

Valencia Hinojosa v. Ecuador

ABSTRACT¹

This case is about the investigation of the death of a police officer during a shootout with other police officers. According to some versions of the events, the police officer committed suicide instead of surrendering, but the investigation was partial and did not rule out the possibility that he had actually been executed. The Court found Ecuador in violation of the American Convention.

I. FACTS

A. Chronology of Events

December 3, 1992: While on police duty in the Chimborazo Precinct No. 5¹⁰, Mr. Luis Jorge Valencia Hinojosa meets with four others, including a policeman, two corporals, and a taxi driver, to have drinks at a bar called *La Ciudadela*.² A fight ensues between Corporal Lizardo Pilco and the taxi driver, Mr. Guznay Choto.³ Local residents witness the altercation and call the police.⁴

Captain Joofre Venegas promptly arrives at the scene and orders the four drunk policemen to get in the patrol car, and takes them to the police station.⁵ At the police station, Mr. Valencia Hinojosa refuses to comply with orders to turn over his .38 caliber service revolver.⁶ Instead, he fires his service revolver twice, injuring Mr. Venegas and Corporal S. Luis Lema.⁷ Mr. Valencia Hinojosa fires two more shots and escapes.⁸

1. Kiana Farzad, Author; Shushan Khorozyan, Editor; Erin Gonzalez, Chief IACHR Editor; Cesare Romano, Faculty Advisor.

2. Valencia Hinojosa v. Ecuador, Report on Merits, Report No. XX/14, Inter-Am. Comm'n H.R., Case No. 11.442, ¶ 53 (Oct. XX, 2014).

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.* ¶ 54.

7. *Id.*

8. Valencia Hinojosa v. Ecuador, Report on Merits, ¶ 54.

Two patrol cars on duty and a pickup truck loaded with policemen follow orders to locate and apprehend Mr. Valencia Hinojosa by searching all the places where he could be.⁹ Lieutenant Hernán Cabezas snatches a rifle off Policeman Luis Alfredo Verdezoto Rodríguez and drives to Mr. Valencia Hinojosa's home.¹⁰ Lieutenant Cabezas, armed with a rifle, and Second Lieutenant Luis Piedra, armed with a pistol, arrive at Mr. Valencia Hinojosa's front door while Mrs. Patricia Alexandra Trujillo Esparza, Mr. Valencia Hinojosa's wife, is at home.¹¹

There are two versions of the story.¹² Mrs. Trujillo Esparza claims Second Lieutenant Piedra expressly threatens her husband that he is going to die, and wants to shoot at the door, but her sister did not let Second Lieutenant Piedra in.¹³ Alternatively, Lieutenant Cabezas claims Second Lieutenant Piedra never made such a threat, given that many locals were gathered.¹⁴ Second Lieutenant Piedra also denies this exchange occurred.¹⁵ The patrol cars leave the residence once the officers confirm Mr. Valencia Hinojosa is not home.¹⁶

An unidentified citizen signals that Mr. Valencia Hinojosa is making his way through the Santa Martha neighborhood while he is visibly intoxicated and armed with a revolver.¹⁷ Immediately, the patrol cars arrive, police exit their vehicles, and continue chasing Mr. Valencia Hinojosa on foot.¹⁸ The chase leads them into the facilities of the Tennis Club Sports complex (hereinafter "Tennis Club") in the city of Ríobamba, where Mr. Valencia Hinojosa takes refuge in the dormitories of the local custodians.¹⁹

Mr. Valencia Hinojosa dies in those dormitories, but "the facts concerning his death are controversial."²⁰ A few witnesses provide statements.²¹ Seventeen-year old Franklin Antonio Garcia Espinoza hears gun shots getting louder as the officers and Mr. Valencia Hinojosa approach the facility, and the policeman shout that they would not do

9. *Id.*

10. *Id.* ¶¶ 55-56.

11. *Id.* ¶¶ 56-57.

12. *Id.*

13. *Id.*

14. Valencia Hinojosa v. Ecuador, Report on Merits, ¶¶ 56-57

15. *Id.*

16. *Id.* ¶ 58.

17. *Id.*

18. *Id.*

19. Valencia Hinojosa v. Ecuador, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 327, ¶ 55 (Nov. 29, 2016).

20. *Id.*

21. Valencia Hinojosa v. Ecuador, Report on Merits, ¶ 68.

anything to Mr. Valencia Hinojosa, and call for him to surrender.²² Mr. Luis Alciviades Valdiviezo, an employee at the facility, sees Lieutenant Cabezas and Second Lieutenant Piedra fire their guns into the air and continue shooting while shouting at Mr. Valencia Hinojosa to drop his weapon.²³ Mr. Valencia Hinojosa enters the facility, with a revolver in his hand.²⁴ Hugging the wall, Mr. Valencia Hinojosa takes cover in Mr. Julio Garcia's dormitory.²⁵

