

INTER-AMERICAN COURT OF HUMAN RIGHTS

CASE OF VERA VERA V. ECUADOR

JUDGMENT OF MAY 19, 2011

(Preliminary Objections, Merits, Reparations and Costs)

In the case of Vera Vera,

The Inter-American Court of Human Rights (hereinafter "the Inter-American Court," "the Court," or "the Tribunal"), comprising the following judges:

Diego García-Sayán, President;
Leonardo A. Franco, Vice-President;
Manuel E. Ventura Robles, Judge;
Margarette May Macaulay, Judge;
Rhadys Abreu Blondet, Judge;
Alberto Pérez Pérez, Judge;
Eduardo Vio Grossi, Judge; and

also present,

Pablo Saavedra Alessandri, Secretary,*

in conformity with Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") and with Articles 31, 32, 42, 65, and 67 of the Court Rules of Procedure¹ (hereinafter "the Rules of Procedure"), issues the following Judgment.

I. INTRODUCTION TO THE CASE AND PURPOSE OF THE CONTROVERSY	<i>Paragraphs</i> 1-6
II. PROCEEDING BEFORE THE COURT	7-9
III. PRELIMINARY OBJECTION REGARDING PRIOR EXHAUSTION OF DOMESTIC REMEDIES	10-17
A. Arguments of the parties	10-12
B. Considerations of the Court	13-17

* Deputy Secretary Emilia Segares Rodríguez informed the Tribunal that she would not be present during the deliberations on this Judgment for reasons of *force majeure*.

¹ Rules of Procedure passed in the LXXXV Regular Period of Sessions held from November 16 to 28, 2009. According to Article 79(2) of the Rules of Procedure, "[i]n cases in which the Commission has adopted a report under Article 50 of the Convention before the these Rules of Procedure have come into force, the presentation of the case before the Court will be governed by Articles 33 and 34 of the Rules of Procedure previously in force. Statements shall be received with the aid of the Victim's Legal Assistance Fund, and the dispositions of these Rules of Procedure shall apply."

IV. JURISDICTION	18
V. EVIDENCE	19
A. Documentary, testimonial, and expert evidence	20-21
B. Admission of the evidence	22-24
VI. PRIOR CONSIDERATIONS	25-33
A. Alleged victims	25-29
B. Factual basis of the application	30-33
VII. RIGHT TO HUMANE TREATMENT [PERSONAL INTEGRITY] AND LIFE OF PEDRO MIGUEL VERA VERA, IN RELATION TO THE OBLIGATIONS TO RESPECT AND GUARANTEE RIGHTS	34-81
A. Arguments of the parties	34-37
B. Considerations of the Court	38
B.1. Medical care as part of the right to life and personal integrity of detainees and prisoners	39-44
B.2. Analysis of each stage of the medical care received by Mr. Pedro Miguel Vera Vera	45
B.2.1. Arrest of Pedro Miguel Vera Vera and transfer to the police station to be registered	46-47
B.2.2. First admission in the Public Hospital of Santo Domingo de los Colorados	48-54
B.2.3. Care in the Provisional Detention Center of Santo Domingo de los Colorados	55-65
B.2.4. Second admission at the Public Hospital of Santo Domingo de los Colorados, transfer to the Eugenio Espejo Hospital of Quito, and subsequent death of Mr. Pedro Miguel Vera Vera	66-74
B.3. Violation of Articles 5(1), 5(2), and 4 of the Convention, in relation to Article 1(1) thereof	75-79
B.4. The alleged prison conditions and health care services for those deprived of liberty in Ecuador at the time that the facts took place	80-81
VIII. JUDICIAL GUARANTEES AND JUDICIAL PROTECTION IN REGARD TO PEDRO MIGUEL VERA VERA AND FRANCISCA MERCEDES VERA VALDEZ	82-99
A. Arguments of the parties	82-84
B. Considerations of the Court	85-99
IX. RIGHT TO HUMANE TREATMENT [PERSONAL INTEGRITY] IN RELATION TO THE OBLIGATION TO GUARANTEE RIGHTS OF MS. FRANCISCA MERCEDES VERA VALDEZ	100-105
X. REPARACIONES	106-151
A. Injured party	109
B. Obligation to investigate the facts	110-123
B.1. Arguments of the parties	110

B.2. Considerations of the Court	111-123
C. Measures of satisfaction	124-127
C.1. Publication of the relevant parts of the present Judgment and public dissemination	124-125
C.2. Public apology and public acknowledgment of international responsibility	126-127 128-137
D. Compensatory damages	128
D.1. Pecuniary damage	129-130
D.1.1. Arguments of the parties	131-132
D.1.2. Considerations of the Court	133
D.2. Non-pecuniary damage	134
D.2.1. Arguments of the parties	135-137
D.2.2. Considerations of the Court	138-139
E. Other claims for reparation	140-145
F. Costs and expenses	141
F.1. Arguments of the parties	142-145
F.2. Considerations of the Court	146-151
G. Method of compliance with the ordered payments	

X. OPERATIVE PARAGRAPHS 152

I

INTRODUCTION TO THE CASE AND PURPOSE OF THE CONTROVERSY

1. On February 24, 2010, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission"), in accordance with Articles 51 and 61 of the Convention, filed an application against the Republic of Ecuador (hereinafter "the State" or "Ecuador") before the Tribunal in case No. 11.535. The initial petition was presented before the Commission on November 8, 1994, by the Ecumenical Human Rights Commission (*Comisión Ecuménica de Derechos Humanos*, hereinafter "CEDHU," its acronym in Spanish). On August 6, 2009, the Inter-American Commission approved Report on admissibility and merits No. 82/09 (hereinafter "the Report"), in which it declared the case admissible and made several recommendations for the State. The State was notified of this Report on August 24, 2009. After the State submitted certain information, and after a deadline extension was granted and another requested, and "[a]fter considering the available information indicating that the State has not complied with the recommendations made in the report on admissibility and merits," the Inter-American Commission decided to submit this case to the Tribunal. The Commission designated Ms. Luz Patricia Mejía, Commissioner, and Mr. Santiago A. Canton, Executive Secretary, as Delegates, and Elizabeth Abi-Mershed, Deputy Executive Secretary, and Silvia Serrano and Nerea Aparicio, attorneys of the Executive Secretariat, as legal advisors.

2. The application relates to the alleged "lack of adequate medical attention; physical and psychological suffering; and subsequent death of Pedro Miguel Vera Vera while under State custody." The Commission indicated that "the facts have not yet been resolved, nor have those responsible been identified and punished."

