

# Acosta Calderón v. Ecuador

## ABSTRACT<sup>1</sup>

*This case is about the bungled prosecution of a Colombian cocaine mule. After his arrest at the Ecuadorian border, as he was allegedly trying to bring cocaine paste in the country, he was detained but the evidence of the crime was lost. Mr. Acosta Calderón was held in preventative detention, without trial, for almost seven years while authorities tried to find the evidence. The Court ruled against Ecuador.*

## I. FACTS

### A. Chronology of Events

**November 15, 1989:** Customs military police arrest Colombian national Mr. Rigoberto Acosta Calderón in Lago Agrio, Ecuador, for suspected drug trafficking and transport him to the police station, where they take his statement.<sup>2</sup> Mr. Acosta Calderón admits he agreed to carry a woman's suitcase in exchange for approximately \$54.51<sup>3</sup> and knew of the contents inside.<sup>4</sup> However, he also makes a statement to the Criminal Prosecutor of Sucumbios, declaring he is innocent.<sup>5</sup> Neither statement is made with defense counsel present, nor is he told he has the right to seek help from the Columbian consulate.<sup>6</sup> The resulting police report states Mr. Acosta Calderón was carrying two pounds and twelve ounces of cocaine paste.<sup>7</sup> The Lago Agrio Criminal Court judge orders Mr.

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1. Emily Williams, Author; Nathaniel Reinhardt, Editor; Kathryn Benson, Chief IACHR Editor; Cesare Romano, Faculty Advisor.

2. Acosta Calderón v. Ecuador, Admissibility Report, Report No. 78/01, Inter-Am. Comm'n H.R., Case No. 11.620, ¶ 6 (Oct. 10, 2001).

3. The original amount of 30,000 sucres was converted using the following: Currency Converter for Ecuador, FXTOP.COM, <http://fxtop.com/en/currency-converter-past.php> (Set to a date value of November 15, 1989) (1ECS = 0.817 USD = \$54.51).

4. Acosta Calderón v. Ecuador, Admissibility Report, ¶¶ 6, 13; *see also* Acosta Calderón v. Ecuador, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 129, ¶ 50(3) (June 24, 2005).

5. Acosta Calderón v. Ecuador, Merits, Reparations and Costs, ¶ 50(3).

6. *Id.*

7. Acosta Calderón v. Ecuador, Admissibility Report, ¶¶ 6, 13.

Acosta Calderón to be held in custody<sup>8</sup> and orders an investigation opened, stating that the prerequisites of Article 177 of the Code of Criminal Procedure have been met.<sup>9</sup> Article 177 allows for preventative detention when evidence leads to the presumption of “the existence of a [punishable] crime” and that the defendant perpetrated the crime.<sup>10</sup>

**November 29, 1989:** The Criminal Court orders the cocaine paste to be weighed, examined, and then destroyed at the Lago Agrio Hospital.<sup>11</sup> The hospital does not examine the paste but finds it weighs 3.641 grams.<sup>12</sup>

**December 21, 1989:** The trial judge requests Mr. Acosta Calderón be transferred to the Social Rehabilitation Center of Tena.<sup>13</sup>

**January 12, 1990:** The Treasury of the Provincial Health Authority of Napo receives 1.175 grams of the cocaine paste.<sup>14</sup>

**January 18, 1990:** The trial judge orders the Provincial Health Authority to acknowledge, weigh, analyze, and destroy the cocaine paste.<sup>15</sup>

**May 18, 1990:** The trial judge orders a fifteen-day extension for preliminary proceedings, ordering the clerk to state, in writing and within forty-eight hours, the location of the cocaine paste.<sup>16</sup>

**June 6, 1990:** The authors of the police report of November 15, 1989, Jorge Luna, Edison Tobar, and Raúl Toapanta, appear before the trial judge to ratify its content.<sup>17</sup>

**July 27, 1990:** Mr. Acosta Calderón requests his imprisonment be revoked.<sup>18</sup>

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8. *Id.*

9. Acosta Calderón v. Ecuador, Merits, Reparations and Costs, ¶ 50(5).

10. *Id.* ¶ 66.

11. *Id.* ¶ 50(7).

12. *Id.* ¶ 50(8).

13. *Id.* ¶ 50(9).

14. *Id.* ¶ 50(10).

15. *Id.* ¶ 50(11).

16. *Id.* ¶ 50(12).

