

INTER-AMERICAN COURT OF HUMAN RIGHTS
CASE OF CARRANZA ALARCÓN V. ECUADOR
JUDGMENT OF FEBRUARY 3, 2020
(Preliminary Objections, Merits, Reparations, and Costs)

In the case of *Carranza Alarcón v. Ecuador*,

the Inter-American Court of Human Rights (hereinafter “the Inter-American Court” or “the Court”), composed of the following judges*

Elizabeth Odio Benito, President;
Eduardo Vio Grossi, Judge;
Humberto Antonio Sierra Porto, Judge;
Eduardo Ferrer Mac-Gregor Poisot, Judge;
Eugenio Raúl Zaffaroni, Judge, and
Ricardo Pérez Manrique, Judge,

also present,

Pablo Saavedra Alessandri, Secretary,

pursuant to Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”) and Articles 31, 32, 62, 65, and 67 of the Rules of Procedure of the Court (hereinafter “the Rules of Procedure” or “the Court’s Rules of Procedure”), delivers this judgment structured as follows:

* Judge L. Patricio Pazmiño, Vice President of the Court and an Ecuadorian national, did not take part in the processing of this case or in the deliberation and signing of this judgment, in accordance with Articles 19(1) and 19(2) of the Court’s Rules of Procedure.

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I
INTRODUCTION OF THE CASE AND PURPOSE OF THE DISPUTE

1. *The case submitted to the Court.* On March 29, 2018, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or “the Commission”) submitted to the jurisdiction of the Court the case of “Carranza Alarcón” against the Republic of Ecuador (hereinafter “the State” or “Ecuador”).¹ The Commission took it as a proven fact that Ramón Rosendo Carranza Alarcón (hereinafter also “Mr. Carranza” or “Mr. Carranza Alarcón”) was “held in preventive detention from November 1994 to December 1998,” when his guilty verdict was finalized. According to the Commission, the preventive detention was arbitrary, and its duration as well as the duration of the criminal trial were unreasonable.

2. *Procedure before the Commission.* The procedure before the Commission was as follows:

a) *Petition.* On April 5, 1998, the Commission received the initial petition, presented by José Leonardo Obando Laaz (hereinafter “the representative”).

b) *Reports on Admissibility and Merits.* On November 2, 2011, and May 23, 2017, the Commission approved Admissibility Report No. 154/11 and Merits Report No. 40/17 (hereinafter “Merits Report”) respectively. It drew conclusions² and developed recommendations for the State.

c) *Notification to the State.* The Commission sent the State a notification of Report No. 40/17 on June 29, 2017, giving it two months to report back on its compliance with the recommendations.

d) *Reports on the Commission’s recommendations.* In response to Ecuador's requests, on September 27, 2017, December 28, 2017, and January 29, 2018, the Commission granted extensions to the State. However, as it stated when it submitted the case to the Court, the Commission believed that “it did not have concrete information on compliance with the recommendations” detailed in the Merits Report.³

¹ It stated that it submitted the case to this Court due to “the need to obtain justice in this particular case.” It appointed Commissioner Esmeralda Arosemena de Troitiño and Executive Secretary Paulo Abrão as its delegates, and then-Assistant Executive Secretary Elizabeth Abi-Mershed, Silvia Serrano Guzmán, and Erick Acuña Pereda as legal advisors.

² The Commission concluded that Ecuador is responsible for violating the rights to personal liberty, judicial guarantees, and judicial protection, established in Articles 7(1), 7(3), 7(5), 8(1), and 8(2) of the American Convention regarding obligations set forth in Articles 1(1) and 2 of the same treaty.

³ Ecuador presented reports to the Commission on its compliance with the Commission's recommendations at least on September 5, 2017, January 4, 2018, and March 29, 2018. It is worth emphasizing that the Commission recommended that the State “make comprehensive reparation to Mr. [...] Carranza” and “adopt the measures of non-repetition necessary to ensure that both the applicable laws and the respective practices in relation to preventive detention are compatible with the standards established in the [Merits Report].” Notably, in a document dated December 26, 2017, sent to the Commission on January 4, 2018, the State, regarding the first recommendation, stated that it had “undertaken efforts” to locate Mr. Carranza, and regarding the second recommendation, noted that in 2014 the Comprehensive Organic Criminal Code had gone into effect, modifying the legal framework of preventive detention such that, in the view of the State, “it is in harmony with the standards set by the C[ommission].” In addition, it reported on police personnel training sessions that had a “human rights focus” and included a module on “preventive detention.” The State then sent the Commission a copy of a January 25, 2018, document from Mr. Carranza’s lawyer, addressed to state authorities, in which said lawyer stated he was attempting to locate Mr. Carranza and was “in full agreement with an extension of at least two or three months in order to locate M[r.] C[arranza...] and arrive at an amicable resolution of the case, including pecuniary and non-pecuniary reparation.” In its last presentation, on March 29, 2018, the State reported to the Commission that it had taken various steps to ascertain the whereabouts of Mr. Carranza and that his lawyer had noted that he had “indications that Mr.

3. *The Commission's requests.* The Commission asked this Court to declare the international responsibility of Ecuador, considering "the totality of the facts and human rights violations" noted in its Merits Report, and to order the State to adopt, as measures of reparation, the recommendations included in that report.

II PROCEEDINGS BEFORE THE COURT

4. *Notification to the State and to the representative.* The representative of the presumed victim, as well as the State, were notified of the case on July 3, 2018.⁴

5. *Brief with motions, pleadings, and evidence.* On September 5, 2018, the representative presented his brief with motions, pleadings, and evidence (hereinafter "motions and pleadings brief"), pursuant to Articles 25 and 40 of the Court's Rules of Procedure. He agreed with the Commission's arguments and also asked the Court to declare the State responsible for violating the rights to personal integrity and judicial protection. He sought a variety of reparation measures and the payment of "fees."

6. *Answering brief.* On November 28, 2018, Ecuador presented its brief with preliminary objections, its answer to the submission of the case, and its observations on the motions and pleadings brief (hereinafter "the answering brief"). It lodged two preliminary objections, and it denied the alleged violations and the appropriateness of measures of reparation.

7. *Observations on the preliminary objections.* On February 20, 2019, the Commission presented observations on the preliminary objections. The representative did the same on the 26th of that month. The representative's observations were delivered late, so they will not be considered. In the same brief, the representative presented observations on the merits of the case and on the evidence offered by Ecuador. As those observations were presented outside of the legally established occasions for that purpose and as they were unsolicited, they will not be considered either.

8. *Final written proceedings.* After evaluating the primary briefs presented by the Commission and the parties, and in light of the provisions of Articles 15, 45, and 50(1) of the Rules of Procedure, the then-President of the Court⁵ (hereinafter "the President"), in consultation with the Plenum of the Court, decided "for reasons of procedural

Carranza had passed away." The State declared at that time that it "was willing to carry out the comprehensive reparation process recommended in Merits Report No. 40/17" and that "the difficulty of ascertaining Mr. Carranza's whereabouts have[had] made it impossible to do so." Also at that time, the State indicated that for the reason presented, it was "necessary to seek an extension" from the Commission and that it "would be appropriate, within the framework of the trial within the Inter-American System [...], to request that the petitioner's representative provide the State with information allowing it to contact Mr. Carranza Alarcón."

⁴ On June 15, 2018, the representative reported that he "[would] continue to represent" Mr. Carranza, who had passed away, according to "information from family members." Moreover, on July 9, 2018, he reported that the compact disc containing documentary appendices to the case notification had arrived damaged. For this reason, on July 13, he was sent that documentation again with a note that the two-month period for presenting his brief with motions, pleadings, and evidence would be counted from the date of receipt of that second set of documents.

⁵ When said resolution was issued, the President of the Court was Judge Eduardo Ferrer Mac-Gregor Poisot.

efficiency” that it was unnecessary to convene a public hearing, considering that “the disputes in the case are fundamentally legal in character.” The decision was communicated via Presidential Resolution on July 23, 2019. That resolution included an order for two notarized written statements to be delivered to the Court (*infra* para. 34).

9. *Final written arguments and observations.* On September 16, 2019, the Commission presented its final written observations and the State submitted its final written arguments. The representative did not present final written arguments.

10. *Deliberation of the case.* The Court deliberated this judgment on February 3, 2020.

III JURISDICTION

11. The Court has jurisdiction to hear this case pursuant to Article 62(3) of the Convention. Ecuador has been a Party to the Convention since December 28, 1977, and it recognized the contentious jurisdiction of the Court on July 24, 1984.

IV PRELIMINARY OBJECTIONS⁶

12. The State lodged two preliminary objections, claiming: a) failure to exhaust domestic remedies and b) alleged violation of its right to defense.

A) Objection regarding the failure to exhaust domestic remedies

13. The **State** argued that it had provided domestic remedies for a) challenging the court conviction and b) contesting the preventive detention. Regarding the first, it noted that: i.- a cassation appeal could be filed “if the presumed victim believed the Criminal Court had violated the law through the conviction,” and ii.- the remedy of review was appropriate to “remedy the case of a person wrongly convicted.” Regarding the second, it noted that Mr. Carranza presented neither i.- the remedy of habeas corpus, which was a “fast, suitable, and effective remedy” to demand the release of persons unlawfully or arbitrarily detained, nor ii.- the liberty *amparo* during the criminal proceedings in order to resolve his legal situation with respect to his right to personal liberty.

14. The **Commission** noted: a) that the State did not have any proof that it had carried out a periodic review of the continued appropriateness of preventive detention until the issuance of the conviction; b) that the requirement of exhausting domestic remedies does not mean that the presumed victims are necessarily obligated to exhaust all available remedies; c) that the brief presented by Mr. Carranza in September 1995 to the court that was hearing the criminal trial gave the State the opportunity to remedy the issue; d) that the liberty *amparo* remedy was pointed out by the State for the first time before the Inter-American Court, so the argument is not timely; e) that the remedies of cassation and review are not for the purpose of contesting the “unlawful or arbitrary” detention of the presumed victim, and f) that a habeas corpus before

⁶ As indicated above (*supra* para. 7), the representative’s observations on the preliminary objections will not be considered because they were presented late.

the administrative authority does not constitute an effective remedy under the standards of the American Convention.