Lieutenant Cabezas and Second Lieutenant Piedra enter the facility.²⁶ Mr. Garcia Espinoza sees Second Lieutenant Piedra, who approaches him and threatens to kill him if he does not say where Mr. Valencia Hinojosa is hiding.²⁷ Mr. Garcia Espinoza tells Lieutenant Cabezas that Mr. Valencia Hinojosa is in the room.²⁸ However, Second Lieutenant Piedra denies this exchange occurred.²⁹

Lieutenant Cabezas and Second Lieutenant Piedra surround the dormitory to prevent Mr. Valencia Hinojosa's escape.³⁰ He refuses to surrender or give up his weapon and threatens to kill them if they approach him.³¹ He is told by the officers that he only injured the Captain, and that everything will be fine.³² Standing his ground, he proclaims that the only way they will get him out is if he is dead.³³ Lieutenant Cabezas and Second Lieutenant Piedra take cover in different locations after claims that Mr. Valencia begins shooting.³⁴

Lieutenant Cabezas and Second Lieutenant Piedra deny firing shots intending to kill, but rather only to intimidate.³⁵ To stop Mr. Valencia Hinojosa from shooting, they fire at neutral places and in the air.³⁶ Another policeman takes position forty meters away, and fires two to three shots at neutral parts of the cement building, at either a prudent height or into the air to not injure anyone.³⁷ Facility worker, Mr. Valdiviezo, sees a "policeman with a rifle shooting at the front

22. *Id.* ¶ 59.

23. *Id.*

24. *Id.*

25. *Id.*

26. *Id.* ¶ 60.

27. Valencia Hinojosa v. Ecuador, Report on Merits, ¶ 60.

28. *Id.* ¶ 59.

29. *Id.* ¶ 61.

30. *Id.* ¶ 62.

31. *Id.*

32. *Id.*

33. Valencia Hinojosa v. Ecuador, Report on Merits, ¶ 62.

34. *Id.*

35. *Id.* ¶ 65.

36. *Id.* ¶ 63.

37. *Id.*

while another did so from the back,” during the five minutes that the shooting is going on.³⁸

Captain Milton Patricio Ramírez arrives at the scene.³⁹ Mr. Ramírez sees Lieutenant Cabezas and Second Lieutenant Piedra lying in front of the door where Mr. Valencia Hinojosa is hiding.⁴⁰ Lieutenant Cabezas and Second Lieutenant Piedra tell Captain Ramírez that they should go in because they hear a shot go off in the room and that is when they find Mr. Valencia Hinojosa’s corpse.⁴¹ Captain Ramírez states that at no point did he hear gunshots.⁴² They immediately exit the room and signal that Mr. Valencia Hinojosa is dead.⁴³

Multiple witnesses see the officers emerge onto the patio, and shake hands.⁴⁴ These witnesses view the handshake as a sign of victory but Second Lieutenant Piedra finds that description slanderous.⁴⁵ A witness sees a police officer point a rifle as to shoot into the air, but the officer runs out of bullets.⁴⁶ Mr. Verdezoto Rodríguez reclaims his rifle, and notices it has eighteen rounds missing from its magazine.⁴⁷

A facility worker, Mr. Valdiviezo, contends that Second Lieutenant Piedra enters the room alone, and that the police officer with the rifle never goes in.⁴⁸ Specifically, Mr. Valdiviezo hears two shots when Second Lieutenant Piedra goes inside, but cannot identify where the shots come from because he is hiding behind a wall.⁴⁹ Second Lieutenant Piedra refutes these claims.⁵⁰

The Riobamba Police Magistrate’s Court hears of the verbal reports of the death of Mr. Valencia Hinojosa, and orders the removal of the corpse.⁵¹ There are varying accounts on the position that Mr. Valencia Hinojosa is physically found.⁵² The police report finds him in “supine decubitus” (face-up) position on the tile floor.⁵³ There is

38. *Id.* ¶¶ 65-66.

39. Valencia Hinojosa v. Ecuador, Report on Merits, ¶ 67.

40. *Id.*

41. *Id.*

42. *Id.*

43. *Id.*

44. *Id.* ¶ 68.

45. Valencia Hinojosa v. Ecuador, Report on Merits, ¶ 69.

46. *Id.* ¶ 68.

47. *Id.* ¶ 71.

48. *Id.* ¶ 69.

49. *Id.* ¶¶ 68-69.

50. *Id.* ¶ 69.

51. Valencia Hinojosa v. Ecuador, Report on Merits, ¶ 72.

52. *Id.* ¶¶ 70, 72.

