

# García Ibarra et al. v. Ecuador

## ABSTRACT<sup>1</sup>

*This case is about the arbitrary killing of a minor by an on-duty police officer. Although the State investigated and prosecuted the police officer, eventually the Court found Ecuador in violation of the American Convention because the prosecution and judicial proceedings had not met minimum international judicial standards.*

## I. FACTS

### A. Chronology of Events

**September 15, 1992:** Sixteen-year old José Luis García Ibarra hangs out in his neighborhood, Codesa, in the city of Esmeraldas.<sup>2</sup> He is a high-school student living with his mother, father, and six brothers.<sup>3</sup> José Luis sits under a tree chatting with two teenage friends, Byron Rolando Saa Macías and Cristian Cristóbal Rivadeneira.<sup>4</sup> At approximately 8:30 p.m., Mr. Segundo Rafael Mosquera Sosa, age nineteen, and nicknamed “*zapatón*,” approaches the teens to chat.<sup>5</sup> At that same moment, National Police Officer Mr. Guillermo Segundo Cortez Escobedo walks up, accompanied by his friend, Mr. Johnny Mendoza Salazar.<sup>6</sup>

There are two varying accounts of what occurs after these two men arrive.<sup>7</sup> However, in both versions, Officer Cortez Escobedo shoots José

---

1. Jennifer Harkins, Author; Edgar Navarrete, Editor; Erin Gonzalez, Chief IACHR Editor; Cesare Romano, Faculty Advisor

2. García Ibarra v. Ecuador, Report on Admissibility and Merits, Report No. 33/13, Inter-Am. Comm’n H.R., Case No. 11.576, ¶ 26 (Jul. 10, 2013).

3. *Id.* ¶¶ 4; 27; 73; 194. García Ibarra v. Ecuador, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 306, ¶ 178 (Nov. 17, 2015). (Available only in Spanish) .

4. García Ibarra v. Ecuador, Report on Admissibility and Merits, ¶ 78.

5. *Id.*

6. *Id.*

7. *Id.* ¶ 80.

Luis with a Smith and Wesson .38-caliber long barrel revolver, and kills him.<sup>8</sup>

### **Eye Witness Version**

José Luis socializes with a group of young men when Officer Cortez Escobedo approaches the group “in a state of intoxication” and the officer attacks Mr. Mosquera Sosa, “punching him with his fists,” and then using his gun to “hit him with the back of it,” also known as pistol whipping, followed by a series of kicks.<sup>9</sup> Mr. Mosquera Sosa had recently undergone surgery, and tries to show his surgical wound to Officer Cortez Escobedo in an attempt to stop the beating, but the officer continues with his attack and Mr. Mosquera Sosa cannot resist.<sup>10</sup> When Officer Cortez Escobedo finishes beating Mr. Mosquera Sosa, he turns his attention to José Luis, who was close by, and deliberately shoots him “without any provocation.”<sup>11</sup>

### **Officer Cortez Escobedo's Version**

Mr. Mosquera Sosa attempts to rob Officer Cortez Escobedo who responds by fighting him off.<sup>12</sup> During the struggle, Officer Cortez Escobedo hears a shot discharge and José Luis is hit.<sup>13</sup> Officer Cortez Escobedo claims the shot is “accidental” and a “result of the struggl[e].”<sup>14</sup> Furthermore, Officer Cortez Escobedo justifies the situation by stating the youths are “gangsters,” and Mr. Mosquera Sosa “tackled him for no apparent reason” other than to “rob him and steal his gun.”<sup>15</sup>

**September 16, 1992:** Mrs. Pura Vicenta Ibarra Ponce, José Luis' mother, appears at Esmeraldas's First National Police Precinct and files a complaint against Officer Cortez Escobedo for the death of her son.<sup>16</sup> Furthermore, the members of the Taxi Cooperative “Su Amigo” send telegrams to the National Congress, to the Police Command, to the Ecumenical Human Rights Commission (“CEDHU”), to representatives, and to the Governor of Esmeraldas, condemning Jose

---

8. *Id.* ¶ 75.

9. *Id.* ¶ 82. *See also* García Ibarra, Preliminary Objections, Merits, Reparations and Costs, ¶¶ 141; 187.