3. The Commission requested that the Court declare the State of Ecuador responsible for the violation of Articles 4(1) (Right to Life), 5(1) and 5(2) (Right to Humane Treatment [Personal Integrity]) of the American Convention, as relating to the general obligations contained in Article 1(1) of that instrument, to the detriment of Mr. Pedro Miguel Vera Vera. Likewise, the Commission requested that the State of Ecuador be declared responsible for the violation of Articles 8(1) (Fair Trial [Judicial Guarantees]) and 25(1) (Judicial Protection) of the American Convention, in relation to the general obligations contained in Article 1(1) of that treaty, to the detriment of Francisca Mercedes Vera Valdez, Agustín Abraham Vera Vera, Patricio Rubén Vargas Vera, Johanna Vargas Vera and Francisco Rubén Vargas Balcázar. Finally, the Commission requested that the Tribunal order the State to provide certain reparations.

4. On June 28, 2010, Mr. César Duque, legal advisor with the CEDHU and representative of the alleged victims (hereinafter "the representative"), filed a brief of pleadings, motions, and evidence (hereinafter "the brief of pleadings and motions") before the Court. In general, the representative agreed with the arguments contained in the Inter-American Commission's application (*supra* paras. 2 and 3) and requested that the Tribunal rule the State of Ecuador internationally responsible for the violation of Articles 4, 5, 8, and 25 of the American Convention, in relation to Article 1(1) thereof, "for failing to provide adequate medical attention to Pedro Miguel Vera Vera and save his liv[e], [a]s well as [for] failing to guarantee an adequate investigation that would permit the punishment of those responsible, to the detriment of Pedro Miguel Vera Vera's next of kin." The representative also requested that the Court order certain reparations.

5. On October 11, 2010, the State filed a brief with a preliminary objection and its answer to the application and comments to the brief of pleadings and motions (hereinafter, "answer to the application" or "answer"). The State argued that domestic remedies had not been exhausted and rejected international responsibility for the violation of the rights established. The Ecuadorian State indicated that the expenses and compensatory sums requested by the representative are excessive. On June 2, 2010, the State accredited Messes. Erick Roberts Garcés and Rodrigo Durango Cordero as Agent and Alternate Agent, respectively, in the present case.

6. Pursuant to Article 42(4) of the Rules of Procedure, on December 15, 2010, the Commission and representatives presented, respectively, their comments to the preliminary objection filed by the State.

II PROCEEDING BEFORE THE COURT

7. The State and the representatives were notified of the Commission's application on April 29, 2010. During the proceeding before this Tribunal, in addition to the presentation of the main briefs (*supra* paras. 1, 4, and 5) and others submitted by the parties, in an Order dated December 23, 2010, the President of the Court (hereinafter "the President") ordered via statements given before a notary public (hereinafter "affidavit") the testimony to be taken from two alleged victims proposed by the representative. Reports from

three expert witnesses were also to be collected, two of them ordered by the Tribunal on its own motion and one proposed by the representative. The representative and the State had the opportunity to formulate questions for the alleged victims and the expert witnesses prior to the giving of testimony and preparation of the expert witness reports, respectively, as well as to submit comments. Neither the representative nor the State formulated questions or submitted comments to the Tribunal. Likewise, the President called the Commission, the representative, and the State to a public hearing to hear the testimony of an alleged victim and the final oral arguments of the representatives and the State, as well as the final comments of the Inter-American Commission on the preliminary objection and possible merits, reparations, and costs in this case.

8. The public hearing was held on March 2, 2011, during the 90th Regular Period of Sessions of the Tribunal, held in the seat of the Court.²

9. On April 4, 2011, the representative and the State submitted their final written arguments, while the Inter-American Commission submitted its final written comments on the case. Those briefs were forwarded to the parties so that the representatives and the State could submit observations to new documents submitted by the parties in their final written arguments and to other documents that the Tribunal had requested from the State to facilitate adjudication. The parties submitted their comments to those documents on May 5, 2011.

III PRELIMINARY OBJECTION ON THE "FAILURE TO EXHAUST DOMESTIC REMEDIES"

A. Arguments of the parties

10. The State requested that the Tribunal reject the application *in limine litis* based on the argument that, at the proper time, it indicated to the Inter-American Commission that domestic remedies had not been exhausted. It indicated that in this case, "the adequate and effective remedy" was "the initiation of an investigation into the facts alleged by [the] representatives of the alleged victims that are supposedly violations of rights enshrined in the Convention." Likewise, it argued that "it never precisely determined what crime should be applied [in this] case because of the complexity of the issue of a death that took place in the context of a surgical procedure and medical attention provided by several physicians in trying to save the life of Mr. Vera Vera." Finally, the State indicated that "Ecuadorian legal code in force at the time [of the facts] called for an inquisitorial proceeding in which it was the judge who was empowered to move the proceeding forward[. H]owever, as a

² The following people attended the hearing: a) for the Inter-American Commission: Elizabeth Abi-Mershed, Deputy Executive Secretary, and Silvia Serrano Guzmán, Advisor; b) for the representatives, Mr. César Duque, Legal Advisor of the CEDHU; and c) for the State, Carlos Espín Arias, Legal Assistant 2 and Alonso Fonseca Garcés, Supervising Litigation Attorney 2.

possibility for correcting any kind of omission or, fundamentally, the authorities' lack of knowledge of the commission of a crime, individuals were guaranteed the option of bringing any violations of which they may have been victims to the attention of the State[,], which [allegedly] did not leave aside the State's obligation to launch an *ex officio* investigation."

11. The Commission referred to the time-barred nature of the State's arguments. In this regard, it maintained that Ecuador filed five briefs, dated September 27, 1995, June 11, 1996, September 27, 1999, October 2, 2001, and December 29, 2003, during the proceeding before it and prior to any ruling on the admissibility of the case. In its first two briefs, the State did not present any defense with regard to the failure to exhaust local remedies. It was in the briefs dated September 27, 1999, and October 2, 2001, that the Ecuadorian State explicitly invoked the alleged failure to meet the requirement of exhaustion of local remedies under Article 46(1) of the Convention. The Commission also highlighted that the arguments supporting the preliminary objection during the admissibility proceeding do not match those set forth by the State in its answer to the application before the Court. The Commission indicated that in proceedings before it, the State argued that a domestic proceeding had not concluded and had to be resolved by domestic tribunals. Despite this, the State's central argument before the Inter-American Court is that a criminal proceeding had not been launched because "the possibility of medical malpractice could not be presumed." The Commission indicated that for this reason, Ecuador argued that it was up to the relatives of Pedro Miguel Vera Vera to file a complaint to initiate State action. By virtue of these considerations, the Commission requested that the Court dismiss the preliminary objection presented by the State, as the latter's arguments had not been filed at the proper moment before the Commission and were thus time-barred.

