November 14, 1997 Anti-narcotics Police officials seized a shipment of fish belonging to the company "Mariscos Oreana Maror" in Guayaquil's Simón Bolívar Airport that was going to be sent to Miami, United States of America. The Commission stated that, in this shipment, some thermal insulated boxes or ice chests were found in which the presence of heroine and cocaine hydrochloride was discovered. According to the application, Mr. Chaparro was deemed to belong to an "international criminal organization" dedicated to international drug trafficking, because his factory produced ice chests similar to those seized. For this reason, the Guayas Twelfth Criminal Judge ordered a search of the Plumavit factory and the detention of Mr. Chaparro for investigative purposes. According to the Commission, at the time of Mr. Chaparro's detention, the State authorities did not advise him of the respective reasons or justification, or of his right to request consular assistance from the country of which he was a national. The Commission advised that, during the search of the said factory, Mr. Lapo and other employees of the Plumavit factory were detained. The detention of Mr. Lapo was allegedly not made in flagrante delicto and it was not preceded by a written order by a judge; moreover, he, also, was not advised of the reasons and justification for his detention. The two alleged victims were allegedly transferred to a police station and remained incommunicado for five days. Supposedly, Mr. Chaparro did not have a lawyer present when he made his pre-trial statement and Mr. Lapo's public defender was unsatisfactory. According to the Commission, the detention of the alleged victims exceeded the legal maximum allowed by domestic law and they were not taken before a judge promptly.

3. The Commission added that, even though several expert appraisals were conducted, which concluded that it was not possible that the seized ice chests had been made in the Plumavit factory and that there was no evidence at all to incriminate Mr. Chaparro and Mr. Lapo for the crime of illegal drug-trafficking, the alleged victims were remanded in custody for over a year. According to the application, Messrs. Chaparro and Lapo filed the recourses available to them requesting a review of the grounds for the preventive detention measure, but these recourses were unsuccessful. The Commission stated that the Plumavit factory was "seized" on November 15, 1997, following the search and, even though no drugs had been found, it was only returned to its owner, almost five years after it had been confiscated. Mr. Lapo's vehicle has not yet been returned. Also, it appears that there are still public records and records in private institutions that include the criminal records of the alleged victims in relation to the facts of the instant case.

4. The Commission asked the Court to establish the international responsibility of the State for the violation, to the detriment of the two alleged victims, of the rights embodied in Articles 5 (Right to Humane Treatment), 7 (Right to Personal Liberty), 8 (Right to a Fair Trial), 21 (Right to Property) and 25 (Right to Judicial Protection) of the Inter-American Convention, in relation

to Article 1(1) (Obligation to Respect Rights) thereof. Lastly, the Commission asked the Court to declare that the State had failed to comply with the obligation contained in Article 2 (Domestic Legal Effects) of the Convention to the detriment of Mr. Lapo.

5. On October 9, 2006, Xavier Flores Aguirre and Pablo Cevallos Palomeque, representatives of the alleged victims (hereinafter "the representatives"), presented their written brief containing requests, arguments and evidence (hereinafter "requests and arguments brief") pursuant to Article 23 of the Court's Rules of Procedure (hereinafter "the Rules of Procedure"). They stated that they "endorsed all aspects of the legal principles and facts set out by the Commission […] in its application."

6. On December 5, 2006, the State submitted its brief with preliminary objections, its answer to the application, and its observations on the requests and arguments brief (hereinafter "answer to the application"), [FN2] in which it filed two preliminary objections and contested the assertions of the Inter-American Commission.

[FN2] On September 25, 2006, the State appointed Juan Leoro Almeida, Ambassador of Ecuador to Costa Rica, as Agent, and Erick Roberts and Salim Zaidán as Deputy Agents. On October 20, 2006, the Secretariat of the Court informed the State that the Court's Rules of Procedure did not establish that a State could designate several Deputy Agents, and therefore asked it to "specify who would be its designated Deputy Agent." On December 13, 2006, the State appointed Erick Roberts as principal Agent and Salim Zaidám as Deputy Agent.

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7. On January 12, 2007, the Commission and the representatives forwarded their respective briefs with arguments on the preliminary objections filed by the State.

II. PROCEEDINGS BEFORE THE COURT

8. The Commission's application was notified to the State [FN3] on August 17, 2006, and to the representatives on August 10, 2006. During the proceedings before the Court, in addition to the principal briefs forwarded by the parties (supra paras. 1, 5 and 6), the President of the Court [FN4] (hereinafter "the President") ordered that the expert opinions offered by the Commission at the appropriate time be received by means of statements made before notary public (affidavits), and the parties were given the opportunity to present their observations. In addition, the President asked the State to forward helpful evidence. [FN5] Lastly, bearing in mind the particular circumstances of the case, the President convened the Commission, the representatives, and the State to a public hearing to hear the statements of the two alleged victims, and also the final oral arguments on preliminary objections, merits, reparations, and costs. [FN6] The public hearing was held on May 17, 2007, during the thirtieth special session of the Court, which took place in Guatemala City, Guatemala. [FN7]

[FN3] When the application was notified to the State, it was advised of its right to appoint a judge ad hoc to take part in the deliberation of the case. On September 25, 2006, the State

appointed Diego Rodríguez Pinzón as judge ad hoc. However, on December 6, 2006, the State was informed that the Court had decided to reject this appointment, because it had been presented after the expiry of the time limit established in Article 10(4) of the Court's Statute.
[FN4] Order of the President of the Inter-American Court of March 15, 2007.
[FN5] The evidence consisted of: (a) complete and legible copies of all the domestic judicial case files in the instant case, and (b) copy of the annexes to the answer to the application that were incomplete or illegible.
[FN6] On April 26, 2007, the State requested that "despite the provisions of Articles 33 and 38 of the Court's Rules of Procedure, [the Court …] examine the possibility of receiving the testimony […] of Guadalupe Manrique Rossi." On May 7, 2007, the President of the Court, in consultation with the other judges and having heard the opinion of the Commission and the representatives, decided "not to accept the State's offer as it was time-barred" under Article 44 of the Rules of Procedure.
[FN7] There appeared at this hearing: (a) for the Inter-American Commission: Evelio Fernández Arévalos, Commissioner, Marió López and Lilly Ching, advisers; b) in representation of the alleged victims: Xavier Flores Aguirre; and (c) for the State: Salim Zaidán, Deputy Agent, and Gabriela Galeas, adviser.
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9. On May 15, 2007, the State remitted part of the helpful evidence requested by the President, and on June 6, 2007, the parties forwarded their respective briefs with final arguments.

10. On September 12 and 17, 2007, the State forwarded some documentation that had not been requested by the Court, and the Commission and the representatives alleged that it was time-barred.

11. On September 18 and 25, 2007, the President requested the representatives and the State to forward new helpful evidence [FN8] which was forwarded to the Court within the allotted time. On October 9, 2007, Mr. Lapo submitted new documentation regarding the helpful evidence that the President had asked the representatives to provide.

[FN8] The representatives were asked: (a) to forward the vouchers for the expenditure they claimed the alleged victims had incurred for costs and expenses; (b) to provide information on the amount of the equity investment or the number of shares that Mr. Chaparro possessed in the Plumavit company at the time of his detention and at the time the company was returned to him, and also the amount of the equity investment and the number of shares that the other partners or shareholders in the company held at the time of Mr. Chaparro's arrest and when the company was returned to him, and (c) to advise whether Mr. Chaparro Álvarez had received the amount of US$10,444.77 (ten thousand four hundred and forty-four United States dollars and seventy-seven cents) when the factory was returned. The State was requested to submit: (a) the official exchange rates of the sucre with regard to the United States dollar from 1997 until the date on which the dollar began to be used as the country's only currency; (b) Resolution No. 059-CD of December 19, 1999, issued by the Administrative Council of the National Council for the Control of Drugs and Narcotic Substances (hereinafter "CONSEP"), published in official gazette No. 14 of February 10, 2000, and (c) Resolution No. 13, published in official gazette No. 376 of

July 13, 2004, with the replacement regulations for the collection of fees for deposit, custody and administration of property and assets seized, confiscated and impounded, and delivered to CONSEP, for violations of Act 108.

III. PRELIMINARY OBJECTIONS

12. When submitting its answer to the application, the State filed two preliminary objections. They were: (a) "failure to comply with the rule of prior exhaustion of domestic remedies," and (b) lack of jurisdiction of the Court "based on the fourth level of jurisdiction formula." The Court will proceed to examine these preliminary objections in the order in which they were filed.

A) FAILURE TO EXHAUST DOMESTIC REMEDIES

13. According to the State, the alleged victims failed to appeal the adverse habeas corpus decisions before the Constitutional Court; and they did not appeal the orders for remand in custody "pursuant to the Code of Criminal Procedure." The State also indicated that "the appropriate channel available to remedy possible unlawful or arbitrary acts committed by the judge [who heard the case] was to file a civil action for damages to claim compensation for judicial error."

14. The Commission requested, inter alia, that this preliminary objection be rejected "because it was not filed at the appropriate moment before the Commission, and was clearly without grounds." The representatives agreed with the Commission and also indicated, inter alia, that the State's allegations were "groundless, because they do not demonstrate that the domestic remedies that should supposedly have been exhausted would be effective."

15. The Convention grants the Court full jurisdiction over all matters pertaining to a case submitted to its jurisdiction, even those of a procedural nature on which the possibility of it exercising its jurisdiction are based. [FN9]

[FN9] Cf. Case of Hilaire v. Trinidad and Tobago. Preliminary objections. Judgment of September 1, 2001. Series C No. 80, para. 80; Case of the Dismissed Congressional Employees (Aguado Alfaro et al.) v. Peru. Preliminary objections, merits, reparations, and costs. Judgment of November 24, 2006. Series C No. 158, para. 66, and Case of Acevedo Jaramillo et al. v. Peru. Preliminary objections, merits, reparations, and costs. Judgment of February 7, 2006. Series C No. 144, para. 121.

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16. Article 46(1)(a) of the Inter-American Convention stipulates that admission by the Commission of a petition or communication lodged in accordance with Articles 44 or 45 of the Convention requires that the remedies under domestic law shall have been pursued and exhausted in accordance with generally recognized principles of international law.

17. In this regard, the Court has maintained that the respondent State can expressly or tacitly waive invoking the failure to exhaust domestic remedies. The tacit waiver occurs when the State fails to file this objection at the appropriate time before the Commission. [FN10]

[FN10] Cf. Matter of Viviana Gallardo et al. Series A No. 101/81, para. 26; Case of Velásquez Rodríguez v. Honduras. Preliminary objections. Judgment of June 26, 1987. Series C No. 1, para. 88; Case of Nogueira de Carvalho et al. v. Brazil. Preliminary objections and merits. Judgment of November 28 , 2006. Series C No. 161, para. 51.

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18. In the instant case, the Court observes that the State did not allege, at the appropriate procedural opportunity, that the recourses to appeal the decisions on habeas corpus and remand in custody, and also the civil action for damages, had not been exhausted. Accordingly, as indicated in the preceding paragraphs, the Court considers that the State tacitly waived a means of defense that the Convention establishes in its favor and implicitly admitted the inexistence of these recourses or their opportune exhaustion. [FN11] Consequently, it decides to reject the first preliminary objection.

[FN11] Cf. Case of Castillo Páez v. Peru. Preliminary objections. Judgment of January 30, 1996. Series C No. 24, para. 40; Case of the Girls Yean and Bosicov. Dominican Republic. Preliminary objections, merits, reparations, and costs. Judgment of September 8, 2005. Series C No. 130, para. 64, and Case of Nogueira de Carvalho et al., supra note 10, para. 53.

B) THE FOURTH LEVEL OF JURISDICTION FORMULA

19. In the State's opinion, the Court lacks jurisdiction to rule on the instant case, because this is "reserved to the domestic courts of justice." The State indicated that "[t]he Inter-American Court cannot examine the contesting of judicial decisions [such as orders for material or personal precautionary measures], because to do so would be to disregard the subsidiary or complementary nature of the system." According to the State, the "basic principle" of the fourth level of jurisdiction formula is that the organs of the Inter-American system "cannot review judgments delivered by the national courts, acting within their own sphere of competence and applying the appropriate judicial guarantees, unless it is considering the possibility that there may have been a violation of the Convention."

20. The Commission stated that the State's arguments on this point "do not provide even the minimum grounds for a preliminary objection," and added that it had "lodged this case before the Court, not to review issues of domestic law, but rather to determine the State's responsibility for failing to comply with its obligations under the Convention."

21. The representatives argued that the State "invalidated its own claim" when it acknowledged that judgments delivered by the domestic courts could be reviewed if it was considered that "there may have been a violation of the Convention."

22. The Court reiterates that clarification of whether the State has violated its international obligations owing to the actions of its judicial bodies may lead to a situation in which the Court must examine the respective domestic proceedings in order to establish their compatibility with the Inter-American Convention. In light of this, the domestic proceedings must be considered as a whole, including the decisions of the courts of appeal. The role of international courts is to determine whether the entire proceedings, including the incorporation of evidence, are in keeping with the Convention. [FN12]

[FN12] Cf. Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Preliminary objections. Judgment of September 11, 1997. Series C No. 32, para. 222; Case of the Yakye Axa Indigenous Community v. Paraguay. Merits, reparations, and costs. Judgment of June 17, 2005. Series C No. 125, para. 109, and Case of Lori Berenson Mejía v. Peru. Merits, reparations, and costs. Judgment of November 25, 2004. Series C No. 119, para. 133.

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23. In the instant case, the Commission's application does not attempt to review the rulings or decisions of the domestic courts, but asks the Court to declare that the State violated the principles of the Inter-American Convention during the detention and trial of Messrs. Chaparro and Lapo. Consequently, the Court considers that this is not a preliminary objection, but rather a matter related to the merits of the case.

IV. COMPETENCE

24. The Court is competent to hear this case in the terms of Articles 62(3) and 63(1) of the Inter-American Convention, because Ecuador has been a State Party to the Convention since December 28, 1977, and accepted the compulsory jurisdiction of the Court on July 24, 1984.

V. PARTIAL ACKNOWLEDGEMENT OF RESPONSIBILITY

25. During the public hearing held in this case (supra para. 8), the representative of the State made a partial acquiescence, as follows:

The Ecuadorean State regrets the excesses committed by public officials who intervened in the detention and trial of the alleged victims, Juan Carlos Chaparro Alvarez and Freddy Hernán Lapo, and, over and above my role as the State's Agent, I would personally like to express my regret for the unpleasant situation that the alleged victims experienced during the domestic proceedings against them for the alleged crime of drug-trafficking, of which they were ultimately acquitted.
[…]
The State acknowledges the violations of the rights protected by Articles 2, 5, 8 and 25 of the Inter-American Convention on Human Rights.

26. During this public hearing, the Commission and the representatives assessed the State's acquiescence.

27. According to Articles 53(2) and 55 of the Rules of Procedure, in exercise of its inherent power concerning the international protection of human rights, the Court may determine whether an acknowledgement of international responsibility by a respondent State offers sufficient grounds, in the terms of the Inter-American Convention, to proceed with consideration of the merits and a decision on reparations and costs. To this end, the Court examines the situation in each specific case. [FN13] Accordingly, it will proceed to define the terms and scope of the partial acknowledgement of international responsibility made by the State and the extent of the subsisting dispute.

[FN13] Cf. Case of Myrna Mack Chang v. Guatemala. Merits, reparations, and costs. Judgment of November 25, 2003. Series C No. 101, para. 105; Case of Zambrano Vélez et al. v. Ecuador. Merits, reparations, and costs. Judgment of July 4, 2007. Series C No. 166, para. 12, and Case of the Rochela Massacre v. Colombia. Merits, reparations, and costs. Judgment of May 11, 2007. Series C No. 163, para. 9.

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28. The Court observes, first, that the State failed to describe in detail all the facts that it acknowledged. Consequently, the Court finds that, by acquiescing to the claims of the Commission and the representatives concerning the violations of Articles 2, 5, 8 and 25 of the Convention, the State implicitly acknowledged the facts that, according to the application, comprise those violations, in the understanding that the application provides the factual framework for the proceedings. [FN14] The Court therefore declares that the dispute has ceased concerning the facts and their juridical consequence in relation to Articles 2, 5, 8 and 25 of the Convention.

[FN14] Cf. Case of the “Mapiripán Massacre” v. Colombia. Merits, reparations, and costs. Judgment of September 15, 2005. Series C No. 134, para. 59; Case of Zambrano Vélez et al., supra note 13, para. 17, and Case of the Rochela Massacre, supra note 13, para. 30.

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29. The State excluded from its acquiescence, the facts related to Articles 7 and 21 of the Convention, so the dispute on these points continues.

30. Second, the Court observes that the State accepted certain measures of reparation requested by the Commission. More precisely, the State indicated:

Even before the delivery of the corresponding judgment by the Inter-American Court of Human Rights, the Ecuadorean State requests the representative of the alleged victims to cooperate in the process of the review and adaptation of Ecuadorean laws, specifically those regulating the criminal prosecution procedure for cases involving drug-trafficking crimes, in order to adapt certain norms that could lead to violations of the provisions of the Inter-American Convention on Human Rights.

In addition, the Ecuadorean State will make every effort, through the National Constituent Assembly to be installed shortly, to adapt the constitutional guarantee of habeas corpus to international standards, […] so that the judicial verification of whether an arrest is in keeping with international conventions, the Constitution, and the law is no longer entrusted to the senior municipal representative.

31. Nevertheless, the State questioned the amounts requested by the representatives for compensation and reimbursement of costs and expenses, and did not refer to the other measures of reparation requested.

32. In the corresponding chapter, the Court will examine the measures of reparation that are appropriate in this case, bearing in mind the State's observations.

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33. The Court considers that the State's partial acknowledgement of international responsibility makes a positive contribution to the development of these proceedings, to the satisfactory functioning of the Inter-American jurisdiction over human rights, to the exercise of the principles that inspire the Inter-American Convention, and to the conduct that the States are obliged to observe in this regard. [FN15]

[FN15] Cf. Case of Zambrano Vélez et al., supra note 13, para. 30; Case of Bueno Alves v. Argentina. Merits, reparations, and costs. Judgment of 11 de mayo de 2007. Series C No. 164, para. 34, and Case of the Rochela Massacre, supra note 13, para. 29.

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34. Taking into account the responsibilities incumbent on this Court, as an international body entrusted with the protection of human rights, the Court deems it necessary to deliver a judgment in which it determines the facts and all the elements relating to the merits of the case, as well as the corresponding consequences, since the delivery of the judgment contributes to making reparation to Messrs. Chaparro and Lapo, to avoiding a repetition of similar facts and, in summary, to satisfying the purposes of the Inter-American jurisdiction over human rights. [FN16]

[FN16] Cf. Case of La Cantuta v. Peru. Merits, reparations, and costs. Judgment of November 29, 2006. Series C No. 162, para. 57; Case of Bueno Alves, supra note 15, para. 35, and Case of the Rochela Massacre, supra note 13, para. 54.

VI. EVIDENCE

35. Based on Articles 44 and 45 of the Rules of Procedure, and also on the Court's case law regarding evidence and its assessment, [FN17] the Court will proceed to examine and assess the documentary probative elements forwarded by the Commission, the representatives, and the

State at different procedural opportunities or as helpful evidence requested by the President, as well as the expert witness statements made by affidavit. In this regard, the Court will take into account the principles of sound criticism, within the corresponding legal framework. [FN18]

[FN17] Cf. Case of Almonacid Arellano et al. v. Chile. Preliminary objections, merits, reparations, and costs. Judgment of September 26, 2006. Series C No. 154, paras. 66 to 69; Case of Servellón García et al. v. Honduras. Merits, reparations, and costs. Judgment of September 21, 2006. Series C No. 152, paras. 32 to 35, and Case of Ximenes Lopes v. Brazil. Merits, reparations, and costs. Judgment of July 4, 2006. Series C No. 149, paras. 42 to 45.
[FN18] Cf. Case of La Cantuta, supra note 16, para. 59; The Miguel Castro Castro Prison v. Peru. Merits, reparations, and costs. Judgment of November 25, 2006. Series C No. 160, paras. 182 to 185, and Case of Nogueira Carvalho et al., supra note 10, para. 55.

A) DOCUMENTARY, TESTIMONIAL AND EXPERT EVIDENCE

36. The President of the Court decided that the sworn statements and those made before public notary (affidavit) of the following expert witnesses proposed by the Commission should be received:

a) Yazmín Kuri González testified, inter alia, about the alleged financial losses suffered by the alleged victims and the corresponding reparations, and
b) Jorge Fantoni Camba testified, inter alia, about the nature and application of the Ecuadorean Narcotic Drugs and Psychotropic Substances Act (hereinafter "the NDPSA").

37. Regarding the evidence provided during the public hearing, the Court heard the statements of the alleged victims offered by the Commission. Mr. Chaparro and Mr. Lapo testified, inter alia, about their arrest, the measures taken to seek justice, the alleged deprivation and subsequent return of their property, the judicial actions filed, and the consequences of the judicial proceedings against them.

38. Also, during the public hearing (supra para. 8), the State's Deputy Agent declared, inter alia, that:

If Mr. Lapo, if Mr. Chaparro, through their representative, prove that a certain type of possession protected by their right to property has been harmed, the Ecuadorean State, in good faith, is willing to acknowledge such harm, provided it is supported by an expert report, duly prepared by an impartial professional who is an expert on these matters.
We consider it premature for the Inter-American Court of Human Rights to rule on the type of claims made by the representative of the alleged victims, because the views contained in his written brief containing pleadings, motions and evidence are not duly supported by the impartial opinion of an expert, who should be appointed to establish possible losses, which, if verified, must be recognized by the Ecuadorean State.

[…] If the Inter-American Court attributes responsibility to the Ecuadorean State in relation to Article 21 of the Convention, we demand that this should be based on an expert report duly prepared by a qualified person who has no relationship of any kind to the parties to this case.

39. In view of the above, the President, in consultation with the other judges of the Court and in accordance with Article 45 of the Rules of Procedure, requested the State and the representatives to each submit a list of professionals, experts in evaluating losses, so that the President could select an expert from each list to evaluate the possible pecuniary losses that the facts of this case had allegedly caused to Messrs. Chaparro and Lapo. He also advised the parties that, since the preparation of the expert report responded to a request by the State, the State was responsible for covering all the costs involved in its preparation, pursuant to Article 46 of the Rules of Procedure.

40. Subsequently, the State sent two communications to the Court [FN19] in which it indicated that the Court had misinterpreted its Agent's statements. According to the State, it had not proposed or requested an expert report, so that "it [would] not assume the costs required by the preparation of this evidence."

[FN19] Official communication No. 001876 of May 30, 2007 (file on merits, volume II, folios 560 to 562) and official communication No. 2062 of June 11, 2007, received on June 12, 2007 (file on merits, volume II, folios 762).

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41. On July 17, 2007, based on the State's refusal to cover the costs of the evidence it had requested, the Court decided that it was not necessary to proceed to appoint independent experts, and that it would deliver judgment based on the evidence submitted by the parties.

B) ASSESSMENT OF THE EVIDENCE

42. In this case, as in others, [FN20] the Court admits the probative value of those documents presented by the parties at the appropriate procedural opportunity that were not contested or opposed, and whose authenticity was not questioned. Regarding the documents forwarded as helpful evidence (supra paras. 9 and 11), the Court incorporates them into the body of evidence in this case, in accordance with Article 45(2) of the Rules of Procedure. However, it notes that the State forwarded the evidence requested (supra paras. 8 and 9) with a delay of one month. The Court recalls that the parties must submit the evidence that the Court requests so that it has as many probative elements as possible when examining the facts and to justify its decisions. [FN21]

[FN20] Cf. Case of Velásquez Rodríguez. Merits. Judgment of July 29, 1988. Series C No. 4, para. 140; Case of Cantoral Huamaní and García Santa Cruz v. Peru. Preliminary objection, merits, reparations, and costs. Judgment of July 10, 2007. Series C No. 167, para. 41, and Case of Zambrano Vélez et al., supra note 13, para. 37.
[FN21] Cf. Case of Zambrano Vélez et al., supra note 13, para. 33.

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43. The Court admits the documents sent by the representatives on December 1 and 11, 2006, regarding the "certifications of the police records" of Messrs. Chaparro and Lapo, and also the documentation forwarded by the State together with its final arguments brief because, although this documentation was produced after the principal briefs had been remitted (supra paras. 1 and 5), it was not opposed, and its authenticity and truth were not contested.

