

# Tibi v. Ecuador

## ABSTRACT<sup>1</sup>

*This case is about the arbitrary arrest, torture and prolonged detention of a French national in Ecuador, who had been wrongly accused by a snitch of having committed a crime. Eventually, the Court found Ecuador in violation of several Articles of the American Convention, as well as of the Inter-American Convention to Prevent and Punish Torture.*

## I. FACTS

### A. Chronology of Events

**September 27, 1995:** Mr. Daniel David Tibi – a French national residing in Quito, Ecuador and a merchant of precious stones and art objects – is driving his car down a street in Quito when he is arrested by two National Police officers, who are acting on an Interpol (“International Criminal Police Organization”) request.<sup>2</sup> They arrest him because of a statement by Mr. Eduardo Edison García León – a co-suspect in drug trafficking called “Operativo Camarón” (“Shrimp”)<sup>3</sup> – that “a French individual, by name Daniel . . . supplied him with up to fifty grams of cocaine, two or three times.”<sup>4</sup> The Interpol officers forcibly detain Mr. Tibi without a court order,<sup>5</sup> and seize goods worth one million French francs (\$198,601.84).<sup>6</sup> They do not inform him of the charges against him, but tell him the reason for his arrest is “migration control.”<sup>7</sup> Next, they fly Mr. Tibi to Guayaquil, a city in the Guayas province approximately six hundred kilometers from Quito,<sup>8</sup> putting him in a cell at the headquarters

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1. Anne-Marie Rouche, Author; Emily Williams, Editor; Megan Venanzi, Chief IACHR Editor; Cesare Romano, Faculty Advisor.

2. Tibi v. Ecuador, Admissibility Report, Report No. 90/00, Inter-Am. Comm’n H.R., Case No. 12.124, ¶ 1, 5 (Oct. 5, 2000).

3. Tibi v. Ecuador, Preliminary Objections Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 114, ¶¶ 90.7, 90.8, 90.11 (Sept. 7, 2004).

4. *Id.* ¶ 90.8.

5. *Id.* ¶ 3.

6. *Id.*

7. *Id.* ¶ 90.11.

8. *Id.* ¶ 90.12.

of Interpol, where he will eventually spend eighteen months.<sup>9</sup>

**September 28, 1995:** Judge Ángel Rubio Game, the First Criminal Judge of the Guayas, issues a judicial arrest warrant against Mr. Tibi.<sup>10</sup> Then, with no judge present, Mr. Tibi goes to the prosecutor to give his pre-trial statement.<sup>11</sup> The prosecutor shows him a photo album with photographs of persons implicated in the operation against Camarón,<sup>12</sup> including Camarón's picture, whom Mr. Tibi had met with twice to negotiate the exportation of leather bags.<sup>13</sup> Mr. Tibi claims that Interpol, in order to frame him, falsified the portion of Camarón's statement that implicated him.<sup>14</sup> Nevertheless, Interpol accuses Mr. Tibi of selling fifty grams of cocaine to Mr. Camarón.<sup>15</sup>

**October 4, 1995:** Judge Rubio Game issues a preventive detention order against Mr. Tibi, as well as against the others charged in the case against Camarón.<sup>16</sup> Mr. Tibi does not learn the substance of the court order until weeks later.<sup>17</sup> He is not immediately brought before and examined by Judge Rubio Game.<sup>18</sup> Although the court order assigns Mr. Tibi court-appointed defense counsel, Mr. Tibi does not know this and has no defense counsel for a month.<sup>19</sup>

**October 5, 1995:** Interpol imprisons Mr. Tibi for forty-five days in "the quarantine" cellblock, which is 120 square meters holding 120 to 300 inmates.<sup>20</sup> Mr. Tibi does not have adequate ventilation, light, or food.<sup>21</sup> Interpol next moves Mr. Tibi to the "low attenuated" cellblock, where he sleeps on the floor until he uses physical force to get a cell.<sup>22</sup>

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9. Tibi v. Ecuador, Preliminary Objections, Merits, Reparations, and Costs, ¶ 90.12.; Tibi v. Ecuador, Admissibility Report, ¶ 6.

10. Tibi v. Ecuador, Preliminary Objections, Merits, Reparations, and Costs, ¶ 90.13.

11. *Id.* ¶ 90.14.

12. Tibi v. Ecuador, Admissibility Report, ¶ 6.

13. *Id.*

14. *Id.*

15. *Id.*

16. Tibi v. Ecuador, Preliminary Objections Merits, Reparations, and Costs, ¶ 90.18.

17. *Id.*

18. *Id.*

19. *Id.* ¶ 90.19.

20. *Id.* ¶ 90.46.