15. The **Court** has held that an objection to the exercise of its jurisdiction based on the supposed failure to exhaust domestic remedies should be presented at the appropriate procedural time, that is, during the admissibility proceedings before the Commission.⁷ Failing which, the State will have lost the possibility of presenting it. In addition, the State presenting this objection must specify the domestic remedies that have yet to be exhausted, as well as provide an account of its availability and effectiveness with respect to the circumstances of the case.⁸ In this regard, a remedy must be effective, that is, capable of producing the result for which it was created.⁹

16. This Court notes that the State indicated four remedies. Two of those, according to the State, permitted challenging the guilty verdict: cassation and review. Two others permitted contesting the preventive detention: the liberty *amparo* and habeas corpus.

17. Regarding the remedies of cassation and review, the State's arguments themselves indicate that those remedies are for challenging the guilty verdict, not for contesting, prior to the issuance of that judgment, the deprivation of liberty Mr. Carranza was enduring in the form of preventive detention. Thus, Ecuador has not presented sufficient arguments to show that such remedies were suitable and effective to appropriately remedy the alleged violation in the case.

18. In addition, it is not appropriate to examine the arguments on *amparo* because the State did not present them at the appropriate time. It mentioned them for the first time as support for a preliminary objection before the Court, so the arguments are not timely.

19. What is left to examine is the State's argument on habeas corpus. In this respect, it follows from the foregoing (*supra* para. 15) that in order for a preliminary objection to proceed due to noncompliance with Article 46(1)(a) of the Convention, which establishes the requirement of prior exhaustion of domestic remedies, the State that presents the objection must indicate a remedy that is available and effective for the circumstances of the case.

20. It is relevant to bear in mind that the preventive detention of Mr. Carranza lasted from November 1994 to December 1998 (*supra* para. 1). The State reported that during that period, the Constitution of Ecuador provided for habeas corpus, both in its 1993 text and in the 1996 and 1998 revisions. As the State has reported, in all three cases, the respective law established that habeas corpus could be exercised to demand liberty before the "Mayor" ("or President of the Council" in the 1993 version), "or before their substitute" (or "before whoever may be substituting," in the 1996 version). Ecuador

⁷ Cf. *Case of Velásquez Rodríguez v. Honduras. Preliminary Objections*. Judgment of June 26, 1987. Series C No. 1, para. 88, and *Case of Díaz Loreto et al. v. Venezuela. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of November 19, 2019. Series C No. 392, para. 16.

⁸ In that regard: *Case of Velásquez Rodríguez v. Honduras. Preliminary Objections*, para. 88, and *Case of Perrone and Preckel v. Argentina. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of October 8, 2019. Series C No. 384, para. 33.

⁹ Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*. Judgment of June 26, 1987. Series C No. 1, para. 66 and *Case of Perrone and Preckel v. Argentina*, paras. 33 and 36.

also noted that “for the year 1998, if this remedy was denied by the mayor, it could be appealed before the former Constitutional Court.”

21. As the Court has noted in previous decisions, the mayor, even when he or she may have jurisdiction under the law, does not constitute an authority that meets the requirements of the Convention. This is because, under Article 7(6) of the Convention, control of deprivation of liberty shall be judicial (“before an appropriate judge or court”), and the mayor is part of the Administration. In its examination of cases on Ecuador, this Court has also found that the requirement of appealing the mayor’s decisions in order for habeas corpus to be heard by a judicial authority creates obstacles to a remedy that should by its very nature be simple.¹⁰ Thus, as the Court has expressed in its case law on Ecuador, the remedy of habeas corpus indicated by the State does not constitute an effective remedy.

22. For all these reasons, the Court concludes that the State’s arguments are not sufficient to support its claim of a failure to exhaust domestic remedies. Thus, it is appropriate to reject the preliminary objection lodged by Ecuador.

B) Alleged violation of the right to defense

23. The **State** argued that the Commission “took some steps without guaranteeing due process in the development of the present case.” It divided its arguments into two groups: one related to the “lack of motivation in the Admissibility Report” and the other “on the Merits Report [...] and compliance with recommendations.” It noted, specifically, that:

a) the preliminary objection regarding a failure to exhaust domestic remedies was presented by the State in the period of admissibility and was not considered in the Admissibility Report, which shows that the Commission did not analyze the “legal position” of the State and, thus, there was an “absence of motivation” in its determinations, and

b) the Merits Report: i.- was not “adequately motivated,” as it did not analyze the remedy of habeas corpus as a guarantee of respect for the right to personal liberty; ii.- asserted that a request for liberty for Mr. Carranza was not considered, “which does not correspond to the procedural facts;” and iii.- expressed recommendations and then “did not allow the State enough time to comply with [them].”¹¹

24. The **Commission** stated that “the Court’s case law indicates that the authority to carry out a ‘lawfulness review’ of the Commission’s actions must be exercised in the most limited and exceptional manner so as to not jeopardize the autonomy and independence of the Commission.” Furthermore, it asserted: a) regarding the claimed failure to consider habeas corpus in its decisions, that “it considered in its [A]dmissibility [R]eport that Mr. Carranza attempted an appropriate course of action through which the State had the opportunity to analyze the compatibility of the deprivation of liberty with

¹⁰ *Case of Chaparro Álvarez and Lapo Iñiguez v. Ecuador, Preliminary Objections, Merits, Reparations, and Costs*, Judgment of November 21, 2007. Series C No. 170, para. 122 and *Case of Herrera Espinoza et al. v. Ecuador. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of September 1, 2016. Series C No. 316, para. 167.

¹¹ Ecuador maintained that the Commission had sent the case to the Court without considering that, as it was aware, the actions aimed at complying with the recommendations were being coordinated with the representative of the presumed victim.

the Convention;" and b) regarding the submission of the case to the Court, that that decision is within the "purview" of the Commission and that in this case it had granted extensions to the State "without the State presenting concrete, detailed information."

25. The **Court** has indicated that in matters under its consideration, it has the authority to review the lawfulness of the Commission's actions, but this does not necessarily mean reviewing *ex officio* the proceedings that took place before the Commission. In addition, the Court must maintain a fair balance between the protection of human rights—the ultimate goal of the inter-American system—and the legal certainty and procedural fairness that ensure the stability and reliability of international protection. This review can occur, then, in those cases in which one of the parties argues that a serious error has violated its right of defense, in which case the party concerned must effectively prove that harm. A complaint or difference of opinion in relation to the Inter-American Commission's actions is not sufficient.¹²

26. The Court recalls that the Convention does not demand an express act on the part of the Commission regarding the admission of a complaint, and, for that reason, it does not regulate the content of Admissibility Reports. Without prejudice to the foregoing, the motivation in the Commission's reports enables the State to know that its defenses were considered by that body as it made its decision, though a detailed response to every single argument of the parties is not required.¹³

27. This Court notes that it is true that the Commission did not explicitly address the failure to present the remedy of habeas corpus either in the Admissibility Report or in the Merits Report. However, the Commission considered a brief that was reportedly presented in September 1995 to the court hearing the criminal trial against Mr. Carranza to be an appropriate action for contesting his deprivation of liberty. The Court understands that neither the Admissibility Report nor the Merits Report lacked motivation. A reading of both of them shows that, in the view of the Commission, the September 1995 brief was sufficient, so it did not need to explicitly address habeas corpus in its decisions. Whether the State shares the Commission's view on this is another question, but as has already been noted, a simple difference of opinion is not sufficient to prompt a review of the Commission's actions (*supra* para. 25).

28. Furthermore, the Court notes that the State claimed that the Commission's assertion in the Merits Report that the September 1995 brief was not considered by the justice system "does not correspond to the procedural facts." This disagreement by the State with the views of the Commission refers to aspects of the merits of the case.

29. What remains to be considered is the State's argument on the lack of adequate time to comply with the Commission's recommendations. In accordance with Articles 50 and 51 of the Convention, the Commission is responsible for assessing whether the State complied with the recommendations and, if applicable, whether it will refer the case to the Court. Once the legal proceedings have begun, the Court must determine whether

¹² Cf. *Case of the Saramaka People v. Suriname. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of November 28, 2007. Series C No. 172, para. 32 and *Case of Women Victims of Sexual Torture in Atenco v. Mexico. Preliminary Objection, Merits, Reparations, and Costs*. Judgment of November 28, 2018. Series C No. 371, para. 23.

¹³ In that regard, the considerations made by this Court in its case law are pertinent: cf. *Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela. Preliminary Objection, Merits, Reparations, and Costs*. Judgment of August 5, 2008. Series C No. 182, para. 90, and *Case of Rico v. Argentina. Preliminary Objection and Merits*. Judgment of September 2, 2019. Series C No. 383, para. 75.

the State violated substantive precepts of the Convention and, if applicable, set the consequences of said violations.

30. This Court highlights the importance of the Commission's evaluation of compliance with its recommendations. It is useful for assessing whether the State has made appropriate progress to adequately make reparation to the individuals considered to be victims and, if applicable, for attempting to ensure that the violations declared by the Commission do not happen again. In addition, where appropriate, said evaluation allows the Commission to decide whether to refer the case to the Court or if that would not be appropriate or expedient in a particular case. In this regard, the applicable articles of the Convention, statutory laws, and regulations do not obligate the Commission to refer a case to this Court.¹⁴

31. In the present case, the State presented information to the Commission after the Merits Report had been issued (*supra* footnote on page 3). That information described, first, training activities to prevent a recurrence of the events (in addition to recalling that it had modified the legal framework for preventive detention years before the merits decision of the Commission) and, second, attempts to locate Mr. Carranza in order to comply with the recommendation to make reparation for the damage the Commission found that he had suffered. Regarding this, the State communicated to the Commission that Mr. Carranza's lawyer was willing to request an extension and, later, that the same lawyer had reported that Mr. Carranza had died.

