

Herrera Espinoza et al. v. Ecuador

ABSTRACT¹

This case is about the botched prosecution of members of a drug trafficking cartel. The court found violation of several provisions of the American Convention, as well as of the Inter-American Convention to Prevent and Punish Torture.

I. FACTS

A. Chronology of Events

July 1994: The Interpol office of Pichincha puts Ms. Alba Tinitana under surveillance for her suspected involvement in an international drug trafficking ring.²

August 2, 1994: Police arrest Mr. Jorge Eliécer Herrera Espinoza, Mr. Eusebio Domingo Revelles, Mr. Emmanuel Cano, and Mr. Luis Alfonso Jaramillo González (“the foreigners”) during a drug enforcement operation by the name of Operation “Linda.”³ Mr. Herrera Espinoza and Mr. Jaramillo González are Colombian nationals.⁴ Mr. Cano is a French national and Mr. Domingo Revelles is a Spanish national.⁵

August 3, 1994: The Police Chief of Pichincha authorizes the arrest of the four foreigners.⁶ The Police Chief orders an investigation be completed within forty-eight hours and denies the foreigners access to legal counsel.⁷

1. Nicholas Lusk, Author; Raymond Chavez, Editor; Kimberly Barreto, Chief IACHR Editor; Cesare Romano, Faculty Advisor

2. Herrera Espinoza et al. v. Ecuador, Admissibility Report and Report on Merits, Report No. 40/14, Inter-Am. Comm’n H.R., Case No. 11.438, ¶ 8 (July 17, 2014).

3. *Id.* ¶ 21.

4. *Id.* ¶ 8.

5. *Id.*

6. *Id.* ¶ 9.

7. *Id.*

August 8, 1994: The police file a report based on incriminating statements provided by the foreigners obtained through torture.⁸

August 9, 1994: Forensic medical experts confirm the prisoners sustained torture-related injuries.⁹

August 19, 1994: The Twelfth Judge for Criminal Matters of Pichincha formalizes criminal charges, institutes criminal proceedings and orders that the foreigners be held in custody before trial.¹⁰

September 28, 1994: Mr. Domingo Revelles provides an incriminating statement to the police.¹¹

October 7, 1994: Mr. Herrera Espinoza, Mr. Jaramillo González, and Mr. Cano provide incriminating statements to police.¹²

December 15, 1994: Mr. Herrera Espinoza escapes custody.¹³

May 12, 1995: Mr. Cano escapes custody.¹⁴

November 30, 1995: The Twelfth Prosecutor presents the outcome of the criminal investigation to the Twelfth Judge for Criminal Matters of Pichincha.¹⁵ The Prosecutor formally accuses Mr. Cano of aiding in the crime of possession of narcotics and Mr. Herrera Espinoza, Mr. Jaramillo González, and Mr. Domingo Revelles with concealing those crimes.¹⁶

September 13, 1995: The Twelfth Judge for Criminal Matters of Pichincha closes the preliminary investigation despite receiving medical reports evidencing torture.¹⁷ The judge orders the Office of the Public Prosecutor to issue its decision regarding whether it will prosecute the foreigners.¹⁸ At this point, because both Mr. Herrera Espinoza and Mr.

8. Herrera Espinoza et al. v. Ecuador, Admissibility Report and Report on Merits, Report No. 40/14, Inter-Am. Comm'n H.R., Case No. 11.438, ¶ 9.

9. *Id.*

10. *Id.*

11. Herrera Espinoza et al. v. Ecuador, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. L) No. 316, ¶ 63 (Sept. 1, 2016).

12. *Id.*

13. *Id.* ¶ 64.

14. *Id.*

15. *Id.* ¶ 65.

16. *Id.*

17. Jorge Eliécer Herrera Espinoza et al. v. Ecuador, Report on Merits, ¶ 10.

18. *Id.*

Cano have escaped custody, proceedings in regards to Mr. Herrera Espinoza and Mr. Cano are suspended.¹⁹

June 14, 1996: The Thirteenth Criminal Court of Pichincha issues the appeal to plenary trial.²⁰

June 19, 1996: Mr. Domingo Revelles appeals the order beginning the trial.²¹

July 2, 1996: Mr. Domingo Revelles sends a letter to the President of the Supreme Court alleging violations of his rights throughout his criminal proceedings and claims that he has been held incommunicado and tortured.²²

