INTER-AMERICAN COURT OF HUMAN RIGHTS

CASE OF VILLARROEL MERINO *ET AL V.* ECUADOR

JUDGMENT OF AUGUST 24, 2021

(Preliminary objections, merits, reparations and costs)

In the *Case of Villarroel Merino et al. 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, and
Romina I. Sijniensky, Deputy 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, 42, 65 and 67 of the Rules of Procedure of the Court (hereinafter also "the Rules of Procedure"), delivers this judgment.

[*] Judge L. Patricio Pazmiño Freire, Vice President of the Court, an Ecuadorian national, did not take part in the deliberation and signature of this judgment pursuant to the provisions of Articles 19(2) of the Court's Statute and 19(1) of its 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 November 13, 2019, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") submitted to the jurisdiction of the Inter-American Court, pursuant to Articles 51 and 61 of the American Convention, the case of Villarroel Merino and others against the Republic of Ecuador (hereinafter "the State" or "Ecuador"). According to the Commission, the case relates to the alleged unlawful and arbitrary detention of the officers of the National Police: Jorge Humberto Villarroel Merino (hereinafter also "Jorge Villarroel Merino" or "Mr. Villarroel Merino" or "Mr. Villarroel"), Mario Romel[1] Cevallos Moreno (hereinafter also "Mario Cevallos Moreno" or "Mr. Cevallos Moreno" or "Mr. Cevallos"), Jorge Enrique Coloma Gaibor[2] (hereinafter also "Jorge Coloma Gaibor" or "Mr. Coloma Gaibor" or "Mr. Coloma"), Fernando Marcelo López Ortiz (hereinafter also "Fernando López Ortiz" or "Mr. López Ortiz" or "Mr. López"), Leoncio Amílcar Ascázubi Albán (hereinafter also "Amílcar Ascázubi Albán" or "Mr. Ascázubi Albán" or "Mr. Ascázubi") and Alfonso Patricio Vinueza[3] Pánchez (hereinafter also "Patricio Vinueza Pánchez" or "Mr. Vinueza Pánchez" or "Mr. Vinueza") (hereinafter also "the presumed victims") in May 2003, first under the measure of *detención en firme* (a detention order issued in conjunction with a committal order to ensure the defendant's presence at the trial) and then under pre-trial detention. The Commission also alleged that judicial guarantees had been violated in the proceedings instituted against the presumed victims because they did not have prior detailed information of the charges against them or time to prepare their defense. In addition, it alleged that there had been violations: (i) of the principle of independence and impartiality because the right to a competent authority was violated due to the numerous indications of the lack of competence of the person acting as the president of the court; (ii) the presumed victims were not allowed to appeal the ruling before a higher court, and (iii) the duration of the proceedings was unreasonable.

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

a. *Petition.* The initial petition was lodged before the Commission on July 15, 2003, by María Paula Romo.

b. *Admissibility Report*. On January 29, 2015, the Commission adopted Admissibility Report No. 6/15 and made itself available in order to reach a friendly settlement.

c. *Merits Report*. On October 5, 2018, the Commission issued Merits Report No. 113/18[4] (hereinafter "the Merits Report") under Article 50 of the Convention in which it reached a series of conclusions,[5] and made several recommendations to the State.

d. *Notification to the State.* The Merits Report was notified to the State on November 13, 2018. After the Commission had granted the State three extensions of either three months or one month, the State failed to present information on compliance with the recommendations

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[1] In the different documents presented, the second name of Mario Cevallos Moreno appears, indistinctly, as "Rommel" or "Romel." For the purposes of this judgment, the Court will use the spelling "Romel."

[2] In the different documents presented, the second last name of Jorge Coloma appears, indistinctly, as "Gaibor" or "Gaybor." For the purposes of this judgment, the Court will use the spelling "Gaibor."

[3] In the different documents presented, the first last name of Alfonso Patricio appears, indistinctly, as "Vinueza" or "Vinuesa." For the purposes of this judgment, the Court will use the spelling "Vinueza."

[4] Merits Report No. 113/18, *Jorge Villarroel and Others v. Ecuador,* of October 5, 2018 (merits file, fs. 5 to 30).

[5] The Commission concluded that the State of Ecuador was responsible for the violation of the rights established in Articles 7(1), 7(2), 7(3), 7(5), 7(6) (personal liberty), 8(1), 8(2), 8(2)(b), 8(2)(c), 8(2)(h) (judicial guarantees), 24 (principle of equality and non-discrimination) and 25(1) (judicial protection) of the American Convention on Human Rights, in relation to Articles 1(1) and 2 of this instrument, to the detriment of Jorge Humberto Villarroel Merino, Mario Romel Cevallos Moreno, Jorge Coloma Gaibor, Fernando López Ortiz, Amílcar Ascázubi Albán and Patricio Vinueza Pánchez. In addition, the Commission concluded that the State was not responsible for the violation of Article 9 of the American Convention.

and nor did it request a further extension in keeping with the Commission's Rules of Procedure in this regard.

e. *Submission to the Court.* On September 13, 2019, the Commission[6] submitted to the jurisdiction of the Court all the facts and alleged human rights violations described in Merits Report No. 113/18, "owing to the need to obtain justice in this specific case."

f. *Request of the Inter-American Commission.* The Commission asked the Court to conclude and declare the international responsibility of Ecuador for the alleged violation of the rights indicated in the conclusions to the Merits Report. It also asked the Court to order the State to adopt certain measures of reparation (*infra* Chapter VIII). The Court notes with concern that more than 16 years elapsed between the lodging of the initial petition and the submission of the case to the Court.

II
PROCEEDINGS BEFORE THE COURT

3. *Notification to the State and the representative.*[7] The submission of the case was notified to the State on November 6, 2019, and to the representative of the presumed victims on November 8, 2019.

4. *Brief with pleadings, motions and evidence*. On January 8, 2020, the representative presented his brief with pleadings, motions and evidence (hereinafter "pleadings and motions brief"), pursuant to Articles 25 and 40 of the Court's Rules of Procedure. In general, in this brief the representative made the same allegations as the Inter-American Commission.

5. *Answering brief with preliminary objections.*[8] On May 29, 2020, the State submitted to the Court its brief answering the submission of the case and the pleadings and motions brief (hereinafter "answering brief") pursuant to Article 41 of the Court's Rules of Procedure. In this brief the State filed two preliminary objections.

6. *Observations on the preliminary objections.* On June 28 and July 2, 2020, the representative and the Commission, respectively, presented observations on the preliminary objections, and asked the Court to reject them.

7. *Final written procedure*. After assessing the Merits Report, the pleadings and motions brief and the State's answering brief, and in light of the provisions of Articles 15, 45 and 50(1) of the Court's Rules of Procedure, the President of the Court decided that, considering the circumstances of the case and the absence of a factual dispute, it was not necessary to hold a public hearing. This decision was communicated in an order of the President of December 8, 2020.[9] In the order, the President also required the presentation by affidavit of six deponents, *ex officio,* and one expert witness offered by the Commission.

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[6] The Commission appointed its President, Esmeralda Arosemena de Troitiño, and then Executive Secretary Paulo Abrão as its Delegates, and Marisol Blanchard Vera, Deputy Executive Secretary, and Jorge Meza Flores and Erick Acuña Pereda, Executive Secretariat lawyers, as legal advisers.

[7] The presumed victims appointed Marcelo Dueñas Veloz as their representative.

[8] The State appointed María Fernanda Álvarez Alcívar, as its Agent, and Carlos Alfonso Espín Arias and Jorge Palacios Salcedo, as Deputy Agents.

[9] *Cf. Case of Villarroel Merino et al. v. Ecuador. Order of the President of the Court* of December 8, 2020. Available at: http://www.corteidh.or.cr/docs/asuntos/villarroel_y_otros_08_12_20.pdf.

8. *Final written arguments and observations of the parties and the Commission*. On March 24, 2021, the State and the representative presented their final written arguments. On March 25, 2021, the Commission presented its final written observations.

9. *Presentation of helpful evidence*. On June 15, 2021, the State and the representative were asked to submit helpful evidence under Article 58(b) of the Rules of Procedure by June 25, 2021. On June 25, 2021, the State presented the documentation and information requested. On June 30, 2021, owing to technical problems with the representative's email when sending this documentation and its annexes, the requested evidence and information were submitted belatedly. Subsequently, on July 2, 2021, the representative forwarded another group of documents related to the helpful evidence. On July 14 and 27, 2021, the State presented its corresponding observations in which it asked the Court to consider the documentation presented by the representative inadmissible owing to its late presentation. On July 14 and 30, 2021, the Commission advised that it had no comments to make. Lastly, the representative did not present observations on the helpful evidence forwarded by the State.

10. *Deliberation of the case.* The Court deliberated this judgment on August 23 and 24, 2021.[10]

III
JURISDICTION

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

IV
PRELIMINARY OBJECTIONS

12. The State presented two preliminary objections: (a) alleged "[l]ack of jurisdiction of the Inter-American Court *rationae materiae* and the use of the [inter-American human rights system] as a fourth instance in relation to the criminal proceedings instituted against Messrs. Villarroel Merino, Cevallos Moreno, Coloma Ga[i]bor, Ascázubi Albán, López Ortiz and others," and (b) "[c]ontrol of legality of the action of the [Commission] owing to violation of the State's right of defense." The Court will now examine the preliminary objections filed by the State and the corresponding arguments of the representative and the Commission.

A. The Court's alleged lack of competence to act as a fourth instance

A.1. Arguments of the parties and the Commission

13. The ***State*** argued that Messrs. Villarroel Merino, Cevallos Moreno, Coloma Gaibor, Ascázubi Albán, López Ortiz and Vinueza Pánchez were trying to use, first, the Inter-American Commission and, now, the Court as a fourth instance in relation to the criminal proceedings for the offense of misappropriation of funds. The State claimed that it was not incumbent on the Court to examine judicial decisions issued in the context of criminal proceedings that had already been decided by the National Police Court of Justice (hereinafter also "NPCJ"), or to examine supposed legal or factual errors that could have been committed by the domestic courts. It argued that the presumed victims were seeking for the Court to annul the decisions of the domestic court, which would mean that it was acting as a higher court.

[10] Owing to the exceptional circumstances resulting from the Covid-19 pandemic, this judgment was deliberated and adopted during the 143rd regular session held using technological means, pursuant to the Court's Rules of Procedure. See Press release No. 39/2020, of May 25, 2020, available at: http://www.corteidh.or.cr/docs/comunicados/cp_39_2020.pdf

14. The ***representative*** considered that the State had revealed "a total lack of knowledge of the inter-American human rights system" and indicated that he had "never [referred to the Inter-American Court] as a court of fourth instance or a higher court." He argued that the State "was trying to dispute a court and jurisdiction that it had fully recognized," because it had undertaken to respect the obligations and effects derived from the inter-American human rights system.

15. The ***Commission*** recalled the case of *Cabrera García and Montiel Flores v. Mexico*, in which the Inter-American Court had established that the Court had competence to examine domestic proceedings to verify their compatibility with the American Convention. It added that "the conventionality of all domestic proceedings, inasmuch as they are acts of the State, can be analyzed by the organs of the inter-American system, an analysis that corresponds to the merits of the matter."

A.2. Considerations of the Court

16. This Court has indicated that, to determine whether the actions of judicial organs constitute a violation of the State's international obligations, the Court may have to examine the respective domestic proceedings to establish their compatibility with the American Convention. Consequently, this Court is not a fourth instance for judicial review because it examines the conformity of domestic judicial decisions with the American Convention rather than with domestic law.[11]

17. In this specific case, the Court notes that the objective of the Commission is not merely that the Court review the decisions of the domestic courts, but also that it determine whether the police criminal proceedings against the presumed victims and their deprivation of liberty were in keeping with the American Convention. Therefore, to decide whether the alleged violations really occurred, the Court must examine the decisions issued by the different jurisdictional authorities in order to determine their compatibility with the State's international obligations. Ultimately, this constitutes a substantive issue that cannot be resolved by a preliminary objection. Consequently, the Court finds that the preliminary objection filed by the State is inadmissible.

B. Alleged violation of the State's right of defense owing to the failure to control the legality of the Commission's actions

B.1. Arguments of the parties and the Commission

18. The ***State*** indicated that more than 15 years had passed between the start of the procedure before the Commission and the adoption of the Merits Report. It argued that the disproportionate duration of the procedure prejudiced the State's exercise of its defense because the passage of time had made it difficult to obtain evidence and to prepare the State's defense strategy. In addition, it argued that it had been forced to amend the objections to admissibility initially proposed because a change in the factual framework had rendered the substantiation of the proposed objection insufficient. At the start of the procedure, the State had argued that domestic remedies had not been exhausted because the criminal proceedings against the presumed victims were being processed. The State argued that the issue of the Admissibility Report had rendered its defense more complicated. It indicated that the petition had been lodged on July 15, 2003, and two years later, on July 29, 2005, the Commission advised the State and required it to present observations on the petition's admissibility. Nine years after presenting this request, the Commission adopted the Admissibility Report on January 29, 2015, and, more than 15 years after the petition had been

[11] *Cf. Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits.* Judgment of November 19, 1999. Series C No. 63. para. 222, and *Case of Grijalva Bueno v. Ecuador. Preliminary objection, merits, reparations and costs.* Judgment of June 3, 2021. Series C No. 426, para. 22.

lodged, it adopted the Merits Report on October 5, 2018. The State argued that the difficulties in obtaining evidence violated the adversarial principle and procedural fairness and, consequently, the principle of legal certainty. In conclusion, it argued that, since its defense had been affected due to the passage of time, the required legality of the Commission's actions had been violated. Therefore, the State asked the Court to conduct a control of legality of the Commission's actions and determine that the right of defense had been harmed.

19. The ***representative*** argued that the State was trying "to convert itself into a victim of the Inter-American Commission on Human Rights because it had not always ensured the reasonableness of the time frames while processing the case."

20. The ***Commission*** noted that the Court's case law indicated that control of the legality of the Commission's actions should be extremely restricted because, otherwise, its autonomy and independence were jeopardized. It explained that "this is only applicable in those cases in which it is proved that a serious error has been made which adversely affects the State's right of defense that would justify the inadmissibility of a case before the Court.

B.2. Considerations of the Court

21. The Court has already ruled on control of the legality of the procedure before the Commission. It has indicated that this is applicable when it has been proved that a serious error has been made which adversely affects the State's right of defense that would justify the inadmissibility of a case before the Court.[12] Thus, the Court must analyze whether the Commission's actions have caused any violation of the State's right to defend itself.

22. In the instant case, although the Court has noted that the procedure before the Commission lasted more than 15 years, the State's argument concerning the supposed violation of the right of defense is confined to the fact that, owing to the passage of time, difficulties arose "to obtain evidence," as well as "difficulties to prepare the State's defense strategy," because it was "forced to amend the objections to admissibility initially proposed owing to a change in the factual framework that had rendered the substantiation of the proposed objection insufficient." This Court considers that this argument does not provide a concrete reason for the inadmissibility of the case because, although the passage of time has meant that the State has had to modify its defense strategy in relation to preliminary objections, it does not signify that a serious error has occurred that has prevented it from defending itself before either the Commission or the Court.[13]

23. The Court considers that, fundamentally, the time taken to process this case before the Commission caused significant prejudice to the presumed victims whose right of access to inter-American justice was harmed.[14]

24. Therefore, the Court rejects this preliminary objection.

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[12] *Cf. Case of the Dismissed Congressional Employees (Aguado Alfaro et al.) v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of November 24, 2006. Series C No. 158, para. 66, and *Case of Montesinos Mejía v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of January 27, 2020. Series C No. 398, para. 38.

[13] *Cf. Case of Montesinos Mejía v. Ecuador*, *supra*, para. 39.

[14] *Cf. Case of Montesinos Mejía v. Ecuador*, *supra*, para. 40.

V
EVIDENCE

A. Admission of the documentary evidence

25. The Court received documents presented as evidence by the Commission, the representative and the State together with their principal briefs (*supra* paras. 1, 2, 4 and 5). In this case, as in others, the Court admits those documents presented at the appropriate moment by the parties and the Commission or requested as helpful evidence by its President,[15] the admissibility of which was not contested or challenged.[16] Based on Article 58(a) of the Rules of Procedure, the Court has also incorporated the texts of three domestic laws because they are useful and are public documents.[17]

26. In addition, the representative submitted the documentation requested as helpful evidence belatedly owing to technical problems with his email when trying to send the documentation and annexes (*supra* para. 9), even though he tried to send it several times. The State asked the Court to consider those documents inadmissible owing to their late presentation. Nevertheless, the Court notes that the representative sent documentation related to the helpful evidence requested on two occasions; the first time it was received on June 30, 2021, so that most of the documentation forwarded by the representative was already included in the body of evidence in this case. Regarding the documentation submitted for the first time, this Court considers that it is useful for deciding the case and, therefore, on this occasion, based on Article 58(b) of the Rules of Procedure, it admits the documentation provided by the representative,[18] and will take into account the State's corresponding observations. Regarding the second batch of documents related to helpful evidence presented on July 2, 2021,[19] the State reiterated its argument that these should not be admitted

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[15] The laws presented by the State as helpful evidence included the following: (1) Constitution of the Republic of Ecuador; (2) 1983 common Code of Criminal Procedure, in force from January 1, 1998, to June 30, 2000; (3) 1960 Law on the Judicial Function of the National Police; (4) Organic Law of the National Police, and (5) Law on National Police Personnel, published in the Supplement to Official Record 378 of August 7, 1998. In addition, the State clarified that Audit Report No. 32-DA1-2001-466 formed part of Audit Report No. DA1-93-01 on the special review of the administrative and financial operations of the National Police General Command, for the period January 1, 1998, to June 30, 2000, forwarded as annex 1 to the answering brief. Lastly, the State referred to whether the presumed victims received any type of total or partial salary or remuneration during the police criminal proceedings conducted in 2003, 2004 and 2005.

[16] *Cf. Case of Velásquez Rodríguez v. Honduras*. *Merits*. Judgment of July 29, 1988. Series C No. 4, para. 140, and *Case of Azul Rojas Marín et al. v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of March 12, 2020. Series C No. 402, para. 34.

[17] The following are incorporated *ex officio*: Organic Law of the Judicial Function published in Official Record No. 636 of September 11, 1974; Law amending the common Code of Criminal Procedure, Law No. 2003-101, amending the common Code of Criminal Procedure and the 2000 common Code of Criminal Procedure, published in the Supplement to Official Record 360 of January 13, 2000.

[18] The representative referred to whether the presumed victims received any type of total or partial salary or remuneration during the police criminal proceedings conducted in 2003, 2004 and 2005, and whether, following their acquittal, they were paid any proportional salaries and other benefits they had not received. In addition, based on the Court's requests, he presented the following documents, *inter alia*: (a) Claim for compensation for pecuniary and non-pecuniary damages filed before the National Police Court of Justice on March 24, 2005; (b) "Administrative complaint" against the State represented by the Constitutional President and his judicial representative, the Attorney General, undated; (c) Communication from the Office of the President of the Republic dated October 12, 2006; (d) Resolution of the Alternate President of the Supreme Court of Justice of February 8, 2007; (e) Resolution of the President of the Supreme Court of Justice of April 10, 2007; (f) Claim for compensation for pecuniary and non-pecuniary damage against the Ecuadorian State represented by the Attorney General and the Police Institution represented by the Police Commander General, filed on July 21, 2008; (g) Judicial decision of the Twentieth Civil Court of Pichincha, Quito, of September 25, 2008; (h) Judicial decision of the Twentieth Civil Court of Pichincha, Quito of September 29, 2008; (i) Judicial decision of the District Court for Administrative Disputes of the Metropolitan District of Quito, province of Pichincha, of November 8, 2018; (j) Application for amparo filed by Mario Romel Cevallos Moreno before the National Court of Justice, undated, and (k) Brief relating to the prosecutor's request for clarification and expansion of the application of November 27, 2003.