53. *Id.*

“a circular wound in the right temple, a wound orifice in the occipital bone,” and his weapon is lying on the floor next to his left knee.⁵⁴

Corporal Manuel Masías Pillajo Castro, who is out on traffic duty, hears that a police officer has been killed, and out of curiosity, drives to the scene. Contrary to the police report, Mr. Castro sees the body facedown, and a bloodstain on the floor.⁵⁵

The National Police Commissioner of Ríobamba orders “...a public defender...represent those who [may] be perpetrators, accomplices, or accessories in the death of Mr. Valencia Hinojosa.”⁵⁶

December 4, 1992: The “examination, identification, and autopsy” of the body takes place.⁵⁷ The head wound on the right side of the scalp or skull and the head wound on the left side of the scalp or skull reveal entry and exit wounds caused by a firearm projectile.⁵⁸ The projectile’s path is “from right to left, slightly upward, and slightly from front to back.”⁵⁹ Mr. Valencia Hinojosa’s death is reported as “violent, sudden, and instantaneous,” and “consistent with a gunshot from close range and very probably suicide.”⁶⁰

December 7, 1992: Medical experts to the National Police Commissioner indicate on the autopsy report that Mr. Valencia Hinojosa’s death is due to a “massive brain hemorrhage.”⁶¹ The National Police Medical Doctor, Dr. Alberto Lema Carpio, notes that this is probably because Mr. Valencia Hinojosa shot himself while standing and then fell backwards.⁶²

The Second District Prosecutor’s Office presented to the Second District Police Lower Court a formal request stating “that he killed himself, which the victim’s relatives reject.”⁶³

December 8, 1992: Inspection of the Tennis Club in the city of Ríobamba takes place.⁶⁴ There are several bullet holes in the room where Mr. Valencia Hinojosa is found.⁶⁵ Plaster and brick fall off the

54. *Id.*

55. *Id.* ¶ 70.

56. *Id.* ¶ 73.

57. Valencia Hinojosa v. Ecuador, Report on Merits, ¶ 74.

58. *Id.*

59. *Id.*

60. *Id.*

61. *Id.* ¶ 77.

62. *Id.* ¶ 78.

63. Valencia Hinojosa v. Ecuador, Report on Merits, ¶ 79.

64. *Id.* ¶ 80.

65. *Id.*

front wall due to a projectile located 1.5 meters above the floor.⁶⁶ A projectile hits an adjacent window and leaves cracks and breakages.⁶⁷ Investigators see bullet holes above windowpanes, located on the upper part of the far wall.⁶⁸ On a side wall, bullets strike the edge of a windowpane and damage plasterwork.⁶⁹ Broken glass is found under a projectile that hit a window of the far wall.⁷⁰ In addition, the lock on the door to enter the room is partially broken.⁷¹

December 10, 1992: The Judge of the Second National Police District to Chimborazo Province Police Commandant No.5 initiates a criminal proceeding in the police jurisdiction following the prosecutor's formal request.⁷²

December 14, 1992: The National Police Commissioner indicates that Mr. Valencia Hinojosa was on duty on December 3, 1992, and therefore requests the case transferred to the National Police Magistrate's Court.⁷³

January 4, 1993: The National Police Commissioner sends the National Police District Judge all documentation regarding Mr. Valencia Hinojosa's death.⁷⁴

"Mrs. Trujillo Esparza, [now] Mr. Valencia Hinojosa's widow, presents a private indictment against" Lieutenant Cabezas, Second Lieutenant Piedra, Captain Ramírez, and three others.⁷⁵

January 20, 1993: Mrs. Trujillo Esparza provides the Second National Police District with written documentation to withdraw her private indictment against Lieutenant Cabezas.⁷⁶

January 29, 1993: The National Police Commissioner's "viscera laboratory" results show that Mr. Valencia Hinojosa's blood alcohol level is at 0.24%. However, the evidence of gunpowder residue on his right hand remains inconclusive.⁷⁷

66. *Id.*

67. *Id.*

68. *Id.*

69. Valencia Hinojosa v. Ecuador, Report on Merits, ¶ 80.

70. *Id.*

71. *Id.*

72. *Id.* ¶ 82.

73. *Id.* ¶ 83.

74. *Id.* ¶ 85.

75. Valencia Hinojosa v. Ecuador, Report on Merits, ¶ 85.

76. *Id.* ¶ 86.

77. *Id.*

March 3, 1993: The Judge of the Second National Police District begins reviewing the case.⁷⁸

July 19, 1993: Mrs. Trujillo Esparza provides the Second National Police District with written documentation to withdraw her private indictment against the officers, and thus forgoes any possible damage award.⁷⁹

August 11, 1993: Mrs. Trujillo Esparza fails to appear before the Second National Police District to certify her signature and initial on the written documentation.⁸⁰

September 2, 1993: Mrs. Trujillo Esparza provides the Judge of the Second National Police District with a brief, indicating that she “freely and voluntarily” withdraws her private indictment.⁸¹ She appears before the Judge to certify her signatures and initials, stating it is “in due legal order.”⁸²

September 24, 1993: The Judge of the Second National Police District separates Mrs. Trujillo Esparza’s private indictment from the instant case.⁸³

November 25, 1993: The Judge of the Second National Police District orders the testimony of nine policemen and approximately twenty citizens.⁸⁴ In addition, the Judge directs an examination of “firearm, projectiles, and other objects.”⁸⁵

July 7, 1993: The Judge of the Second National Police District prohibits Lieutenant Cabezas from leaving the State.⁸⁶

February 8, 1994: Medical expert, Vincente Pedro Usiña provides additional testimony on the presence of Tardieu spots.⁸⁷ Mr. Usiña

78. *Id.* ¶ 87.