12. For their part, the representatives indicated that the "Code of Criminal Procedure in force at the time of the facts indicated that criminal prosecution is of public action and exercised *ex officio*." Therefore, as of the date of the alleged victim's death, the criminal judge or the police commissioner had jurisdiction to launch, *ex officio*, an initial investigation into an "investigable" infraction, as both the Eleventh Criminal Judge of Pichincha and the Fifth Police Commissioner - who collected the body in the city of Quito - were aware of the facts. As a consequence, they alleged that "it was not necessary to file a complaint in order to bring to the State's attention that a crime had been committed that was prosecutable *ex officio*, as the facts were already known to [those officials]." The representatives indicated that in keeping with the "legislation in force on that date, [the Fifth Commissioner] had the obligation to launch the initial investigation. Nevertheless, after the reforms introduced in 1994, the proceeding had to be turned over to a criminal judge in order to continue, which [allegedly] demonstrates that the process has not yet concluded[,], as the tribunals with jurisdiction must move to rule on it and as of this date [the State] has not said what the result of that criminal proceeding was[.]" Finally, they indicated that the victim's family did indeed bring to the attention of the State, in a timely fashion, that Pedro Miguel Vera Vera had been wounded with a firearm and was being detained in a police holding cell.

B. Considerations of the Court

13. Article 46 of the American Convention indicates that for a petition presented under Articles 44 or 45 of that treaty to be admitted by the Commission, it is required, *inter alia*, "that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law." The Court will evaluate in this case whether, pursuant to its jurisprudence, the formal and material standards for a preliminary objection on the grounds of a lack of exhaustion of domestic remedies to proceed have been met. With regard to the formal standards, with the understanding that this exception is a defense available to the State, the Tribunal will first analyze strictly procedural questions, such as the procedural moment in which the objection was raised (whether it was raised in a timely fashion); the facts with regard to which it was raised; and whether the interested party has indicated that the ruling on admissibility was based on erroneous information or on anything else that would affect the right to defense. With regard to the material requisites, the Court should analyze whether domestic remedies have been sought and exhausted in keeping with generally recognized principles of international law - in particular, whether the State raising this objection has specified which domestic remedies have not yet been exhausted. It will also be necessary to demonstrate that these remedies were available, adequate, suitable, and effective. This is due to the fact that because the admissibility of a petition before the Inter-American System is at issue, the Court must verify that the requisites of the rule are met as alleged, though the analysis of the formal requisites takes precedence over that of the material requisites and, in some instances, the latter can be related to the merits of the case.³

14. Related with the foregoing, this Tribunal has repeatedly held in its jurisprudence that an objection to the Court's exercise of its jurisdiction based on the supposed lack of exhaustion of domestic remedies must be presented at the proper procedural moment⁴ - that is, during the admissibility stage of the proceeding before the Commission.⁵ If it is not, the State will have lost its opportunity to file this defense before this Tribunal. Likewise, it is up to neither the Court nor the Commission to identify, *ex officio*, the domestic remedies that must be exhausted. Rather, it is incumbent upon the State to indicate in a timely fashion the domestic remedies that must be exhausted and their effectiveness. Neither does it fall on the international bodies to rectify a lack of precision in the pleadings of a State⁶ that, in spite of having a

³ Cf. *Case of Velásquez Rodríguez v. Honduras. Preliminary Objections*. Judgment of June 26, 1987. Series C No. 1, para. 91; *Case of Garibaldi*, para. 46, and *Case of Perozo et al v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 195, para. 42.

⁴ Cf. *Case of Velásquez Rodríguez V. Honduras*, *supra* note 3, para. 88; *Case of Vélez Loor V. Panamá*, *supra* note 3, para. 20, and *Case of Gomes Lund et al. (Guerrilha do Araguaia) V. Brazil. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 24, 2010. Series C No. 219, para. 38.

⁵ Cf. *Case of Herrera Ulloa V. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107, para. 81; *Case of Vélez Loor V. Panamá*, *supra* note 3, para. 20, and *Case of Gomes Lund et al. (Guerrilha do Araguaia) V. Brazil*, *supra* note 4, para. 38.

⁶ Cf. *Case of Reverón Trujillo V. Venezuela. Preliminary Objection, Merits, Reparations and Costs*. Judgment of June 30, 2009. Series C No. 197, para. 23; *Case of Usón Ramírez V.*

procedural opportunity in which to do so, did not duly file an objection based on exhaustion of domestic remedies.

15. From the case file, the Court has verified that during the admissibility proceeding before the Commission, the State filed five briefs, as indicated by the Inter-American Commission (*supra* para. 11). However, it was not until the presentation of its briefs of September 27, 1999, October 2, 2001, and December 29, 2003, that the State argued that domestic remedies had not been exhausted. Nevertheless, the Tribunal notes that the arguments of said brief were not the same as the ones it filed as a preliminary objection in the answer to the application. In the admissibility stage before the Commission, the State maintained that “the proceeding had not been forwarded to a Judge of the Criminal jurisdiction where the alleged crime was committed” and from this, it was clear that the judicial proceeding had not yet concluded, to which the “[t]ribunals with jurisdiction [had] to rule on it”; that effective remedies such as cassation and review were available; and that “Mr. Vera and his relatives had unlimited access to each and every domestic legal remedy [...] offered for the protection of the right to life and other fundamental rights. Neither the detained individual, nor anyone else in the country has been denied *habeas corpus*, *amparo*, or any other remedy.” However, in its answer to the application, the State indicated that “the remedy that would be adequate and effective would be the launching of an investigation into the facts alleged by the representatives of the alleged victims [...].” It also stated that “it was never precisely determined which crime was to be prosecuted [in this] case due to the complexity of the topic,” and that “the individuals were guaranteed the opportunity to bring the violations of which they may have been victims to the attention of the State[.]”

16. Therefore, the Court highlights the contradiction into which the State falls, as the arguments presented before the Inter-American Commission on the failure to exhaust domestic remedies focus on a supposed judicial proceeding that was underway, while the arguments submitted by the State before the Tribunal maintain that no judicial activity has been carried out in order to investigate and, if applicable, punish those responsible for the violations of the rights of the alleged victims and their relatives because the latter have not filed a complaint. The Court observes that the arguments presented by the State in its answer to the application were not raised at the proper procedural moment before the Commission. Thus, they do not meet one of the formal requirements that must be met for a preliminary objection of prior exhaustion of domestic judicial remedies to be accepted. This makes the analysis of the other formal and material requisites with regard to this preliminary objection unnecessary. Moreover, the content of this preliminary objection relating to the alleged failure to investigate the facts of the case is closely related to the merits of the matter, particularly with regard to the alleged violation of Articles 8 and 25 of the Convention.

17. As a consequence, the Tribunal rejects the State's preliminary objection and will continue to hear the merits, reparations, and costs in this case.

IV JURISDICTION

18. The Inter-American Court has jurisdiction to hear this case in accordance with Article 62(3) of the Convention, as Ecuador has been a State Party to the American Convention since December 28, 1977, and recognized the contentious jurisdiction of the Court on July 24, 1984.