[19] Namely: (1) Nine communications of the Supreme Court of Justice, Alternate President, in the summary oral proceedings (damages), dated February 5, 7 and 8; April 10, 19 and 22; June 29; July 24, and November 16, 2007; (2) Seven briefs of Jorge Villarroel Merino in the summary oral proceedings (damages) dated April 5, May 18, June 22, July 20

owing to their late presentation. Based on the foregoing, the Court considers that this evidence is inadmissible because it was presented after the deadline for its submission had passed.

B. Admission of statements and expert evidence

27. Regarding the affidavits made by the presumed victims Messrs. Villarroel Merino, Cevallos Moreno, Coloma Gaibor, López Ortiz, Ascázubi Albán and Vinueza Pánchez, in its final arguments, the State argued that it could be observed that the statements exceeded the purpose delimited by the Court because, in several parts, they referred to facts and situations that were not relevant to the instant case and restated their claims for reparation. It also argued that, in their statements, the presumed victims merely described the police criminal proceedings against them, repeating the arguments made in the briefs presented during the processing of the case before the Inter-American Commission, which the latter had reflected in its Merits Report; consequently, the State questioned the evidentiary pertinence of the said statements. The Court notes that, indeed, in their statements, the presumed victims had referred to situations and claims for reparation that did not form part of the purpose of their statements. Therefore, the Court deems it pertinent to admit the said statements to the extent that these are in keeping with the purpose defined in the order requiring them (*supra* para. 7) and taking into account the corresponding observations of the State.

28. In addition, in the case of the expert opinion of Mario Luis Coriolano, in its final written arguments the State indicated that "this opinion seeks to support the hypothesis of the [Commission] and the presumed victims that they were deprived of their liberty unlawfully in the context of the police criminal proceedings instituted against them. However, this assertion is not true." The Court notes that the State's comment on this expert opinion refers to its evidentiary value and not to its admissibility. Consequently, the Court admits it and will take Ecuador's comment into account when assessing the evidence.

VI
FACTS

29. The Court will now describe the facts of the case in the following order: (A) Legal framework; (B) Presumed victims; (C) Detention and prosecution of the presumed victims, and (D) Claims for compensation.

A. Legal framework

30. Articles 183 and 187 of the Constitution of the Republic of Ecuador (hereinafter "the Constitution") in force at the time of the facts established, respectively, that "[t]he public security forces shall be constituted by the Armed Forces and the National Police," and that "[t]he members of the security forces shall be subject to a special jurisdiction for the prosecution of any offenses

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and October 25, 2007, and two undated; (3) Application for amparo filed by Jorge Villarroel Merino, Jorge Coloma Gaibor, Fernando López Ortiz and Patricio Vinueza Pánchez on July 2, 2003; (4) Excuse addressed to the Alternate President on July 2, 2003; (5) Two judicial decisions of the National Police Court of Justice dated July 3 and 9, 2003; (6) Appeal to reverse the judicial decision of July 3, 2003, filed by the defense counsel of Messrs. Villarroel, Coloma, López and Vinueza on July 7, 2003; (7) Dissenting votes of Fausto Aquiles Vasconez Naranjo and Alejandro Carrión Pérez of July, 9, 2003; (8) Administrative complaint for damages of Jorge Villarroel Merino addressed to the President of the Republic of Ecuador and filed on October 4, 2006; (9) Communication of the Secretary General for Legal Affairs of the Republic of October 12, 2006; (10) letter of Jorge Villarroel Merino addressed to the President of the Republic of Ecuador, presented on October 16, 2006; (11) letter of Jorge Villarroel Merino addressed to the Head of Human Resources of the National Council of the Judiciary, undated.

committed in the exercise of their professional duties. In the case of ordinary offenses, they shall be subject to the ordinary jurisdiction."[20]

31. Article 24(8) of the 1998 Constitution[21] stipulated:

> Article 24. To ensure due process, the following basic guarantees shall be observed, without prejudice to others established in the Constitution, international instruments, laws or case law. […] (8) Pre-trial detention shall not exceed six months in cases of offenses punishable by imprisonment, or one year in offenses punishable with penal servitude. If these terms are exceeded, the order of pre-trial detention shall expire under the responsibility of the judge hearing the case […]. In any case, and without any exception, once a stay of proceedings or an acquittal has been issued, the detainee shall immediately recover his liberty, without prejudice to any pending remedy or consultation.

32. Regarding the jurisdiction, article 4 of the Criminal Code of the National Civil Police (hereinafter also "CCNCP") established that "[t]he jurisdiction for members of the National Civil Police is only applicable in the case of offenses committed in the exercise of their specific functions as members of this Institution, and for offenses determined in this Code and in the Disciplinary Regulations."[22]

33. Furthermore, article 4 of the Code of Criminal Procedure of the National Civil Police (hereinafter also "CCPNCP") in force at the time of the facts stipulated that "[t]he jurisdiction [was] distributed based on the rank, territory and instances," while article 5 established that "[t]he jurisdiction is exercised, based on the case, […] by the Supreme Court." Lastly, article 7 indicated that "t]he jurisdiction for the members of the National Civil Police is applicable only with regard to offenses committed in the exercise of their specific functions as members of this Institution, and for offenses determined in this Code and in the Disciplinary Regulations."[23]

34. Article 91 of the CCPNCP[24] established the situations in which pre-trial detention was admissible:

> The suspect shall not be detained unless the following circumstances concur:
> 1. Procedural information leading to the presumption of the existence of an offense that should be prosecuted*, ex officio*, and that merits imprisonment, and
> 2. Evidence or significant presumptions that the accused is the perpetrator of the offense, or an accomplice.

35. In addition article 167 of the CCPNCP[25] establishes the elements that a reasoned order should include:

> 1. The statement that the case is admissible;
> 2. The offense prosecuted, and the names of the perpetrators, accomplices and accessories after the fact;
> 3. The arrest warrant for the accused;
> 4. The indication that the accused may appoint defense counsel, if he so wishes;
> 5. The order for a deposition to be taken from the accused;
> 6. The order for the embargo of equivalent assets of the accused, whenever financial liability may be found, and
> 7. The instruction that a copy of the reasoned order be forwarded to the head of the corps on whose premises the accused should be detained and to the head of the respective district.

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[20] 1988 Constitution of the Republic of Ecuador, Official Record 1 of August 11, 1998, articles 183 and 187 (evidence file, fs. 4102 to 4174).

[21] 1988 Constitution of the Republic of Ecuador, article 24.8, *supra*.

[22] Criminal Code of the National Civil Police, published in the Supplement to Official Record No. 1202 of August 20, 1960, article 4 (evidence file, fs. 3117 to 3191).

[23] Code of Criminal Procedure of the National Civil Police, published in the Supplement to Official Record No. 1202 of August 20, 1960, articles 4, 5 and 7 (evidence file, fs. 3192 to 3233).

[24] Code of Criminal Procedure of the National Civil Police, article 91, *supra*.

[25] Code of Criminal Procedure of the National Civil Police, article 167, *supra*.

36. The Criminal Code of the National Civil Police regulated offenses against police integrity in articles 197 and 198, and misappropriation of funds in article 222,[26] as follows:

> Article 197. Anyone who falsifies documents relating to the service, such as [financial] statements, vouchers, communications, reports, correspondence, interventions, wording relating to retirement, incapacity, or pensions, ledgers, records, promotions, demotions, passports, or any other document relating to the administration or exercise of the Institution's functions or posts shall be punished with six to nine years of medium-term ordinary imprisonment.
> Falsification may consist in imitation, elimination, increase, insertion or alteration of letters, signatures or headings, or the numbering of the text of any document; in forging the complete document, or in adding or eliminating persons, clauses, obligations, excuses, conventions, statements, acts or agreements, in the number, quantity or quality, in the dates or days, or in the imitation or falsification or undue use of seals, stamps, marks, bodkins, plates or clichés.
> If the falsification is committed in relation to significant documents and causes very serious prejudices to the State, the Institution or individuals, the punishment shall be eight to twelve years of long-term ordinary imprisonment.
> If the falsification is perpetrated in relation to matters of little value or significant, the punishment shall be two to five years' imprisonment.
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> Article 198. Anyone who knowingly makes use of a false document shall be punished with the same sanctions.
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> Article 222. Anyone who, in order to favor other persons or for their own use, perpetrates any of the following acts shall be punished with three to six years of medium-term ordinary imprisonment: […] 3. Anyone who, in buying, selling or leasing real estate or assets of the Institution, or for the Institution obtains any personal benefit or benefit for third parties; 4. Anyone who, in any contract corresponding to the Institution alters the original price, weight, quantity or quality; […] 10. Anyone who signs contracts on behalf of the Institution, dispensing with tendering procedures, when the law requires this […].

37. In 2003, the Code of Criminal Procedure (hereinafter also "the CCP") was amended by the Law amending the Code of Criminal Procedure, Law 2003-101; its article 10 amended article 160 of the common CCP,[27] so that the wording would read:

> Art. 160. Types. Individual precautionary measures are detention, pre-trial detention, and *detención en firme*. Substantive precautionary measures are: prohibition to dispose of assets, sequester, confiscation and embargo.
>
> *Detención en firme* shall be ordered in all cases in which an order to initiate a trial is issued, pursuant to article 232 of this Code and may only be revoked by an acquittal and suspended in offenses punished by imprisonment.

38. In addition, article 16 of the Law amending the common Code of Criminal Procedure, Law 2003-101, introduced the legal measure of *detención en firme*. The common CCP established *detención en firme* in its article 173-A,[28] which stipulated that:

> To ensure the presence of the accused at the trial stage and to avoid the suspension of the proceedings, in the order to initiate a trial, the judge who is hearing the case shall, imperatively, order the *detención en firme* of the accused, except in the following cases:
>
> 1. Of the person who has been classified as presumed accessory after the fact, and
> 2. Of those being tried for an offense for which the punishment is less that one year's imprisonment.
>
> If an order of pre-trial detention has been issued for the accused, when issuing the order to initiate a trial, this shall be changed to *detención en firme*.

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[26] Criminal Code of the National Civil Police, articles 197, 198 and 222, paras. 3, 4 and 10, *supra*.

[27] Law amending the Code of Criminal Procedure, Law 2003-101, article 10 of which amended article 160 of the CCP https://www.derechoecuador.com/registro-oficial/2003/01/registro-oficial-13-de-enero-del-2003#anchor480794 Consulted on September 23, 2021.

[28] Law amending the Code of Criminal Procedure, Law 2003-101, article 16, which added article 173–A, *supra*.

39. Also, article 173-B of the CCP,[29] which relates to an appeal against *detención en firme*, indicated that: "[i]f an appeal is filed against the order to initiate a trial, the order for *detención en firme* shall not be suspended."

40. Subsequently, by its article 9, Law 2006-30[30] again amended the common CCP adding the following to article 173-A:

> Once the order to initiate a trial has been executed with the respective order of deprivation of liberty, the competent criminal judge or court shall deliver judgment within no more than ninety days. If judgment is not delivered within this time frame, the substitute or associate judges shall act and, within forty-five days they shall decide the proceedings. Both the principal judges and the substitutes shall be civilly liable for the delay in the administration of justice and the National Council of the Judiciary shall examine their conduct and shall proceed to sanction them by dismissal.
>
> The National Council of the Judiciary shall provide the logistics to enable judges to take a decision within the said time frames.

41. Then, by Ruling No. 0002-2005-TC[31] issued by the Constitutional Court on October 23, 2006, *detención en firme* was declared unconstitutional.

B. Presumed victims

42. The presumed victims were members of the National Police of Ecuador in the following posts:

a) *Jorge Humberto Villarroel Merino* was Commander General of the National Police from 1998 until January 2000. In January 2000 he was placed in reserve retirement by the National Police because he had completed the maximum term in the post (2 years) pursuant to the Law on National Police Personnel,[32] and 36 year' service in the institution.
b) *Mario Romel Cevallos Moreno* was Commander General of the National Police from January 2000 to April 2001. Subsequently, he was placed in a transitory situation from April to October 2001[33] and, on October 11, 2001, he was placed in reserve retirement by the National Police,[34] after 36 years' service in the institution.
c) *Jorge Enrique Coloma Gaibor* was Technical Financial Director of the National Police General Command at the time of the facts. Following his acquittal, he was appointed National Financial Director of the National Police and, on August 28, 2006, he requested voluntary discharge, "waiving a transitory post, with the rank of [colonel]."[35]
d) *Fernando Marcelo López Ortiz* was a Colonel at the time of the facts. He was placed in a transitory situation at the orders of the Ministry of the Interior between January 2004 and November 2005, at which time he returned to active service with the National Police. In

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29 Law amending the Code of Criminal Procedure, Law 2003-101, article 16, which added article 173–B to the common Code of Criminal Procedure, *supra*.

30 Law amending the Codes of Execution of Judgment and Social Rehabilitation, and of Criminal Procedure, Law 2006-30, article 9, https://www.derechoecuador.com/registro-oficial/2006/03/registro-oficial-13-de-marzo-del-2006#anchor881031 Consulted on September 23, 2021.

31 The 2000 Code of Criminal Procedure, published in the Supplement to Official Record 360 of January 13, 2000, refers to Ruling No. 0002-2005-TC of the Constitutional Court published in the Supplement to Official Record 382 of October 23, 2006. Available at: http://www.oas.org/juridico/PDFs/mesicic4_ecu_codigo_pp.pdf

32 *Cf.* Affidavit made by Jorge Humberto Villarroel Merino on February 9, 2021 (evidence file, fs. 3931 to 3949).

33 *Cf. Curriculum vitae* of Mario Romel Cevallos Moreno, issued by the Affiliation and Information Department of the Ecuadorian Social Services Directorate (evidence file, fs. 3884 and 3885).

34 *Cf.* Affidavit made by Mario Romel Cevallos Moreno on February 9, 2021 (evidence file, fs. 3950 to 3974).

35 *Cf.* Affidavit made by Jorge Enrique Coloma Gaibor on February 9, 2021 (evidence file, fs. 4017 to 4040).

April 2006 he was promoted to District General and, subsequently, requested voluntary discharge.[36]

e) *Leoncio Amílcar Ascázubi Albán* was Administrative Secretary of the National Police General Command at the time of the facts. On April 7, 2006, he was promoted to District General and, on June 14, 2006, he was placed in reserve retirement by the National Police.[37]

f) *Alfonso Patricio Vinueza Pánchez* was Head of Mechanics of the National Police with the rank of Police Major until August 2000; subsequently, he was promoted to Staff Police Lieutenant Colonel. In 2009, he was placed in reserve retirement with the rank of colonel.[38]

C. Detention and prosecution of the presumed victims

43. On July 13, 2001, the Office of the Comptroller General (hereinafter "the Comptroller's Office") issued a report entitled "Indications of criminal responsibility from the special review of the administrative and financial operations of the National Police General Command" No. 32-DA.1-2001-466 (hereinafter also "the report of the Comptroller's Office" or "the report"), a review conducted for the period from January 1, 1998, to June 30, 2000. The report of the Comptroller's Office identified the existence of irregularities in the procurement procedures for the acquisition of automotive spare parts and vehicle repairs conducted by the National Police General Command and named several individuals who were involved – including the presumed victims[39] - regarding whom it concluded that the opening of a criminal investigation was justified for the offense of misappropriation of funds, defined as an offense in article 257 of the Criminal Code,[40] and the offense of misrepresentation in private instruments, defined as an offense in article 340 of the same Code.[41] Essentially, the report indicated the following:

> […] The Procurement Committee, based on information sent to it – that is, following an internal request, the opinion of the mechanic, and proformas from several commercial establishments, suppliers of spare parts – proceeded to select and award the purchases to TECMADIESEL GRUP, COTRANSA and DIJORMING, interrelated companies because they belonged to a single family group, avoiding healthy competition with other suppliers, so that they overpaid S/99,425,907 [sucres]; in addition, the companies that appear on the operation vouchers are different and the purchases were subdivided so that they were not subject to the Public Procurement Law. Facts based on which the perpetration of the offense defined in the third unnumbered paragraph added to articles 257 and 340 of the Criminal Code is presumed.[42]

44. The report of the Comptroller's Office was forwarded to the prosecutor of the National Police Court of Justice on January 28, 2002.[43] And, in compliance with his powers under article 58 of the

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36 *Cf.* Affidavit made by Fernando Marcelo López Ortiz on February 9, 2021 (evidence file, fs. 3975 to 3999).

37 *Cf.* Affidavit made by Leoncio Amílcar Ascázubi Albán on February 9, 2021 (evidence file, fs. 4000 to 4016).

38 *Cf.* Affidavit made by Alfonso Patricio Vinueza Pánchez on February 9, 2021 (evidence file, fs. 4041 to 4067).

39 *Cf.* Partial report on indications of criminal responsibility from the special review of the administrative and financial operations of the National Police General Command, No. 32-DA.1-2001-466 of the Office of the Comptroller General of July 13, 2001 (evidence file, fs. 42 to 62).

40 Article 257: "Public employees and anyone responsible for a public service who has abused of public or private money, of goods that represent this, vouchers, securities, documents or movable goods that were in their power due to their position shall be punished by long-term ordinary imprisonment of four to eight years; whether the abuse consists in embezzlement, misappropriation of funds, arbitrary disposal or any similar type of abuse […]." 1971 Criminal Code, published in the Supplement to Official Record No. 147 of January 22, 1971 (evidence file, fs. 3236 to 3397). The information cited is taken from this Criminal Code presented as evidence by the representative.

41 Article 340: "Anyone who […] commits the forgery of private instruments, with the exception of cheques, shall be punished with two to five years' imprisonment." 1971 Criminal Code, *supra*.

42 Partial report on indications of criminal responsibility from the special review of the administrative and financial operations of the National Police General Command, No. 32-DA.1-2001-466, *supra*.

43 Both the State and the representative indicated that on January 28, 2002, Report No. 32-DA.1-2001-466 was forwarded to the Prosecutor of the National Police Court of Justice. *Cf.* Communication No. 05802 of the Office of the Attorney General of the State of Ecuador of May 3, 2016 (evidence file, fs. 176 to 218), and Petition of the presumed victims before the Inter-American Commission of July 15, 2003 (evidence file, fs. 135 to 141).

Law on the Judicial Function of the National Police,[44] and having analyzed the report of the Comptroller's Office as well as other probative elements, in a brief of March 7, 2002, the police prosecutor concluded that "the goods procured under the contracts signed by the Police General Command, benefitting the companies COTRANSA, TECMADIESEL GROUP, DIJORMING and LLANTERA DEL PACÍFICO, were subdivided and the cost overvalued violating the provisions of article 64 of the Public Procurement Law"[45] relating to the prohibition to subdivide contracts (capital letters in the original). Consequently, in the same brief, the prosecutor asked the president of the NPCJ to issue an "order to initiate" proceedings against those who presumably had authorized the expenditure and the payment of the different acquisitions, in keeping with the information provided in the report of the Comptroller's Office.[46]

45. On March 19, 2002, the president of the NPCJ issued an order to open proceedings against fourteen members of the National Police, including the six presumed victims. The president of the NPCJ indicated that, based on the report of the Comptroller's Office, there were indications of the perpetration of the offense of misappropriation of funds established in paragraphs 3, 4 and 10 of article 222, and of offenses against police integrity established in articles 197.2 and 198 (*supra* para. 36), all of the Criminal Code of the National Police. He also established that those presumably implicated should have a public defender.[47]

46. According to the State, on November 26, 2002, the president of the NPCJ declared that the preliminary investigation stage had concluded and asked the police prosecutor to issue his final report.[48]

47. On April 9, 2003, the prosecutor issued his report in which he charged two officers, including presumed victim Mr. Vinueza Pánchez, of the offense of misappropriation of funds established in article 222.3 of the Criminal Code of the National Police (*supra* para. 36). The police prosecutor abstained from charging the other individuals, including five of the presumed victims.[49]

48. On April 29, 2003, the President of the Republic at the time issued Executive Decree No. 357 based on articles 69[50] and 79[51] of the Organic Law of the National Police in which he appointed the

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[44] Article 58. "The powers and duties of the prosecutor general are: […] 1. To issue a report prior to the legal orders issued by the courts. […] 2. To issue a report prior to the decision on the case files that are processed by the Service Rating Board […] 3. To have the right to speak and vote in the deliberations of this Board […], and 4. To require the judges and other officials and employees of justice to comply with their duties […]." 1960 Law on the Judicial Function of the National Police (evidence file, fs. 4297 to 4307).