21. *Id.*

22. Tibi v. Ecuador, Preliminary Objections Merits, Reparations, and Costs, ¶¶ 90.20, 90.47.

**December 8, 1995:** Camarón rescinds the statement he made that allegedly implicated Mr. Tibi, but this is not included in the file.<sup>23</sup>

**February 1996:** Mr. Tibi is offered his freedom if he will make a statement admitting his involvement in the Camarón case.<sup>24</sup> He is handcuffed and brought to a room where he receives blows to his face and body.<sup>25</sup> His legs are burnt with red hot metal bars and cigarettes.<sup>26</sup> Ten days later, the burns and blows are repeated, but this time results in broken ribs.<sup>27</sup> On other occasions, he is hit with baseball bats and his head is submerged in a barrel of water.<sup>28</sup> He never receives medical attention for his injuries.<sup>29</sup> In total, he is tortured in seven sessions, but never admits to participating in the drug trafficking case.<sup>30</sup> Finally, the torture is suspended when the French Embassy intervenes.<sup>31</sup>

**March 6, 1996:** Mr. García León makes another statement that Mr. Tibi is innocent, and the statement is put in the file this time.<sup>32</sup>

**March 21, 1996:** Mr. Tibi delivers his trial statement before “a notary public,” in which he does not submit to the charges against him.<sup>33</sup>

**July 1996:** Mr. Tibi files an action for enforcement of his right to liberty before the President of the Superior Court, but it is rejected.<sup>34</sup>

**February 19, 1997:** Mr. Tibi is moved to a cellblock in which unruly inmates are kept and is attacked by another inmate.<sup>35</sup>

**September 3, 1997:** Mr. Tibi’s request for dismissal of the proceeding and charges against him is accepted, but he is not freed because the Public

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23. Tibi v. Ecuador, Admissibility Report, Report No. 90/00, Inter-Am. Comm’n H.R., Case No. 12.124, ¶ 6 (Oct. 5, 2000); Tibi v. Ecuador, Preliminary Objections Merits, Reparations, and Costs, ¶ 90.21.

24. Tibi v. Ecuador, Admissibility Report, ¶ 8.

25. *Id.*

26. *Id.*

27. *Id.*

28. *Id.*

29. *Id.*

30. Tibi v. Ecuador, Admissibility Report, ¶ 8.

31. *Id.*

32. Tibi v. Ecuador, Preliminary Objections Merits, Reparations, and Costs, ¶ 90.21.

33. *Id.* ¶ 90.22.

34. Tibi v. Ecuador, Admissibility Report, ¶ 7.

35. Tibi v. Ecuador, Preliminary Objections Merits, Reparations, and Costs, ¶ 90.48.

Prosecution Service has to send its verdict “for consultation” to the Superior Court; the consultation takes longer than the usual fifteen days.<sup>36</sup>

**October 2, 1997:** Mr. Tibi files an action for *amparo*,<sup>37</sup> which is dismissed without any explanation.<sup>38</sup>

**January 1998:** The judges sign the Public Prosecution Service’s consultation, because the accusations against Mr. Tibi are unrelated to the criminal activity in the Camarón case.<sup>39</sup>

**January 20, 1998:** Judge Reynaldo Cevallos, the Second Criminal Judge of the Guayas, orders the immediate release of Mr. Tibi.<sup>40</sup>

**January 21, 1998:** Mr. Tibi is released from jail, but his property is not returned to him.<sup>41</sup> He returns to France.<sup>42</sup>

### B. Other Relevant Facts

[None]

## II. PROCEDURAL HISTORY

### A. Before the Commission

**July 16, 1998:** Mr. Arthur Vercken, Mr. Tibi’s attorney, files a petition on Mr. Tibi’s behalf with the Inter-American Commission of Human Rights (“the Commission”).<sup>43</sup>

**August 12, 1999:** The State claims domestic remedies have not been exhausted since the State criminal proceeding in the Camarón case is still pending.<sup>44</sup> The State again claims the petition is inadmissible because of

36. Tibi v. Ecuador, Admissibility Report, ¶ 9.

37. A writ of *amparo* is a remedy against violations of constitutional rights committed by a public official or a private individual or entity; it is “protective relief to a person’s right to security.” See generally Eliza B. Yu, *Writ of Amparo is Protective Relief to a Person’s Right to Security* (Aug. 13, 2015), <https://yueb.wordpress.com/2015/08/13/writ-of-amparo-is-protective-relief-to-a-persons-right-to-security>.

38. Tibi v. Ecuador, Admissibility Report, ¶ 9.

39. *Id.*

40. Tibi v. Ecuador, Preliminary Objections Merits, Reparations, and Costs, ¶ 90.25.

41. *Id.* ¶ 3.