10. García Ibarra v. Ecuador, Report on Admissibility and Merits, ¶¶ 79; 82.

11. *Id.* ¶ 82.

12. *Id.* ¶ 83.

13. *Id.*

14. *Id.*

15. *Id.*

16. García Ibarra v. Ecuador, Report on Admissibility and Merits, ¶ 84.

Luis' murder by the off-duty policeman, who has a history of attacking peaceful citizens.<sup>17</sup>

**September 17, 1992:** A forensic examination and an autopsy are performed on Jose Luis' body at the municipal cemetery morgue.<sup>18</sup> The autopsy determines the cause of death was an "intracranial hemorrhage with encephalic laceration and multiple skull fractures produced by a firearm projectile."<sup>19</sup>

**September 23, 1992:** The First National Police Precinct issues an order to investigate the crime.<sup>20</sup>

**October 8, 1992:** The First National Police Precinct orders the case be sent to the case docketing and management office of the Esmeraldas Superior Court, where it is assigned to the Third Criminal Court of Esmeraldas.<sup>21</sup>

**October 14, 1992:** The Third Criminal Court of Esmeraldas confirms the "order of detention" against Officer Cortez Escobedo and orders the officer be transferred to the Social Rehabilitation Center.<sup>22</sup> The Court also orders a Constitutional Notice of Incarceration be issued and requests Officer Cortez Escobedo's criminal records.<sup>23</sup>

**October 15, 1992:** The Third Criminal Tribunal requests the First and Second Criminal Tribunals of Esmeraldas to forward Officer Cortez Escobedo's criminal background certificates.<sup>24</sup>

In addition, Officer Cortez Escobedo requests the Third Criminal Judge "overturn the transfer order" because he "represented the national police, and as such, he had participated permanently in the suppression of crime."<sup>25</sup> The Third Criminal Judge annuls the transfer and keeps Officer Cortez Escobedo under police custody.<sup>26</sup>

Also on this date, Ms. Ibarra Ponce sends evidence to the substantive judicial authority showing Officer Cortez Escobedo has a

---

17. *Id.*

18. *Id.* ¶ 85.

19. *Id.*

20. *Id.* ¶ 86.

21. *Id.* ¶ 88.

22. García Ibarra v. Ecuador, Report on Admissibility and Merits, ¶ 89.

23. *Id.*

24. *Id.* ¶ 90.

25. *Id.* ¶ 91.

26. *Id.*

“criminal background and record of police brutality.”<sup>27</sup> Ms. Ibarra Ponce includes information that the officer once “shot a civilian hurting his spinal cord” and paralyzing him.<sup>28</sup> Ms. Ibarra corroborates this statement with photographic evidence.<sup>29</sup>

**February 8, 1994:** The Court closes the preliminary proceedings and orders Ms. Ibarra Ponce, a private plaintiff, to bring formal charges.<sup>30</sup>

**February 10, 1994:** The petitioners send a communication to the Criminal Judge of Esmeraldas, “expressing their concern for the delay” after over a year-and-a-half has passed since the incident.<sup>31</sup>

**March 16, 1994:** The Public Prosecutor’s Office files murder charges against Officer Cortez Escobedo.<sup>32</sup> The prosecution concludes that Officer Cortez Escobedo acted “willfully and deliberately” in firing the shot, and explains:

“...a police officer knows that he is carrying a .38-caliber gun, a powerful and dangerous weapon; he decided to use it when Mosquera’s resistance had already been sapped – assuming there was any resistance –; there was no cause to fire his weapon on a 16-year-old minor who had nothing to do with the matter...Intent does not require days of preparation; it is instantaneous; it happens in minutes, seconds. And that’s what happened here: he decided to use his weapon; he wanted to prevail and he wanted to inflict harm.”<sup>33</sup>

**May 30, 1994:** The Third Criminal Court of Esmeraldas orders a trial and confirms the confinement of Officer Cortez Escobedo pending trial.<sup>34</sup> Both the accused and Ms. Ibarra Ponce file appeals.<sup>35</sup>

**February 14, 1995:** The Superior Court of Esmeraldas declares that after a thorough review of the facts and evidence, the deed committed “constituted a crime for which the accused bore responsibility.”<sup>36</sup> The

---

27. *Id.* ¶ 92.

28. *García Ibarra v. Ecuador*, Report on Admissibility and Merits, ¶ 92.