17. *Id.* ¶ 50(13).

18. *Id.* ¶ 50(14).

**August 20, 1990:** The trial judge reaffirms the order to locate the cocaine paste.<sup>19</sup>

**September 13, 1990:** The trial judge denies Mr. Acosta Calderón's request to revoke his imprisonment because his "legal situation" has not changed.<sup>20</sup> The judge repeats the order to locate the cocaine paste.<sup>21</sup>

**October 3, 1990:** The judge again repeats the order to locate the cocaine paste.<sup>22</sup> The current Secretary of the Court states that the previous Secretary did not provide him with inventory of the criminal cases or the location of physical evidence.<sup>23</sup>

**October 10, 1990:** The Director of Social Rehabilitation Center of Tena informs the trial judge that Mr. Acosta Calderón has been transferred to the Social Rehabilitation Center of Ambato.<sup>24</sup>

**November 27, 1990:** The trial judge again orders that the cocaine paste be located, that the Secretary contact the previous Secretary in order to determine the location of the evidence, that a request be made to the Director of Provincial Health Authority of Napo to certify whether evidence was located there, and that the authors of the police report again appear before the criminal court to help locate the evidence.<sup>25</sup>

**August 26, 1991:** The trial judge repeats his order to locate the cocaine paste.<sup>26</sup>

**October 8, 1991:** Mr. Acosta Calderón presents a brief, arguing there is no evidence to justify his imprisonment.<sup>27</sup> He additionally requests that the Court receive his preliminary statement on preventative detention and objects to all evidence against him, stating that his case was "altered and flawed" because it contained testimonies and information for other

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19. *Id.* ¶ 50(15).

20. *Id.* ¶ 50(16).

21. *Id.*

22. *Id.* ¶ 50(17).

23. *Id.*

24. *Id.* ¶ 50(18).

25. *Id.* ¶ 50(19).

26. *Id.* ¶ 50(20).

27. *Id.* ¶ 50(21).

cases.<sup>28</sup> He asks for a filing of cause and reversal of his detention order, and designates Dr. Gino Cevallos as his counsel.<sup>29</sup> In response, the judge extends the preliminary proceedings by fifteen days, orders that Mr. Acosta Calderón's preliminary examination must be taken within twenty-four hours, notes that the case includes testimonies relating to other cases, and again requests that the authors of the police report appear before the court.<sup>30</sup>

**October 18, 1991:** Mr. Acosta Calderón provides his preliminary examination statement, again asserting that he is innocent and has been imprisoned with no physical evidence.<sup>31</sup>

**December 10, 1991:** The Criminal Prosecutor of Sucumbios ("the Prosecutor") recommends that the cocaine paste should be destroyed.<sup>32</sup>

**December 17, 1991:** The judge asks the Provincial Health Authority of Napo to confirm whether it has the evidence so that it can be destroyed.<sup>33</sup>

**January 24, 1992:** Mr. Acosta Calderón files a brief reiterating that he remains in custody even though, pursuant to Article 177 of the Code of Criminal Procedures, preventative detention was improper because of the lack of evidence.<sup>34</sup> He additionally asks for the proceedings to be closed and to be released.<sup>35</sup>

**January 31, 1992:** The judge restates his order to the Provincial Health Authority of Napo to confirm whether it has the cocaine paste.<sup>36</sup>

**March 27, 1992:** Mr. Acosta Calderón's counsel presents a writ to the judge, asking for Mr. Acosta Calderón's release.<sup>37</sup> The judge reiterates his order to the Provincial Health Authority of Na-

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28. *Id.* The Court erroneously referred to Article 127, instead of Article 177.

29. *Id.* ¶ 50(22).

30. *Id.* ¶ 50(23).

31. *Id.* ¶ 50(25).

32. *Id.* ¶ 50(28).

33. *Id.* ¶ 50(29).

34. *Id.* ¶ 50(30).

35. *Id.*

36. *Id.* ¶ 50(31).

37. *Id.* ¶ 50(32).