August 14, 1996: The judge is recused and the case is assigned to the Thirteenth Judge for Criminal Matters of Pichincha.²³ The new judge issues an order to begin trial.²⁴ In making this decision, the judge considers the statements provided by the foreigners, and the fact that no evidence had been provided that the foreigners were legally present in Ecuador.²⁵ The judge also notes that police reports and the fact that drugs had been found in the possession of one of the foreigners provide *prima facie* support for the charges.²⁶

November 18, 1997: Mr. Domingo Revelles files an appeal of the order beginning trial.²⁷ The Fourth Chamber of the Superior Court of Quito hears the appeal and finds against Mr. Domingo Revelles, stating that he had not been forced to plead guilty when he provided his initial statement.²⁸

April 1, 1998: The Second Court for Criminal Matters of Pichincha hears trial proceedings in which Mr. Domingo Revelles is convicted as an accomplice and sentenced to six years in prison.²⁹

19. *Id.*

20. Herrera Espinoza et al. v. Ecuador, Merits, Reparations, and Costs, ¶ 66.

21. *Id.* ¶ 67.

22. *Id.* ¶ 68.

23. Jorge Eliécer Herrera Espinoza et al. v. Ecuador, Report on Merits, ¶ 11.

24. *Id.*

25. *Id.*

26. *Id.*

27. *Id.* ¶ 12.

28. *Id.*

29. Jorge Eliécer Herrera Espinoza et al. v. Ecuador, Report on Merits, ¶ 13.

August 25, 1998: Mr. Domingo Revelles files a petition for *habeas corpus* with the Office of the Mayor of Quito.³⁰ The basis for the petition is the length of time Mr. Domingo Revelles and the other victims were confined without judgment, the illegality of their initial arrest and detention, and that the police tortured them.³¹ The office denies the petition.³²

November 9, 1998: The Constitutional Court hears Mr. Domingo Revelles's *habeas corpus* petition on appeal and denies it.³³

November 24, 1998: The Fourth Chamber of the Superior Court reviews Mr. Domingo Revelles's conviction and upholds the conviction and his sentence.³⁴

B. Other Relevant Facts

Ecuador has long battled narcotics smuggling.³⁵ The difficulty with narcotics flowing through Ecuador stems from its position between Colombia, which was the world's largest cocaine refiner and Peru, which was the world's largest cocoa leaf grower.³⁶

In 1992, police in Ecuador carried out the largest drug raids in the country up to that point to disrupt the flow of drugs and drug money into the country.³⁷ At the time, Ecuadorian nationals were hopeful that the raids would help maintain peace in their country.³⁸

II. PROCEDURAL HISTORY

A. Before the Commission

October 31, 1994: Mrs. Elsie Monje, Director of the Ecumenical Human Rights Commission ("CEDHU"), files a petition on behalf of Jorge

30. *Id.* ¶ 14.

31. *Id.* ¶¶ 14-15.

32. *Id.* ¶ 14.

33. *Id.*

34. *Id.* ¶ 13.

35. James Brooke, *Ecuador Fighting to Avoid Drug Link*, N.Y. Times (Jan. 27, 1991), <https://nyti.ms/29n3WpF>.

36. *Id.*

37. James Brooke, *Ecuador Journal; With Graft Rife, Nation Reins In the Cocaine King*, N.Y. TIMES (July 22, 1992), <https://nyti.ms/29bdUuf>.

38. *Id.*

Eliécer Herrera Espinoza, Luis Alfonso Jaramillo González, Eusebio Domingo Revelles, and Emmanuel Cano.³⁹

April 21, 2003: The Commission defers its determination of admissibility pursuant to Article 37.3 of the Convention.⁴⁰

August 2, 2012: The Commission asks the petitioners if they want to proceed with their case as seven years have passed since the last action with the case.⁴¹

September 4, 2012: CEDHU reaffirms the allegations in the petition and requests to continue the procedure of the case.⁴²