32. Despite this, the Commission stated when it submitted the case to the Court that "it did not have concrete information on compliance with [its] recommendations" (*supra* para. 2). Given the above, it is necessary to emphasize that, in accordance with the above-mentioned articles, it is the responsibility of the Commission—not this Court—to determine whether the State has complied with the recommendations contained within the Merits Report and, in general, to determine the circumstances related to the actions taken after the communication of said decision. It is not, in principle, the Court's role to assess or review the views of the Commission in this regard. In this case, the State had the opportunity—after having been notified of the Merits Report—to present information to the Commission, and that information was assessed by the Commission. Thus, the Court does not observe a serious error that would affect the right of defense.

33. Based on the above, this Court rejects the preliminary objection.

V EVIDENCE

¹⁴ The Rules of Procedure of the Commission, in the version that was current and in force when the Merits Report of the present case was issued, establishes in its Article 45(1) that if "the Commission considers that the State has not complied with the recommendations of the report approved in accordance with Article 50 of the American Convention, it shall refer the case to the Court, unless there is a reasoned decision by an absolute majority of the members of the Commission to the contrary." It follows from that article that it is possible for the Commission to decide not to refer a case to the Court. The second paragraph of the same article states that "[t]he Commission shall give fundamental consideration to obtaining justice in the particular case, based, among others, on the following factors: a. the position of the petitioner; b. the nature and seriousness of the violation; c. the need to develop or clarify the case law of the system; and d. the future effect of the decision within the legal systems of the Member States." It is not the responsibility of this Court to assess such "elements" regarding a particular case. Nevertheless, the Court considers it evident that the fact that the only person the Commission considered a victim and beneficiary of its recommended measures has died is a circumstance that, at least a priori, appears relevant to the consideration of the possibility of "obtaining justice in the particular case."

34. The Court received documents presented as evidence by the Commission and the parties along with their main briefs (*supra* paras. 1, 5, and 6). In this case, as in others, the Court admits documents presented at the appropriate time, by the parties and the Commission, whose admissibility was not contested or challenged.¹⁵ In addition, the Court received and hereby admits the expert opinion of Marcella da Fonte Carvalho, proposed by the State. It is noted that on August 7, 2019, the Commission withdrew the expert evidence it had offered and whose admission had been ordered in the July 23, 2019 Presidential Resolution (*supra* para. 8).

VI FACTS

35. The facts of this case concern the deprivation of liberty of Mr. Carranza during a criminal trial against him. The Court notes that there is no dispute as to the facts. The statements made by the Commission, the representative, and the State regarding those facts are in substantial agreement. Consequently, the Court considers them established, based on the statements made by the Commission, the representative, and the State in their main briefs (*supra* paras. 1, 5, and 6), which are consistent with the evidence presented. Those facts are described below.

A) Beginning of actions and detention of Mr. Carranza

36. On August 17, 1993, the superintendent in charge of the police station in the canton of Yaguachi, province of Guayas, ordered a preliminary investigation and issued an indictment against Mr. Carranza and one other person. These actions were prompted by events two days before, when a man had died of a gunshot wound, an incident witnessed by several people. The superintendent ordered the Rural Police to “apprehend” Mr. Carranza and the other person because “they were fugitives.” With regard to this, the State indicated that both “fled” on August 15, 1993, after the referenced events took place on that day.¹⁶ In addition, based on Article 177 of the Code of Criminal Procedure, the superintendent ordered the “preventive detention” of Mr. Carranza and the other person being charged.

37. Article 177 of the Code of Criminal Procedure (hereinafter CCP), as the Court has already had occasion to note,

established that the judge, “when he or she believes it to be necessary,” could order preventive detention when the following procedural facts exist: a) indications of a crime meriting a prison sentence, and b) indications that the defendant is a perpetrator or accomplice of the crime being prosecuted. Furthermore, the same article ordered that “the order specify the indications on which the detention is based.”¹⁷

¹⁵ Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*, para. 140, and *Case of Jenkins v. Argentina. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of November 26, 2019. Series C No. 397, para. 38.

¹⁶ According to the description of events in the August 17, 1993 “indictment,” Mr. Carranza fled on horseback right after the shots were fired on the 15th of the month (*cf.* August 17, 1993, Indictment. Evidence file, annex 2 of the Merits Report, folios 402 to 405).

¹⁷ *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador*, para. 104. In the Merits Report, the Commission referred to the indicated judgment when describing the text from Article 177. Furthermore, the Court understands that the text of the CCP is a public fact.

The 1983 CCP, containing the above-mentioned Article 177, which was applied to the facts of the case, was expressly annulled in 2000.¹⁸

38. On October 1, 1993, the superintendent notified the 11th Criminal Court in Guayas of the murder trial of Mr. Carranza and one other person. On the 28th of the same month, the 11th Criminal Court of Guayas (hereinafter "11th Court") took over the criminal trial. It also upheld the detention orders issued and requested that the National Police take steps to capture the individuals. That decision stated that the criteria set out in Article 177 of the CCP were met, so it was appropriate to uphold the preventive detention orders issued by the superintendent.

39. In November 1994, Mr. Carranza was detained by Ecuador's Rural Police. The Merits Report indicated that Mr. Carranza stated in the initial petition sent to the Commission that he was detained "without having been caught committing a crime" and without the police officials presenting a "detention order." The Commission also noted that Mr. Carranza claimed he had been held incommunicado for more than 24 hours, without the assistance of a lawyer, and interrogated using "psychological pressure." The representative described the facts in the same way. When the State recounted the facts of the case in its response, it did not refer to the detention of Mr. Carranza or the other statements recently articulated.

B) Continuation of the criminal trial after the detention

40. On December 6, 1994, Mr. Carranza presented a brief before the 11th Court. In it, he named his defense lawyer¹⁹ and rejected the accusation against him, stating that it "[was] not connected to the reality of the facts, [...] since [he] never [shot] the gun."

41. On December 7, 1994, Mr. Carranza asked the 11th Court to receive his statement and also three testimonies.

42. On February 23, 1995, the 11th Court received Mr. Carranza's requests and arranged for his transfer to the Men's Social Rehabilitation Center in Guayaquil in order to receive the investigatory testimony.

43. On August 23, 1995, two written testimonies were received, and on the 25th of the same month, Mr. Carranza submitted his investigatory testimony. He maintained that on August 15, he was in the canton of Durán, that he does not know the person who died, and that he "[had] not committed any crime."

44. On September 11, 1995, Mr. Carranza presented a brief to the 11th Court requesting his release. He stated that he had been imprisoned for the last "10 months[,...] blamed for something [he] had not done." There is no record of a response to this request.

¹⁸ In the same vein, expert witness Fonte Carvalho explained, referring to preventive detention, that there was a "legal framework" between 1983 and 2000; that then "[b]etween January 13, 2000, and February 10, 2014, the Code of Criminal Procedure was in force;" and that on the last date indicated, "the Comprehensive Organic Criminal Code entered into force."

¹⁹ The State noted that later, on August 28, 1998, Mr. Carranza named his defense lawyer again.

45. On September 13, 1995, the 11th Court gave the Guayas Seventh Transit Prosecutor (hereinafter "the Prosecutor") 48 hours to issue an opinion regarding the case. There is no record of a response to this request.

46. On September 30, 1996, the 11th Court closed the preliminary proceedings and ordered that the records be sent to the Prosecutor to issue a legal ruling.

47. On March 4, 1997, the Prosecutor issued his ruling.²⁰ He noted that there was sufficient evidence to believe Mr. Carranza had participated in a "criminal act" of homicide. He declined to charge the other person who had been linked to the trial (*supra* para. 36) due to a lack of merit.

48. On March 7, 1997, the Court notified Mr. Carranza's lawyer of the formal charges and set a period of six days for a response. The Court received no information indicating there was any response to said notification of charges.

49. On April 14, 1997, the 11th Court initiated the trial stage, accepting the prosecutor's formal charges.

50. On March 30, 1998, the Guayas Fourth Criminal Court (hereinafter "Criminal Court") took over the case.

51. On July 23, 1998, the Criminal Court summoned the parties for a public hearing to be held on the 27th day of the same month. The hearing was postponed several times.²¹ It finally took place on December 1, 1998.

C) The sentence and serving the sentence

52. On December 15, 1998, the Criminal Court issued a guilty verdict, sentencing Mr. Carranza to "six years of ordinary imprisonment." The Commission and the State noted that Mr. Carranza did not present any appeal against said judgment.

53. The State noted that on March 29, 1999, the Criminal Court stated that Mr. Carranza "[had] completed the sentence of six years of [o]rdinary [i]mprisonment and that with a sentence discount of 755 days granted to him," he had completed the sentence imposed. The following April 6th, Mr. Carranza's release form was sent to the Men's Social Rehabilitation Center of Guayaquil.

VII

²⁰ Although the representative asserted that this occurred on April 21, 1997, the evidence shows that the document has a date of March 4, 1997 (*cf.* Prosecutor's formal charges of March 4, 1997. Evidence file, annex 19 to the response, folios 563 to 567).

²¹ On July 27, 1998, Mr. Carranza refused to attend the hearing due to illness. The Criminal Court delayed the hearing until the following August 4th. It is not recorded what took place on that date or the reason why the hearing might have been suspended, but on August 11, 1998, the Criminal Court delayed the hearing and on the 24th of the same month called for it to be held two days later. On August 26, 1998, the Prosecutor asked the Criminal Court to be excused from the hearing because he had been notified of another public hearing on August 21st. On the 31st of that month, the Criminal Court set the following September 3rd as the hearing date. It did not take place on that day because the President of the Criminal Court was in a meeting with members of the Supreme Court of Justice. On September 17, 1998, the hearing was convened for the 21st of the same month. However, as the State noted, on November 27, 1998, the Criminal Court convened the public hearing for December 1st of that year. It is not recorded why the hearing was not held on September 21, 1998.