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**May 25, 1993:** The criminal court asks the Health Director of the Province of Napo for certified copies of the delivery letters and receipt of the cocaine paste.<sup>39</sup>

**July 1, 1993:** Mr. Acosta Calderón's counsel presents another brief, again asking for Mr. Acosta Calderón's release.<sup>40</sup>

**July 15, 1993:** The judge orders the prosecutor to draft an advisory opinion regarding concluding the proceedings.<sup>41</sup> However, the judge explains that he cannot reverse Mr. Acosta Calderón's arrest because Mr. Acosta Calderón has not disproved the conditions of Article 177.<sup>42</sup> Again, he asks the Health Director of the Province of Napo whether it has the cocaine paste.<sup>43</sup>

**August 13, 1993:** The National Council for the Control of Narcotic and Psychotropic Substances informs the court that the cocaine paste has not been located.<sup>44</sup> As a result, the judge orders the preliminary proceedings closed.<sup>45</sup>

**November 16, 1993:** The Prosecutor chooses not to prosecute Mr. Acosta Calderón because the cocaine paste is missing.<sup>46</sup>

**December 3, 1993:** The Lago Agrio Criminal Court judge orders the acquittal of Mr. Acosta Calderón due to the lack of physical evidence and the prosecutor's unwillingness to press charges.<sup>47</sup> However, Mr. Acosta Calderón remains in custody.<sup>48</sup>

**July 22, 1994:** The First Chamber of the Superior Court of Quito overturns the previous ruling and summons Mr. Acosta Calderón to appear,

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38. *Id.*

39. *Id.* ¶ 50(33).

40. *Id.* ¶ 50(34).

41. *Id.* ¶ 50(35).

42. *Id.*

43. *Id.*

44. *Id.* ¶¶ 50(36)–(37).

45. *Id.*

46. *Id.* ¶ 50(38).

47. Acosta Calderón v. Ecuador, Admissibility Report, ¶¶ 8, 14.

48. *Id.*

arguing that the arrest report,<sup>49</sup> the Lago Agrio Hospital's conclusions, the Health Authority of the Province of Napo's memorandum, and Mr. Acosta Calderón's confession in his preliminary statement<sup>50</sup> all constitute proof of Mr. Acosta Calderón's violation of Article 33 of the Law on the Control of the Trafficking of Narcotic and Psychotropic Substances ("Narcotics Law").<sup>51</sup>

**October 7, 1994:** At the Criminal Court of Napo in Tena, the prosecution accuses Mr. Acosta Calderón of violating Article 33 of the Narcotics Law, specifically requesting the enforcement of subsection (c), which provides for twelve to sixteen years' imprisonment and a fine of \$25 to \$50.<sup>52</sup>

**October 8, 1994:** The Criminal Court finds that Mr. Acosta Calderón violated Article 33 of the Narcotics Law, sentences him to nine years' imprisonment at the Social Rehabilitation Center in Quito, and orders a fine of approximately \$25.<sup>53</sup>

**July 25, 1996:** Mr. Acosta Calderón submits an application for release to the Criminal Court.<sup>54</sup>

**July 29, 1996:** The Criminal Court in and for Napo grants Mr. Acosta Calderón parole twenty-four months before his sentence is complete for time served pending trial.<sup>55</sup> The Criminal Court cannot locate Mr. Acosta Calderón after this date.<sup>56</sup>

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49. *Id.* ¶¶ 9, 14.

50. Acosta Calderón v. Ecuador, Merits, Reparations and Costs, ¶¶ 50(40), 50(42).

51. Acosta Calderón v. Ecuador, Admissibility Report, ¶¶ 9, 14.

52. Acosta Calderón v. Ecuador, Merits, Reparations and Costs, ¶ 50(42). The original amount of 50,000–100,000 sucres was converted using the following: Currency Converter for Ecuador, FXTOP.COM, <http://fxtop.com/en/currency-converter-past.php> (Set to a date value of October 7, 1994).

53. *Id.* ¶ 50(43). The original amount of 50,000 sucres was converted using the following: Currency Converter for Ecuador, FXTOP.COM, <http://fxtop.com/en/currency-converter-past.php> (Set to a date value of October 8, 1994).

54. Acosta Calderón v. Ecuador, Admissibility Report, ¶ 15. His application had previously been denied by the Director of Social Rehabilitation of Ambato and the Superior Court in and for Ambato because his parole was prohibited under Article 115 of the Narcotic Drugs and Psychotropic Substances Act.

55. Acosta Calderón v. Ecuador, Admissibility Report, ¶¶ 10, 14, 16; *see also* Acosta Calderón v. Ecuador, Merits, Reparations and Costs, ¶ 3.