29. *Id.*

30. *Id.* ¶ 105.

31. *Id.* ¶ 106.

32. *Id.* ¶ 105.

33. *Id.*

34. *García Ibarra v. Ecuador*, Report on Admissibility and Merits, ¶ 108.

35. *Id.* ¶ 109.

36. *Id.*

Court orders the accused to “stand trial for the crime of qualified murder, based on Article 450, subparagraph 1, of the Criminal Code.”<sup>37</sup>

**May 10, 1995:** The case goes to trial and Ms. Ibarra Ponce officially withdraws the charges she had brought for her son’s death.<sup>38</sup> The Commission “does not have any information about the reasons why she withdrew.”<sup>39</sup> According to the petitioners, “a financial settlement had been reached between the plaintiff and the defendant.”<sup>40</sup>

**November 17, 1995:** Trial hearings end and there are three inconsistent rulings issued, one from each of the three members of the First Criminal Court of Esmeraldas.<sup>41</sup>

The first ruling, by the Third Member of the Criminal Court, finds Officer Cortez Escobedo guilty of unintentional homicide and that he should be sentenced to eighteen months in prison because the argument “with Mosquera caused the weapon he was carrying to discharge and fatally wound” José Luis.<sup>42</sup>

The second ruling, by the President of the Criminal Court, holds that Officer Cortez Escobedo is “guilty of the crime of simple homicide” and should be sentenced to eight years in prison because a “weapon cannot be discharged... except by releasing the trigger”, which is impossible when an individual pistol whips someone.<sup>43</sup>

The final ruling, by the Second Member of the Criminal Court, holds that the court did not have jurisdiction because Officer Cortez Escobedo “was carrying out his duties at the time of the event and, as a law enforcement officer, is considered to be on duty 24 hours a day.”<sup>44</sup> He holds that the National Civil Police are the proper authorities “to hear and decide the case.”<sup>45</sup>

Based on the “principle of *in dubio pro reo*, the verdict [imposed by the Court] is the one that imposes the least severe sentence, which in this case is the sentence of [eighteen] months in prison for unintentional homicide.”<sup>46</sup>

---

37. *Id.*

38. *Id.* ¶ 110.

39. *Id.*

40. García Ibarra v. Ecuador, Report on Admissibility and Merits, ¶ 110.

41. *Id.* ¶ 114.

42. *Id.* ¶ 115.

43. *Id.* ¶ 116.

44. *Id.* ¶ 117.

45. *Id.*

46. García Ibarra v. Ecuador, Report on Admissibility and Merits, ¶ 118.

**January 2, 1996:** Officer Cortez Escobedo is released because he has served the sentence imposed “as he had already been in detention for three years and three months.”<sup>47</sup> He files a cassation appeal, challenging the rulings of the First Criminal Court of Esmeraldas, arguing that the case should have been decided before a police court.”<sup>48</sup>

**May 15, 2000:** The Esmeraldas Superior Court denies the appeal and affirms the guilty verdict.<sup>49</sup>

**June 16, 2000:** The case is sent to the Supreme Court for a ruling on the cassation appeal.<sup>50</sup>

**February 26, 2002:** The Second Criminal Chamber of the Supreme Court denies the appeal and affirms.<sup>51</sup>

### *B. Other Relevant Facts*

In 1991, human rights abuses in the State continue to be “frequent, persistent and serious.”<sup>52</sup> In September 1992, just a month after President Sixto Duran-Ballen takes office, a “harsh economic adjustment policy” goes into effect.<sup>53</sup> From August 1992 to July 1993, the cost of an average family’s basic monthly needs rises from \$170 to \$250, while the minimum salary only increased from \$30 to \$53.<sup>54</sup> The adjustment policy worsens the daily life of more than half of the State’s 10.5 million people, and many turn to crime to survive and to support their families.<sup>55</sup>

According to CEDHU, the government “reinforce[s] the State’s repressive apparatus to calm the people, instead of seeking compensatory measures and social programs [to] ease the disastrous effects of the adjustment policy.”<sup>56</sup> According to CEDHU, from “August 1992 to July 1993, twenty-four homicides, forty-one cases of torture, 123 cases of physical maltreatment, 188 arbitrary arrests by the

---

47. *Id.* ¶ 119.