44. Regarding the documents forwarded by the State on September 12 and 17, 2007 (supra para. 10), the Court reiterates that, according to Article 44(1) of the Rules of Procedure, "[i]tems of evidence tendered by the parties shall be admissible only if […] contained in the application and in the reply thereto." Nevertheless, it considers that these documents are useful to decide the instant case and will assess them together with the whole body of evidence and taking into account the observations of the parties.

45. Regarding the newspaper Articles submitted by the parties, the Court considers that they can be assessed when they refer to well-known public facts or non-rectified declarations of State officials, or when they corroborate aspects related to the case and are authenticated by other means. [FN22]

[FN22] Cf. Case of Velásquez Rodríguez, supra note 20, para. 146; Case of La Cantuta, supra note 16, para. 62, and Case of Escué Zapata v. Colombia. Merits, reparations, and costs. Judgment of July 4, 2007. Series C No. 165, para. 28.

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46. Regarding the testimonies and expert opinions, the Court considers they are pertinent when they are in keeping with the purpose defined by the President in the Order in which he instructed that they should be received (supra para. 8), taking into account the observations submitted by the parties. The Court considers that the testimonial statements made by the alleged victims must be assessed together with all the evidence in the case and not in isolation, since the victims have a direct interest in the case. [FN23]

[FN23] Cf. Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Reparations and costs. Judgment of May 25, 2001. Series C No. 76, para. 70; Case of Cantoral Huamaní and García Santa Cruz, supra note 20, para. 44 and Case of Zambrano Vélez et al., supra note 13, para. 40.

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47. Having examined the probative elements in the case file, the Court will now examine the alleged violations, considering the facts that have been acknowledged and those that will be proved [FN24] in the respective chapter. The Court will also examine the allegations of the parties that it deems pertinent, bearing in mind the acknowledgment of the facts and the State's acquiescence.

[FN24] Hereafter, this judgment contains facts that the Court finds have been established based on the State's acquiescence. Some of these facts have been complemented with probative elements, in which case, the respective footnotes are included.

VII. ARTICLE 7 (RIGHT TO PERSONAL LIBERTY) [FN25] IN RELATION TO ARTICLES 1(1) (OBLIGATION TO RESPECT RIGHTS) [FN26] AND 2 (DOMESTIC LEGAL EFFECTS) [FN27] OF THE INTER-AMERICAN CONVENTION

[FN25] The relevant provisions of Article 7 of the Convention establish:

1. Every person has the right to personal liberty and security.
2. No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto.
3. No one shall be subject to arbitrary arrest or imprisonment.
4. Anyone who is detained shall be informed of the reasons for his detention and shall be promptly notified of the charge or charges against him.
5. 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.
6. Anyone who is deprived of his liberty shall be entitled to recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful. In States Parties whose laws provide that anyone who believes himself to be threatened with deprivation of his liberty is entitled to recourse to a competent court in order that it may decide on the lawfulness of such threat, this remedy may not be restricted or abolished. The interested party or another person in his behalf is entitled to seek these remedies.

[FN26] Article 1(1) of the Convention establishes that:

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

[FN27] Article 2 of the Convention stipulates that:

Where 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 or freedoms.

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48. The Commission alleged that the right embodied in Article 7 of the Convention was violated to the detriment of Mr. Chaparro, "because the method or procedure used for his arrest and subsequent treatment […] was contrary […] to domestic norms," given that it was

implemented "without there being any evidence that connected him to the proceedings, and without his having been shown the arrest warrant […] or […] informed of the reasons for it [and of] his right to consular assistance[; nor] was he guaranteed his right to a technical defense." Furthermore, it stated that Mr. Lapo was arrested "in circumstances that did not qualify for an exception to the need for a judicial order […], without being informed of the reasons for [the arrest], and without being guaranteed the right to a technical defense." Lastly, the Commission stated that the two victims were brought before a police agent and a prosecutor, neither of whom had the power to release them, and it was only 23 days after their arrest that they were taken before a judge, which was contrary to domestic norms. It also indicated that they were remanded in custody for an excessive length of time, that the recourses filed to contest the deprivation of their liberty were ineffective, and that the remedy of habeas corpus "embodied in Article 28 of the Constitution […] is not compatible with the requirements of Article 7[(6)] of the Convention[,] because it establishes that a Mayor – in other words, an administrative authority – is the person responsible for deciding whether an arrest is lawful." The representatives endorsed these allegations.

49. The State alleged that the arrests were carried out under strict judicial control and orders, and respecting domestic law, because the Twelfth Criminal Judge "coordinated and supervised the procedure of the arrest and search of the respective persons and property in the case," going to "Mr. Chaparro's residence, together with police officials, in order to detain him," and subsequently going to the Plumavit factory to search it and detain Mr. Lapo. For the State, the procedure that led to the arrest of the victims was reasonable, based on the work of monitoring, interrogation of third parties and prior analysis; it was also predictable and proportionate. According to the State, at the time of their arrest, Messrs. Chaparro and Lapo were informed of the reasons, and notified of the charges against them. It added that, although at one time there were serious reasons to consider that the victims were responsible for drug-trafficking, during subsequent proceedings, the evidence was a determining factor to absolve them from guilt, "which is perfectly possible in criminal proceedings."

50. To examine the dispute, the Court will first provide a general overview of the right to personal liberty and security. It will then refer to the alleged unlawful and arbitrary nature of the deprivation of the victims' liberty; the alleged lack of immediate information on the reasons for the detention; the alleged ineffectiveness of the recourses filed to contest their arrest and, lastly, the alleged violation of the right to be tried within a reasonable time or to be released.

A) THE RIGHT TO PERSONAL LIBERTY AND SECURITY

51. Article 7 of the Convention contains two distinct types of regulations: one general, the other specific. The general one is contained in the first subparagraph: "[e]very person has the right to personal liberty and security"; while the specific one is composed of a series of guarantees that protect the right not to be deprived of liberty unlawfully (Art. 7(2)) or in an arbitrary manner (Art. 7(3)), to be informed of the reasons for the detention and the charges brought against him (Art. 7(4)), to judicial control of the deprivation of liberty and the reasonable length of time of the remand in custody (Art. 7(5)), to contest the lawfulness of the arrest (Art. 7(6)), and not to be detained for debt (Art. 7(7)).

52. In its broadest sense, liberty is the ability to do or not do all that is lawfully allowed. In other words, it is the right of every person to organize his individual and social life in keeping with his own choices and beliefs, and in accordance with the law. Security, on the other hand, is the absence of interferences that restrict or limit liberty beyond what is reasonable. Defined as such, liberty is thus a basic human right, inherent in the attributes of the person, that crosscuts the entire American Convention. Indeed, the Preamble underscores the intention of the States of the America to consolidate "a system of personal liberty and social justice based on respect for the essential rights of man," and their recognition that "the ideal of free men enjoying freedom from fear and want can be achieved only if conditions are created whereby everyone may enjoy his economic, social, and cultural rights, as well as his civil and political rights." Thus, each human right protects an aspect of the liberty of the individual.

53. In the case of Article 7 of the Convention, this protects exclusively the right to physical liberty and covers physical conducts that presuppose the actual presence of the holder of the right and that are normally expressed in physical movement. Security should also be understood as protection against all unlawful or arbitrary interference with physical liberty. [FN28] However, this right may be exercised in many ways, and what the American Convention regulates are the limits or restrictions that the State may impose. This explains why Article 7(1) establishes in general terms the right to liberty and security and the other subparagraphs refer to the different guarantees that must be provided when depriving a person of their liberty. This also explains why the way in which domestic laws affect the right to liberty is characteristically negative, when they allow liberty to be deprived or restricted. Consequently, liberty is always the rule and the limitation or restriction always the exception.

[FN28] The European Court has also understood this to be so, when it considered that "[i]n proclaiming the "right to liberty", paragraph 1 of Article 5 (art. 5-1) is contemplating individual liberty in its classic sense, that is to say the physical liberty of the person," Cf. ECHR, Case of Engel and others v. The Netherlands, Judgment of 8 June 1976, Applications Nos. 5100/71; 5101/71; 5102/71; 5354/72; 5370/72, para. 57.

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54. Lastly, the Court emphasizes that any violation of subparagraphs 2 to 7 of Article 7 of the Convention necessarily entails the violation of Article 7(1) thereof, because the failure to respect the guarantees of the person deprived of liberty leads to the lack of protection of that person's right to liberty.

B) UNLAWFULNESS OF THE ARRESTS OF MESSRS. CHAPARRO AND LAPO

55. Article 7(2) of the Convention establishes that "[n]o 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."

56. This subparagraph of Article 7 recognizes the main guarantee of the right to physical liberty: the legal exception, according to which the right to personal liberty can only be affected by a law. It is worth repeating that this Court understands a "law" to be:

A general legal norm closely related to the general welfare, enacted by democratically elected legislative bodies established by the Constitution, and formulated according to the procedures set forth in the Constitutions of the States Parties for that purpose. [FN29]

[FN29] Cf. 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.

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57. The legal exception must necessarily be accompanied by the principle of legal definition of the offense (tipicidad), which obliges the States to establish, as specifically as possible and "beforehand," the "reasons" and "conditions" for the deprivation of physical liberty. Hence, Article 7(2) of the Convention refers automatically to domestic law. Accordingly, any requirement established in domestic law that is not complied with when depriving a person of his liberty will cause this deprivation to be unlawful and contrary to the American Convention. The analysis of the compatibility of domestic laws with the Convention will be made when examining subparagraph 3 of Article 7.

58. Thus the Court's task is to verify that the arrests of Messrs. Chaparro and Lapo were carried out in keeping with Ecuadorean legislation.

59. Article 22(19) of the Constitution of Ecuador in force at the time of the facts stipulated that:

(h) No one shall be deprived of his liberty, unless this is based on an order in writing from a competent authority, in the cases, for the time, and with the formalities established by law, except in flagrante delicto, in which case, a person may not be held for more than twenty-four hours unless he has been formally charged. […].
(i) All persons shall be informed immediately of the reason for their arrest.

60. The Code of Criminal Procedure applicable at the time of the victims' arrest established that:

Art. 170. In order to guarantee the presence of the accused during the proceedings, as well as the payment of the compensation for damages to the aggrieved party and the procedural costs, the judge may order precautionary measures of a personal or material nature.
Art. 171. The precautionary measures of a personal nature are arrest and remand in custody. […]
Art. 172. In order to investigate whether a crime has been committed, before initiating the respective criminal proceedings, the competent judge may order the arrest of a person, based on either personal knowledge, or verbal or written reports of the National Police or the Judicial Police or any other person which establish that a crime has been committed together with the corresponding presumptions of responsibility.
This arrest shall be ordered by means of a warrant that shall include the following requirements:
1. The reasons for the arrest;

2. The place and date of issue, and
3. The signature of the competent judge.

In order to carry out the arrest order, the said warrant shall be delivered to an agent of the National Police or the Judicial Police.

Art. 173. The arrest referred to in the preceding Article may not exceed forty-eight hours, and within this period, if it is found that the detained person has not intervened in the crime under investigation, he shall be released immediately. To the contrary, the respective criminal proceedings shall be opened and, if applicable, an order for remand in custody shall be issued.

61. The Court will examine whether the facts of this case are compatible with the domestic norms indicated in the preceding paragraphs in relation to the following points: (a) the arrest of Messrs. Chaparro and Lapo; (b) the information about the reasons for the arrest, and (c) the duration of the detention.

a) The arrest of Messrs. Chaparro and Lapo

62. According to the police report entitled "Operation Rivera," several people were using the fish exporting firm, "Mariscos Oreana Maror," to carry out "international drug-trafficking" activities. [FN30] According to the Police, ice chests manufactured in the Plumavit factory owned by Mr. Chaparro and in which Mr. Lapo worked as plant manager, were used to ship the alkaloid. [FN31]

[FN30] Cf. report No. 512-JPA-G-97 concerning "Operativo Rivera" issued on December 4, 1997, by two Police investigators and addressed to the Guayas Provincial Anti-narcotics Chief (judicial case file, volumes 15, 16 and 17, folios 3011, 3023 and 3024).

[FN31] Cf. report No. 512-JPA-G-97, supra note 30 (folios 3018 to 3021).

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63. On November 14, 1997, after receiving from the Guayas Anti-narcotics Provincial Chief a report on "the existence of a criminal drug-trafficking organization […] that [was] planning to make a possible shipment of drugs to Miami," [FN32] the Guayas Twelfth Criminal Judge ordered the arrest [FN33] of thirteen persons, including Mr. Chaparro, so that they could be investigated "for committing the crime of international drug trafficking." [FN34] The respective arrest warrant (boleto) was issued the same day. [FN35] On November 15, 1997, at 4.25 p.m., and in execution of this order, the Guayas Anti-narcotics Police proceeded to detain Mr. Chaparro; this was done in the presence of the judge. [FN36]

[FN32] Cf. report issued by the Guayas Provincial Anti-narcotics Chief on November 14, 1997 (file of appendixes to the application, appendix 1, folio 817).

[FN33] Cf. court order (auto) for the arrest of Mr. Chaparro and the search of the Plumavit factory issued by the Guayas Twelfth Criminal Judge on November 14, 1997 (file of appendixes to the application, appendix 2, folio 822 and 823).

[FN34] Cf. warrant for the arrest of Mr. Chaparro issued by the Guayas Twelfth Criminal Judge on November 14, 1997 (file of appendixes to the application, appendix 3, folio 829).

[FN35] Cf. arrest warrant issued on November 14, 1997, supra note 34.
[FN36] Cf. report made to the Guayas Provincial Anti-narcotics Chief on November 15, 1997 (file of appendixes to the application, appendix 5, folio 834).
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64. In this regard, the Court observes that the arrest of Mr. Chaparro was preceded by an arrest warrant issued in the context of a criminal investigation by a competent judge; in other words, pursuant to the previously indicated provisions of domestic law. Therefore, there was no violation of Article 7(2) of the Inter-American Convention to the detriment of Mr. Chaparro on this point.

65. Regarding Mr. Lapo, on November 14, 1997, the same Guayas Twelfth Criminal Judge ordered the search of the Plumavit factory, [FN37] because, according to the Police, the premises were used by the "criminal drug-trafficking organization." During the search, carried out on November 15, 1997, the police agents detained thirteen Plumavit employees, including Mr. Lapo. [FN38]

[FN37] Cf. court order of November 14, 1997, supra note 33.
[FN38] Cf. arrest report submitted to the Guayas Provincial Anti-narcotics Chief on November 15, 1997 (judicial case file, volume 1, folios 1310 and 1311).
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66. The Court observes that the warrant for the arrest of Mr. Lapo is dated November 15, 1997, [FN39] the day that he was detained, and that the order for his arrest issued by the judge is dated November 18, 1997, three days after his arrest. These irregularities prevent the Court from establishing the existence of judicial authorization prior to Mr. Lapo's arrest that would comply with domestic laws. Moreover, the State has not provided a reasonable explanation. Therefore, the Court finds Ecuador responsible for the violation of Article 7(2) of the Convention to the detriment of Mr. Lapo.

[FN39] Cf. warrant issued on November 15, 1997, by the Guayas Twelfth Criminal Judge, for the arrest of Mr. Lapo (judicial case file, volume 2, folio 1489).

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67. The State asked this Court to rule on whether "the presence of a judge […] replaces [...] the written order of the competent judge."

68. In this regard, the Court points out that domestic law does not contemplate this possibility, and that any arrest carried out without a written judicial order, except in flagrante delicto, would be unlawful.

b) Information about the reasons for the arrest

69. As can be seen from paragraph 59 supra, domestic law requires that "[a]ll persons shall be informed immediately of the reason for their arrest." In addition, Article 7(4) of the American Convention establishes that "[a]nyone who is detained shall be informed of the reasons for his arrest." This leads the Court to examine the facts of the instant case under these two normative parameters: one based on domestic law and the other on the Convention. If it is established that the State did not inform the victims of the "motives" or "reasons" for their arrest, the arrest would be unlawful and, consequently, contrary to Article 7(2) of the Convention; but, it would also constitute a violation of the right embodied in Article 7(4) thereof.

70. In Juan Humberto Sánchez v. Honduras, the Court established that the information on the "motives and reasons" for the arrest must be provided "when [the arrest] occurs," as this "constitutes a mechanism to avoid unlawful or arbitrary arrests as of the very moment of the deprivation of liberty and, also, guarantees the individual's right of defense." [FN40] In addition, the right to be informed of the reasons for the arrest allows the detained person to contest its lawfulness, using the legal mechanisms that all the States must offer pursuant to Article 7(6) of the Convention.

[FN40] Cf. Case of Juan Humberto Sánchez v. Honduras. Preliminary objection, merits, reparations, and costs. Judgment of June 7, 2003. Series C No. 99, para. 82.

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71. The information about the motives and reasons for the arrest necessarily supposes, first, providing information on the arrest itself. The detained person must understand that he is being detained. Second, the agent who carries out the arrest must inform him in simple language, free of technical terms, about the essential legal grounds and facts on which the arrest is based. Article 7(4) of the Convention is not satisfied by the mere mention of the legal grounds.

72. In this case, the Commission and the representatives stated that Mr. Chaparro was not informed that he was being detained and was simply told that he should accompany the police agents to make a statement. The State merely rejected these facts in general terms without providing or referring to concrete evidence. In brief, the Court has little evidence about these facts.

73. In the instant case, the victim has no available means of proving this fact. His allegation is of a negative nature, and indicates the inexistence of a fact. The State declares that the information about the reasons for the arrest was provided. This is an allegation of a positive nature and, thus, susceptible of proof. Moreover, if it is recalled that, on other occasions, the Court has established that "in proceedings on human rights violations, the defense of the State cannot be based on the impossibility of the plaintiff to provide evidence that, in many cases, cannot be obtained without the cooperation of the State," [FN41] this leads to the conclusion that the burden of proof on this point corresponds to the State. Consequently, the Court considers that the State has not proved that its authorities informed Mr. Chaparro of the motives and reasons for his arrest, which constitutes a violation of Article 7(4) of the Convention and, since it is also contrary to domestic law, of Article 7(2) of this treaty to the detriment of Mr. Chaparro.

[FN41] Case of Velásquez Rodríguez, supra note 20, para. 135; Case of Zambrano Vélez et al., supra note 13, para. 108, and Case of the Yakye Axa Indigenous Community, supra note 12, para. 16.

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74. Furthermore, both the Commission and the representatives question the lawfulness of the arrest, affirming that Mr. Chaparro was not shown the respective arrest warrant.

75. This Court notes, first, that, under domestic law, there is no formal requirement that the detained person must be shown the actual court order. Accordingly, there cannot be unlawfulness in the terms of Article 7(2) of the Convention.

76. Second, the first obligation of Article 7(4) of the Convention does not specify that the information that the detained person should receive must be in writing. The Court considers that this obligation can be complied with orally; however, this is not the case of the second obligation of Article 7(4) of the Convention regarding prompt notification of the charge or charges against him, which must be given in writing. Nevertheless, in the instant case, it is not necessary to examine the second obligation of Article 7(4) of the Convention because, as established in paragraph 73 above, the State failed to comply with the first obligation of this Article.

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77. In the case of Mr. Lapo, the Court finds it unnecessary to examine whether he was informed of the purpose and reasons for his arrest, since it has been decided that the arrest itself was unlawful (supra para. 66) in clear violation of Article 7(2) of the Convention.

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78. The Commission alleged that the right to liberty of Messrs. Chaparro and Lapo was also violated because they were not "guaranteed a technical defense" and because Mr. Chaparro was not advised of his right to consular assistance, since he was a foreigner.

79. The Court finds that the respective analysis should be made in the context of Article 8 of the Convention, and this will be done in the following chapter (infra paras. 155 to 159 and 162 to 165).

c) Duration of the detention

80. The Commission stated that the two victims were brought before the judge "23 days after their arrest," which would be contrary to domestic law and to Article 7(5) of the Inter-American Convention. The State declared that there had been "prompt judicial control" of the arrests.

81. The first part of Article 7(5) of the Convention establishes that the detained person must be brought promptly before a judge. Prompt judicial control is a measure intended to avoid arbitrary or unlawful arrests, bearing in mind that, under the rule of law, the judge is responsible for guaranteeing the rights of the detained person, authorizing the adoption of precautionary or coercive measures when strictly necessary and, in general, ensuring that the accused is treated in a manner in keeping with the presumption of innocence. [FN42]

[FN42] Cf. Case of the Gómez Paquiyauri Brothers v. Peru. Merits, reparations, and costs. Judgment of July 8, 2004. Series C No. 110, para. 96; Case of Maritza Urrutia v. Guatemala. Merits, reparations, and costs. Judgment of November 27, 2003. Series C No. 103, para. 66, and Case of Bulacio v. Argentina. Merits, reparations, and costs. Judgment of September 18, 2003. Series C No. 100, para. 129.

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82. Article 173 of the Code of Criminal Procedure (supra para. 60) established that detention for investigative purposes could not last more than 48 hours, after which the detained person must be released or criminal proceedings opened.

83. From the evidence provided, it is clear that the victims made a first statement before a prosecutor on November 19, 1997; that is, four days after their arrest, and a statement before the judge on December 11, 1997, 26 days after they had been detained.

84. According to the Court's case law in other cases relating to the Ecuadorean State, the victims' statement before the prosecutor cannot be considered to comply with the right to be brought before "a judge or other officer authorized by law to exercise judicial power" embodied in Article 7(5) of the Convention. [FN43]

[FN43] Cf. Case of Tibi v. Ecuador. Preliminary objections, merits, reparations, and costs. Judgment of September 7, 2004. Series C No. 114, para. 119.

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85. Furthermore, the Court does not accept the State's argument that it had complied with Article 7(5) because the judge in the case was present at the time of the arrests and exercised direct judicial control, suggesting that there was no need to bring the victims before her again. Even though the presence of the judge could be described as an additional guarantee, it was not, by itself, sufficient to satisfy the requirement of Article 7(5) of being "brought" before a judge. The judicial authority must hear the detained person personally and evaluate all the explanations that the latter provides, in order to decide whether to proceed to release him or to maintain the deprivation of liberty. In the instant case, there is no evidence that this occurred.

86. In view of the above, the Court finds that the duration of Mr. Chaparro's detention exceeded the permitted legal maximum, thus violating Article 7(2) of the Convention, and that he was not brought before a judge "promptly," in violation of Article 7(5) of the Convention.

87. In Mr. Lapo's case, as indicated above (supra para. 66), his detention was unlawful from the outset so that, whatever its length, it was intrinsically unlawful, making it unnecessary for the Court to examine the maximum duration established in domestic law in order to apply Article 7(2) of the Convention. With regard to Article 7(5) of the Convention, Mr. Lapo was not brought "promptly" before a judge to control the unlawfulness of his arrest, which entailed the violation of that principle.

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88. Based on the above, the Court declares that the State violated the right embodied in Article 7(2), 7(4) and 7(5) of the Convention to the detriment of Mr. Chaparro, and the right embodied in Article 7(2) and 7(5) of this international instrument to the detriment of Mr. Lapo. Consequently, it violated the right to personal liberty of the two victims established in Article 7(1) of the Convention, in relation to the obligation to respect rights established in Article 1(1) thereof.

C) THE ARBITRARY NATURE OF THE DEPRIVATION OF LIBERTY OF MESSRS. CHAPARRO AND LAPO

89. Article 7(3) of the Convention establishes that "no one shall be subjected to arbitrary arrest or imprisonment."

90. On other occasions the Court has established that:

No one may be subjected to arrest or imprisonment for reasons and using methods that – although classified as legal – can be considered incompatible with regard for the fundamental rights of the individual, because they are, among other matters, unreasonable, unpredictable, or disproportionate. [FN44]

[FN44] Cf. Case of Gangaram Panday v. Suriname. Merits, reparations, and costs. Judgment of January 21, 1994. Series C No. 16, para. 47.

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91. The European Court of Human Rights has established that, although any arrest must be made in keeping with a procedure prescribed by domestic law, this domestic law must also be in conformity with the Convention, including the general principles expressed or implied therein. [FN45]

[FN45] Cf. ECHR, Kemmache v. France, Judgment of 24 November 1994, para. 37. The European Court ruled as follows:
The Court reiterates that the words "in accordance with a procedure prescribed by law" essentially refer back to domestic law; they state the need for compliance with the relevant procedure under that law. However, the domestic law must itself be in conformity with the Convention, including the general principles expressed or implied therein. The notion underlying

the term in question is one of fair and proper procedure, namely that any measure depriving a person of his liberty should issue from and be executed by an appropriate authority and should not be arbitrary (see the Winterwerp v. the Netherlands judgment of 24 October 1979, Series A no. 33, pp. 19-20, para. 45).

