

Chaparro Álvarez and Lapo Íñiguez v. Ecuador

ABSTRACT¹

This case is about the arrest of the owner and manager of a plant producing Styrofoam containers that had been used to smuggle narcotics out of Ecuador and into the United States. Although experts and evidence made it clear early on that the containers in question had not been manufactured in the plant where the victims worked, they were subject to more than one year of detention and lost their property. The Court found violations of the American Convention.

I. FACTS

A. Chronology of Events

1. Events Pertaining to Juan Carlos Chaparro Álvarez

November 14, 1997: Officers from the anti-narcotic division of the police stop cargo containing fish destined for export to Miami, U.S., at Simón Bolívar Airport in Guayaquil.² Police find insulated ice boxes, belonging to a company named Mariscos Oreana Maror, containing traces of heroin and cocaine.³

November 15, 1997: Police apprehend Mr. Juan Carlos Chaparro Álvarez, a Chilean national and the owner of Aislantes Plumavit Cía. Ltda (“Plumavit Factory”), in a warrantless arrest at his home.⁴ Mr. Chaparro Álvarez’s arrest is witnessed by his wife and brother-in-law, and is made by heavily armed policemen who refuse to provide valid identification.⁵

¹ Durdana Karim, Author; Milja Miric, Editor; Megan Venanzi, Chief IACHR Editor; Cesare Romano, Faculty Advisor.

² Chaparro Álvarez and Lapo Íñiguez v. Ecuador, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 170, ¶ 2 (Nov. 21, 2007).

³ *Id.*

⁴ Chaparro Álvarez and Lapo Íñiguez v. Ecuador, Admissibility Report, Report No. 77/03, Inter-Am. Comm’n H.R., Case No. 12.091, ¶ 2 (Oct. 22, 2003).

⁵ The police are accompanied by the 12th Criminal Judge of Guayas, Judge Guadalupe

Police interrogate Mr. Chaparro Álvarez on suspicion of drug trafficking and detain him in police custody for five days.⁶ Mr. Chaparro Álvarez is initially interrogated without the presence of any counsel.⁷ During the five-day period, police do not permit Mr. Chaparro Álvarez to consult with an attorney nor communicate with his family.⁸

Earlier that morning, the police unlawfully search and seize Mr. Chaparro Álvarez's business, Plumavit Factory, without notice.⁹ During this search, the police also arrest several employees without warrants.¹⁰ The State's Drug Law of 1990 authorized the seizure of property used for the commission of criminal activity.¹¹ Consequently, the National Drugs Council (*Consejo Nacional de Control de Sustancias Estupefacientes y Psicótropicas*; "CONSEP") takes control of Plumavit Factory.¹² Subsequently, CONSEP rents the factory to a private individual who displaces all "machinery and office equipment" of the factory, causing financial hardship to Mr. Chaparro Álvarez.¹³

November 16, 1997: Police interrogate Mr. Chaparro Álvarez a second time.¹⁴ He provides a declaration to the police in the presence of a non-criminal defense attorney.¹⁵ Mr. Chaparro Álvarez learns that he is being accused of trafficking drugs by supplying styrofoam containers enclosed with narcotics under the disguise of seafood exportation.¹⁶ The seizure of the styrofoam containers by the police at the airport reveal "14,821 grams of heroin and 353,688 grams of cocaine, camouflaged in 144 containers containing fish, [indicating] property of the Marisco Oceana Maror company."¹⁷ As a result of antinarcotic operations, the police incriminate Mr. Chaparro Álvarez."¹⁸

Manrique Rossi, who asserts that her presence is sufficient to make a warrantless arrest. *Id.* ¶ 10.

6. *Id.* ¶ 2.

7. *Id.* ¶ 12.

8. The State's incommunicado period is statutorily set for a limited 24-hour period, during which time police can prevent a person in police custody from communicating with anyone from the general public, including counsel or any family members. *Id.* ¶ 2.

9. *Id.* ¶ 11.

10. Chaparro Álvarez and Lapo Íñiguez v. Ecuador, Admissibility Report, ¶ 2. During the warrantless arrest for employees at the Plumavit Factory, police also arrest Freddy Hernán Lapo Íñiguez, who is the Production Manager at the factory. *See Id.* ¶ 11.

11. *Id.* ¶ 16.

12. *Id.*

13. *Id.*

14. *Id.* ¶ 12.

15. Chaparro Álvarez and Lapo Íñiguez v. Ecuador, Admissibility Report, ¶ 12.

16. *Id.* ¶ 13.

17. *Id.* ¶ 19.

18. *Id.* ¶ 13. The "Rivera Case" involves the investigation of alleged international trafficking of narcotics, which is primarily associated with Mariscos Oreana Maror, a fish exporting company. Chaparro Álvarez and Lapo Íñiguez v. Ecuador, Preliminary Objections, Merits, Reparations and

Mr. Chaparro Álvarez affirms his innocence during his detention, asserting that the styrofoam containers were not made by the machines in his factory because they were different in size and had no identifiable marks that match those manufactured by his business.¹⁹ Mr. Chaparro Álvarez inquires to Police Captain Peralta regarding expert verification confirming whether Plumavit Factory manufactured the intercepted containers.²⁰

December 5, 1997: The expert report from the Mechanical Engineering Faculty of the Technical College of the Litoral (“E.S.P.O.L.”) is submitted to the police and concludes that Plumavit Factory is not the manufacturer of the styrofoam containers.²¹ Police do not submit this report during initial charges.²²

State police along with U.S. Drug Enforcement Administration preform a formal search of Plumavit Factory using drug detection technology.²³ The examination further confirms no evidence of any drugs at the facility.²⁴