56. Acosta Calderón v. Ecuador, Merits, Reparations and Costs, ¶ 3.

### *B. Other Relevant Facts*

On June 10, 1983, the State enacts the Code of Criminal Procedures, which describes four stages of the criminal trial and provides for the entire process, notwithstanding an appeal, to take approximately 126 days.<sup>57</sup> The Code requires that defendants receive appointed counsel when an investigation is ordered.<sup>58</sup>

On November 15, 1989, the date of Mr. Acosta's arrest, the Narcotics Law of 1987 is in effect in the State.<sup>59</sup> Article 43 of the Narcotics Law declares that an inmate cannot be released without the superior judge's confirmation of dismissal or acquittal, in direct contradiction to the Code of Criminal Procedures' general requirement for release of prisoners in preventative detention.<sup>60</sup> Article 46 of the Narcotics Law requires the National Department for the Control of Narcotics provide an expert report on the nature of the drug in question.<sup>61</sup>

## II. PROCEDURAL HISTORY

### *A. Before the Commission*

**November 8, 1994:** The Ecumenical Commission for Human Rights (*Comisión Ecuémica de Derechos Humanos*, "CEDHU") presents a petition on behalf of Mr. Acosta Calderón to the Inter-American Commission on Human Rights.<sup>62</sup>

**March 1, 1996 – February 10, 2000:** The Commission requests additional information from the petitioner and the State and transmits the information when received.<sup>63</sup>

**October 10, 2001:** The Commission issues Admissibility Report No. 78/01.<sup>64</sup>

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57. *Id.* ¶ 44(a).

58. *Id.*

59. *Id.*

60. *Id.*

61. *Id.*

62. *Acosta Calderón v. Ecuador*, Admissibility Report, ¶ 1; *Acosta Calderón v. Ecuador*, Merits, Reparations and Costs, ¶ 6.

63. *Acosta Calderón v. Ecuador*, Admissibility Report, ¶ 5.

64. *Id.* ¶¶ 23–24, 27.

**January 22, 2002:** The petitioners reject an amicable solution due to the severity of the alleged violations.<sup>65</sup>

**March 3, 2003:** The Commission issues Report on the Merits No. 33/03, finding that the State violated Articles 2 (Obligation to Give Domestic Legal Effect to Rights), 7 (Right to Personal Liberty), 8 (Right to a Fair Trial), 24 (Right to Equal Protection), and 25 (Right to Judicial Protection) of the American Convention.<sup>66</sup> The Commission recommends that the State: 1) indemnify Mr. Acosta Calderón; 2) remove his criminal record; 3) take steps to guarantee non-repetition in the future; and 4) adopt requirements under Article 36 of the Vienna Convention on Consular Relationships into its domestic legislation.<sup>67</sup>

### *B. Before the Court*

**June 25, 2003:** The Commission submits the case to the Court after the State failed to adopt its recommendations.<sup>68</sup>

#### 1. Violations Alleged by Commission<sup>69</sup>

Article 2 (Obligation to Give Domestic Legal Effect to Rights)

Article 7 (Right to Personal Liberty)

Article 8 (Right to a Fair Trial)

Article 24 (Right to Equal Protection)

Article 25 (Right to Judicial Protection)

*all in relation to:*

Article 1(1) of the American Convention.

#### 2. Violations Alleged by Representatives of the Victims<sup>70</sup>

Same Violations Alleged by Commission, plus:

Article 5(1) (Right to Physical, Mental, and Moral Integrity)

Article 5(2) (Prohibition of Torture, and Cruel, Inhumane or Degrading

65. Acosta Calderón v. Ecuador, Merits, Reparations and Costs, ¶ 9.

66. *Id.* ¶¶ 2, 10.

67. *Id.*

68. *Id.* ¶ 1.

69. *Id.* ¶ 2.

70. *Id.* ¶¶ 6, 16, 140(a), 142. Elsie Monge, César Duque, and Alejandro Ponce Villacís of CEDHU served as representatives of Mr. Acosta Calderón.



Treatment) of the American Convention.