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92. The Human Rights Committee has stated that:

"[A]rbitrariness" is not to be equated with "against the law", but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law. […T]his means that remand in custody pursuant to lawful arrest must not only be lawful but reasonable in all the circumstances. [FN46]

[FN46] Cf. Human Rights Committee, Case of Albert Womah Mukong v. Cameroon, (458/1991), 21 July 1994, Doc. ONU CCPR/C/51/D/458/1991, para. 9.8.

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93. In brief, it is not sufficient that every reason for deprivation or restriction of the right to liberty is established by law; this law and its application must respect the requirements listed below, to ensure that this measure is not arbitrary: (i) that the purpose of the measures that deprive or restrict liberty is compatible with the Convention. It is worth indicating that the Court has recognized that ensuring that the accused does not prevent the proceedings from being conducted or evade the judicial system is a legitimate purpose; [FN47] (ii) that the measures adopted are appropriate to achieve the purpose sought; (iii) that they are necessary, in the sense that they are absolutely essential to achieve the purpose sought and that, among all possible measures, there is no less burdensome one in relation to the right involved, that would be as suitable to achieve the proposed objective. Hence, the Court has indicated that the right to personal liberty supposes that any limitation of this right must be exceptional, [FN48] and (iv) that the measures are strictly proportionate, [FN49] so that the sacrifice inherent in the restriction of the right to liberty is not exaggerated or excessive compared to the advantages obtained from this restriction and the achievement of the purpose sought. Any restriction of liberty that is not based on a justification that will allow an assessment of whether it is adapted to the conditions set out above will be arbitrary and will thus violate Article 7(3) of the Convention. [FN50]

[FN47] Cf. Case of Servellón García et al., supra note 17, para. 90, and Acosta Calderón v. Ecuador. Merits, reparations, and costs. Judgment of June 24, 2005. Series C No. 129, para. 111.
[FN48] Cf. Case of Palamara Iribarne v. Chile. Merits, reparations, and costs. Judgment of November 22, 2005. Series C No. 135, para. 197, and García Asto and Ramírez Rojas v. Peru. Preliminary objection, merits, reparations, and costs. Judgment of November 25, 2005. Series C No. 137, para. 106.
[FN49] Cf. Case of the "Juvenile Reeducation Institute" v. Paraguay. Preliminary objections, merits, reparations, and costs. Judgment of September 2, 2004. Series C No. 112, para. 228.
[FN50] Cf. Case of García Asto and Ramírez Rojas, supra note 48, para. 128.

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94. Based on the above, the Court will now examine: (1) whether the State violated the right embodied in Article 7(3) of the Convention by the detention of Mr. Lapo, and (b) where the order for the remand in custody of Messrs. Chaparro and Lapo, and its maintenance, were arbitrary.

a) The arrest of Mr. Lapo

95. The Commission stated that the arrest of Mr. Lapo was arbitrary because it was made in application of the principle of "grave presumption of responsibility" contained, in its opinion, in Article 56 of the Code of Criminal Procedure, "because the State has not alleged or presented elements that show that he was arrested in flagrante delicto." The Commission considers that this legal norm is contrary to the Ecuadorean Constitution and the American Convention. The State did not submit specific arguments on this point.

96. The Court notes, first, that the Commission did not demonstrate that the legal provision it mentioned had been applied in this specific case and, second, that Mr. Lapo's arrest has already been classified as unlawful from the outset, precisely because it was not preceded by a written order of the judge or by flagrante delicto. Any unlawful arrest entails a degree of arbitrariness, but that arbitrariness is subsumed in the examination of unlawfulness that the Court has made pursuant to Article 7(2) of the Convention. The arbitrariness referred to in Article 7(3) of the Convention has it own juridical content, as indicated in the preceding paragraphs (supra paras. 90).

97. Consequently, the Court declares that the State did not violate Article 7(3) of the Convention in relation to the arrest of Mr. Lapo.

b) The remand in custody of Messrs. Chaparro and Lapo

98. The representatives added that "the rationale" that led the judge to issue the court order to investigate the alleged crime (auto de cabeza de proceso), which required the remand in custody of the two victims, was "invisible to the members of the judiciary, the lawyers, and the victims themselves. There is no evidence […] of the line of reasoning by which […] the perpetration of a crime or simply the existence of a crime could be attributed, except for the mere existence of a police report." The State and the Commission did not submit specific arguments on this point.

99. From the evidence submitted, the Court finds that, on November 17, 1997, two days after the victims' arrest, the judge in charge of the proceedings against them received information from the Anti-narcotics Police [FN51] about the seizure in Guayaquil on November 14, 1997, of 44 thermal insulated boxes belonging to the company "Mariscos Oreana Maror" that contained fish; however, 448 PVC tubes were found within the structure of all the boxes, containing a substance that was later discovered to be heroine and cocaine hydrochloride.

[FN51] Cf. official communication No. 3370-CP2-JPA-G-97 of November 16, 1997, issued by the Guayas Provincial Anti-narcotics Chief (judicial case file, volume 1, folios 1306 to 1308).

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100. Subsequently, on December 8, 1997, 23 days after the victims' arrest, the judge issued a "court order to investigate the alleged crime" in which she stated:

It is observed that the structures of expandable polythene known as thermal insulated boxes or ice chests have a flawless finish[,] thus there is no incision that would allow it to be supposed that the drug packages had been inserted when the thermal boxes were finished[,] because the work shows that the packages or tubes that contained the drugs were placed when the ice chests were being manufactured […]
To date the investigators have determined that the shell company MAROR purchased the ice chests or thermal boxes […] from the manufacturer, AISLANTES PLUMAVIT DEL ECUADOR C. Ltda., owned and managed by JUAN CARLOS CHAPARRO [Á]lvarez, presently in custody, who has supplied the two sizes of ice chest that were seized […]
As the above constitutes a crime that can be investigated and punished de oficio, I issue this court order to investigate the crime and institute a preliminary investigation against: […] JUAN CARLOS CHAPARRO [Á]LVAREZ, FREDDY HERN[Á] LAPO [Í]ÑIGUEZ […]
Since the requirements of art. 177 of the Code of Criminal Procedure are met[,] I issue an order for the remand in custody of: […] JUAN CARLOS CHAPARRO [Á]LVAREZ, FREDDY HERN[Á] LAPO [Í]ÑIGUEZ […]. [FN52]

[FN52] Cf. the court order to investigate the crime dated December 8, 1997, issued by the Guayas Twelfth Criminal Judge (judicial case file, volume 20, folios 3391 to 3393).

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101. The Court has established that, in order to restrict the right to personal liberty using measures such as remand in custody, there must be sufficient evidence to allow reasonable supposition that the person committed to trial has taken part in the criminal offense under investigation. [FN53]

[FN53] Case of Servellón García et al., supra note 17, para. 90.

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102. Likewise, the European Court has indicated that "[t]he 'reasonableness' of the suspicion on which an arrest must be based forms an essential part of the safeguard against arbitrary arrest and detention which is laid down in Article 5(1) [of the European Convention," adding that "having a 'reasonable suspicion' presupposes the existence of facts or information which would satisfy an objective observer that the person concerned may have committed the offence." [FN54]

[FN54] Cf. ECHR, Fox, Campbell and Hartley v. United Kingdom, Judgment of 30 August 1990, para. 32.

The "reasonableness" of the suspicion on which an arrest must be based forms an essential part of the safeguard against arbitrary arrest and detention which is laid down in Article 5 (1) (c) (art. 5-1-c). The Court agrees with the Commission and the Government that having a "reasonable suspicion" presupposes the existence of facts or information which would satisfy an objective observer that the person concerned may have committed the offence. What may be regarded as "reasonable" will however depend upon all the circumstances.
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103. This Court finds that the suspicion must be based on specific facts, expressed in words; that is, not on mere conjectures or abstract intuitions. Consequently, the State should not detain someone to investigate him; to the contrary, it is only authorized to deprive a person of liberty when it has sufficient information to be able to commit him to trial. Nevertheless, even in these circumstances, the deprivation of liberty of the accused cannot be based on general preventive or special preventive purposes, which could be attributed to the punishment, but, as stated above (supra para. 93), can only be based on a legitimate purpose, which is: to ensure that the accused does not prevent the proceedings from being conducted or elude the system of justice. [FN55]

[FN55] Cf. Case of Servellón García et al., supra note 17, para. 90, and Case of Acosta Calderón, supra note 47, para. 111.
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104. Article 170 of the Ecuadorean Code of Criminal Procedure in force at the time of the facts only allowed the judge to order precautionary measures “[i]n order to guarantee the presence of the accused in the proceedings,” while Article 177 established that, “when he considered it necessary,” the judge could issue an order for remand in custody “provided the following procedural information existed: (a) evidence leading to the presumption of the existence of an offense that merited the penalty of deprivation of liberty, and (b) evidence leading to the presumption that the accused was the author of, or an accomplice to, the offense that was the object of the proceedings.” In addition, this Article required that “[t]he judicial order shall describe the evidence on which the order of imprisonment is based.”

105. The court order that required the remand in custody of the victims (supra para. 100) did not include a description, however brief, of the circumstances as regards the time, means and place in which Mr. Lapo supposedly committed the criminal offense, or any indication of the act or omission attributed to him, specifying the elements on which the accusation was based. In Mr. Chaparro’s case, the judicial authority did not provide grounds for why she believed preventive detention was essential “to guarantee the presence” of the accused or to allow the proceedings to be conducted. Furthermore, she did not indicate the offense committed by the two victims. Consequently, the order for remand in custody issued against Messrs. Chaparro and Lapo was arbitrary.

106. Even though the foregoing is sufficient to declare the violation of Article 7(3) of the Convention, the Court considers it important to refer to the Commission’s allegation that, during the criminal proceedings filed against the victims, the grounds for the measure depriving them of their liberty were never reviewed. The State did not present specific arguments on this point.

107. The Court emphasizes that it is the national authorities who are responsible for assessing the pertinence of maintaining the precautionary measures they issue pursuant to their own laws. When carrying out this task, the national authorities should provide sufficient grounds to permit the interested parties to know the reasons why the restriction of their liberty is being maintained. To determine this, it is necessary to examine whether the judicial proceedings guaranteed not only the formal possibility of submitting arguments, but the form in which the right to defense was effectively manifested as a real safeguard of the rights of the accused. This implies a prompt and justified response by the authorities to the arguments in answer to the charges. In this regard, the Court has underscored that the decisions adopted by national bodies that could affect human rights must be duly justified, because, if not, they would be arbitrary decisions. [FN56] The grounds are the exteriorization of the reasoned justification that allows a conclusion to be reached. In this understanding, the Court summarizes the arguments made by the victims to obtain their release and the response they obtained from the competent authorities.

[FN56] Case of Yatama v. Nicaragua. Judgment of June 23, 2005. Series C No. 127, para. 144, 153 and 164. Also, the European Court has stated that judges must indicate the reasons underlying their decisions. See Eur. Court H.R., Hadjianstassiou v. Greece, Judgment of 16 December 1992, para. 23.

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108. In the instant case, the "presumptions of responsibility" that the Police had against Mr. Chaparro were based, inter alia, on the fact that:

The MAROR company, which is owned by the international drug-trafficking organization, bought the ice chests for packing the fish from PLUMAVIT. […]
From examining the system used to camouflage the seized cocaine and heroine hydrochloride, it is indisputable that the PVC tubes that contained the drugs […] were placed in the molds of the injector machines so that, when the ice chests were made, the drugs became a structural part of the base of the ice chests, which means that it was in factory where these thermal insulated boxes were made […] that the actual camouflage of the drugs took place.
[…]
In his eagerness to avoid responsibility, JUAN CARLOS CHAPARRO [Á]LVAREZ […] tr[ied] to explain that [the ice chests] were not manufactured in his company […], and it was possible that, if they were not manufactured in this company, they had been stored on his premises. […]
In this case, responsibility was attributed to JUAN CARLOS CHAPARRO [Á]LVAREZ, in his capacity as Owner Manager of PLUMAVIT and legal representative and also because, as the owner, he was aware and had full knowledge of everything that took place in his company. [FN57]

[FN57] Cf. report No. 512-JPA-G-97, supra note 30 (folios 3018 to 3020).

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109. The Police indicated that Mr. Lapo:

Presented a series of technical explanations that attempted to support his version, to the effect that the ice chests where the drugs were found were not manufacture in PLUMAVIT. But, as a technician, he is able to change the molds and respond to any of the client's requirements and, even if the ice chests in question had not been made there, he was present […] during the night-time delivery of the finished [ice] chests with the drugs contained in their structure […]. [FN58]

[FN58] Cf. report No. 512-JPA-G-97, supra note 30 (folio 3021).

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110. During the domestic proceedings, five expert appraisals were carried out, and most of the arguments submitted by the defense were based on them. The first appraisal concluded that the mold found in the Plumavit factory "did not correspond to the one used to make the boxes involved in the criminal offense." [FN59] This expert appraisal was requested by the Guayas INTERPOL Provincial Chief, [FN60] before the Police sent their report to the judge in the case and, according to Mr. Chaparro, at his own express request. Indeed, during the public hearing in this case (supra para. 8), Mr. Chaparro indicated that, after his arrest he had been taken to the place where the boxes involved in the criminal offense had been seized (supra para. 99). When he saw them, he informed the police agents that those ice chests had not been manufactured by his factory and, to prove this, he requested that an expert appraisal be carried out. The Police did not wait for the result of the appraisal before sending their report to the judge (supra para. 99), and the latter, in turn, did not wait for the result to charge Messrs. Chaparro and Lapo and to order their remand in custody. [FN61] The result of the appraisal was finally sent to the judge on December 10, 1997, two days after the court order to investigate the alleged crime (supra para. 100).

[FN59] Cf. Official communication DEC-FIMCP-560-97 issued on December 8, 1997, by the Dean of the Faculty of Mechanical Engineering and Production Sciences of the Escuela Superior Politécnica del Litoral (ESPOL) (file of appendixes to the application, appendix 12, folio 877).
[FN60] Cf. Official communication No. 3597–JPAG–97 issued on November 24, 1997, by the Guayas INTERPOL Provincial Chief (file of appendixes to the application, appendix 9, folios 858-859).
[FN61] The judge was aware that this expert opinion was pending, because she requested it again in the court order to investigate the crime dated December 8, 1997. Cf. order to investigate the crime dated December 8, 1997, supra note 52 (folios 873 and 874).

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111. The second appraisal indicated that the ice chests used in the criminal offense could not have been manufactured by Plumavit. [FN62]

[FN62] Cf. expert opinion provided by Riccardo Delfini Mechelli, engineer, on January 9, 1998, in criminal proceedings #370-97 (judicial case file, volume 26, folios 4066-4067).

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112. After examining the Plumavit machines, the third expert appraisal concluded that the boxes “were not injected in the same mold.” [FN63]

[FN63] Cf. expert opinion provided by Daniel Burgos, engineer, on January 9, 1998, in criminal proceedings #370-97 (judicial case file, volume 26, folios 4064-4065).

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113. The fourth expert appraisal established that the ice chests “were made in different molds, with a different technique, with different measurements and were noticeably different from those produced by [Plumavit].” [FN64]

[FN64] Cf. expert opinion provided by Rodrigo Cevallos Salvador, engineer, on January 9, 1998, in criminal proceedings #370-97 (judicial case file, volume 26, folios 4069-4071).

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114. The fifth expert appraisal corresponded to a technical test using an Ion-Scanner. [FN65] This machine is used to “see the computerized scientific presence of drug pArticles.” During the test, the experts took samples of the molds that were at the factory and requested the judge to grant them five days to present their final reports. In the file before the Court, there is no evidence that these reports were presented. Regarding this probative procedure, the Head of the Drug Enforcement Administration (DEA) of Guayaquil sent an official communication to the judge on December 9, 1998, in which he stated:

After many tests with the electro-chemical equipment, in the storage area and in the office area, David Morillo, chemist, described a positive reaction for the presence of cocaine in Machine No. 5 (polystyrene (plumafon) molding machine) located in the storage area of the factory. The electro-chemical equipment indicated that the cocaine had been in or near the polystyrene molding machine. [FN66]

[FN65] Cf. record of the Ion-Scan expert appraisal in proceedings #370-97 issued on January 8, 1998 (judicial case file, volume 26, folio 4033).

[FN66] Cf. brief presented on January 13, 1998, by Victor Cortez, Head of the DEA in Guayaquil to the Guayas Nineteenth Criminal Judge (judicial case file, volume 26, folio 4094).

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115. Following the five expert appraisals, Messrs. Chaparro and Lapo reaffirmed their answers to the charges. Despite acknowledging the existence of a commercial relationship between “Mariscos Oreana Maror” and the Plumavit factory, in which the former purchased ice chests from the latter, they argued that this merely involved sales contracts and the Plumavit factory did not know how Maror used the ice chests. In addition, they argued that most of the expert appraisals showed that the seized ice chests had not been manufactured in Plumavit, a factor directly related to the reason for their arrest. Lastly, with regard to the Ion-Scanner test, they stated that their lawyers were notified of the decision ordering it on the day it was carried out, so

they were unable to be present; also that, in order to carry out the first four appraisals (supra para. 110 to 113), the experts had had to place the ice chests seized with the drugs in the Plumavit machines to check whether or not they matched, so it was logical to suppose that drug pArticles from those chests contaminated the machines and that it was those pArticles that the Ion-Scanner detected. Based on this, on several occasions, they requested that the preventive detention be annulled. [FN67]

[FN67] Brief submitted by Chaparro's lawyer on December 11, 1997, requesting the annulment of the arrest warrant, based on the result of the ESPOL expert appraisal (judicial case file, volume 22, folios 3590-3593). Brief submitted by Chaparro's lawyer on January 13, 1998, contesting the result of the Ion-Scan expert appraisal and requesting the annulment of the preventive detention (judicial case file, volume 26, folios 4095-4105). Brief submitted by Chaparro's lawyer on February 25, 1998, contesting the result of the Ion-Scan expert appraisal and requesting the annulment of the preventive detention order (judicial case file, volume 30, folios 4619-4629). Brief submitted by Lapo's lawyer on January 22, 1998, contesting the Ion-Scan, and requesting that statements be taken from the investigating agents and also the annulment of the preventive detention appraisal (judicial case file, volume 27, folios 4231-4234), and brief submitted by Lapo's lawyer on February 27, 1998, indicating that the judge in the case had "not given [them] the opportunity of exercising the right to defense" since notification of the communication ordering the Ion-Scan arrived too late (judicial case file, volume 31, folio 4726).
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116. In general, the judge did not answer the many briefs submitted by the victims and, on the only occasion on which she did, she merely indicated that: "the petitions requesting the annulment of the order for their remand in custody are denied." [FN68] Regarding the Ion-Scanner test, she merely ruled that: "the objection was denied because it was inadmissible, […] since the judicial decision giving notice of this procedural act was opportunely notified to the parties," [FN69] without mentioning the alleged contamination of the machines.

[FN68] Cf. judicial decision of January 12, 1998, issued by the Guayas Twelfth Criminal Judge (judicial case file, volume 26, folio 4072).
[FN69] Cf. judicial decision of January 26, 1998 issued by the Guayas Twelfth Criminal Judge (judicial case file, volume 27, folio 4247).
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117. The Court emphasizes that, in cases when individuals are detained, the judges do not have to wait until a judgment absolving them has been delivered for the detained persons to recover their liberty, but rather should assess periodically that the reasons and purposes that justified the deprivation of liberty subsist, whether the precautionary measure is still absolutely necessary in order to achieve these purposes, and whether it is proportionate. At any time that the precautionary measure does not meet any of these conditions, the release of those detained must be ordered. Likewise, when a request is received for the release of those detained, the judge must explain the grounds, even if very briefly, on which he considers that preventive detention should be maintained.

118. Moreover, the Court underscores that the grounds for the judicial decision must be provided to be able to guarantee the right to defense. Indeed, the reasoning offered by the judge must show clearly that the arguments of the parties have been duly taken into account and the body of evidence examined rigorously, particularly in cases in which important rights such as the liberty of the accused is involved. This did not occur in the instant case. The judge's failure to state the grounds for her decision prevented the defense lawyers from knowing the reasons why the victims remained deprived of their liberty, and hampered their task of presenting new evidence or arguments in order to achieve the victims' release or to contest crucial evidence against them in the best way possible.

119. Based on the above, the Court finds that the State violated the right of the victims embodied in Article 7(3) of the American Convention, owing to the lack of due justification in the adoption and maintenance of the remand in custody of Messrs. Chaparro and Lapo. Consequently, the State violated their right to personal liberty embodied in Article 7(1) of the Convention, in relation to the obligation to respect rights established in Article 1(1) thereof.

D) REMEDIES AVAILABLE TO CONTEST THE DEPRIVATION OF LIBERTY OF MESSRS. CHAPARRO AND LAPO

120. The Commission indicated that the State had violated Article 7(6) of the Convention because the recourses filed by Messrs. Chaparro and Lapo were ineffective, "since, at no time, were the grounds for the measure depriving them of their liberty reviewed." In addition, it considered that Article 2 of the Convention had been violated because the authority responsible for hearing the constitutional habeas corpus recourse was a Mayor, "in other words, an administrative authority."

121. With regard to effectiveness, the State affirmed that the decision on the recourses filed was "duly justified and in keeping with the law." Regarding the authority who heard the habeas corpus recourse, it acknowledged that "the best option would be to attribute competence to a judge, a person with legal training." Nevertheless, it indicated that this "does not mean that, in the instant case, the constitutional norm invoked and the actions of the Mayor disregarded any right that could be contested by this channel." Also, as stated previously (supra para. 25), the State acquiesced to the claims of the parties regarding failure to comply with Article 2 of the Convention.

122. The Court observes that, in Ecuador at the time of the facts, there were two types of recourses that allowed the lawfulness of deprivation of liberty to be reviewed. The first was the constitutional habeas corpus embodied in Article 28 of the Constitution, which stated:

Any person who believes that he has been unlawfully deprived of his liberty may have recourse to habeas corpus. He may exercise this right on his own behalf or through a third party, without the need for a written mandate, before the Mayor under whose jurisdiction he is, or before the person carrying out the Mayor's responsibilities. The municipal authority shall require immediately that the appellant be brought before him and the order that deprived him of his

liberty produced. This mandate shall be obeyed without any comment or excuse by those in charge of the social rehabilitation center or place of detention.
Once he has been informed of the relevant facts, the Mayor shall immediately order the release of the appellant if the latter has not been brought into his presence, or if the order has not been produced, or if the order does not comply with the legal requirements, or if there have been procedural errors or, lastly, if the grounds for the recourse are justified. […]

123. Article 31 of the Constitutional Control Act established the remedy of appeal against decisions that denied the constitutional habeas corpus, as follows:

The decision denying habeas corpus may be appealed before the Constitutional Court, which shall immediately order the Mayor to forward the case file of the denied appeal within forty-eight hours of receiving this order.

124. Lastly, Article 74 of the Municipal Regime Act at the time indicated that:

Once the complaint has been submitted, or put in writing if it is verbal, the Mayor shall order that the appellant be brought before him, within twenty-four hours, and that the authority or judge who ordered the detention or delivered the judgment, provide information on the content of the complaint, in order to establish the relevant facts.
For the same purpose, he shall request any other authority and the person in charge of the prison or penitentiary establishment where the appellant is detained, to provide the reports and documents he deems necessary. The authorities or employees to whom this request has been made shall submit [such reports and documents] with the urgency with which they were requested and, if they should not do so, [the Mayor] shall impose on them a fine of 1,000 to 10,000 sucres, and shall immediately begin to study the relevant facts that allow him to issue any of the following decisions, with justifications, and within forty-eight hours, if he has not rejected the appeal:
1. The immediate release of the appellant, if the arrest or imprisonment are not justified;
2. An order that the legal defects be rectified, if the recourse is merely claiming flaws in the procedure or the investigation;
3. An order that the appellant be brought before the appropriate judges, if the complaint refers to competence or his examination of the case leads him to this conclusion.