48. *Id.* ¶ 120.

49. *Id.* ¶ 121.

50. *Id.* ¶ 122.

51. *Id.* ¶ 123.

52. Hum. Rts. Watch, *Ecuador: Human Rights Developments*, 1992 World Report, (1992), [https://www.hrw.org/reports/1992/WR92/AMW-07.htm#P515\\_187801](https://www.hrw.org/reports/1992/WR92/AMW-07.htm#P515_187801).

53. Sergio Gaete, *Ecuador: More Human Rights Abuses Under Present Government*, IPS-INTER PRESS SERVICE (Aug. 11, 1993).

54. *Id.*

55. *Id.*

56. *Id.*

armed forces,” and two disappearances occur.<sup>57</sup> The Latin American Human Rights Association (ALDHU) reports that human rights abuses are carried out in the State “by members of the security forces’ lower hierarchy.”<sup>58</sup>

## II. PROCEDURAL HISTORY

### A. Before the Commission

**November 8, 1994:** The Inter-American Commission on Human Rights receives a petition from the CEDHU alleging the State violated various provisions of the American Convention on Human Rights.<sup>59</sup> The Commission registered the petition as case 11.576.<sup>60</sup>

**March 13, 1995:** The Commission orders the case be opened for processing.<sup>61</sup>

**July 10, 2013:** The Commission adopts the Report on Admissibility and Merits 33/13.<sup>62</sup> The Commission concludes that the State is responsible violations of Articles 4 (Right to Life), 5 (Right to Humane Treatment), 8 (Right to a Fair Trial), 19 (Rights of the Child) and 25 (Right to Judicial Protection) of the American Convention.<sup>63</sup> The Commission recommends that the State: (1) perform an adequate and effective investigation; (2) make reparations; and (3) take action to guarantee non-repetition.<sup>64</sup>

### B. Before the Court

**November 23, 2013:** The Commission submits the case to the Court after the State failed to adopt its recommendations.<sup>65</sup> The Commission finds the judicial process “failed to comply with the minimum standards

---

57. *Id.*

58. Sergio Gaete, *Ecuador: Abuses Persist Despite an Improved Human Rights Record*, IPS-INTER PRESS SERVICE (July 31, 1992).

59. García Ibarra v. Ecuador, Report on Admissibility and Merits, ¶ 1.

60. *Id.* ¶ 2.

61. *Id.*

62. *Id.* ¶ 198.

63. *Id.* ¶ 197.

64. *Id.* ¶ 198.

65. *IACHR Takes Case Involving Ecuador to the Inter-American court*, ORG. OF AM. ST., <http://www.oas.org/en/iachr/media-center/PReleases/2013/099.asp> (last visited July 29, 2017)

that the jurisprudence that the Inter-American system has established” for this type of case.<sup>66</sup>

**July 30, 2014:** The State submits its brief containing its answer and three preliminary objections.<sup>67</sup> The State: (1) objects to the Court acting as a court of “fourth instance” when it was resolved in the domestic courts; (2) alleges that the Admissibility Report is null due to a “lack of motivation”; and (3) alleges that the Commission acted illegally.<sup>68</sup>

In response to the first objection, the Court notes that it does not act as a “fourth court” and the term “fourth instance” is not used in the Court’s jurisprudence.<sup>69</sup> Instead, the Court has an “intervening and complementary character”<sup>70</sup> and here, the Court is not reviewing the domestic decision, but rather whether the process was compatible with the American Convention.<sup>71</sup> Thus, the Court does not regard the State’s “fourth instance” argument as a preliminary objection and declares it is inadmissible.<sup>72</sup>

In response to the State’s second preliminary objection, alleging that the Commission lacked sufficient motivation in its Admissibility Report, the Court notes that while the American Convention “expressly requires” the motivation in the judgment of the Court, it does not require motivation in the reports of the Commission.<sup>73</sup> Even so, in the given case, the Court finds that the Commission’s Admissibility Report is motivated.<sup>74</sup>

The State’s third preliminary objection alleges that the Commission acted illegally when it did not justify the reasons that led it to combine the admissibility with the merits in its Admissibility Report.<sup>75</sup> The Court does not consider this prejudicial to the State, but rather a procedure that the Commission undertook in compliance with a valid regulation in force at the time that gives the Commission flexibility to defer the treatment of admissibility along with the merits.<sup>76</sup>

---

66. *García Ibarra v. Ecuador*, Petition to the Court, Inter-Am. Comm’n H.R., Case No. 11.576, 1 (Nov. 23, 2013).