V EVIDENCE

19. Based on the provisions of Articles 46 and 50 of the Rules of Procedure, as well as on its jurisprudence relative to evidence and the examination thereof,⁷ the Court will examine and weigh the documentary evidence submitted by the parties on various occasions during the proceedings, as well as the statements of the victims and the expert witness reports given via affidavit and during the public hearing before the Court, along with the evidence to facilitate adjudication of the case requested by the Tribunal (*supra* para. 9). In doing so, the Court will follow the rules of sound judgment within the applicable legal framework.⁸

A. Documentary, testimonial, and expert evidence

20. The Tribunal received various documents presented as evidence by the Inter-American Commission, the representative, and the State along with their principal briefs (*supra* paras. 1, 4, and 5). Likewise, the Court received the testimony given before public notaries (affidavits) by the following alleged victims and expert witnesses:

a) *Agustín Abraham Vera Vera*. Alleged victim. Brother of Pedro Miguel Vera Vera. Testimony offered by the representative. Addressed the effects allegedly suffered by Mr. Pedro Miguel Vera Vera, his mother, his stepfather, and his siblings as a result of the facts alleged in this case.

b) *Francisco Rubén Vargas Balcázar*. Alleged victim. Stepfather of Pedro Miguel Vera Vera. Testimony offered by the representative. Addressed the measures taken before medical officials and State authorities so that they would provide adequate medical care to Mr.

⁷ Cf. *Case of the "White Van" (Paniagua Morales et al.) V. Guatemala. Preliminary Objections*. Judgment of January 25, 1996. Series C No. 23, para. 50; *Case of Cabrera García and Montiel Flores V. México. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 26, 2010. Series C No. 220, para. 24, and *Case of Abrill Alosilla V. Perú. Merits, Reparations and Costs*. Judgment of March 4, 2011. Series C No. 223, para. 35.

⁸ Cf. *Case of the "White Van" (Paniagua Morales et al.) V. Guatemala*, *supra* note 7, para. 76; *Case of Cabrera García and Montiel Flores V. México*, *supra* note 7, para. 24, and *Case of Abrill Alosilla V. Perú*, *supra* note 7, para. 35. In its answer to the application, the State offered testimonial evidence. Nevertheless, via communication of December 8, 2010, withdrew it.

Pedro Miguel Vera Vera. Also addressed alleged obstacles to carrying out these measures.

c) *Hans Petter Hougen* and *Önder Özkalpci*. Expert witnesses. Doctors in Medical Science and Forensic Medicine, respectively. Joint expert witness report ordered *ex officio* by the Tribunal.⁹ Addressed the supposed medical status of Pedro Miguel Vera Vera and the consequences of the alleged lack of access to medical care for the 10 days after he was shot until the moment of his death.

d) *Manuel Ramiro Aguilar Torres*. Expert witness. Attorney. Expert witness report ordered *ex officio* by the Tribunal.¹⁰ Addressed the criminal laws and criminal procedure applicable to the facts of this case, including the possible criminal and administrative investigations that could have been launched to determine the corresponding responsibility.

e) *Aída Beatriz Villarreal Tobar*. Expert witness. Social Worker. Expert report presented by the representative. Addressed the practices in Ecuadorian prisons for evaluating the moment in which individuals under detention who are sick or wounded must be checked into public hospitals.

21. With regard to the evidence given during the public hearing, the Court heard the testimony of:

a) *Francisca Mercedes Vera Valdez*. Alleged victim. Mother of Pedro Miguel Vera Vera. Testimony offered by the representative. Addressed the alleged actions taken so that medical attention might be provided to her son, as well as the effects she suffered as a consequence of the facts in this case.

B. Admission of the evidence

22. In this case, as in others, the Court accepts the evidentiary value of the documents presented by the parties at the proper procedural moment that were not contested or opposed, and whose authenticity was not questioned.¹¹ The documents that the Tribunal requested of the State as evidence to facilitate adjudication (*supra* para. 9 and *infra* para. 24) are incorporated into the body of evidence under Article 58 of the Rules of Procedure.

⁹ Cf. *Case of Vera Vera V. Ecuador*. Order of the President of the Inter-American Court of Human Rights of December 23, 2010, Operative Paragraph two.

¹⁰ Cf. *Case of Vera Vera V. Ecuador*, *supra* note 9, Operative Paragraph two.

¹¹ Cf. *Case of Velásquez Rodríguez V. Honduras. Merits*. Judgment of July 29, 1988. Series C No. 1, para. 140; *Case of Cabrera García and Montiel Flores V. México*, *supra* note 7, para. 27, and *Case of Alosilla V. Perú*, *supra* note 7, para. 38.

23. The Court also finds the declarations and expert witness reports rendered to be pertinent inasmuch as they adhere to the purpose defined in the President's Order receiving them (*supra* para. 7). They will be examined in the appropriate chapter together with the rest of the body of evidence.¹² Pursuant to the jurisprudence of this Tribunal, the testimony given by alleged victims cannot be weighed in isolation. Rather, it will be examined together with the rest of the evidence in the proceeding, as it is useful inasmuch as it can provide more information on the alleged violations and their consequences.¹³

24. During the public hearing, the Court required the State to submit certain information and documents as evidence to facilitate adjudication. The Court noted that the State did not reply or submit some of the documents requested.¹⁴ Consequently, as it has done in other cases, the Court may consider facts alleged by the Commission and complemented by the representative as established when those allegations could only be refuted with evidence that the State should have submitted and did not.¹⁵

VI

¹² Cf. *Case of Loayza Tamayo V. Perú. Merits*. Judgment of September 17, 1997. Series C No. 33, para. 43; *Case of Gelman V. Uruguay. Merits and Reparaciones*. Judgment of February 24, 2011. Series C No. 221, para. 39, and *Case of Abrill Alosilla V. Perú, supra* note 7, para. 47.

¹³ Cf. *Case of Loayza Tamayo V. Perú, supra* note 12, para. 43; *Case of Cabrera García and Montiel Flores V. México, supra* note 7, para. 39, and *Case of Gelman V. Uruguay, supra* note 12, para. 40.

¹⁴ The State did not respond to the following questions asked during the public hearing. (*supra* para. 8):

- The autopsy report in the case file indicates that during this procedure, the bullet removed from the body of Pedro Miguel Vera Vera was sent for ballistic forensic studies. Was this ballistic study conducted? If the answer is yes, what were the results? The Illustrious State shall send the documentation to support the answer.
- Are there any guidelines or rules on what to do when someone in police custody is in need of medical attention?
- Is the prison doctor responsible for the health and physical care of people in custody? Is this doctor part of the 'administration'?
- Is there any obligation, rule, practice, or law in the Illustrious State for prison, hospital, or private doctors or any other medical personnel establishing any obligation to report any case that comes to their attention involving a victim who has been shot?
- What specific treatment did the doctors give to the victim when they examined him and apparently found that he had a gunshot wound? What was the specific treatment provided before he was put back under the police custody?
- Why did Mr. Vera Vera's mother apparently have to make all efforts and press for her son to receive medical treatment when needed? Did the State find out why? Is it a practice in Ecuador that relatives have to pay for the medical treatment of persons who are under police custody?
- Why did the mother apparently have to pay for pills, blood, or whatever [for Mr. Vera Vera]?