July 17, 2014: The Commission issues and adopts Admissibility and Merits Report No. 40/14 declaring the petition admissible in relation to Articles 5 (Right to Humane Treatment), 7 (Right to Personal Liberty), 8 (Right to a Fair Trial), and 25 (Right to Judicial Protection) of the American Convention in relation to Articles 1(1) (Obligation of Non-Discrimination) and 2 (Obligation to Give Domestic Legal Effect to Rights) of the same instrument and Articles 1 (Obligation to Prevent and Punish Torture), 6 (Obligation to Take Effective Measures and Punish Torture and Cruel, Inhumane, and Degrading Treatment), and 8 (Obligation to Investigate and Prosecute) of the Inter-American Convention to Prevent and Punish Torture.⁴³ The Commission rejects the State's argument that the petition is inadmissible because: (1) court proceedings timely followed the arrests of the victims; (2) evidence of torture was insufficient; (3) legal requirements were satisfied for the arrests; (4) the pretrial detention of the victims was in compliance with the Convention; and (5) the victims had sufficient access to judicial protection and remedies which were not exhausted.⁴⁴ The Commission recommends the State: (1) pay full reparations to the victims; (2) conduct a complete and thorough investigation within a reasonable time; (3) punish State officials for actions and omissions contributing to the plight of the victims, and; (4) adopt measures to prevent the reoccurrence of similar acts.⁴⁵

39. Herrera Espinoza et al. v. Ecuador, Admissibility Report and Report on Merits, ¶ 1.

40. Herrera Espinoza et al. v. Ecuador, Merits, Reparations, and Costs, ¶ 2.

41. *Id.*

42. *Id.*

43. Herrera Espinoza et al. v. Ecuador, Admissibility Report and Report on Merits, ¶ 225.

44. *Id.* ¶¶ 21-27.

45. *Id.* "Recommendations," ¶¶ 1-4.

B. Before the Court

November 21, 2014: The Commission submits the case to the Court after the State failed to adopt its recommendations.⁴⁶

1. Violations Alleged by Commission⁴⁷

Article 5 (Right to Humane Treatment)

Article 7 (Right to Personal Liberty)

Article 8 (Right to a Fair Trial)

Article 25 (Right to Judicial Protection)

all in relation to:

Article 1(1) (Obligation of Non-Discrimination)

Article 2 (Obligation to Give Domestic Legal Effect to Rights) of the American Convention.

Article 1 (Obligation to Prevent and Punish Torture)

Article 6 (Obligation to Take Effective Measures and Punish Torture and Cruel, Inhuman, and Degrading Treatment)

Article 8 (Obligation to Investigate and Prosecute) of the Inter-American Convention to Prevent and Punish Torture

2. Violations Alleged by Representatives of the Victims⁴⁸

Same Violations Alleged by Commission.

June 26, 2015: The State submits two preliminary objections claiming that: (1) the Court was not competent to hear this case with respect to the Inter-American Convention to Prevent and Punish Torture, and; (2) Mr. Domingo Revelles had not exhausted his domestic remedies.⁴⁹

August 19, 2015: The Court determines it is competent to analyze violations of the Inter-American Convention to Prevent and Punish Torture after December 9, 1999, the date on which the treaty entered into force for Ecuador.⁵⁰ The Court also rejected the State's objection of exhaustion of domestic remedies because Mr. Domingo Revelles's

46. Herrera Espinoza et al. v. Ecuador, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 11.438.

47. Herrera Espinoza et al. v. Ecuador, Admissibility Report and Report on Merits, ¶ 225.

48. Mr. César Duque of the CEDHU served as representative of the victims.

49. Herrera Espinoza et al. v. Ecuador, Merits, Reparations, and Costs, ¶ 13.

50. *Id.* ¶¶ 17-18.

appeals in the State courts did not constitute an adequate legal remedy.⁵¹ The Court further clarified that such exhaustion would have simply extended the deprivation of Mr. Domingo Revelles' liberty and the State had already been made aware of the violations alleged by Mr. Domingo Revelles.⁵²

III. MERITS

A. *Composition of the Court*⁵³

Roberto F. Caldas, President
Eduardo Ferrer Mac-Gregor Poisot, Vice-President
Eduardo Vio Grossi, Judge
Humberto Antonio Sierra Porto, Judge
Elizabeth Odio Benito, Judge
Eugenio Raúl Zaffaroni, Judge

Pablo Saavedra Alessandri, Secretary
Emilia Segares Rodríguez, Deputy Secretary

B. *Decision on the Merits*

September 1, 2016: The Court issues its Judgment on Preliminary Objections, Merits, Reparations and Costs.⁵⁴

The Court found unanimously that Ecuador had violated:

Articles 5(1) (Right to Physical, Mental and Moral Integrity) and 5(2) (Prohibition of Torture, and Cruel, Inhuman or Degrading Treatment), in relation to Article 1(1) (Obligation of Non-Discrimination) of the American Convention, to the detriment of Mr. Domingo Revelles, Mr. Herrera Espinoza, Mr. Cano and Mr. Jaramillo González,⁵⁵ because:

*Torture occurs when abuse: (1) is intentional; (2) causes severe physical or mental suffering, and; (3) is committed for any purpose.*⁵⁶ *Impartial*

51. *Id.* ¶¶ 34-35.