125. The second available remedy was the action for juridical protection or "amparo of freedom" (amparo de libertad), also known as the habeas corpus prescribed by law (habeas corpus legal), which is established in Article 458 of the Code of Criminal Procedure as follows:

Any defendant who is detained, based on the breach of the consistent principles of this Code, may request his liberty from the superior Judge to the one who ordered its deprivation.
[…]
The petition shall be made in writing.
Immediately after receiving the application, the judge who will examine it shall order that the detained person be brought before him and shall hear his statement, which shall be recorded in a document to be signed by the judge, the secretary and the complainant, or by a witness instead of the latter, if he does not know how to sign his name. With this statement, the judge shall request

all the information he deems necessary to form an opinion and ensure the lawfulness of his decision, and within forty-eight hours he shall decide what he considers is lawful. […]
If he decides that the deprivation of liberty was unlawful, the judge shall order that the detained person be released immediately. The authorities and employees responsible for the custody of the detained person must necessarily obey the order.

126. The Court must therefore examine whether the remedies established in law and filed by the victims complied with the provisions of Article 7(6) of the Convention. First, it will proceed to examine the constitutional habeas corpus and then the action for judicial protection.

a) Constitutional habeas corpus

127. Mr. Lapo filed a constitutional habeas corpus on September 3, 1998, before the Mayor of the canton of Santiago de Guayaquil. [FN70] The Court does not have the Mayor's decision on this recourse, [FN71] but it can be supposed that it was denied, because Mr. Lapo remained in custody. Mr. Chaparro did not use this recourse.

[FN70] Cf. application for habeas corpus presented on September 3, 1998, by Freddy Hernán Lapo Íñiguez and his lawyer (files of appendixes to the application, appendix 30, folio 1149).
[FN71] As stated in paragraph 8 of this judgment, the President of the Court asked the State to forward legible copies of all the domestic proceedings. The State did not remit the constitutional habeas corpus proceedings. The Court only has the documentation that the Commission forwarded with the application brief.

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128. Article 7(6) of the Convention is clear when it establishes that the authority who must decide on the lawfulness of the "arrest or detention" must be a judge or court. The Convention is thereby ensuring that control of deprivation of liberty must be of a judicial nature. Although he may have been granted competence by law, a mayor is not a judicial authority. According to the Ecuadorean Constitution, a mayor is a "sectional regime" authority; in other words, part of the Administration.

129. The Court is aware that negative decisions by a mayor could be appealed before the Constitutional Court, an authority that does exercise judicial control. It is also aware that Mr. Lapo did not file an appeal. However, it finds that, by requiring that those detained must appeal the mayor's decisions in order for their case to be heard by a judicial authority, the State is placing obstacles to a recourse that should, due to its nature, be simple. In addition, the law established that the mayor was obliged to decide the recourse within 48 hours, and forward the case documents to the Constitutional Court if the latter requested this, within a similar period. This means that the detained person had to wait at least four days for the Constitutional Court to hear his case. If it is also considered that the law did not establish a time limit for the Constitutional Court to take a decision on the appeal, and that this court was the only judicial body competent to hear appeals from throughout the country against the denial of habeas corpus, we can conclude that the requirement that the recourse be decided "without delay" established in Article 7(6) of the Convention is not respected. Lastly, the detained person is not brought before

the Constitutional Court; consequently this body cannot verify his situation and, thus, guarantee his rights to life and personal integrity. [FN72]

[FN72] Cf. 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. This paragraph states that:
In 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, inhumane or degrading punishment or treatment.
See also, Case of Suárez Rosero v. Ecuador. Merits. Judgment of November 12, 1997. Series C No. 35, para. 63, and Case of La Cantuta, supra note 16, para. 111.

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130. Based on the above and bearing in mind the State's acquiescence, the Court declares that Ecuador violated Article 7(6) of the Convention, in relation to Article 2 thereof, to the detriment of Mr. Lapo, which, in turn, represents a violation of his right to personal liberty, embodied in Article 7(1) of the Convention, in relation to the obligation to guarantee rights embodied in Article 1(1) thereof.

b) Action for juridical protection or habeas corpus prescribed by law

131. On April 13, 1998, Mr. Lapo filed an action for juridical protection before the Guayaquil Superior Court of Justice, indicating that he had been "deprived of his liberty unlawfully, because the case file does not show any procedural reason that would make the precautionary measure applicable." [FN73] On May 14, 1998, the Superior Court rejected the recourse stating that "there is no evidence of any violation of procedure that would affect the appellant's rights." [FN74]

[FN73] Cf. action for juridical protection filed on April 13, 1998, by Freddy Hernán Lapo Íñiguez (judicial case file, volume 72, folio 9227).
[FN74] Cf. judgment of May 13, 1998, delivered by the Superior Court of Justice of Guayaquil (judicial case file, volume 72, folios 9295 and 9296).

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132. On May 12, 1998, [FN75] Mr. Chaparro filed an action for juridical protection before the same Superior Court, stating that "if the requirements established in art. 177 of the Code of Criminal Procedure [(supra para. 104)] to deprive [him] of [his] liberty have been totally invalidated, it is evident that this deprivation of liberty has become unlawful and, consequently, [he] request[ed] that it be revoked and that the injustice being committed against [him] be repaired." [FN76] On May 20, 1998, the Superior Court decided to deny the recourse, based on the following considerations:

It is not necessary to examine whether the order of remand in custody is admissible when deciding this recourse, because the said order depends on the criterion of the judge who is granted this discretional power by law. […] Examining the proceedings in criminal case #370-97, it can be seen that the case is at the preliminary stage […]. The procedure is not contrary to that established by law and, consequently, no procedural defects are observed […]. [FN77]

[FN75] The Commission mistakenly indicated that the date on which Mr. Chaparro filed the action for juridical protection was May 20, 1988 (file on merits, volume I, folio 87).
[FN76] Cf. action for judicial protection filed on May 12, 1998, by Juan Carlos Chaparro Álvarez (judicial case file, volume 72, folio 9313).
[FN77] Cf. judgment of May 20, 1998, delivered by the Superior Court of Justice of Guayaquil (judicial case file, volume 72, folio 9316).

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133. This Court has established that it is not enough that such a remedy exists formally, it must be effective; that is, it must provide results or responses to the violations of rights established in the Convention. [FN78] To the contrary, the judicial activity would not signify a real control, but merely a formal or even symbolic procedure that would result in an impairment of the liberty of the individual. Furthermore, an analysis of the lawfulness of a deprivation of liberty "must examine the reasons invoked by the complainant and specifically express an opinion on them, in accordance with the parameters established in the Inter-American Convention." [FN79]

[FN78] Cf. Case of Baena Ricardo et al. v. Panama. Merits, reparations, and costs. Judgment of February 2, 2001. Series C No. 72, para. 77; Case of Juan Humberto Sánchez, supra note 40, para. 121, and Case of the "Five Pensioners" v. Peru. Merits, reparations, and costs. Judgment of February 28, 2003. Series C No. 98, para. 126.
[FN79] Cf. Case of López Álvarez v. Honduras. Merits, reparations, and costs. Judgment of February 1, 2006. Series C No. 141, para. 96.

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134. As can be observed, the Guayaquil Superior Court rejected the recourses filed without ruling on the reasons that, in the opinion of Messrs. Lapo and Chaparro, made their preventive detention unlawful. Moreover, when deciding Mr. Chaparro's recourse, it expressly indicated that the order of remand in custody was at the discretion of the judge who issued it, suggesting that the said discretionary power could not be controlled by the ad quem. The Court observes that the said decision incurs in the so-called flaw that vitiates the argument, because it takes for granted the element that it should specifically have proved; in other words, its affirms from the start that it is not necessary to examine whether the order of remand in custody is admissible, when this is precisely what was being discussed before that court. In addition, the Superior Court did not rule on whether the preventive detention should be maintained.

135. Lastly, the Court underscores that the Superior Court took 31 days to decide on Mr. Lapo's recourse, and nine days to decide on the recourse of Mr. Chaparro, which is not compatible with the term "promptly" contained in Article 7(6) of the Convention.

136. Based on the above, the Court considers that the State violated Article 7(6) of the Convention to the detriment of Messrs. Chaparro and Lapo and, therefore, their right to personal liberty embodied in Article 7(1) of the Convention, in relation to the obligation to guarantee rights embodied in Article 1(1) thereof.

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137. The Court observes that the Commission requested that the violation of Article 25 of the Convention [FN80] should be declared for the same facts, and the State acquiesced to this (supra para. 25)

[FN80] Article 25 of the Convention stipulates:

1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.
2. The States Parties undertake:
   a. to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state;
   b. to develop the possibilities of judicial remedy; and
   c. to ensure that the competent authorities shall enforce such remedies when granted.

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138. In this regard, the Court recalls that in Advisory Opinion OC-8/87 Habeas Corpus in Emergency Situations, it affirmed that, if Articles 7(6) and 25 of the Convention are examined together:

[I]t is possible to conclude that "amparo" comprises a whole series of remedies and that habeas corpus is but one of its components. An examination of the essential aspects of both guarantees, as embodied in the Convention and, in their different forms, in the legal systems of the States Parties, indicates that in some instances habeas corpus functions as an independent remedy. Here its primary purpose is to protect the personal freedom of those who are being detained or who have been threatened with detention. In other circumstances, however, habeas corpus is viewed either as the "amparo of freedom" or as an integral part of "amparo." [FN81]

[FN81] Cf. Habeas Corpus in an Emergency Situation, supra note 72, para. 34

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139. In the case of Ecuador, habeas corpus and the action for juridical protection ["amparo of freedom"] are remedies that are independent of the remedy of "amparo" itself, which was

regulated in Article 31 of the Constitution in force at the time of the facts. [FN82] Consequently, the only Article of the Convention applicable is Article 7(6). Therefore, the Court does not consider that Article 25 of the Convention has been violated.

[FN82] Article 31 of the Constitution established that:
Any person may resort to the bodies of the Judiciary appointed by law and request the adoption of urgent measures, designed to make cease or avoid the committing of, or immediately remedy the consequences of, an unlawful act of authority of the public administration that violates any constitutional right and that may cause imminent and also grave and irreparable damage.
To this end, the judge who must hear the recourse may not allege any inhibition, and the fact that it is a public holiday shall not be an impediment.
The judge shall immediately summon the parties to be heard at a public hearing within twenty-four hours and, at the same time, if he finds it justified, shall order the suspension of any actual or imminent action that could become a violation of constitutional law.
Within the following forty-eight hours, the judge shall issue his decision, which shall be complied with immediately.
The suspension procedure shall be obligatorily consulted, for its confirmation or annulment, before the Constitutional Court, the body before which the recourse of appeal against the refusal to grant the suspension is admissible and, in either case, the judge must immediately forward the file to his superior.

E) RIGHT TO BE TRIED WITHIN A REASONABLE TIME OR TO BE RELEASED

140. The Commission stated that the time that Messrs. Chaparro and Lapo spent in custody disregarded their right to be tried within a reasonable time or to be released, in accordance with the provisions of Article 7(5) of the Convention. The State did not submit specific arguments on this point.

141. Mr. Lapo was released on May 25, 1999, [FN83] one year, six months and eleven days after his arrest, because the judge in the case ordered a temporary stay of proceedings. Mr. Chaparro was released on August 18, 1999, [FN84] one year, nine months and five days after his arrest, owing to the 1998 constitutional reform which limited the time a person could be remanded in custody. [FN85]

[FN83] Cf. court order issued on May 25, 1999, by the Guayas Twelfth Criminal Court (file of appendixes to the application, appendix 22, folios 1101 and 1102).
[FN84] Cf. court order issued on August 18, 1999, by the Guayaquil Superior Court of Justice (judicial case file, volume 79, folio 10,346).
[FN85] Article 24.8 of the 1998 Constitution establishes the following:
Article 24.To ensure due process of law, the following basic guarantees shall be observed, with detriment to others that the Constitution establishes, international instruments, the laws or case law:
[…]

Preventive detention may not exceed six months in the cases for crimes punishable by prison (prisión), or one year in crimes punishable with imprisonment (reclusion). If these periods are exceeded, the order for preventive detention is annulled, under the responsibility of the judge hearing the case. In any case, and without any exception, once the judicial acquittal or dismissal of the case has been issued, the person detained shall immediately recover his liberty, without prejudice to any pending recourse or consultation.

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142. Article 7(5) of the Inter-American Convention establishes that any person detained "shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings." Since the remand in custody of the Messrs. Chaparro and Lapo was arbitrary, the Court does not find it necessary to consider whether the time that elapsed exceeded a reasonable time. [FN86]

[FN86] Cf. Case of Tibi, supra note 43, para. 120.

VIII. ARTICLE 8 (RIGHT TO A FAIR TRIAL) [FN87] IN RELATION TO ARTICLE 1(1) (OBLIGATION TO RESPECT RIGHTS) OF THE INTER-AMERICAN CONVENTION

[FN87] The relevant provisions of Article 8 of the Convention establish that:

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

2. 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. During the proceedings, every person is entitled, with full equality, to the following minimum guarantees:

a) the right of the accused to be assisted without charge by a translator or interpreter, if he does not understand or does not speak the language of the tribunal or court;

b) prior notification in detail to the accused of the charges against him;

c) adequate time and means for the preparation of his defense;

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

e) 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;

[…]

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143. The Court deems it useful to examine the arguments of the parties regarding the alleged violation of Article 8 of the Convention as follows. It will verify: (a) whether the State respected the victims' right to the presumption of innocence; (b) whether they were granted adequate time and means to prepare their defense; (c) whether their right to be assisted by legal counsel was

respected; (d) whether the criminal proceedings took a reasonable time, and (e) whether Mr. Chaparro's right to information about consular assistance was respected. To this end, the Court will take into account that the State presented its complete acquiescence in the case of Article 8 of the Convention.

A) RIGHT TO THE PRESUMPTION OF INNOCENCE

144. The Commission alleged that the State violated the victims' right to presumption of innocence for the duration of their preventive detention and because Article 116 of the NDPSA was applied to the case "which presumed the grave guilt of the accused," even though the Constitutional Court of Ecuador declared this norm unconstitutional only days after the victims' arrest. The representatives endorsed this argument.

145. This Court has indicated that the principle of presumption of innocence constitutes a cornerstone of the right to a fair trial. The provisions of Article 8(2) of the Convention establish 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 prevent the proceedings from being conducted or evade the justice system. Hence, preventive detention is a precautionary rather than a punitive measure.

146. The Court has stated that there would be a violation of the Convention if individuals whose criminal responsibility has not been established are deprived of their liberty for a disproportionate length of time, because this would be tantamount to anticipating a sentence, which is at odds with universally recognized general principles of law. [FN88]

[FN88] Cf. Case of Tibi, supra note 43, para. 180; Case of Suárez Rosero, supra note 72, para. 77, and Case of Acosta Calderón, supra note 47, para. 111.

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147. In the previous chapter, the Court declared that the order to remand the victims in custody was arbitrary because it did not contain reasoned and objective legal grounds regarding its merits. The Court considered that the recourses filed by the victims to achieve their release were ineffective, and indicated that the judge did not set out reasons to justify maintaining the precautionary measure. Bearing this in mind, together with the duration of the deprivation of liberty of the victims (supra para. 141) and the State's acquiescence, the Court declares that Ecuador violated the right to presumption of innocence of Messrs. Chaparro and Lapo embodied in Article 8(2) of the Inter-American Convention, in relation to Article 1(1) thereof.

148. Regarding Article 116 of the NDPSA, the Court does not find it proved that it was applied in this specific case.

B) GRANTING THE ACCUSED ADEQUATE TIME AND MEANS TO PREPARE HIS DEFENSE

149. The Commission and the representatives indicated that notification of the Ion-Scanner expert appraisal procedure (supra para. 114) "was not given with sufficient advance notice," and

this prevented the victims and their lawyers from being present and contesting its validity. The Commission considered that "the right to defense of the victims was restricted because, if they had been present […] during the expert appraisal, they would have been able to contest its validity, without having to wait almost four years to have it annulled."

150. Article 62 of the Code of Criminal Procedure in force at the time established that "[j]udges must intervene personally and directly when procedural actions concerning evidence are practiced, and shall ensure that they are carried out respecting the legal norms." Article 22.19(e) of the Constitution stipulated that "[n]o one may be […] deprived of the right to defense at any stage or level of the proceedings […]."

151. On January 7, 1998, at 6.30 p.m., the Guayas Twelfth Criminal Judge ordered that the Ion-Scanner test be carried out on the premises of the Plumavit factory and on other premises. The judge decided that the tests would be conducted "on January 8, 1998, as of 10 a.m." [FN89] This decision was notified to the parties, through the 'casillero judicial' (Translator's note: legal notification mail box; possibly an electronic mail box), on January 8, 1998, "at 9 a.m." [FN90] The procedure was carried out at "11.55 a.m." [FN91] In other words, the judicial decision was notified with two hours and fifty-five minutes notice.

[FN89] Cf. court order issued on January 7, 1998, by the Guayas Twelfth Criminal Judge (judicial case file, volume 25, folio 4009).
[FN90] Cf. notification order issued on January 8, 1998, by the Secretariat of the Guayas Twelfth Criminal Court (file of appendixes to the application, appendix 17, folio 897) and notification order issued on January 8, 1998 (judicial case file, volume 25, folio 4010).
[FN91] Cf. record of the Ion-Scan expert appraisal, supra note 65.

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152. The Court observes that late notification of the judicial decision ordering that the Ion-Scanner test be carried out made it impossible for the defense lawyers to be present during the test. Although it is true that it is not necessarily reasonable to have the parties present when every type of evidence is being produced, in the instant case, given that the results of the technical verification were immediate, the fact that both parties to the proceedings were not present during the Ion-Scanner test could not be replaced by the subsequent presentation of their observations. In addition, the Court accords special relevance to the fact that the Ion-Scanner test was the only technical evidence against the victims and was taken into account by the judge to commit Mr. Chaparro to trial.

153. This disregard of the right of defense was underscored by the Guayas Twelfth Criminal Prosecutor in his report of December 23, 1998. The Attorney General's Office (Ministerio Público) considered that, during this test, "certain legal formalities were sacrificed, because it was carried out very hastily, and this did not allow the parties involved to attend the test." He added that "the procedure was conducted hurriedly, adversely affecting the right to defense of the parties." [FN92] The Prosecutor also identified other flaws; for example, that the experts who took part in the procedure did not submit their respective reports, and that the DEA Director in Guayaquil, who had not been appointed an expert in the case, signed the official report with the

test results. [FN93] Also, on October 30, 2001, the Fourth Criminal Chamber of the Guayaquil Superior Court of Justice emphasized that the experts who conducted this procedure had not submitted their reports and acknowledged the arguments of the defense lawyers when it stated that:

This evidence cannot be granted probative value, because it does not offer due guarantee given that, several days previously, the experts who examined the machines that produce the ice chests and the corresponding molds had manipulated the ice chests provided by CONSEP in which the drugs were found to see if they fitted the PLUMAVIT machines, which would explain why the remains of cocaine contained in them had contaminated the machinery or fallen near the molding machine. [FN94]

[FN92] Cf. opinion of the Guayas Twelfth Criminal Prosecutor issued on December 23, 1998, in criminal proceedings #370-97 (file of appendixes to the application, appendix 20, folios 1047 to 1050).

[FN93] On this point, Article 77 of the Code of Criminal Procedure indicated that:
The expert report shall contain:
(1) The detailed description of what has been inspected, as observed by the expert when carrying out the appraisal;
(2) The condition of the person or object, that is the subject of the expert appraisal, before the crime was committed, to the extent possible;
[…]
2. The final conclusions, the procedure used to reach these conclusions, and the grounds on which they are reached;
3. The date of the report, and
4. The signature and official stamp of the expert. […]."

[FN94] Cf. judgment delivered on October 30, 2001, by the Fourth Chamber of the Superior Court of Justice (file of appendixes to the application, appendix 21, folios 1078-1079).

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154. Based on the above, and considering the State's acquiescence, the Court considers that Ecuador violated the right established in Article 8(2)(c) of the Inter-American Convention, in relation to Article 1(1) thereof, to the detriment of Messrs. Chaparro and Lapo.

C) RIGHT OF THE ACCUSED TO BE ASSISTED BY LEGAL COUNSEL OF HIS OWN CHOOSING AND RIGHT TO BE ASSISTED BY COUNSEL PROVIDED BY THE STATE

155. The Commission affirmed that "neither victim had a defense lawyer of his own choosing when the initial interrogation was carried out by the Police and the prosecutor." Regarding Mr. Chaparro Álvarez, the Commission indicated that, on November 19, 1997, he made a statement in the presence of a friend of the family who was visiting him and who was a lawyer; however, on the express instructions of the Police, the latter was unable to advise him during the interrogation."

156. During the public hearing before the Court, Mr. Chaparro stated that on November 18, 1997, he was "interrogated without the presence of a lawyer." [FN95] This interrogation occurred one day before the pre-trial statement made before the Prosecutor. Moreover, Mr. Chaparro indicated that, when presenting his action for juridical protection before the Guayaquil Superior Court (supra para. 132), the President of that court forbade his lawyer to defend him, telling him that he himself had to substantiate his recourse. [FN96] Also, Mr. Lapo stated that, when he made his pre-trial statement, the public defender who had been assigned to him was absent during the interrogation and was only present so that he could begin his statement and at the end of it, in order to sign it. The State submitted its acquiescence concerning Article 8 of the Convention during the public hearing, after having heard the victims and being able to cross-examine them; the Court therefore finds that these facts have been established.

[FN95] Cf. Testimony of Juan Carlos Chaparro Álvarez at the public hearing held before the Inter-American Court on May 17, 2007.
[FN96] Cf. Testimony of Mr. Chaparro Álvarez at the public hearing, supra note 95.

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157. Article 22(19) of the Constitution of Ecuador in force at the time of the facts established that:

(e) No one may be punished without a prior trial, or deprived of the right to defense at any stage or level of the proceedings. Any person accused of a criminal offense shall have the right to a defense lawyer, and that the witnesses for the defense shall be obliged to appear;
(f) […]
No one may be interrogated, even for investigative purposes, by a police authority, by the Attorney General's Office, or by any other State agency without the assistance of a private defense lawyer or one appointed by the State in cases in which the interested party is unable to appoint his own defense lawyer. Any judicial, pre-trial or administrative procedure that does not comply with this principle lacks probative value.

158. Despite the constitutional norms cited above, Mr. Chaparro did not have a defense lawyer present when he was interrogated by the Police on November 18, 1997. Also, the Court finds that, by preventing Mr. Chaparro's lawyer from intervening in his pre-trial statement and by requiring Mr. Chaparro to justify his action for juridical protection himself, when he would have preferred his lawyer to do this, the presence of a defense lawyer was a mere formality. Consequently, the State violated the right embodied in Article 8(2)(d) of the Convention, in relation to Article 1(1) thereof, to the detriment of Mr. Chaparro.

159. Furthermore, the Court finds that the attitude of the public defense lawyer assigned to Mr. Lapo was clearly incompatible with the State's obligation to provide an acceptable defense lawyer to anyone who is unable to defend himself or appoint a private defense lawyer. In particular, the Court underscores that the legal assistance provided by the State must be effective and, to this end, the State must adopt all appropriate measures. [FN97] Consequently, the Court finds that Ecuador violated, to the detriment of Mr. Lapo, the right to have a defense lawyer

provided by the State embodied in Article 8(2)(e) of the Convention, in relation to Article 1(1) thereof.

[FN97] Cf. ECHR, Case of Artico v. Italy, Judgment of 13 May 1980, Application no. 6694/74, paras. 31-37.

D) REASONABLE TIME OF THE CRIMINAL PROCEEDINGS

160. The Commission alleged that the criminal proceedings against the victims ended eight years, three months and seven days after it began; in its opinion, this violated the right to a hearing within a reasonable time established in Article 8(1) of the Convention. The representatives presented similar arguments, and the State acquiesced to these claims.

161. Bearing in mind the State's acquiescence and the criteria established by this Court in relation to the principle of reasonable time, [FN98] the Court agrees with the Commission that the criminal proceedings against Messrs. Chaparro and Lapo exceeded the limits of what is reasonable. Likewise, in keeping with its case law, [FN99] the Court considers that length of time such as the one that elapsed in this case, which has not been justified by the State with sufficient probative elements, constitutes a violation of judicial guarantees. Consequently, it declares that the State has violated Article 8(1) of the Inter-American Convention, in relation to Article 1(1) thereof, to the detriment of Messrs. Chaparro and Lapo.

[FN98] Cf. Case of La Cantuta, supra note 16, para. 149; and Case of Ximenes Lopes, supra note 17, para. 196.