42. Tibi v. Ecuador, Admissibility Report, ¶ 9.

43. Tibi v. Ecuador, Preliminary Objections, Merits, Reparations, and Costs, ¶ 6.

44. *Id.* ¶ 8.

the representative's failure to exhaust all effective domestic remedies,<sup>45</sup> and that the decision of the State tribunals would be a suitable resolution.<sup>46</sup> Also, the State claims that the State law requires the petitioner request the return of his property, and that he did not claim his belongings after his release.<sup>47</sup>

**October 5, 2000:** The Commission adopts Report on Admissibility No. 90/00, declaring the petition admissible.<sup>48</sup> The Commission concludes that an exception to the exhaustion of domestic remedies requirement exists pursuant to Article 46(2)(c) of the American Convention, because there has been unjustified delay.<sup>49</sup> The Commission specifies that the State's argument about non-exhausted remedies refers to the Camarón drug trafficking case that was provisionally dismissed on September 3, 1997, yet Mr. Tibi's case has been underway since 1995.<sup>50</sup> As such, the Commission determines that the petition is admissible.<sup>51</sup>

**December 12, 2001:** Mr. Tibi notifies the Commission that the Center for Justice and International Law ("CEJIL") will now represent him.<sup>52</sup>

**December 14, 2001:** Mr. Tibi notifies the Commission that the Human Rights Clinic of the Catholic University of Ecuador (*Clínica de Derechos Humanos of the Pontificia Universidad Católica del Ecuador*; "*Clínica de Derechos Humanos PUCE*") will also represent him.<sup>53</sup>

**March 3, 2003:** The Commission adopts the Report on the Merits No. 34/03,<sup>54</sup> in which it recommends that the State grant full reparation to Mr. Tibi.<sup>55</sup> The Commission recommends the State provide compensation and rehabilitation for the torture of Mr. Tibi, erase any criminal record if it exists,<sup>56</sup> and take the necessary steps to make legislation on *amparo* effective.<sup>57</sup>

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45. *Id.*

46. Tibi v. Ecuador, Admissibility Report, ¶ 14.

47. *Id.* ¶ 15.

48. Tibi v. Ecuador, Preliminary Objections, Merits, Reparations, and Costs, ¶ 10.

49. *Id.*

50. *Id.*

51. *Id.*

52. *Id.* ¶ 15.

53. *Id.*

54. Tibi v. Ecuador, Preliminary Objections, Merits, Reparations, and Costs, ¶ 17.

55. *Id.*

56. *Id.*

57. *Id.*

*B. Before the Court*

**June 25, 2003:** The Commission submits the case to the Court after the State failed to adopt its recommendations.<sup>58</sup>

1. Violations Alleged by Commission<sup>59</sup>

Article 5 (Right to Humane Treatment)

Article 7 (Right to Personal Liberty)

Article 8 (Right to a Fair Trial)

Article 10 (Right to Compensation in the Event of Miscarriage of Justice)

Article 11 (Right to Privacy)

Article 21 (Right to Property)

Article 25 (Right to Judicial Protection)

*all in relation to:*

Article 1(1) (Obligation of Non-Discrimination) of the American Convention.<sup>60</sup>

2. Violations Alleged by Representatives of the Victims<sup>61</sup>

Same Violations Alleged by Commission, plus:

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

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

Article 17 (Rights of the Family)

*all in relation to:*

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

**August 29, 2003:** The State appoints Hernán Salgado Pesantes as judge

58. *Id.* ¶¶ 18–19.

59. *Tibi v. Ecuador*, Admissibility Report, ¶¶ 1, 3.

60. *Id.* ¶ 1.

60. *Id.* ¶ 15.

61. *Tibi v. Ecuador*, Preliminary Objections, Merits, Reparations, and Costs, ¶ 25. Mr. Arthur Vercken served as representative of Mr. Tibi. *Id.* ¶ 6.

*ad-hoc*.<sup>62</sup>

**October 31, 2003:** The State files two preliminary objections.<sup>63</sup> In the first objection, the State argues Petitioner failed to exhaust the State's domestic remedies.<sup>64</sup> Specifically, the State argues the following: the petition should not have been admitted since State criminal proceedings against Mr. Tibi are pending; the *amparo* is not the suitable remedy; the habeas corpus remedy was not exhausted before the Justice of the Peace of the County where Mr. Tibi was detained – as set forth in Article 93 of the Political Constitution of Ecuador –; the civil action against the State – as set forth in Article 22 of the Political Constitution of Ecuador – was not exhausted; the motion of appeal remedy was not exhausted; the Commission did not allow the State to solve the conflict before engaging in international justice;<sup>65</sup> and as a result, there was no unjustified delay in processing of the case.<sup>66</sup>

In the second objection, the State argues the Court lacked *ratione materiae* jurisdiction, or subject-matter jurisdiction, over the Inter-American Convention to Prevent and Punish Torture.<sup>67</sup> Specifically, the State argues the Court has no jurisdiction to apply this instrument because the Inter-American Convention to Prevent and Punish Torture was not ratified by Ecuador until 2000, thus it was not a part of the Ecuadorian legal system at the time of Mr. Tibi's detention; and the State cannot be punished for obligations that did not exist at the time of the alleged facts.<sup>68</sup>

### III. MERITS

#### A. Composition of the Court

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

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62. *Id.* ¶ 23.