[45] Prosecutor's report of March 7, 2002, signed by the prosecutor of the National Court of Justice of the National Police and addressed to the president of the Police Court of Justice (evidence file, fs. 2319 to 2324).

[46] *Cf.* Prosecutor's report of March 7, 2002, *supra*.

[47] *Cf.* National Court of Justice of the National Police, Case 36-PCJP-2002, order to open a trial of March 19, 2002 (evidence file, fs. 3442 to 3447).

[48] *Cf.* Communication No. 14148 of the Office of the Attorney General of Ecuador of August 1, 2013 (evidence file, fs. 143 to 163). The order of November 26, 2002, of the president of the NPCJ is not included among the evidence; however, this information was not contested by either the representative or the Commission.

[49] *Cf.* Final report of the prosecutor of the National Police Court of Justice of April 9, 2003 (evidence file, fs. 76 to 116).

[50] Article 69: "The National Police Court of Justice shall be composed of five judges, three of them must be general officers in reserve, of whom at least one must be a doctor of jurisprudence, and two doctors of jurisprudence who have worked as a lawyer with great probity or, as a member of the judicial function, or as a university lecturer for at least fifteen years; they shall be appointed by the President of the Republic, shall remain in office for two years and may be re-elected. To comply with this provision, the Police Commander General shall forward the President of the Republic the list of general officers in reserve. […]." Organic Law of the National Police, published in Official Record No. 368 of July 24, 1998 (evidence file, fs. 4309 to 4330).

[51] Article 79: "As part of the administration of police justice, the Public Prosecution Service shall act through the prosecutor, district prosecutors and prosecution agents. The police prosecutor must meet the same requirements as the Prosecutor General; he shall be named by the President of the Republic from a slate provided by the Commander General,

new judges of the NPCJ, including General Byron Pinto Muñoz (hereinafter "Mr. Pinto Muñoz") because "the judges of the [NPCJ] and the police prosecutor ha[d] completed the term for which they had been appointed."[52]

49. On May 2, 2003, the first session of the NPCJ was held with its new composition. Mr. Pinto Muñoz informed the NPCJ plenary session that he should occupy the presidency owing to his rank and seniority. Consequently, based on article 70 of the Organic Law of the National Police,[53] the full Court agreed that Mr. Pinto Muñoz should occupy the presidency and, from then on, he presided the session.[54]

50. On May 26, 2003, the president of the NPCJ indicated that "[…], therefore, based on the rules of sound discretion, [he] consider[ed] that there [were] sufficient indications of responsibility concerning the existence of the offense, as well as the causal nexus between the offense and those responsible, based on the content of the PARTIAL REPORT ON INDICATIONS OF CRIMINAL RESPONSIBILITY FROM THE SPECIAL REVIEW OF THE ADMINISTRATIVE AND FINANCIAL OPERATIONS OF THE NATIONAL POLICE GENERAL COMMAND WITH COMMERCIAL ESTABLISHMENTS […] AUDIT DIRECTORATE 1. REPORT NO. 32–DA.1-2001-466,[55] [and] partially admit[ted] the prosecutor's final report." In addition, he ordered the *detención en firme* of eight officers, including the presumed victims, and, to this end, required that a constitutional order of imprisonment be issued.[56] He also ordered that this precautionary measure be served in the Equitation and Remount Unit of the National Police, pursuant to article 112 of the Law on National Police Personnel.[57]

51. On June 13, 2003, the defense counsel of Messrs. Villarroel Merino, Cevallos Moreno, Coloma Gaibor, Vinueza Pánchez, López Ortiz and Ascázubi Albán filed an appeal for declaration of nullity and an appeal against the order of May 26, 2003, based on: (i) the fact that they were "prosecuted on the basis of a legal provisions that was neither coercive nor punitive, because the reasoned order states that the offense is defined and sanctioned by paragraphs 1, 3, 4, and 10 of art. 222 of the Police Code of Criminal Procedure which allude to the substantive formalities of the appeal for declaration of nullity and in no way refer […] to misappropriation of funds, fraud and other abuses of the administration of the Institution";[58] (ii) "lack of competence of the judge," because Mr. Pinto

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he shall remain in office for two years and may be re-elected." Organic Law of the National Police, published in Official Record No. 368, of July 24, 1998, *supra*.

52 *Cf.* Executive Decree No. 357 of April 29, 2003 (evidence file, fs. 2275 to 2278).

53 Article 70: "The President of the National Police Court of Justice shall be the most senior and highest-ranking officer; in case of absence or impediment, he shall be substituted by the second most senior officer." Organic Law of the National Police, *supra*.

54 *Cf.* Indictment of the National Court of Justice of March 8, 2006, in case 91-2003 (evidence file, fs. 3726 to 3744) and Guilty verdict of January 10, 2005, adopted por the National Police Court of Justice and signed by its president, General Byron Pinto Muñoz (evidence file, fs. 2566 to 2600).

55 In its answering brief, the State argued that, according to the case law of the Supreme Court of Justice, in force at the time of the facts of this case, the report issued by the Comptroller General's Office "[…] even if indications of responsibility have been declared […], does not constitute indisputable evidence of the existence of the offense because this must be established with direct arguments," according to a Cassation Judgment of April 22, 2008, of the Supreme Court of Justice, Third Criminal Chamber, published in the Supplement to Official Record 132 of February 19, 2010.

56 *Cf.* Reasoned order of the president of the National Police Court of Justice of May 26, 2003 (evidence file, fs. 2379 to 2396).

57 Article 112: "Arrest warrants and the order of pre-trial detention issued by the competent judge against members of the National Police on active duty shall be served in the Units of the respective jurisdiction of the judge or court that issues these until the corresponding judgment is delivered […]." Law on National Police Personnel, published in the Supplement to Official Record 378 of August 7, 1998, (evidence file, fs. 4365 to 4386).

58 *Cf.* Appeal for declaration of nullity and Appeal filed on June 13, 2003, against the reasoned order of May 26, 2003 (evidence file, fs. 2607 to 2611).

Muñoz was not entitled to be the president of the NPCJ "because he [was] neither the most senior nor the most high-ranking officer," and (iii) the fact that "the parties ha[d] not been notified."[59]

52. On July 31, 2003, the National Police Court of Justice rejected the said appeal for declaration of nullity. It determined that the appeal was without grounds and, "endorsing the opinion of the prosecutor, it is rejected," indicating that "the omission of just one of the substantive formalities is not sufficient to declare the nullity of proceedings; it is also necessary […] that the omission has influenced the decision in the case." Regarding the judge's lack of competence, it indicated that, based on rank and seniority, General Byron Pinto Muñoz was the person who should preside that court.[60]

53. On November 11, 2003, the National Police Court of Justice decided to deny the requests to expand and clarify the reasoned order and the denial of the appeal for declaration of nullity and ratified the reasoned order.[61] The pertinent part of the prosecutor's analysis of the request for clarification indicated: "[…] this is an order that does not suffer from lack of clarity and, therefore, its content is easy to understand; therefore, it is considered that it does not warrant clarification." Regarding the request for expansion, he indicated that, this was not inadmissible because all the points of the *litis* had been decided.[62] In relation to the appeal for declaration of nullity and the ratification, he determined, *inter alia*, that "no defects or omissions of any substantive formality are observed in the proceedings that would affect it."[63]

54. Messrs. Villarroel Merino, Coloma Gaibor, Vinueza Pánchez, López Ortiz and Ascázubi Albán filed a joint application for protection of liberty, which was denied on July 3, 2003.[64] Mario Romel Cevallos Moreno also filed application for protection of liberty.[65] On July 3, 2003, the National Police Court of Justice, by a majority vote, decided that the appeal was inadmissible.[66]

55. On November 11, 2003, the National Police Court of Justice revoked the reasoned order issued against Mr. Cevallos Moreno and, instead, issued a provisional dismissal in his favor ordering his immediate release. On November 13, 2003, the National Police Court of Justice required the issue of the constitutional order for his release.[67]

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59 *Cf.* Appeal for declaration of nullity and appeal against the reasoned order of May 26, 2003, *supra*.

60 *Cf.* Mario Romel Cevallos Moreno was excluded from this decision because it indicated that "the appellants have provided the grounds for the appeal filed in this instance, with the exception of General Inspector (sp) Mario Romel Cevallos Moreno, who, since he did not file the appeal, is declared a non-intervener." *Cf.* Judicial decision of the National Police Court of Justice of July 31, 2003, rejecting the appeal for declaration of nullity of the reasoned order of May 26, 2003 (evidence file, fs. 2617 to 2619).

61 *Cf.* Judicial decision of the National Police Court of Justice, of November 11, 2003, denying the requests to expand and clarify the reasoned order and the appeal for declaration of nullity, and ratifying the reasoned order (evidence file, fs. 2622 to 2669).

62 Brief of the prosecutor on the request to clarify and expand the reasoned order of November 27, 2003 (fs. 4483 and 4484).

63 *Cf.* Judicial decision of the National Police Court of Justice, of November 11, 2003, denying the requests to expand and clarify the reasoned order and the appeal for declaration of nullity, and ratifying the reasoned order, *supra*.

64 *Cf.* Ruling issued by the National Police Court of Justice on July 3, 2003, deciding to deny the application for protection of liberty filed by Jorge Villarroel Merino (evidence file, fs. 2682 to 2684).

65 *Cf.* Application for amparo filed by Mario Romel Cevallos Moreno before the National Court of Justice, undated (evidence file, fs. 4393 to 4396) and Ruling issued by the National Police Court of Justice on July 3, 2003, deciding to deny the application for protection of liberty filed by Mario Romel Cevallos Moreno (evidence file, fs. 2672 to 2681).

66 *Cf.* Ruling issued by the National Police Court of Justice on July 3, 2003, deciding to deny the application for protection of liberty filed by Mario Romel Cevallos Moreno, *supra*.

67 *Cf.* Ruling of the National Court of Justice of the National Police of November 13, 2003 (evidence file, fs. 2648 to 2669), and National Court of Justice of the National Police, constitutional order for the release of Mr. Cevallos Moreno, of November 13, 2003 (evidence file, f. 2687).

56. On December 2, 2003, the National Police Court of Justice denied the appeals for clarification filed by Messrs. Villarroel Merino, Vinueza Pánchez, Ascázubi Albán and Coloma Gaibor, and the appeal for expansion filed by Mr. Coloma Gaibor, indicating the appeals were inadmissible.[68]

57. On January 14, 2004, the Supreme Court of Justice decided that "[i]n criminal proceedings initiated prior to January 13, 2003, it was not admissible to issue the order for *detención en firme* referred to in [articles] 10, 16, 28 and 34 of Law 2003-101 amending the Code of Criminal Procedure, promulgated in Official Record No. 743 of January 13, 2003. Consequently, in such proceedings, the judge or court that was hearing the case should annul – as inoperative – the order for *detención en firme* that had been issued, even those orders included in the order to initiate a trial and, instead order or confirm pre-trial detention, and also annul this, when applicable, due to the expiration of the time frames established in [article] 24.8 of the Constitution of the Republic."[69] On January 9, 2004, the Supreme Court of Justice issued a ruling in which it indicated that "the amendments to the Code of Criminal Procedure promulgated on January 13, 2003, are only applicable to trials initiated for offenses presumably perpetrated after that date, while the norms in force at the time a trial was initiated must be applied in trials that are already underway."[70]

58. Subsequently, on January 27, 2004, the president of the NPCJ annulled the *detención en firme* ordered for Messrs. Villarroel Merino, López Ortiz, Ascázubi Albán, Coloma Gaibor and Vinueza Pánchez and, instead, confirmed their detention pursuant to article 167 of the Code of Criminal Procedure of the National Civil Police (*supra* para. 35), ordering that the precautionary measure be served in the Equitation and Remount Unit of the National Police.[71]

59. On May 25, 2004, based on article 24.8 of the Ecuadorian Constitution (*supra* para. 31), the National Police Court of Justice decided the following:

> […] the immediate release of the accused Staff Police Colonel Leoncio Amílcar Ascázubi Albán, Staff Police Colonel Marcelo Fernando López Ortiz, Staff Police Colonel Jorge Enrique Coloma Gaibor and Staff Police Lieutenant Colonel Alfonso Patricio Vinueza Pánchez, without prejudice to continuing the criminal proceedings against them. Regarding the request for the release of Senior General (sp) Jorge Humberto Villarroel Merino, his release is denied because he has not served the time stipulated in art. 24.8 of the Constitution of the Republic.[72]

60. On May 25, 2004, constitutional orders were issued for the release of Messrs. Ascázubi Albán, López Ortiz, Coloma Gaibor and Vinueza Pánchez.[73]

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[68] *Cf.* Order of the National Court of Justice of the National Police, Case No. 36-PCJP-2002, of December 2, 2003 (evidence file, fs. 3514 to 3515).

[69] *Cf.* Ruling issued by the Supreme Court of Justice on January 14, 2004 (evidence file, fs. 2526 and 2527).

[70] *Cf.* Ruling issued by the Supreme Court of Justice on January 9, 2004, and published in Official Record No. 258 of January 23, 2004 (evidence file, fs. 2518 to 2525). It added that "pre-trial detention as a personal precautionary measure established in the Code of Criminal Procedure is a provision of a procedural nature, which when substituted by "*detención en firme*" when the order to initiate a trial is issued, creates serious problems because, since the latter is a mechanisms that is unfavorable to the accused, cannot be applied retroactively, but only in trials that initiate after January 13, 2003, and, for those initiated previously, pre-trial detention is in order to be required or confirmed in the order to initiate a trial pursuant to art. 232.4 of the Code of Criminal Procedure."

[71] Order of the National Court of Justice of the National Police, Case 36-PCJP-2002, of January 27, 2004 (evidence file, f. 3517).

[72] Order of the National Court of Justice of the National Police, Case 36-PCJP-2002, of May 25, 2004 (evidence file, f. 3520).

[73] *Cf.* National Court of Justice of the National Police, Case 36-PCJP-2002, Constitutional orders for the release of Messrs. Ascázubi Albán, López Ortiz, Coloma Gaibor and Vinueza Pánchez of May 25, 2004 (evidence file, fs. 3522 to 3525).

61. On June 4, 2004, the National Police Court of Justice decided the request for release filed by Mr. Villarroel Merino on June 4, 2004, and consequently, in application of article 24.8 of the Ecuadorian Constitution, ordered his immediate release.[74]

62. On October 8, 2004, the police prosecutor issued a new final report in which he considered that there was insufficient evidence to charge the individuals under investigation, including the presumed victims:

> It has been shown that the report […] issued by the Comptroller General's Office is not founded on the reality because, based on the evidence provided, it has been proved that a series of errors were committed when issuing that report. […] There is no evidence that their actions have prejudiced the Police Institution […] or that they have committed any offense.[75]

63. On January 10, 2005, the National Police Court of Justice issued a judgment convicting Alfonso Patricio Vinueza Pánchez and Jorge Enrique Coloma Gaibor as perpetrators of the offense of misappropriation of funds (*supra* para. 36), and sentencing them to three years of ordinary imprisonment which, due to extenuating circumstances was modified to one year's medium-term imprisonment. In addition, the NPCJ convicted Jorge Humberto Villarroel Merino as an accomplice to the same offense while acquitting Fernando Marcelo López Ortiz and Leoncio Amílcar Ascázubi Albán.[76]

64. On June 10, 2005, the President of the Republic at the time issued Executive Decree No. 227 appointing the new members of the NPCJ because the previous members had completed their term of office.[77]

65. On September 19, 2005, as a result of "the appeals filed [against the judgment of January 10, 2005,] by the defendants, Senior General (sp) Jorge Villarroel Merino, Police Lieutenant Colonel Alfonso Patricio Vinueza Pánche[z], Staff Police Colonel Jorge Enrique Coloma Gaibor and a Police Colonel,"[78] the NPCJ, with its new composition, revoked the guilty verdict, exonerated all those who had been prosecuted including the presumed victims, and ordered the release of those who were detained. The NPCJ indicated that "there is no evidence, in particular convincing evidence as the law requires, of the defendants' guilt."[79]

D. Claims for compensation

66. On March 24, 2005, Mr. Ascázubi Albán filed a claim against the State for compensation for pecuniary and non-pecuniary damage before the National Police Court of Justice owing to the flawed administration of justice by the president of the National Police Court of Justice and the plenary of the Court, based on article 59 of the codification of the Code of Civil Procedure.[80] He also filed another claim for compensation before the Thirteenth Civil Court of Pichincha[81] and, on September

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74 *Cf.* Request for the release of Mr. Villarroel Merino addressed to the National Court of Justice of the National Police, Case 36-PCJP-2002 on June 3, 2004 (evidence file, f. 3527), and Constitutional order for the release of Mr. Villarroel Merino, of June 4, 2004 (evidence file, f. 3529).

75 Report of the prosecutor of the National Police Court of Justice of October 8, 2004 (evidence file, fs. 6 to 40)

76 *Cf.* Judgment of the National Police Court of Justice of January 10, 2005 (evidence file, fs. 2567 to 2600).

77 Executive Decree No. 227 of June 10, 2005 (evidence file, fs. 2695 and 2696).

78 It should be noted that, in this judgment, those persons who are not on record as having intervened in the processing of the case in the international sphere before the Inter-American Commission or the Inter-American Court are indicated by their initials.

79 *Cf.* Judgment of the National Police Court of Justice of September 19, 2005 (evidence file, fs. 2700 to 2767).

80 *Cf.* Claim for compensation for pecuniary and non-pecuniary damage before the National Police Court of Justice filed on March 24, 2005 (evidence file, fs. 4543 to 4547).

81 This Court points out that the evidence file does not contain the brief with the claim for compensation filed before the Thirteenth Civil Court of Pichincha; however, the file does include several decisions of the Thirteenth Civil Court of

1, 2010, the Thirteenth Civil Judge of Pichincha issued a decision in order to deliver judgment.[82] In addition, Mr. Ascázubi Albán filed an undated "administrative complaint" against the State represented by the Constitutional President and his legal representative, the Attorney General.[83] On October 12, 2006, the office of the President of the Republic advised that this had been forwarded to the Attorney General.[84] On February 8, 2007, the latter established "that the case should be forwarded to the Alternate President [of the Supreme Court], to continue with the legal procedures."[85] On April 10, 2007, the President of the Supreme Court of Justice asked the plaintiff to clarify the claim within three days and to specify the persons who should be notified of the claim.[86]

67. In relation to Mr. López Ortiz, on July 21, 2008, he filed a claim for compensation for pecuniary and non-pecuniary damage against the Attorney General and the National Police.[87] On September 25, 2008, the Twentieth Civil Court of Pichincha, Quito, took over the hearing of the case under the ordinary procedure pursuant to article 59 of the Code of Civil Procedure. The claim was notified to the Attorney General and the National Police.[88] On September 29, 201, that court issued a judicial decision in which it decided, "based on the request made and in view of the stage of the case, the proceedings will be reviewed in order to deliver judgment."[89] On April 30, 2015, the judge of the Civil Judicial Unit recused himself *ratione materiae* and ordered that the case be forwarded to the Judicial Unit for Administrative Disputes in Quito to continue with the substantiation and settlement of the case.[90] On May 19, 2015, the Quito District Court for Administrative Disputes received the proceedings owing to the recusal of the civil judge.[91] On November 8, 2018, the District Court for Administrative Disputes of the Metropolitan District of Quito, province of Pichincha, assumed the hearing of the case and indicated that, owing to its procedural load owing to proceedings initiated before the General Organic Procedural Code came into effect, the plaintiff's request for judgment would be dealt with in the chronological order in which the case had been received.[92]

VII
MERITS

68. The Court will now consider and decide the merits of the dispute in the instant case in relation to the alleged violation of personal liberty owing to the unlawful and arbitrary detention required by

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Pichincha relating to this and other briefs filed by Mr. Ascázubi Albán during the proceeding, which verify its existence (evidence file, fs. 4534 to 4542).