79. *Id.* ¶ 88.

80. *Id.* ¶ 89.

81. Valencia Hinojosa v. Ecuador, Report on Merits, ¶ 91.

82. *Id.* ¶ 92.

83. *Id.*

84. *Id.* ¶ 93.

85. *Id.*

86. *Id.* ¶ 94.

87. Valencia Hinojosa v. Ecuador, Report on Merits, ¶ 95.

cannot confirm if the spots are due to asphyxia, or “shock caused by the projectile in the brain.”⁸⁸

February 11, 1994: As a precautionary measure at pretrial, the Judge of the Second National Police District detains Lieutenant Cabezas and Second Lieutenant Piedra.⁸⁹

March 23, 1994: Lieutenant Cabezas and Second Lieutenant Piedra’s detention is suspended upon an offer of bail.⁹⁰

March 28, 1994: Medical expert Carlos Gilberto Moreno provides supplementary information regarding the presence of Tardieu spots on Mr. Valencia Hinojosa’s corpse.⁹¹ According to Mr. Moreno, the medical report did not investigate asphyxia because it is unwarranted.⁹² Mr. Moreno claims that the “asphyxia might have occurred through suffocation concomitant with death,” but the probable cause is a massive brain hemorrhage.⁹³ In addition, Mr. Moreno cannot draw a conclusion as to the existence of gunpowder residue on Mr. Valencia Hinojosa’s right hand.⁹⁴

May 16, 1994: The Judge of the Second National Police District orders: (1) to exhume Mr. Valencia Hinojosa’s corpse; (2) to gather new testimony; and (3) to recreate the sequence of events in light of the evidence.⁹⁵

May 20, 1994: Mr. Valencia Hinojosa’s corpse is exhumed.⁹⁶ The process affirms an entry wound on the right temporal bone, and an exit wound on the left parietal bone.⁹⁷

May 26, 1994: The events that occurred at Chimborazo Police Station No. 5 and the Tennis Club are reconstructed.⁹⁸

88. *Id.*

89. *Id.* ¶ 94.

90. *Id.*

91. *Id.* ¶ 97.

92. *Id.*

93. Valencia Hinojosa v. Ecuador, Report on Merits, ¶ 97.

94. *Id.*

95. *Id.* ¶ 99.

96. *Id.*

97. *Id.*

98. *Id.* ¶ 101.

June 6, 1994: A report by the National Police Central Forensics Laboratory (*Laboratorio Central de Peritajes*) reveals a ring around the gunshot wound.⁹⁹ The nitroderivates test confirms that the ring is consistent with a contact shot.¹⁰⁰

June 30, 1994: “The Judge of the Second National Police District Court orders the preliminary investigation closed and [requests that] the prosecutor issue his opinion.”¹⁰¹

August 3, 1994: The Police Prosecution Service (*Ministerio Público Policial*) issues an opinion, but refrains from naming any suspects.¹⁰² The opinion indicates a lack of evidence to determine if Mr. Valencia Hinojosa committed suicide or if one of the officers’ bullets killed him.¹⁰³

August 16, 1994: The Judge of the Second National Police District Court considers the characteristics of the bullet entry and exit wounds, the positions of the officers during the shooting, and the room in which Mr. Valencia Hinojosa’s body was found.¹⁰⁴ The judge is unable to conclude that Mr. Valencia Hinojosa was murdered.¹⁰⁵ Accordingly, the case is dismissed with prejudice.¹⁰⁶

December 20, 1994: The First National Police District Court voids the decision made by the Second National Police District Court on grounds of not following a legal formality with the withdrawal of Mrs. Trujillo Espinoza’s private indictment.¹⁰⁷

September 20, 1995: The Judge of the Second National Police District Court reviews the non-compliance order and continues the case.¹⁰⁸

99. Valencia Hinojosa v. Ecuador, Report on Merits, ¶ 100.

100. *Id.*

101. *Id.* ¶ 105.

102. *Id.* ¶ 106.

103. *Id.*

104. *Id.*

105. Valencia Hinojosa v. Ecuador, Report on Merits, ¶ 106.

106. *Id.*

107. Valencia Hinojosa v. Ecuador, Preliminary Objections, Merits, Reparations and Costs, ¶ 71.

108. Valencia Hinojosa v. Ecuador, Report on Merits, ¶ 109.

October 1, 1996: The Prosecutor of the Second National Police District Court renders a final opinion, and he fails to find any punishable act, or omission, by the police officers.¹⁰⁹

November 11, 1996: The Judge of the Second National Police District Court again orders the case to be dismissed with prejudice.¹¹⁰

March 5, 1997: The First National Police District Court affirms the dismissal with prejudice.¹¹¹