63. *Id.* ¶ 26.

64. *Id.* ¶ 44.

65. *Id.*

66. *Id.*

67. Tibi v. Ecuador, Preliminary Objections, Merits, Reparations, and Costs, ¶ 56.

68. *Id.*

Hernán Salgado Pesantes, Judge *ad-hoc*

Pablo Saavedra Alessandri, Secretary  
Emilia Segares Rodríguez, Deputy Secretary

*B. Decision on the Merits*

**September 7, 2004:** The Court issues its Judgment on Preliminary Objections, Merits, Reparations, and Costs.<sup>69</sup>

The Court found unanimously to:

Dismiss both of the State's preliminary objections.<sup>70</sup>

The Court found unanimously that State had violated:

Article 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) and 7(5) (Right to Be Promptly Brought Before a Judge and Right to a Trial Within Reasonable Time), all in relation to Article 1(1) of the Convention, to the detriment of Mr. Tibi<sup>71</sup>, because:

*The State failed to meet its obligation to present an arrest warrant or court order, but detained Mr. Tibi anyway, constituting an unlawful detention.<sup>72</sup> The only exception to this rule is if an individual is clearly and openly committing a crime, which Mr. Tibi was not.<sup>73</sup> This obligation arose not only from the Convention, but also from domestic law in force at the time of the events, including Article 19(17)(h) of the Ecuadorian Political Constitution and the Code of Criminal Procedures of Ecuador of 1983.<sup>74</sup> Additionally, the State failed to meet its obligation to present sufficient evidence that would lead to a reasonable presumption that Mr. Tibi was an accomplice to a crime, yet kept him imprisoned, constituting*

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69. See *Tibi v. Ecuador*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 114 (Sept. 7, 2004).

70. *Id.* "Operative Paragraphs" ¶¶ 1-2.

71. *Id.* "Operative Paragraphs" ¶ 3.

72. *Id.* ¶ 103.

73. *Id.*

74. *Id.*



*an arbitrary preventive imprisonment.<sup>75</sup> The Code of Criminal Procedures of Ecuador of 1983 also included an obligation against such imprisonment.<sup>76</sup>*

*Furthermore, the State has certain safeguards it must comply with to prevent arbitrary arrests.<sup>77</sup> First, the State was required to disclose to Mr. Tibi the reasons for his detention, the charges against him, and his rights,<sup>78</sup> such as his right to contact next of kin or an attorney.<sup>79</sup> Second, the State failed to present Mr. Tibi before a judge or competent judicial authority without delay, since it took approximately six months for him to testify before a “notary public,” and since, according to the Convention and Ecuador’s Political Constitution, the Public Prosecutor to whom Mr. Tibi made his pre-trial statement was not deemed an “official authorized by law to carry out judicial functions.”<sup>80</sup> The fact that the judge received the police report does not fulfill this guarantee, since a personal appearance is required.<sup>81</sup> Therefore, the State violated the above portions of Article 7 (Right to Personal Liberty) of the Convention.<sup>82</sup>*

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

*The State failed to promptly offer Mr. Tibi a judicial remedy against the acts that violated his basic rights.<sup>84</sup> An effective opportunity to file a prompt remedy is required so that an individual may attain the judicial protection requested.<sup>85</sup> The Court found that the State failed to make a timely decision on the judicial amparo remedy filed by Mr. Tibi, given that the ruling on said remedy was issued twenty-one days after its filing.<sup>86</sup> Thus, the State violated Mr. Tibi’s rights under Article 7(6) (Right to Have Recourse Before a Competent Court) and Article 25 (Right to Judicial Protection) of the Convention.<sup>87</sup>*

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75. Tibi v. Ecuador, Preliminary Objections, Merits, Reparations, and Costs, ¶ 107.

76. *Id.* ¶ 105.

77. *Id.* ¶¶ 111–14.

78. *Id.* ¶ 111.

79. *Id.* ¶ 112.

80. *Id.* ¶ 117-19.

81. Tibi v. Ecuador, Preliminary Objections, Merits, Reparations, and Costs, ¶ 118.

82. *Id.* ¶ 122.

83. *Id.* “Operative Paragraphs” ¶ 4.

84. *Id.* ¶ 130.

85. *Id.* ¶ 131.

86. *Id.* ¶ 134.