82 *Cf.* Decision of the Thirteenth Judge of Pichincha in the civil trial instituted at the request of Leoncio Amílcar Ascázubi of September 1, 2010 (evidence file, f. 459).

83 *Cf.* "Administrative complaint" against the State represented by the Constitutional President and his legal representative, the Attorney General, undated (evidence file, fs. 4548 to 4556). It should, however, be noted that it shows the date that the Correspondence Department of the Office of the President of the Republic received it: October 4, 2006.

84 *Cf.* Communication from the Office of the President of the Republic of October 12, 2006 (evidence file, f. 4559).

85 *Cf.* Decision of the Alternate President of the Supreme Court of Justice of February 8, 2007 (evidence file, f. 4561).

86 *Cf.* Decision of the President of the Supreme Court of Justice of April 10, 2007 (evidence file, f. 4560).

87 *Cf.* Claim for compensation for pecuniary and non-pecuniary damage against the Ecuadorian State represented by the Attorney General, and the Police Institution represented by the Police Commander General, filed on July 21, 2008 (evidence file, fs. 4507 to 4521).

88 *Cf.* Judicial decision of the Twentieth Civil Court of Pichincha, Quito, of September 25, 2008 (evidence file, fs. 4524 and 4525).

89 *Cf.* Judicial decision of the Twentieth Civil Court of Pichincha, Quito, of September 29, 2008 (evidence file, f. 4527).

90 *Cf.* Recusal of the judge of the Civil Court of the Metropolitan District of Quito with regard to the claim for compensation filed by Fernando Marcelo López Ortiz, of April 30, 2015 (evidence file, f. 461 and 462).

91 *Cf.* Decision of District Court for Administrative Disputes No. 1 with regard to the claim for compensation filed by Fernando Marcelo López Ortiz, of May 19, 2015 (evidence file, f. 464).

92 *Cf.* Decision of the District Court for Administrative Disputes of the Metropolitan District of Quito, province of Pichincha, Quito of November 8, 2018 (evidence file, f. 4533).

the reasoned order of May 26, 2003, to which the officers of the National Police, Jorge Humberto Villarroel Merino, Mario Romel Cevallos Moreno, Jorge Enrique Coloma Gaibor, Fernando Marcelo López Ortiz, Leoncio Amílcar Ascázubi Albán and Alfonso Patricio Vinueza Pánchez, were subjected during the police criminal proceedings. Regarding the judicial guarantees, first, this Court will examine the alleged failure to provide the presumed victims with prior and detailed information of the charges and time to prepare their defense owing to the report entitled: "Indications of criminal responsibility from the special review of the administrative and financial operations of the National Police General Command," Report No. 32-DA.1-2001-466, prepared prior to the filing of the police criminal proceedings. Then, the Court will examine the alleged violations of the judicial guarantees related to the police criminal proceedings: (a) the lack of competence and impartiality of the court that heard the case, and (b) the unreasonable duration of the police criminal proceedings. Lastly, it will address the alleged violation of judicial protection in relation to the claims for compensation filed by the presumed victims.

69. The Court notes that the representative indicated the violation of the rights to compensation and to protection of honor and dignity established in Articles 10 and 11 of the American Convention; however, he merely cited those rights without providing arguments or legal substantiation. Consequently, the Court does not have sufficient elements to examine the alleged violations of the rights recognized in Articles 10 and 11 of the Convention.

VII-1
RIGHTS UNDER THE AMERICAN CONVENTION TO PERSONAL LIBERTY, PRESUMPTION OF INNOCENCE AND EQUALITY BEFORE THE LAW, IN RELATION TO THE OBLIGATION TO RESPECT AND TO ENSURE THESE RIGHTS AND THE DUTY TO ADOPT DOMESTIC LEGAL PROVISIONS[93]

70. In this chapter, the Court will examine the alleged violation of the right to personal liberty, and also the alleged violations of equality before the law and the guarantee of the lawfulness of the detention by means of an effective remedy.

A. Deprivation of liberty of the presumed victims

A.1 Arguments of the parties and the Commission

71. The ***Commission*** alleged the violation of the rights to personal liberty, presumption of innocence and equality before the law established in Articles 7(1), 7(2), 7(3), 7(5), 8(2) and 24 of the American Convention, in relation to Articles 1(1) and 2 of this instrument, to the detriment of Jorge Villarroel Merino, Mario Romel Cevallos Moreno, Jorge Coloma Gaibor, Fernando López Ortiz, Amílcar Ascázubi Albán and Patricio Vinueza Pánchez. The Commission indicated that the presumed victims were held in *detención en firme* from May 26, 2003, until January 27, 2004. When examining the implications of this measure, the Commission indicated that *detención en firme* was obligatory and automatic pre-trial detention based exclusively on the severity of the punishment attributed to the offense, the way in which it had supposedly been committed, and the procedural stage; that is, the fact that it was at the trial stage.

72. The Commission argued that the law that regulated *detención en firme* entailed a difference in treatment between individuals who complied with the circumstances described by the law and on whom this precautionary measure was imposed, compared to those who did not meet those requirements, and that this difference in treatment, since it related to a precautionary measure and not to a punishment, violated the right to personal liberty and presumption of innocence. It argued that, in this specific case, the application of *detención en firme* signified an arbitrary and

[93] Articles 1(1), 2, 7(1), 7(2), 7(3). 7(5), 7(6), 8(2) and 24 of the American Convention.

discriminatory restriction of the right to personal liberty of the presumed victims who were subjected to this precautionary measure. The Commission also pointed out that, while the presumed victims were in *detención en firme*, there was no periodic review of the need to continue this precautionary measure because it signified an automatic deprivation of liberty without any legal possibility of review of its duration in conformity with the conventionally acceptable purposes.

73. The Commission considered that, as the deprivation of liberty of the presumed victims had been ordered under the measure of *detención en firme*, contrary to rulings adopted by the Supreme Court of Ecuador concerning when the said measure came into force, the detention was unlawful. Based on the above considerations, it concluded that the State had violated the rights established in Articles 7(1), 7(2), 7(3), 7(5), 8(2) and 24 of the Convention, in relation to Articles 1(1) and 2 of this instrument, to the detriment of the presumed victims, owing to the application of the measure of *detención en firme*.

74. The Commission also indicated that the *detención en firme* had been revoked on January 27, 2004, and that the presumed victims were held in pre-trial detention from that date until May 25 that year. Regarding the pre-trial detention, the Commission indicated that article 91 of the Code of Criminal Procedure of the National Police did not require verification of the procedural objectives in order to impose this measure; it was sufficient that an offense existed that was punishable by deprivation of liberty and "significant indications or presumptions of responsibility," and this inverted the exceptional nature of prevention detention and converted it into the rule. Furthermore, the judicial authorities did not make an individualized analysis of the situation of the presumed victims or an assessment of the conventionality of their pre-trial detention because the measure did not require any analysis or justification of whether it complied with procedural objectives pursuant to the obligations under the Convention. Consequently, the Commission concluded that the pre-trial detention of the presumed victims violated Articles 7(1), 7(3) and 8(2), in relation to the obligations established in Articles 1(1) and 2 of this instrument.

75. Lastly, the Commission determined that the remedies filed by the presumed victims to contest their detention were neither appropriate nor effective to obtain due judicial protection. It also noted that the decisions ordering the detention of the presumed victims did not contain a statement of reasons, which created a problem for the presumed victims when presenting their arguments to contest the detention. The Commission concluded that the State had violated Articles 7(6) and 25(1) of the American Convention in relation to the obligations established in Article 1(1) of this instrument, to the detriment of the presumed victims.

76. The ***representative*** referred, in general, to the arguments of the Inter-American Commission. It alleged that the *detención en firme* ordered by General Byron Pinto Muñoz was decreed in the absence of either an indictment by the prosecutor or the fundamental requirements of Ecuador's criminal law and was applied "retroactively," because this precautionary measure only came into force on January 13, 2003, while the order to initiate a trial was issued on March 19, 2002. He concluded that the State had violated the rights established in Articles 7(1), 7(2), 7(3), 7(5) and 7(6), 8(1) and 8(2), 9, 24 and 25 of the Convention.

77. The ***State*** argued that the real intention of the judge was to order pre-trial detention (which was totally lawful and valid at the time of the facts of the instant case) and not *detención en firme*. It also argued that, in order to apply pre-trial detention to the presumed victims, several procedures were conducted and, when the evidence had been analyzed, based on sound judicial discretion it was determined that there were indications of responsibility in relation to the existence of a transgression associated with the offense of misappropriation of funds as well as a causal nexus between the offense and those presumably responsible. It added that the detention order had been issued in order to protect the effective conduct of the proceedings because "it merely sought to ensure that the defendants appeared before the court and did not hamper the conduct of the

proceedings" and that the detention was "strictly necessary." Furthermore, the presumed victims were never detained unlawfully because, in compliance with article 24.8 of the Ecuadorian Constitution, when the time limit for pre-trial detention had been completed, their immediate release was ordered.

78. The State also argued that, in the decision of January 27, 2004, the National Police Court of Justice "used an erroneous term with regard to the determination of the type of detention," when "it annulled the *detención en firme* […] and, in its place confirmed the detention […] in the terms established by [article] 167 of the Code of Criminal Procedure of the National Police." It concluded that the deprivation of liberty of the presumed victims observed the provisions of Article 7 of the American Convention "because they were deprived of their liberty in compliance with the law; therefore, there was no unlawful deprivation of liberty."

A.2 Considerations of the Court

79. The Court will now examine whether the deprivation of liberty of the presumed victims in the context of the police criminal proceedings was in keeping with the standards established in the Convention and developed by this Court's case law. However, before referring to those standards, it is necessary to determine whether or not the presumed victims were subjected to *detención en firme* because, while the Commission and the representative have argued that the State applied *detención en firme* to the victims, the State argues that this expression was used erroneously in the decision of May 26, 2003, and that this mechanism was not applied to the presumed victims; rather the true intention of the judge was to order pre-trial detention.[94]

80. From the evidence in the case file, the Court concludes that the presumed victims were subjected to *detención en firme* and that this was not a mere factual error in the decision of May 2003. It is undeniable that, on May 26, 2003, the president of the NPCJ ordered the "*detención en firme* of the accused as presumed perpetrators and accomplices,"[95] pursuant to article 167 of the Code of Criminal Procedure of the National Police and the corresponding article 253 of the common Code of Criminal Procedure. The Court also notes that this expression is used in other documents in the case file and it has been verified that this measure was applied in the decision of May 26.[96]

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[94] The State argued that this decision was based on article 167 of the Code of Criminal Procedure of the National Civil Police and that article 253 of the common Code of Criminal Procedure refers to the measure of pre-trial detention so that an unlawful deprivation of liberty does not exist.

[95] *Cf.* Reasoned order of the president of the National Police Court of Justice of May 26, 2003, *supra*.

[96] For example, it is worth noting that, in the opinion of one of the judges on the decision of the National Police Court of Justice of July 3, 2003, rejecting the application for amparo filed by Mr. Cevallos Moreno, his *detención en firme* was inadmissible; he stated that "considering that the application for protection of liberty was lawfully filed and the inadmissibility of *detención en firme* established in art. 160 of the Code of Criminal Procedure included in Law No. 2003-101 amending the Code of Criminal Procedure published in Official Record No. 743 of January 13, 2003, under which General Inspector (sp) Mario Cevallos Moreno has been deprived of liberty, the application should be admitted and the immediate release of the appellant ordered." *Cf.* Judgment of the National Police Court of Justice of July 3, 2003 (evidence file, fs. 2672 to 2681). Also, the decision of the National Police Court of Justice of July 31, 2003, which concluded that "the appeal for declaration of nullity filed by the defendants is unsubstantiated," took into consideration the reasoned order of May 26, 2003, and indicated in paragraphs: "(b) The reasoned order requiring *detención en firme* in violation of art. 16 of the law amending the common Code of Criminal Procedure (art. 17.A)," and "(e) That the defendants were informed of the *detención en firme* required in the reasoned order 24 hours later," without ruling in this regard. *Cf.* Judicial decision of the National Police Court of Justice of July 31, 2003, rejecting the appeal for declaration of nullity of the reasoned order of May 26, 2003, *supra*. Similarly, the judicial decision of the National Police Court of Justice of November 11, 2003, referring to the reasoned order against the presumed victims, indicates "ordering the *detención en firme* of the accused as presumed perpetrators and accomplices, a precautionary measure that they will serve in the Equitation and Remount Unit of the National Police." *Cf.* Judicial decision of the National Police Court of Justice, of November 11, 2003, denying the requests to expand and clarify the reasoned order and the appeal for declaration of nullity and ratifying the reasoned order, *supra*. In addition, the order to initiate a trial for the offense of malfeasance in office issued by the President of the Supreme Court of Justice on October 13, 2006, indicates in its sixth paragraph: "[…] based on these precedents, it is clearly and conclusively established that, when issuing the reasoned order, General (sp) Byron Pinto Muñoz unlawfully and unduly applied the provisions that refer to *detención en*

Subsequently, on January 27, 2004, the same president of the NPCJ annulled the *detención en firme* ordered against Messrs. Villarroel Merino, López Ortiz, Ascázubi Albán, Coloma Gaibor and Vinueza Pánchez and confirmed their detention (*supra* para. 58). *Detención en firme* was also ordered for Mr. Cevallos Moreno but, on November 11, 2003, his release was ordered (*supra* para. 55).

81. Therefore, this demonstrated that Jorge Villarroel Merino, Jorge Coloma Gaibor, Fernando López Ortiz, Amílcar Ascázubi Albán and Patricio Vinueza Pánchez remained deprived of liberty in *detención en firme* for eight months, from May 26, 2003, to January 27, 2004. On the latter date the type of detention was changed to pre-trial detention until May 25, 2004, for the last four presumed victims. Jorge Humberto Villarroel Merino remained detained until June 4, 2004.[97] In the case of Mario Romel Cevallos Moreno, the duration of the *detención en firme* was five months and seventeen days, from May 26, 2003, to November 13, 2003.

82. The foregoing reveals that, during the police criminal proceedings, the presumed victims were deprived of liberty under two procedures, which refer to the same situation, irrespective of what the detention is called. Therefore, the Court must examine whether the *detención en firme* and the pre-trial detention were in keeping with the standards that it has developed.

83. According to this Court's case law, pre-trial detention is the most severe measure that can be imposed on a defendant; therefore, it should only be applied exceptionally.[98] In addition, the deprivation of liberty of a person who is accused of, or being prosecuted for an offense cannot be based on general or special preventive purposes, which could be attributed to the punishment.[99] Consequently, the general rule should be that the accused faces the criminal proceedings in liberty.[100]

84. The Court has already indicated in its case law that the essential content of Article 7 of the American Convention establishes the protection of the individual against any arbitrary or unlawful interference by the State.[101] The Court has also pointed out that this article contains two types of rules, one general and the other specific. The general type is defined in paragraph 1, while the specific type is found in paragraphs 2 to 7. Any violation of the latter paragraphs necessarily results in the violation of Article 7(1) of the American Convention.[102]

85. Article 7(2) of the American 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 Court has

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firme, which constitutes an explicit violation, that does not admit doubts or interpretations." *Cf.* Order to initiate a trial of the Supreme Court of Justice of October 13, 2006 (evidence file, fs. 2801 to 2825).

97 In his brief requesting his release, Mr. Villarroel explained that "on June 13, 2003, [he] came forward to obey the order of pre-trial detention, and from that date until Friday, June 4, 2004, represents 358 days; in other words, the complete year referred to in art. 23.8 [(*sic*)] of the Constitution. […] [He asked] that orders be given to the Head of the Equitation and Remount Unit, tomorrow, June 4, 2004, at 24:00 hours (exactly midnight) when the said 358 days have been served: Commander of the Equitation and Remount Unit, please authorize my release (*supra* para. 61).

98 *Cf. Case of the "Juvenile Re-education Institute" v. Paraguay. Preliminary objections, merits, reparations and costs*. Judgment of September 2, 2004. Series C No. 112, para. 228, and *Case of Carranza Alarcón v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of February 3, 2020. Series C No. 399, para. 65.

99 *Cf. Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador. Preliminary objections, merits, reparations and costs.* Judgment of November 21, 2007. Series C No. 170, para. 103, and *Case of Hernández v. Argentina. Preliminary objection, merits, reparations and costs.* Judgment of November 22, 2019. Series C No. 395, para. 106.

100 *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 Carranza Alarcón v. Ecuador, supra*, para. 65.

101 *Cf. Case of the "Juvenile Re-education Institute" v. Paraguay, supra*, para. 223, and *Case of Carranza Alarcón v. Ecuador, supra*, para. 60.

102 *Cf. Case of Chaparro Álvarez and Lapo Iñiguez v. Ecuador, supra*, paras. 51 and 54, and *Case of Carranza Alarcón v. Ecuador, supra*, para. 60.

indicated that, by referring to the Constitution and the laws established "pursuant thereto," the analysis of the observance of Article 7(2) of the Convention entails examining compliance with the requirements established as specifically as possible and "beforehand" in those instruments in relation to the "reasons" for and the "conditions" of the deprivation of physical liberty. If both the formal and the substantive aspect of domestic law is not observed when depriving a person of his liberty, this deprivation of liberty will be unlawful and contrary to the American Convention,[103] in light of Article 7(2).[104]

86. Regarding the arbitrariness referred to in Article 7(3) of the Convention, the Court has established that no one shall be subject to arrest or imprisonment for reasons and by methods that – although classified as lawful – may be considered incompatible with respect for the fundamental rights of the individual because, *inter alia*, they are unreasonable, unpredictable or disproportionate.[105] The Court has considered that domestic law, the applicable procedure, and the corresponding general explicit or tacit principles must, in themselves, be compatible with the Convention. Thus, the concept of "arbitrariness" should not be equated with "contrary to the law"; rather, it should be interpreted more broadly in order to include elements of irregularity, injustice and unpredictability.[106]

87. The Court has considered that, to ensure that a precautionary measure that restricts liberty is not arbitrary, it is necessary that: (i) substantive assumptions are presented concerning the existence of an unlawful act and the connection of the person prosecuted to this act; (ii) the measure restricting liberty complies with the four elements of the "proportionality test"; namely, that the purpose of the measure must be legitimate (compatible with the American Convention),[107] appropriate to comply with the objective sought, necessary and strictly proportionate,[108] and (iii) the decision that imposes it contains sufficient reasons to allow an assessment of whether it meets the said conditions.[109]

88. Regarding the first element of the proportionality test – that is, the purpose of the measure that restricts liberty – the Court has indicated that a measure of this nature should only be imposed when it is necessary to achieve a legitimate purpose, namely: that the accused will not impede the conduct of the proceedings or evade the action of justice.[110] It has also stressed that a risk to the proceedings should not be presumed, but must be verified in each case based on the real and objective circumstances of the specific case.[111] The grounds for these requirements are to be found in Articles 7(3), 7(5) and 8(2) of the Convention.

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103 *Cf. Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador*, *supra*, para. 57, and *Case of Carranza Alarcón v. Ecuador, supra*, para. 61.

104 *Cf. Case of Argüelles et al. v. Argentina. Preliminary objections, merits, reparations and costs*. Judgment of November 20, 2014. Series C No.288, para. 116, and *Case of the 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. 230.

105 *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 Carranza Alarcón v. Ecuador, supra*, para. 62.

106 *Cf. Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador*, *supra*, para. 92, and *Case of Carranza Alarcón v. Ecuador, supra,* para. 62.

107 *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. 89, and *Case of Romero Feris v. Argentina. Merits, reparations and costs.* Judgment of October 15, 2019. Series C No. 391, para. 92.

108 *Cf. Case of Palamara Iribarne v. Chile. Merits, reparations and costs*. Judgment of November 22, 2005. Series C No. 135, para. 197, and *Case of Romero Feris v. Argentina, supra,* para. 92.

109 *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 Romero Feris v. Argentina, supra,* para. 92.

110 *Cf. Case of Suárez Rosero v. Ecuador. Merits*. Judgment of November 12, 1997. Series C No. 35, para. 77, and *Case of Romero Feris v. Argentina, supra,* para. 99.