**August 29, 2003:** The State appoints Mr. Hernán Salgado Pesantes as judge *ad hoc*.<sup>71</sup>

**November 24, 2003:** The State submits its answer to the application and observations, including documentary evidence, but the Court rejects the answer on the grounds that the deadline to answer has passed.<sup>72</sup>

**February 1, 2005:** The Commission asks the Court to proceed without public hearing.<sup>73</sup>

**March 18, 2005:** The President of the Court issues an order that it has enough evidence to forgo the public hearing and gives the parties until May 16, 2005 to file their final written allegations.<sup>74</sup>

**May 11, 2005:** The State claims it is necessary to locate Mr. Acosta Calderón before proceeding, since the parties might still be able to reach an amicable solution.<sup>75</sup>

### III. MERITS

#### *A. Composition of the Court*

Sergio García Ramírez, President  
Alirio Abreu Burelli, Vice President  
Oliver H. Jackman, Judge  
Antônio Augusto Cançado Trindade, Judge  
Cecilia Medina Quiroga, Judge  
Manuel E. Ventura Robles, Judge  
Diego García-Sayán, Judge  
Hernán Salgado Pesantes, Judge

Pablo Saavedra Alessandri, Secretary  
Emilia Segares Rodríguez, Deputy Secretary

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71. *Id.* ¶ 15.

72. *Id.* ¶ 17.

73. *Id.* ¶ 21.

74. *Id.* ¶ 25.

75. *Id.* ¶ 30.

*B. Decision on the Merits*

**June 24, 2005:** The Court issues its Judgment on Merits, Reparations and Costs.<sup>76</sup>

The Court found unanimously that the State had violated:

Articles 7(1) (Right to Personal Liberty and Security), 7(3) (Prohibition of Arbitrary Arrest or Imprisonment), and 7(5) (Right to Be Promptly Brought Before a Judge and Right to a Trial Within Reasonable Time) in relation to Article 1(1) of the Convention, to the detriment of Mr. Acosta Calderón,<sup>77</sup> because:

*The State failed to meet its obligation to show that the substance seized was cocaine paste yet kept Mr. Acosta Calderón imprisoned, constituting an arbitrary arrest and imprisonment.<sup>78</sup> This obligation arose not only from the Convention, but also from the second and fourth Principle of the United Nations' Body of Principles for the Protection of All People Submitted to Any Form of Detention or Imprisonment, as well as domestic law in force at the time of the events, including Article 19(17)(h) of the Ecuadorian Constitution, the Code of Criminal Procedures of Ecuador of 1983, and Article 10 of the Narcotics Law.<sup>79</sup> Additionally, the State failed to meet its obligation to present Mr. Acosta Calderón before a judge or other judicial official without delay – a safeguard against arbitrary arrests, since Mr. Acosta Calderón did not have the chance to make a statement to a judge until approximately two years after he was arrested.<sup>80</sup> This obligation additionally arose from Article 5(3) of the European Convention and Article 98 of the Political Constitution of Ecuador in force at the time of the events.<sup>81</sup> Because of these omissions, the Court found the State violated Articles 7(1) (Right to Personal Liberty and Security), 7(3) (Prohibition of Arbitrary Arrest or Imprisonment), and 7(5) (Right to Be Promptly Brought Before a*

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76. Acosta Calderón v. Ecuador, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 129 (June 24, 2005).

77. *Id.* “Operative Paragraphs” ¶ 1.

78. *Id.* ¶¶ 70–71.

79. *Id.* ¶¶ 53, 54–55, 58, 61, 63–69.

80. *Id.* ¶¶ 76, 79.

81. *Id.* ¶¶ 77, 80.

*Judge and Right to a Trial Within Reasonable Time*).<sup>82</sup>

Articles 7(6) (Right to Have Recourse Before a Competent Court) and 25 (Right to Judicial Protection), in relation to Article 1(1) of the Convention, to the detriment of Mr. Acosta Calderón,<sup>83</sup> because:

*The State held Mr. Acosta Calderón in preventative detention over five years yet did not provide a report regarding the existence of the cocaine paste, which was necessary for a conviction.<sup>84</sup> Furthermore, the recourses Mr. Acosta Calderón brought before the domestic court were either undecided or ruled on after the time limit established by domestic law.<sup>85</sup> This violated the Convention as well as domestic laws in force at the time of the events, including Article 19(17)(j) of The Political Constitution of Ecuador and Article 458 of the Code of Criminal Procedure.<sup>86</sup> Thus, the Court found the State violated Articles 7(6) (Right to Have Recourse Before a Competent Court) and 25 (Right to Judicial Protection).<sup>87</sup>*

Articles 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal), 8(2) (Right to Be Presumed Innocent), 8(2)(b) (Right to Have Prior Notification of Charges), and 8(2)(e) (Right to Assistance by Counsel Provided by State) in relation to Article 1(1) of the Convention, to the detriment of Mr. Acosta Calderón,<sup>88</sup> because:

*The State failed to meet its obligation to try Mr. Acosta Calderón within a reasonable time period because the matter was not complex, because Mr. Acosta Calderón did not purposely delay proceedings, and because the judicial authorities affirmatively delayed proceedings.<sup>89</sup> In failing to try Mr. Acosta Calderón within a reasonable time, the State violated both the Convention and the Code of Criminal Procedures of 1983.<sup>90</sup> Furthermore, the State did not presume Mr. Acosta Calderón's inno-*

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82. *Id.* ¶ 84.