[FN99] Cf. Case of Ricardo Canese v. Paraguay. Merits, reparations, and costs. Judgment of August 31, 2004. Series C No. 111, para. 142; Case of the Moiwana Community v. Suriname. Preliminary objections, merits, reparations, and costs. Judgment of June 15, 2005. Series C No. 124, para. 160, and Case of Gómez Palomino v. Peru. Merits, reparations, and costs. Judgment of November 22, 2005. Series C No. 136, para. 85.

E) RIGHT TO INFORMATION ABOUT CONSULAR ASSISTANCE

162. The Commission maintained that Mr. Chaparro was not informed of his right to communicate with the consulate of his country of origin in order to obtain consular assistance. The State indicated that it had never hindered the intervention of the Chilean consular authorities, since the Chilean Consul in Ecuador visited Mr. Chaparro on the premises of the Model Detention Center where he was detained.

163. There is no probative element in the case file before the Court to show that the State notified Mr. Chaparro, as a foreign detainee, of his right to communicate with a consular official of his country in order to obtain the assistance established in Article 36(1)(b) of the Vienna Convention on Consular Relations. Indeed, on March 5, 1998, the Chilean Honorary Consul in

Guayaquil informed Mr. Chaparro's wife that he had learned of Mr. Chaparro's detention "through newspaper Articles published in the different media of that city." [FN100]

[FN100] Cf. letter of March 5, 1998, signed by the Chilean Honorary Consul and addressed to Cecilia Aguirre de Chaparro (file of appendixes to the application, appendix 4, folio 832).

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164. The Court reiterates its consistent case law, [FN101] according to which, when a foreigner is arrested, at the time he is deprived of his freedom and before he makes his first statement before the authorities, he must be notified of his right to establish contact with a consular official and inform the latter that he is in the custody of the State. The Court has indicated that the Consul may assist the detained person during the different defense measures, such as the provision or retaining of legal representation, the obtaining of evidence in the country of origin, the verification of the conditions under which the legal assistance is provided, and the monitoring of the conditions under which the accused is being held while in prison. In this regard, the Court has also stated that the individual's right to request consular assistance from the country of which he is a national must be recognized and considered in the context of the minimum guarantees essential to provide foreigner nationals the opportunity of adequately preparing their defense and receiving a fair trial.

[FN101] Cf. Case of Bulacio, supra note 42, para. 130; Case of Tibi, supra note 43, paras. 112 and 195; Case of Bueno Alves, supra note 15, para. 116, and The Right to Information on Consular Assistance in the Framework of the Guarantees of Due Process of Law. Advisory Opinion OC-16/of October 1, 1999. Series A No. 16, paras. 86, 106 and 122.

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165. Based on the above, the Court declares that Ecuador violated Article 8(1) of the Convention, in relation to Article 1(1) thereof, to the detriment of Mr. Chaparro.

IX. ARTICLE 5 [FN102] (RIGHT TO HUMANE TREATMENT) IN RELATION TO ARTICLES 1(1) (OBLIGATION TO RESPECT RIGHTS) OF THE INTER-AMERICAN CONVENTION

[FN102] The relevant part of Article 5 stipulates that:

1. Every person has the right to have his physical, mental, and moral integrity respected.
2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with regard for the inherent dignity of the human person.

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166. The Commission alleged that the two victims were incommunicado for three days, even though Ecuadorean laws limit the duration of incommunicado to 24 hours. The representatives stated that the duration of the period of incommunicado was five days in the case of Mr.

Chaparro and four days in that of Mr. Lapo, and added that the conditions in which they were detained in the Guayaquil Model Detention Center and in the "El Litoral Prison" were unsafe.

167. The State indicated during the public hearing in this case (supra para. 8) that: "regarding Article 5 of the Convention […] its acquiescence is total"; "the State does not contest any fact […] in relation to Article 5," and "the five-day incommunicado period to which they were subjected […] constitutes cruel [and] inhuman treatment."

168. During this public hearing, Mr. Lapo indicated:

In the Model Detention Center, I slept on the floor during the first week […], we were allowed to bathe once a day with a gallon of water, use the toilet once - not at the time we wanted to, but at the time they indicated. [In the "El Litoral Prison"] we were in a cell of three by four [meters], approximately 20 persons […] I had to defend myself with my fists to avoid being assaulted […], many companions had to defend me because, when they could not assault me, they took out their knives or their machetes to try and attack me […]. The organic waste was left in the yard […]. Those who were being held for trial and who went to eat in the prison kitchen were beaten by the prison guards when they formed a line to collect the food." [FN103]

[FN103] Cf. testimony of Freddy Hernán Lapo Íñiguez at the public hearing held before the Inter-American Court on May 17, 2007.

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169. In response to a question by the Commission on the conditions in the El Litoral Prison, Mr. Chaparro stated:

Anything that I can tell you about them may seem exaggerated; […] the conditions in which these people live are infrahuman. It is very painful to have to recall this. [FN104]

[FN104] Cf. testimony of Mr. Chaparro at the public hearing, supra note 95.

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170. According to Article 5 of the Convention, all persons deprived of their liberty shall be treated with regard for their inherent dignity. [FN105] The State, as the entity responsible for detention centers, must guarantee prison inmates the existence of conditions that respect their fundamental rights and a decent life. [FN106]

[FN105] Cf. Case of Tibi, supra note 3, para. 150; Case of the "Juvenile Reeducation Institute", supra note 49, para. 151; and Case of Bulacio, supra note 42, para. 126.
[FN106] Cf. Case of Tibi, supra note 3, para. 150; Case of the "Juvenile Reeducation Institute", supra note 3, para. 152; and Case of Bulacio, supra note 42, para. 126.

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171. Also, the Court has established that "prolonged isolation and being held incommunicado constitute, in themselves, forms of cruel and inhuman treatment harmful to the mental and moral integrity of the person and to the right of respect for the inherent dignity of the human being." [FN107] A person may only be held incommunicado exceptionally, taking into account its grave effects, because "isolation from the outside world causes any person to suffer moral and psychological trauma, making him particularly vulnerable and increasing the risk of aggression and arbitrariness in prisons." [FN108]

[FN107] Cf. Case of Maritza Urrutia, supra note 42, para. 87; Case of Bámaca Velásquez v. Guatemala. Merits. Judgment of November 25, 2000. Series C No. 70, para. 150, and Case of Cantoral Benavides v. Peru. Merits Judgment of August 18, 2000. Series C No. 69, para. 83

[FN108] Cf. Case of Maritza Urrutia, supra note 42, para. 87; Case of Bámaca Velásquez, supra note 107, para. 150; and Case of Cantoral Benavides, supra note 107, para. 84.

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172. Based on the above, and taking into account the State's acquiescence, the Court declares that Ecuador violated the right to humane treatment of Messrs. Chaparro and Lapo embodied in Article 5(1) and 5(2) of the Inter-American Convention, in relation to Article 1(1) thereof.

X. ARTICLE 21 (RIGHT TO PROPERTY) IN RELATION TO ARTICLES 1(1) (OBLIGATION TO RESPECT RIGHTS) AND 2 (DOMESTIC LEGAL EFFECTS) OF THE AMERICAN CONVENTION

173. The parties submitted different arguments concerning the norms that regulate seizure and deposit of property suspected of being related to illegal drug-trafficking. Other arguments related to the alleged arbitrary acts committed in this case when executing the seizure of Mr. Chaparro's factory and Mr. Lapo's vehicle, in the subsequent management of this property, and in its return.

174. The Court's case law has developed a broad concept of property that includes, among other matters, the use and enjoyment of property, defined as material goods that can be possessed, as well as any right that may form part of a person's patrimony. This concept includes all movables and immovables, corporeal and incorporeal elements, and any other immaterial object which may have a value. [FN109] Also, under Article 21 of the Convention, the Court has protected acquired rights, understood as rights that have been incorporated into a person's patrimony. [FN110] The Court observes, however, that the right to property is not an absolute right, because Article 21(2) of the Convention establishes that, for the deprivation of the property of a person to be compatible with the right to property, it must be for reasons of public utility or social interest, subject to payment of just compensation, and only in the cases and in the ways established by law, [FN111] and be carried out in accordance with the Convention.

[FN109] Cf. Case of Palamara Iribarne, supra note 48, para.102; Case of the Yakye Axa Indigenous Community, supra note 12, para. 137; Case of the Moiwana Community, supra note 99, para. 129; and The Mayagna (Sumo) Awas Tingni Community v. Nicaragua. Merits, reparations, and costs. Judgment of August 31, 2001. Series C No. 79, para. 144.

[FN110] Cf. Case of the Five Pensioners, supra note 78, para. 102.
[FN111] Cf. Case of Palamara Iribarne, supra note 48, para. 108; Case of the Yakye Axa Indigenous Community, supra note 12, paras. 145 and 148; and Ivcher Bronstein v. Peru. Merits, reparations, and costs. Judgment of February, 2001. Series C No. 74, para. 128.

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175. In the instant case, as previously established (supra para. 65), on November 14, 1997, a search was ordered of the Plumavit factory. On November 15, 1997, during the search, the factory was seized and the premises were put under police protection. [FN112] The property seized included the Subaru vehicle, license plate GDK-410 [FN113], owned by Mr. Lapo. [FN114] Documents found at the factory, including cheques and invoices, were also confiscated. [FN115]

[FN112] Cf. report of November 15, 1997, on the seizure submitted to the Guayas Provincial Anti-narcotics Chief (file of appendixes to the application, appendix 6, folios 840 and 841).
[FN113] Cf. report submitted to the Provincial Chief of the Guayas Anti-narcotics Office, with the inventory of the polystyrene factory known as "AISLANTES PLUMAVIT" (judicial case file, volume 4, folio 1716).
[FN114] Cf. certificate of ownership and registration of the Subaru car, license plate GDK-410, in the name of Freddy Hernán Lapo Iñiguez (judicial case file, volume 78, folio 10184).
[FN115] Cf. report submitted to the Provincial Chief of the Guayas Anti-narcotics Office, with the inventory of documents collected from the Fábrica de Aislantes PLUMAVIT S.A. (case file, volume 4, folios 1706 to 1708).

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176. The Guayas Twelfth Criminal Judge ordered that "an official communication be sent to the Superintendence of Banks requiring the freezing of banking activities on any current, savings and monetary accounts of the accused." She also sent official communications to the registry offices of Guayaquil and Manabí requesting them "to register the prohibition to dispose of any immovables that the accused might possess," and also ordered that "all the property seized should be inventoried, and deposited in CONSEP." [FN116] On January 2, 1998, the same judge addressed an official communication to the Guayas Provincial Anti-narcotics Chief requiring him to hand the seized property over to CONSEP. [FN117]

[FN116] Cf. the court order to investigate the crime of December 8, 1997, supra note 52 (folios 873 and 874).
[FN117] Cf. official communication No. 4718-370-97 of January 2, 1998, issued by the Guayas Twelfth Criminal Judge (judicial case file, volume 24, folio 3913).

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177. On January 19, 1998, CONSEP signed a contract with a private individual for a three-year lease of the facilities of the Plumavit factory. [FN118] On December 1, 2001, CONSEP signed a new lease contract with the same person. [FN119]

[FN118] Cf. rental contract signed on January 19, 1998, between CONSEP and Chalver Iván Alvarado Sarango, engineer (file of appendixes to the application, appendix 3, volume II, folios 586 to 592).
[FN119] Cf. rental contract signed on December 1, 2001, between CONSEP and Chalver Iván Alvarado Sarango, engineer (file of appendixes to the application, appendix 34, folios 1163 to 1166).

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178. As a result of the dismissal of the proceedings in favor of Messrs. Chaparro and Lapo, on March 7, 2002, the Guayaquil Superior Court of Justice lifted "any precautionary measure that had been ordered on the property of [Mr. Chaparro] and on the vehicle owned by [Mr. Lapo] seized during these proceedings." [FN120]

[FN120] Cf. judicial decision issued on March 7, 2002, by the Fourth Chamber of the Guayaquil Superior Court of Justice (judicial case file, volume 80, folio 10422).

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179. On October 10, 2002, CONSEP handed back the factory to Mr. Chaparro. In the respective official record, it was indicated that some of the property was defective. [FN121] Moreover, Mr. Chaparro certified, through a notary, that some of the property listed in the inventory of the factory [FN122] (infra para. 206) had not been returned. On February 19, 1999, [FN123] May 28, 1999, [FN124] and April 20, 2005, [FN125] Mr. Lapo requested the return of his vehicle and it has not yet been returned. [FN126]

[FN121] Cf. record of delivery/reception of immovable and movable property returned to its owners by judicial decision of October 10, 2002, signed by the Chief Custodian CONSEP-GUAYAS, the owner of PLUMAVIT, and the CONSEP Regional Chief (file of appendixes to the application, appendix 33, folio 1155).
[FN122] Cf. official record of notarial procedure issued on October 10, 2002, by the Seventh Regular Notary of the Guayaquil Canton (file of appendixes to the application, appendix 36, folios 1193 to 1196).
[FN123] Cf. request of the defense lawyer of Freddy Hernán Lapo Iñiguez submitted to the Guayas Twelfth Criminal Court on February 19, 1999 (judicial case file, volume 78, folio 10185, and volume 79, folio 10285).
[FN124] Cf. request of the defense lawyer of Freddy Hernán Lapo Iñiguez submitted to the Guayas Eighth Criminal Court on May 28, 1999 (judicial case file, volume 78, folio 10185).
[FN125] Cf. request of the defense lawyer of Freddy Hernán Lapo Iñiguez submitted to the Director of CONSEP on April 20, 2005 (file of appendixes to the application, appendix 39, folio 1204).
[FN126] Cf. statement of Mr. Lapo during the public hearing, supra note 103.

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180. As a condition for the return of the factory, Mr. Chaparro was required to make a "payment for custody fees." [FN127]

[FN127] Cf. official communication No. 1992-JRL-CONSEP-2002 issued on September 17, 2002, by the Regional Head of CONSEP-Litoral (file of appendixes to the application, appendix 3, volume I, folio 233).

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181. Before examining the dispute, the Court notes that the arguments of all the parties in relation to Mr. Chaparro, make no distinction between the Plumavit factory's property, and Mr. Chaparro's property. This Court has made a difference between the rights of the shareholders of a company and those of the company itself, indicating that domestic laws grant shareholders certain direct rights, such as the right to receive the agreed dividends, to attend and vote at general meetings, and to receive part of the company's assets when it is liquidated. [FN128]

[FN128] Cf. Case of Ivcher Bronstein, supra note 111, para. 127. See also, Barcelona Traction, Light and Power Company, Limited, Judgment, I.C.J. Reports 1970, p. 36, para. 47.

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182. From the evidence provided, it can be seen that, in November 1997, Mr. Chaparro held shares in the Plumavit company amounting to 50% of its capital. [FN129] In addition, Mr. Chaparro was the general manager of the company. [FN130] It is clear that a value could be placed on this participation in the company's shares, which formed part of its owner's patrimony from the moment it was acquired. As such, this participation constituted an asset to which Mr. Chaparro had the right to use and enjoyment. The Court must therefore decide whether the State interfered in an unlawful and arbitrary manner in the exercise of this right.

[FN129] Cf. minutes of the extraordinary and universal general meeting of shareholders of the company "Aislantes Plumavit del Ecuador C. Ltda." issued on March 15, 1990 (judicial case file, volume 9, folio 2272), and instrument increasing the capital and reforming the Articles of association of the company "Aislante Plumavit del Ecuador C. Ltda", issued on March 23, 1990 (file on merits, volume III, folios 1107 to 1109).

[FN130] Cf. communication issued on January 28, 1997, by Jorge Moncayo Nuques, president of the board of partners of the company, Aislante Plumavit del Ecuador C. Ltda" (judicial case file, volume 10, folio 2282).

A) MATERIAL PRECAUTIONARY MEASURES AND OBLIGATION TO ADOPT PROVISIONS UNDER DOMESTIC LAW

183. The representatives alleged that the NDPSA norms relating to the special confiscation and deposit of property in CONSEP, "affect the private property of citizens whose innocence is presumed" and, consequently, these norms should be eliminated. They added that the seizure and

deposit of property "always harms the patrimony of the defendants" owing to "its inadequate and, at times, wrongful custody and administration." The State argued that, in criminal proceedings, "without the need for a prior judgment," it is admissible to issue a material precautionary measure "to preserve the object of the crime of which the owner of the property is accused." The State indicated that, "during the proceedings, the Inter-American Court must balance the exercise of the State's investigative powers against the limitation of the right [to property]." The Commission did not submit any arguments in this regard.

184. Article 63 of the Constitution of Ecuador in force at the time of the facts stipulated that:

Property, in any of its forms, constitutes a right that the State recognizes and guarantees for the organization of its economy, while it fulfills a social role […]

185. The Code of Criminal Procedure in force at that time authorized the judge to issue, as a material precautionary measure, the prohibition to dispose of, impound, retain and embargo property. [FN131] Whereas the NDPSA authorized the Police to seize property, a procedure that was subject to judicial control. Following this control, the judge could order the deposit of the property in a specific State agency, CONSEP, and, as this Act established, the property was available to the judge to "verify the material evidence of the crime." The deposit was maintained until the judge ordered the respective return, if admissible. [FN132] As has been indicated (supra paras. 175 and 176), in the instant case, the precautionary measures of seizure, deposit and prohibition to dispose of property were applied.

[FN131] The 1983 Code of Criminal Procedure established the following:
Art. 170. In order to guarantee […] the payment of the compensation for damages to the aggrieved party and the procedural costs, the judge may order precautionary measures of a […] material nature.
Art. 171. […] The precautionary measures of a material nature are the prohibition to dispose of property, and seizure, retention and embargo. These measures are in order only in Cases indicated in this Code and in the special laws.
[FN132] The NDPSA in force at that time stipulated:
Article 104. Seizure. The National Police, through their specialized technical agencies shall be responsible for the control and investigation of the crimes defined in the Act, the detection and arrest of the transgressors, the monitored handover of controlled substances or property and the immediate seizure of:
[…]
a. Property and objects used for the storage and conservation of controlled substances, and of the vehicles and other means used to transport them;
b. Money, assets, monetary instruments, banking, financial or commercial documents, and other property that are considered to be the product of the perpetration of the acts defined in this Act.
[…]
Article 105. Those who carry out the seizure […] shall identify all the movable and immovable property, substances, money, assets, monetary instruments, banking, financial or commercial documents; and the alleged owner or owners, in separate official records, which they

shall remit to the criminal judge in the following 24 hours. When issuing the court order to investigate the alleged crime, the judge shall order the deposit in CONSEP of everything that has been seized, including narcotic and psychotropic substances, precursors and other specific chemical products. This property and material shall be at the order of the competent judge for verification of the material evidence of the offense. […]
[…]
Article 119. Precautionary measures. In the court order to investigate the alleged crime, the applicable precautionary measures of a personal and material nature established in Article 171 of the Code of Criminal Procedure shall be ordered and, in particular, the prohibition to dispose of the property of the accused and the freezing of his bank and money accounts and company stocks and shares.
Article 83 of the Regulations for the application of the NDPSA established that: "[T]he annulment of the precautionary measures established in Article 105 of the Act shall be issued by the judge of the case, following the favorable opinion emitted by the Attorney General's Office Cf. Regulations No. 2145-A for the application of the Narcotic Drugs and Psychotropic Substances Act, published in the official gazette of the Government of Ecuador of March 7, 1991 (file of appendixes to the application, appendix 35, folio 1190).
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186. The Court observes that these material precautionary measures are expressly regulated by law. Given their precautionary nature, they are subordinate to the requirements for personal precautionary measures, such as preventive detention (supra para. 93) and thus are compatible with the presumption of innocence in the same way as the latter (supra paras. 145 and 146). Bearing in mind the abovementioned Ecuadorean normative, as regards the purpose of these measures, the Court understands that, they seek: (i) to avoid the property continuing to be used in unlawful activities; (ii) to ensure the success of the criminal investigation; (iii) to guarantee the pecuniary responsibilities that could be declared as a result of the legal actions, and (iv) to avoid the loss or deterioration of the evidence. It is evident that these measures are adequate and effective to ensure the availability of the evidence that will allow drug-trafficking crimes to be investigated.

187. The Court finds that the adoption of these measures does not constitute per se a violation of the right to property, if it is considered that they do not signify a transfer of the ownership of the right to legal title. In this regard, the property cannot be disposed of definitively and such disposal is restricted exclusively to its administration and conservation and to the respective acts of investigation and management of the evidence.

188. Nevertheless, the Court finds that the adoption of material precautionary measures must be justified previously by the inexistence of another type of measure that is less restrictive of the right to property. In this regard, it is only admissible to seize and deposit property when there is clear evidence of its connection to the offense, and provided that it is necessary to guarantee the investigation and the payment of the applicable pecuniary responsibilities, or to avoid the loss or deterioration of the evidence. Also, these measures must be adopted and supervised by judicial officials, taking into account that, if the reasons that justified the precautionary measure cease to exist, the judge must assess the pertinence of maintaining the restriction, even before the proceedings are concluded. This point is extremely important, given that if the property ceases to

fulfill a relevant role in continuing or promoting the investigation, the material precautionary measure must be lifted, because they run the risk of becoming an anticipated punishment. The latter would constitute a manifestly disproportionate restriction of the right to property.

189. Based on the above, provided there is due justification to adopt these measures, the corresponding effect on the power to dispose of property that is created does not in itself constitute a violation of the right to property. Accordingly, the Court considers that the purpose of these measures is in keeping with the American Convention and their existence is not contrary to the provisions of Article 21 in relation to Article 2 thereof. The dispute regarding the alleged arbitrariness in the application of these measures will be examined below.

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190. The representatives referred to another aspect related to the compatibility of domestic law with the Convention. Thus, they indicated that the fact that CONSEP charged Mr. Chaparro for the deposit, custody and administration of the property (supra 180) means that this system is "onerous for the patrimony of the accused," bearing in mind that "a person whose innocence has been declared in a judgment must pay the State for the deposit and administration of property that was seized unlawfully and unduly."

191. The Court observes that, in the instant case, Resolution No. 059-CD of 2000 issued by the Administrative Council of CONSEP [FN133] was applied. This Resolution issued the "Regulations for the collection of fees for the deposit, custody and administration of property and assets seized, confiscated or impounded that are entrusted to CONSEP." The pertinent part of these regulations establishes that:

Art. 1. The CONSEP Secretariat, through the National Directorate for the Administration of Property in Deposit, is responsible for the custody, administration and deposit of property that is seized, confiscated or impounded and entrusted to CONSEP; since such actions entail financial outlays, these must be assumed by the owners when the deposit ends owing to the existence of an order to return the property issued by a competent judge.
Art. 3. The daily amounts resulting from the deposit, custody and administration shall be paid by the owner of the property, based on its value […]
Art. 6. The fees charged by CONSEP, as custodian, for leasing property are six point seventy-five percent (6.75 %) of the income obtained, and this shall be collected before the property is returned. […]
Art. 10. If the deposit generates expenses other than those of the deposit, custody and administration, these shall also be paid by the owner of the property. […]

[FN133] Cf. resolution No. 059-CD issued by the CONSEP Administrative Council and published in official gazette No. 14 of February 10, 2000 (file on merits, volume III, folios 1068 to 1072).
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192. Mr. Chaparro was charged both "administrative expenses" and "CONSEP fees." [FN134]

[FN134] Cf. statement issued by the CONSEP Custodian-Administrator of Immovable Property (file of appendixes to the application, appendix 37, folio 1198).

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193. In this regard, the Court emphasizes that material precautionary measures are adopted with regard to the property of a person who is presumed innocent; hence, these measures should not prejudice the accused disproportionately. The charges that a person whose case has been dismissed is required to pay, with regard to the property of which he was provisionally dispossessed, constitute a burden that is tantamount to a sanction. This requirement is disproportionate for those persons whose guilt has not been proved. On this point, the State indicated that, "when property owned by a person who has been acquitted in criminal proceedings is returned or restituted," "a certain rate of interest must be paid for the custody or administration undertaken by the State while it was confiscated"; this "[i]s a clear example of arbitrariness that must be corrected by the Ecuadorean State, through the respective legal reform."

194. The Court's case law [FN135] has interpreted that the obligation to adapt domestic laws entails the adoption of measures that eliminate norms and practices of any nature that give rise to a violation of the guarantees established in the Convention or that disregard the rights recognized therein or hinder their exercise. [FN136]

[FN135] Cf. Case of La Cantuta, supra note 16, para. 172.