111 *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, supra,* para. 99.

89. In addition, the Court has considered that pre-trial detention should be a precautionary rather than a punitive measure.[112] It should be applied exceptionally and cannot be based on general or special preventive purposes, which could be attributed to the punishment. Consequently, the Court reiterates that the rule should be the liberty of the accused while his criminal responsibility is being decided (*supra* para. 83).

90. Therefore, the judicial authority must only impose measures of this nature when it has been verified that: (a) the purpose of the measures that restrict or deprive liberty is compatible with the Convention; (b) the measures adopted are appropriate to achieve the purpose sought; (c) the measures are necessary, in the sense that they are absolutely essential to achieve the desired purpose and that, among all possible measures that are equally appropriate to achieve the proposed objective, no other measure exists that is less harmful to the right involved, and (d) they are strictly proportionate, so that the sacrifice inherent in the restriction of the right to liberty is not exaggerated or excessive compared to the advantages obtained from the restriction and the achievement of the purpose sought.[113]

91. The Court has also considered that any order for restriction of liberty that does not contain a sufficient statement of reasons that permits an evaluation of whether it is in keeping with the aforementioned conditions will be arbitrary.[114] The judicial decision should substantiate and demonstrate – clearly stating the reasons – the existence of sufficient indications to prove the criminal conduct of the individual concerned.[115] This safeguards the presumption of innocence.[116] Moreover, the personal characteristics of the suspect and the gravity of the offense he is accused of are not, in themselves, sufficient justification for pre-trial detention.[117]

92. According to case law, pre-trial or preventive detention should be subject to periodic review so that it does not continue when the reasons for its adoption no longer exist. The judge should assess whether the reasons for the measure remain, and the need for and proportionality of the detention; also, whether the reasonable time has been respected. If not, the judge must immediately order the release of the detainee. It is the responsibility of the domestic authorities to provide sufficient reasons to maintain the restriction of liberty, and those reasons must be based on the need to ensure that the detainee does not impede the efficient conduct of the investigations or evade the action of justice.[118]

93. One of the principles that limit pre-trial detention is the presumption of innocence contained in Article 8(2), according to which a person is considered innocent until his guilt has been proved. This guarantee reveals that the elements that prove the existence of the legitimate purposes for the preventive deprivation of liberty cannot be presumed; rather the judge must substantiate his decision on the real and objective circumstances of the specific case, which it is for the prosecutor to prove and not the accused who also must be able to exercise his right of defense and to be duly

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112 *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 Carranza Alarcón v. Ecuador, supra,* para. 67.

113 *Cf. Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador*, *supra*, para. 93, and *Case of Romero Feris v. Argentina*, *supra*, para. 98.

114 *Cf. Case of García Asto and Ramírez Rojas v. Peru, supra,* para. 128, and Case of *Carranza Alarcón v. Ecuador, supra,* para. 75.

115 *Cf. Case of Herrera Espinoza et al. v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of September 1, 2016. Series C No. 316, para. 143, and *Case of Romero Feris v. Argentina, supra,* para. 110.

116 *Cf. Case of Usón Ramírez v. Venezuela. Preliminary objection, merits, reparations and costs*. Judgment of November 20, 2009. Series C No. 207, para. 144, and *Case of Romero Feris v. Argentina, supra,* para. 110.

117 *Cf. Case of Bayarri v. Argentina. Preliminary objection, merits, reparations and costs*. Judgment of October 30, 2008. Series C No. 187, para. 74, and *Case of Carranza Alarcón v. Ecuador, supra*, para. 65.

118 *Cf.* Case of *Chaparro Álvarez and Lapo Íñiguez v. Ecuador*, *supra*, para. 117, and Case of *Carranza Alarcón v. Ecuador, supra,* para. 83.

assisted by a lawyer.[119] When imposing the precautionary measure of pre-trial detention, the presence of the required conventional procedural purposes must be verified; otherwise, it is presumed to be an advance application of the punishment.

94. Based on the violations of the rights recognized in the American Convention that have been alleged in the instant case, the Court will now examine: (1) *Detención en firme*, and (2) Pre-trial detention, and then reach a (3) Conclusion.

B. *Detención en firme*

95. As previously indicated (*supra* para. 37), in 2003, Law 2003-101 amended article 160 of the common CCP of Ecuador so that it established *detención en firme* "in all the cases in which an order to initiate a trial is issued pursuant to article 232 [of the CCP], and this can only revoked by an acquittal and suspended in offenses punished by imprisonment." The same amendment introduced article 173-A into the CCP, an article that regulated the said measure. That article established that the judge hearing the case had the obligation to order the *detención en firme* of the accused, except for: (a) those individuals classified as presumed accessories after the fact, and (b) those individuals being tried for an offense with a punishment of no more than one year's imprisonment. The article also included the possibility that, if an order for prevention detention had been issued against the accused, when the order to initiate a trial was issued, this would be changed to *detención en firme*.

96. This Court notes that the amendments to the Code of Criminal Procedure were promulgated on January 13, 2003, and entered into force on that date. Then, on January 9, 2004, the Supreme Court of Justice decided that "[i]n the criminal proceedings initiated prior to January 13, 2003, it was not appropriate to issue an order for *detención en firme*." Consequently, *detención en firme* was only applicable to proceedings initiated for offenses presumably perpetrated after that date while, in the proceedings that were underway, the norms in force at the time they were initiated had to be applied.[120]

97. The foregoing reveals that, according to the transitory provision of the amendment of the common CCP and the decision of the Supreme Court of Justice (*supra* para. 57), *detención en firme* could not be applied to the presumed victims in this case because the order to initiate a trial was issued on March 19, 2002, prior to the date on which that measure came into force – January 13, 2003. Consequently, this Court considers that the *detención en firme* that was ordered was unlawful and violated Articles 7(1) and 7(2) of the American Convention, in relation to the obligations established in Article 1(1) of this Convention, to the detriment of Jorge Villarroel Merino, Mario Romel Cevallos Moreno, Jorge Coloma Gaibor, Fernando López Ortiz, Amílcar Ascázubi Albán and Patricio Vinueza Pánchez.

98. In addition, in light of the regulation and application of *detención en firme*, the Court considers that it functioned as automatic and compulsory pre-trial detention based on the severity of the punishment attributed to the offense. Therefore, the judge was not required to analyze or justify whether the procedural purposes of detention during the trial had been met, or its appropriateness, necessity and proportionality pursuant to the obligations derived from the American Convention.[121] Furthermore, an individual analysis of the situation of each of the accused

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[119] *Cf. Case of Amrhein et al. v. Costa Rica, supra,* para. 101, *and Case of Carranza Alarcón v. Ecuador, supra,* para. 65.

[120] The representative argued that the First Transitory Provision (amended by art. 34 of Law 2003-101, RO 743 of January 13, 2003), stated: "The criminal proceedings that are being processed when this Code of Criminal Procedure enters into force shall continue to be substantiated pursuant to the previous criminal procedure up until their conclusion, without prejudice to observance of the rules of due process established in the Constitution of the Republic."

[121] In addition, article 167 of the common Code of Criminal Procedure establishes as requirements to order the measure the existence of indications of the need "to deprive the accused of liberty to ensure his appearance before the court" and

was not required, or to provide the reasons for the decision, and this violated the presumption of innocence. Owing to the way in which *detención en firme* was regulated, in none of the cases was the existence of valid requirements for its admissibility clearly proved and substantiated because the judge was the only authority responsible for assessing its pertinence, and he was not required to justify this.

99. The Court has also corroborated that the case file does not reveal that the authorities reviewed the *detención en firme* of the presumed victims during their detention. In the instant case, the Court considers that, by maintaining the presumptions for *detención en firme* owing to the application of the said norm, it was not possible to conduct a periodic review to assess whether the reasons and need for, and the proportionality of, the measure persisted. Consequently, the Court considers that, by failing to conduct a periodic assessment of the precautionary measure imposed, the State violated the personal liberty of the presumed victims in violation of Articles 7(3), 7(5) and 8(2) of the American Convention.

100. The Court also considers that, in addition to having been applied unlawfully in this specific case, the regulation of *detención en firme* was incompatible with the purposes of the American Convention, because it did not allow an examination of all the presumptions required in order to impose a measure that restricted personal liberty. Consequently, the Court finds that the norms applied in the instant case violated Article 2 of the American Convention, in relation to Article 7 of this instrument.

101. With regard to the Commission's allegation that the application of this norm entailed a difference in treatment that was contrary to the Convention, the Court notes that article 173-A of the Code of Criminal Procedure concerning *detención en firme* (*supra* para. 38), defined two categories: (a) those persons prosecuted for offenses punishable by more than one year's imprisonment, who were not classified as presumed accessories after the fact, and on whom the precautionary measure of *detención en firme* should be imposed, and (b) those persons prosecuted for offenses punishable by less than one year's imprisonment, or classified as presumed accessories after the fact, or even without those requirements when the order to initiate a trial had not been issued, and who could be subject to other precautionary measures. This difference in treatment was not based on any legitimate purpose in light of the standards established by the Court to justify the imposition of pre-trial detention and, therefore, it was arbitrary.

102. In the instant case, *detención en firme* was applied to the presumed victims; therefore, this differentiated treatment cannot be reasonably justified by the Convention-based purposes for coercive measures that entail deprivation of personal liberty.[122] The Court notes that the case file does not contain any formal justification or substantiation used by the judicial authority to order the *detención en firme* of the presumed victims, nor does it contain any justification to maintain this measure; therefore, the presumed victims were subject to a discriminatory and arbitrary restriction of personal liberty. Consequently, the Court considers that the State is responsible for the violation of Articles 7(1), 7(3) and 24 of the American Convention, in relation to the obligations established in Articles 1(1) and 2 of this instrument, to the detriment of Jorge Villarroel Merino, Mario Romel Cevallos Moreno, Jorge Coloma Gaibor, Fernando López Ortiz, Amílcar Ascázubi Albán and Patricio Vinueza Pánchez.

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also indications that non-custodial measures are "insufficient to ensure his presence at the trial." 2000 Code of Criminal Procedure, published in the Supplement to Official Record 360 of January 13, 2000, *supra*.

[122] *Cf. Case of Suárez Rosero v. Ecuador. Merits, supra,* para. 98, and *Case of Acosta Calderón v. Ecuador. Merits, reparations and costs*. Judgment of June 24, 2005. Series C No 129, paras. 135 to 138.

C. Pre-trial detention

103. The Court recalls that Jorge Coloma Gaibor, Fernando López Ortiz, Amílcar Ascázubi Albán and Patricio Vinueza Pánchez remained deprived of liberty in pre-trial detention for four months from January 27, 2004, to May 25, 2004. Jorge Villarroel Merino remained deprived of liberty until June 4, 2004. Mr. Cevallos Moreno is not included in this analysis because he obtained his liberty on November 13, 2003 (*supra* para. 55).

104. The Court notes that the decision of January 27, 2004, confirming the pre-trial detention of five of the presumed victims, Messrs. Villarroel Merino, Coloma Gaibor, López Ortiz, Ascázubi Albán and Vinueza Pánchez, was based on article 167 of the CPPPN, and does not explicitly mention article 91 of this code (*supra* para. 58). The Court also notes that this decision lacks a statement of reasons because the judge merely indicated that the *detención en firme* of the presumed victims was revoked and confirmed their detention (*supra* para. 58). This is coherent with paragraph 2 of the said article 91 which does not require the substantiation of pre-trial detention for procedural purposes; rather it is automatically regulated when there are serious indications or presumptions of responsibility. The Court has also noted that, when confirming the detention, the judge failed to assess whether or not the purposes, need and proportionality of the detention subsisted, because he was responsible for evaluating whether or not it was pertinent to maintain it, and this also violated the principle of presumption of innocence.

105. In addition, the Court recalls that Article 7(5) of the Convention requires that a person detained must be "brought before a judge," which means that the authority should hear the detainee in person and assess all the explanations provided by the latter in order to decide whether it is appropriate to release him or to maintain the deprivation of liberty.[123] The judge in this case did not exercise direct judicial control because he merely changed the *detención en firme* to pre-trial detention. Also, the failure to substantiate the decision prevented the defense from knowing the reasons why the pre-trial detention was maintained.

106. Therefore, the Court considers that, in this case, given that the judge prolonged the deprivation of liberty without exercising direct control of the detention and without providing sufficient reasons to justify it, this constituted an arbitrary deprivation of liberty, contrary to the principle of presumption of innocence to the detriment of Messrs. Villarroel Merino, Coloma Gaibor, López Ortiz, Ascázubi Albán and Vinueza Pánchez, in violation of Articles 7(1), 7(3), 7(5) and 8(2) of the American Convention.

D. Conclusion

107. Based on all the foregoing, the Court concludes that the deprivation of liberty ordered in the form of *detención en firme* was unlawful and arbitrary in violation of personal liberty, and also the principles of presumption of innocence and equality before the law. While the *detención en firme* was in force, the judge failed to assess the purpose, appropriateness, necessity and proportionality of the detention. Consequently, the Court finds that the State violated the rights established in Articles 7(1), 7(2), 7(3), 7(5), 8(2) and 24 of the American Convention, in relation to Articles 1(1) and 2 of this instrument, to the detriment of Jorge Villarroel Merino, Mario Romel Cevallos Moreno, Jorge Coloma Gaibor, Fernando López Ortiz, Amílcar Ascázubi Albán and Patricio Vinueza Pánchez.

108. Furthermore, the Court finds that the State is responsible for failing to assess the purpose, appropriateness, necessity and proportionality of the pre-trial detention because, when prolonging the deprivation of liberty, the judge did not exercise direct control of the detention or provide a

[123] *Cf. Case of Chaparro Álvarez and Lapo Iñiguez v. Ecuador, supra,* para. 85, and *Case of Espinoza Gonzáles v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of November 20, 2014. Series C No. 289, para. 129.

statement of reasons, and this constituted an arbitrary deprivation of liberty which was also contrary to the principle of presumption of innocence in violation of Articles 7(1), 7(3), 7(5) and 8(2) of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of Jorge Humberto Villarroel Merino, Jorge Coloma Gaibor, Fernando López Ortiz, Amílcar Ascázubi Albán and Patricio Vinueza Pánchez.

E. Remedies filed against the detention (Articles 7(1), 7(6) and 1(1))

109. In this section, the Court will analyze whether the State enabled the presumed victims to have recourse to a competent judge or court, for the court to decide without delay on the lawfulness of their detention and order their release if the detention was unlawful, pursuant to Article 7(6) of the Convention. Since Article 7(6) has its own legal content and the principle of effectiveness (*effet utile*) crosscuts the protection due to all the rights recognized in this instrument, the Court finds it unnecessary to analyze that provision in relation to Article 25 of the Convention, as alleged by the Commission.[124] For the same reason, it will not examine the remedies of nullity and appeal filed by the presumed victims[125] because their purpose was not to achieve a prompt decision on whether or not the detention was lawful; therefore, they were neither appropriate nor effective remedies to protect personal liberty.[126]

110. As mentioned, Article 7(6) of the Convention has its own legal content which consists in the direct protection of personal or physical liberty by a judicial mandate addressed to the corresponding authorities to ensure that the person detained is brought before a judge so that the latter may examine the lawfulness of the deprivation of liberty and, if applicable, order his release.[127] This Court's case law has already indicated that such remedies should not only exist formally in law, but must be effective; in other words, comply with the objective of obtaining a prompt decision on the lawfulness of the arrest or detention. To the contrary, the judicial activity would not signify true control but a mere formal or even symbolic procedure resulting in a violation of personal liberty. Moreover, the analysis of the lawfulness of a deprivation of liberty "should examine the arguments submitted by the plaintiff and expressly refer to them, in accordance with the standards established by the American Convention."[128]

111. In the instant case, two applications for amparo were filed[129] based on articles 422 and *ff.* of the common Code of Criminal Procedure as a default rule which established the so-called protection

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[124] *Cf. Case of Anzualdo Castro v. Peru. Preliminary objection, merits, reparations and costs.* Judgment of September 22, 2009. Series C No. 202, para. 77, and *Case of Vélez Loor v. Panamá. Preliminary objections, merits, reparations and costs.* Judgment of November 23, 2010. Series C No. 218, para. 123.

[125] In this case, following the decision of May 26, 2003, the presumed victims filed several remedies against this judicial decision. On June 13, 2003, the defense of Messrs. Villarroel Merino, Cevallos Moreno, Coloma Gaibor, Vinueza Pánchez, López Ortiz and Ascázubi Albán and one other person filed remedies of nullity and appeal. On July 31, 2003, the National Police Court of Justice rejected the appeal for declaration of nullity, declaring that it was unsubstantiated, and returned the proceedings for a decision on the remedy of appeal (*supra* paras. 51 and 52). On November 11, 2003, the National Police Court of Justice decided the appeal for declaration of nullity, confirming and upgrading the reasoned order (*supra* para. 53).

[126] In this regard, it should be mentioned that Marcella da Ponte Carvalho provided an expert opinion in the Case of *Carranza Alarcón v. Ecuador,* in which she stated that the 1983 Code of Criminal Procedure did not establish the remedy of appeal against the order of pre-trial detention (article 348). Therefore, a person who was being prosecuted and against whom an order of pre-trial detention had been issued could contest it by either: the application for protection of liberty or the application for habeas corpus. *Cf. Case of Carranza Alarcón v. Ecuador, supra,* para. 34.

[127] *Cf. Habeas Corpus in Emergency Situations (Arts. 27(2), 25(1) and 7(6) American Convention on Human Rights).* Advisory Opinion OC-8/87 of January 30, 1987. Series A No. 8, para. 33*, and Case of Vélez Loor v. Panamá*, *supra,* para. 124.

[128] *Cf. Case of López Álvarez v. Honduras, supra,* para. 96, and *Case of Chaparro Álvarez and Lapo Iñiguez v. Ecuador, supra*, para. 133.

[129] The Court notes that the body of evidence only includes the application for amparo filed by Mr. Cevallos Moreno. However, it does include the decisions on two applications for protection of liberty, one filed jointly by Messrs. Villarroel

of liberty that specifically permitted a review of the lawfulness of a deprivation of liberty. Messrs. Villarroel Merino, Coloma Gaibor, Vinueza Pánchez, López Ortiz and Ascázubi Albán filed a joint application for protection of liberty and Mr. Cevallos Moreno filed another application for amparo, individually; both applications were rejected. The Court will now examine the said remedies to determine whether they constituted appropriate and effective remedies to obtain a prompt decision on the lawfulness of the detention of the presumed victims.

112. As this Court has noted, the NPCJ decisions which denied the remedies filed did not mention the grounds that substantiated the remedies and did not make any ruling in this regard. When deciding the remedy filed by Messrs. Villarroel Merino, Coloma Gaibor, Vinueza Pánchez, López Ortiz and Ascázubi Albán, the NPCJ merely indicated that "given the stage of the case, it is inadmissible, as decided by the court in a similar case filed previously by another of the accused in these proceedings." This reveals that the NPCJ did not duly found the decision and did not rule on whether or not the detention was lawful, or on the continuation of the measure. Nor did it schedule a hearing for the officers to be brought before the court pursuant to article 425 of the common CCP.[130] Therefore, in this case, the application for amparo did not permit a real control of the liberty of the presumed victims, because it did not examine the lawfulness of the *detención en firme*, a matter that was debated before that court; nor did it rule expressly on the continuation of the measure.

113. In addition, in the remedy filed by Mr. Cevallos Moreno, even though the decision contains an account of the appellant's arguments, once again the NPCJ merely indicated the following: "since this is the stage of the case and without it being necessary to make any other analysis and especially to examine evidence provided during the corresponding hearing, the court considers that the application for protection of liberty […] is inadmissible and, consequently, it is denied." In that case also, the NPCJ failed to rule on the merits of the matter concerning whether the detention was lawful, or about the continuation of the measure.