December 8, 1997: Despite the lack of material evidence or corroborating expert reports, an arrest warrant is officially ordered for Mr. Chaparro Álvarez after twenty-three days in police custody.²⁵

December 10, 1997: Investigators eventually submit the expert evaluation with the charges to the court.²⁶ Mr. Chaparro Álvarez is formally indicted during initial criminal proceedings as a “member of an international syndicate of drug traffickers.”²⁷ Additionally, the Judge overseeing Mr. Chaparro Álvarez’s criminal proceedings instruct three further evaluations of Plumavit Factory.²⁸ All three evaluations confirm that Plumavit Factory is not the manufacturer of the seized containers.²⁹

December 24, 1997: The State promulgates Resolution 119, which

Costs, ¶ 62. Police investigation involves the search and seizure of manufacturing factories that may have been involved in the trafficking scheme. *Id.*

19. *Id.* ¶ 13.

20. *Id.*

21. Chaparro Álvarez and Lapo Íñiguez v. Ecuador, Admissibility Report, ¶ 13.

22. *Id.* ¶ 14.

23. *Id.*

24. *Id.*

25. *Id.* ¶ 2.

26. *Id.* ¶ 14.

27. Chaparro Álvarez and Lapo Íñiguez v. Ecuador, Admissibility Report, ¶ 14.

28. *Id.* ¶ 15.

29. *Id.*

affirms Ecuador's Drug Law as unconstitutional.³⁰

January 8, 1998: Police return to Plumavit Factory with a judge to thoroughly search the factory for any possible traces of narcotics.³¹ Police indicate that their search showed small traces of the drugs in one of the styrofoam molds.³² This search is conducted after police had entirely seized control of the factory and without the presence of any defense lawyer, suggesting possible evidence tampering.³³

August 22, 1999: After serving a little over one year and six-month sentence in the Center of Social Rehabilitation in Guayaquil, Mr. Chaparro Álvarez is released from detention.³⁴

November 12, 2001: The Fourth Chamber of the Superior Court of Justice of Guayaquil provisionally dismisses Mr. Chaparro Álvarez case.³⁵

2. Events Pertaining to Freddy Hernán Lapo Íñiguez

November 15, 1997: Police detain Mr. Freddy Hernán Lapo Íñiguez, a Production Manager at Plumavit Factory, in a warrantless arrest during their search of the factory.³⁶ Police dismiss Mr. Lapo Íñiguez's request to show a warrant describing the reasons for their forceful takeover and search of the factory, stating that they will "search and arrest whatever and whomever they wanted".³⁷ Similarly, police attempt to implicate Mr. Lapo Íñiguez for drug trafficking.³⁸ Mr. Lapo Íñiguez is imprisoned for five days at No. 2 Guayaquil Regiment Police Station ("Guayaquil Station") and is not permitted to communicate with any family or an attorney.³⁹

During his detention, Mr. Lapo Íñiguez is interrogated and provides a declaration to the police without the presence of any counsel.⁴⁰ At the interrogation, Mr. Lapo Íñiguez learns that he is being detained for

30. *Id.* ¶ 2.

31. *Id.* ¶ 16.

32. *Id.*

33. Chaparro Álvarez and Lapo Íñiguez v. Ecuador, Admissibility Report, ¶ 16.

34. *Id.* ¶ 2

35. *Id.* ¶ 3

36. *Id.* ¶¶ 5, 6.

37. *Id.* ¶ 19.

38. *Id.*

39. Chaparro Álvarez and Lapo Íñiguez v. Ecuador, Admissibility Report, ¶ 20.

40. *Id.* ¶ 21.

allegedly manufacturing the containers filled with narcotics, which were intercepted by anti-narcotic agents at Simon Bolivar Airport.⁴¹

December 8, 1997: Despite the lack of sufficient evidence and an expert evaluation suggesting Mr. Lapo Íñiguez's innocence, judicial proceedings are instigated.⁴² Although Article 231 of the Ecuadorian Code of Criminal Procedure prohibits investigations from lasting longer than sixty days in criminal proceedings, Mr. Lapo Íñiguez's investigation continues for over nine months.⁴³

November 15, 1997: Police seize Mr. Lapo Íñiguez's car during their investigation without any evidence linking the property to criminal activities.⁴⁴

May 26, 1999: Mr. Lapo Íñiguez is released from the Center of Social Rehabilitation in Guayaquil after serving a sentence of one year, six months, and eleven days when the Superior Court of Guayaquil formally dismisses his case and acquits him.⁴⁵

As a result of the unduly delayed investigation, which eventually showed no evidence of criminal drug-trafficking activities, Mr. Lapo Íñiguez unfairly suffers financial hardship, losing his employment, his car, and his family home.⁴⁶

B. Other Relevant Facts

Police abuse is investigated after national and international media attention on the disappearance of two young brothers known as the Restrepo Brothers reveal possible police malfeasance in the early 1990s.⁴⁷ Specifically, the Criminal Investigation Service of the National Police is investigated, revealing reports on misuse of military and police forces participating in anti-crime operations, including mass arbitrary arrests as well as unlawful searches and investigations, which began under an "emergency decree issued in September of 1994."⁴⁸ Police force is heightened as a result of increased antinarcotic actions taken by both

41. *Id.*

42. *Id.* ¶ 24.

43. *Id.*

44. *Id.* ¶ 23.

45. Chaparro Álvarez and Lapo Íñiguez v. Ecuador, Admissibility Report, ¶ 5.

46. *Id.* ¶ 23.