Furthermore, the State did not submit the Ecuadorian Code of Ethics nor the "manuals, protocols, or whatever name is given to police custody procedures that existed in 1993 and those that exist in the present," requested by the Court as evidence to better resolve during the mentioned hearing.

¹⁵ Cf. *Radilla Pacheco V. México. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 23, 2009. Series C No. 209, para. 92.

PRIOR CONSIDERATIONS

A *Alleged victims*

25. In the application, the Inter-American Commission indicated that it "made the Court aware [...] that in keeping with its constant practice, at the time the [R]eport [on admissibility and the merits] was approved, it referred generally to Pedro Miguel Vera Vera's next of kin and mentioned the individuals whose names were found in the case file at the time a decision was made." Those individuals were Pedro Miguel Vera Vera and his mother, Francisca Mercedes Vera. However, after the report was approved, "according to practice at that time, the petitioners informed the Commission of other relatives," those being Agustín Abraham Vera Vera, Patricio Rubén Vargas Vera, and Johanna Vargas Vera, as well as Francisco Rubén Vargas Balcázar, siblings and stepfather of Pedro Miguel Vera Vera, respectively. The Commission indicated that for this reason, "it include[d] the names of [those] individuals in the [application]."

26. In its final written arguments, the Commission reiterated the foregoing and indicated that "the sworn statements submitted by the representatives regarding the next of kin corroborate[d] their status as victims in the present case." Likewise, it mentioned that "the report on admissibility and merits [...] was approved under a process of adaptation of the practices of the Commission to the changes in the practice of the Court on the inclusion of family members as victims." It argued that "the Tribunal should weigh the fact that at the time it changed its criteria in this regard, the practices and regulations of the Commission were still applicable. Under these practices, the proper procedural moment for the submission of all of the affected family members was subsequent to the issuance of the merits report. In that understanding, the petitioners in the present case provided complete information on this point through the brief mentioned in Article 43(3) of the Commission's Rules of Procedure then in force." Finally, the Commission "highlight[ed] that the State of Ecuador [could have] exercise[d] its right of defense on the inclusion of family members named in the application, both in its answer and at the public hearing.

27. The Tribunal notes that the admissibility and merits report of the Inter-American Commission only indicates Pedro Miguel Vera Vera and Francisca Mercedes Vera as victims. It likewise observes that in the application, in addition to those individuals, the Commission also presented Agustín Abraham Vera Vera, Patricio Rubén Vargas Vera, Johanna Vargas Vera, and Francisco Rubén Vargas Balcázar as victims. Those individuals are also indicated as victims by the representative in the brief of pleadings and motions.

28. In that regard, the Court recalls that in since 2007,¹⁶ its jurisprudence has repeatedly established that alleged victims must be indicated in the

¹⁶ Since the *Case of García Prieto et al. V. El Salvador. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 20, 2007. Series C No. 168, paras. 65 to 68, and the *Case of Chaparro Álvarez and Lapo Íñiguez V. Ecuador. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 21, 2007. Series C No. 170, paras. 224 to 225. These judgments were adopted by the Court during the same period of sessions, See also, *Case of*

Commission's report issued according to Article 50 of the Convention, as well as in the application before this Court. In addition, in keeping with Article 35 of the Rules of Procedure, it is the responsibility of the Commission, and not this Tribunal, to identify with precision and at the proper procedural moment the alleged victims in a case before the Court.¹⁷ Likewise, the Tribunal finds that the admissibility and merits report indicated by the Commission dates to 2009, that is, subsequent to the adoption of the standard mentioned regarding the identification of the victims. On the other hand, that presented additionally by the Inter-American Commission in its final written arguments in regard to the determination of the alleged victims is time-barred.

29. Consequently, the Tribunal specifies that the individuals that will be considered as alleged victims in this case are Pedro Miguel Vera Vera and Francisca Mercedes Vera, who were indicated as such by the Inter-American Commission in the report to which Article 50 of the American Convention refers, as well as in the application.¹⁸ However, this does not prevent the Court from taking into consideration the testimonies of Agustín Abraham Vera Vera and Francisco Rubén Vargas Balcázar (*supra* para. 20) as evidence of the facts alleged in this case.

B. Factual Basis of the application

30. In its application, the Commission referred to an alleged situation that is generalized in Ecuador regarding "the overpopulation of prisoners in establishments of the penitentiary system[,], poor provision of equipment and medicine in health clinics of the penitentiary system, as well [as a] lack of minimum requirements such [as] access to medical care," among other things, when alleging the human rights violations suffered by Mr. Pedro Miguel Vera Vera in 1993. In the public hearing (*supra* para. 8), the Commission noted that the case of Pedro Miguel Vera Vera "demonstrates [...]" that the detention system does not have the resources, mechanisms, and procedures necessary in order to ensure that persons who require urgent medical attention receive[d] treatment in a timely manner[.]" Nevertheless, in its final written arguments, the Commission noted that "[t]he information available indicates [that], to date, this situation entailing the lack of an institutional response that would allow for the provision of medical treatment to those deprived of liberty persists, and thus it is indispensable that measures of non-repetition be issued in order to resolve this problem in a general manner in Ecuador." For their part, during the hearing, the representatives argued that there is currently a pattern "of indolence on behalf of [State] authorities regarding the health of persons deprived of

Gelman V. Uruguay, *supra* note 12, para. 32, and *Case of Gomes Lund et al. (Guerrilha do Araguaia) V. Brazil*, *supra* note 4, paras. 79 to 80

¹⁷ Cf. *Case of Masacres de Ituango V. Colombia. Preliminary Objection, Merits, Reparations and Costs*. Judgment of July 1, 2006. Series C. No. 148, para. 98; *Case of Rosendo Cantú and otra V. México. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 31, 2010 Series C No. 216, para. 140, and *Case of Gomes Lund et al. (Guerrilha do Araguaia) V. Brazil*, *supra* note 4, para. 78.

¹⁸ Cf. Admissibility and Merits Report No. 82/09, Case of 11.535. Milton Zambrano Vera V. Ecuador (case file of annexes to the application, appendix I, folios 96 to 122). Application of the Inter-American Commission on Human Rights (case file of Merits, tomo I, folios 4 a 26).

liberty [...],” as the resources intended to meet their medical needs are insufficient to guarantee their right to physical integrity and life.

31. First, the Court considers it appropriate to specify that the alleged current state of access to health of those deprived of liberty in Ecuadorian prisons does not form part of the factual basis presented by the Commission in its application. Indeed, this case concerns, *inter alia*, the medical care received by Mr. Vera Vera while under State custody approximately eighteen years ago, in light of an alleged situation of a general nature in Ecuador at that time. Therefore, the allegation made by the Commission in its final written arguments (*supra* para. 9) was not presented at the opportune procedural moment, and as such, it will not be considered by this Tribunal.