83. *Id.* “Operative Paragraphs” ¶ 2.

84. *Id.* ¶ 96.

85. *Id.* ¶ 97.

86. *Id.* ¶¶ 94–95.

87. *Id.* ¶¶ 99–100.

88. *Id.* “Operative Paragraphs” ¶ 3.

89. *Id.* ¶¶ 105–106, 108.

90. *Id.*

*cence, and his detention was “arbitrary and excessive,” considering that there was no proof of illegal substances as required by the State’s domestic Narcotics Law, as well as the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment of the United Nations.<sup>91</sup> Additionally, the State failed to meet its obligation to notify Mr. Acosta Calderón of his charges before he gave his first statement, in violation also of the UN Human Rights Committee’s General Observation No. 13 regarding “Equality before the Courts and the right of every person to be heard publicly by a competent tribunal established by law.”<sup>92</sup> Further, the State failed to meet its obligation to provide Mr. Acosta Calderón with defense counsel during his initial questioning and to inform him of his right to help from the consulate of his country, in violation also of the 17th Principle of the United Nations’ Body of Principle for the Protection of All Persons Under Any Form of Detention or Imprisonment, Article 36(1)(b) of the Vienna Convention on Consular Relationships, and Article 19(17)(e) of the domestic Political Constitution in force at the time of events.<sup>93</sup> Based on these domestic and international obligations, the Court found the State violated Articles 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal), 8(2) (Right to Be Presumed Innocent), 8(2)(b) (Right to Have Prior Notification of Charges), and 8(2)(e) (Right to Assistance by Counsel Provided by State).<sup>94</sup>*

Article 2 (Obligation to Give Domestic Legal Effect to Rights), in relation to Article 7(5) (Right to Be Promptly Brought Before a Judge and Right to a Trial Within Reasonable Time) of the Convention,<sup>95</sup> because:

*The State applied Article 114 of the Criminal Code, which generally required the release of prisoners who had been imprisoned for at least one half of the maximum sentence of the alleged offense but had never been sentenced at all.<sup>96</sup> However, Article 114 provided an exception when the inmate’s charges were brought under the Law on Narcotic Drugs and Psychotropic Substances.<sup>97</sup> As such, the State applied Article*

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91. *Id.* ¶¶ 108, 110.

92. *Id.* ¶¶ 117–19.

93. *Id.* ¶¶ 122–25.

94. *Id.* ¶ 127.

95. *Id.* “Operative Paragraphs” ¶ 4.

96. *Id.* ¶ 131.

97. *Id.* ¶¶ 131, 135–37.

121 of the Law on Narcotic Drugs and Psychotropic Substances, which provided that a reversal of preventive detention was only sufficient when affirmed by a higher court.<sup>98</sup> As a result, Mr. Acosta Calderón remained imprisoned despite a dismissal in his favor, causing him undue harm and violating the Convention and Article 24(8) of the Ecuadorian Political Constitution of 1998.<sup>99</sup> Because of the inconsistencies in domestic law giving rise to untimely proceedings, the Court found the State violated Article 2 (Obligation to Give Domestic Legal Effect to Rights) in relation to Article 7(5) (Right to Be Promptly Brought Before a Judge and Right to a Trial Within Reasonable Time).<sup>100</sup>

The Court did not rule on Articles 5(1) (Right to Physical, Mental, and Moral Integrity) and 5(2) (Prohibition of Torture, and Cruel, Inhuman or Degrading Treatment) because:<sup>101</sup>

*Article 5 (Right to Humane Treatment) affords state citizens the right to be treated with respect and dignity.*<sup>102</sup> *The Court acknowledged that deprivation of liberty might have an adverse affect on an individual's mental and moral integrity, but the parties failed to produce sufficient evidence to issue a conclusive ruling.*<sup>103</sup>

### C. Dissenting and Concurring Opinions

#### 1. Concurring Opinion of Judge Antônio Augusto Cançado Trindade

In a separate opinion, Judge Cançado Trindade argued that there should have been two additional operative paragraphs.<sup>104</sup> First, he advocated for a paragraph establishing a violation of Article 24 (Right to Equal Protection) of the Convention, as a result of the Court's 2 Advisory Opinion No. 18 on the Juridical Condition and Rights of Undocumented Migrants.<sup>105</sup> In the advisory opinion, affirmed in *YATAMA v.*

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98. *Id.*

99. *Id.*

100. *Id.* ¶ 138.