47. Report on the Situation of Human Right in Ecuador, Inter-Am. Comm'n H.R., OEA/Ser.L/V/II.96, Doc. 10 rev. 1 "The National Police and Armed Forces" ¶ 1 (1997).

48. *Id.* ¶¶ 1, 4-5.

CONSEP and the national police.⁴⁹ A series of legislation in the 1990s, including the enactment of the Narcotics and Psychotropic Substances Act of 1991, which permits “seizure and forfeiture” of any property involved in drug trafficking, paves the way not only for increased police force, but also unlawful abuse.⁵⁰

II. PROCEDURAL HISTORY

A. Before the Commission

September 8, 1998: Attorneys Dr. Jose Leonardo Obando Laaz and Dr. Xavier Zavala Egas⁵¹ file a complaint to the Inter-American Commission on Human Rights (“Commission”) on behalf of Mr. Chaparro Álvarez.⁵²

April 14, 1999: Attorney Mr. Juan Ferrusola Pereir, subsequently files a complaint to the Commission on behalf of Mr. Lapo Íñiguez.⁵³

October 22, 2003: The Commission finds that both Mr. Chaparro Álvarez’s and Mr. Lapo Íñiguez’s petitions have factual similarities⁵⁴ and makes a joinder of claims into a single petition.⁵⁵

The Commission issues a Report on Admissibility of the case and finds that the petition meets admissibility requirements pursuant to Article 46 of the American Convention on Human Rights (“Convention”).⁵⁶ The State, however, contests that Mr. Chaparro Álvarez has not exhausted his domestic remedies before seeking legal remedies with the Commission.⁵⁷ The Commission ultimately finds that Mr. Chaparro Álvarez did exhaust his legal remedies when the “Fourth Chamber of the Superior Court ‘provisionally’ dismissed” his charges.⁵⁸

February 28, 2006: The Commission issues Merits Report No. 6/06 and

49. U.S. DEPARTMENT OF STATE, INTERNATIONAL NARCOTICS CONTROL STRATEGY REPORT, 1995 90 (1995).

50. *Id.*

51. Dr. Xavier Zavala Egas joined as counsel for Mr. Chaparro Álvarez subsequently in July 2, 2002. Chaparro Álvarez and Lapo Íñiguez v. Ecuador, Admissibility Report, ¶ 1.

52. *Id.*

53. *Id.*

54. *Id.* ¶ 36.

55. *Id.*

56. Chaparro Álvarez and Lapo Íñiguez v. Ecuador, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 170, ¶ 1 (Nov. 21, 2007).

57. Chaparro Álvarez and Lapo Íñiguez v. Ecuador, Admissibility Report, ¶ 40.

58. *Id.*

submits recommendations to the State.⁵⁹ The Commission concludes that the State violated Article 5 (Right to Humane Treatment), Article 7 (Right to Personal Liberty), Article 8 (Right to a Fair Trial), Article 21 (Right to Property), and Article 25 (Right to Judicial Protection), in relation to 1.1 of the Convention to the detriment of Mr. Chaparro Álvarez and Mr. Lapo Íñiguez.⁶⁰

The Commission recommends that State 1) pay the full reparation consistent with international standards to Mr. Chaparro Álvarez and Mr. Lapo Íñiguez, 2) pay the cost of all psychological treatments, 3) erase the criminal records of Mr. Lapo Íñiguez, 4) complete the judicial proceedings, 5) order full investigation in order to prosecute those responsible for the mishandlings and 6) initiate steps to reform the habeas corpus litigation.⁶¹

B. Before the Court

June 16, 2006: The Commission submits the case to the Court after the State failed to adopt its recommendations.⁶²

1. Violations Alleged by Commission⁶³

Article 2 (Domestic Legal Effects)

Article 5 (Right to Humane Treatment)

Article 7 (Right to Personal Liberty)

Article 8 (Right to a Fair Trial)

Article 21 (Right to Property)

Article 25 (Right to Judicial Protection)

all in relation to:

Article 1(1) (Obligation to Respect Rights) of the American Convention.

2. Violations Alleged by Representatives of the Victims⁶⁴

Same Violations Alleged by Commission.

59. Chaparro Álvarez and Lapo Íñiguez v. Ecuador, Preliminary Objections, Merits, Reparations and Costs, ¶ 1.

60. Chaparro Álvarez and Lapo Íñiguez v. Ecuador, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 12.091, ¶ 25 (June 23, 2006).

61. *Id.* ¶ 26.

62. Chaparro Álvarez and Lapo Íñiguez v. Ecuador, Preliminary Objections, Merits, Reparations and Costs, ¶ 1.

63. *Id.* ¶ 4.

64. Xavier Flores Aguirre and Pablo Cevallos Palomeque served as representatives of Chaparro Álvarez and Lapo Íñiguez. *Id.* ¶ 5.

September 25, 2006: Although the State appoints Diego Rodríguez Pinzón as judge *ad hoc*, the Commission rejects the appointment due to untimely submission.⁶⁵

December 5, 2006: The State submits preliminary objections⁶⁶ asserting that: 1) domestic remedies had not been exhausted; and 2) the Court lacked jurisdiction.⁶⁷

January 12, 2007: The Commission rejects the first preliminary objection because the State waived this defense when it failed to timely object on the appropriate assertions to the exhaustion of domestic remedies.⁶⁸ The second preliminary objection is dismissed because the argument does not plead proper grounds for preliminary objections, as the State is asking the Court to declare violations of the Convention and not make a ruling on domestic laws or decisions.⁶⁹

III. MERITS

A. Composition of the Court

Sergio García Ramírez, President
Cecilia Medina Quiroga, Vice-President
Manuel E. Ventura Robles, Judge
Diego García-Sayán, Judge
Leonardo A. Franco, Judge
Margarette May Macaulay, Judge
Rhadys Abreu Blondet, Judge

Pablo Saavedra Alessandri, Secretary
Emilia Segares Rodríguez, Deputy Secretary

B. Decision on the Merits

November 21, 2007: The Court issues its Judgment on Preliminary Objections, Merits, Reparations, and Costs.⁷⁰

65. *Id.* at 3 n.3.