67. *García Ibarra v. Ecuador*, Preliminary Objections, Merits, Reparations and Costs, ¶ 7.

68. *Id.* ¶ 13.

69. *Id.* ¶¶ 17; 18.

70. *Id.* ¶ 17.

71. *Id.* ¶¶ 21; 22.

72. *Id.* ¶ 23.

73. *García Ibarra v. Ecuador*, Preliminary Objections, Merits, Reparations and Costs, ¶ 31.

74. *Id.*

75. *Id.* ¶ 33.

76. *Id.*

Because the State has not shown how this action prejudiced its defense, the Court rejects this preliminary objection.<sup>77</sup>

**December 10, 2014:** The Court considers and accepts the admissibility of two expert opinions offered by the Commission as evidence.<sup>78</sup> Additionally, the Court considers the statements of two experts offered by the representatives of the victims to be inadmissible.<sup>79</sup>

### 1. Violations Alleged by Commission<sup>80</sup>

Article 4 (Right to Life)  
Article 5 (Right to Humane Treatment)  
Article 8 (Right to a Fair Trial)  
Article 19 (Rights of the Child)  
Article 25 (Right to Judicial Protection)

### 2. Violations Alleged by Representatives of the Victims<sup>81</sup>

Same Violations Alleged by Commission.<sup>82</sup>

## III. MERITS

### A. Composition of the Court

Humberto Antonio Sierra Porto, President  
Roberto F. Caldas, Vice President  
Manuel E. Ventura Robles, Judge  
Diego García-Sayán, Judge  
Alberto Pérez Pérez, Judge  
Eduardo Vio Grossi, Judge  
Eduardo Ferrer Mac-Gregor Poisot, Judge

---

77. *Id.*

78. *García Ibarra v. Ecuador*, Provisional Measures, Order of the President of the Court, Inter-Am. Ct. H.R. (ser. E) “Admissibility of the expert evidence offered by the Inter-American Commission” ¶ 13 (Dec. 10, 2014).

79. *Id.* at “Admissibility of Expert Reports Offered by Representatives” ¶ 9.

80. *García Ibarra v. Ecuador*, Petition to the Court, at 2.

81. The Ecumenical Commission on Human Rights (CEDHU), César Duque Chasi, Legal Adviser, served as representative of the victims. *García Ibarra v. Ecuador*, Provisional Measures, Order of the President of the Court, n.1 (Dec. 10, 2014).

82. *García Ibarra v. Ecuador*, Preliminary Objections, Merits, Reparations and Costs, ¶ 123.

Pablo Saavedra Alessandri, Secretary  
Emilia Segares Rodríguez, Deputy Secretary

*B. Decision on the Merits*

**November 17, 2015:** The Court issues its Judgment on Merits, Reparations and Costs.<sup>83</sup>

The Court found unanimously that the State had violated:

Article 4(1) (Prohibition of Arbitrary Deprivation of Life), in relation to Article 1(1) (Obligation of Non-Discrimination) and 19 (Rights of the Child) of the Convention, to the detriment of José Luis,<sup>84</sup> because:

*Article 4 (Right to Life), related to Article 1(1) (Obligation of Non-Discrimination) of the American Convention, requires States perform both a negative and positive obligation: first, that no person shall be arbitrarily deprived of his life; and second, that States take all appropriate measures to protect and preserve the right to life of all persons.*<sup>85</sup>

*Here, the Court found that the State arbitrarily deprived José Luis of his life.<sup>86</sup> José Luis, and the group of youths with whom he was socializing at the time of his death, were not gang members.<sup>87</sup> José Luis had no police record, but rather was a quiet high school student.<sup>88</sup> The Court reasoned that even if the teens had been gang members, when José Luis was executed, he was not doing anything that could be considered a serious attack against the police officer.<sup>89</sup> The evidence showed that Officer Cortez Escobedo killed José Luis in cold blood and used a weapon given to him by the State to protect citizens.<sup>90</sup> Officer Cortez Escobedo used lethal force without any justification or legitimate purpose.<sup>91</sup> Therefore, the Court found José Luis' death arbitrary.<sup>92</sup>*

---

83. *Id.*

84. *Id.* ¶ 118.