B. Other Relevant Facts

Mr. Valencia Hinojosa serves seven years as a police officer before his death.¹¹² He leaves behind his wife, Mrs. Trujillo Esparza, who is only nineteen years old at the time, and their one-month old daughter.¹¹³ Mrs. Trujillo Esparza states that the couple had no problems during the course of their three-year relationship.¹¹⁴ However, she knows of the problems her husband was having at work, as he complains to her on several occasions about the supervisors' ill-treatment towards officers.¹¹⁵ Allegedly, the police officers are "trampled and denigrated."¹¹⁶ In particular, there is 'bad blood' between her husband and his supervisor, Captain Joofre Venegas.¹¹⁷ She explains that Mr. Venegas was the Chief of CIDG where her husband works, "and that soon after he [is] transferred to the Urban Service."¹¹⁸

The State's constitutional and legal framework in 1992 provides criminal police jurisdiction sole discretion in the matter.¹¹⁹ The police officers that intervene in the operation benefit from the legal structure because they are all cleared in 1997 from any wrongdoing.¹²⁰ In fact, the

109. *Id.* ¶ 110.

110. *Id.* ¶ 111.

111. *Id.* ¶ 112.

112. *Demand Justice for Police Death in Ecuador in 1992 Before the Court*, AGENCIA EFE (Aug. 25, 2016),

<https://www.efe.com/efe/usa/mexico/exigen-justicia-por-muerte-de-policia-en-ecuador-1992-ante-corteidh/50000100-3022874#>.

113. *Id.*

114. *Id.*

115. *Id.*

116. *Id.*

117. Valencia Hinojosa v. Ecuador, Report on Merits, ¶ 57.

118. *Id.*

119. *After 22 Years, IACHR Court Sentence by Case Valencia Hinojosa*, PGE.GOB.EC (Dec. 29, 2016), <http://www.pge.gob.ec/index.php/component/k2/item/883-tras-22-anos-corte-idh-dicta-sentencia-por-caso-valencia-hinojosa>.

120. *Id.*

only statements that the judge considers are those coinciding with the theory that Mr. Valencia Hinojosa committed suicide.¹²¹

II. PROCEDURAL HISTORY

A. Before the Commission

November 8, 1994: The Commission receives a petition by the Ecumenical Center for Human Rights (*Comisión Ecuménica de Derechos Humanos*; CEDHU) (hereinafter “the petitioners”), indicating that Mr. Valencia Hinojosa was arbitrarily deprived of his life.¹²² The Commission registered the petition under case number 11.442.¹²³

May 8, 2003: Pursuant to Article 37(3), the Commission informs petitioners that the decision on admissibility is deferred “until the debate and decision on the merits.”¹²⁴ Thus, the Commission requests that the petitioners submit observations on the merits within two months.¹²⁵

November 4, 2014: The Commission approves the Admissibility and Merits Report 90/14.¹²⁶ The Commission found violations of Article 4 (Right to Life), Article 5(1) (Right to Humane Treatment), Article 8 (Right to a Fair Trial), and Article 25 (Right to Judicial Protection) and recommends that:¹²⁷ (1) the State conduct a full and effective investigation of the human rights violations declared in the report;¹²⁸ (2) the State adequately repair, both materially and morally, the human rights violations declared in the report;¹²⁹ and (3) in regards to the use of force by State agents, the State should adopt legislative, administrative and other measures to ensure compliance with the standards described in the report.¹³⁰

121. Valencia Hinojosa v. Ecuador, Report on Merits, ¶ 154.

122. *Id.* ¶ 1.

123. *Id.* ¶ 2.

124. *Id.* ¶ 7.

125. *Id.*

126. Valencia Hinojosa v. Ecuador, Preliminary Objections, Merits, Reparations and Costs, ¶ 2.

127. *Id.*

128. *Id.*

129. *Id.*

130. *Id.*

November 19, 2014: The Commission requests that the State provide a report within two months to substantiate compliance with the recommendations.¹³¹

B. Before the Court

February 19, 2015: The Commission submits the case to the Court after the State failed to adopt its recommendations.¹³²

1. Violations Alleged by Commission¹³³

Article 4 (Right to Life)

Article 5(1) (Right to Humane Treatment)

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.

2. Violations Alleged by Representatives of the Victims¹³⁴

Same violations alleged by the Commission.

III. MERITS

*A. Composition of the Court*¹³⁵

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

131. *Id.*

132. Valencia Hinojosa v. Ecuador, Preliminary Objections, Merits, Reparations and Costs, ¶ 3.

133. *Id.* ¶ 2.

134. *Id.*

135. Pursuant to Article 19(1) (Impediments, Excuses and Disqualifications) of the Rules of the Court, Judge L. Patricio Pazmiño Freire is unable to participate in the knowledge and deliberation of the Judgment; *Id.* n.1.