[FN136] Cf. Case of "The Last Temptation of Christ" (Olmedo Bustos et al.) v. Chile. Merits, reparations, and costs. Judgment of February 5, 2001. Series C No. 73, para. 85; Case of Almonacid Arrellano et al., supra note 17, para. 118; and Case of Ximenes Lopes, supra note 17, para. 83.

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195. Based on these findings, and the observations of the State (supra para. 193), the Court concludes that the amount charged to Mr. Chaparro in application of Resolution No. 059-CD of 2000 affected him disproportionately. Consequently, the Court declares that the State violated his right to property embodied in Article 21(1) in relation to Articles 1(1) and 2 of the American Convention.

B) ARBITRARINESS OF THE SEIZURE OF THE PROPERTY

196. The Commission stated that the police report corresponding to the search of the factory, "did not state the reason why it was decided to seize [it], nor did it indicate that drugs or any narcotic substance had been found that would justify this measure." The Commission added that the search "did not find any evidence and, from the outset of the procedure, it was not possible to determine that the ice chests used in the attempt to transport drugs had been manufactured in this establishment." In this regard, the Commission considered that restrictions to the right to property must be justified in light of a "relationship of proportionality between the measures

used and the purpose of the restriction." The representatives endorsed these considerations. The State alleged that the factory was "seized respecting the procedure described in Articles 104 and 105 of [the NDPSA] and was returned to its owner in accordance with Article 110 of [this] Act, once the investigations had been concluded, so that the operation cannot be described as confiscatory."

197. The Court finds that, when exercising the authority to issue material precautionary measures contemplated by law, the national authorities are obliged to provide reasons that justify the appropriateness of the measure. This requires them to clarify the "fumus boni iuris," in other words, that there are sufficient probabilities and evidence that the property was really involved in the offense.

198. Based on the prior police report, the court order to investigate the crime alleged that the ice chests used in the criminal offense had been manufactured in the Plumavit factory and, therefore, ordered the deposit of the factory and all its contents with CONSEP. The Court considers that there is no evidence of an arbitrary procedure in this regard. However, evidence was subsequently presented to prove that the Plumavit factory was not involved in the criminal offense (supra paras. 110 to 113), and the judge of the case did not assess this and, consequently, did not assess the possibility of lifting the material precautionary measures in the event that the reasons that made them necessary had disappeared. Furthermore, there was no judicial ruling on the need to maintain the deposit; in other words, on whether the investigation could continue without affecting the possession and administration of the company to such an extent.

199. Based on the above, the precautionary measures adopted became arbitrary and, therefore, the State disproportionately affected the right of Mr. Chaparro to the use and enjoyment of his property in violation of Article 21(1) of the American Convention, in relation to Article 1(1) thereof.

C) IRREGULARITIES IN THE RETURN OF THE PROPERTY

200. Under Ecuadorean law, when a possession has been the object of a precautionary measure, its return is in order when there has been an acquittal. The NDPSA regulates the return of property as follows:

Article 110. Return of property. If the accused, owner of the seized property, is acquitted, the property shall be returned by CONSEP when the judge so orders, once the precautionary measures have been cancelled.
The institutions to which the property was delivered shall return it in the condition in which it was when they received it, except for normal deterioration owing to its legitimate use. If it has been damaged, they must repair it or pay the compensation established by the judge, except in the case of force majeure or unforeseeable circumstances.
The money or value represented by the monetary instruments or banking, financial or commercial documents seized or confiscated shall be returned in national currency, using the exchange rate on the free market for the purchase of the seized currency on the date of its return, with the respective legal interest in force, established by the Monetary Board.
The legal action to seek compensation for any possible damages is admissible.

201. The parties alleged that, in this case, at the time of the corresponding return of the property, there were problems related to the delay in the return and the failure to return part of it.

a) Delays in the return

202. The Commission alleged that the delay in returning the factory "exceeded a reasonable length of time and was a result of the grave violations of judicial guarantees that Mr. Chaparro experienced."

203. As can be observed from paragraph 198 of this judgment, the property confiscated from Mr. Chaparro should have been returned when the reasons had disappeared that made the material precautionary measures necessary. In the instant case, even though a provisional stay of proceedings was issued in favor of Mr. Chaparro on October 30, 2001, the property was only returned to him one year later, in October 2002.

204. The Court finds that this delay in complying with the order to return the property, which was no longer affected by a precautionary measure, aggravated Mr. Chaparro's situation when he was attempting to remedy, to some extent, the impediment to the use and enjoyment of his property, and this constitutes a violation of Article 21(1) of the Convention, in relation to Article 1(1) thereof, to his detriment.

b) Failure to return part of the property

205. The Commission and the representatives alleged that, when the factory was returned, all the seized property was not handed back. The State expressed its "concern about the alleged incompatibility between the inventory made at the time of the seizure [… and] the inventory presented for its return."

206. On November 18, 1997, three days after Mr. Chaparro's arrest, the Guayas Fourth Criminal Prosecutor and a Police Lieutenant made an inventory of the property in the Plumavit factory. On November 20, 1997, another inventory was made, this time of the documents found in the factory. [FN137] The Court observes that, while these inventories were being prepared, neither a representative of the company nor Mr. Chaparro's defense lawyers were represent. This prevented a satisfactory comparison being made of what was seized and what was returned.

[FN137] Cf. report submitted to the Provincial Chief of the Guayas Anti-narcotics Office, supra note 115.

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207. On October 10, 2002, an "Official Record of Delivery/Reception" was signed by the Head Custodian CONSEP-Guayas and Mr. Chaparro. By means of this document, the Plumavit Industrial Plant was handed back and it was recorded that Mr. Chaparro "received the facilities with all the movable property in its actual condition and this is described in forty-one (41) folios attached to the record." [FN138] This appendix, which included the list of the respective

movable property, was not submitted to the Court. Nevertheless, this record of delivery-reception specifies that "one of the molding machines is damaged and the interior of certain computer equipment, such as CPUs, is incomplete, because they were received in this condition by the CONSEP Custodian from the lessee." The return of the factory was carried out in the presence of a notary public who was present at Mr. Chaparro's request in order to record the property that was missing at that time. The corresponding record of the notarial procedure, [FN139] stated that "by visual inspection" it was verified that a series of movable assets "do not appear physically in the factory." Also, the notarial record indicated that "[t]here was no accounting documentation for the seven previous years, or deeds and other documents held in the safe (Caja de Fondos) of the Plumavit Company."

[FN138] Cf. record of delivery/reception, supra note 121.
[FN139] Cf. record of the notarial procedure, supra note 122.

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208. The Court does not have the inventory that would allow it to make a comparison between what CONSEP states it handed over and what Mr. Chaparro affirms he did not receive. The State only provided one inventory of assets, but this inventory corresponds to the delivery that the police officials made to CONSEP on January 28, 1998. [FN140] The official inventory that is attached to the official record of the delivery-reception of property to Mr. Chaparro does not appear in the file before the Court. However, from the notary's record it is clear that some movable property was not returned. The State has not contested this record or explained the situation. Therefore, the Court accepts the notary's record to be true and considers it is an established fact that the State did not return certain property of the Plumavit factory that was seized. Also, no reasons have been given to justify the failure to return property, nor has it been shown that fair compensation was paid for it.

[FN140] Cf. appendix to the record of delivery/reception, supra note 121 (merits file, volume III, folios 871 and 872).

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209. The Court finds that the failure to return property belonging to the company had an impact on its value and productivity, which, in turn, prejudiced its shareholders. This prejudice must be understood as an arbitrary interference in the "enjoyment" of the property under the provisions of Article 21(1) of the Convention. Therefore, the Court declares that the State violated the right embodied in Article 21(1) of the American Convention, in relation to Article 1(1) thereof, to the detriment of Mr. Chaparro.

D) UNSATISFACTORY ADMINISTRATION OF THE PROPERTY

210. The Commission stated that the factory was under the administration of CONSEP "for almost five years," and that "at the time of its return, the machinery was damaged […] as a result of its lease to a private individual for three years." The Commission indicated that this lease was "in direct violation of the provisions of the Regulations for the application of the [NDPSA],"

which established the possibility of extending a lease, but only to public institutions. The representatives endorsed this position and the State did not submit specific arguments on this point.

211. The Court finds, first, that property confiscated by the State during drug-trafficking operations is placed in its custody; consequently, the State assumes a position of guarantor of its good use and conservation, particularly taking into account that precautionary measures are not of a punitive nature. In the instant case, the position of guarantor of both the judge and CONSEP derived from their institutional role in this type of procedure; they were therefore responsible for ensuring that the precautionary measure did not become a cause of the deterioration of the property in question. The custodian, in this case CONSEP, had the legal obligation to return the confiscated property "in the condition in which it was at the time of its reception, except for normal deterioration owing to legitimate use" (supra para. 200).

212. Several CONSEP reports allow the Court to deduce that there was significant deterioration in the seized property. [FN141] There is also evidence that several debts were not paid, which led to the factory being embargoed. [FN142] In addition, the seized factory was leased to a private individual, an action that not only disregards the Regulations for the application of the NDPSA, [FN143] but also was not accompanied by the inspection and monitoring of the work of the lessee. The Court underscores that the said lease contract included the obligation of monthly supervision; [FN144] however, no evidence was provided that this occurred. The lease contract also provides evidence of the deterioration of the property. [FN145]

[FN141] On March 3, 1998, the Regional Head of CONSEP informed the judge of case that "the property contained in the said factory [was] received in regular condition, probably because it had suffered the effects of flooding owing to El Niño." Cf. communication issued on March 3, 1998, by the Regional Head of CONSEP, addressed to the Guayas Twelfth Criminal Judge (judicial case file, volume 31, folio 4782). On May 14, 1998, the Head Custodian of CONSEP in Guayas made an inspection "of the property, sheets of espumaflex, ice chests of espumaflex, that were in the storage area for finished products and that had been destroyed owing to the effects of the flooding suffered by this factory." This official verified that "the sheets and the ice chests were broken and totally deteriorated," and advised that the lessee of the company had indicated that the foregoing "was the reason why the Municipality of Guayaquil had closed the factory." Cf. official communication No. 071-JRL-CONSEP-98 issued on May 28, 1998, by the Head Custodian CONSEP-Guayas (file on merits, volume III, folio 870). Also, in a report dated February 18, 2002, the #2 Custodian of CONSEP in Guayas informed his superior that "he had complied with the removal of several movables from the PLUMAVIT factory," which, according to the official, were "in an appalling condition, totally unusable; in addition the computer equipment, such as the CPUs, were incomplete inside" (Cf. report No. 001-DBD-JRL-CONSEP-02 of February 18, 2002, issued by the #2 Custodian, CONSEP Guayas (file of appendixes to the application, appendix 3, volume II, folios 648 and 649).

[FN142] Owing to failure to comply with tax obligations, on April 1, 2003, the Regional Directorate of the Southern Littoral Internal Revenue Service closed the company. Cf. non-filers closure decision No. 922003340002328 issued on April 1, 2003, by the Regional Director of the Southern Littoral Internal Revenue Service (file of appendixes to the application, appendix 3,

volume II, folio 445). This sanction was lifted on May 2, 2003. When lifting the sanction, it was indicated that "the obligations on which the closure were based are the responsibility of the National Council of Narcotic Drugs and Psychotropic Substances." Cf. decision to lift closure No. 109012003RGTR002494 issued on May 2, 2003, by the Regional Director of the Southern Littoral Internal Revenue Service (file of appendixes to the application, appendix 3, volume II, folio 450). In addition, the company was embargoed by a bank and a supplier of raw material because several debts were not paid. Cf. communication of April 16, 2003, addressed by Juan Carlos Chaparro Álvarez to the Regional Directorate of the Internal Revenue Service (file of appendixes to the application, appendix 3, volume II, folio 447; judicial decision issued on October 5, 1998, by the Fifth Civil Court of Guayaquil (file of appendixes to the application, appendix 3, volume II, folio 424); official communication No. 70 issued on March 4, 1999, by the Guayaquil Second Civil Court (judicial case file, volume 78, folio 10186); judicial decision issued on May 12, 2003, by the Second Enforcement Court of the Municipality of Guayaquil (file of appendixes to the application, appendix 3, volume II, folio 460).

[FN143] Article 109 of the NDPSA, regarding the disposal of property, establishes that the: "CONSEP Administrative Council may provisionally deliver property that has been seized or confiscated to the public institutions it determines, so that this property may be used under its responsibility." Also, Article 12 of the Regulations for the application of the NDPSA indicates that the Administrative Council has the powers "to deliver, provisionally, the property seized or confiscated that has been given in deposit to CONSEP to public institutions, following a report by the Executive Secretariat." Cf. Regulation No. 2145-A for the Application of the NDPSA, published in the official record of the Government of Ecuador on March 7, 1981 (file of appendixes to the application, appendix 35, folio 1172).

[FN144] The lease contract contained a clause establishing that CONSEP would supervise "on a monthly basis, the functioning of the factory facilities and the use of the equipment and immovables that were the object of the contract." Cf. lease contract, supra note 118 (folio 590).

[FN145] The third clause of the contract indicated that: "[g]iven that there has been a flood in the factory, which has affected the machinery and equipment, and also the structure of the building, so that there are leaks, the lessor grants a three-month grace period to the lessee so that, during this period, the repairs of the machinery, equipment and building can be carried out so as to make the said factory ready to operate." Cf. lease contract, supra note 118 (folio 587).

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213. In his testimony before the Court, Mr. Chaparro stated that when the factory was returned no "type of maintenance could be observed during the whole time [it had been seized and in deposit]. None of the molding equipment was in working order […] all the equipment was damaged, […] the lessee had neither maintained the equipment nor responded for the damage." [FN146] According to Mr. Chaparro, the damage to the machinery and the failure to return certain property prevented the company from starting up production after it had been returned. The State did not dispute the foregoing.

[FN146] Cf. testimony of Mr. Chaparro at the public hearing, supra note 95.

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214. The Court considers that the State is responsible for this damage, because the property was in its custody. Consequently, it declares that the State violated the right to property established in Article 21(1) of the American Convention, in relation to Article 1(1) thereof, to the detriment of Mr. Chaparro, because, as a result of the unsatisfactory administration of the factory and the deterioration in it, Mr. Chaparro was deprived arbitrarily of the possibility of continuing to receive the profits that he obtained when the company was operating.

E) UNLAWFULNESS OF THE SEIZURE AND DEPOSIT OF THE AUTOMOBILE BELONGING TO MR. LAPO

215. The Commission stated that Mr. Lapo's vehicle was seized and that "even though on October 30, 2001, the order was issued to lift any precautionary measures issued on this vehicle, it has not been returned to its owner." The representative endorsed these arguments and added that "the seizure of [Mr. Lapo's vehicle] was an accidental act that, added to the failure to return it, shows the arbitrariness with which the Ecuadorean authorities acted." The State did not submit specific arguments on this point.

216. Regarding the seizure and deposit of this automobile, the Court observes that: (i) there is no reference to this in the police report on which the detention was based, [FN147] and (ii) the judicial decision ordering the search of the Plumavit factory orders the seizure of some vehicles, but there is no order to seize Mr. Lapo's vehicle. [FN148] Thus, it was seized unlawfully.

[FN147] Cf. report No. 512-JPA-G-97, supra note 30 (folios 2884 to 3026).
[FN148] Cf. decision of November 14, 1997, supra note 33.

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217. In addition, the Court has verified that the unlawfulness of the seizure was aggravated because the relationship of this automobile with the criminal act investigated or with the other movable property that was found in the factory at the time of the seizure was not investigated or determined; the pertinence of continuing with the material precautionary measure was not assessed; and, on several occasions, its return was ordered, [FN149] although CONSEP did not comply with these orders. To date, Mr. Lapo's vehicle has not been returned and he has not been granted any compensation.

[FN149] Cf. Communication issued on June 5, 2002, by the Guayas Eighth Criminal Judge (judicial, case file volume 80, folio 1045).

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218. Bearing in mind these circumstances, the Court finds that the impediment to the use and enjoyment of the property of Mr. Lapo's automobile was manifestly unlawful and arbitrary. Consequently, it concludes that the State violated the right to property established in Article 21(1) and 21(2) of the American Convention, in relation to Article 1(1) thereof, to the detriment of Mr. Lapo.

XI. REPARATIONS (APPLICATION OF ARTICLE 63(1) DE THE AMERICAN CONVENTION)

219. It is a principle of international law that any violation of an international obligation that has caused damage entails the obligation to repair it adequately. [FN150] In its decisions in this regard, the Court has based itself on Article 63(1) of the American Convention. [FN151]

[FN150] Cf. Case of Velásquez Rodríguez, supra note 20, para. 25; Case of Cantoral Huamaní and García Santa Cruz, supra note 20, para. 156 and Case of Zambrano Vélez et al., supra note 13, para. 131.

[FN151] Article 63(1) of the Convention stipulates that:

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

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220. In the context of the State's acquiescence (supra para. 25), pursuant to the its findings on merits and on the violations of the Convention declared in the preceding chapters, and in light of the criteria established in the Court's case law concerning the nature and scope of the obligation to make reparation, [FN152] the Court will examine the claims presented by the Commission and the representatives, as well as the State's position in relation to reparations, in order to decide measures to repair the damage.

[FN152] Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and Costs. Judgment of July 21, 1989. Series C No. 7, paras. 25 to 27; Case of Garrido and Baigorria v. Argentina. Reparations and costs. Judgment of August 27, 1998. Series C No. 39, para. 43, and Case of the "White Panel" (Paniagua Morales et al.), supra note 23, paras. 76 to 79.

A) INJURED PARTY

221. The Court will now proceed to decide who should be considered an "injured party" in the terms of Article 63(1) of the American Convention and, consequently, entitled for the reparations established by the Court.

222. The Court finds that Juan Carlos Chaparro Álvarez and Freddy Hernán Lapo Iñiguez are the "injured party," as victims of the violations that is has been proved were committed against them; they are therefore entitled for the reparations that the Court establishes for pecuniary and non-pecuniary damage.

223. Regarding the next of kin of Messrs. Chaparro and Lapo, the Court observes that the Commission did not declare them victims of any violation of the Convention in its Report on

merits No. 06/06 (supra para. 1); that, when preparing its application, the Commission requested the representatives to provide "essential information in order to determine the beneficiaries of reparations"; [FN153] that, in response to this, the representatives presented testimonial statements by Mr. Chaparro's wife and children, [FN154] describing alleged changes in their lives; that, despite this, in the application it lodged before the Court, the Commission did not request that the next of kin of Messrs. Chaparro and Lapo be considered victims; that the representatives did not submit allegations to this effect when presenting their requests and arguments brief (supra para. 5); that the representatives waited until their final written arguments (supra para. 7) to identify the next of kin of the victims and to request compensation for them; that the Commission, in its final written arguments (supra para. 7), only included a general allegation that the State should repair the "damage caused to the next of kin of the victims," without identifying them and without requesting the Court to declare the violation of any provision of the Convention against them.

[FN153] Cf. Note of the Inter-American Commission on Human Rights of March 23, 2006 (file of appendixes to the application, appendix 3, volume II, folios 517 to 519).

[FN154] Brief of the representatives of April 25, 2006, which included the testimonies of the next of kin of Mr. Chaparro: Cecilia Aguirre Mollet de Chaparro (wife), José Pedro Chaparrro de Aguirre (son), Gabriela Chaparro Aguirre (daughter), Christián Chaparro Canales (son), Carolina Chaparro Canales (daughter), Juan Pablo Chaparro Canales (son), and Hortensia Álvarez Pineda de Chaparro (mother) (file of appendixes to the application, appendix 3, volume II, folios 573 to 580).

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224. The Court reiterates that it considers the injured party to be those persons who have been declared victims of violations of a right embodied in the Convention. The Court's case law has stated that the alleged victims must be mentioned in the application and in the Commission's report under Article 50 de la Convention. Consequently, according to Article 33(1) of the Court's Rules of Procedure, it is the Commission, and not this Court, that must identify the alleged victims in a case before the Court precisely and at the appropriate procedural opportunity. [FN155]

[FN155] Cf. Case of the Ituango Massacres v. Colombia. Preliminary objection, merits, reparations, and costs. Judgment of July 1, 2006 Series C No. 148, para. 98, and Case of Goiburú et al. v. Paraguay. Merits, reparations, and costs. Judgment of September 22, 2006. Series C No. 153, para. 29.

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225. This has not occurred in the instant case and, accordingly, the Court has not declared any violation to the detriment of the next of kin of Messrs. Chaparro and Lapo; hence, they cannot be considered to be an injured party.

B) COMPENSATION

226. In its case law, the Court has developed the concept of pecuniary damage and the circumstances in which it is in order to compensate this. [FN156]

[FN156] Cf. Case of Bámaca Velásquez v. Guatemala. Reparations and Costs. Judgment of February 22, 2002. Series C No. 91, para. 43; Case of Cantoral Huamaní and García Santa Cruz, supra note 20, para. 166, and Case of Escué Zapata, supra note 22, para. 132.

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227. In the instant case, the Commission maintained that the victims "were not only deprived of their liberty and ceased working but, in addition, property belonging to them was seized" and this was not returned immediately after their acquittal, but required additional measures to make the return effective, which "caused added financial losses." The representatives requested that compensation be awarded for pecuniary damage "in the terms described in the expert opinion prepared by Yazmín Kuri Gonzalez." In addition, during the public hearing, the representatives requested that "an appraisal be conducted of the material losses they suffered: in the case of Mr. Chaparro, his factory, and in the case of Mr. Lapo, his vehicle and his house." The State contested these requests for reparation, arguing that "the alleged victims could file a civil action to claim payment of damages."

a) Pecuniary damage arising from the seizure and deposit of property

228. The Court has established in this judgment that Mr. Chaparro's shares in the Plumavit factory had a financial value that formed part of his patrimony (supra para. 182). This financial value was directly related to the value of the company itself. The State's actions, namely the unsatisfactory administration of the property, the delay in the return of the factory, the return of property in a deteriorated condition, and the misplacement of certain property, entailed an impediment to the use and enjoyment of those shares, because the value of the company decreased considerably, and this had an impact on Mr. Chaparro's patrimony.

229. Based on the above, the Court finds that the State must compensate Mr. Chaparro for the financial losses that the depreciation in the value of the company caused him.

230. However, the only evidence presented on this aspect is the expert appraisal of Yasmín Kuri González (supra para. 36). Regarding this appraisal, the representatives made general references, without defining the amount they are requesting as compensation for this concept and without developing a logical reasoning that would allow the Court to assess the damage effectively caused. Indeed, the representatives submitted this evidence, but did not develop a line of reasoning about the expert appraisal that would allow this Court to understand it and assess it with the rest of the body of evidence, using sound criticism. The Court finds that this reasoning was required in the instant case, since it was necessary in order to clarify on what basis the Court could consider this expert's opinions to be valid. This is particularly necessary with regard to expert appraisals based on technical expertise outside that of the Court.

231. What the Court can observe from the expert appraisal in question is that the expert made a calculation of the "operating flows" from 1997 to 2006, and the result was more than five

million United States dollars. [FN157] No explanation has been presented to the Court of why the calculations had to be up until 2006. As established previously, the factory was returned in 2002 (supra para. 179). Furthermore, during the public hearing held in this case, Mr. Chaparro stated that he sold the factory, [FN158] but he did not specify the exact date of the sale or the price obtained, and how much corresponded to him. Furthermore, when submitting the helpful evidence requested by the President (supra para. 11), the representatives advised that the factory still exists and that Mr. Chaparro is the owner of almost all the shares; in other words, the factory has not been sold. [FN159] Lastly, the percentage of the company's losses that would correspond to Mr. Chaparro, in relation to the number of shares he possessed at the time of his arrest, has not been explained.

[FN157] Cf. statement made before notary public (affidavit) by Yazmín Kuri González on April 16, 2007 (file on merits, Volume I, folio 374).
[FN158] Cf. testimony of Mr. Chaparro at the public hearing, supra note 95.
[FN159] Cf. brief submitted by the representatives on October 3, 2007, as helpful evidence requested by the President of the Court (file on merits, volume III, folio 1096).

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232. Based on the above, and given the complexity of determining the commercial value of a company, which could include, inter alia, its capital, the financial situation, the capital investments, property and securities, assets and liabilities, operating flows, market potential and other matters, the Court considers that an arbitration tribunal should determine the percentage of loss that Mr. Chaparro suffered as a result of the State's seizure and deposit of the Plumavit factory. Despite the foregoing, the Court takes into account that the said factory had been in operation for several years and that, at the time of the facts, had received some loans to improve its productivity; consequently, the Court establishes, based on the equity principle, the amount of US$150,000.00 (one hundred and fifty thousand United States dollars) for this concept. If the amount decided during the arbitration procedure is greater that the amount ordered by the Court in this judgment, the State may deduct from the victim the amount established by this Court, based on the equity principle. If the amount decided in the arbitration procedure is less, the victim shall keep the US$150,000.00 (one hundred and fifty thousand United States dollars) established in this judgment. The amount established by the Court shall be delivered to Mr. Chaparro within one year at the latest of notification of this judgment.