66. *Id.* ¶ 6.

67. Chaparro Álvarez and Lapo Íñiguez v. Ecuador, Preliminary Objections, Merits, Reparations, and Costs, ¶ 12.

68. *Id.* ¶ 18.

69. *Id.* ¶ 23.

70. *See generally* Chaparro Álvarez and Lapo Íñiguez v. Ecuador, Preliminary Objections, Merits, Reparations and Costs.

The Court found unanimously that the State had violated:

Articles 7(1) (Right to Personal Liberty and Security), 7(2) (Prohibition of Deprivation of Liberty Unless for Reasons and Conditions Previously Established by Law), 7(3) (Prohibition of Arbitrary Arrest or Imprisonment), 7(4) (Right to Be Informed of Reasons of Arrest and Charges), 7(5) (Right to Be Promptly Brought Before a Judge and Right to a Trial Within Reasonable Time), and 7(6) (Right to Have Recourse Before a Competent Court), in relation to Articles 1(1) and 2 of the Convention to the detriment of Mr. Chaparro Álvarez and Mr. Lapo Íñiguez,⁷¹ because:

Article 7(1) (Right to Personal Liberty and Security) is a broad and overreaching right established under the Convention that affords a common right to personal freedom intrinsic to the fundamental human right of enjoying life without unreasonable restrictions or limitations.⁷² Under this Article, the State is entitled to physical liberty devoid of unlawful or arbitrary interference.⁷³ As such, the subparagraphs of Article 7(1) (Right to Personal Liberty and Security) set out the specific practices required by the State when physical liberty is deprived.⁷⁴ Accordingly, the Court identified that violations of subparagraphs by the State is an implicit violation of the right to personal liberty and security.⁷⁵

The State unlawfully arrested and detained both Mr. Chaparro Álvarez and Mr. Lapo Íñiguez without proper warrants and cause.⁷⁶ Article 7(2) (Prohibition of Deprivation of Liberty Unless for Reasons and Conditions Previously Established by Law), Article (7)(3) (Prohibition of Arbitrary Arrest or Imprisonment), and Article 7(4) (Right to Be Informed of Reasons of Arrest and Charges) prohibit the deprivation of liberty through arbitrary arrests without adequate causes and circumstances established under domestic law.⁷⁷ Pursuant to both the constitutional and criminal domestic laws of the State,⁷⁸ proper reasoning and motive for an

71. *Id.* “Operative Paragraphs” ¶¶ 3-4.

72. *Id.* ¶ 52.

73. *Id.* ¶ 53.

74. *Id.*

75. *Id.* ¶ 54.

76. Chaparro Álvarez and Lapo Íñiguez v. Ecuador, Preliminary Objections, Merits, Reparations and Costs, ¶ 66.

77. *Id.* ¶ 51.

78. *Id.* ¶¶ 59-60. Article 22(19) of the Constitution of Ecuador and Articles 170-173 are the applicable domestic laws discussed in the judgement.

arrest can be provided orally, but “prompt notification of the charge or charges” must be provided in writing.⁷⁹ Consequently, the Court found that the State did not provide adequate “motives and reasons” for Mr. Chaparro Álvarez’s arrest, which was contrary to domestic law and in violation of Article 7(2) (Prohibition of Deprivation of Liberty Unless for Reasons and Conditions Previously Established by Law) and Article 7(4) (Right to Be Informed of Reasons of Arrest and Charges) of the Convention.⁸⁰ The Court also identified that Mr. Lapo Íñiguez’s arrest was unlawful because it was done without a court order or under *flagrante delicto*⁸¹ in violation of Article 7(2) (Prohibition of Deprivation of Liberty Unless for Reasons and Conditions Previously Established by Law).⁸² The Court found that the State’s order for the victims remand in custody during investigations of the alleged crime was arbitrary and in violation of Article (7)(3) (Prohibition of Arbitrary Arrest or Imprisonment), specifically because the court order for remand in custody did not stipulate “circumstances as regards [to] the time, means and place in which” the victims allegedly committed the crime.⁸³

Article 7(5) (Right to Be Promptly Brought Before a Judge and Right to a Trial Within Reasonable Time) guarantees detained persons the right to a prompt legal trial with the presumption of innocence.⁸⁴ The State’s domestic laws⁸⁵ limited investigative detentions to 48 hours or less.⁸⁶ The State did not bring Mr. Chaparro Álvarez and Mr. Lapo Íñiguez in front a judge for statements until 26 days after their initial arrests.⁸⁷ The Court established that detained individuals need to be brought before a proper judge holding judicial authority for legal proceedings and not any other prosecutorial individuals within a reasonable amount of time identified in the State’s domestic laws.⁸⁸ The Court recognized that the presence of a judge during the arrest was insufficient in this regard.⁸⁹ Consequently,

79. *Id.* ¶ 76.

80. *Id.* ¶ 73.

81. *Id.* ¶ 96.

82. Chaparro Álvarez and Lapo Íñiguez v. Ecuador, Preliminary Objections, Merits, Reparations and Costs, ¶ 77.

83. *Id.* ¶ 105.

84. *Id.* ¶ 81.

85. Pursuant to Ecuador’s Article 173 of the Code of Criminal Procedure, investigative arrest and detentions cannot last more than 48 hours, after which the State must establish criminal proceedings or release the detained person. *Id.* ¶ 82.