Pablo Saavedra Alessandri, Secretary
Emilia Segares Rodríguez, Deputy Secretary

B. Decision on the Merits

November 29, 2016: The Court issues its Judgment on Preliminary Objections, Merits, Reparations, and Costs.¹³⁶

The Court unanimously rejected the State’s preliminary objection with respect to the fourth instance of jurisdiction principle, because:¹³⁷

The Court evaluated the State’s domestic proceedings to ensure they complied with the American Convention on Human Rights.¹³⁸ The fourth instance principle is an exception to the Court’s jurisdiction.¹³⁹ It applies when the Court’s sole purpose is to determine whether the State court correctly assessed its “evidence, facts or domestic law,” or is acting as another level of appellate review.¹⁴⁰ The Court concluded it had jurisdiction to rule on the merits of this case because the Court would evaluate the domestic court proceedings as alleged violations of Articles 4 (Right to Life), 5 (Right to Human Treatment), 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection) of the Convention, and not as a court of fourth instance.¹⁴¹

The Court unanimously rejected the State’s preliminary objection with respect to due process before the Commission, because:¹⁴²

The State failed to demonstrate that the Commission’s actions hindered its right of defense.¹⁴³ The State was provided with many opportunities to argue the admissibility and merits of the case.¹⁴⁴ With respect to Article 8 (Right to a Fair Trial) and Article 25 (Right to Judicial Protection), the Commission was not obligated to provide the State with

136. *Id.* “Operative Paragraphs” ¶ 1.

137. *Id.*

138. Valencia Hinojosa v. Ecuador, Preliminary Objections, Merits, Reparations and Costs, ¶ 22.

139. *Id.*

140. *Id.* ¶ 20.

141. *Id.* ¶¶ 22-25.

142. *Id.* “Operative Paragraphs” ¶ 1.

143. *Id.* ¶ 26.

144. Valencia Hinojosa v. Ecuador, Preliminary Objections, Merits, Reparations and Costs, ¶ 33.

*a detailed analysis of the “violation of judicial guarantee and effective judicial protection.”*¹⁴⁵

*In addition, the State’s right of defense was not compromised by an unjustified delay from the Commission’s conduct.*¹⁴⁶ *The State should have adapted its “material and human infrastructure” to the increasing demands of the system.*¹⁴⁷ *Accordingly, the Commission did not act in an irregular manner.*¹⁴⁸

The Court found unanimously that the State had violated:

Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) to the detriment of Mr. Valencia Hinojosa and Mrs. Trujillo Esparza,¹⁴⁹ because:

*The State failed to adequately investigate the death of Mr. Valencia Hinojosa.*¹⁵⁰ *The Court found the State responsible for depriving Mr. Valencia Hinojosa and Mrs. Trujillo Esparza of the right to an independent and impartial judiciary.*¹⁵¹ *In this case, the police criminal jurisdiction was not an independent system because it functioned as an administration under the Executive Branch.*¹⁵²

*The Court analyzed the legal nature of criminal police jurisdiction in accordance with the American Convention.*¹⁵³ *Specifically, this case was processed by a judicial authority comprised solely of policemen, and the majority actively served at the time.*¹⁵⁴ *A senior police officer was appointed as the judge leading the investigation into Mr. Valencia Hinojosa’s death, and he ordered the case to be dismissed.*¹⁵⁵ *Thus, the case was not processed under a system consistent with the American Convention.*¹⁵⁶

145. *Id.* ¶ 34.

146. *Id.* ¶ 36.

147. *Id.* ¶ 40.

148. *Id.* ¶ 26.

149. *Id.* “Operative Paragraphs” ¶ 2.

150. Valencia Hinojosa v. Ecuador, Preliminary Objections, Merits, Reparations and Costs, ¶ 82.

151. *Id.* ¶ 97.

152. *Id.* ¶ 95.

153. *Id.* ¶ 96.

154. *Id.* ¶¶ 98-103.

155. *Id.* ¶ 84.

156. Valencia Hinojosa v. Ecuador, Preliminary Objections, Merits, Reparations and Costs, ¶ 118.

The Court expressed that “stability in office” is fundamental to judicial independence.¹⁵⁷ The prosecutors and judges who issued the dismissal did not have stability in their positions because the executive branch held the power to designate and remove them at free will; thus, the Court expressed doubt that specific disputes were decided without fear of retaliation.¹⁵⁸

Similarly, the Court expressed that “judicial review” by ordinary courts is fundamental to the guarantee of judicial independence and impartiality.¹⁵⁹ In this case, the previous legislation established by the State guaranteed criminal jurisdiction free from any subsequent judicial control.¹⁶⁰ As a result, the petitioners were deprived of the right of having an ordinary court review their case.¹⁶¹

The Court abstained from analyzing the other judicial guarantees established in Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) since it already determined that the police criminal jurisdiction was neither independent nor impartial.¹⁶²

Article 25(1) (Right of Recourse Before a Competent Court), in relation to Article 1(1) (Obligation of Non-Discrimination) and 2 (Obligation to Give Domestic Legal Effect to Rights) of the Convention, to the detriment of Mr. Valencia Hinojosa and Mrs. Trujillo Esparza,¹⁶³ because:

Article 25(1) (Right of Recourse Before a Competent Court) requires that States provide all persons with an effective and adequate remedy before a competent court in its jurisdiction.¹⁶⁴ The Court’s analysis in determining whether a violation of Article 25(1) (Right of Recourse Before a Competent Court) occurred is similar to the analysis seen above determining whether a violation of Article 8 (Right to a Fair Trial) occurred. In this case, the police criminal jurisdiction did not provide judicial protection when assessing the proper remedy in this

157. *Id.* ¶ 105.