233. The arbitration procedure indicated in the preceding paragraph must be of an independent nature, be carried out in the city in which Mr. Chaparro resides, and be pursuant to the applicable domestic laws concerning arbitration, provided that it does not contradict the decisions in this judgment. The procedure must commence within six months of notification of this judgment. The arbitration tribunal shall be composed of three arbitrators. The State and Mr. Chaparro shall each select an arbitrator. The third arbitrator shall be selected by mutual agreement between the State and Mr. Chaparro. If, within two months of notification of this judgment, the parties have not reached an agreement, the third arbitrator shall be selected by mutual agreement by the arbitrator selected by the State and the one selected by Mr. Chaparro. If the two arbitrators do not reach an agreement within the following two months, the State and Mr. Chaparro's representatives must present this Court with a slate of no less than two and no more than three

candidates. The Court will decide the third arbitrator from among the candidates proposed by the parties. The amount decided by the arbitration tribunal must be delivered to Mr. Chaparro within one year of notification of its decision, at the latest.

234. With regard to Mr. Lapo, the only possession that was seized from him was his vehicle (supra para. 175), which has not yet been returned (supra para. 179). According to the expert appraisal made by Kuri González, the value of the vehicle was calculated "based on the valuation of the Guayas Transit Commission at US$1,150.09 [(one thousand one hundred and fifty United States dollars and nine cents)]." [FN160] The State has not contested this conclusion and the Court finds it reasonable. Therefore, it decides that the State must deliver the amount of US$1,150.09 (one thousand one hundred and fifty United States dollars and nine cents) to Mr. Lapo, as compensation for the loss of his vehicle. This amount must be delivered within one year of notification of this judgment.

[FN160] Cf. Testimony of Yazmín Kuri González, supra note 157 (folio 374).

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b) Loss of earnings

235. According to the expert appraisal provided by Kuri González, at the time of their detention, Messrs. Chaparro and Lapo perceived a monthly salary of US$6,267.59 (six thousand two hundred and sixty-seven United States dollars and fifty-nine cents) and US$1,624.93 (one thousand six hundred and twenty-four United States dollars and ninety-three cents), respectively. [FN161] Based on this appraisal, the representatives requested a sum of US$350,000.00 (three hundred and fifty thousand United States dollars) [FN162] for Mr. Chaparro and US$175,492.44 (one hundred and seventy-five thousand four hundred and ninety-two United States dollars and forty-four cents) [FN163] for Mr. Lapo, for loss of earning from 1997 to 2006.

[FN161] Cf. Testimony of Yazmín Kuri González, supra note 157 (folio 364).
[FN162] Cf. Testimony of Yazmín Kuri González, supra note 157 (folio 369).
[FN163] Cf. Testimony of Yazmín Kuri González, supra note 157 (folio 374).

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236. The Court notes that during the criminal proceedings against the victims in the domestic sphere, socio-economic reports prepared by social workers were provided at the request of the Guayas Twelfth Criminal Court. These reports indicated that Messrs. Chaparro and Lapo received a monthly salary of approximately US$3,038.87 [FN164] (three thousand and thirty-eight United States dollars and eighty-seven cents) and US$818.15 (eight hundred and eighteen United States dollars and fifteen cents) respectively. [FN165] Moreover, there is a statement of contributions to the Ecuadorean Social Security Institute corresponding to September 1997, which indicates for the salaries of Messrs. Chaparro and Lapo the sums of US$3,155.75 (three thousand one hundred and fifty-five United States dollars and seventy-five cents) and US$818.15 eight hundred and eighteen United States dollars and fifteen cents), respectively. [FN166] In view of the above, the Court will base itself on the salaries that appear on the statement of

contributions to the Ecuadorean Social Security Institute, which are comparable to the amounts established in the social workers' reports.

[FN164] Cf. socio-economic and family report on Juan Carlos Chaparro Álvarez issued on January 20, 1998, (judicial case file, Volume 27, folio 4245). The report indicated that Mr. Chaparro had stated that his work "earned him a monthly income of 13 million sucres."
[FN165] Cf. socio-economic and family report on Freddy Hernán Lapo Íñiguez issued on January 2, 1998, (judicial case file, Volume 25, folio 4025). The report indicated that Mr. Lapo Iñiguez "received a monthly remuneration of 3,500,000 [sucres]."
[FN166] Cf. statement of contributions to the Ecuadorean Social Security Institute of Empresa Aislantes Plumavit del Ecuador C. Ltda for September 1997 (file on merits, volume III, folio 854). The statement indicated that the salary of Mr. Chaparro was 13,500,000 sucres and that of Mr. Lapo was 3,500,000 sucres.

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237. Although the representatives calculated the compensation up until 2006, the Court considers that the compensation for loss of earning in favor of the victims should cover the time that elapsed between their arrest and until the time they recovered their liberty; that is, 21 months and 5 days for Mr. Chaparro and 18 months and 11 days for Mr. Lapo (supra para. 141). The Court recognizes that, owing to the deprivation of their liberty, the victims lost their employment and that, once they were released, it was difficult for them to find another one. However, this aspect must be examined in the chapter on non-pecuniary damage.

238. Owing to the foregoing, the Court decides that the State must deliver the sum of US$66,796.70 (sixty-six thousand seven hundred and ninety-six United States dollars and seventy cents) to Mr. Chaparro and the sum of US$15,026.68 (fifteen thousand and twenty-six United States dollars and sixty-eight cents) to Mr. Lapo, as compensation for loss of earnings during the time they were deprived of their liberty. These amounts must be paid to the victims within one year of notification of this judgment at the latest.

c) Loss of Mr. Lapo's house and Mr. Chaparro's apartment

239. The representatives asked that compensation should be established for pecuniary losses with regard to Mr. Lapo's house. In this regard, during the public hearing, Mr. Lapo stated that, at the time he was detained, he "had been paying for a house bought on credit, and lost it because he had no income." [FN167] The State did not contest this fact, so the Court considers it an established fact.

[FN167] Cf. testimony of Mr. Lapo at the public hearing, supra note 103.

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240. The representatives did not present any supporting documentation that would allow the Court to establish the value of Mr. Lapo's house. Consequently, the Court decides, in equity, to

establish the sum of US$20,000.00, (twenty thousand United States dollars). The State must pay this amount to Mr. Lapo within one year of notification of this judgment.

241. Based on the expert appraisal of Kuri González, the representatives asked that compensation should be established for Mr. Chaparro with regard to the loss of his apartment in Salinas. The State did not dispute this fact or contest the expert appraisal of Kuri González, so the Court considers it an established fact.

242. The amount requested for this concept is US$135,729.07 (one hundred and thirty-five thousand seven hundred and twenty-nine United States dollars and seven cents). From the evidence provided, the Court is unable to establish clearly the basis used by the expert to establish that the apartment was worth this amount, since no additional evidence or arguments have been submitted by the representatives in this regard. Therefore, it decides to establish, in equity, the amount of US$40,000.00 (forty thousand United States dollars), which the State must deliver to Mr. Chaparro to compensate him for the loss of his apartment. The State must pay this amount to Mr. Chaparro within one year of notification of this judgment.

d) Other expenses

243. The Commission stated that the victims had taken a series of measures in the domestic sphere to obtain the return of their property. The Court considers that this allegation will be assessed in the chapter corresponding to costs and expenses.

244. Based on the expert appraisal of Kuri González, the representatives requested that Mr. Chaparro should be awarded the sum of US$12,000.00 (twelve thousand United States dollars) for the alleged loss of a "share" and "membership" in the "Salinas Yacht Club," and US$14,500.00 (fourteen thousand five hundred United States dollars) for the alleged loss of a "share" and "membership" in the "La Costa Country Club." The State did not dispute the foregoing, or contest the expert appraisal of Kuri González. Despite this, the Court observes that the representatives did not indicate what relation these alleged losses have with the facts of the instant case and does not find them reasonable. Hence, it decides that it is not appropriate to grant compensation for these concepts.

245. Lastly, based on the expert appraisal of Kuri González, the representatives requested the sum of US$114,000.00 (one hundred and fourteen thousand United States dollars) for "lease of the company to third persons." In this regard, when declaring the violation of Article 21 of the Convention, the Court found it proved that the State had leased the Plumavit factory to a private individual, thereby obtaining US$26,588.54 (twenty-six thousand five hundred and eight-eight United States dollars and fifty-four cents). Also, when declaring the violation of Article 21, the Court considered it incompatible with the Convention that the State had collected administration fees and the percentage for CONSEP charges (supra para. 195), amounting to US$16,143.77 (sixteen thousand one hundred and forty-three United States dollars and seventy-seven cents). Consequently, the Court decides that the State must reimburse Mr. Chaparro the amount he was charged for CONSEP administration fees and charges, that is US$16,143.77 (sixteen thousand one hundred and forty-three United States dollars and seventy-seven cents), together with the corresponding interest at the banking interest rate on arrears in Ecuador. The amount established

by the Court and the respective interest must be delivered to Mr. Chaparro within one year of notification of this judgment at the latest.

d) Non-pecuniary damage

246. The Court must now determine the reparations for non-pecuniary damage, as it has understood this in its case law. [FN168]

[FN168] Cf. Case of Neira Alegría v. Peru. Reparations and costs. Judgment of September 19, 1996. Series C No. 29, para. 57; Case of Cantoral Huamaní and García Santa Cruz, supra note 20, para. 175 and Case of Zambrano Vélez et al., supra note 13, para. 141.

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247. The Commission considered that "the victims have experienced intense psychological suffering, anguish, uncertainty, grief, and changes in their life projects owing to the lack of justice within a reasonable time, and as regards all those involved in the facts that gave rise to the instant case." The representatives requested that the State compensate the victims for the non-pecuniary damage suffered with the sum of US$50,000.00 (fifty thousand United States dollars) each.

248. During the public hearing before this Court, Mr. Chaparro stated that:

My life changed […] because these trials for drug-trafficking […] leave a stigma […] indeed […] when I was able to extricate myself from this affair only one friend […] offered me work. […] I lost the source of my income; at that time I had three children studying at the University. The two older children had to pay for the studies of the two younger ones. My mother-in-law had to continue paying my household expenses […]. In practice, the family broke up as of that time […]. I have had to have psychiatric and psychological treatment since then; my wife also. [In addition,] I have been unable to open a bank account since then […], and this has really limited the possibility of carrying out any commercial activities; I have not even been able to open a savings account. [I have had] very few employment openings; I have had to subsist doing other things that are outside my sphere of experience in industry; I have been able to survive with great difficulty owing to my wife's help […] and the aid of my children who nowadays help pay my expenses. […] It is very painful to have been arrested and tried for something as horrible […] as drug-trafficking and to be innocent; no one can imagine how powerless one feels. [FN169]

[FN169] Cf. testimony of Mr. Chaparro at the public hearing, supra note 95.

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249. Meanwhile, Mr. Lapo stated, inter alia, that:

When I was arrested, I had been married one year. I had a two-month old baby, who I could not help teach to walk. I had projects with my wife […]. I was paying for a house that I had bought on credit, and which I lost because I had no income. I maintained two of my sisters; I paid for

their university studies; they lived with me. […] My siblings had to look for work to help me. My family suffered; my wife suffered; she left my son abandoned with my mother-in-law so that she could take steps to seek my release. My wife cried; she said to me 'what can I do, what can I do to get you released. What can I do because I haven't any money now – she said to me – how can I get money?' When I was released, life was very hard. I was shut up in my mother-in-law's house for two months without going out. When I finally went out, I walked the streets, but I looked behind me all the time, because I thought I was being followed. I despaired because I wanted to work; I had no income; I had to pay debts; I didn't know what to do; doors shut in my face everywhere. It was about two years before a company where I had worked previously […] had a vacancy, and the person who had been my boss […] called me. He said to me, 'I trust you; I know that you are innocent, that you had nothing to do with it' and he offered me the job again and, since then, I am working in that company. My eldest son's schoolmates told him that their parents told them they should have nothing to do with him because he was the son of a criminal. […] I lost my home and now, when I want to take out a loan to purchase another one, [I am registered as] a person who is not suitable for obtaining credit, because of what appears in the CONSEP. I took certain measures to clear my record with CONSEP and, supposedly, they sent a communication saying that it had been erased from their files. This same communication was sent to the banks, but the banks refuse to erase my name from their list. [FN170]

[FN170] Cf. testimony of Mr. Lapo at the public hearing, supra note 103.

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250. The Court's case law has established repeatedly that a judgment constitutes per se a form of reparation. [FN171] However, considering the circumstance of the case sub judice, the suffering that the violations committed caused to the victims, the change in their living conditions, and the other consequences of a non-pecuniary nature that they suffered, the Court deems it pertinent to decide that compensation, established on the basis of the equity principle, should be paid for non-pecuniary damage. [FN172]

[FN171] Cf. Case of Suárez Rosero v. Ecuador. Reparations and Costs. Judgment of January 20, 1999. Series C No. 44, para. 72; Case of Cantoral Huamaní and García Santa Cruz, supra note 20, para. 180 and Case of Zambrano Vélez et al., supra note 13, para. 142.

[FN172] Cf. Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Reparations and costs. Judgment of May 26, 2001. Series C No. 77, para. 84; Case of Escué Zapata, supra note 22, para. 149, and Case of La Cantuta, supra note 16, para. 219.

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251. The Court takes into consideration that, as a result of the facts, the victims lost their employment and, hence, the financial support for themselves and their families; that they faced difficulty in finding new employment after they had been declared innocent; that they suffered the effects that the stigma of these facts gave rise to in society in general and in their social circle in particular, and that their family life was altered.

252. Based on all the above, the Court establishes a sum of US$50,000.00 (fifty thousand United States dollars) for each of the victims as compensation for non-pecuniary damage.

253. The State must make the payment of the compensation for non-pecuniary damage directly to the beneficiaries within the term of one year following notice of this judgment.

C) MEASURES OF SATISFACTION AND GUARANTEES OF NON-REPETITION

254. In this section, the Court will determine the measures of satisfaction that seek to repair the non-pecuniary damage and that are not of a pecuniary nature, and will decide on measures of a public scope and impact. [FN173]

[FN173] Cf. Case of Myrna Mack Chang, supra note 13, para. 268; Case of the 19 Tradesmen v. Colombia. Merits, reparations, and costs. Judgment of July 5, 2004. Series C No. 109, para. 253, and Case of Zambrano Vélez et al., supra note 13, para. 147.

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a) obligation to investigate the facts that gave rise to the violations in the instant case, and identify, prosecute and, if applicable, sanction those responsible

255. The Commission and the representative requested that the State be ordered to conduct a complete, impartial, effective and prompt investigation in order to identify and sanction those responsible for the facts. The representatives also asked that the State be ordered to take the necessary administrative measures to "obtain the dishonorable discharge from the police of those members who acted in violation of the human rights of the […] victims."

256. During the public hearing, the State affirmed that:

There is a certain presumption of police and judicial irresponsibility and arbitrariness that merits the initiation of the respective investigations into the actions of the officials who intervened in the proceeding; after the corresponding judicial and administrative assessment, these investigations will determine individual responsibilities and the eventual exercise of the right of recovery by the Ecuadorean State, once the procedure to do this has been regulated.

257. The Court accepts and takes note of the measures taken by the State on this point.

b) Elimination of the records against Messrs. Chaparro and Lapo

258. As appendixes to its final arguments brief, the State submitted a copy of the letters sent, on May 30, 2007, by the Public Prosecutor (Procurador General) to the Commander General of the National Police, [FN174] the Executive President of the Private Banks Association, [FN175] and the Superintendent of Banks, [FN176] requesting them to take the necessary measures to eliminate Messrs. Chaparro and Lapo from all the records they hold concerning the unlawful acts of which they have been acquitted.

[FN174] Cf. official letter No. 1886 signed by the Public Prosecutor and addressed to the Commander General of the National Police (file on merits, volume II, folios 591 and 592)
[FN175] Cf. official letter No. 1885 signed by the Public Prosecutor and addressed to the Executive President of the Association of Private Banks (file on merits, volume II, folios 593 and 594).
[FN176] Cf. official letter No. 1884 signed by the Public Prosecutor and addressed to the Superintendent of Banks (file on merits, volume II, folios 595 and 596).

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259. The Court notes that these actions were adopted in order to eliminate the criminal record of the victims, to facilitate their access to different credit and banking services that had been denied them, and to recover the good name of Messrs. Chaparro and Lapo.

260. The Court appreciates the actions taken by the State; nevertheless, no information has been provided on the result of the requests made to these institutions. Consequently, and without disregarding the above, the Court rules that the State must eliminate forthwith the names of Messrs. Chaparro and Lapo from the public records in which they still appear with a criminal record in relation to the instant case, particularly the records of the National Police, the Superintendence of Banks, and INTERPOL. Also, the State shall immediately inform the private institutions that they must erase from their records any reference to Messrs. Chaparro and Lapo as authors or suspects of the criminal act of which they were accused in this case. These private institutions shall be those that Messrs. Chaparro and Lapo indicate to the State. The State shall also inform these institutions that the victims were prosecuted by the State in violation of their human rights and were acquitted of all guilt by the national judicial authorities.

c) Dissemination of the judgment

261. As a measures of reparation for the victims, the Commission requested "the publicizing of the Court's decision" and a public apology by the State in which "it acknowledges its international responsibility […] and makes reparation to the victims and their next of kin for the violations committed and the stigma they have suffered." Meanwhile, the representative requested "the publication in national newspapers and in the official gazette of the background to the case and the operative paragraphs of the judgment with a permanent link to the web page with the Court's judgment […] from the web page of the Public Prosecutor's Office." In addition, they asked that "the State be ordered [to carry out] a public act to acknowledge responsibility."

262. As the Court has stipulated in other cases, [FN177] as a measure of satisfaction, the State must publish once in the official gazette and in another national newspaper with widespread circulation, chapters VII to X of this judgment, without the corresponding footnotes, and its operative paragraphs. The State shall also disseminate this judgment by radio and television in the same way.

[FN177] Cf. Case of Cantoral Benavides v. Peru. Reparations and Costs. Judgment of December 3, 2001. Series C No. 88, para. 179; Case of Cantoral Huamaní and García Santa Cruz, supra note 20, para. 192, and Case of Zambrano Vélez et al., supra note 13, para. 215.
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263. The Court also ordered the State to issue a publication indicating specifically that the victims were deprived of their liberty unlawfully and arbitrarily; were kept incommunicado and suffered prison conditions incompatible with the standards of the Convention; that their cases were dismissed after an unreasonably long time; that the presumption of their innocence was not respected; that their detention gave rise to pecuniary and non-pecuniary damage in their lives, and that the Court ordered that all records against them for the facts of this case be eliminated from the public files. In addition, the State must inform the public and private institutions and the population in general that, in compliance with the decisions taken by the Court, the State reiterates that the victims are innocent of all the charges of which they were accused. This publication must be made in a size and in a section of a newspaper with widespread circulation that is sufficiently visible, so that it fulfills the purpose of restoring the good name of the victims, and as a guarantee of non-repetition.

264. To comply with the provisions of the preceding paragraph, the State must ensure the participation of the victims or their representatives, both in drafting this publication, and to determine the media in which it shall be published and its size. Also, the State must ensure the participation of the victims or their representatives in planning the dissemination of this judgment by radio and television (supra para. 262). If the parties are unable to reach agreement on these points within three months of notification of this judgment, the Court will settle the dispute.

265. The State must make the publications and the dissemination of the judgment by radio and television indicated in the preceding paragraphs within six months of notification of this judgment.

d) Adaptation of domestic legislation to the parameters of the Convention

266. The Commission asked the Court to require the State to adopt "the necessary domestic legal measures to adapt its laws […] to conform to the Convention."

267. During the public hearing, the State declared that it:

Requests the representative of the alleged victims to cooperate in the process of the review and adaptation of Ecuadorean laws, specifically those regulating the criminal prosecution procedure for cases involving drug-trafficking crimes, in order to adapt certain norms that could lead to violations of the provisions of the Inter-American Convention on Human Rights.

268. Bearing in mind what has been indicated concerning the Ecuadorean regulation of the recourse of habeas corpus and the violation of Article 7(6) in relation to Article 2 of the Convention (supra paras. 127 to 130) that has been declared, as well as the State's declaration during the public hearing that "it will make every effort, through the National Constituent

Assembly to be installed shortly, to adapt the constitutional guarantee of habeas corpus to international standards, […] so that the judicial verification of whether an arrest is in keeping with international conventions, the Constitution, and the law is no longer entrusted to the senior municipal representative," the Court deems it pertinent to order the State to adapt its laws, within a reasonable time, to the parameters of the Convention so that it is a judicial authority that decides on the remedies that those detained may file, as established in Article 7(6) of the American Convention.

269. Furthermore, for the reasons set out in paragraphs 193 to 195 supra and based on the declarations of the State included in paragraph 193 supra, the Court determines that Ecuador must modify the Narcotic Drugs and Psychotropic Substances Act and the corresponding regulations, so that it ceases to charge fees for the deposit and management of property seized under this Act to those who have not been convicted in a final judgment.

e) Adoption of the necessary measures for the elimination de oficio of criminal records

270. The Court considers that the State must adopt all the administrative and other measures necessary to eliminate de oficio the criminal record of those persons who are acquitted or whose cases are dismissed, taking into account that the proceedings should not entail an additional prejudice or burden for an innocent person. In addition, within a reasonable period, it must initiate the necessary actions to ensure that the relevant legislative measures are adopted.

f) Other claims for reparation

271. The representative asked the Court to order that:

Legal and administrative norms be adopted […] to strengthen the public defenders system […] and that these norms include sanctions for public defenders should they fail to comply with their obligations, particularly in those cases in which their negligence or dolus leaves a person defenseless, as happened to Mr. Lapo; […] that the Ecuadorean prison system be reformed so that those deprived of their liberty are not subjected to cruel, inhuman or degrading treatment during the time they spend in detention centers; that the members of the forces of law and order, especially the members of special forces such as CONSEP, receive periodic courses on human rights education, and that prison officials receive courses on human rights and basic principles for the treatment of prisoners, and on the series of principles for the protection of all those subjected to any form of detention.

272. The Court observes that the representatives requested these reparations in their final written arguments. In this regard, the Court considers that this was not the appropriate procedural opportunity for requesting such measures; the submission of the brief with requests and arguments has been established for this purpose. Nevertheless, the Court observes that the present case is the fourth Ecuadorean case submitted to this international court in which violations of due process of law and other rights protected by the American Convention have been declared within the framework of Ecuador's anti-narcotics policies. [FN178] Consequently and owing to the circumstances of the instant case, the Court finds it pertinent to reiterate the education and training measures similar to those already ordered in Tibi v. Ecuador.

[FN178] Case of Suárez Rosero, supra note 72; Case of Tibi, supra note 43; Case of Acosta Calderón, supra note 47, and now the instant case.

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273. Consequently, the State must inform the Court, within six months of notification of this judgment, about the activities, timetables and expected results of the education and training measures for public officials that must be completed within 18 months of notification of this judgment.

D) COSTS AND EXPENSES

274. As the Court has indicated previously, costs and expenses are included in the concept of reparation embodied in Article 63(1) of the American Convention. [FN179]

[FN179] Cf. Case of Garrido and Baigorria, supra note 152, para. 79; Case of the "White Van" (Paniagua Morales et al.), supra note 23, para. 212, and Case of Zambrano Vélez et al., supra note 13, para. 159.

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275. In the instant case, when forwarding their brief containing pleadings and motions (supra para. 5), the representatives did not submit the respective vouchers for the costs and expenses in which Messrs. Chaparro and Lapo had allegedly incurred, nor did they submit clear arguments in this regard. The Court considers that the claims of the victims or their representatives in relation to costs and expenses, and the evidence supporting them, must be presented to the Court at the first procedural opportunity granted them; [FN180] namely, in the brief containing pleadings and motions, without prejudice to those claims being updated subsequently, to include new costs and expenses incurred as a result of the proceedings before this Court.