MERITS
PERSONAL LIBERTY AND JUDICIAL GUARANTEES²²

54. The question the Court must examine in the present case is whether the preventive deprivation of liberty Mr. Carranza suffered as part of his criminal trial was compatible with the American Convention. It must also examine whether the criminal trial took place within a reasonable period of time.

55. The Court should make it clear that the object of this case is not the criminal sentence Mr. Carranza received, nor any alleged infringement of his right to personal integrity. This Court notes, first, that the Commission explained that in its Admissibility Report “the analysis of exhaustion of domestic remedies was carried out exclusively with reference to preventive detention.” For that reason, it only determined violations to the right to personal liberty and—understanding it to be “closely linked to [preventive detention]”—to the right to judicial guarantees regarding the length of the trial.

56. Second, although the representative mentioned Articles 5 and 25 of the Convention, referring to the rights to personal integrity and judicial protection, he did not develop relevant arguments but merely described the criminal trial and the deprivation of liberty. He only asserted that there was “solitary confinement and psychological pressure,” in an interrogation without a lawyer present. He made these statements as well as a cursory reference to the conditions of detention, without elaborating on his arguments or on the description of the referenced events. Considering all of the above, the Court does not have sufficient support for examining alleged violations to the rights of personal integrity or judicial protection. Thus, it will not examine the representative’s allegations regarding Articles 5 and 25 of the Convention. It will limit its examination to the allegations regarding deprivation of liberty and the reasonableness of the length of the criminal trial.

A) Allegations of the Commission and the parties

57. The **Commission** noted that Mr. Carranza’s preventive detention “[was based] essentially on [...] elements that point[ed] toward his responsibility” and that the relevant law, Article 177 of the CCP, established indications of responsibility—not “procedural purposes”—as the only requirement for deprivation of liberty. It viewed that law, as well as decisions based on it, as arbitrary. In addition, it observed that the preventive detention lasted a little more than four years, with no periodic review of its continuation. It inferred that the preventive detention in this case was arbitrary and punitive, violating personal liberty and presumption of innocence. The Commission understood Articles 7(1), 7(3), 7(5), and 8(2) of the American Convention as having been violated, in conjunction with its Articles 1(1) and 2. Moreover, “it observe[d] significant delays in the conduct of the trial” after Mr. Carranza’s imprisonment.²³ Thus, it understood that the State infringed Mr. Carranza’s right to be tried in a reasonable amount of time, violating Article 8(1) of the Convention in conjunction with Article 1(1) of the same treaty.

²² Articles 7 and 8 of the American Convention.

²³ The Commission indicated that “on February 23, 1995, the Judge arranged for [Mr. Carranza’s] transfer in order to give investigatory testimony, which took place on the following August 25th. In addition, Mr. Carranza presented a brief on September 11, 1995, and it was a year later, September 30, 1996, when the preliminary proceedings were closed and the case was sent to the prosecutor for a ruling. [Also,] another year and nine months passed between the March 1997 ruling and the December 1998 public hearing.”

58. The **representative** claimed that the preventive detention order was issued "without [Mr. Carranza] [having been] notified in any way." He stated that he had been illegally deprived of liberty by members of the rural police because "they did not show [him] the detention order or inform him of the reasons for his detention." He also claimed that Mr. Carranza remained in preventive detention for over four years and that the State "deliberately" delayed the trial in order to infringe his rights beyond a reasonable time frame,²⁴ which constituted a "flagrant" violation of his rights. The representative claimed that Articles 7 and 8 of the Convention had been violated but did not specify which paragraphs.

59. The **State** denied responsibility. It stated that the preventive detention of Mr. Carranza ordered by the competent authority had a legal basis and was necessary because as he was a fugitive. It asserted that this precautionary measure was appropriate, well-supported, and intended to ensure that Mr. Carranza appeared at trial. It stated that the preventive detention was ordered on the basis of "strictly necessary criteria" and that the presumption of innocence was respected. In that regard, the measure was based on indications that a crime had been committed but also on the fact that Mr. Carranza was a fugitive, so "the circumstances determined the preventive detention." Moreover, it stated that while Mr. Carranza was deprived of his liberty, he did not request the remedies of habeas corpus or *amparo* of liberty, which were the effective remedies for challenging the allegedly excessive length of the preventive detention. The State also argued that four years (from the detention of Mr. Carranza) to obtain a criminal sentence "is within reasonable inter-American parameters." It also claimed the presumed victim "delayed the criminal trial for more than a year when he was a fugitive."

B) Considerations of the Court

60. The Court has maintained that the essence of Article 7 of the American Convention is the protection of individual liberty against any arbitrary or illegal interference by the State.²⁵ It has affirmed that this article has two quite distinct types of regulations: one general and one specific. The general one is in the first subparagraph: "[e]very person has the right to personal liberty and security." The specific one is composed of a set of guarantees that protect the right to not be deprived of liberty unlawfully (Article 7(2)) or arbitrarily (Article 7(3)), to be informed of the reasons for their detention and the charges against them (Article 7(4)), to judicial review of the deprivation of liberty and the reasonableness of the length of the preventive detention (Article 7(5)), to contest the lawfulness of the detention (Article 7(6)), and to not be detained for debt (Article 7(7)).²⁶ Any violation of subparagraphs 2 through 7 of Article

²⁴ The representative, among his arguments on the infringement of the reasonable time frame, noted that Mr. Carranza "ended up serving more than the time of the sentence," because "on May 17, 1997, before [he] was convicted, [A]rticles 33 and 34 of the Sentencing Implementation and Rehabilitation Code were modified[,] automatically reducing the sentence to 180 days per year for those inmates who have been sentenced and those without a sentence who have good behavior." He noted that Mr. Carranza "only needed to serve three years in prison."

²⁵ 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. 223 and *Case of Jenkins v. Argentina*, para. 71.

²⁶ Cf. *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador*, para. 51, and *Case of Jenkins v. Argentina*, para. 71.

7 of the Convention will necessarily entail the violation of Article 7(1) of the same.²⁷ In this regard, it is worth recalling the following insofar as it is relevant to this case.

61. 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.” This subparagraph 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.²⁸ 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. Furthermore, it must be applied with strict adherence to the procedures objectively established in the law.²⁹ Hence, Article 7(2) of the Convention refers automatically to domestic law. 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.³⁰

62. Regarding the prohibition of “arbitrariness” in the deprivation of liberty, mandated by Article 7(3) of the Convention, 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 respect for the fundamental rights of the individual because they are, among other matters, unreasonable, unpredictable, or disproportionate.³¹ It has taken the view that domestic law, applicable procedures, and corresponding general principles—both express and tacit—must themselves be compatible with the Convention. Thus, the concept of “arbitrariness” should not be equated with that of “contrary to the law;” rather, it should be interpreted more broadly so as to include the elements of impropriety, injustice, and unpredictability.³²

63. Regarding Article 7(4), this Court has stated that “this refers to two guarantees for the individual who is being detained: i) oral or written information on the reasons for the detention, and ii) notification of the charges, which must be in writing.”³³

²⁷ Cf. *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador*, para. 54, and *Case of Jenkins v. Argentina*, para. 71.

²⁸ Cf. *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador*, para. 55, and *Case of Romero Feris v. Argentina. Merits, Reparations, and Costs*. Judgment of October 15, 2019. Series C No. 391, para. 77.

²⁹ Cf. *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador*, para. 57, and *Case of Romero Feris v. Argentina*, para. 77.

³⁰ Cf. *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador*, para. 57, and *Case of Romero Feris v. Argentina*, para. 77.

³¹ Cf. *Case of Gangaram Panday v. Suriname. Merits, Reparations, and Costs*. Judgment of January 21, 1994. Series C No. 16, para. 47 and *Case of Jenkins v. Argentina*, para. 73.

³² Cf. *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador*, para. 92, and *Case of Jenkins v. Argentina*, para. 73.

³³ The Court has explained that: “the information on the ‘reasons’ for the detention must be provided ‘at the time of the arrest,’ and this is a mechanism to avoid unlawful or arbitrary detentions at the very moment of the deprivation of liberty and, also, to ensure the individual’s right of defense. In addition, this Court has indicated that the agent who makes the arrest must provide information, in simple, jargon-free language of the fundamental facts and legal grounds on which the detention is based and that the provisions of Article 7(4) of the Convention are not met if only the legal grounds are mentioned. If the person is not adequately informed of the reasons for the detention, including the facts and their legal grounds, he does not know the charges

64. Article 7(5), in turn, establishes that a detained person must be tried “within a reasonable time” or “released” even if the trial is ongoing. The same article notes that “release may be subject to guarantees to assure his appearance for trial.” This article indicates that deprivation of liberty measures during a criminal trial are compatible with the Convention as long as they have a precautionary purpose, that is, they are a means of eliminating procedural risks; the article specifically refers to the risk of not appearing at trial.³⁴

65. Regarding the above, it must be emphasized that preventive detention constitutes the most severe measure that can be taken against an accused person, and for that reason it should be the exception: the norm should be liberty for a person on trial while their criminal responsibility is being determined.³⁵ One of the principles that limits preventive detention is the presumption of innocence, contained in Article 8(2), according to which a person is considered innocent until proven guilty. It follows from this guarantee that the elements proving the existence of legitimate goals of preventive deprivation of liberty are not presumed either, but rather that the judge must base their decision on true and objective circumstances of the specific case. The burden of proof is on the criminal authorities and not on the accused, who should also have the opportunity to exercise the right to a hearing and to be duly assisted by a lawyer.³⁶ Thus, the Court has held that the personal characteristics of the alleged perpetrator and the gravity of the crime are not in themselves sufficient justification for preventive detention.³⁷

66. Article 7(5) of the Convention imposes time limits on the length of preventive detention in relation to the length of the trial, indicating that the trial can continue with the accused not in detention. The Court has held that “even when there are reasons for keeping a person in preventive detention, Article 7(5) guarantees that he will be released if the detention period has exceeded a reasonable time.”³⁸

67. The above makes clear that in some respects, the judicial guarantees set forth in Article 8 of the Convention can be understood as closely related to the right to personal liberty. Thus, for the purposes of this case, it is relevant to point out that since preventive detention is a precautionary rather than a punitive measure,³⁹ depriving a person of their liberty beyond a reasonable time to achieve the purposes that justify their detention

against which he must defend himself and, consequently, the judicial control is illusory.” *Case of Yvon Neptune v. Haiti. Merits, Reparations, and Costs*. Judgment of May 6, 2008. Series C No. 180, para. 105 and *Case of Women Victims of Sexual Torture in Atenco v. Mexico*, para. 246.