114. Based on the above, this Court considers that, in the instant case, the applications for protection of liberty that were filed were neither appropriate nor effective, because they did not achieve the purpose of obtaining a prompt decision on the lawfulness of the detention. This was because the NPCJ did not conduct a control of the lawfulness of the detention or order their release, on the grounds that a ruling in this regard could signify advancing an opinion on the main issue of the case relating to the remedies of nullity and appeal previously filed by the presumed victims against the decision of May 26, 2003.

115. In the instant case, as the Court has not been advised of the date on which the applications for protection of liberty were filed, it will not rule on the time taken by the NPCJ to decide the remedies in order to determine whether this conformed to the expression "without delay" in Article 7(6) of the Convention.

116. Based on the above, the Court finds that the State violated the right to personal liberty recognized in Articles 7(1) and 7(6) of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of Messrs. Villarroel Merino, Cevallos Moreno, Coloma Gaibor, Vinueza Pánchez, López Ortiz and Ascázubi Albán.

Merino, Coloma Gaibor, Vinueza Pánchez, López Ortiz and Ascázubi Albán, and the other by Mr. Cevallos Moreno, both of which were declared inadmissible by the National Police Court of Justice on July 3, 2003.

[130] Article 425 of the Code of Criminal Procedure indicates that: "When a person is deprived of his liberty, the judge or court of criminal guarantees shall immediately order that the detainee be brought before him. If necessary, the measure may be conducted in the place of his deprivation of liberty. In addition, the judge must call for a hearing, which must be held within the following twelve hours so that, in the presence of the detainee, the authority concerned may present a report. The judge or court of criminal guarantees may order that evidence be submitted during the hearing […]." 2000 Code of Criminal Procedure, published in the Supplement to Official Record 360 of January 13, 2000, *supra*.

E.1 Conclusion

117. The Court concludes that the applications for amparo that were filed were neither appropriate nor effective to control the lawfulness of the deprivation of liberty of the presumed victims. Therefore, the State violated the right to personal liberty established in Articles 7(1) and 7(6) of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of Messrs. Villarroel Merino, Cevallos Moreno, Coloma Gaibor, Vinueza Pánchez, López Ortiz and Ascázubi Albán.

VII-2
JUDICIAL GUARANTEES, IN RELATION TO THE OBLIGATIONS TO RESPECT AND TO ENSURE THE RIGHTS AND THE DUTY TO ADOPT DOMESTIC LEGAL PROVISIONS OF THE AMERICAN CONVENTION[131]

A. Judicial guarantees

118. In this chapter, the Court will examine the alleged violations of judicial guarantees. First, it will refer to the failure to provide the presumed victims with prior detailed information of the charges against them and time to prepare their defense in relation to the report prepared by the Comptroller's Office prior to the police criminal proceedings. Then, it will analyze the alleged violations of judicial guarantees during the police criminal trial, namely: (a) the lack of competence and impartiality of the court that heard the case, and (b) the unreasonable duration of the police criminal trial. Lastly, it will examine the alleged violation of judicial protection in relation to the claims for compensation alleged by the presumed victims.

119. In addition, regarding the criminal complaint filed by the presumed victims Villarroel Merino, Coloma Gaibor, López Ortiz, Ascázubi Albán and Vinueza Pánchez against Byron Pinto Muñoz for the offense of malfeasance in office,[132] this Court notes that both the representative and the Commission referred to this complaint and that the State presented arguments to disprove the possible violations of due process in the corresponding proceedings. However, the Court notes that the representative and the Commission only mentioned the proceedings, without providing legal substantiation or supporting arguments concerning possible violations of the Convention. Therefore, the Court will not rule in this regard because it has insufficient elements to examine the said proceedings.

A.1 Arguments of the parties and the Commission

A.1.1 Right to prior notification in detail of the charges and adequate time and means for the preparation of the defense in relation to the report of the Comptroller General's Office

120. The ***Commission*** alleged the violation of the right to prior notification in detail of the charges and the right of defense established in Articles 8(2)(b) and 8(2)(c) of the American Convention, in relation to Article 1(1) of this instrument. The Commission noted that, taking into account the punitive implications of the administrative investigation which also preceded the start of the criminal investigation, the investigation should have been notified previously to the persons involved so that they would be aware of the possible irregularities that were being investigated and could exercise their right of defense. In addition, it noted that, in its answering brief, the State did not contest this allegation or prove, with pertinent documentation, that it had notified the presumed victims prior to

[131] Articles 1(1), 2 and 8 of the American Convention.

[132] *Cf.* Complaint filed by Messrs. Villarroel Merino, Coloma Gaibor, López Ortiz, Ascázubi Albán and Vinueza Pánchez before the Prosecutor General on June 3, 2003 (evidence file, fs. 3672 to 3681).

the start of the administrative investigation or offered them the opportunity to prepare their defense during the investigation.

121. The ***representative*** referred, in general, to the considerations of the Inter-American Commission. He merely listed the articles of the American Convention that had supposedly been violated, including Article 8(1) and (2) and Article 25. In this regard, he did not present specific arguments, but reproduced extracts from the Commission's Admissibility and Merits Reports and from the letter submitting the case.

122. The ***State*** did not refer specifically to the Commission's allegations. In general, it argued that the presumed victims had been heard at each procedural stage and that, throughout the criminal proceedings, the judicial authorities had observed due process. It also argued that the presumed victims were able to submit the arguments, evidence and remedies they considered pertinent throughout the proceedings. In addition, it reiterated that the presumed victims had obtained some favorable judicial decisions.

A.1.2. Right to a competent, impartial and independent judge or court, presumption of innocence, and duty to provide a statement of reasons

123. The ***Commission*** argued that, as president of the NPCJ, Byron Pinto Muñoz exercised substantive powers in the proceedings, including with regard to decisions concerning personal liberty. The Commission considered that, given the numerous indications of the lack of competence of Mr. Pinto Muñoz, the State was unable to offer a convincing explanation of the reasons why this person was competent pursuant to domestic law.[133] Therefore, it considered that the State had violated the right to a competent authority in accordance with legally established procedures, recognized in Article 8(1) of the American Convention, in relation to Article 1(1) of this instrument.

124. Moreover, with regard to the composition of the NPCJ, the Commission underscored that, considering that it exercised judicial functions of a punitive nature with the power to impose punishments of deprivation of liberty, the lack of legal education of all the members, their direct appointment by the President of the Republic, and a limited two-year mandate with the possibility of re-election, meant that the said organ did not offer sufficient guarantees of impartiality and independence, in violation of the judicial guarantees established in Article 8(1) of the Convention.

125. Lastly, regarding the second composition of the NPCJ[134] presided by Mr. Pinto Muñoz, it emphasized that the conviction of Alfonso Vinueza Pánchez, Jorge Coloma Gaibor and Jorge Villarroel Merino for the offense of misappropriation of funds was issued despite the existence of numerous exculpatory elements that included the different reports of the prosecution concluding that there was no evidence on which to charge the presumed victims. Thus, by convicting the presumed victims, the presumption of innocence and the duty to provide a statement of reasons for decisions were violated.

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133 It also argued that although the report of the Comptroller's Office indicated that the acts that the presumed victims had allegedly committed were defined as embezzlement, the president of the NPCJ issued an order to initiate a trial for the offense of misappropriation of funds. The latter was defined in the Criminal Code of the National Police. According to the Code, the NPCJ was the court responsible for trying function-related acts of the members of that institution. The Commission also noted that the presumed victims were police officers at the time of the facts and that the presumed wrongful acts had been committed in the context of their functions in the National Police of Ecuador.

134 The Commission indicated that, based on the proven facts, during the police criminal proceedings against the presumed victims, the NPCJ had three different compositions: "(i) the one presided by [MAD] who began hearing the case; (ii) the one presided by Byron Pinto Muñoz who ordered the detention of the presumed victims and issued the judgment convicting them, and (iii) the new composition that decided the acquittal. These changes in composition were based on the decisions issued by two Presidents of the Republic in 2003 and 2005, respectively."

126. The ***representative*** reproduced some parts of the Admissibility and Merits Reports and of the letter submitting the case.

127. Regarding judicial independence, the ***State*** referred to articles 69 and 70 of the Organic Law of the National Police, which established the way in which the NPCJ judges were appointed, the duration of the appointment (two years), and the possibility of re-election. It indicated that, in the instant case, the proceedings were heard by three judges who presided the NPCJ: Senior General MAD, General Byron Pinto Muñoz and, subsequently, Commander General JJR. It added that it had not been proved that the president of the NPCJ had been subjected to any type of pressure; therefore, it considered that it was independent in both its individual and institutional aspects. The State insisted that the trial was conducted in conformity with the basic guarantees of due process, starting with respect for the principle of innocence throughout the processing of the case, from the start of the investigations and until the guilty verdict was delivered against Messrs. Villarroel, Vinueza and Coloma, which was subsequently revoked in second and final instance by the NPCJ. It added that "the rulings delivered include[d] several relevant aspects that reveal[ed] not only the existence of a statement of reasons in the decisions but, above all, the evidence gathered during the proceedings […]."

A.1.3. Reasonable time

128. The ***Commission*** alleged that the State had violated the reasonable time established in Article 8(1) of the Convention. It argued that the case was not of a special complexity that would justify the duration of three years and eight months of the criminal proceedings against the presumed victims. The Commission added that the NPCJ had based itself exclusively on the report of the Comptroller's Office, which had been issued in 2001, and the NPCJ acquittal judgment was issued in September 2005. Regarding the conduct of the domestic authorities, the Commission noted that the case file did not reveal any probative procedures that would justify the delay in the decisions in the criminal proceedings. Indeed, periods of inactivity existed that the State had not justified. Regarding the actions of the presumed victims, the case file did not highlight any element that would indicate that the presumed victims had obstructed the proceedings or bore any responsibility for the delay. Lastly, the Commission considered that the continuation of the proceedings under the circumstances of this case – the prohibition of release due to *detención en firme*, the subsequent application of pre-trial detention and the deprivation of liberty of two of the presumed victims owing to the judgment convicting them – resulted in the continuation of the deprivation of liberty of the presumed victims.

129. The ***representative*** referred, in general, to the findings of the Inter-American Commission, without presenting specific arguments, and reproduced extracts from the Commission's Admissibility and Merits Reports, and from the letter submitting the case.

130. The State argued that the criminal proceedings against the presumed victims, which were decided in their favor, lasted for 3 years and 6 months, a reasonable time in view of the number of defendants in the proceedings and the procedural activity of Messrs. Villarroel Merino, Cevallos Moreno, Coloma Gaibor, Vinueza Pánchez, López Ortiz and Ascázubi Albán. The facts revealed that they played an active role in the criminal proceedings, and filed the remedies they considered pertinent. The activity of the judicial authorities was, at no time, aimed at delaying the analysis of the remedies that were filed; to the contrary, despite the remedies of appeal, nullity, recusal, expansion and clarification, among others, the criminal proceedings were conducted satisfactorily. The defendants were able to present all the remedies they deemed pertinent. The State concluded that the evidence showed that criminal trial No. 36-PCJP-2002 instituted against the presumed victims respected due process in keeping with the standards established by the Court and, therefore, Article 8 of the Convention had not been violated.

A.2 Considerations of the Court

131. The Court recalls that, on July 13, 2001, the Comptroller General's Office issued a report entitled "Indications of criminal responsibility from the special review of the administrative and financial operations of the National Police General Command," Report No. 32-DA.1-2001-466, which concluded that there had been a series of irregularities in the contractual procedures for the acquisition of automotive spare parts and the reparation of vehicles of the National Police (*supra* para. 43), in which the presumed victims who, at the time of the facts, were officers of the National Police of Ecuador, were implicated (*supra* para. 42). This report provided the grounds for opening the police criminal proceedings to which the presumed victims were subjected. The Commission alleged that the presumed victims were not informed of the said report at the time of its preparation. In this regard, the Court cannot be certain whether all the presumed victims were informed of it prior to the police criminal proceedings; however, it is clear that, at least, it was notified to them when the proceedings were opened.[135] Consequently, the Court does not have sufficient elements to rule on the alleged violation of Articles 8(2)(b) and 8(2)(c) of the American Convention. Nevertheless, given the relevance of the said Report No. 32-DA.1-2001-466, and pursuant to the standards established by the Court in relation to the right of defense, the Court points out that the presumed victims should have taken part in the review conducted by the Comptroller's Office[136] and been aware of the contents of the report prior to the opening of the police criminal proceedings in order to exercise their right of defense.

132. In addition, in the instant case, the dispute is centered on determining whether the State violated the right to a competent, impartial and independent judge or court in the police criminal trial. The Court will now examine the relevant aspects as regards whether the police criminal jurisdiction offered sufficient guarantees of independence and impartiality.

133. The Court has indicated that the independence of judges is guaranteed by their irremovability, an appropriate appointment procedure that takes into account their accomplishments and their legal training, and the guarantee against external pressure.[137] The fact that the Executive

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135 According to the affidavits made by the presumed victims, the Court notes that: (a) Mr. *Villarroel Merino* indicated that he "did contest Audit Report No. 32-DA.1-2001-466, issued by the Comptroller General's Office on July 13, 2001, […] [but his arguments] were rejected," without indicating the date on which this was done. *Cf.* Affidavit made by Jorge Humberto Villarroel Merino on February 9, 2021, *supra*; (b) Mr. *Cevallos Moreno* stated that he "was aware of Report No. 32-DA.1-2001-466." *Cf.* Affidavit made by Mario Romel Cevallos Moreno on February 9, 2021, *supra*; (c) Mr. *López Ortiz* indicated that he "only found out about the results of the report with indications of criminal responsibility when [he] was criminally prosecuted, violating [his] right of defense." *Cf.* Affidavit made by Fernando Marcelo López Ortiz on February 9, 2021, *supra*; (d) Mr. *Vinueza Pánchez* indicated that Report No. 32-DA.1-2001-466 corresponded to the trial. *Cf.* Statement of Alfonso Patricio Vinueza Pánchez on February 9, 2021, *supra,* and (e) Messrs. *Ascázubi Albán* and *Coloma Gaibor* did not refer to Report No. 32-DA.1-2001-466 of the Comptroller's Office. *Cf.* Statements of Leoncio Amílcar Ascázubi Albán and Jorge Enrique Coloma Gaibor on February 9, 2021, *supra*.

136 It is worth mentioning that in the affidavit submitted to the Court by Mr. Vinueza Pánchez, he alleged that he was unaware of the special review conducted by the Comptroller's Office, even though, according to the presumed victim, article 296 of the Organic Law of Financial Administration and Control, in force at the time, established that "[d]uring an audit or special review, the government's auditors shall be in constant communication with the employees of the entity or agency concerned, affording them the opportunity to present documentary evidence, as well as pertinent verbal information on the matters being examined. Without prejudice to compliance with the provisions of articles 278, 286 and 342 of this law, the auditors will disclose the provisional results of each part of the review, as soon as they are ready, to the relevant officials for the following purposes: (1) To allow them to present their opinions; (2) To ensure that the government's auditors have all possible information and evidence during their work; (3) To avoid additional information or evidence being presented after the audit has been concluded; (4) To facilitate the immediate start of the necessary corrective measures by the head of the entity and the officials in charge, including the implementation of improvements based on the recommendations, without having to wait for the report to be issued […]." *Cf.* Affidavit made by Alfonso Patricio Vinueza Pánchez on February 9, 2021, *supra*.

137 *Cf. Case of Reverón Trujillo v. Venezuela. Preliminary objection, merits, reparations and costs*. Judgment of June 30, 2009. Series C No. 197, paras. 70 and 72, and *Case of Martínez Esquivia v. Colombia. Preliminary objections, merits and reparations.* Judgment of October 6, 2020. Series C No. 412, para. 85.

appoints the judges results in their functional and administrative dependence on the Executive, which entails a lack of independence and impartiality from an institutional perspective.[138]

134. The Court has also pointed out that impartiality requires that the judge acting in a specific dispute approaches the facts of the case subjectively free of all prejudice, and also offers sufficient objective guarantees to exclude any doubt the parties or the community might entertain as to a lack of impartiality.[139]

135. In the instant case, at the time the facts investigated occurred, the presumed victims were members of the National Police on active duty (*supra* para. 42), and therefore an investigation was opened in the special jurisdiction: the police criminal jurisdiction. Thus, internally, on November 11, 2003, the NPCJ ordered a partial stay of proceedings in the case against Mario Romel Cevallos Moreno, and then ordered the dismissal of the case against him. Subsequently, on January 10, 2005, the NPCJ acquitted Fernando Marcelo López Ortiz and Leoncio Amílcar Ascázubi Albán and convicted Jorge Enrique Coloma Gaibor and Alfonso Patricio Vinueza Pánchez as perpetrators of the offense defined in paragraphs 1, 3, 4 and 10 of article 222 of the Criminal Code of the National Civil Police, and Jorge Humberto Villarroel Merino as accomplice; they therefore filed an appeal against the judgment. Lastly, on September 19, 2005, the National Police Court of Justice delivered a judgment exonerating Messrs. Coloma Gaibor, Vinueza Pánchez and Villarroel Merino (*supra* para. 65).

136. The Court notes that both the investigation and the prosecution of the presumed victims were conducted by the National Police Court of Justice, which was also responsible for hearing and deciding the appeals. Also, pursuant to article 68 of the Organic Law of the National Police,[140] the NPCJ depended administratively on the Ministry of the Interior and, under article 69 of the Organic Law of the National Police, the President of the Republic was responsible for appointing the judges of the NPCJ. As has been proved, on April 29, 2003, the President of the Republic at the time issued Executive Decree No. 357 in which he appointed the new judges of the NPCJ who heard the case in first instance; they included General Byron Pinto Muñoz (*supra* para. 48). Subsequently, on June 10, 2005, the President of the Republic at the time issued Executive Decree No. 227 appointing new members of the NPCJ because the mandate of the previous members had concluded, and the new members heard the appeal against the conviction (*supra* paras. 64 and 65). Moreover, the members of the NPCJ were not required to have had any legal training in order to occupy the position of judge, and they only had a two-year mandate with the possibility of re-election.[141]

137. The Court has had occasion to analyze the compatibility of the police criminal jurisdiction with the American Convention taking into account the specificity of the legal nature of the Police. It has indicated that the standards for guarantees and due process established in the American Convention are also enforceable in the police criminal jurisdiction; therefore, it must provide

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138 *Cf. Case of Palamara Iribarne v. Chile. Merits, supra,* para. 155, and *Case of Valencia Hinojosa v. Ecuador. Preliminary objections, merits, reparations and costs.* Judgment of November 29, 2016. Series No. 327*,* para. 97.

139 *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. 56, and *Case of Valencia Hinojosa v. Ecuador, supra*, para. 93.

140 Article 68 established that "the National Police Court of Justice […] [d]epends administratively on the Ministry of the Interior; its functions are determined in the Organic Law of the Judicial Function of the Judicial Police." Organic Law of the National Police. Official Record No. 368 of July 24, 1998 (evidence file, fs. 4309 to 4330).