158. *Id.* ¶¶ 105, 110.

159. *Id.* ¶¶ 111.

160. *Id.* ¶¶ 111-12.

161. *Id.* ¶ 114.

162. Valencia Hinojosa v. Ecuador, Preliminary Objections, Merits, Reparations and Costs, ¶ 124.

163. *Id.* “Operative Paragraphs” ¶ 3.

164. *Id.* ¶ 115.

case.¹⁶⁵ *The Court found that the criminal jurisdiction was not independent and impartial¹⁶⁶ and that it was not a part of the Judicial Branch.¹⁶⁷ On the contrary, the administration fell under the control of the Executive Branch.¹⁶⁸ The State's minister appointed these police officials at the request of the Commander-in-Chief of the National Police, and while they were legally trained, they were active service officials of the National Police.¹⁶⁹ Therefore, there was no guarantee the officials were independent and impartial during their investigation.¹⁷⁰ Since the case was alleging human rights violations, the State should have provided proper redress.¹⁷¹*

The Court found five votes to one that the State had violated:

Article 4(1) (Prohibition of Arbitrary Deprivation of Life), in relation to Article 1(1) (Obligation of Non-Discrimination) of the Convention, to the detriment of Mr. Valencia Hinojosa,¹⁷² because:

The Court found that the State violated the right to life when it deprived the petitioners an independent and impartial investigation.¹⁷³ Article 4(1) (Prohibition of Arbitrary Deprivation of Life) requires States establish domestic legal standards to “protect and preserve the right to life.”¹⁷⁴ Furthermore, the Court noted that the State has a duty to prevent its agents from violating the right to life.¹⁷⁵ At the time of Mr. Valencia Hinojosa's death, the State did not have measures in place to regulate the force used by police officers¹⁷⁶ and the exceptional use of force by police officers should have been regulated by law.¹⁷⁷

165. *Id.* ¶ 117.

166. *Id.* ¶ 115.

167. *Id.* ¶ 113.

168. Valencia Hinojosa v. Ecuador, Preliminary Objections, Merits, Reparations and Costs, ¶ 113.

169. *Id.*

170. *Id.*

171. *Id.* ¶ 116.

172. *Id.* “Operative Paragraphs” ¶ 4.

173. *Id.* ¶ 135.

174. Valencia Hinojosa v. Ecuador, Preliminary Objections, Merits, Reparations and Costs, ¶ 135.

175. *Id.* ¶ 130.

176. *Id.* ¶ 131.

177. *Id.* ¶ 137.

Consequently, the State failed to adopt measures to reasonably protect Mr. Valencia Hinojosa's life under Article 4(1) (Prohibition of Arbitrary Deprivation of Life).¹⁷⁸

Article 5(1) (Right to Physical, Mental, and Moral Integrity), in relation to Article 1(1) (Obligation of Non-Discrimination) of the Convention, to the detriment of Mrs. Trujillo Esparza,¹⁷⁹ because:

*A victim's next of kin may become the victim of a separate human rights violation.*¹⁸⁰ *The Court considered the close bond between Mrs. Trujillo Esparza and Mr. Valencia Hinojosa,*¹⁸¹ *and found that his death "caused deep pain and suffering to his wife."*¹⁸² *The Court acknowledged that she mourned her husband's death for four years.*¹⁸³ *At a hearing, Mrs. Trujillo Esparza expressed that "her life took a rather drastic turn."*¹⁸⁴ *She also became a single mother raising their child who was only one month old at the time of Mr. Valencia Hinojosa's death.*¹⁸⁵ *Additionally, the Court already concluded that the State did not fulfill its obligation to guarantee the right to life with respect to Mr. Valencia Hinojosa, to provide an independent and impartial investigation into his death, or regulate the use of police force.*¹⁸⁶ *In light of these circumstances, the Court found that the suffering experienced by Mrs. Trujillo Esparza violated Article 5(1) (Right to Physical, Mental, and Moral Integrity).*¹⁸⁷

178. *Id.*

179. *Id.* "Operative Paragraphs" ¶ 5.

180. Valencia Hinojosa v. Ecuador, Preliminary Objections, Merits, Reparations and Costs, ¶ 142.

181. *Id.* ¶ 143.

182. *Id.*

183. *Id.*

184. *Id.*

185. *Id.*

186. Valencia Hinojosa v. Ecuador, Preliminary Objections, Merits, Reparations and Costs, ¶ 145.

187. *Id.* ¶ 146.