32. On the other hand, it is reiterated jurisprudence of the Court that alleged victims and their representatives can invoke the violation of rights other than those included in the application, inasmuch as they are holders of the rights enshrined in the Convention, and provided those allegations address facts contained in the application. In effect, the application constitutes the factual framework for the proceedings before the Court, and thus it is not acceptable to allege facts distinct from those in the application, without detriment to those facts that explain, clarify, or refute those that have been mentioned in the application, or those that answer any of the plaintiff's claims.¹⁹ The exception to this principle are those facts characterized as supervening, which may be submitted before the Court at any procedural stage prior to the issuance of the judgment.²⁰ On the other hand, the time for the alleged victims or their representatives to fully exercise the right to *locus standi in judicio* is in the brief of pleadings and motions.²¹ In short, the Court must decide, in each case, whether arguments of such nature will be admitted, safeguarding the equality of arms of the parties.²²

33. As such, the Court notes that the arguments of the representative refer to the alleged current prison conditions in Ecuador, based on alleged facts that took place during this year and on the expert report of social worker Beatriz Villarreal Tobar, who describes the alleged prison situation of Ecuador as of today. As noted, these facts do not form part of the factual

¹⁹ Cf. *Case of "Five Pensioners" V. Perú. Merits, Reparations and Costs*. Judgment of February 28, 2003. Series C No. 98, paras. 153 and 155; *Case of Vélez Loo V. Panamá*, *supra* note 3, para. 43, and *Case of Cabrera García and Montiel Flores V. México*, *supra* note 7, para. 56.

²⁰ Cf. *Case of "Five Pensioners" V. Perú*, *supra* note 19, para. 154; *Case of Vélez Loo V. Panamá*, *supra* note 3, para. 43, and *Case of Cabrera García and Montiel Flores V. México*, *supra* note 7, para. 56.

²¹ Cf. *Case of the "Mapiripan Massacre" V. Colombia. Merits, Reparations and Costs*. Judgment of September 15, 2005. Series C No. 134, para. 56; *Case of González et al. ("Cotton Fields") V. México. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 16, 2009. Series C No. 205, para. 232, and *Case of Xákmok Kásek Indigenous Community. V. Paraguay. Merits, Reparations and Costs*. Judgment of August 24, 2010. Series C No. 214, para. 237.

²² Cf. *Case of de la "Mapiripan Massacre" V. Colombia*, *supra* note 21, para. 58; *Case of The Dos Erres Massacre V. Guatemala. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 4, 2009. Series C No. 211, para. 165, and *Case of Vélez Loo V. Panamá*, *supra* note 3, para. 43.

basis of the application (*supra* para 31). Therefore, the Court will not rule on the arguments of the representative in this regard.

VII RIGHTS TO PERSONAL INTEGRITY AND LIFE OF PEDRO MIGUEL VERA VERA, IN RELATION TO THE OBLIGATION TO RESPECT AND GUARANTEE RIGHTS

A. *Arguments of the parties*

34. The Inter-American Commission held that Mr. Pedro Miguel Vera Vera, twenty years old, was detained on April 12, 1993, after he “was followed by a group of persons who had surprised him during an attempted robbery and tried to lynch him and burn him alive.” While they chased him, Mr. Vera Vera “received a blow from a bullet from a distance in the upper left frontal region.” It noted that “there are not sufficient elements to establish whether the bullet came from the group of persons that followed him or from police agents that apprehended him in the same context.” It also stated that upon his detention, as a consequence of the serious omissions in the administration of medical care while Mr. Vera Vera was under State custody,²³ he “suffered serious consequences to his health,” fear, and helplessness while he experienced “the serious deterioration of his condition,” and subsequently, death in a public hospital. As a consequence, it requested that the Court declare that the State failed to comply “with its obligation to guarantee the physical integrity of Mr. Pedro Miguel Vera Vera, submitting him to cruel and inhumane treatment and not treating him with the inherent respect that is due to all human beings,” pursuant to Articles 5(1) and 5(2) of the American Convention, in relation to Article 1(1) thereof. Moreover, it argued that the Court declare that the State failed to comply with its obligation to guarantee the right to life of Mr. Vera Vera, pursuant to Article 4(1) of the American Convention, in relation to Article 1(1) thereof.

35. The representative substantially agreed with the Commission. He also specified that “on the night of April 12, 1993, [Mr. Vera Vera was] followed by a mob that accused him of assaulting people in a public street, [a] police officer joined the chase at the time that he was shot and was captured, and it is noted that he had suffered a gunshot wound to his left breast [...]” Mr. Vera Vera passed away on April 23, 1993, in the Eugenio Espejo Hospital in the city of Quito. The autopsy report states that “the cause of death was peritonitis and hemoperitoneum due to lacerations of the mesenteric vessels and intestinal loops, caused by penetration of a projectile from a firearm[.]” As

²³ The Commission indicated that the State failed to comply with its obligation to administer adequate medical assistance of Mr. Pedro Miguel Vera Vera: “a) after his detention, [as he was not taken immediately to a hospital, but to the Police station to be searched, and because he was released from the public hospital of Santo Domingo de los Colorados on 12 April 1993 without an explanation on the medical considerations that justified that release]; during his stay at the Police Detention Center in Santo Domingo from 13 to 17 April 1993, which did not have the hygienic and material conditions necessary to house him and offer him medical treatment; and [c)] during his stay between 17 and 22 April 1993 in the public hospital of Santo Domingo de los Colorados, where no surgery was performed despite the existence of a judicial order of 16 April 1993”.

such, the representatives expressed that, "in the case under review, the confinement conditions without the rendering of adequate control and medical care to the gunshot wounds [Mr. Vera Vera had] suffered, lead to the deterioration of his physical condition, eventually causing him [...] severe pain and physical and mental suffering, without the authorities considering his case in a timely manner."²⁴ Based on the foregoing, the representatives argued the existence of a violation of Articles 4 and 5 of the American Convention, to the detriment of Pedro Miguel Vera Vera.

36. The State noted that "in no way" could it be declared that it had incurred international responsibility, as "it provided abundant medical care to Mr. Pedro Vera Vera" by means of its agents "[...] at the Santo Domingo Hospital, in the [P]rovisional [D]etention [C]enter and in the Eugenio Espejo Hospital in the city of Quito."²⁵ Moreover, it argued that "[i]t is likely [that] the medical care provided [...] was inefficient or negligent, but this cannot [be] determined without there being an examination [or] proceeding that [...] produces a result[. I]f these agents did their job poorly, it cannot be said that the State is responsible, as it provid[ed] the victims the means with which to challenge and be a part of the proceeding." It noted that given that the case does not involve a "violent death," but rather an "inflammation that grew complicated," it could not assume that if a citizen cared for by several doctors dies in an operating room, this is due to [their] noncompliance with their duty." According to the State, the death should have been denounced "and the claim should have been prosecuted in order for it to be said that the State has not complied with its mission in regard to the case[,...] as it is the role of a domestic judge to determine the existence of poor medical practices." As such, the State considered that it is not responsible for the violation of the rights recognized in Articles 4 and 5 of the American Convention, in relation to Article 1(1) thereof.