52. *Id.* ¶¶ 32, 33.

53. Judge Pazmiño Freire did not participate in deliberation of this case because she is an Ecuadorian national. *Id.* n. *.

54. *See id.*

55. Herrera Espinoza et al. v. Ecuador, Merits, Reparations, and Costs, ¶¶ 109-110.

56. *Id.* ¶ 87.

*medical evaluations corroborated the prisoners' claims of abuse and demonstrated that the prisoners suffered beatings and injuries while they were in custody indicative of torture.*⁵⁷ *The State has a duty to investigate any possible acts of torture or other cruel, inhumane or degrading treatment.*⁵⁸ *Here, the State was made aware of the allegations of torture and failed to satisfy its duty to investigate.*⁵⁹ *The State is therefore liable for acts of torture and for failure to investigate those acts, thus violating articles 5(1) (Right to Physical, Mental and Moral Integrity) and 5(2) (Prohibition of Torture, and Cruel, Inhuman or Degrading Treatment), in relation to article 1(1) (Obligation of Non-Discrimination) of the American Convention.*⁶⁰

Articles 5(1) (Right to Physical, Mental and Moral Integrity) and 5(2) (Prohibition of Torture, and Cruel, Inhumane or Degrading Treatment), in relation to Article 1(1) (Obligation of Non-Discrimination) of the American Convention, as well as Articles 1 (Obligation to Prevent and Punish Torture), 6 (Obligation to Take Effective Measures and Punish Torture and Cruel, Inhumane, and Degrading Treatment), and 8 (Obligation to Investigate and Prosecute) of the Inter-American Convention to Prevent and Punish Torture, to the detriment of Mr. Domingo Revelles, Mr. Herrera Espinoza, Mr. Cano and Mr. Jaramillo González,⁶¹ because:

*It is the duty of the State to properly and immediately investigate, ex officio, torture and other cruel, inhumane treatment when the State is made aware of such treatment.*⁶² *Here, the State was made aware of the ill treatment and did not investigate.*⁶³ *As such, the State violated Articles 5(1) (Right to Physical, Mental and Moral Integrity) and 5(2) (Prohibition of Torture, and Cruel, Inhumane or Degrading Treatment), in relation to Article 1(1) (Obligation of Non-Discrimination) of the American Convention, as well as Articles 1 (Obligation to Prevent and Punish Torture), 6 (Obligation to Take Effective Measures and Punish Torture and Cruel, Inhumane, and Degrading Treatment), and 8 (Obligation to Investigate and Prosecute) of the Inter-American Convention to Prevent and Punish Torture, to the detriment of Mr.*

57. *Id.* ¶ 101.

58. *Id.* ¶ 103.

59. *Id.* ¶ 104.

60. *Id.* ¶ 110.

61. Herrera Espinoza et al. v. Ecuador, Merits, Reparations, and Costs, "Decides," ¶ 4.

62. *Id.* ¶ 103.

63. *Id.* ¶ 104.

*Domingo Revelles, Mr. Herrera Espinoza, Mr. Cano and Mr. Jaramillo González.*⁶⁴

Articles 7(1) (Right to Personal Liberty and Security), 7(2) (Prohibition of Deprivation of Liberty Unless for Reasons and Conditions) 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) (Obligation of Non-Discrimination) of the American Convention, to the detriment of Mr. Domingo Revelles, Mr. Herrera Espinoza, Mr. Cano and Mr. Jaramillo González,⁶⁵ because:

Restrictions on the right of personal liberty are allowed only when they occur through the adoption of strictly-followed laws.⁶⁶ State laws in force at the time of the prisoners' arrests required a warrant for an arrest unless caught in the act.⁶⁷ Neither party here alleged the prisoners were caught in the act.⁶⁸ Moreover, no arrest warrant was issued when the prisoners were arrested.⁶⁹ These arrests did not comply with the provisions of State law or the American Convention.⁷⁰ Thus, the Court found that the State violated Articles 7(1) (Right to Personal Liberty and Security) and 7(2) (Prohibition of Deprivation of Liberty Unless for Reasons and Conditions) in relation to Article 1(1) (Obligation of Non-Discrimination) of the American Convention to the detriment of Mr. Domingo Revelles, Mr. Herrera Espinoza, Mr. Cano and Mr. Jaramillo González.