101. *Id.* ¶ 143.

102. *Id.* ¶ 141.

103. *Id.* ¶ 143.

104. *Acosta Calderón v. Ecuador, Merits, Reparations and Costs, Concurring Opinion of Judge Antônio Augusto Cançado Trindade, Inter-Am. Ct. H.R. (ser. C) No. 129, ¶ 10 (June 24, 2005).*

105. *Id.* ¶¶ 2–4.

Nicaragua,<sup>106</sup> the Court declared that equality is an integral part of *jus cogens*, and that “no legal act that is in conflict with this fundamental principle is acceptable.”<sup>107</sup> Accordingly, he argued that Article 114 of the Criminal Code violated Article 24 (Right to Equal Protection) of the Convention.<sup>108</sup> Second, he proposed a paragraph establishing a violation of Article 5 (Right to Humane Treatment) because there was a presumption that the arrest was inhumane, such that “substantial evidence” was not necessary to find a violation.<sup>109</sup>

## 2. Concurring Opinion of Judge Manuel E. Ventura Robles

In a separate opinion, Judge Ventura Robles argued the Court should have considered a violation of Article 5 (Right to Humane Treatment).<sup>110</sup> Specifically, he argued the majority should have decided whether his psychological and moral integrity was violated because Mr. Acosta Calderón spent five years in preventative detention that amounted to an arbitrary detention.<sup>111</sup> Judge Ventura Robles contemplated that Mr. Acosta Calderón must have suffered psychological and moral damage during those five years, and such a lengthy arbitrary detention should be sufficient to prove a violation of Article 5 (Right to Humane Treatment).<sup>112</sup>

## IV. REPARATIONS

The Court ruled unanimously that the State had the following obligations:

### *A. Specific Performance (Measures of Satisfaction and Non-Repetition Guarantee)*

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106. YATAMA v. Nicaragua, Preliminary Objections, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 127, ¶ 124(20) (June 23, 2005); “YATAMA v. Nicaragua,” IACHR Project, LOYOLA OF LOS ANGELES INTERNATIONAL AND COMPARATIVE LAW REVIEW, <https://iachr.lls.edu/cases/yatama-v-nicaragua>.

107. Acosta Calderón v. Ecuador, Concurring Opinion of Judge Antônio Augusto Cançado Trindade, ¶¶ 2–4.

108. *Id.* ¶¶ 5–7.

109. *Id.* ¶¶ 10–11.

110. Acosta Calderón v. Ecuador, Merits, Reparations and Costs, Concurring Opinion of Judge Manuel E. Ventura Robles, Inter-Am. Ct. H.R. (ser. C) No. 129, ¶ 1 (June 24, 2005).

111. *Id.* ¶ 4.

112. *Id.* ¶ 6.

### 1. Judgment as a Form of Reparation

The Court explained that the Judgment itself was a *per se* form of reparation.<sup>113</sup>

### 2. Publish the Judgment

The Court ordered the State to publish the “Proven Facts” and “Operative Paragraphs” sections of the Judgment in the State’s Official Gazette and another newspaper with widespread national circulation.<sup>114</sup>

### 3. Eliminate Mr. Acosta Calderón’s Criminal Record

The State must remove Mr. Acosta Calderón’s name from criminal record public registries as it appears in regard to this case.<sup>115</sup>

## *B. Compensation*

The Court awarded the following amounts:

### 1. Pecuniary Damages and Non-Pecuniary Damages

The Court awarded \$60,000 to Mr. Acosta Calderón for both pecuniary and non-pecuniary damages.<sup>116</sup> It noted, however, that if Mr. Acosta Calderón was not located within one year, the State should place the money into an account or deposit a certificate in a State bank with a good reputation in favor of Mr. Acosta Calderón, and that if, after ten years, he had not come forward to claim the money, it would be returned to the State.<sup>117</sup>

### 2. Costs and Expenses

The Court awarded \$5,000 to CEDHU, \$2,000 to Dr. Alejandro Ponce Villacís, and \$2,000 to Mr. Acosta Calderón, as reimbursement

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113. Acosta Calderón v. Ecuador, Merits, Reparations and Costs, “Operative Paragraphs” ¶ 5.