37. From the arguments presented by the parties, the Court notes that there is no controversy regarding the facts related to Mr. Pedro Miguel Vera Vera's persecution on April 12, 1993, when he was allegedly surprised in the commission of an armed robbery, received a gunshot wound at the time of the persecution, and died on April 23, 1993, while under State custody. Nevertheless, the State argued that it cannot be deemed responsible for Mr. Vera Vera's death, given that his case does not involve a "violent death" but

²⁴ The representative indicted that "despite the order of the Eleventh Criminal Judge of Pichinca [requiring] that Pedro Vera undergo surgery, that order was not obeyed by authorities, both at the jail and at the Hospital of Santo Domingo, and he only received that treatment [...] when he was transferred to the city of Quito. [However,] due to the delay and advanced state of the illness, the medical intervention was ineffective." According to the representative, "it is evident that the gunshot wound and his grave state of health prevented the victim from carrying out his basis necessities on his own, requiring him to constantly seek the assistance of third parties, which necessarily [produced] feelings of inferiority and great suffering in him which constituted degrading treatment that was incompatible with his dignity[.]"

²⁵ The State highlighted that the alleged victim "received emergency care" from the doctors on duty at that hospital. These "carried out the procedures that they, in their professional opinion, th[ought] were those appropriate for treating [Mr. Vera Vera's] wounds." Additionally, the doctor at the Provisional Detention Center in Santo Domingo "agreed with the opinion" of the Hospital doctors and decided that Mr. Vera Vera should continue "with the medication prescribed and remain in observation." Finally, when the victim's situation "grew complicated," the State transferred him to "a much larger hospital" and "exhausted all efforts to safeguard [...his] rights[.]"

rather a complication stemming from an injury he received. It noted that, in any case, what is at hand is poor medical practices that could not have been assumed by the State and that could have been challenged by Mr. Vera Vera's next of kin, but this was not done in the case at hand.

B. Considerations of the Court

38. In order to examine the alleged international responsibility of the State for the violation of the rights to personal integrity²⁶ and life,²⁷ in relation to the obligations to respect and guarantee the rights²⁸ of Mr. Pedro Miguel Vera Vera, the Court will outline, in light of the body of evidence, the various stages of detention and medical care he received. Given the diversity and complexity of the facts argued in the present case, these will be specified in the corresponding parts of this Chapter. Subsequently, the Court will analyze the arguments of the parties and will determine whether the care provided was inadequate in light of the standards derived from the Convention, comprising possible violations to the rights to personal integrity and life of Mr. Pedro Miguel Vera Vera.

B.1. Medical care as part of the right to life and personal integrity of detainees and prisoners

39. This Court has held that the right to life is fundamental in the American Convention, because safeguarding it is crucial for the realization of other rights.²⁹ Due to this nature, States have the obligation to ensure the creation of the conditions necessary so that this right may be fully enjoyed and exercised.³⁰

²⁶ Article 5 of the Convention states, in pertinent part:

1. Every person has the right to have his physical, mental, and moral integrity respected.
2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.

²⁷Article 4(1) of the Convention states, "Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life."

²⁸ Article 1(1) of the American Convention states: "The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition."

²⁹ Cf. *Case of the "Street Children" (Villagrán Morales et al.) V. Guatemala. Merits*. Judgment of November 19, 1999. Series C No. 63, para. 144; *Case of Zambrano Vélez et al. V. Ecuador. Merits, Reparations and Costs*. Judgment of July 4, 2007. Series C No. 166, para. 78, and *Case of Xákmok Kásek Indigenous Community. V. Paraguay, supra* note 21, para. 186.

³⁰ Cf. *Case of the "Street Children" (Villagrán Morales et al.) V. Guatemala, supra* note 29, para. 144; *Case of González et al. ("Cotton Fields") V. México, supra* note 21, para. 245, and *Case of Xákmok Kásek Indigenous Community. V. Paraguay, supra* note 21, para. 187.

40. Additionally, the right to personal integrity is of such importance that the American Convention protects it specifically upon establishing, *inter alia*, the prohibition on torture, cruel, and inhumane treatment, and the impossibility of suspending this right during states of emergency.³¹

41. The rights to life and personal integrity require not only that the State respect them (negative obligation), but also that the State take all appropriate measures to ensure them (positive obligation), in fulfilling its general obligation established in Article 1(1) of the Convention.³²

42. The Court has established that from the general obligation to respect and guarantee rights established in Article 1(1) of the American Convention, determinable special rights are derived as a function of the particular necessity for protection of the holder of the right, given either his or her personal condition or his or her specific situation.³³ This Court has held that, under Article 5(1) and 5(2) of the Convention, every person deprived of his or her liberty has the right to live in detention conditions compatible with his or her personal dignity. Consequently, since the State is the institution responsible for detention establishments, it is the guarantor of the rights of those under its custody.³⁴ This implies the State's duty to guarantee the health and welfare of inmates by providing them, among other things, with required medical care, and it must also ensure that the manner and method of any deprivation of liberty do not exceed the unavoidable level of suffering inherent in detention.³⁵ The States cannot invoke economic hardships to justify imprisonment conditions that do not comply with minimum international standards and respect the inherent dignity of the human being.³⁶

43. In turn, the rights to life and personal integrity are directly and closely linked with human health care. In this sense, Article 10 of the Additional

³¹ Articles 5 and 27 of the American Convention. See, also, *Case of "Juvenile Reeducation Institute" V. Paraguay. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 2, 2004. Series C No. 112, para. 157.

³² Cf. *Case of the "Street Children" (Villagrán Morales et al.) V. Guatemala*, *supra* note 29, para. 139; *Case of González et al. ("Cotton Fields") V. México*, *supra* note 21, para. 245, and *Case of Xákmok Kásek Indigenous Community. V. Paraguay*, *supra* note 21, para. 187.

³³ Cf. *Case of the Pueblo Bello Massacre V. Colombia. Merits, Reparations and Costs*. Judgment of January 31, 2006. Series C No. 140, para. 111; *Case of González et al. ("Cotton Fields") V. México*, *supra* note 21, para. 243, and *Case of Vélez Loor v. Panamá*, *supra* note 3, para. 98.

³⁴ Cf. *Case of Neira Alegría et al. V. Perú. Merits*. Judgment of January 19, 1995. Series C No. 20, para. 60; *Case of Yvon Neptune V. Haití. Merits, Reparations and Costs*. Judgment of 6 de mayo de 2008. Series C No. 180, para. 130, and *Case of Vélez Loor v. Panamá*, *supra* note 3, para. 198.