When the State detains an individual, it must bring the individual before a judge without delay in order to prevent arbitrary or illegal detentions.⁷¹ In this case, the State did not provide any information to a court until fifteen days after the prisoners were arrested.⁷² Because of this, the State violated the Article 7(5) (Right to Be Promptly Brought Before a Judge and Right to a Trial Within Reasonable Time) in relation to Article 1(1) (Obligation of Non-Discrimination) to the detriment of Mr. Domingo

64. *Id.* ¶ 110.

65. *Id.* ¶¶ 140, 160.

66. *Id.* ¶ 133.

67. Herrera Espinoza et al. v. Ecuador, Merits, Reparations, and Costs, ¶ 138.

68. *Id.*

69. *Id.* ¶¶ 139-140.

70. *Id.* ¶ 140.

71. *Id.* ¶ 158.

72. *Id.* ¶ 160.

*Revelles, Mr. Herrera Espinoza, Mr. Cano, and Mr. Jaramillo González.*⁷³

Articles 7(1) (Right to Personal Liberty and Security) and Article 7(3) (Prohibition of Arbitrary Arrest or Imprisonment) in relation to Articles 1(1) (Obligation of Non-Discrimination) and 2 (Obligation to Give Domestic Legal Effect to Rights) of the American Convention, to the detriment of Mr. Domingo Revelles, Mr. Herrera Espinoza, Mr. Cano and Mr. Jaramillo González,⁷⁴ because:

The accused were imprisoned prior to trial.⁷⁵ This is the most severe measure a State can take when an individual is accused of a crime.⁷⁶ Therefore, the State must prove that such preventative detention is strictly necessary and not based upon mere suspicion or “personal perception of the defendant’s membership of [in] illegal group.”⁷⁷ The Court found it does not matter that two of the prisoners eventually escaped because there were no facts to justify the necessity of the detention.⁷⁸ Thus, the preventative detentions of Mr. Domingo Revelles, Mr. Herrera Espinoza, Mr. Cano, and Mr. Jaramillo González were arbitrary and violated Articles 7(1) (Right to Personal Liberty and Security) and 7(3) (Prohibition of Arbitrary Arrest or Imprisonment) in relation to Articles 1(1) (Obligation of Non-Discrimination) and 2 (Obligation to Give Domestic Legal Effect to Rights) of the Convention.⁷⁹

Articles 7(1) (Right to Personal Liberty and Security) and Article 7(4) (Right to Be Informed of Reasons of Arrest and Charges) in relation to Article 1(1) (Obligation of Non-Discrimination) of the Convention, to the detriment of Mr. Domingo Revelles,⁸⁰ because:

When the State detains an individual, it must inform him orally or in writing of why he is being detained, and inform him in writing of the charges he is facing.⁸¹ The detention of Mr. Domingo Revelles was illegal and the State did not inform him of the reasons for which he was

73. Herrera Espinoza et al. v. Ecuador, Merits, Reparations, and Costs, ¶ 162.

74. *Id.* ¶ 153.

75. *Id.* ¶ 143.

76. *Id.*

77. *Id.*

78. *Id.* ¶ 152.

79. Herrera Espinoza et al. v. Ecuador, Merits, Reparations, and Costs, ¶ 153.

80. *Id.* ¶¶ 156-157.

81. *Id.* ¶ 154.

being detained.⁸² Thus, the State violated the Article 7(4) (Right to be Informed of Reasons of Arrest and Charges) in relation to Article 1(1) (Obligation of Non-Discrimination) of the Convention.⁸³

Articles 7(1) (Right to Personal Liberty and Security) and 7(6) (Right to Have Recourse Before a Competent Court) in relation to Articles 1(1) (Obligation of Non-Discrimination) and 2 (Obligation to Give Domestic Legal Effect to Rights) of the Convention to the detriment of Mr. Domingo Revelles,⁸⁴ because:

A prisoner must have an effective method by which to appeal the legality of his detention before a court to determine the legality of the deprivation of his liberty.⁸⁵ The Court stated that it had already found the State's habeas corpus process to be ineffective.⁸⁶ The State's constitution requires that the mayor resolve habeas corpus actions, thereby constructing an unnecessary obstacle to the process.⁸⁷ Because of this obstacle, Mr. Domingo Revelles lacked an effective judicial remedy.⁸⁸ Therefore, the State violated Articles 7(1) (Right to Personal Liberty and Security) and 7(6) (Right to Have Recourse Before a Competent Court) in relation to Articles 1(1) (Obligation of Non-Discrimination) and 2 (Obligation to Give Domestic Legal Effect to Rights) of the Convention to the detriment of Mr. Domingo Revelles.⁸⁹