86. *Id.* ¶ 82.

87. *Id.* ¶ 83.

88. *Id.* ¶ 84-85.

89. Chaparro Álvarez and Lapo Íñiguez v. Ecuador, Preliminary Objections, Merits, Reparations and Costs, ¶ 85.

*the State was in violation of Article 7(5) (Right to Be Promptly Brought Before a Judge and Right to a Trial Within Reasonable Time) when it failed to bring both Mr. Chaparro Álvarez and Mr. Lapo Íñiguez promptly before a judge or initiate adequate criminal proceedings within the reasonable time.*⁹⁰

*Article 7(6) (Right to Have Recourse Before a Competent Court) affords individuals deprived of liberty the right to seek legal remedies in front of authorized and competent judges who can make decisions on such matters.*⁹¹ *The State violated this right as a result of setting unreasonable obstacles for seeking legal recourse and arbitrarily “reject[ing] the recourses filed [by Mr. Chaparro Álvarez and Mr. Lapo Íñiguez.] without ruling on the reasons.”*⁹²

Articles 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal), 8(2) (Right to Be Presumed Innocent), 8(2)(c) (Right to Adequate Time and Means to Prepare Defense), 8(2)(d) (Right to Self-Defense or Legal Assistance and to Communicate Freely with Counsel), and 8(2)(e) (Right to Assistance by Counsel Provided by State),⁹³ in relation to Articles 1(1) and 2 of the Convention to the detriment Mr. Chaparro Álvarez and Mr. Lapo Íñiguez,⁹⁴ because:

*Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) conveys judicial guarantees to a court hearing within a reasonable time.*⁹⁵ *As a result of the unreasonable length in commencing its criminal proceedings against Mr. Chaparro Álvarez and Mr. Lapo Íñiguez,*⁹⁶ *the State failed to uphold these rights.*⁹⁷ *Additionally, The State is required to provide foreign detainees the right to seek assistance from consular officials at the time of his or her deprivation of liberty and prior to making any statement with State authorities.*⁹⁸ *The State failed to notify Mr. Chaparro Álvarez, a Chilean*

90. *Id.* ¶¶ 85-86.

91. *Id.* ¶ 128.

92. *Id.* ¶¶ 134-36.

93. The State violated 8(2)(e) (Right to Assistance by Counsel Provided by State) only to the detriment of Mr. Lapo Íñiguez. *Id.* “Operative Paragraphs” ¶ 4.

94. *Id.* “Operative Paragraphs” ¶ 3-4.

95. Chaparro Álvarez and Lapo Íñiguez v. Ecuador, Preliminary Objections, Merits, Reparations and Costs, ¶¶ 30-31, n.87.

96. *Id.* ¶ 161. The criminal proceedings executed by the State lasted approximately eight years, three months and seven days. *Id.* ¶ 160.

97. *Id.* ¶ 161.

98. *Id.* ¶ 164.

*national, of his right to seek assistance from the Chilean consulate or identify him as a foreign detainee.*⁹⁹

*Article 8(2) (Right to Be Presumed Innocent) ensures the right of individuals to be presumed innocent until proven guilty of the crimes alleged against him or her.*¹⁰⁰ *As a result of the arbitrary and meritless orders to hold the victims and unjustified reasoning in rejecting recourse, the State failed to observe the victims' right to the presumption of innocence established.*¹⁰¹ *Article 8(2)(d) (Right to Self-Defense or Legal Assistance and to Communicate Freely with Counsel) provides individuals the right to a defense attorney.*¹⁰² *The State failed to provide proper legal remedies as a consequence of not advising Mr. Chaparro Álvarez of his right to consular assistance or counsel.*¹⁰³ *The State was in violation of Article 8(2)(d) (Right to Self-Defense or Legal Assistance and to Communicate Freely with Counsel) when it failed to provide Mr. Chaparro Álvarez with defense counsel during his initial interrogation, when it prevented his attorney from taking part in pre-trial motions, as well as juridical protection proceedings.*¹⁰⁴ *Article 8(2)(e) (Right to Assistance by Counsel Provided by State) requires the State to provide individuals deprived of liberty the right to receive efficient and competent assistance by legal counsel.*¹⁰⁵ *The State was in violation of this principle when it failed to provide Mr. Lapo Íñiguez with adequate and competent defense counsel who could sufficiently defend his rights.*¹⁰⁶

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 Articles 1(1) and 2 of the Convention to the detriment of Mr. Chaparro Álvarez and Mr. Lapo Íñiguez,¹⁰⁷ because:

*Article 5(1) (Right to Physical, Mental, and Moral Integrity) establishes a broad right to physical, mental, and moral integrity.*¹⁰⁸ *Article 5(2) (Prohibition of Torture, and Cruel, Inhumane or Degrading Treatment)*

99. *Id.*, ¶¶ 164-65.

100. *Id.*, ¶ 147.

101. Chaparro Álvarez and Lapo Íñiguez v. Ecuador, Preliminary Objections, Merits, Reparations and Costs, ¶ 147.

102. *Id.*, ¶¶ 30-31 n.87.

103. *Id.*, ¶ 78.

104. *Id.*, ¶ 158.

105. *Id.*, ¶ 159

106. *Id.*

107. Chaparro Álvarez and Lapo Íñiguez v. Ecuador, Preliminary Objections, Merits, Reparations and Costs, "Operative Paragraphs" ¶¶ 3-4.

108. *Id.*, ¶ 35, n.102.