87. Tibi v. Ecuador, Preliminary Objections, Merits, Reparations, and Costs, ¶ 137.

Article 5(1) (Right to Physical, Mental, and Moral Integrity), 5(2) (Prohibition of Torture, and Cruel, Inhumane or Degrading Treatment) and 5(4) (Right of Accused to Be Segregated from Convicted Persons) all in relation to Article 1(1) of the Convention, to the detriment of Mr. Tibi,<sup>88</sup> because:

*The Court found that the State did not comply with its obligations for several reasons.<sup>89</sup> First, prison guards repeatedly tortured Mr. Tibi with the goal of causing such extreme suffering that he would plead guilty.<sup>90</sup> Second, the State did not provide acceptable living conditions or decent treatment to Mr. Tibi.<sup>91</sup> Third, Mr. Tibi did not receive timely or proper medical examinations, and no investigations were opened as to the cause of his wounds and injuries.<sup>92</sup> Additionally, the penitentiary in which Mr. Tibi was held did not segregate its inmates, thus leaving Mr. Tibi exposed to great risk of violence.<sup>93</sup> These obligations to investigate and prosecute those responsible for torturing Mr. Tibi arose not only from the Convention, but also from the Convention to Prevent and Punish Torture, which entered into force in Ecuador on December 9, 1999.<sup>94</sup> As a result, the State violated the above subparagraphs of Article 5 (Right to Humane Treatment) of the Convention.<sup>95</sup>*

Article 5(1) (Right to Physical, Mental, and Moral Integrity) in relation to Article 1(1) of the Convention, to the detriment of Mrs. Beatrice Baruet, Ms. Sarah and Ms. Jeanne Camila Vachon, Ms. Lisianne Judith Tibi, and Mr. Valerian Edouard Tibi<sup>96</sup>, because:

*The impact the arbitrary incarceration and torture had on Mr. Tibi's immediate family was significant: the family could not locate Mr. Tibi's whereabouts, they felt powerless in efforts to help end his detention, they were forced to travel more than six hundred miles from their home if they wanted to visit Mr. Tibi, and they were frightened for his safety, causing increased anguish and psychological effects on them.<sup>97</sup> Thus, the State*

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88. *Id.* "Operative Paragraphs" ¶ 5.

89. *Id.* ¶¶ 148-58.

90. *Id.* ¶¶ 148-49.

91. *Id.* ¶ 152.

92. *Id.* ¶¶ 153, 157.

93. *Tibi v. Ecuador*, Preliminary Objections, Merits, Reparations, and Costs, ¶ 158.

94. *Id.* ¶ 159.

95. *Id.* ¶ 162.

96. *Id.* "Operative Paragraphs" ¶ 6.

97. *Id.* ¶¶ 160-61.

violated their rights under Article 5(1) (Right to Physical, Mental, and Moral Integrity) of the Convention.<sup>98</sup>

Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal), 8(2) (Right to Be Presumed Innocent), 8(2)(b) (Right to Have Prior Notification of Charges), 8(2)(d) (Right to Self-Defense or Legal Assistance and Communicate Freely with Counsel), 8(2)(e) (Right to Assistance by Counsel Provided by State), and 8(2)(g) (Right Not to Self-Incriminate) all in relation to Article 1(1) of the Convention, to the detriment of Mr. Tibi,<sup>99</sup> because:

*The State failed to try Mr. Tibi within a reasonable time.<sup>100</sup> In evaluating the reasonableness of the length of a proceeding, the Court looks to three factors: “the complexity of the matter, procedural activity of the interested party, and the behavior of the judicial authorities.”<sup>101</sup> The fact that almost nine years have passed since Mr. Tibi’s detention demonstrates that the length of time the State took to reach a decision was unreasonable.<sup>102</sup> Additionally, the State failed to presume the innocence of Mr. Tibi, as seen by the fact that the State attempted to charge him for being involved in the Camarón Operation despite there being no evidence to reasonably make that inference.<sup>103</sup> Furthermore, the State neglected its duty to inform Mr. Tibi of the charges against him, the reasons for the charges, and the crimes for which he is being accused, prior to having Mr. Tibi make his first statement.<sup>104</sup> Additionally, the State did not allow Mr. Tibi to have access to an attorney during the first month of his detention.<sup>105</sup> Furthermore, being that Mr. Tibi was a foreign detainee, he should have been granted the right to communicate with a consular official of France.<sup>106</sup> Lastly, State agents attempted to compel Mr. Tibi to incriminate himself through acts of torture, which was intended to break down his mental resistance, thus violating his basic right not to be compelled to plead guilty.<sup>107</sup> Therefore, the State violated the above subparagraphs of Article 8 (Right to a Fair Trial) of the Convention.<sup>108</sup>*

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98. *Id.* ¶ 162. 001

99. Tibi v. Ecuador, Preliminary Objections, Merits, Reparations, and Costs “Operative Paragraphs” ¶ 7.

100. *Id.* ¶ 177.

101. *Id.* ¶ 175.

102. *Id.* ¶ 176.

103. *Id.* ¶ 181.

104. *Id.* ¶¶ 187–88.

105. Tibi v. Ecuador, Preliminary Objections, Merits, Reparations, and Costs, ¶ 193.

106. *Id.* ¶ 195.

107. *Id.* ¶ 197-98.

108. *Id.* ¶ 200.