Article 8(2), subparagraphs (b) (Right to Have Prior Notification of Charges), (c) (Right to Adequate Time and Means to Prepare Defense), (d) (Right to Self-Defense or Legal Assistance and to Communicate Freely with Counsel), and (e) (Right to Assistance by Counsel Provided by State) in relation to Article 1(1) (Obligation of Non-Discrimination) of the Convention to the detriment of Mr. Domingo Revelles,⁹⁰ because:

An individual has a right to defense during criminal proceedings as a guarantee of due process.⁹¹ Consequently, the accused has a right to be

82. *Id.* ¶ 155.

83. *Id.* ¶ 156.

84. *Id.* ¶ 168.

85. Herrera Espinoza et al. v. Ecuador, Merits, Reparations, and Costs, ¶ 164.

86. *Id.* ¶ 167.

87. *Id.*

88. *Id.*

89. *Id.* ¶ 168.

90. *Id.* ¶ 187.

91. Herrera Espinoza et al. v. Ecuador, Merits, Reparations, and Costs, ¶ 181.

*informed of what he is being accused of in detail.*⁹² *The accused also has the right to a defense attorney to aid with technical defenses.*⁹³ *Again, there is nothing to support that Mr. Domingo Revelles was ever informed of what he was being accused.*⁹⁴ *Although there is some indication in the record that Mr. Domingo Revelles had a defense attorney at some point, it is undermined by the fact that he was not informed of the reasons for his arrest or the charges against him and he did not have the attorney present with him when he provided his statements to the prosecutor and police.*⁹⁵ *Thus, the State violated Article 8(2), subparagraphs (b) (Right to Have Prior Notification of Charges), (c) (Right to Adequate Time and Means to Prepare Defense), (d) (Right to Self-Defense or Legal Assistance and to Communicate Freely with Counsel), and (e) (Right to Assistance by Counsel Provided by State) in relation to Article 1(1) (Obligation of Non-Discrimination) of the Convention to the detriment of Mr. Domingo Revelles.*⁹⁶

Article 8(2) (Right to Be Presumed Innocent) in relation to Articles 1(1) (Obligation of Non-Discrimination) and 2 (Obligation to Give Domestic Legal Effect to Rights) of the Convention, to the detriment of Mr. Domingo Revelles,⁹⁷ because:

*A state may be found liable for violations without proof beyond a reasonable doubt.*⁹⁸ *The Court must only find that the actions or omissions, attributable to the State, have allowed the perpetration of violations or the State has not fulfilled its obligations.*⁹⁹ *An accused benefits from the presumption of innocence.*¹⁰⁰ *However, the law under which Mr. Domingo Revelles was convicted by the State provided a presumption of guilt.*¹⁰¹ *Additionally, Mr. Domingo Revelles was detained prior to trial for nearly the same amount of time that he would face after conviction.*¹⁰² *For these reasons, the State violated Article 8(2) (Right to Be Presumed Innocent) in relation to Articles 1(1) (Obligation*

92. *Id.* ¶ 182.

93. *Id.* ¶ 183.

94. *Id.* ¶ 184.

95. *Id.* ¶ 186.

96. *Id.* ¶ 187.

97. Herrera Espinoza et al. v. Ecuador, Merits, Reparations, and Costs, “Decides,” ¶ 10.

98. *Id.* ¶ 172.

99. *Id.*

100. *Id.* ¶ 192.

101. *Id.* ¶¶ 196-197.

102. *Id.* ¶ 198.

*of Non-Discrimination) and 2 (Obligation to Give Domestic Legal Effect to Rights) of the Convention, to the detriment of Mr. Domingo Revelles.*¹⁰³

Articles 8(2)(g) (Right Not to Self-Incriminate) and 8(3) (A Confession is Valid Only if Not Coerced) in relation to Articles 1(1) (Obligation of Non-Discrimination) and 2 (Obligation to Give Domestic Legal Effect to Rights) of the Convention to the detriment of Mr. Domingo Revelles,¹⁰⁴ because:

*In criminal proceedings, the accused has a right to be presumed innocent which implies that the accuser carries the burden of proof in showing the accused to be guilty.*¹⁰⁵ *A corollary guarantee of this is that the accused not be forced to testify against himself.*¹⁰⁶ *Here, a State law created a presumption of guilt in this case.*¹⁰⁷ *Thus, Mr. Domingo Revelles was presumed guilty here before a trial.*¹⁰⁸ *As such, the State violated Article 8(2) (Right to Be Presumed Innocent) in relation to Articles 1(1) (Obligation of Non-Discrimination) and 2 (Obligation to Give Domestic Legal Effect to Rights) of the Convention to the detriment of Mr. Domingo Revelles.*¹⁰⁹

*Moreover, statements from Mr. Domingo Revelles were obtained through torture and were then used against him.*¹¹⁰ *Thus, the State violated both Articles 8(2) subparagraph (g) (Right Not to Self-Incriminate) and 8(3) (A Confession is Valid Only if Not Coerced) in relation to Article 1(1) (Obligation of Non-Discrimination) of the Convention to the detriment of Mr. Domingo Revelles.*¹¹¹

Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) in relation to Article 1(1) (Obligation of Non-Discrimination) of the Convention to the detriment of Mr. Domingo Revelles,¹¹² because:

103. Herrera Espinoza et al. v. Ecuador, Merits, Reparations, and Costs, ¶ 209.

104. *Id.* ¶ 199.

105. *Id.* ¶ 192.

106. *Id.* ¶ 193.

107. *Id.* ¶¶ 196-197.

108. *Id.*

109. Herrera Espinoza et al. v. Ecuador, Merits, Reparations, and Costs, ¶ 199.

110. *Id.* ¶ 195.

111. *Id.*

112. *Id.* ¶ 206.

*In determining whether a hearing has occurred within a reasonable time, the Court considers four elements: (1) the complexity of the matter; (2) the procedural activity of the interested party; (3) the conduct of the judicial authorities; and (4) the impact of the legal situation on the person involved in the process.*¹¹³ *The Court focused specifically on the fourth element because during the more than four-year long court process, Mr. Domingo Revelles was preventatively deprived of his liberty.*¹¹⁴ *The Court opined that the case here may have been complex, but not so complex as to warrant this long of a delay.*¹¹⁵ *Thus, the State violated Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) in relation to Article 1(1) (Obligation of Non-Discrimination) of the Convention to the detriment of Mr. Domingo Revelles.*¹¹⁶

The Court did not rule on:

Article 25(1) (Right to Recourse Before a Competent Court)¹¹⁷, because:

*Other violations alleged and analyzed render it unnecessary for the Court to consider this violation.*¹¹⁸

C. Dissenting and Concurring Opinions

1. Concurring Opinion of Judge Eduardo Vio Grossi

In a separate opinion, Judge Vio Grossi examined the requirements of the State to raise a lack of exhaustion of domestic remedies argument.¹¹⁹ The State did not properly raise the lack of exhaustion of domestic remedies because it did not argue this in the first document submitted to the Commission as required by the Convention.¹²⁰ The majority, therefore, improperly considered the State's argument and incorrectly interpreted Article 46 of the Convention.¹²¹

113. *Id.* ¶ 203.

114. *Id.* ¶ 204.

115. Herrera Espinoza et al. v. Ecuador, Merits, Reparations, and Costs, ¶ 205.

116. *Id.* ¶ 206.

117. *Id.* ¶ 208.

118. *Id.*

119. Herrera Espinoza et al. v. Ecuador, Merits, Reparations, and Costs, Concurring Opinion of Judge Eduardo Vio Grossi, Inter-Am. Ct. H.R. (ser. L) No. 316 (Sept. 1, 2016).

120. *Id.*

121. *Id.*

IV. REPARATIONS

The Court ruled unanimously that the State had the following obligations:¹²²

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

1. Judgment as a Form of Reparation

The Court indicated that the Judgment itself constitutes a form of reparation.¹²³

2. The State Must Timely Investigate

The Court declared that the State must “in accordance with its domestic law, initiate and conduct effectively, in a reasonable time, an investigation” in regards to the facts found in the Judgment.¹²⁴ The State must also punish those found responsible for the injuries suffered by Mr. Domingo Revelles, Mr. Herrera Espinoza, Mr. Cano and Mr. Jaramillo González.¹²⁵

3. The State Must Nullify the Prosecution of Mr. Domingo Revelles

To prevent future consequences of a violation of judicial protections, the State must annul the conviction of Mr. Domingo Revelles.¹²⁶

4. The State Must Publish the Judgment

The State must, within six months of the Judgment, publish the official summary once in the official newspaper and in a newspaper of wide national circulation.¹²⁷ The State must also publish the Judgment for at least one year, on an official website accessible to the public.¹²⁸

122. *Herrera Espinoza et al. v. Ecuador*, Merits, Reparations, and Costs, p. 69.