*prohibits cruel and inhumane punishment, including torture and degrading treatment for all individuals who have been deprived of liberty.*¹⁰⁹ *The State acknowledged its violation of these rights as a result of the five-day incommunicado period for Mr. Chaparro Álvarez and four-day incommunicado period for Mr. Lapo Íñiguez, which were both in excess of the legal time limit of 24 hours under the State’s domestic laws.*¹¹⁰ *Moreover, the Court found that the detention center in which both victims were imprisoned did not contain adequate conditions which could “guarantee prison inmates. . . respect [of] their fundamental rights and a decent life” and the prolonged isolation of the unlawful incommunicado period was in violation of Article 5(1) (Right to Physical, Mental, and Moral Integrity) and Article 5(2) (Prohibition of Torture, and Cruel, Inhumane or Degrading Treatment) to the detriment of Mr. Chaparro Álvarez and Mr. Lapo Íñiguez.*¹¹¹

Articles 21(1) (Right to Use and Enjoyment of Property) and 21(2) (Right to Compensation in Case of Expropriation), in relation to Articles 1(1) and 2 of the Convention to the detriment of Mr. Chaparro Álvarez and Mr. Lapo Íñiguez,¹¹² because:

*Article 21(1) (Right to Use and Enjoyment of Property) protects the right of individuals to full use and enjoyment of property, which the Court has established under previous case law as “material goods that can be possessed, as well as any right that may form part of a person’s patrimony.”*¹¹³ *The Court found that the State’s precautionary measures were justified because the State only seized and deposited Mr. Chaparro Álvarez’s property, including his Plumavit factory, for the purpose of maintaining possible evidence of criminal misconduct.*¹¹⁴ *However, the State was in violation of Article 21(1) when: 1) it failed to lift the material precautionary measures after evidence showed that the was not involved;*¹¹⁵ *2) the State required that Mr. Chaparro Álvarez pay administrative fees to maintain the factory after his charges had been dismissed;*¹¹⁶ *3) the State failed to return all portions of the seized*

109. *Id.* ¶ 35-36, n.102.

110. *Id.* ¶¶ 167-68.

111. *Id.* ¶¶ 171-72.

112. *Id.* “Operative Paragraphs” ¶¶ 3-4.

113. Chaparro Álvarez and Lapo Íñiguez v. Ecuador, Preliminary Objections, Merits, Reparations and Costs, ¶ 174.

114. *Id.* ¶ 188.

115. *Id.* ¶ 198-99.

116. *Id.* ¶¶ 193-95.

property, including inventory taken from the factory;¹¹⁷ and 4) when the State unduly delayed the return of Mr. Chaparro Álvarez's remaining property in damaged conditions which disproportionality affected the worth and productivity of his business.¹¹⁸ All of this impeded Mr. Chaparro Álvarez's right to the full use and enjoyment of his business.¹¹⁹

Article 21(2) (Right to Compensation in Case of Expropriation) requires the State only deprive property for "public utility or social interest" specified under domestic laws and provide equitable compensation to the individual.¹²⁰ As a result of the unlawful, arbitrary, and unjustified seizure of Mr. Lapo Ñíguez's vehicle, which had no evidence of connection with any criminal offense and has not been returned, the Court found that the State had violated Article 21(2) (Right to Compensation in Case of Expropriation).¹²¹

C. Dissenting and Concurring Opinions

1. Separate Opinion of Judge Sergio García Ramírez

In a separate opinion, Judge Sergio García Ramírez affirmed the violations of the Judgment by the State, but held administrative authorities can more effectively correct the violations than correction done by habeas corpus proceedings.¹²² Additionally, Judge Ramírez emphasized the impact that passage of time has on the valid interest and rights of persons should be an element to determine reasonableness of criminal detention.¹²³

IV. REPARATIONS

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

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

117. *Id.* ¶ 205.

118. *Id.* ¶ 204.

119. Chaparro Álvarez and Lapo Ñíguez v. Ecuador, Preliminary Objections, Merits, Reparations and Costs, ¶ 209.

120. *Id.* ¶ 174.

121. *Id.* ¶ 217-18.

122. *Id.* ¶ 13.

123. *Id.* ¶ 17.

Guarantee)

1. Judgment as a Form of Reparation

The Court determined that the Judgment, itself, is a *per se* form of reparation.¹²⁴

2. Removal of Criminal Records of the Names of Mr. Chaparro Álvarez and Mr. Lapo Íñiguez

The Court ordered the State to eliminate all criminal records of both Mr. Chaparro Álvarez and Mr. Lapo Íñiguez from public records, including records from the National Police, the Superintendence of Banks, and [The International Criminal Police Organization] INTERPOL.¹²⁵ Additionally, the State is required to inform any private institutions, including banking and credit foundations, of the human rights violations inflicted on the victims and of their exoneration to all criminal charges.¹²⁶

3. Publication of Judgment

The State is required to publicize Sections IV through X of the Judgment in the official gazette and another nationally circulated newspaper as well as broadcasting the Judgment on radio and television within six months of the Judgment's notification.¹²⁷ The State is obligated to work with the victims and their representatives in disseminating the Judgment.¹²⁸

4. Implementation of Domestic Legislation Conforming to the Convention

Although the State acknowledged its violations during the public hearing and admitted the obligation to adopt the full constraints of the Convention, the Court reiterated that the State must comply appropriately with all obligations established by the Convention.¹²⁹ The State is also obligated to stop charging any fees for maintaining property seized during

124. *Id.* "Operative Paragraphs" ¶ 7.

125. Chaparro Álvarez and Lapo Íñiguez v. Ecuador, Preliminary Objections, Merits, Reparations and Costs, ¶ 260.

126. *Id.*

127. *Id.* ¶ 262-65.