85. *Id.* ¶ 97.

86. *Id.* ¶ 106.

87. *Id.* ¶ 93.

88. *García Ibarra v. Ecuador*, Preliminary Objections, Merits, Reparations and Costs, ¶ 93.

89. *Id.*

90. *Id.*

91. *Id.* ¶ 110.

92. *Id.* ¶ 106.

*In addition, the State is responsible for violating Article 4(1) (Prohibition of Arbitrary Deprivation of Life) in relation to Article 19 (Rights of the Child) of the Convention, because José Luis was only sixteen years old when he died.<sup>93</sup> Minors enjoy special protection under Article 19 (Rights of the Child), and have established rights in the Convention, as defined according to the particular circumstances of each specific case.<sup>94</sup> No evidence was provided to show the police officers had received training or knew of their duty to protect children and adolescents.<sup>95</sup> Furthermore, because the State claimed that the police had assumed that “youths gathered in a corner of a poor neighborhood [were] gang members,” the Court found that young people are stigmatized as the cause for public insecurity and the State believes youths “must be repressed.”<sup>96</sup> The Court stressed that the State cannot allow practices that foster the stigma that certain groups of children and young people are conditioned to delinquency, or are necessarily linked to the increase of citizen insecurity.<sup>97</sup> Therefore, the Court found José Luis’ death was a consequence of the State’s failure to inform the police, and thereby denied José Luis, an adolescent, with special protection that was supposed to shield him from State violence.<sup>98</sup>*

*The Court reiterated that the State must reasonably prevent human rights violations, and must conduct effective investigations into violations committed within its jurisdiction to identify those responsible, to impose appropriate sanctions, and to ensure the victim has adequate reparation.<sup>99</sup> Once it becomes known that a State’s agent has used a firearm with lethal consequences, the State is obliged to immediately initiate a “serious, independent, impartial and effective investigation.”<sup>100</sup> The Court concluded José Luis’ death was due to the State’s lack of precautionary oversight over its police force,<sup>101</sup> and because Officer Cortez Escobedo did not comply with the rules for lethal weapons.<sup>102</sup>*

---

93. *Id.* ¶ 117

94. *García Ibarra v. Ecuador*, Preliminary Objections, Merits, Reparations and Costs, ¶ 117.

95. *Id.*

96. *Id.* ¶ 93.

97. *Id.* ¶ 117.

98. *Id.* ¶¶ 115-17.

99. *Id.* ¶ 98.

100. *García Ibarra v. Ecuador*, Preliminary Objections, Merits, Reparations and Costs, ¶ 98.

101. *Id.* ¶ 115.

102. *Id.*

*Because the State failed to oversee its police and because it permitted practices stigmatizing children as conditioned to delinquency, the Court held that the State is responsible for the arbitrary deprivation of the life of José Luis, a child, under the terms of Article 4(1) (Prohibition of Arbitrary Deprivation of Life), in relation to Articles 1(1) (Obligation of Non-Discrimination) and 19 (Rights of the Child) of the Convention.*<sup>103</sup>

Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) and Article 25 (Right to Judicial Protection), in relation to Article 1(1) (Obligation of Non-Discrimination) of the Convention, to the detriment of Pura Vicenta Ibarra Ponce, Alfonso Alfredo García Macías and Ana Lucía, Lorena Monserrate, Luis Alfonso, Santo Gonzalo, Juan Carlos and Alfredo Vicente García Ibarra,<sup>104</sup> because:

*The Court found the State lacked due diligence when investigating the facts and failed to resolve the matter in a reasonable amount of time.*<sup>105</sup>

*The State's investigative and judicial response did not offer a satisfactory, sufficient, and effective account of the truth of José Luis' death; and it was not shown that the criminal proceeding was a suitable or effective means to guarantee reparations.*<sup>106</sup>

*First, the State lacked due diligence in investigating the facts.*<sup>107</sup> *The Court noted the jurisdictional conflict between ordinary jurisdiction and the police jurisdiction remained unresolved throughout the first thirteen months of the investigation.*<sup>108</sup> *Also, technical ballistics tests were not performed to determine the feasibility of accidental firing of the firearm as caused by pistol whipping.*<sup>109</sup>

*The Court also found that the State was responsible for unreasonable delays in the proceedings.*<sup>110</sup> *The Court reiterated its previous case law and reasoned that an unreasonably long investigation or proceeding is a per se breach of judicial guarantees.*<sup>111</sup> *The Court concluded that this case was not complex because the perpetrator, victim, and location of*

---

103. *Id.* ¶¶ 116-18.