114. *Id.* “Operative Paragraphs” ¶ 6.

115. *Id.* “Operative Paragraphs” ¶ 7.

116. *Id.* ¶ 160.

117. *Id.* ¶ 170.

for costs and expenses.<sup>118</sup>

3. Total Compensation (including Costs and Expenses ordered):

\$ 69,000

*C. Deadlines*

The Court ordered the State to publish the Judgment within six months.<sup>119</sup> The State must make all required payments within one year.<sup>120</sup> Finally, the State must provide a compliance report within one year.<sup>121</sup>

V. INTERPRETATION AND REVISION OF JUDGMENT

[None]

VI. COMPLIANCE AND FOLLOW-UP

**February 7, 2008:** The Court declared that the State fully complied with its obligations.<sup>122</sup> First, the State published the “Proven Facts” and “Operative Paragraphs” of the Judgment in the State’s official daily newspaper as well as another national daily newspaper.<sup>123</sup> Second, the State erased Mr. Acosta Calderón’s criminal record from public registries.<sup>124</sup> Third, the State deposited \$62,000 into a bank account, to be claimed by Mr. Acosta Calderón within ten years.<sup>125</sup> Finally, the State reimbursed CEDHU and Mr. Ponce Villacís for costs and expenses.<sup>126</sup> Accordingly, the Court ordered the case closed.<sup>127</sup>

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118. *Id.* ¶ 168.

119. *Id.* ¶ 164.

120. *Id.* ¶ 175, “And Decides” ¶ 8.

121. *Id.* ¶ 175, “And Decides” ¶ 9.

122. Acosta Calderón v. Ecuador, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R., “Declares” ¶ 2 (Feb. 7, 2008).

123. *Id.* “Considering” ¶ 5.

124. *Id.* “Considering” ¶ 6.

125. *Id.* “Considering” ¶ 7.

126. *Id.* “Considering” ¶ 8.

127. *Id.* “And Orders” ¶ 1.



## VII. LIST OF DOCUMENTS

*A. Inter-American Court*

## 1. Preliminary Objections

[None]

## 2. Decisions on Merits, Reparations and Costs

[Acosta Calderón v. Ecuador, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 129 \(June 24, 2005\).](#)

[Acosta Calderón v. Ecuador, Merits, Reparations and Costs, Concurring Opinion of Judge Antônio Augusto Cançado Trindade, Inter- Am. Ct. H.R. \(ser. C\) No. 129 \(June 24, 2005\).](#)

[Acosta Calderón v. Ecuador, Merits, Reparations and Costs, Concurring Opinion of Judge Manuel E. Ventura Robles, Inter- Am. Ct. H.R. \(ser. C\) No. 129 \(June 24, 2005\).](#)

## 3. Provisional Measures

[None]

## 4. Compliance Monitoring

[Acosta Calderón v. Ecuador, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(Feb. 7, 2008\).](#)

## 5. Review and Interpretation of Judgment

[None]

*B. Inter-American Commission*

## 1. Petition to the Commission

[Not Available]

## 2. Report on Admissibility

[Acosta Calderón v. Ecuador, Admissibility Report, Report No. 78/01, Inter-Am. Comm'n H.R., Case No. 11.620 \(Oct. 10, 2001\).](#)

## 3. Provisional Measures

[None]

## 4. Report on Merits

Acosta Calderón v. Ecuador, Report on Merits, Report No. 33/03, Inter-Am. Comm'n H.R., Case No. 11.620 (Mar. 3, 2003).

## 5. Application to the Court

[Not Available]

## VIII. BIBLIOGRAPHY

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Julio Jose Rojas Baez, *Academy On Human Rights And Humanitarian Law: Articles And Essays Analyzing Reparations In International Human Rights Law: The Jurisprudence of the Inter-American Court of Human Rights on reparations and Criteria Draft Articles on Responsibility of States for internationally wrongful acts*, 23 AM. U. INT'L L. REV. 91 (2007).