Article 21 (Right to Property), in relation to Article 1(1) of the Convention, to the detriment of Mr. Tibi,<sup>109</sup> because:

*The State deprived Mr. Tibi of his right to property when it did not return his possessions.<sup>110</sup> Mr. Tibi was not required to show pre-existence or proof of the goods seized in order for them to be returned.<sup>111</sup> As a result, Mr. Tibi's Article 21 (Right to Property) right was violated.<sup>112</sup>*

### C. Dissenting and Concurring Opinions

#### 1. Concurring Opinion of Judge Sergio García Ramírez

In a separate opinion, Judge García Ramírez wrote of the importance of furthering the reformation of the State's criminal prosecution system, including due process and prison conditions, and addressed the issues that arise when the most basic rights of inmates are violated.<sup>113</sup> Accordingly, he emphasized the importance of an effective defense system with access to justice in order to protect human rights.<sup>114</sup> Judge Ramírez stated that precautionary or punitive measures that involve deprivation of an individual's liberty must hinge on the requirements of necessity, lawfulness and moderation.<sup>115</sup> He explained that any violation of the basic rights, such as the right to information on the charges against the defendant and the right to a fair trial by an independent, impartial, and competent tribunal, impedes access to justice, rendering the defendant defenseless and making the law arbitrary.<sup>116</sup> Therefore, he concluded, reform of proceedings and prisons requires serious attention to produce more effective measures.<sup>117</sup>

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

In a separate opinion, Judge Cançado Trindade wrote to discuss the

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109. *Id.* "Operative Paragraphs" ¶ 8.

110. *Id.* ¶ 220.

111. Tibi v. Ecuador, Preliminary Objections, Merits, Reparations, and Costs, ¶ 220.

112. *Id.* ¶ 221.

113. Tibi v. Ecuador, Preliminary Objections, Merits, Reparations, and Costs, Separate Opinion of Judge Sergio García Ramírez, Inter-Am. Ct. H.R. (ser. C) No. 114 ¶ 1, 62, 70 (Sept. 7, 2004).

114. *Id.* ¶ 48.

115. *Id.* ¶ 66.

116. *Id.* ¶¶ 39, 43-44.

117. *Id.* ¶ 73.

issues and consequences that arise from torture and the lack of rehabilitation in the prison system.<sup>118</sup> He discussed the psychological impact that arbitrary and inhumane detention has on an individual's conscience, and how it leads one to feel isolated from the outside world.<sup>119</sup> Due to the indifference and brutalization of the outside world, Judge Cançado Trindade argued there is an even greater need for the law to step in and not remain indifferent to the abuses suffered by detainees.<sup>120</sup>

Additionally, he stressed the importance of the realization of justice, with due reparations, in order to help victims of torture rehabilitate.<sup>121</sup> He stated that rehabilitation is of great importance, because torture reaches beyond physical injuries, causing mental suffering, loss of dignity, identity and personality, and suffering by the next of kin.<sup>122</sup>

### 3. Concurring Opinion of Judge Hernán Salgado Pesantes

In a separate opinion, Judge Salgado Pesantes concurs that the violations of the basic rights of Mr. Tibi and his family were proven.<sup>123</sup> He points out that Ecuador ratified the Inter-American Convention against Torture in 1999, thus torture must be abolished as a way of investigating a crime.<sup>124</sup> He also addresses the responsibility of the judges to make reasonable rulings.<sup>125</sup> Judge Salgado Pesantes reiterates the majority's position that unjust and unreasonable criminal proceedings, including incarceration, shall not be tolerated and constitute a violation of a person's most basic rights.<sup>126</sup>

## IV. REPARATIONS

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

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118. Tibi v. Ecuador, Preliminary Objections, Merits, Reparations, and Costs, Separate Opinion of Judge A.A. Cançado Trindade, Inter-Am. Ct. H.R. (ser. C) No. 114, ¶ 1.

119. *Id.* ¶ 3.

120. *Id.* ¶ 11-13.

121. *Id.* ¶ 33-34.

122. *Id.* ¶ 24.

123. Tibi v. Ecuador, Preliminary Objections, Merits, Reparations, and Costs, Separate Opinion of Judge Hernán Salgado Persantes, Inter-Am. Ct. H.R. (ser. C) No. 114, ¶ 1.

124. *Id.* ¶ 3.

125. *Id.* ¶¶ 5-6.

126. *Id.* ¶ 2.