[FN180] Cf. Case of Molina Theissen v. Guatemala. Reparations and costs. Judgment of July 3, 2004. Series C No. 108, para. 22, and Case of Acosta Calderón, supra note 47, para. 41.

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276. Given the lack of evidence mentioned in the preceding paragraph, the President decided to request the representatives that, as helpful evidence, they forward probative documentation on the costs and expenses incurred (supra para. 11). In this regard, the Court wishes to observe that it is a power and not an obligation of the Court to request the parties to provide helpful evidence. As stated in the preceding paragraph, the representatives have the obligation to submit the pertinent evidence opportunely.

277. Moreover, even though the representatives submitted the documentation requested (supra para. 11), they did not include precise details of all the items for which reimbursement was requested, or the total amount they requested the Court to establish. It was only following two

communications from the Court that the representatives finally submitted the total amount of their claim. In this regard, the Court considers that it is not sufficient to remit probative documents; rather the parties must develop the reasoning that relates the evidence to the fact under consideration, and, in the case of alleged financial disbursements, the items and their justification must be described clearly.

278. The representatives requested reimbursement of the sum of US$235,813.21 (two hundred and thirty-five thousand eight hundred and thirteen United States dollars and twenty-one cents) to Mr. Chaparro and US$9,941.55 (nine thousand nine hundred and forty-one United States dollars and fifty-five cents) to Mr. Lapo for legal advice and representation and the procedural costs they incurred during the proceedings in the domestic sphere and in these international proceedings. In turn, Mr. Lapo provided a statement of expenses that exceeds the amount requested by the representatives, and indicated that he had not kept some of the receipts for those expenses. The State requested the Court to "abide by its case law on costs and expenses and establish reasonable amounts based on the equity principle."

279. From the documentation provided, it can be seen that the victims agreed with their representatives that they would pay the latter the sum of US$150,000.00 (one hundred and fifty thousand United States dollars) for professional fees, "when the Ecuadorean State pays the pecuniary reparations that the Inter-American Court orders in favor of Messrs. Chaparro Álvarez and Lapo Íñiguez in its judgment." [FN181] In this regard, the State declared that "the amount […] 'agreed' for the payment of professional fees cannot be recognized by the Inter-American Court in the case of an eventual judgment against the State and, instead, the amount should be established, based on the equity principle, without taking into account the arrangements and conditions under which the lawyers have assumed the legal representation of the alleged victims."

[FN181] Certification issued by the lawyers Xavier A. Flores Aguirre and Pablo J. Cevallos Palomeque on September 20, 2007 (file on merits, volume III, folio 944).

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280. The Court has indicated previously that it does not have competence to rule on the agreements that victims reach with their representatives concerning professional fees. [FN182] However, if, as in the instant case, it is requested that this agreement between the victims and their representatives be assumed by the State, the Court must examine whether the agreed amount is reasonable. In this regard, in Cantoral Benavides v. Peru, the Court stated that the costs "include the various necessary and reasonable expenses that the victim or victims incurred in order to have access to the Inter-American system for the protection of human rights, and these expenses include the fees of those who provide legal assistance." [FN183]

[FN182] Cf. Case of de the Gómez Paquiyauri Brothers. Monitoring compliance with judgment. Order of the Inter-American Court of Human Rights of September 22, 2006, sixteenth considering paragraph.

[FN183] Cf. Case of Cantoral Benavides, supra note 177, para. 85. Also, in Case of Cesti Hurtado v. Peru, the Court stated that "[w]ith regard to professional fees, it is necessary to bear in mind the characteristics inherent in international human rights proceedings, in which decisions are adopted on the violations of such rights, without examining all the extremes of the implications of these violations, which could involve questions of profit related to the said fees, which are legitimate in themselves, but unrelated to the specific issue of the protection of human rights. Therefore, the Court must decide these claims with restraint. If the Court proceeded otherwise, international human rights litigation would be denatured. Consequently, the Court must apply criteria of equity in these cases."

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281. Bearing in mind the foregoing considerations, the evidence provided, the State's observations on this evidence, and the equity principle, the Court determines that the State shall deliver the sum of US$30,000.00 (thirty thousand United States dollars) to Mr. Chaparro, and the sum of US$5,000.00 (five thousand United States dollars) to Mr. Lapo, for costs and expenses. These amounts shall be delivered to the victims within one year of notification of this judgment, and they shall deliver the amount they consider appropriate to their representatives, in keeping with the assistance provided by the latter.

282. Furthermore, the representatives requested reimbursement of approximately $5,000.00 (five thousand United States dollars) to Mr. Lapo, and US$3,500.00 (three thousand five hundred United States dollars) to Mr. Chaparro, for supposed food and maintenance expenses while they were deprived of their liberty, and for paying for "security to other inmates." In this regard, the Court observes, first, that these allegations were presented together with the helpful evidence (supra para. 11), in other words, when the appropriate procedural opportunity had expired. According to the Court's case law, the request for helpful evidence does not grant a fresh opportunity for expanding or completing arguments. [FN184] Second, the said concepts do not conform to what the Court understands by costs and expenses, which are: "the disbursements that are strictly necessary to attend the matters before the jurisdictional organs at the national and international level." [FN185] Consequently, it decides not to grant reimbursement for these concepts.

[FN184] Cf. Case of Molina Theissen, supra note 180, para. 22; Case of Acosta Calderón, supra note 47, para. 41.

[FN185] Cf. Case of Cesti Hurtado, supra note 183, para. 72.

E) METHOD OF COMPLIANCE WITH THE PAYMENTS ORDERED

283. The payment of compensation and the reimbursement of costs and expenses established in favor of the victims shall be made directly to them. If one of them should die before the respective compensation is delivered to him, it shall be paid to his successors, in accordance with the applicable domestic laws. [FN186]

[FN186] Cf. Case of Myrna Mack Chang, supra note 13, para. 294; Case of Cantoral Huamani and García Santa Cruz, supra note 20, para. 162, and Case of Zambrano Vélez et al., supra note 13, para. 137.

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284. The State must comply with its obligations by payment in United States dollars.

285. If, for reasons attributable to the beneficiaries of the compensation, it is not possible for them to receive it within the indicated period, the State shall deposit the amount in favor of the beneficiaries in an account or a deposit certificate in an Ecuadorean banking institute in United States dollars and in the most favorable financial conditions permitted by law and banking practice. If, after 10 years, the compensation has not been claimed, it shall revert to the State with the accrued interest.

286. The amounts allocated in this judgment for compensation and for reimbursement of costs must be delivered to the beneficiaries integrally as established in this judgment without any deductions for possible taxes.

287. If the State falls into arrears, it shall pay interest on the amount owed, corresponding to banking interest on arrears in Ecuador.

288. In keeping with its consistent practice, the Court reserves the right inherent in its attributes and derived from Article 65 of the American Convention to monitor compliance with all the terms of this judgment. The case will be closed when the State has fully complied with all its terms. Within six months of notification of this judgment, the State shall provide the Court with a report on the measures adopted to comply with it.

XII. OPERATIVE PARAGRAPHS

289. Therefore,

THE COURT

DECIDES,

unanimously:

1. To reject the preliminary objections filed by the State in the terms of paragraphs 13 to 23 of this judgment.

DECLARES,

unanimously, that:

2. It accepts the partial acknowledgement of international responsibility made by the State, in the terms of paragraphs 25 to 34 of this judgment.

3. The State violated the rights to personal liberty, judicial guarantees, personal integrity, and property embodied in Articles 7(1), 7(2), 7(3), 7(4), 7(5), 7(6), 8(1), 8(2), 8(2)(c), 8(2)(d), 5(1), 5(2) and 21(2) of the American Convention in relation to Articles 1(1) and 2 thereof, to the detriment of Juan Carlos Chaparro Álvarez, in the terms of paragraphs 73, 86, 88, 105, 119, 136, 147, 154, 158, 161, 165, 172, 195, 199, 204, 209 and 214 of this judgment.
4. The State violated the rights to personal liberty, judicial guarantees, personal integrity, and property embodied in Articles 7(1), 7(2), 7(3), 7(5), 7(6), 8(1), 8(2), 8(2)(c), 8(2)(e), 5(1), 5(2), 21(1) and 21(2) of the American Convention in relation to Articles 1(1) and 2 thereof, to the detriment of Freddy Hernán Lapo Íñiguez, in the terms of paragraphs 66, 87, 88, 105, 119, 130, 136, 147, 154, 159, 161, 172 and 218 of this judgment.
5. It is not necessary to rule on the alleged violation of the right embodied in Article 7(4) of the American Convention to the detriment of Freddy Hernán Lapo Íñiguez, for the reasons set out in paragraph 77 of this judgment.
6. There has been no violation of the right embodied in Article 25 of the American Convention to the detriment of Juan Carlos Chaparro Álvarez and Freddy Hernán Lapo Íñiguez, for the reasons set out in paragraph 139 of this judgment.

AND RULES,

unanimously, that:

7. This judgment constitutes per se a form of reparation.
8. The State must eliminate forthwith the names of Juan Carlos Chaparro Álvarez and Freddy Hernán Lapo Íñiguez from the public records in which they still appear with a criminal record, in the terms of paragraphs 258 to 260 of this judgment.
9. The State must immediately inform the relevant private institutions that they should eliminate from their records any reference to Juan Carlos Chaparro Álvarez and Freddy Hernán Lapo Íñiguez as authors or suspects of the criminal act of which they were accused in this case, in accordance with paragraph 260 of this judgment.
10. The State must publicize this judgment within six months from notification of the judgment, in the terms of paragraphs 261 to 265 hereof.
11. The State must adapt its legislation within a reasonable time to the parameters of the American Convention on Human Rights, in the terms of paragraphs 266 to 269 of this judgment.
12. The State must adopt forthwith all the administrative or other measures necessary to eliminate de oficio the criminal record of those persons who are acquitted or whose cases are dismissed. Also, within a reasonable time, it must implement the pertinent legislative measures to this end, in the terms of paragraph 270 of this judgment.
13. The State and Juan Carlos Chaparro Álvarez must submit to an arbitration procedure to establish the amounts corresponding to pecuniary damage, in the terms of paragraphs 232 and 233 of this judgment.
14. The State must pay Juan Carlos Chaparro Álvarez and Freddy Hernán Lapo Iñiguez the amounts established in paragraphs 232, 234, 238, 240, 242, 245, 252, 253 and 281 of this judgment, to compensate them for pecuniary and non-pecuniary damage and for reimbursement of costs and expenses, within one year from notification of this judgment, in the terms of paragraphs 283 to 287 hereof.

15. The Court reserves the right inherent in its attributes and derived from Article 65 of the American Convention on Human Rights to monitor implementation of all aspects of this judgment. The case will be closed when the State has fully complied with all its terms. Within six months of notification of this judgment, the State shall provide the Court with a report on the measures adopted to comply with it, in the terms of paragraph 288 hereof.

Judge Sergio García Ramírez advised the Court of his separate opinion, which accompanies this judgment.

Done in San José, Costa Rica, on November 21, 2007, in Spanish and English, the Spanish text being authentic.

Sergio García Ramírez
President

Cecilia Medina Quiroga
Manuel E. Ventura Robles
Diego García-Sayán
Leonardo A. Franco
Margarette May Macaulay
Rhadys Abreu Blondet

Pablo Saavedra Alessandri
Secretary

So ordered,

Sergio García Ramírez
President

Pablo Saavedra Alessandri
Secretary

SEPARATE OPINION OF JUDGE SERGIO GARCÍA RAMÍREZ REGARDING THE JUDGMENT OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS (CASE OF CHAPARRO ALVAREZ AND LAPO ÍÑIGUEZ v. ECUADOR) OF NOVEMBER 21, 2007

A) Issues relating to criminal prosecution in the case law of the Inter-American Court of Human Rights

1. In the Judgment delivered by the Inter-American Court of Human Rights on November 21, 2007, in the Case of Chaparro Álvarez and Lapo Iñiguez (Ecuador), the Court examines, among other matters, different issues relating to prosecution – a term that I employ in the broadest sense – or due process of law, judicial guarantees, effective judicial protection, comprehensive and satisfactory defense; concepts that, at times, are used as synonyms although, in truth, they are not, and that, in any event, encompass some of the issues that the Inter-

American jurisdiction and its European counterpart deal with most often. The extraordinary relevance and the frequent examination of these issues stems from their crucial role for the preservation of all fundamental rights, and the prevalence of the problems, of greater or lesser significance in this regard, that the Inter-American jurisdiction must consider.

2. Hence, the importance of due process and the need to insist on the definition and analysis of its different components. Due process is the touchstone of access to justice – formal, material and preventive; a factor of profound relevance to the preservation of the democratic system, above all when it extends its influence to the relationship between public authorities and the citizen in that critical sphere for the exercise of rights, the criminal proceedings, where the most relevant rights (life, integrity, liberty) are at risk, and the most serious allegations are made of authoritarianism designed to reduce, relativize or eliminate rights and freedoms.

B) Preventive measures in criminal proceedings. Characteristic tensions

3. In the Judgment that this opinion accompanies, among other procedural issues, the Court examines some of the preventive measures regularly used in criminal prosecution, of both a personal (arrest, remand in custody) and material (embargo of property) nature. The former are usually characteristic of criminal proceedings (although, evidently, not exclusive to such proceedings), while the latter are associated, above all, with civil proceedings – but can increasingly be observed in criminal proceedings as an indirect means of combating crime, and a direct means of preserving the subject of the proceedings and the possibility of executing a guilty verdict.

4. In the context of criminal proceedings the preventive system has become particularly prevalent, alongside the stages of the hearing of the case (which it assists) and the execution of Judgment. It runs parallel to the investigation into the facts and the authors of these facts. It uses increasingly incisive and complex methods. Evidently, it always affects the rights of the accused, to a greater or lesser degree and, by definition, this takes place before there are juridical grounds – the Judgment – that decides on the existence of a crime, its characteristics, and the responsibility of a specific person, towards whom the preventive measures adopted by different authorities have been directed – occasionally for a significant length of time. At times these authorities are jurisdictional, and this should be the rule, owing to the need to guarantee the legality and lawfulness of the measure; at times they are administrative (an increasingly frequent situation), in order to combat criminal acts, based on arguments of urgency and public safety, but certainly disquieting and dangerous.

5. The fact that restrictions to the exercise of the rights of the individual – entailing, if we examine this realistically, a real temporary deprivation of those rights (for example, preventive detention) – occur before a judgment has been delivered (and, often, even before the trial commences), evidently creates tension between such measures, extensively embodied in law and applied in the practice, on the one hand, and the principle or presumption of innocence, on the other hand. The latter is a prized general guarantee for the individual, prior to the time when he faces criminal proceedings or while such proceedings are underway, and the Inter-American Court's case law recognizes this to be the foundation or basis for the rights embodied in the notion of due process. It is difficult to conciliate the presumption that someone is innocent of the

unlawful conduct attributed to him or that is being investigated in order to attribute it to him, with the infringement of his rights as a means or instrument – paradoxically – to define whether the alleged conduct exists and to prove hypothetical responsibility.

6. In these circumstances, there is an evident element of injustice in punitive preventive measures that limit rights, invade privacy and restrict liberty. However, there appear to be no doubts about the need or inevitability of adopting measures of this nature in the interest of criminal justice as a whole, the probable rights of victims, public peace, etcetera, factors that help alleviate the tensions to which I referred and "pacify the conscience of justice" with persuasive arguments based, above all, on reasons of security. We have been unable to eradicate – and will be unable to do so for a long time, or perhaps ever – the need for preventive measures that are more or less rigorous. The most we can and, obviously, should do is to reduce them to their most essential form and substitute them, whenever possible, by instruments that have a less harmful effect on rights and that are sufficiently effective for the satisfactory administration of criminal justice.

7. In brief, therefore, as in the case of any other restriction of fundamental rights, punitive preventive measures must be: (a) exceptional, rather than regular, routine and systematic; (b) justified within a precise framework of reasons and conditions that provide them with legitimacy and rationale; (c) agreed on by an independent, impartial and competent jurisdictional authority, that decides on them formally and states the reasons and grounds on which they are based; (d) essential to achieve their legitimate purpose; (e) proportionate to this purpose and to the circumstances in which they are issued; (f) limited, to the extent possible, in intensity and duration; (g) periodically reviewable, by law and at the request of the parties; a review that include the guarantees inherent in a real impugning system (independence, effectiveness and promptness); and (h) able to be revoked or substituted when their reasonable duration has been exceeded, taking into account their characteristics. All of this, which is applicable to the general system of punitive preventive measures, has a special importance if we consider the most severe of such measures: the preventive deprivation of liberty.

C) Preventive deprivation of liberty

a) Conditions

8. It is frequently and rightly said that the criminal justice system – particularly the one used in the countries encompassed by the Inter-American system – makes excessive use of preventive detention and remand in custody. Abundant information exists to illustrate this affirmation. There are many supposed offenses for which the alleged authors are subjected to preventive deprivation of liberty, while a pre-trial investigation is conducted and a trial is held to decide whether there has been a crime and the criminal responsibility, which constitutes, to evoke Beccaria, a punishment that precedes the verdict.

9. Numerous laws establish inexorably that preventive detention must be imposed on those accused of certain categories of offenses, a provision that deprives the judge of the possibility of weighing individually, as he should, the pertinence of ordering remand in custody in the case he is examining, not merely as an abstract and general category. This order of preventive detention

extended to a heterogeneous variety of individuals and proceedings, borders on arbitrariness: legislative rather than judicial, but always related to the State. It suggests – mutatis mutandis – similar reflections to those that the Court has made when ruling on "automatic" penalties, such as the mandatory death penalty that some legislations conserve.

10. I have already indicated that the adoption of preventive measures, including deprivation of liberty – appears to be inevitable in criminal proceedings, but it is also essential to review situations that could justify them, established by law and assessed by the judge, under his strict responsibility. Admittedly, this measure is intended to assist the development of the proceedings, with all its implications concerning the preservation of the evidence, the safety of the participants and, when applicable, the possibility of executing the judgment. If this is so – and it would be difficult to go further – it is up to the legislator to limit the possibilities of preventive detention, indicating the elements that could legitimize it, and for the judge to assess whether these elements are effectively present in the case submitted to his jurisdiction. Obviously, none of this would justify the reclusion of entire groups of accused, indiscriminately, because they belonged to a determined "general category"; in other words, under a common heading and based on a legislative pre-trial, rather than a judicial trial. In summary, the intention is not to abolish preventive detention, but rather to rationalize it. It would not be irrational to establish punitive rationality, here also.

b) Control and determination of lawfulness

11. The Court sets out its considerations regarding the body called on to control the actions of other authorities and to decide on the lawfulness of the deprivation of liberty, an issue established in Article 7 of the American Convention. In this regard, the Court examines, in the terms of the Case of Chaparro Álvarez and Lapo Íñiguez and of the domestic laws applicable to it, the nature of this authority and of the proceedings taking place before it. The Convention establishes that the control of lawfulness – and habeas corpus intervenes here – is the responsibility of a judicial authority. I agree that this is so, and that it should be so; the judicial authority, and no other, has the powers – pursuant to the international human rights instrument that binds the States and is applied by the Court – to decide on the pertinence of liberty and on release from prison.

12. I believe it is admissible, however, to expand the sphere of the rights and guarantees of the accused, if this possible and even necessary, taking into account the circumstances in which the detention has taken place and in which its rectification could be broached. When dealing with this point, I abide by the principle that domestic law can expand – rather than restrict – the rights of the individual and improve – rather than weaken – the guarantees that protect the individual. Consequently, I consider that it is possible that a non-judicial official, acting promptly – very promptly, perhaps – may end the unlawful detention imposed on an individual. I underscore: this intervention should not entail any condition or requirement, obstacle or delay for the judicial intervention embodied in Article 9 of the American Convention, but rather an additional benefit, and a prompt and opportune guarantee.

13. By stating this, I am not disagreeing, even remotely, with the judgment I have signed. I am not validating the delivery of habeas corpus to political and administrative authorities

(mayors, for example), rather, I am affirming that the violation or error committed by the captor can be corrected without delay by that authority, not by means of habeas corpus and in substitution of the judicial authority or as an instance that precedes the latter, but in order to provide prompt justice, which eliminates the violation and restores liberty. Moreover, I am thinking of the situation that could arise when the administrative authority is able to act promptly, owing to his proximity to the person captured and to the captor, and the judicial authority is at a certain distance that must be covered – promptly, evidently – in order to request this liberty.

c) Formality

14. In the instant case, the Court also examined the characteristics of the act of judicial control (referring to the precedent established in other cases); that is, the presence, action and diligence of the judge who controls the form and duration of the detention. Obviously, the purpose of the guarantees contained in the Convention and in the laws of a democratic society that protect rights and establish guarantees, is not merely an appearance of control, which could derive in the mere presence of a judicial authority at a determined act, more or less distant and even covert. What is needed is an effective presence – conscious, explanatory, investigative, helpful – of the subject before the judge and a real awareness on the part of the judge, as a requirement for genuine control based on a grounded and reasoned decision.

d) Diligence

15. Regarding the diligence in the actions of the authorities required by various provisions under different hypotheses (the decision on detention, pursuant to Article 7 of the American Convention; the development and conclusion of the trial, according to Article 8), the expressions used by the applicable provisions, by case law and legal doctrine, by the vox populi and by common sense, and the experience deposited in the discourse of the defendants, all point towards the prompt and expedient action of the authority called on to decide (as rapidly as that authority would wish a decision to be made if he himself was subject to trial, for one moment taking the place of the accused on the defendant's bench) on the reasonable promptness of the decision, the removal of obstacles, and the elimination of delays that postpone the control of the lawfulness or legitimacy of the act, the settlement of a dispute, or the adoption of an urgent measure (particularly for the person who is subject to the action of justice: a temporary resident in the labyrinths of any stage of the proceedings.

16. There can be – and there are – general criteria to assess reasonable time, related to the different hypotheses posed, and accepted in the intention of different expressions. The Court, which deals with developments of European case law under this point, has referred to the complexity of the issues, the conduct of the authorities (judicial and other, who intervene in the proceedings and, through their procedural conduct, influence the latter's development, its "times and movements"), the conduct of the accused (and even more of his legal counsel, who guides the defense "strategy and tactics"). The latter, we must emphasize, does not conclude with the transfer to the individual of "responsibility" for the duration of the process. The Court has never suggested that there has been or there exists such a transfer of responsibility and assignment of prejudice.

17. As I have stated on another occasion, I believe that another factor needs to be added to these elements that help us assess the reasonableness of the time; one embodied in law and in practice, based on the circumstances of the specific case: the impact that the passage of time may have on the legitimate interests and rights of the individual, a point that we have not explored up until now. Beside these general and reasonable references, I consider that it will always be necessary to assess the issue casuistically. What is reasonable in one case may not be in another. It would be difficult to establish a "typical time" to which all proceedings are made to fit, as on Procrustes' bed. Nevertheless, it is not unusual that, even without having this "typical time," which when exceeded allows the actions of the authority to be censured – under the provisions of Articles 7 and 8 – we are confronted with evidently excessive durations: weeks to decide whether a detention is appropriate; years to bring a trial to conclusion.

D) Material precautionary measures

18. In the Judgment in the Case of Chaparro Álvarez and Lapo Íñiguez, the Inter-American Court has also referred to material preventive measures in criminal cases, those that affect property and, thus, restrict rights connected directly to such property; particularly, the right to property. Many of the considerations, if not all, that I have formulated with regard to personal preventive measures are also applicable to this type of measure. These include, evidently, the rationality of the measures, based on elements that justify them.

19. It is necessary to be alert when faced with material precautionary measures that constitute, basically, shortcuts to eliminating a right, without the existence of evidence regarding the unlawful act committed, or proof of criminal responsibility, or a judgment declaring both these elements: all factors that restrict or eliminate any right. The Judgment in the case that gives rise to these comments points towards the excesses that may affect property, a delicate issues whose importance increases to the extent that summary instruments are used, unrelated to the declaration of unlawfulness and responsibility, based on conjecture and associated with an inversion of the burden of proof.

20. Thus, we return to the dilemma that has occupied many key decisions and discussions in the criminal sphere: does the end justify the means? We have maintained the inverse proposition, based on the principles of the criminal justice system of a democratic society: the legitimacy of the means legitimizes the end. This has important repercussions at all levels: for the precautionary measures that we are examining, but also for the definition of crimes, the selection of the juridical consequences of a crime, the organization of the proceedings, the admission and assessment of the evidence, the execution of penalties and measures, etcetera.

Judge Sergio García Ramírez
President

Pablo Saavedra Alessandri
Secretary