³⁴ Cf. *Case of Romero Feris v. Argentina*, para. 100.

³⁵ Cf. *Case of López Álvarez v. Honduras. Merits, Reparations, and Costs*. Judgment of February 1, 2006. Series C No. 141, para. 67, and *Case of Jenkins v. Argentina*, para 72.

³⁶ Cf. *Case of Amrhein et al. v. Costa Rica. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of April 25, 2018. Series C No. 354, para. 357, and *Case of Romero Feris v. Argentina*, para. 101.

³⁷ Cf. *Caso Bayarri v. Argentina. Preliminary Objection, Merits, Reparations, and Costs*. Judgment of October 30, 2008. Series C No. 187, para. 74; *Case of J. v. Peru. Preliminary Objection, Merits, Reparations, and Costs*. Judgment of November 27, 2013. Series C No. 275, para. 159, and *Case of Romero Feris v. Argentina*, para. 101.

³⁸ Cf. *Case of Bayarri v. Argentina*, para. 74, and *Case of Jenkins v. Argentina*, para. 84.

³⁹ Cf. *Case of Pollo Rivera et al. v. Peru. Merits, Reparations, and Costs*. Judgment of October 21, 2016. Series C No. 319, para. 122, and *Case of Romero Feris v. Argentina*, para. 97.

would be tantamount to anticipating a sentence,⁴⁰ which would violate not only the right to personal liberty but also the presumption of innocence set forth in Article 8(2) of the Convention. In cases in which a person is deprived of liberty, the duration of the procedural actions constitutes another link between the right to personal liberty and judicial guarantees. Thus, the Court has indicated that “the purpose of the principle of ‘reasonable time’ to which Articles 7(5) and 8(1) of the American Convention refer is to prevent accused persons from remaining in that situation for a protracted period and to ensure that the charge is promptly disposed of.”⁴¹

68. Based on the above and on more specific rules detailed below, this Court will examine the facts of the case. Thus, it will analyze: i) the detention and preventive detention orders for Mr. Carranza, ii) review of the preventive detention, iii) the reasonableness of the time taken, and iv) observance of the principle of presumption of innocence. Lastly, it will present its conclusion.

B.1 Detention and preventive detention orders for Mr. Carranza

B.1.1 Initial detention

69. Mr. Carranza was apprehended in November 1994, after a superintendent had issued an arrest warrant in August 1993, as well as an order for “preventive detention” on the basis of Article 177 of the CCP (*supra* para. 36),⁴² and after the October 28, 1993, judicial confirmation of said order.

70. The arrest warrant made reference to the fact that Mr. Carranza was “a fugitive.” The Court views that statement as a reference to a situation of fact, described in the police report of a person shot and killed: that after the shots were fired, Mr. Carranza fled on horseback (*supra* para. 36 and footnote on page 16).

71. Given the circumstances of the case, the Court does not view as arbitrary the decision of the superintendent to order the Rural Police to “apprehen[d]” Mr. Carranza, “as he [was] a fugitive,” and given that fact, to bring him before said superintendent “in order to proceed in accordance with the law.”⁴³ In addition, the existence of a legal basis for ordering Mr. Carranza to be detained was not challenged by the parties or the Commission.

72. Moreover, even though it is documented that Mr. Carranza was apprehended in November 1994, neither the Commission nor the representative specified the day on which that occurred or described the specific circumstances of the arrest. The Court considers Mr. Carranza’s allegations before the Commission regarding a failure to present the arrest warrant and an initial failure to communicate as insufficient for concluding, in this case, that Mr. Carranza’s detention was unlawful or that he had not been informed of the reasons for his detention or the charges against him.

⁴⁰ Cf. *Case of Suárez Rosero v. Ecuador. Merits*. Judgment of November 12, 1997. Series C No. 35, para. 77, and *Case of Rosadio Villavicencio v. Peru. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of October 14, 2019. Series C No. 388, para. 214.

⁴¹ *Case of Suárez Rosero v. Ecuador. Merits*, para. 70.

⁴² Regarding the actions of the superintendent, the Court notes that the 1983 CCP stated in its Article 4 that “police superintendents [...] [have] criminal authority in cases and procedures as determined by law.” Neither the Commission nor the parties put forth arguments related to the authority of the superintendent.

⁴³ Cf. Order of August 15, 1993. Evidence file, annex 2 to the answer, folios 524 to 526.

B.1.2 Preventive detention

73. Now, the same proceedings that ordered the apprehension of Mr. Carranza also ordered his “preventive detention” on the basis of Article 177 of the CCP. The Court infers the above because there is no record of proceedings—after the orders of the superintendent and the 11th Court of August and October 1993 (*supra* paras. 36 and 38)—that confirmed or made a decision regarding deprivation of liberty after the initial detention.

74. It follows from the above that Article 7(2) of the Convention was the legal basis for the preventive detention; whether other measures were taken in accordance with the Convention remains to be examined.

75. Article 7(3) of the Convention indicates that for a deprivation of liberty to not become arbitrary, the following requirements must be met: i) there must be evidence to develop charges or go to trial—evidence that is sufficient to reasonably suppose that an illicit act took place and that the person on trial could have participated in it;⁴⁴ ii) the goal must be compatible with the Convention,⁴⁵ namely: to keep the defendant from obstructing the conduct of the trial and from evading justice,⁴⁶ and the measures must be appropriate, necessary, and strictly proportional to that goal;⁴⁷ and iii) the ruling that imposes the measures must have sufficient motivation to allow for an evaluation of whether it meets the conditions described.⁴⁸ Any restriction on liberty that does not have

⁴⁴ This must not in itself constitute an element capable of weakening the principle of the presumption of innocence contained in Article 8(2) of the Convention. To the contrary, it is in addition to the other requirements. This decision must have no effect on the judge’s ruling regarding the defendant’s culpability. Suspicion must be based on specific facts described in words, not on mere conjecture or abstract intuition. It follows from this that the State must not detain people to investigate them later. Rather, deprivation of liberty is only authorized when there is enough information to bring the person to trial (*cf. Case of Servellón García et al. v. Honduras. Preliminary Objection, Merits, Reparations, and Costs.* Judgment of September 21, 2006. Series C No. 152, para. 90, and *Case of Jenkins v. Argentina*, para. 75).

⁴⁵ *Cf. Case of Servellón García et al. v. Honduras*, para. 90, and *Case of Jenkins v. Argentina*, para. 74.

⁴⁶ *Cf. Case of Suárez Rosero v. Ecuador. Reparations and Costs.* Judgment of January 20, 1999. Series C No. 44, para. 77, and *Case of Jenkins v. Argentina*, para. 76. The need for these purposes is based on Articles 7(3), 7(5), and 8(2) of the Convention (*cf. Case of Romero Feris v. Argentina*, para. 99).

⁴⁷ *Cf. Case of Tibi v. Ecuador. Preliminary Objections, Merits, Reparations, and Costs.* Judgment of September 7, 2004. Series C No. 114, para. 106; *Case of Argüelles et al. v. Argentina. Preliminary Objections, Merits, Reparations, and Costs.* Judgment of November 20, 2014. Series C No. 288, para. 120, and *Case of Jenkins v. Argentina*, para. 76. The indicated criteria that must be met for a deprivation of liberty signify the following: i) *appropriate*: the measure is suitable for reaching the intended goal; ii) *necessary*: the measure is absolutely indispensable for attaining the desired goal, and there is no measure that is less severe—with respect to the affected right—out of all the measures that are equally appropriate for reaching the proposed goal; and iii) *strictly proportional*: the sacrifice inherent in restricting the right to liberty is not excessive compared to the advantages obtained through that restriction and the attainment of the intended goal (*cf. Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador*, para. 92, and *Case of Amrhein et al. v. Costa Rica*, para. 356, and *Case of Romero Feris v. Argentina*, para. 98).

⁴⁸ *Cf. Case of García Asto and Ramírez Rojas v. Peru. Preliminary Objection, Merits, Reparations, and Costs.* Judgment of November 25, 2005. Series C No. 137, para. 128, and *Case of Jenkins v. Argentina*, para. 74. The requirement for motivation is related to judicial guarantees (Article 8(1) of the Convention). In addition, so that the presumption of innocence (Article 8(2)) is respected when precautionary measures restricting liberty are ordered, the State must prove, in a clear and well-motivated way, with reference to each particular case, that the above-mentioned criteria required by the Convention are met (*cf. Case of García Asto and Ramírez Rojas v. Peru*, para. 128; *Case of J. v. Peru*, para. 159, and *Case of Jenkins v. Argentina*, para. 77).

sufficient motivation to allow for an evaluation of whether it meets the conditions described will be arbitrary and, therefore, a violation of Article 7(3) of the Convention.⁴⁹

76. The preventive detention ordered for Mr. Carranza was based on Article 177 of the CCP, which authorized the legal authorities to order it only on the basis of indications of a crime punishable by deprivation of liberty and indications of the "guilt" or "complicity" of the "defendant" (*supra* para. 37).⁵⁰

77. The legal decision that ordered Mr. Carranza's preventive detention stated that "[b]ecause the conditions set forth in Article 177 of the CCP are met, the orders for preventive detention are confirmed." Even though the same action referred to the fact that Mr. Carranza was a fugitive, it did not discuss it as support for the decision to use preventive detention, but rather for the purpose of his capture or apprehension.⁵¹

78. Regarding Article 177 of the CCP, this Court has already determined that:

it left in the hands of the judge the decision on pretrial detention based solely on the assessment of "indicia" regarding the existence of a crime and its authorship, without considering its exceptional nature, or its use based on strict necessity and the possibility that the accused could hinder the process or evade justice. The decision to automatically impose preventive deprivation of liberty based on the type of crime prosecuted is contrary to [conventional] guidelines, which require proof, in each specific case, that the detention is strictly necessary and that its purpose is to ensure that the accused will not impede the development of the proceedings or evade justice. [...] In view of the foregoing, this Court [found] that article [...] 177 [...] was contrary [...] to the international standard established in its constant case law regarding preventive detention.⁵²

79. The Court notes the State's argument, presented before this Court, that preventive detention was "necessary by virtue of the fact that [Mr. Carranza] was a fugitive" (*supra* para. 59). However, that is an allegation the State made in the trial before this Court, not an argument clearly documenting the proceedings that ordered the preventive detention. Said proceedings supported the preventive detention ruling in which the circumstances required by Article 177 of the CCP were presented. As stated above, "[a]ny restriction on liberty that does not have sufficient motivation to allow for an evaluation of whether it meets the conditions [previously] described [for the appropriateness of preventive detention] will be arbitrary," in violation of Article 7(3) of the Convention (*supra* para. 75).