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

1. Judgment as a Form of Reparation

The Court explained that the Judgment itself is a *per se* reparation.<sup>127</sup>

2. Investigate the Facts and Identify and Punish those Responsible

The Court ordered the State to conduct a proper investigation of the case and identify, prosecute, and punish those responsible for the violations committed against Mr. Tibi.<sup>128</sup> Throughout the investigation, the authorities should update Mr. Tibi and his family on progress made in the case, as well as make sure they are involved in criminal proceedings, including the investigation.<sup>129</sup>

3. Publish the Judgment

The State must publish the proven facts and operative paragraphs of the Judgment in the State's Official Gazette and in a nationally circulated newspaper, and the French translation in a widespread newspaper in France, particularly in the locality in which Mr. Tibi lives.<sup>130</sup>

4. Issue a Public Apology

The State must make a public formal written statement accepting international responsibility for the case and apologizing to Mr. Tibi and his family.<sup>131</sup> The statement must also be published in a nationally circulated newspaper in the State, and a French translation in a widespread newspaper in France, particularly in the locality in which Mr. Tibi lives.<sup>132</sup>

5. Implement Educational Programs

The State must create educational training programs for "staff of the judiciary, the public prosecutor's office, the police and penitentiary staff,

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127. Tibi v. Ecuador, Preliminary Objections, Merits, Reparations, and Costs, "Operative Paragraphs" ¶ 9.

128. *Id.* "Operative Paragraphs" ¶ 10.

129. *Id.* ¶¶ 257-58.

130. *Id.* "Operative Paragraphs" ¶ 11.

131. *Id.* "Operative Paragraphs" ¶ 12.

132. *Id.* ¶ 261.

and the medical, psychiatric and psychological staff” working on protecting human rights in the treatment of inmates.<sup>133</sup> The State must create an inter-institutional committee to implement the training programs and must apportion specific resources in order to meet its objectives.<sup>134</sup>

### *B. Compensation*

The Court awarded the following amounts:

#### 1. Pecuniary Damages

The Court required the State to pay a total of 148,715 Euros (\$179,440) for pecuniary damages; out of this sum, 57,995 Euros (\$69,976.80) should be given to Mr. Tibi and 7,870 Euros (\$9,495.94) to his wife, Mrs. Beatrice Baruet.<sup>135</sup> The State must also return Mr. Tibi’s property they seized upon his detainment, and, if this cannot be done, they must pay him 82,850 Euros (\$99,966.80).<sup>136</sup>

#### 2. Non-Pecuniary Damages

The Court required the State to pay a total of 207,123 Euros (\$249,915) for non-pecuniary damages.<sup>137</sup> Of this sum, 99,420 Euros (\$119,960) should be given to Mr. Tibi, 57,995 (\$69,976.80) to Mrs. Beatrice Baruet, and 12,427 (\$14,994.40) each to Ms. Sarah Vachon, Ms. Jeanne Camila Vachon, Ms. Lisianne Judith Tibi and Mr. Valerian Edouard Tibi.<sup>138</sup>

#### 3. Costs and Expenses

The Court ordered that the State must compensate Mr. Tibi 37,282 Euros (\$44,984.50) for the domestic and international proceedings.<sup>139</sup>

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133. Tibi v. Ecuador, Preliminary Objections, Merits, Reparations, and Costs, “Operative Paragraphs” ¶ 13.

134. *Id.*

135. *Id.* “Operative Paragraphs” ¶ 14.

136. *Id.* USD calculations as of September 7, 2004.

137. *Id.* “Operative Paragraphs” ¶ 15.

138. *Id.* USD calculations as of September 7, 2004.

139. Tibi v. Ecuador, Preliminary Objections, Merits, Reparations, and Costs, “Operative Paragraphs” ¶ 16.

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

393,120 Euros (\$474,339)

*C. Deadlines*

The State must comply with the publishing orders within six months.<sup>140</sup>

Within six months, the State should issue its public apology.<sup>141</sup>

The State must report to the Court within six months on the establishment and operation of the inter-institutional committee.<sup>142</sup>

The State must provide the required compensation and reimbursements within one year.<sup>143</sup>

The State should give the Court a report on compliance measures within one year.<sup>144</sup>

## V. INTERPRETATION AND REVISION OF JUDGMENT

[None]

## VI. COMPLIANCE AND FOLLOW-UP

**September 22, 2006:** The Court determined that the State had complied with its obligation to publish sections of the Judgment in the State's Official Gazette and in another nationally circulated State newspaper.<sup>145</sup> Additionally, the Court ordered the State to reimburse Mr. Tibi 82,850 Euros (\$99,966.80) for the value of his property seized, since reaching an agreement regarding the return of Mr. Tibi's stones and Volvo had proven to be impossible.<sup>146</sup>

The Court decided it would keep the proceeding open to ensure that the State would investigate for the purpose of identifying, trying, and punishing "those responsible for the violations committed against" Mr. Tibi; publish the French translation of the Judgment sections in a French newspaper; publish a formal apology; create educational training programs and an inter-institutional committee; and pay Mr. Tibi and the

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140. *Id.* ¶ 260.

141. *Id.* ¶ 261.

142. *Id.* ¶ 264.

143. *Id.* "Operative Paragraphs" ¶ 19.

144. *Id.* "Operative Paragraphs" ¶ 20.