104. *Id.* ¶ 171.

105. *Id.*

106. *García Ibarra v. Ecuador, Preliminary Objections, Merits, Reparations and Costs*, ¶ 171.

107. *Id.* ¶ 143.

108. *Id.* ¶ 140.

109. *Id.* ¶ 141.

110. *Id.* ¶ 164.

111. *Id.* ¶ 159.

*the crime were fully identified, the facts were immediately known, and the relevant authorities had free access to the crime scene.*<sup>112</sup> *Despite the uncomplicated nature of the case, the criminal proceedings lasted nine years and five months, and within that time frame, the proceedings were in a period of unjustified inactivity for more than seven years.*<sup>113</sup>

*Second, the State’s investigative and judicial response did not offer a satisfactory, sufficient, or effective account of José Luis’ death.*<sup>114</sup> *The Court stated a clear ruling contains a reasoned justification for reaching a conclusion.*<sup>115</sup> *The reasoning should state the facts, motives, and rules the authority used to make its decision.*<sup>116</sup> *Here, the Court found the investigative and judicial responses of the State were not satisfactory, sufficient, or effective.*<sup>117</sup> *The criminal court adjudicated irregularly and the trial ended with a judgment containing three different votes by each of its members who used different criteria to make their decisions.*<sup>118</sup> *In the end, the judges chose the sentence that would be “most favorable to the inmate.”*<sup>119</sup>

*Finally, the criminal proceedings did not facilitate reparations for the victims.*<sup>120</sup> *The State argued that by withdrawing her complaint against the State, Mr. García Ibarra’s mother was adequately compensated.*<sup>121</sup> *The State also argued that following the police officer’s dismissal, no further reparations to the victim or their family were required.*<sup>122</sup> *The Court disagreed and found the agreement between the State and the mother did not amount to a reparation and found no evidence that the dismissal of the police officer was the result of a disciplinary procedure.*<sup>123</sup>

*Therefore, the Court found that for the above reasons, the State was responsible for breaching its obligation to guarantee the “rights of access and to know the truth, contained in the rights to judicial guarantees and judicial protection” under Articles 8(1) (Right to a*

---

112. García Ibarra v. Ecuador, Preliminary Objections, Merits, Reparations and Costs, ¶ 160.

113. *Id.* ¶ 164.

114. *Id.* ¶ 171.

115. *Id.* ¶ 151.

116. *Id.*

117. *Id.* ¶ 171.

118. García Ibarra v. Ecuador, Preliminary Objections, Merits, Reparations and Costs, ¶ 145.

119. *Id.* ¶ 149.

120. *Id.* ¶ 156.

121. *Id.* ¶ 155.

122. *Id.*

123. *Id.*

*Hearing Within Reasonable Time by a Competent and Independent Tribunal) and 25 (Right to Judicial Protection) of the American Convention, in relation to Article 1(1) (Obligation of Non-Discrimination).*<sup>124</sup>

C. *Dissenting and Concurring Opinions*

[None]

IV. REPARATIONS

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

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

1. Publish the Judgment

Within six months from the date of notification of this Judgment, the State must publish both the official summary of this Judgment and the entire Judgment, and make it available for at least one year on an official national website accessible to the public, and on other State-designated official websites.<sup>125</sup>

2. Compensate the Victims

Within one year, the State must compensate the victims' pecuniary and non-pecuniary damages and reimburse funeral costs and expenses.<sup>126</sup>

3. Submit a Compliance Report

Within one year, the State must submit a report to the Court on the steps it has taken to comply with this Judgment.<sup>127</sup>

---

124. *García Ibarra v. Ecuador, Preliminary Objections, Merits, Reparations and Costs*, ¶ 171.

125. *Id.* ¶ 181.

126. *Id.* ¶¶ 196; 219; 225.