80. Therefore, the statements made by this Court in the case of *Herrera Espinoza et al. v. Ecuador* are relevant for the present case:

The Court notes the State's argument that the defendant's flight [...] proved the need for preventive detention in the case. However, even when it could eventually be possible to determine that there were

⁴⁹ Cf. *Case of García Asto and Ramírez Rojas v. Peru*, para. 128, and *Case of Jenkins v. Argentina*, para. 77.

⁵⁰ In the same vein, the expert Fonte Carvalho asserted that within the "legal framework in effect between 1983 and 2000," the "bases" for ordering preventive detention were "indications of a crime meriting a sentence of deprivation of liberty, as well as indications that the defendant is a perpetrator or accomplice to the crime being tried. If the crime being tried merited a sentence not longer than one year of prison and [if] the defendant has not been sentenced previously, the Judge should refrain from ordering preventive detention."

⁵¹ The text of the legal order states "as [Mr. Carranza and one other person] are fugitives, local [p]olice authorities are hereby ordered capture them."

⁵² *Case of Herrera Espinoza et al. v. Ecuador*, paras. 148, 149, and 150. In the same judgment, paragraph 153 states the conclusion that shows the violation of Article 2 of the Convention.

well-founded reasons for the measure, what is clear is that the preventive detention was ordered [...] without proving necessity, and it was implemented within the framework of legislation that was contrary to the American Convention. Consequently, the State's argument is not sufficient to consider the preventive deprivation of liberty to be in accordance with the Convention.⁵³

81. The Court concludes, therefore, that the order for the preventive detention of Mr. Carranza was arbitrary, in violation of Articles 7(1) and 7(3) of the American Convention on Human Rights, in conjunction with its Articles 1(1) and 2, given that it was issued without motivation proving necessity and it was based on a law that, in establishing the appropriateness of preventive detention automatically, as described above (*supra* para. 78), was contrary to the Convention.

B.2 Review of preventive detention

82. What must be examined now is whether maintaining or prolonging the preventive detention was appropriate in this case.

83. The Court has determined that national authorities are the ones responsible for assessing the appropriateness of their precautionary measures pursuant to their own laws. Preventive detention should be subject to periodic review so that it is not prolonged when the reasons for its use no longer exist. The judge should periodically assess whether the causes, necessity, and proportionality of the measure have changed, and whether the length of the detention has exceeded the limits of the law and of reason. If at any point it appears that the preventive detention does not meet those conditions, release must be ordered. In reviewing the continuation of the measure, the authorities must give sufficient evidence of the reasons for maintaining the restriction of liberty, which, in order to be compatible with Article 7(3) of the American Convention, must be based on the need to ensure that the defendant does not impede the efficient conduct of the investigations or evade justice. In the same way, every time the prisoner's release is requested, the judge must demonstrate at least minimally the reasons for maintaining the preventive detention.⁵⁴

84. This Court notes that in this case the preventive detention lasted as long as the criminal trial, and it ended with the court conviction. There is no evidence that during that period the legal authorities carried out any review of the continued appropriateness of the preventive detention. This is despite the fact that Mr. Carranza requested his release in September 1995 (*supra* para. 44); the legal authorities did not respond in any way.

85. In view of the above, this Court concludes that the preventive detention of Mr. Carranza was implemented arbitrarily because it was not reviewed periodically, violating Articles 7(1) and 7(3), in conjunction with Article 1(1), of the Convention.

B.3 Reasonableness of the length of the preventive deprivation of liberty

86. The Court has noted that Article 7(5) of the Convention imposes limits on the length of preventive detention and, consequently, on the authority of the State to attain the goals of the trial through this precautionary measure. When the length of a preventive detention is unreasonable, the State will be able to restrict the liberty of the

⁵³ *Case of Herrera Espinoza et al. v. Ecuador*, para. 152.

⁵⁴ *Cf. Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador*, paras. 107 and 117, and *Case of Bayarri v. Argentina*, para. 74, and *Case of Jenkins v. Argentina*, para. 85.

defendant using less harmful measures to ensure appearance at trial, rather than using deprivation of liberty.⁵⁵ In accordance with the aforementioned article, the detained person has the right “to trial within a reasonable time or to be released.” Thus, if a person continues to be preventively deprived of liberty and the proceedings are not completed within a reasonable amount of time, Article 7(5) of the Convention is violated.

87. This Court notes that there is no record of procedural steps between September 13, 1995, when the prosecutor was asked to issue an opinion on the case, and September 30, 1996, when the preliminary proceedings were closed. In that action, the prosecutor was notified so that he could issue an opinion, which was produced over five months later. Similarly, more than a year and eight months passed between the opinion being issued on March 4, 1997, and the hearing being held on December 1, 1998, because the hearing was postponed several times. This shows that, although that Mr. Carranza was deprived of his liberty, there were delays that totaled close to three years out of the approximately four years his criminal trial took starting from the time of his apprehension. There is no justification for these periods of inactivity, especially considering that Mr. Carranza was preventively deprived of his liberty, which should have prompted the legal authorities to conduct his trial with the utmost speed.

88. Because of this, the Court concludes that the State violated Article 7(5) of the Convention.

B.4 Presumption of innocence

89. Given the presumption of innocence, guaranteed in Article 8(2) of the Convention, it is a general rule that the defendant shall not be deprived of liberty while on trial.⁵⁶ As previously noted, depriving a person of their liberty beyond a reasonable time to achieve the purposes that justify their detention would be tantamount to anticipating a sentence, a violation of the presumption of innocence (*supra* para. 67).

90. This Court has determined that the order for the preventive detention of Mr. Carranza, as well as the continuation of said detention, were arbitrary. Therefore, prolonging the deprivation of liberty until the time of sentencing was equivalent to anticipating a sentence, in violation of the presumption of innocence. The State thus violated Mr. Carranza’s right to be presumed innocent, enshrined in Article 8(2), in conjunction with Article 1(1), of the Convention.

B.5 Length of the criminal trial

91. What remains to be examined is whether the requirement that the proceedings take place within a “reasonable time,” which is one of the judicial guarantees set forth in Article 8(1) of the Convention, was met.

92. This Court has noted that in criminal proceedings, the reasonableness of the time taken must be assessed in relation to the total duration of the trial, from the first

⁵⁵ Cf. *Case of Amrhein et al. v. Costa Rica*, para. 361, and *Case of Jenkins v. Argentina*, para. 84.

⁵⁶ Cf. *Case of López Álvarez v. Honduras*, para. 67, and *Case of Jenkins v. Argentina*, para. 72.

procedural action until the judgment is definitively issued.⁵⁷ In accordance with Article 8(1) of the Convention and as part of the right to justice, proceedings must take place within a reasonable time,⁵⁸ so a significant delay can become, in itself, a violation of judicial guarantees.⁵⁹ This Court recalls that the four elements it has considered to determine the reasonableness of the duration are: i) the complexity of the issue, ii) the procedural actions of the party, iii) the conduct of the legal authorities, and iv) the effects of the legal situation on the person involved in the trial.⁶⁰

93. In this case, even though there is no record of actions for almost a year at the beginning of the trial, that was due to the fact that Mr. Carranza had not been located, and the facts of the case and the arguments of the parties do not allow for the conclusion that the length of that delay was the fault of the State. It is appropriate then, in the present case, to focus the evaluation on the four other years, from the point at which Mr. Carranza was arrested to the issuance of the guilty verdict against him.

94. First, the facts that the case do not indicate complexity: It was a crime with one victim, committed in the presence of other people, and the presumed perpetrators were identified in the initial report. Second, after Mr. Carranza was deprived of his liberty, there is no record supporting the conclusion that he obstructed the conduct of the proceedings in any way. Moreover, regarding the third and fourth elements, the above-mentioned delays of approximately three years while Mr. Carranza was deprived of his liberty adversely affected his rights.

95. The foregoing shows that there were delays for close to three out of the approximately four years of the criminal trial against Mr. Carranza after he was arrested.

96. Thus, the Court considers that Ecuador violated, to the detriment of Mr. Carranza, the judicial guarantees set forth in Article 8(1) of the Convention by not bringing the criminal trial to a close within a reasonable time.

B.6 Conclusion

97. The Court determines that, in the terms indicated in the preceding paragraphs, Ecuador violated the rights of personal liberty and judicial guarantees, as both the order for preventive detention in the case and the continuation thereof were arbitrary and contrary to the presumption of innocence, in violation of Articles 7(1), 7(3), and 8(2) of the American Convention on Human Rights, to the detriment of Ramón Rosendo Carranza Alarcón, in relation to the obligation to respect the rights and to adopt domestically the legal provisions set forth in Articles 1(1) and 2 of the Convention respectively. Furthermore, regarding the obligation to respect rights, the State violated Mr. Carranza's right to personal liberty with respect to the Convention's right to be tried within a reasonable time or be released. It also violated his right to judicial guarantees

⁵⁷ Cf. *Case of Suárez Rosero v. Ecuador. Merits*, paras. 70 and 71; *Case of López Álvarez v. Honduras*, para. 129, and *Case of Jenkins v. Argentina*, para. 106.