123. *Id.*

124. *Id.* ¶ 219.

125. *Id.*

126. *Id.* ¶¶ 224-225.

127. *Id.* ¶ 227.

128. *Herrera Espinoza et al. v. Ecuador*, Merits, Reparations, and Costs, ¶ 227.

B. Compensation

The Court awarded the following amounts:

1. Pecuniary Damages

[None]

2. Non-Pecuniary Damages

The Court awarded \$10,000 each to Mr. Herrera Espinoza, Mr. Jaramillo Gonzalez and Mr. Cano resulting from non-pecuniary damages declared in the Judgment.¹²⁹ Additionally, the Court awarded Mr. Domingo Revelles \$80,000 in non-pecuniary damages for his unjustified preventative detention, acts of torture and resulting suffering.¹³⁰

3. Costs and Expenses

The Court awarded \$10,000 to be paid to the Ecumenical Commission of Human Rights as the representative of the family of Mr. Domingo Revelles.¹³¹

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

\$ 120,000

C. Deadlines

The State must pay compensation to Mr. Domingo Revelles and reimbursement to his family's representative within one year from notification of the Judgment.¹³²

The compensation to be paid to Mr. Herrera Espinoza, Mr. Jaramillo González, and Mr. Cano must be paid within one year from notification of the Judgment.¹³³

129. *Id.* ¶ 241.

130. *Id.* ¶¶ 242-243.

131. *Id.* ¶ 250.

132. *Id.* ¶ 252.

133. *Id.* ¶ 253.

The State must publish the Judgment within six months of notification.¹³⁴

The State must initiate an effective investigation into the violations of personal integrity discussed in this Judgment within a reasonable time.¹³⁵

The State must nullify the effects of the criminal proceedings against Mr. Domingo Revelles within six months.¹³⁶

The State must submit a monitoring compliance report to the Court within one year of notification of the Judgment.¹³⁷

V. INTERPRETATION AND REVISION OF JUDGMENT

[None]

VI. COMPLIANCE AND FOLLOW-UP

[None]

VII. LIST OF DOCUMENTS

A. *Inter-American Court*

1. Preliminary Objections

[None]

2. Decisions on Merits, Reparations and Costs

[Herrera Espinoza et al. v. Ecuador, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. L\) No. 316 \(Sept. 1, 2016\).](#)

[Herrera Espinoza et al. v. Ecuador, Merits, Reparations, and Costs, Concurring Opinion of Judge Eduardo Vio Grossi, Inter-Am. Ct. H.R. \(ser. L\) No. 316 \(Sept. 1, 2016\).](#)

134. *Herrera Espinoza et al. v. Ecuador, Merits, Reparations, and Costs*, p. 69.

135. “Disposes,” ¶ 15.

136. “Disposes,” ¶ 16.

137. “Disposes,” ¶ 19.

3. Provisional Measures

[Herrera Espinoza et al. v. Ecuador, Provisional Measures, Order of the President of the Court, Inter-Am. Ct HR \(ser. E\) \(Dec. 12, 2015\)](#)

4. Compliance Monitoring

[None]

5. Review and Interpretation of Judgment

[None]

B. Inter-American Commission

1. Petition to the Commission

[None]

2. Report on Admissibility

[None]

3. Provisional Measures

[None]

4. Report on Merits

[Herrera Espinoza et al. v. Ecuador, Admissibility Report and Report on Merits, Report No. 40/14, Inter-Am. Comm'n H.R., Case No. 11.438 \(July 17, 2014\).](#)

5. Application to the Court

[Herrera Espinoza et al. v. Ecuador, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 11.438.](#)

VIII. BIBLIOGRAPHY

[James Brooke, *Ecuador Fighting to Avoid Drug Link*, N.Y. TIMES \(Jan. 27, 1991\), <https://nyti.ms/29n3WpF>.](#)

[James Brooke, *Ecuador Journal; With Graft Rife, Nation Reins In the Cocaine King*, N.Y. TIMES \(July 22, 1992\), https://nyti.ms/29bdUuf.](https://nyti.ms/29bdUuf)

[James Brooke, *U.S. Aid Hasn't Stopped Drug Flow From South America, Experts Say*, N.Y. Times \(Nov. 21, 1993\), https://nyti.ms/29e3exH.](https://nyti.ms/29e3exH)