127. *Id.*

### B. Compensation

The Court awarded the following amounts:

#### 1. Pecuniary Damages

The Court awarded \$180,000 in compensation for loss of income due to the death of José Luis, which must be delivered in equal parts, to Ms. Ibarra Ponce and Mr. Alfonso Alfredo García Macías, within one year from the date of notification of the Judgment.<sup>128</sup> The State must also pay to the family a proportional sum of \$500.00 as compensation for funeral expenses.<sup>129</sup> The Court also awarded additional economic losses of \$2,500.00.<sup>130</sup> These amounts must be delivered in equal parts to Ms. Ibarra Ponce and Mr. García Macías, within one year from the date of notification of the Judgment.<sup>131</sup>

#### 2. Non-Pecuniary Damages

The Court awarded non-pecuniary damages to compensate for the sufferings and the afflictions caused to the direct victim and his relatives.<sup>132</sup> The State was ordered to pay \$60,000 to the estate of José Luis, \$35,000 to Pura Vicenta Ibarra Ponce, \$20,000 to Alfonso Alfredo García Macías, \$10,000 each to Ana Lucía García Ibarra, Lorena Monserrate García Ibarra, Luis Alfonso García Ibarra, Santo Gonzalo García Ibarra, Juan Carlos García Ibarra, and Alfredo Vicente García Ibarra.<sup>133</sup>

#### 3. Costs and Expenses

The State shall pay \$10,000 for expenses incurred in processing the proceedings before the Inter-American System of Human Rights.<sup>134</sup> The payment is to be made to the CEDHU within one year from the date of notification of this Judgment.<sup>135</sup>

---

128. *Id.* ¶¶ 195; 219.

129. *Id.* ¶ 196.

130. García Ibarra v. Ecuador, Preliminary Objections, Merits, Reparations and Costs, ¶ 196.

131. *Id.*

132. *Id.* ¶¶ 200-01.

133. *Id.* ¶ 201.

134. *Id.* ¶ 218.

135. *Id.* ¶¶ 213; 218.

## 4. Total Compensation (including Costs and Expenses ordered):

\$358,000

*C. Deadlines*

The State shall pay the pecuniary and non-pecuniary damages and the reimbursement of costs and expenses established in this Judgment directly to the persons indicated within one year from the date of notification of this Judgment.<sup>136</sup>

## V. INTERPRETATION AND REVISION OF JUDGMENT

[None]

## VI. COMPLIANCE AND FOLLOW-UP

[None]

## VII. LIST OF DOCUMENTS

*A. Inter-American Court*

## 1. Preliminary Objections

[García Ibarra v. Ecuador, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 306 \(Nov. 17, 2015\). \(Available only in Spanish\)](#)

## 2. Decision on Merits, Reparations and Costs

[None]

## 3. Provisional Measures

[García Ibarra v. Ecuador, Provisional Measures, Order of the President of the Court, Inter-Am. Ct. H.R. \(ser. E\) \(Dec. 10, 2014\).](#)

---

136. García Ibarra v. Ecuador, Preliminary Objections, Merits, Reparations and Costs, ¶ 219.

## 4. Compliance Monitoring

[None]

## 5. Review and Interpretation of the Judgment

[None]

*B. Inter-American Commission*

## 1. Petition to the Commission

[Not Available]

## 2. Report on Admissibility

[García Ibarra v. Ecuador, Report on Admissibility and Merits, Report No. 33/13, Inter-Am. Comm'n H.R., Case No. 11.576, \(July 10, 2013\).](#)

## 3. Provisional Measures

[None]

## 4. Report on Merits

[None]

## 5. Application to the Court

[García Ibarra v. Ecuador, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 11.576, \(Nov. 23, 2013\).](#)

## VIII. BIBLIOGRAPHY

S. Gaete, *Ecuador: More Human Rights Abuses Under Present Government*, IPS-INTER PRESS SERVICE (Aug. 11, 1993).

Hum. Rts. Watch, *Ecuador: Human Rights Developments*, 1992 World Report, (1992), [https://www.hrw.org/reports/1992/WR92/AMW-07.htm#P515\\_187801](https://www.hrw.org/reports/1992/WR92/AMW-07.htm#P515_187801).

S. Gaete, *Ecuador: Abuses Persist Despite an Improved Human Rights Record*, IPS-INTER PRESS SERVICE (July 31, 1992).