⁵⁸ Cf. *Case of Bulacio v. Argentina. Merits, Reparations, and Costs*. Judgment of September 18, 2003. Series C No. 100, para. 114, and *Case of Perrone and Preckel v. Argentina*, para. 141.

⁵⁹ Cf. *Case of Hilaire, Constantine, and Benjamin et al. v. Trinidad and Tobago. Merits, Reparations, and Costs*. Judgment of June 21, 2002. Series C No. 94, para. 145, and *Case of Jenkins v. Argentina*, para. 106.

⁶⁰ Cf. *Case of Genie Lacayo v. Nicaragua. Merits, Reparations, and Costs*. Judgment of January 29, 1997. Series C No. 30, para. 77; *Case of Valle Jaramillo et al. v. Colombia. Merits, Reparations, and Costs*. Judgment of November 27, 2008. Series C No. 192, para. 155, and *Case of Jenkins v. Argentina*, para. 106.

because the presumption of his innocence was infringed and the length of his criminal trial was excessive. The latter violated Articles 7(1), 7(5), 8(1), and 8(2) of the Convention, in conjunction with its Article 1(1).

VIII REPARATIONS

98. Pursuant to the provisions of Article 63(1) of the American Convention, the Court has indicated that any violation of an international obligation that has caused harm entails the obligation to remedy it adequately, and that this provision reflects a customary norm that constitutes one of the fundamental principles of contemporary international law on State responsibility.⁶¹

99. Remedying the harm produced by the infringement of an international obligation requires, whenever possible, full restitution (*restitutio in integrum*), which consists in restoring the prior situation. When this is not feasible, as in the majority of cases of human rights violations, this Court will determine measures to guarantee the violated rights and to remedy the consequences of those violations.⁶² The reparations must have a causal nexus with the facts of the case, the declared violations, and the proven harm.⁶³

100. This Court will analyze the claims for reparation in light of the criteria set in its case law regarding the scope of the obligation to remedy.⁶⁴

A) Injured party

101. Pursuant to Article 63(1) of the Convention, the injured party is anyone who has been declared a victim of the violation of any right recognized in this instrument. Therefore, the “injured party” is Ramón Rosendo Carranza Alarcón, who has been reported to be deceased (*supra* footnote on page 4).

B) Measures of satisfaction

102. This Court orders, as it has in other cases,⁶⁵ that the State publish within six months of the notification of this Judgment: a) the official summary of this judgment prepared by the Court, once, in the Official Gazette in a legible and appropriate font size; b) the official summary of the judgment prepared by the Court, once, in a newspaper with broad national circulation in a legible and appropriate font size; and c) the present

⁶¹ Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and Costs*. Judgment of July 21, 1989. Series C No. 7, para. 25, and *Case of Jenkins v. Argentina*, para. 122.

⁶² Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and Costs*, para. 26, and *Case of Jenkins v. Argentina*, para. 123.

⁶³ Cf. *Case of Ticona Estrada et al. v. Bolivia. Merits, Reparations, and Costs*. Judgment of November 27, 2008. Series C No. 191, para. 110, and *Case of Jenkins v. Argentina*, para. 124.

⁶⁴ Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and Costs*, paras. 25 to 27, and *Case of Jenkins v. Argentina*, para. 125.

⁶⁵ This is required even in the absence of an explicit request, as occurred in this case (cf. *Case of Cantoral Benavides v. Peru, Reparations and Costs*. Judgment of December 3, 2001. Series C No. 88, para. 79, and *Case of Hernández v. Argentina. Preliminary Objection, Merits, Reparations, and Costs*. Judgment of November 22, 2019. Series C No. 395, footnote on page 232).

judgment in its entirety, available for one year on an official website accessible to the public. The State must inform the Court immediately when it has made each of the publications ordered, irrespective of the one-year time frame for presenting its first report established in the tenth operative paragraph of this judgment.

C) Request for guarantees of non-repetition

103. The **Commission** requested the measures of non-repetition necessary to ensure that both the applicable law and the respective practices of preventive detention are compatible with inter-American standards. The **representative** and the **State** did not make reference to this request.

104. The **Court** notes that Article 177 of the Code of Criminal Procedure, applied in this case, is not in effect at the time this judgment is being issued. Therefore, it is not appropriate to grant guarantees of non-repetition.

D) Compensation

105. The **Commission** requested that Mr. Carranza be compensated “through measures that cover pecuniary and non-pecuniary damage” produced as a consequence of the declared violations.

106. The **representative** requested pecuniary compensation of not less than USD \$500,000.00 (five hundred thousand United States dollars).

107. The **State** rejected the representative’s allegations and asked the Court to “assess the specific circumstances of the case.”

108. In its case law, the **Court** has developed the concept that pecuniary damage supposes the loss of, or detriment to, the victims’ income, the expenses incurred as a result of the facts, and the consequences of a pecuniary nature that have a causal nexus with the facts of the case.⁶⁶ This Court has developed in its case law that non-pecuniary damage may include both the suffering and affliction caused by the violation and also the impairment of values of great significance to the individuals, as well as any alteration of a non-pecuniary character in the living conditions of the victims. In addition, since it is not possible to allocate a precise monetary equivalent to non-pecuniary damage, it can only be compensated, for the purposes of comprehensive reparation to the victim, by the payment of a sum of money or the delivery of goods or services with a monetary value that the Court determines in reasonable application of sound judicial criteria and based on equity.⁶⁷

109. The Court notes that the representative did not explain the grounds for his monetary request, nor whether it corresponded to pecuniary or non-pecuniary damage. The Court does not have evidence—nor have sufficient arguments been made—to evaluate the supposed pecuniary damage in this case, so it does not consider it

⁶⁶ Cf. *Case of Bámaca Velásquez v. Guatemala. Reparations and Costs*. Judgment of February 22, 2002. Series C No. 91, para. 43, and *Case of Jenkins v. Argentina*, para. 145.

⁶⁷ 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, and *Case of Jenkins v. Argentina*, para. 158.

appropriate to order economic reparations. It does consider it reasonable to believe that the violations to personal liberty and to judicial guarantees caused non-pecuniary damage. Because of this, the Court considers it reasonable to order, in equity, the payment of USD \$25,000.00 (twenty-five thousand United States dollars) as compensation for the non-pecuniary damage suffered by Mr. Carranza.

E) Costs and expenses

110. The **representative** asked the Court to order the State to pay the “fees [...] for all the years the case has taken.” He asked that those fees be “set” by the Court.

111. The **State** asked the Court to refrain from ordering this measure or, if it does, to determine a reasonable amount.

112. The **Court** reiterates that, pursuant to its case law,⁶⁸ costs and expenses are part of the concept of reparation in all cases in which the efforts of the victims in seeking justice, both nationally and internationally, entail expenditures that must be compensated for when the international responsibility of the State is declared. The Court is responsible for prudently assessing the scope of this reimbursement for costs and expenses, taking into consideration the circumstances of the specific case and the nature of international jurisdiction with respect to the protection of human rights. This assessment can be done on the basis of the principle of equity and taking into consideration the expenses declared by the parties, provided the amounts are reasonable.

113. In the present case, the Court observes that the representative did not mention or provide evidence for expenses incurred. His request was that the Court “set” his professional fees. This request is inconsistent with the practice of this Court, which orders the reimbursement of costs and expenses actually incurred, even, as the case may be, those produced by the payment of sums of money by the victims to their representatives or to professionals for their services. Furthermore, when the representative was notified of the submission of the case, he was informed that “the eventual reimbursement of costs and expenses will be carried out on the basis of expenditures duly documented before the Court.”

114. Without prejudice to the foregoing, the Court considers it evident that the steps taken entailed pecuniary expenditures. Therefore, considering it reasonable, it determines that the State must pay the representative the amount of USD \$10,000.00 (ten thousand United States dollars) for costs and expenses. Said amount must be rendered directly to the representative. At the stage of monitoring compliance with the present Judgment, the Court will be able to order the State to reimburse the representative for reasonable expenses incurred during said procedural stage.⁶⁹

F) Method of compliance with the payments ordered

115. The State shall make the payment for reimbursement of costs and expenses established in the present judgment directly to the representative of Mr. Carranza

⁶⁸ Cf. *Case of Garrido and Baigorria v. Argentina. Reparations and Costs*. Judgment of August 27, 1998. Series C No. 39, para. 79, and *Case of Jenkins v. Argentina*, para. 164.

⁶⁹ Cf. *Case of Gudiel Álvarez et al. ("Diario Militar") v. Guatemala. Interpretation of the Judgment on Merits, Reparations, and Costs*. Judgment of August 19, 2013. Series C No. 262, para. 62, and *Case of Jenkins v. Argentina*, para. 165.

Alarcón within a period of one year from the notification of the judgment, without prejudice to making the full payment in advance.

116. The State shall make the payment of non-pecuniary compensation established in the present judgment to Ramón Rosendo Carranza Alarcón's heirs, pursuant to applicable domestic law, within one year of the publications ordered in the present judgment (*supra* para. 102), without prejudice to making the full payment in advance.

117. If, for reasons attributable to Mr. Carranza Alarcón's heirs, it is not possible to pay the amount determined within the indicated time frame, the State shall deposit the amount in his favor in a deposit account or certificate in a solvent Ecuadorian financial institution, in United States dollars, and in the most favorable financial conditions permitted by banking law and practice. If the corresponding compensation is not claimed within ten years, the amount shall be returned to the State along with the interest accrued.