*C. Dissenting and Concurring Opinions*1. Partially Concurring and Dissenting Opinion of Judge Humberto Antonio Sierra Porto¹⁸⁸

Judge Humberto Antonio Sierra Porto agreed that the Court correctly ruled against the State's preliminary objection alleging a violation of due process before the Commission for an unjustified delay in proceedings.¹⁸⁹ He reasoned that the State should not be required to provide sufficient material to accelerate the Commission's procedural process.¹⁹⁰ Rather, he argued that the State's arguments and evidence should be used to analyze whether the delay affected the State's right to defense.¹⁹¹ The State argued that the accusations by the Commission were unduly prolonged and damaged the State's reputation.¹⁹² He found this position unrelated to an impairment of the right to defense.¹⁹³

Judge Humberto Antonio Sierra Porto partially dissented with the Court, and argued that the State did not violate the right to life of Mr. Valencia Hinojosa because it lacked a proper investigation into the facts causing his death.¹⁹⁴ The assessment of a proper investigation should have only been analyzed in light of Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) and Article 25(1) (Right of Recourse Before a Competent Court).¹⁹⁵ Thus, the State should not be held responsible for violating Mr. Valencia Hinojosa right to life, and as a result, Mrs. Trujillo Esparza rights under Article 5(1) (Right to Physical, Mental, and Moral Integrity).¹⁹⁶

IV. REPARATIONS

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

188. Valencia Hinojosa v. Ecuador, Preliminary Objections, Merits, Reparations and Costs, Concurring and Dissenting Opinion of Judge Humberto Antonio Sierra Porto, Inter-Am. Ct. H.R. (ser. C) No. 327 (Nov. 29, 2016).

189. *Id.* ¶ 1.

190. *Id.* ¶ 3.

191. *Id.*

192. *Id.*

193. *Id.*

194. Valencia Hinojosa v. Ecuador, Preliminary Objections, Merits, Reparations and Costs, Concurring and Dissenting Opinion of Judge Humberto Antonio Sierra Porto, ¶ 5.

195. *Id.*

196. *Id.* ¶ 6.

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

1. Publish the Judgment

The Court ordered the State to publish the following: (1) a summary of the Courts' Judgment in the official gazette, and in a nation-wide newspaper, with the font size large enough to be legible and adequate; and (2) the Courts Judgment in its the entirety on an official website for at least one year.¹⁹⁷ The State should publish the foregoing within six months of notification of this Judgment.¹⁹⁸ The State must immediately notify the Court after each publication.¹⁹⁹

B. Compensation

The Court awarded the following amounts:

1. Non-Pecuniary Damages

The Court awarded \$30,000 to Mrs. Trujillo Esparza as compensation for non-pecuniary damages.²⁰⁰

2. Costs and Expenses

The Court awarded \$15,000 to the representatives of Mr. Valencia Hinojosa for the costs and expenses incurred for the public hearing in Mexico City, Mexico.²⁰¹

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

\$45,000

C. Deadlines

The State must pay the non-pecuniary damages and reimburse costs and expenses directly to the persons indicated herein.²⁰² They

197. Valencia Hinojosa v. Ecuador, Preliminary Objections, Merits, Reparations and Costs, ¶ 158.

198. *Id.*

199. *Id.* ¶ 159.

200. *Id.* ¶ 169.

201. *Id.* ¶ 174.

must be fully compensated within a year from the date of notification of this Judgment.²⁰³

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

[Valencia Hinojosa v. Ecuador, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 327 \(Nov. 29, 2016\) \(Available only in Spanish\).](#)

[Valencia Hinojosa v. Ecuador, Preliminary Objections, Merits, Reparations and Costs, Concurring and Dissenting Opinion of Judge Humberto Antonio Sierra Porto, Inter-Am. Ct. H.R. \(ser. C\) No. 327 \(Nov. 29, 2016\) \(Available only in Spanish\)](#)

3. Provisional Measures

[Valencia Hinojosa v. Ecuador, Provisional Measures, Order of the President of the Court, Inter-Am. Ct. H.R. \(ser. E\) \(Mar. 9, 2016\) \(Available only in Spanish\).](#)

202. *Id.* ¶ 175.

203. Valencia Hinojosa v. Ecuador, Preliminary Objections, Merits, Reparations and Costs, ¶ 175.

4. Compliance Monitoring

[None]

5. Review and Interpretation of Judgment

[None]

B. Inter-American Commission

1. Petition to the Commission

[Not Available]

2. Report on Admissibility

[None]

3. Provisional Measures

[None]

4. Report on Merits

[Valencia Hinojosa v. Ecuador, Report on Merits, Report No. XX/14, Inter-Am. Comm'n H.R., Case No. 11.442 \(Oct. XX, 2014\).](#)

5. Application to the Court

[Valencia Hinojosa v. Ecuador, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 11.442 \(Feb. 19, 2015\).](#)

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<https://www.efe.com/efe/usa/mexico/exigen-justicia-por-muerte-de-policia-en-ecuador-1992-ante-corteidh/50000100-3022874#>.

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