128. *Id.* ¶ 264.

129. *Id.* ¶ 268.

criminal investigations.¹³⁰

Further, the State is required to take all necessary measures to eradicate the use of *de officio* criminal records of all victims who have been exonerated of criminal charges in order to prevent future prejudice on innocent persons.¹³¹

5. Educational Training of State Authorities

The Court prescribed the State to take appropriate measures to ensure proper training and education of public authorities so as to alleviate further human rights and due process violations.¹³² The State must provide the Court with notice of compliance of this obligation within 18 months from the notification of the Judgment.¹³³

B. Compensation

The Court awarded the following amounts:

1. Pecuniary Damages

The representatives of the victims did not provide the necessary documentations for the Court to evaluate the pecuniary damages.¹³⁴ Consequently, the Court ordered arbitration proceedings to determine the proper amount that should be awarded, if any.¹³⁵ During the arbitration, the parties shall determine the commercial value of the Plumavit factory's losses.¹³⁶

Additionally, the Court ordered the State to award: 1) Mr. Lapo Íñiguez \$1,150.09 for the loss of his vehicle;¹³⁷ 2) provide Mr. Chaparro Álvarez \$66,796.70 and Mr. Lapo Íñiguez \$15,026.68 for loss of income as a result of their arbitrary arrest and detention;¹³⁸ and 3) provide \$40,000 to Mr. Chaparro Álvarez¹³⁹ and \$20,000 to Mr. Lapo Íñiguez¹⁴⁰ for loss of

130. *Id.* ¶ 269.

131. Chaparro Álvarez and Lapo Íñiguez v. Ecuador, Preliminary Objections, Merits, Reparations and Costs, ¶ 270.

132. *Id.* ¶ 273.

133. *Id.*

134. *Id.* ¶ 275.

135. *Id.* "Operative Paragraphs" ¶ 13.

136. *Id.* ¶ 232.

137. Chaparro Álvarez and Lapo Íñiguez v. Ecuador, Preliminary Objections, Merits, Reparations and Costs, ¶ 234.

138. *Id.* ¶ 238.

139. *Id.* ¶ 242.

140. *Id.* ¶ 240.

their living arrangements.¹⁴¹ The Court further ordered the State to provide \$16,143.77 with interest to Mr. Chaparro Álvarez as reimbursement for maintenance fees for which he was charged as a result of the unlawful seizure of the Plumavit factory.¹⁴²

2. Non-Pecuniary Damages

The Court determined that the State was required to provide Mr. Chaparro Álvarez and Mr. Lapo Íñiguez a total of \$50,000 for non-pecuniary damages.¹⁴³

3. Costs and Expenses

The State is required to award \$30,000 to Mr. Chaparro Álvarez and \$5,000 to Mr. Lapo Íñiguez for legal costs and expenses; they will then determine the appropriate reimbursement of attorney fees to their legal representatives.¹⁴⁴

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

\$ 244,117.24¹⁴⁵

C. Deadlines

First, the State must comply with the obligation to eliminate all criminal records of the victims immediately after the notification of this Judgment.¹⁴⁶

Second, the State is obligated to comply with the publication of the Judgment within six months after the notification of the Judgment.¹⁴⁷

Third, the State must comply with the adoption of domestic legislation that ensures the adherence to the Convention within a reasonable time,¹⁴⁸ including adoption of necessary measures to eliminate

141. *Id.* ¶ 239.

142. *Id.* ¶ 245.

143. Chaparro Álvarez and Lapo Íñiguez v. Ecuador, Preliminary Objections, Merits, Reparations and Costs, ¶ 252.

144. *Id.* ¶ 281.

145. This amount excludes the amount required for arbitration to determine Mr. Chaparro Álvarez's factory. *Id.* ¶ 232.

146. *Id.* ¶ 260.

147. *Id.* ¶ 265.

148. *Id.* ¶ 268.

de officio criminal records.¹⁴⁹

Fourth, the State is required to provide the Court with results of implementing education and training of public officials within eighteen months of the notification of the Judgment.¹⁵⁰

Lastly, the State must pay the victims the amount awarded to them within one year from the notification of the Judgment.¹⁵¹

V. INTERPRETATION AND REVISION OF JUDGMENT

January 18, 2008: The State submitted a petition to the Court requesting interpretation of the Judgment on Preliminary Objections, Merits, Reparations, and Costs.¹⁵² The State sought clarification as to the reasoning behind the requirement for the arbitration regarding the determination of valuation of Mr. Chaparro Álvarez's Plumavit factory.¹⁵³

A. Composition of the Court¹⁵⁴

Sergio García Ramírez, President
Cecilia Medina Quiroga, Vice-President
Manuel E. Ventura Robles, Judge
Diego García-Sayán, Judge
Leonardo A. Franco, Judge
Margarette May Macaulay, Judge
Rhadys Abreu Blondet, Judge

Pablo Saavedra Alessandri, Secretary
Emilia Segares Rodríguez, Deputy Secretary

B. Merits

149. Chaparro Álvarez and Lapo Íñiguez v. Ecuador, Preliminary Objections, Merits, Reparations and Costs, ¶ 270.

150. *Id.* ¶ 273.

151. *Id.* ¶ 281.

152. Chaparro Álvarez and Lapo Íñiguez v. Ecuador, Interpretation of the Judgment on Preliminary Objections, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 189, ¶ 1 (Nov. 26, 2008).

153. *Id.*

154. The composition of the Court was made up of the same judges who conducted the Judgment on Preliminary Objections, Merits, Reparations and Costs. *Id.* ¶ 8.