118. The State shall comply with the monetary obligations by payments in United States dollars, with no reductions resulting from eventual tax charges. If the State falls behind, it shall pay interest on the amount owed corresponding to banking interest on arrears in the Republic of Ecuador.

IX OPERATIVE PARAGRAPHS

119. Therefore,

THE COURT

DECIDES,

unanimously:

1. To reject the preliminary objection filed by the State regarding the alleged failure to exhaust domestic remedies, pursuant to paragraphs 15 to 22 of this judgment.
2. To reject the preliminary objection filed by the State regarding the alleged violation of its right of defense, pursuant to paragraphs 25 to 33 of this judgment.

DECLARES,

unanimously, that:

3. The State is responsible for violating the rights of personal liberty and judicial guarantees enshrined in Articles 7(1), 7(3), and 8(2) of the American Convention on Human Rights, in conjunction with its Articles 1(1) and 2, to the detriment of Ramón Rosendo Carranza Alarcón, pursuant to paragraphs 60, 62, 65, 67-68, 75-85, 90, and 97 of the present judgment.
4. The State is responsible for violating the rights of personal liberty and judicial guarantees enshrined in Articles 7(1), 7(5), 8(1), and 8(2) of the American Convention on Human Rights, in conjunction with its Article 1(1), to the detriment of Ramón Rosendo Carranza Alarcón, pursuant to paragraphs 60, 64-68, and 86-97 of the present judgment.

5. There is insufficient evidence to consider the alleged violation of the rights enshrined in Articles 5 and 25 of the American Convention on Human Rights pursuant to paragraph 56 of the present judgment.

AND ESTABLISHES,

unanimously, that:

6. This judgment constitutes, *per se*, a form of reparation.

7. The State shall make the publications indicated in paragraph 102 of this judgment.

8. The State shall pay the amounts established in paragraphs 109 and 114 of this judgment as compensation for non-pecuniary damage and reimbursement of costs and expenses, pursuant to paragraphs 115 and 118 of this judgment.

9. The State, within one year of notification of this judgment, shall provide the Court with a report on the measures taken to comply with it, without prejudice to the provisions of paragraph 102 of this judgment.

10. The Court will monitor full compliance with this judgment in exercise of its authority and in fulfillment of its duties under the American Convention on Human Rights and will consider this case closed when the State has complied fully with all its provisions.

Judge Eduardo Vio Grossi informed the Court of his separate opinion, which accompanies this judgment.

Done in Spanish in San José, Costa Rica, on February 3, 2020.

I/A Court HR. *Case of Carranza Alarcón v. Ecuador*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of February 3, 2020.

Elizabeth Odio Benito
President

Eduardo Vio Grossi

Humberto Antonio Sierra Porto

Eduardo Ferrer Mac-Gregor Poisot

Eugenio Raúl Zaffaroni

Ricardo C. Pérez Manrique

Pablo Saavedra Alessandri
Secretary

So ordered,

Elizabeth Odio Benito
President

Pablo Saavedra Alessandri
Secretary

**CONCURRING OPINION OF JUDGE EDUARDO VIO GROSSI,
INTER-AMERICAN COURT OF HUMAN RIGHTS,
CASE OF CARRANZA ALARCÓN V. ECUADOR,
JUDGMENT OF FEBRUARY 3, 2020
(Preliminary Objections, Merits, Reparations, and Costs)**

This concurring opinion is issued with the above judgment¹ for the purpose of indicating why, given the author's statements in his other opinions on the matter,² he has voted in favor of operative paragraph 1 of this judgment.³

¹ Hereinafter, the judgment.

² *Dissenting Opinion of Judge Eduardo Vio Grossi, Inter-American Court of Human Rights, Case of López et al. v. Argentina*, Judgment of November 25, 2019 (*Preliminary Objections, Merits, Reparations, and Costs*); *Concurring Opinion of Judge Eduardo Vio Grossi, Inter-American Court of Human Rights, Case of Gómez Virula et al v. Guatemala*, Judgment of November 21, 2019, (*Preliminary Objection, Merits, Reparations, and Costs*); *Dissenting Opinion of Judge Eduardo Vio Grossi, Inter-American Court of Human Rights, Case of the National Association of Discharged and Retired Employees of the National Tax Administration Superintendence (ANCEJUB-SUNAT) v. Peru*, Judgment of November 21, 2019, (*Preliminary Objections, Merits, Reparations, and Costs*); *Dissenting Opinion of Judge Eduardo Vio Grossi, Inter-American Court of Human Rights, Díaz Loreto et al v. Venezuela*, Judgment of November 19, 2019 (*Preliminary Objections, Merits, Reparations, and Costs*); *Concurring Opinion of Judge Eduardo Vio Grossi, Inter-American Court of Human Rights, Case of Terrones Silva et al v. Peru. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of September 26, 2018; *Separate Opinion of Judge Eduardo Vio Grossi, Inter-American Court of Human Rights. Case of Amrhein et al. v. Costa Rica. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of April 25, 2018; *Concurring Opinion of Judge Eduardo Vio Grossi, Inter-American Court of Human Rights. Case of Yarce et al. v. Colombia. Preliminary Objection, Merits, Reparations, and Costs*. Judgment of November 22, 2016; *Concurring Opinion of Judge Eduardo Vio Grossi, Inter-American Court of Human Rights. Case of Herrera Espinoza et al. v. Ecuador. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of September 1, 2016; *Concurring Opinion of Judge Eduardo Vio Grossi. Inter-American Court of Human Rights, Case of Velásquez Paiz et al. v. Guatemala. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of November 19, 2015; *Dissenting Opinion of Judge Eduardo Vio Grossi, Inter-American Court of Human Rights. Case of Peasant Community of Santa Bárbara v. Peru. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of September 1, 2015; *Dissenting Opinion of Judge Eduardo Vio Grossi, Inter-American Court of Human Rights. Case of Wong Ho Wing v. Peru. Preliminary Objection, Merits, Reparations, and Costs*. Judgment of June 30, 2015; *Dissenting Opinion of Judge Eduardo Vio Grossi, Inter-American Court of Human Rights. Case of Cruz Sánchez et al. v. Peru. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of April 17, 2015; *Dissenting Opinion of Judge Eduardo Vio Grossi, Inter-American Court of Human Rights. Case of Liakat Ali Alibux v. Suriname. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of January 30, 2014, and *Dissenting Opinion of Judge Eduardo Vio Grossi, Inter-American Court of Human Rights. Case of Díaz Peña v. Venezuela. Preliminary Objection, Merits, Reparations, and Costs*. Judgment of June 26, 2012.

³ "To reject the preliminary objection filed by the State regarding the alleged failure to exhaust domestic remedies, pursuant to paragraphs 15 to 22 of this judgment."

That reason has to do with the resolution of the attached litigation regarding compliance with the requirement of prior exhaustion of domestic remedies. In this regard, it should be noted here that in the petition received by the Inter-American Commission on Human Rights⁴ on April 5, 1998,⁵ no information was provided on that question, in violation of Article 46(1)(a)⁶ of the American Convention on Human Rights⁷ and Article 28(8)⁸ of the Commission's Rules of Procedure, and also that there is no record of the Commission having done the first review of compliance with said requirement, as mandated in Article 26 of the same Rules of Procedure.⁹ Two additional issues should be taken into consideration. First, the State, in its timely response to that requirement—which was dated October 18, 1999 and pursuant to Article 48(1)(a)¹⁰ of the Convention and Article 30(2)(3)¹¹ of the aforementioned Rules of Procedure—indicated the remedies that in its view had not been exhausted, without alleging, however, a violation of the referenced Article 26. Second, the Commission commented on the admissibility of the referenced petition, pursuant to the terms in which it was presented as much as to the referenced response of the State. That is, it came to a decision on the attached litigation—not on subsequent events—at that time.¹²

Thus, the separate opinion recorded in this document was issued because operative paragraph 1 of the judgment was adopted essentially in consideration of the Commission's determination and because it does not conflict—quite the opposite—with the arguments repeatedly made in the indicated separate opinions.

⁴ Hereinafter, the Commission.

⁵ Paragraph 2(a) of the judgment.

⁶ *"Admission by the Commission of a petition or communication lodged in accordance with Articles 44 or 45 shall be subject to the following requirements: a. that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law; ..."*

⁷ Hereinafter, the Convention.

⁸ *"Requirements for the Consideration of Petitions. Petitions addressed to the Commission shall contain the following information: ...h. any steps taken to exhaust domestic remedies, or the impossibility of doing so as provided in Article 31 of these Rules of Procedure;"*

⁹ *"Initial Review. 1. The Executive Secretariat of the Commission shall be responsible for the study and initial processing of petitions lodged before the Commission that fulfill all the requirements set forth in the Statute and in Article 28 of these Rules of Procedure.*

2. If a petition or communication does not meet the requirements called for in these Rules of Procedure, the Executive Secretariat may request that the petitioner or his or her representative satisfy those that have not been fulfilled.

3. If the Executive Secretariat has any doubt as to whether the requirements referred to have been met, it shall consult the Commission."

¹⁰ *"When the Commission receives a petition or communication alleging violation of any of the rights protected by this Convention, it shall proceed as follows: a) If it considers the petition or communication admissible, it shall request information from the government of the state indicated as being responsible for the alleged violations and shall furnish that government a transcript of the pertinent portions of the petition or communication. This information shall be submitted within a reasonable period to be determined by the Commission in accordance with the circumstances of each case;"*

¹¹ *"Admissibility Procedure... 2. For this purpose, it shall forward the relevant parts of the petition to the State in question. [...] The request to the State for information shall not constitute a prejudgment with regard to any decision the Commission may adopt on the admissibility of the petition. 3. The State shall submit its response within three months counted from the date the request is transmitted. The Executive Secretariat shall evaluate requests for extensions of this period that are duly founded. However, it shall not grant extensions that exceed four months from the date of the first request for information sent to the State."*

¹² Paragraphs 2(1)(b) and 14 of the judgment.

Eduardo Vio Grossi
Judge

Pablo Saavedra Alessandri
Secretary