141 Article 69 stipulated that "the [NPCJ] shall be composed of five judges, three of whom shall be general officers in reserve, of whom at least one must be a doctor of jurisprudence, and two doctors of jurisprudence who have worked either as a lawyer with great probity or, as a member of the judicial function, or as a university lecturer for at least fifteen years; they shall be appointed by the President of the Republic, remain in office for two years and may be re-elected." Organic Law of the National Police, published in Official Record No. 368 of July 24, 1998, *supra*.

sufficient guarantees of impartiality and independence in both the institutional and the individual dimension.[142]

138. In its judgment in the *case of Valencia Hinojosa v. Ecuador*, the Court pointed out that the police criminal jurisdiction in Ecuador did not form part of the Judiciary, but was functionally and administratively dependent on the Executive. Most of its officials were appointed by the Minister of the Interior at the request of the Commander General of the National Police and, although it was composed of officers most of whom had a legal background, most of them were on active duty in the National Police.[143] Also, in that case, the Court concluded:

> The functional and administrative dependence of the police justice system on the Executive and the impossibility of requesting a judicial review by the ordinary jurisdiction did not guarantee the institutional independence and impartiality of the police jurisdiction. In addition, the relationship of subordination and the chain of command characteristic of the National Police did not offer sufficient guarantees of the personal or individual independence and impartiality of the police criminal judges owing to the way in which they were appointed; the absence of sufficient guarantees of stability in the post (especially in the district courts, where the judges were freely appointed and removed and, as in this case, had competence to determine whether or not a case continued), and the status of officers on active duty of most of those involved (which resulted in the possibility that the district judges, for example, had to investigate higher-ranking officers or their own peers).[144]

139. Furthermore, in that case, the Court took note of the conclusions of the Ecuadorian Truth Commission which had stressed that the National Court of Justice itself had concluded that the police criminal jurisdiction "did not enjoy autonomy and independence."[145]

140. It is also worth emphasizing that, in the judgment handed down by this Court in the case of *Grijalva Bueno v. Ecuador*, it indicated that "the proceedings that culminated in the imposition of a punishment on Mr. Grijalva Bueno were heard by officials who were functionally dependent on the Executive and, consequently, were not independent judges. However, the Court will not elaborate further on this point owing to the procedural irregularities that invalidated the proceedings and the fact that the State has repealed the laws that established those competences."[146]

141. The above criteria were applied in the investigation and prosecution of the presumed victims for the facts referred to in the instant case. Therefore, this Court considers that, from an institutional perspective, the police criminal jurisdiction did not offer guarantees of independence and impartiality in violation of Article 8(1) of the Convention.

142. Moreover, the Court recalls that Article 2 of the Convention obliges States Parties to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to the rights or freedoms protected by the Convention.[147] The Court takes note of the information provided by the State that, in 2008, Ecuador adopted a new Constitution which abolished the police jurisdiction. However, it underscores that, at

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142 *Cf. Case of Valencia Hinojosa v. Ecuador, supra*, para. 92.

143 *Cf. Case of Valencia Hinojosa v. Ecuador, supra,* para. 113. It also indicated that: "[i]n this case, by an explicit law, the police criminal jurisdiction depended on the Executive; therefore, from an institutional perspective, it did not offer guarantees of independence and impartiality. Moreover, added to this institutional dependence, the judges, prosecutors and magistrates of the police criminal jurisdiction in Ecuador were appointed and removed by the Minister of the Interior." *Case of Valencia Hinojosa v. Ecuador, supra,* para. 97.

144 *Case of Valencia Hinojosa v. Ecuador, supra,* para. 114.

145 *Cf. Case of Valencia Hinojosa v. Ecuador, supra,* para. 116.

146 *Case of Grijalva Bueno v. Ecuador*, *supra*, para. 97.

147 *Cf. Case of Gangaram Panday v. Suriname. Preliminary objections*. Judgment of December 4, 1991. Series C No. 12, para. 50, and *Case of Guachalá Chimbo et al. v. Ecuador. Merits, reparations and costs*. Judgment of March 26, 2021. Series No. 423, para. 137.

the time of the facts, that jurisdiction was in force and it conducted and concluded the investigation against the presumed victims in violation of the guarantees of independence and impartiality. Even though this Court appreciates the legal amendments made by Ecuador, it notes that the aforesaid reform was not applied to the instant case. Therefore, the Court finds that, in addition, the State failed to comply with its obligation to adapt its domestic law in order to ensure access to an independent and impartial system of justice.

143. Consequently, the Court finds that the investigation of the presumed victims for the facts that have been described by the police criminal jurisdiction violated the guarantees of independence and impartiality established in Article 8(1) of the American Convention, in relation to Articles 1(1) and 2 of this instrument, to the detriment of Fernando Marcelo López Ortiz, Leoncio Amílcar Ascázubi Albán, Jorge Humberto Villarroel Merino, Mario Romel Cevallos Moreno, Jorge Enrique Coloma Gaibor and Alfonso Patricio Vinueza Pánchez.

144. Finally, regarding the Commission's arguments, reproduced by the representative, concerning the violation of the presumption of innocence, the duty to provide a statement of reasons, the right to appeal a judgment, and the reasonable time established in Article 8(1), 8(2) and 8(2)(h) of the American Convention, the Court considers that, having declared that the police criminal proceedings against the presumed victims was conducted by authorities who lacked independence and impartiality (*supra* paras. 141 and 143), the case refers to proceedings that were flawed from the outset and, therefore, it finds it unnecessary to make an additional analysis of the guarantee of competence or refer to other alleged violations of judicial guarantees.

A.3. Conclusion

145. Consequently, the Court concludes that the State is responsible for the violation of the guarantees of independence and impartiality established in Article 8(1) of the American Convention, in relation to Articles 1(1) and 2 of this instrument, in the investigation of the presumed victims for the facts that have been described by the police criminal jurisdiction, to the detriment of Fernando Marcelo López Ortiz, Leoncio Amílcar Ascázubi Albán, Jorge Humberto Villarroel Merino, Mario Romel Cevallos Moreno, Jorge Enrique Coloma Gaibor and Alfonso Patricio Vinueza Pánchez.

B. Compensation proceedings

B.1. Arguments of the parties and the Commission

146. The ***Commission*** took note that the presumed victims filed various claims for damages. In the case of Mr. Villarroel Merino, he filed a claim for compensation and a claim for damages before the President of the Republic, which were rejected due to lack of jurisdiction, and a claim for compensation before the Supreme Court of Justice, which was also rejected. The Commission concluded that it had insufficient information to rule on whether, when hearing these claims, the State had violated the right to judicial protection. In the case of Fernando López Ortiz and Amílcar Ascázubi Albán, it indicated that they had filed claims for compensation in the civil jurisdiction in 2008 and 2015, which had not been decided; thus, these proceedings had been underway for more than nine years. The Commission argued that this time was unreasonable, which resulted in a violation of the right to a prompt and simple remedy against violations of the rights established in Articles 8(1) and 25(1) of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of Messrs. López Ortiz and Ascázubi Albán.

147. The ***representative*** referred, in general, to the findings of the Inter-American Commission, without presenting specific arguments, and reproduced extracts from the Commission's Admissibility and Merits Reports, and from the letter submitting the case.

148. The ***State*** argued that the presumed victims were able to access the jurisdictional authorities under the administrative dispute procedure to claim payment of compensation for damage and even for reparation of non-pecuniary damage if they considered that the acts or omissions of the judge or judges who heard their cases had generated an unjustified delay or an inadequate administration of justice, or a violation of the right to effective protection and to due process or, in general, had committed a judicial error. This remedy could be exercised by an action filed in keeping with the procedural rules established by law; in other words, filed before a judge of administrative disputes in their domicile pursuant to article 217 of the Organic Code of the Judicial Function, in order to sue the president of the Judicial Council as the person with legal liability and follow the procedure for administrative actions, taking into account the four-year statute of limitations for this action. In addition, the State mentioned that, as noted in Merits Report No. 113/18 of the Commission, Mr. Villarroel Merino filed this remedy in the domestic sphere, but using the wrong type of procedure, so that the action was unsuccessful due to the disqualification of the police court.

B.2. Considerations of the Court

149. The Court notes that the Commission mentioned various claims for compensation filed by the presumed victims. In particular, it referred to: (i) a claim for compensation and a claim for damages filed by Mr. Villarroel Merino; (ii) claims for compensation and an administrative claim filed by Mr. Ascázubi Albán, and (iii) a claim for compensation filed by Mr. López Ortiz.

150. Regarding the claim for compensation and the claim for damages filed by Mr. Villarroel Merino, the Commission argued that it had insufficient information to rule on whether, when hearing these claims, the State violated the right to judicial protection. In this regard, the Court notes that the Inter-American Commission merely mentioned the claims and did not present arguments to substantiate a presumed violation of judicial protection, and neither did the presumed victims' representative. Consequently, the Court does not have sufficient information to rule in this regard.

151. According to the information provided to the Court, in the case of Mr. Ascázubi Albán, the Court notes that the body of evidence contains various official communications related to the filing of two claims for compensation; one before the Thirteenth Civil Court of Pichincha, and the other before the National Police Court of Justice. Regarding the former claim, a judicial decision issued by the Thirteenth Civil Court of Pichincha and dated September 1, 2010, indicates: "in view of the stage of the case, the proceedings will be reviewed in order to deliver judgment." The body of evidence also contains an administrative complaint filed by Mr. Ascázubi Albán and a judicial decision of February 8, 2007, of the Alternate President of the Supreme Court of Justice, in which he required that the proceedings be forwarded to the President to continue the legal process (*supra* para. 66).

152. In the case of Mr. López Ortiz, the body of evidence contains a brief he filed relating to a "claim for pecuniary and non-pecuniary damages against the Ecuadorian State represented by the Ecuadorian Attorney General, […,] and the Police Institution," and also a communication of the District Court for Administrative Disputes of the Metropolitan District of Quito, province of Pichincha, dated November 8, 2018, indicating that the plaintiff's request for judgment would be dealt with in the chronological order in which the case was received (*supra* para. 67).

153. In this regard, the Court notes that, when submitting the case, the Commission indicated that the aforementioned procedures had been ongoing for more than nine years, because Messrs. López Ortiz and Ascázubi Albán had filed the said claims in the civil jurisdiction in 2008 and in 2015 they had not been decided. The representative did not present arguments in this regard, and the

State, in a brief submitted to the Commission in February 2014, merely indicated that the judicial archives contained no record of the filing of any civil action in relation to the facts of the case.[148]

154. The Court notes that, regarding the claims for compensation filed by Messrs. López Ortiz and Ascázubi Albán, the Commission merely mentioned the claims without substantiating them with a specific description of the facts, and neither did the presumed victims' representative. Taking all the foregoing into account, the Court does not have sufficient supporting evidence to establish the supposed state responsibility for possible violations of the rights established in Articles 8(1) and 25(1) of the American Convention alleged by the Commission.

VIII
REPARATIONS
(Application of Article 63(1) of the American Convention[149])

155. Based on the provisions of Article 63(1) of the Convention, the Court has indicated that any violation of an international obligation that has caused harm entails the duty make adequate reparation and that this provision reflects a customary norm that constitutes one of the fundamental principles of contemporary international law on State responsibility.[150] The Court has also established that the reparations should have a causal nexus to the facts of the case, the violations that have been declared, the harm proved, and the measures requested to redress the respective harm.[151] Therefore, the Court must analyze the concurrence of these factors to rule appropriately and in keeping with law.

156. Accordingly, based on the preceding considerations on the merits and the violations of the Convention declared in this judgment, the Court will now examine the claims of the Commission and the victims, together with the observations of the State, in light of the criteria established in its case law concerning the nature and scope of the obligation to provide reparation, in order to establish the measures addressed at redressing the harm caused.[152]

A. Injured party

157. The Court reiterates that, pursuant to Article 63(1) of the American Convention, anyone who has been declared a victim of the violation of any right recognized therein is considered an injured party. Therefore, the Court considers that Jorge Humberto Villarroel Merino, Mario Romel Cevallos Moreno, Jorge Enrique Coloma Gaibor, Fernando Marcelo López Ortiz, Leoncio Amílcar Ascázubi Albán and Alfonso Patricio Vinueza Pánchez are the injured party and, as victims of the violations declared in this judgment, they will be considered beneficiaries of the reparations ordered by the Court. Consequently, the Court will not rule on the requests relating to the victims' spouses and children, because they are not victims in this case.

B. Measures of satisfaction

a) Publication of the judgment

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148 *Cf.* Communication 16363 of the Office of the Attorney General of the Republic of Ecuador of February 19, 2014 (evidence file, fs. 164 to 175).

149 Article 63(1) of the American Convention.

150 *Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and costs.* Judgment of July 21, 1989. Series C No. 7, paras. 24 and 25, and *Case of Grijalva Bueno v. Ecuador*, para. 163.

151 *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 Grijalva Bueno v. Ecuador*, *supra*, para. 163.

152 *Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and costs, supra*, paras. 25 and 26, and *Case of Moya Solís v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of June 3, 2021. Series C No. 425, para. 113.

158. The ***representative*** asked that the decision of the Inter-American Commission and the judgment of the Court be published in the Official Record, in the *Orden General* of the National Police and in the national newspapers. The ***Commission*** also submitted requests in this regard.

159. The ***State*** noted that the proceedings in the domestic jurisdiction had been decided and the respective judgment was public. It added that, if the judgment delivered by the Court found the State guilty, the measure requested should merely be the public availability of the judgment on the website of the National Police.

160. The Court establishes, as it has in other cases,[153] that the State must publish, within six months of notification of this judgment, in an adequate and legible font: (a) the official summary of this judgment prepared by the Court, once, in the Official Record; (b) the official summary of this judgment prepared by the Court, once, in a national newspaper with widespread circulation, and (c) this judgment in its entirety, available for one year, on the official website of the National Police. The State must advise the Court immediately when it has made each of the publications ordered, regardless of the one-year time frame to present its first report established in the eighth operative paragraph of this judgment.

C. Other measures

161. The ***representative*** requested that a ceremony be organized to offer a public apology. The ***State*** reiterated to the Court that it should consider that this measure has been fulfilled owing to the actions conducted to comply with the recommendations in Merits Report No. 113/18. This Court does not find it necessary to order additional measures of satisfaction to those already ordered.

162. The ***Commission*** asked the Court to order the measures of non-repetition required to ensure that: (a) both the applicable laws and the respective practices for pre-trial detention and also the police criminal jurisdiction in Ecuador were compatible with the standards established in Report No. 113/18. In particular, the State must guarantee that, both by law and in practice, pre-trial detention was only admitted exceptionally, based on procedural objectives and subject to periodic review; (b) the appointment of the authorities of the police criminal jurisdiction safeguards the guarantees of independence and impartiality in both its composition and its practices, and (c) anyone convicted in the police criminal jurisdiction has a remedy that permits a comprehensive review of the conviction by a higher-ranking authority. The **representative** reiterated the Commission's request.

163. The ***State*** argued that, following the new 2008 Constitution, international human rights standards had been incorporated into domestic laws and jurisprudence. The State described the domestic legal system in order to prove that the military criminal jurisdiction and the special jurisdiction of the National Police had been eliminated, together with the special jurisdiction to try members of the police and the armed forces, and that pre-trial detention established guarantees that protected the rights to personal liberty, presumption of innocence, the principle of legality, the principle of proportionality, and the reasonableness of the time of the measure. In addition, the State indicated that Ecuador's laws also established the obligation to provide the reasons for imposing pre-trial detention. Furthermore, it argued that the victims had access to all the judicial remedies established by law, both for appeals and for cassation, for both legal and factual review. The remedies also permit a review by a higher court of both a pre-trial detention and a sentence. Lastly, the State stressed that, in 2017, a new disciplinary regime had been established for police personnel by the adoption of the Organic Code of Law Enforcement and Public Safety Entities, which ensured procedural guarantees in disciplinary proceedings.

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[153] *Cf. Case of Cantoral Benavides v. Peru. Reparations and costs,* Judgment of December 3, 2001. Series C No. 88, para. 79, and *Case of Grijalva Bueno v. Ecuador*, *supra,* para. 177.

164. The Court reiterates that Article 2 of the Convention obliges States Parties to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to the rights or freedoms protected by the Convention (*supra* para. 142). The Court takes note that, as Ecuador has pointed out, a new Constitution was adopted in 2008, which repealed the police jurisdiction. The Court also notes that, at the time this judgment is delivered, the rule of *detención en firme* established in article 173-A of the common Code of Criminal Procedure applied in this case was no longer in force. Therefore, the Court considers that it is not appropriate to order the adoption, amendment or adaptation of provisions under Ecuador's domestic law.[154]

165. Consequently, the Court finds that, in relation to the other measures of reparation requested by the Commission and the representative, the delivery of this judgment and the reparations already ordered in this chapter are sufficient and adequate to redress the violations suffered by the victims. Therefore, it does not consider it necessary to order other measures.

D. Compensation

166. The ***Commission*** asked that comprehensive reparations should be provided to each victim by measures of compensation and satisfaction that included the pecuniary and non-pecuniary damage caused to the victims as a result of the violations declared in the Merits Report.

167. The ***representative,*** when referring to compensation, indicated the following with regard to each victim:

a) Jorge Humberto Villarroel Merino

168. With regard to Mr. Villarroel Merino, he argued that this situation had caused him untold moral and mental harm that had affected his life project, given his academic, and institutional history and his professional career, which had been publicly recognized. Therefore, in the case of non-pecuniary damage, he indicated that he "left this to the standards for fairness" of the Court.[155] In the case of pecuniary damage he requested fair compensation of US$800,000.00 (eight hundred thousand United States dollars) for loss of earnings

b) Mario Romel Cevallos Moreno

169. For Mr. Cevallos Moreno, he requested US$400,000.00 (four hundred thousand United States dollars) for pecuniary damage. In addition, for non-pecuniary damage and other harm,[156] he requested US$800,000.00 (eight hundred thousand United States dollars).

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154 *Cf. Case of Carranza Alarcón v. Ecuador*, *supra,* para. 104, and *Case of Flor Freire v. Ecuador*. *Preliminary objection, merits, reparations and costs*. Judgment of August 31, 2016. Series C No. 315*,* para. 242.

155 He argued that: (a) [Mr. Villarroel Merino] had been subject to humiliation, by the confinement to a room in the Equitation and Remount Unit (UER), a police barracks on the outskirts of Quito, for one year, of someone who had been Commander General of the National Police and, at the time of the facts, was Director General of Training Schools for Non-Professional Drivers, administered by the Ecuadorian National Association of Tourism (ANETA) with a seat on the National Land Transportation and Transit Board; (b) in the performance of his functions, he had received various decorations and awards; (c) at a personal level, he had drafted a proposed for the creation of a school for non-professional drivers that he would head, and he even received a proposal to manage a private security agency; but the events impeded both these opportunities; (d) his family capital was affected because he had to dispose of an office in Quito and a plot of land in the canton of Pedernales in the province of Manabí, to cover necessities such as food, health care, his children's education, and his maintenance costs while confined, and (e) as a result of his experience, he suffered a minor heart attack, which required prolonged medical treatment.

156 He argued that: (a) [Mr. Cevallos Moreno's] arbitrary detention ruined his life, prejudicing his image of police officer, a role he had fulfilled for many years up to the position of Commander General, and causing him irreparable harm owing to the emotional distress he suffered; (b) since he was a public figure, when the media referred to the case without analyzing

c) Fernando Marcelo López Ortiz

170. For Mr. López Ortiz, based on the violated rights, he requested at least US$1,000,000.00 (one million United States dollars) for full reparation.[157]

d) Jorge Enrique Coloma Gaibor

171. For Mr. Coloma Gaibor, he requested US$30,000.00 (thirty thousand United States dollars) for consequential damage, corresponding to the value of a building that he disposed of to cover the expenses relating to the trial and his detention, and US$300,000.00 (three hundred thousand United States dollars) for loss of earnings. He also requested US$950,000.00 (nine hundred and fifty thousand United States dollars) for pecuniary and non-pecuniary damage.[158]

e) Leoncio Amílcar Ascázubi Albán

172. For Mr. Ascázubi Albán, based on his person and professional situation and the consequences of the violation of his human rights, he requested US$800,000.00 (eight hundred thousand United States dollars) for the financial harm caused.[159]

f) Alfonso Patricio Vinueza Pánchez

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the facts objectively, he was the object of "public contempt," and the public was made aware of the issue by the launch of a smear campaign. This situation hindered his personal, professional and political development because he had occupied important positions with great responsibility, including president of the Pichincha Professional Football Association (AFNA), and member of the Criminal Court for Officers and Rank and File; he had represented his country as Ecuadorian Police Attaché in the Republic of Colombia; he was a member of the National Security Council (COSENA); he had helped create the Social Security Institute of the National Police (ISSPOL), and received various decorations for his years of service and for actions undertaken, and he had obtained a doctorate in industrial psychology at the *Universidad Central del Ecuador* as preparation to provide for his financial needs when he left the police institution; he had also assisted several countries in their efforts to combat drug-trafficking, money-laundering, etc. and had attended many courses and seminars, and (c) owing to the emotional disorders suffered, which still continue, he has had significant medical expenses.