The Court found unanimously to dismiss the request by the State for interpretation of Judgment because the request did not comply with the requirements identified by the Convention as an appropriate legal claim for interpretation.¹⁵⁵ Rather, the request was a demand for the reversal of reparation measures decided by the Court and revision of the decision made by the arbitration tribunal to award Mr. Chaparro Álvarez pecuniary damages for loss valuation to the Plumavit factory.¹⁵⁶

VI. COMPLIANCE AND FOLLOW-UP

April 29, 2009: The State fully complied with its obligation to eliminate all criminal records of Mr. Chaparro Álvarez and Mr. Lapo Íñiguez from public records.¹⁵⁷ The Court kept the proceedings open for compliance monitoring and ordered the State to provide detailed results of the other reparation identified in the Judgment.¹⁵⁸

May 19, 2010: The State fulfilled its obligation to implement necessary legislative measures to conform to the parameters of the Convention.¹⁵⁹ The Court kept the monitoring procedure open until the State complied with all further obligations identified in the Judgment.¹⁶⁰

February 22, 2011: The State fully complied with its obligation to pay Mr. Chaparro Álvarez for the amount with interest determined in the reimbursement of maintenance fees for his seized property.¹⁶¹ The State partially complied with the broadcasting of the Judgment on radio and television.¹⁶² The Court continued to keep its monitoring and compliance proceedings open.¹⁶³

January 27, 2015: The State entirely complied with its obligation to broadcast the Judgment on radio and television.¹⁶⁴ The State partially

155. *Id.* ¶ 20-21.

156. *Id.*

157. Chaparro Álvarez and Lapo Íñiguez v. Ecuador, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R., “Declares” ¶ 1 (Apr. 29, 2009).

158. *Id.* “Declares” ¶ 6.

159. Chaparro Álvarez and Lapo Íñiguez v. Ecuador, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R., “Declares That” ¶ 1(b) (May 19, 2010).

160. *Id.* “Declares” ¶ 3.

161. Chaparro Álvarez and Lapo Íñiguez v. Ecuador, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R., “Declares That” ¶ 1 (Feb. 22, 2011).

162. *Id.* ¶ 2.

163. *Id.* ¶ 3.

164. Chaparro Álvarez and Lapo Íñiguez v. Ecuador, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R., “Resuelve” ¶ 1 (Jan. 27, 2015).

complied its obligations to initiate arbitration proceeding regarding pecuniary damages for Mr. Chaparro Álvarez.¹⁶⁵ The Court continued to keep its monitoring and compliance open until the State entirely fulfilled all its obligations to eliminate *de officio* criminal records of innocent persons and completion of arbitration proceedings.¹⁶⁶

June 23, 2016: The State fully complied with its obligation to complete arbitration proceedings to determine and pay the proper amount that would be compensated for the arbitrary seizure of Mr. Chaparro Álvarez's factory.¹⁶⁷ The Court had continued to keep the monitoring and compliance open in regards to the State's obligation to eliminate *de officio* criminal records of innocent persons.¹⁶⁸

VII. LIST OF DOCUMENTS

A. *Inter-American Court*

1. Preliminary Objections

[Chaparro Álvarez and Lapo Íñiguez v. Ecuador, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 170 \(Nov. 21, 2007\).](#)

2. Decisions on Merits, Reparations and Costs

[Chaparro Álvarez and Lapo Íñiguez v. Ecuador, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 170 \(Nov. 21, 2007\).](#)

[Chaparro Álvarez and Lapo Íñiguez v. Ecuador, Preliminary Objections, Merits, Reparations, and Costs, Separate Opinion of Judge Sergio García Ramírez, Inter-Am. Ct. H.R. \(Nov. 21, 2007\).](#)

3. Provisional Measures

165. *Id.* ¶ 2.

166. *Id.* ¶ 3.

167. Chaparro Álvarez and Lapo Íñiguez v. Ecuador, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R., "Resuelve" ¶ 1 (Jun. 23, 2016).

168. *Id.* ¶ 2.

[None]

4. Compliance Monitoring

[Chaparro Álvarez and Lapo Íñiguez v. Ecuador, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(Apr. 29, 2009\).](#)

[Chaparro Álvarez and Lapo Íñiguez v. Ecuador, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(May 19, 2010\).](#)

[Chaparro Álvarez and Lapo Íñiguez v. Ecuador, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(Feb. 22, 2011\).](#)

[Chaparro Álvarez and Lapo Íñiguez v. Ecuador, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(Jan. 27, 2015\).](#)

[Chaparro Álvarez and Lapo Íñiguez v. Ecuador, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(Jun. 23, 2016\).](#)

5. Review and Interpretation of Judgment

[Chaparro Álvarez and Lapo Íñiguez v. Ecuador, Interpretation of the Judgment on Preliminary Objections, Merits, Reparations and Costs, Inter-Am. Ct. H.R. \(ser. C\) No. 189 \(Nov. 26, 2008\).](#)

B. Inter-American Commission

1. Petition to the Commission

[Not Available]

2. Report on Admissibility

[Chaparro Álvarez and Lapo Íñiguez v. Ecuador, Admissibility Report, Report No. 77/03, Inter-Am. Comm'n H.R., Case No. 12.091 \(Oct. 22, 2003\).](#)

3. Provisional Measures

[None]

4. Report on Merits

[Chaparro Álvarez and Lapo Íñiguez v. Ecuador, Merits Report, Report No. 6/06, Inter-Am. Comm'n H.R., Case No. 12.091, \(Feb. 28, 2006\).](#)

5. Application to the Court

[Chaparro Álvarez and Lapo Íñiguez v. Ecuador, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 12.091 \(June 23, 2006\).](#)