145. Tibi v. Ecuador, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R., "Declares" ¶ 2 (Sept. 22, 2006).

146. *Id.* "Declares" ¶ 2; *Id.* "Considering" ¶ 11.



other victims for pecuniary damages, non-pecuniary damages, and the costs and expenses incurred in the proceedings.<sup>147</sup>

Additionally, the Court instructed the State to submit a report specifying the measures adopted in compliance with the pending reparations by January 19, 2007.<sup>148</sup>

**July 1, 2009:** The Court verified that the State had complied with all payment orders aside from those related to property.<sup>149</sup> Additionally, the Court found that the State had partially complied with its obligation to publish a formal apology by doing so in a nationally circulated State newspaper.<sup>150</sup> The Court decided to keep the proceedings open to ensure that the State would publish the apology in a French newspaper.<sup>151</sup> Additionally, the Court wanted to ensure that the State would identify, try, and punish “those responsible for the violations committed against” Mr. Tibi; publish the French translation of the judgment sections in a French newspaper; create an inter-institutional committee to implement the training programs on human rights and the treatment of inmates; and compensate Mr. Tibi for the property they seized upon his detainment as well as interest for the delayed payment.<sup>152</sup>

Therefore, the Court required the State to submit a report identifying the measures adopted in compliance with the pending reparations by October 15, 2009.<sup>153</sup>

**March 3, 2011:** The Court found that the State had complied with its obligation to publish both the judgment sections and a formal apology in a French newspaper.<sup>154</sup> The Court also found that the State had complied with payment of pecuniary damages for the property the State seized and interest for delayed payment.<sup>155</sup>

The Court determined that the State had partially complied with its obligation to implement training programs by training judges and the National Police.<sup>156</sup> However, the State had yet to create the inter-institutional committee to implement the training programs on human rights and the

147. *Id.* “Declares” ¶ 3.

148. *Id.* “And Decides” ¶ 2.

149. Tibi v. Ecuador, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R., “Declares” ¶ 1 (July 1, 2009).

150. *Id.* “Declares” ¶ 2(a).

151. *Id.* “Declares” ¶ 3(c).

152. *Id.* “Declares” ¶ 3(a), (b), (d)-(f).

153. *Id.* “And Decides” ¶ 2.

154. Tibi v. Ecuador, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R., “Decides” ¶ 1(a)-(b) (Mar. 3, 2011).

155. *Id.* “Decides” ¶ 1(c)-(d).

156. *Id.* “Considering” ¶ 20.

treatment of inmates for “the public prosecution and penitentiary staff, including medical, psychiatric and psychological personnel.”<sup>157</sup>

The Court ruled to keep the proceeding open, also to ensure that the State identifies, tries, and punishes “those responsible for the violations committed against” Mr. Tibi.<sup>158</sup> Furthermore, the Court requested that the State submit a report outlining the measures adopted by June 7, 2011.<sup>159</sup>

## VII. LIST OF DOCUMENTS

### A. *Inter-American Court*

#### 1. Preliminary Objections

[None]

#### 2. Decisions on Merits, Reparations and Costs

[Tibi v. Ecuador, Preliminary Objections Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 114 \(Sept. 7, 2004\).](#)

[Tibi v. Ecuador, Preliminary Objections Merits, Reparations, and Costs, Concurring Opinion of Judge Sergio García Ramírez, Inter-Am. Ct. H.R. \(ser. C\) No. 114 \(Sept. 7, 2004\).](#)

[Tibi v. Ecuador, Preliminary Objections Merits, Reparations, and Costs, Concurring Opinion of Judge Antônio Augusto Cançado Trindade, Inter-Am. Ct. H.R. \(ser. C\) No. 114 \(Sept. 7, 2004\).](#)

[Tibi v. Ecuador, Preliminary Objections Merits, Reparations, and Costs, Concurring Opinion of Judge Hernán Salgado Pesantes, Inter-Am. Ct. H.R. \(ser. C\) No. 114 \(Sept. 7, 2004\).](#)

#### 3. Provisional Measures

[None]

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157. *Id.* “Decides” ¶ 3(b).

158. *Id.* “Decides” ¶ 3(a).

159. *Id.* “And Rules” ¶ 2.

## 4. Compliance Monitoring

[Tibi v. Ecuador, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(July 1, 2009\).](#)

[Tibi v. Ecuador, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(Mar. 3, 2011\).](#)

[Tibi v. Ecuador, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(Sept. 22, 2006\).](#)

## 5. Review and Interpretation of Judgment

[None]

*B. Inter-American Commission*

## 1. Petition to the Commission

[Not Available]

## 2. Report on Admissibility

[Tibi v. Ecuador, Admissibility Report, Report No. 90/00, Inter-Am. Comm'n H.R., Case No. 12.124 \(Oct. 5, 2000\).](#)

## 3. Provisional Measures

[None]

## 4. Report on Merits

[Not Available]

## 5. Application to the Court

[Not Available]

## VIII. BIBLIOGRAPHY

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