[157] He argued that: (a) [Mr. López Ortiz] was unable to discharge the duties of General for four years, District General for two years, and General Inspector for two years; also two years as Senior General should be taken into account because anyone who has a vocation to be a police officer aspires to reach that rank, which is the highest rank in the National Police; (b) the salaries and benefits for all that time (six years); (c) severance pay that varied based on years of service; (d) the retirement pension that lasted while the titleholder or his wife was alive, which was less than that of his colleagues who were generals; (e) the impossibility of obtaining work owing to the public contempt that he suffered in the media, and within and outside the institution; (f) the legal and judicial defense for the three years that the criminal proceedings lasted; (g) the untold physical, mental and psychological stress, especially when the police jurisdiction was subject to external influences against the defendants, as had been shown; (h) the sale of movable and immovable property to meet expenses related to the trial, and (i) the stress caused by the criminal proceedings and by the three years that the trial lasted, from 2002 to 2005; proceedings that began in 2001 in the Comptroller's Office and lasted until November 2018; that is, 17 years.

[158] He argued that: (a) [Mr. Coloma Gaibor] had not received reparation for pecuniary or non-pecuniary damage; (b) he had been subjected to "public contempt" in violation of his honor, dignity and reputation; (c) the proceedings filed against him had been traumatic and he continued to suffer mental stress that causes him to have constant psychological disorders and depression, and had affected his life and his family; (d) his health had been impaired by his detention and he had been admitted to the National Police Hospital for respiratory disorders; (e) he had received decorations and awards for his performance; however, the criminal proceedings against him meant that he received low marks in the process of promotion to the rank of general, so that his legitimate expectation to rise to the highest rank of the National Police was cut short, and (f) this had an impact on his remuneration over the four years he would have held the rank of general on active duty, and on the respective active duty pension.

[159] He argued: (a) [in the case of Mr. Ascázubi Albán] loss of better severance pay owing to his early departure from the institution; (b) loss of promotion from District General to General Inspector; (c) loss of option of promotion from General Inspector to Commander General; (d) loss of employment opportunities owing to the media coverage of the case; (e) loss of the opportunity to travel as Police Attaché, and (f) expenses for his family members to travel to his place of detention located approximately 60 kilometers from Quito, either for visits or procedures ordered by the Higher Court of Police Justice.

173. In the case of Mr. Vinueza Pánchez, he argued that the legal situation had an impact on his institutional, family and personal life. He alleged a loss of earnings amounting to US$390,000.00 (three hundred and ninety thousand United States dollars). He also requested US$800,000.00 (eight hundred thousand United States dollars) as full reparation.[160]

174. The ***State*** reiterated that it was not responsible for any pecuniary damage caused to the victims, because there had been no violation of rights that attributed international responsibility to Ecuador. Moreover, it made some observations for the Court to consider. Regarding consequential damage, it indicated:

> a) Regarding Jorge Humberto Villarroel Merino, it considered that Mr. Villarroel had not provided evidence at the appropriate procedural moment to prove the expenses he had incurred as a result of the supposed violations of his rights.
>
> b) Regarding Mario Romel Cevallos Moreno, it considered that the representative had not specified the exact nature of the consequential damage to Mr. Cevallos. In general, the representative had argued that he had to pay for his defense during the judicial proceedings, and also for the medical treatment related to mental disorders for himself and his wife. It added that, at this stage of the proceedings, it was not possible to add new victims to those named in the Merits Report. The State also repeated that Mr. Cevallos had not presented opportune evidence to prove his allegations.
>
> c) Regarding Leoncio Amilcar Ascázubi Albán, as in the preceding cases, it considered that Mr. Ascázubi had not provided evidence to prove the supposed consequential damage he suffered as a result of the expenses he incurred derived from the payment of fees to his defense counsel, experts, travel and costs related to his defense, in both the criminal proceedings, and in a complaint he filed against the State before one of the country's courts, and also a complaint against the president of the National Police Court of Justice at the time, as well as the expenses for his wife and children to travel to his place of detention.
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> d) Regarding Fernando Marcelo López Ortiz, it indicated that he was demanding pecuniary reparations for the expenses incurred for his legal defense for three years for which he had had to sell some moveable and immovable property. Once again, the State considered that he had not provided the pertinent evidence.
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> e) Regarding Jorge Enrique Coloma Gaibor, it argued that Mr. Coloma had not specified the consequential damage he had suffered or presented any evidence in this regard.

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[160] [Mr. Vinueza Pánchez] suffered the following harm: (a) to his image, honor and reputation, as well as to his mental health. Healthwise, he suffered a high level of stress and other ailments, some of which subsisted to date and, on several occasions, he was treated in the National Police Hospital; (b) owing to the court case, even though he was acquitted, he remained stigmatized or identified by members of the Institution and of his family; (c) his life project was impaired; (d) in the case of consequential damage, his salary as a member of the National Police was never sufficient; (e) payment of air fare to travel to Quito to give statements, because he served in the police force in the province of Loja; (f) owing to the situation, he took out several loans with the National Police Cooperative, and also had recourse to his family in order to have the necessary resources for the upkeep of his family and his children's education, and (g) regarding loss of earnings, the trial caused him important financial harm; he was reinstated in active duty and in his previous rank in the Institution and he resorted to the Council of Generals of the National Police, who awarded the annual performance notes; however, owing to his legal situation, he was given low notes for the three years that the trial lasted and those notes had an adverse impact on him, because he needed the note to request promotion to the next rank, namely Police Colonel. He was promoted on July 17, 2006, two years after his peers. In addition, due to that situation, promotion to General was almost impossible because, by law, he had to leave the institution and accept reserve retirement, with a colonel's pension, and with 32 years, 6 months and 13 days service. If he had been promoted to General, he would have served longer and, consequently, his severance payment would have been greater. The aspiration of any officer of the National Police was to achieve the highest rank, namely Senior General; otherwise, great frustration was felt. The fact that he had to leave the institution while a Colonel prejudiced him greatly because his pension was lower than that of an Inspector or of a Senior General.

f) Regarding Alfonso Patricio Vinueza Pánchez, it indicated that he had incurred expenses for his defense counsel during the proceedings, which had cost him more that he had expected because, at a certain moment, he had to substitute the initial defense counsel because he was not being defended satisfactorily. In addition, he had to pay for travel and maintenance costs during his detention. The State considered that he had not provided sufficient evidence with regard to consequential damage; he had failed to provide invoices or vouchers proving the alleged expenses.

175. Regarding loss of earnings, in the case of all the victims, the State argued the impossibility of assessing the compensation objectively, because the items were based on hypothetical or possible situations. In all cases, the State indicated the payments received by the victims based on their life pension due to retirement, which included coverage for illness or maternity, and an elective life insurance.[161] Those payments exceeded the current general minimum living wage in the country which was US$400.00 (four hundred United States dollars).

D.1 Pecuniary damage

176. In its case law, the Court has developed the concept that pecuniary damage supposes the loss of, or detriment to, the income of the victims, the expenses incurred owing to the facts, and the consequences of a pecuniary nature that have a causal nexus with the facts of the case.[162]

177. Regarding pecuniary damage, the representative failed to present vouchers relating to the expenses incurred by the victims under the heading of consequential damage. Also, in the case of loss of earnings, he failed to present reliable documentation that would have allowed the Court to make an exact assessment of the situation of each victim.

178. The State and the representative advised that, during their detention and the proceedings, Messrs. Villarroel Merino and Cevallos Moreno were in reserve retirement. In this regard, the representative indicated that, according to the Law on National Police Personnel, "they had already met the requirements of rank and time within the Institution and were beneficiaries of the right established in the Social Security Law of the National Police."

179. The State and the representative also reported that Messrs. López Ortiz, Coloma Gaibor, Ascázubi Albán and Vinueza Pánchez were on active duty at the time of the facts and continued to receive their remunerations; after they had been acquitted they were reincorporated into active service. The representative added that, according "to art[icle] 60 of the Law of Police Personnel in force at the time of the criminal proceedings, members of the police who were placed in a provisional situation did not lose the rights established for active members of the institution; consequently, they enjoyed the benefits of remuneration and job security while the [trial] had not been decided against the defendant." Lastly, the representative indicated that none of the victims had received any type of remuneration, compensation, proportionate payments or other benefits other than those established in the law on the retirement pension that had been cited.

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161 Mr. López Ortiz received his pension based on the rank of District General starting on June 9, 2006. Mr. Villarroel Merino received his pension based on the rank of Senior General Superior starting on January 30, 2000. Mr. Cevallos Moreno received his pension based on the rank of General Inspector starting on October 12, 2001. Mr. Ascázubi Albán received his pension based on the rank of District General starting on June 9, 2006. Mr. Coloma Gaibor received his pension based on the rank of Police Staff Colonel starting on August 29, 2009. Mr. Vinueza Pánchez received his pension based on the rank of Police Staff Colonel starting on July 14, 2010.

162 *Cf. Case of Bámaca Velásquez v. Guatemala. Reparations and costs*. Judgment of February 22, 2002. Series C No. 91, para. 43, and *Case of Grijalva Bueno v. Ecuador*, *supra,* para. 185.

180. The State and the representative also indicated that, currently, all the victims have a pension from the Social Security Institute of the National Police; they receive a pension and the corresponding benefits.

181. In the instant case, the Court notes that the representative requested specific sums for each of the victims, but failed to provide any vouchers for the Court to assess the pecuniary damage related to the expenditure for consequential damage, nor any justification for the loss of earnings

182. Based on the above, the Court notes that the victims continued to receive, as applicable, pensions and remuneration while they remained detained and during the police criminal proceedings. In the case of the four victims who were on active duty, they were subsequently reinstated. Consequently, the Court establishes, in equity, the sum of US$10,000.00 (ten thousand United States dollars) for pecuniary damage for each victim. This sum must be delivered to each of the victims: Jorge Humberto Villarroel Merino, Mario Romel Cevallos Moreno, Jorge Enrique Coloma Gaibor, Fernando Marcelo López Ortiz, Leoncio Amílcar Ascázubi Albán and Alfonso Patricio Vinueza Pánchez.

D.2 Non-pecuniary damage

183. The Court has also developed the concept of non-pecuniary damage in its case law and has established that this may include both the suffering and afflictions caused to the direct victims and their family, and the impairment of values of great significance for the individual, as well as the alterations, of a non-pecuniary nature, in the living conditions of the victims or their families.[163]

184. To establish the compensation, the Court will take into account the violations that have been declared and the harm caused.

185. The State noted that the victims had not substantiated their claims based on the parameters established by inter-American case law. Nor had they substantiated the presumed specific non-pecuniary damage they alleged they had suffered. The State even pointed out some contradictory allegations.

186. In the instant case, the Court declared the violation of personal liberty in relation to the unlawful and arbitrary detention of Jorge Humberto Villarroel Merino, Jorge Coloma Gaibor, Fernando López Ortiz, Amílcar Ascázubi Albán and Patricio Vinueza Pánchez for one year and Mario Cevallos Moreno for five months and seventeen days,[164] all of whom did not have an appropriate and effective remedy to control their deprivation of liberty, or judicial guarantees, because they did not have an independent and impartial judge. Therefore, the Court understands that, given the nature of the facts and the violations determined in this judgment, the victims suffered non-pecuniary harm that should be compensated. Consequently, it determines, in equity, the following sum for each of the victims:

a) Jorge Humberto Villarroel Merino: US$30,000.00 (thirty thousand United States dollars);
b) Mario Romel Cevallos Moreno: US$20,000.00 (twenty thousand United States dollars);
c) Jorge Enrique Coloma Gaibor: US$30,000.00 (thirty thousand United States dollars);
d) Fernando Marcelo López Ortiz: US$30,000.00 (thirty thousand United States dollars);
e) Leoncio Amílcar Ascázubi Albán: US$30,000.00 (thirty thousand United States dollars), and
f) Alfonso Patricio Vinueza Pánchez: US$30,000.00 (thirty thousand United States dollars).

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163 *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 Grijalva Bueno v. Ecuador*, *supra*, para. 189.

164 Mr. Cevallos Moreno was released on November 13, 2003, and Messrs. Coloma Gaibor, López Ortiz, Ascázubi Albán and Vinueza Pánchez on May 25, 2004. Lastly, Mr. Villarroel Merino was released on June 4, 2004.

187. The amount established must be delivered to each of the victims: Jorge Humberto Villarroel Merino, Mario Romel Cevallos Moreno, Jorge Enrique Coloma Gaibor, Fernando Marcelo López Ortiz, Leoncio Amílcar Ascázubi Albán and Alfonso Patricio Vinueza Pánchez.

E. Costs and expenses

188. The ***representative*** only referred to the expenses that the victims incurred individually. Specifically, Mr. Villarroel Merino requested the sum of US$70,000.00 (seventy thousand United States dollars). Mr. Ascázubi Albán indicated that, "he accepted the good judgment of the Court" for the costs and expenses. He also asked for the expenses incurred to pay: (a) the legal fees of his defense counsel; (b) fees of defense counsel and experts, travel, and costs, etc. related to his defense; (c) defense counsel for the defense of the complaint filed against the State in one of the country's courts; (d) payment of professional fees for his defense in the complaint filed against the president of the National Police Court of Justice before the Supreme Court of Justice of Ecuador. Mr. Cevallos Moreno indicated that, to defend his case, he had had to pay legal professionals. However, the representative did not refer to the expenses incurred by the victims in the proceedings before the Commission and the Inter-American Court. The ***Commission*** did not refer to costs and expenses.

189. The ***State*** argued that no violation had been committed and, therefore, it was not appropriate to grant costs and expenses. Nevertheless, if it was required to pay costs and expenses, these should be reasonable. The State reiterated that, since this item referred to alleged monetary disbursements for actions taken during the judicial proceedings in the internal and international jurisdiction, the victims should have included this in their arguments and justified the expenditure with vouchers and other receipts or pertinent documents, and this was not done. Thus, for costs, Mr. Villarroel Merino alone had specifically requested US$70,000.00 (seventy thousand United States dollars), while Messrs. Cevallos Moreno, López Ortiz, Ascázubi Albán, Coloma Gaibor and Vinueza Pánchez had not specified the amount they claimed under this heading. Therefore, since the necessary documentation and evidence was lacking, the State asked the Court to establish a sum based on the equity principle and in keeping with its previous case law.

190. The Court reiterates that, according to its case law, costs and expenses form part of the concept of reparation because all the actions taken by the victims in order to obtain justice, at both the domestic and the international level, entail disbursements that should be compensated when the State's international responsibility has been declared in a judgment. Regarding the reimbursement of costs and expenses, it corresponds to the Court to prudently assess their scope which includes the expenses incurred before the authorities of the internal jurisdiction as well as those arising during the proceedings before the inter-American system, taking into account the circumstances of the specific case and the nature of the international jurisdiction for the protection of human rights. This assessment may be made based on the principle of equity and taking into account the expenses indicated by the parties, provided their *quantum* is reasonable.[165]

191. The Court has indicated that the claims of the victims or their representatives for costs and expenses, and the evidence substantiating these, must be submitted to the Court at the first procedural moment granted to them; that is, in the brief with pleadings, motions and evidence, without prejudice to such claims being updated subsequently, in keeping with the new costs and

[165] *Cf. Case of Garrido and Baigorria v. Argentina. Reparations and costs.* Judgment of August 27, 1998. Series C No. 39, para. 82, and *Case of Guerrero, Molina et al. v. Venezuela*. *Merits, reparations and costs*. Judgment of June 3, 2021. Series C No. 424, para. 192.

expenses incurred due to the proceedings before this Court.[166] In the instant case, the representative failed to present any probative support for the expenses that the victims had to defray during the different stages of the respective proceedings; he merely made a general mention of the requests of each victim for reimbursement of costs and expenses incurred, without providing the respective substantiating vouchers.

192. Consequently, considering that the victims had to make disbursement related to the procedures before both the internal jurisdiction and the inter-American system, the Court establishes, in equity, the sum of US$30,000.00 (thirty thousand United States dollars), for the concept of costs and expenses during the procedures before the domestic jurisdiction. This sum must be shared equally between the victims: Jorge Humberto Villarroel Merino, Mario Romel Cevallos Moreno, Jorge Enrique Coloma Gaibor, Fernando Marcelo López Ortiz, Leoncio Amílcar Ascázubi Albán and Alfonso Patricio Vinueza Pánchez, and also the sum of US$10,000.00 (ten thousand United States dollars), for the concept of costs and expenses before the inter-American system in favor of the victim's legal representative, Marcelo Dueñas Veloz.

193. The Court considers that, during the procedure of monitoring compliance with judgment, it may establish that the State must reimburse the victims or their representatives any reasonable expenses in which they incur at that procedural stage.

F. Method of compliance with the payment ordered

194. The State shall make the payments of the compensation for pecuniary and non-pecuniary damage and to reimburse costs and expenses established in this judgment directly to the persons indicated herein, within one year of notification of this judgment, without prejudice to making the complete payments in advance, pursuant to the following paragraphs.

195. If a beneficiary is deceased or dies before he receives the respective amount, this shall be delivered directly to his heirs, pursuant to the applicable domestic law.

196. The State shall comply with the monetary obligations by payment in United States dollars.

197. If, for reasons that can be attributed to the beneficiary/beneficiaries of the compensation or their heirs, it were not possible to pay the established amounts within the indicated time frame, the State shall deposit those amounts in their favor in a deposit certificate or account 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, when ten years have passed the amounts shall be returned to the State with the interest accrued.

198. The amounts allocated in this judgment as compensation for pecuniary and non-pecuniary damage and to reimburse costs and expenses must be delivered to the persons indicated in full, as established in this judgment, without any deductions derived from possible taxes or charges.

199. If the State should incur in arrears, it shall pay interest on the amount owed corresponding to banking interest on arrears in the Republic of Ecuador.

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[166] *Cf.* Article 40(d) of the Rules of Procedure of the Court. See also, *Case of Garrido and Baigorria v. Argentina, supra,* paras. 79 and 82, and *Case of Grijalva Bueno v. Ecuador*, *supra*, para. 194.

IX
OPERATIVE PARAGRAPHS

200. Therefore,

THE COURT

DECIDES:

Unanimously,

1. To reject the preliminary objection of "fourth instance," pursuant to paragraphs 16 and 17 of this judgment.

2. To reject the preliminary objection concerning the alleged violation of the State's right of defense, pursuant to paragraphs 21 to 24 of this judgment.

DECLARES,

Unanimously, that:

3. The State is responsible for the violation of the right to personal liberty, presumption of innocence and equality before the law recognized in Articles 7(1), 7(2), 7(3), 7(5), 7(6), 8(2) and 24 of the American Convention on Human Rights, in relation to Articles 1(1) and 2 of this instrument, to the detriment of Jorge Humberto Villarroel Merino, Mario Romel Cevallos Moreno, Jorge Enrique Coloma Gaibor, Fernando Marcelo López Ortiz, Leoncio Amílcar Ascázubi Albán and Alfonso Patricio Vinueza Pánchez, pursuant to paragraphs 79 to 117 of this judgment.

4. The State is responsible for the violation of the rights to the judicial guarantees recognized in Article 8(1) of the American Convention on Human Rights, in relation to Articles 1(1) and 2 of this instrument, to the detriment of Jorge Humberto Villarroel Merino, Mario Romel Cevallos Moreno, Jorge Enrique Coloma Gaibor, Fernando Marcelo López Ortiz, Leoncio Amílcar Ascázubi Albán and Alfonso Patricio Vinueza Pánchez, pursuant to paragraphs 131 to 145 of this judgment.

AND ESTABLISHES:

Unanimously, that:

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

6. The State shall make the publications established in paragraph 160 of this judgment.

7. The State shall pay the amounts established in paragraphs 182, 186 and 192 of this judgment for pecuniary and non-pecuniary damage, and to reimburse costs and expenses, pursuant to paragraphs 177 to 181, 184, 185 and 187, 190, 191 and 193, and 194 to 199 of this judgment.

8. The State, within one year of notification of this judgment, shall provide the Court with a report on the measures adopted to comply with it, without prejudice to the provisions of paragraph 160 of this judgment.

9. 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 its provisions.

DONE, at San José, Costa Rica, on August 24, 2021, in the Spanish language.

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