³⁵ Cf. *Case of "Juvenile Reeducation Institute" V. Paraguay*, *supra* note 32, para. 159; *Case of Yvon Neptune V. Haití*, *supra* note 35, para. 130, and *Case of Vélez Loor v. Panamá*, *supra* note 3, para. 198.

³⁶ Cf. *Case of Montero Aranguren et al. (Detention Center of Catia) V. Venezuela. Merits, Reparations and Costs*. Judgment of July 5, 2006. Series C No. 150, paras. 85 and 87; *Case of Boyce et al. V. Barbados. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 20, 2007. Series C No. 169, para. 88, and *Case of Vélez Loor v. Panamá*, *supra* note 3, para. 198.

Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights establishes that everyone has the right to health, understood as the enjoyment of the highest level of physical, mental, and social wellbeing, and it indicates that health is a public good.³⁷ Thus, this Court has established that the State has the duty to provide detainees with regular medical review and appropriate medical care and treatment when required.³⁸

44. This Court has noted that a lack of appropriate medical care does not satisfy the minimum material requirements of humane treatment due because of a person's nature as a human being pursuant to Article 5 of the American Convention.³⁹ Thus, the lack of appropriate medical care to a person deprived of liberty and under State custody can be considered in violation of Article 5(1) and 5(2) of the Convention depending on all the circumstances of the case, such as the health of the victim or the type of illness suffered, the duration of time that has elapsed in which the victim has gone without treatment, its cumulative physical and mental effects,⁴⁰ and in some cases, the sex and age of the victim, among others.⁴¹

B.2. Analysis of each stage of the medical care received by Mr. Pedro Miguel Vera Vera

45. In order to determine whether in this case there are violations to the rights to personal integrity and life of Mr. Vera Vera, as mentioned above, the Court will analyze in this Chapter and in a separate manner the actions taken by the State in each of the various stages in which the general facts established occurred. (*supra* para. 38).

³⁷ Cf. *Case of Albán Cornejo et al. V. Ecuador. Merits, Reparations and Costs*. Judgment of November 22, 2007. Series C No. 171, para. 117. See also, Article 25(1) of the Universal Declaration of Human Rights, Article XI of the American Declaration of the Rights and Duties of Man, and General Comment 14 of the Committee on Social, Economic, and Cultural Rights. "The enjoyment of the *highest* attainable standard of *health*" (Article 12 of the International Covenant on Economic, Social, and Cultural Rights)". 22^o period of sessions, 2000, U.N. Doc. E/C.12/2000/4 (2000), para. "The States have the obligation to respect the right to health, in particular, abstaining from refusing or limiting equal access to all persons, including prisoners and detainees, the representatives of minorities, those seeking asylum, and illegal immigrants to services for preventive care, treatment, and palliatives [.]"

³⁸ Cf. *Case of Tibi V. Ecuador. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 7, 2004. Series C No. 114, para. 157; *Case of Montero Aranguren et al. (Detention Center of Catia) V. Venezuela*, *supra* note 37, para. 102, and *Case of Vélez Looz v. Panamá*, *supra* note 3, para. 220.

³⁹ Cf. *Case of De la Cruz Flores V. Perú. Merits, Reparations and Costs*. Judgment of November 18, 2004. Series C No. 115, para. 131; *Case of García Asto and Ramírez Rojas V. Perú. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 25, 2005. Series C No. 137, para. 226, and *Case of Montero Aranguren et al. (Detention Center of Catia) V. Venezuela*, *supra* note 37, para. 102.

⁴⁰ Cf. *Case of Montero Aranguren et al. (Detention Center of Catia) V. Venezuela*, *supra* note 37, para. 103, and *Case of Vélez Looz V. Panamá*, *supra* note 3, para. 220.

⁴¹ Cf. *Case of the "Street Children" (Villagrán Morales et al.) V. Guatemala*, *supra* note 29, para. 74; *Case of the Hermanos Gómez Paquiyauri V. Perú. Merits, Reparations and Costs*. Judgment of July 8, 2004, para. 113, and *Case of the Miguel Castro Castro Prison V. Perú. Merits, Reparations and Costs*. Judgment of November 25, 2006. Series C No. 160, para. 316.

B.2.1. Arrest of Pedro Miguel Vera Vera and transfer to the police station to be registered

46. This Court notes that Mr. Pedro Miguel Vera Vera, twenty years old,⁴² was arrested on April 12, 1993, at approximately 20:00 hours, by members of the National Police that rendered their services in various localities of the city of Santo Domingo de los Colorados, after being chased by a group of persons who apparently accused him of committing assault and armed robbery⁴³ and a gunshot was heard.⁴⁴ Upon arrest, the police noted that he had received a gunshot wound on his left breast and transferred him in a taxi to the Police Station. According to the case file, upon being registered at the police station, where his gunshot wound was also noted, Mr. Vera Vera was transferred to the Public Hospital of Santo Domingo de los Colorados,⁴⁵ where he entered the Emergency room at 20:20 hours and was cared for by the doctors on duty.⁴⁶

47. In this regard, the parties did not offer arguments or evidentiary elements that would allow the Court to analyze whether under the

⁴² Cf. Death Certificate of Pedro Miguel Vera Vera, of April 29, 1993 (case file of annexes to the brief of pleadings, motions, and evidence, annex 19, folio 595).

⁴³ Cf. Part of the Chief of Rural Services and Command of Pichincha No. 1, signed by the "Special Police [...] Monte de Piedad", of April 12, 1993 (case file of annexes to the brief of pleadings and motions, annex 1, folio 538); statement rendered by Wilmo Rodrigo Hurtado Delgado on October 31, 1995 (case file of Merits, tomo I, folio 320), and statement rendered by Oswaldo Efrén Ramírez Ramírez on October 31, 1995 (case file of Merits, tomo I, folio 321).

⁴⁴ Cf. Part of the Chief of Rural Services and Command of Pichincha No. 1, signed by el "Policía Especial [...] Monte de Piedad", of April 12, 1993 (case file of annexes to the brief of pleadings and motions, annex 1, folio 538); statement rendered by Wilmo Rodrigo Hurtado Delgado on October 31, 1995 (case file of Merits, tomo I, folio 320), and statement rendered by Oswaldo Efrén Ramírez Ramírez on October 31, 1995 (case file of Merits, tomo I, folio 321).

⁴⁵ Cf. Official letter addressed to the Subsecretary of International Bodies of the Ministry of Foreign Affairs of Ecuador, signed by the Subsecretary of Police of the Ministry of Government, on December 15, 1995 (case file of annexes to the application, annex 5, folio 14); Part of the Chief of Rural Services and Command of Pichincha No. 1, signed by el "Policía Especial [...] Monte de Piedad", on April 12, 1993 (case file of annexes to the brief of pleadings and motions, annex 1, folio 538); statement rendered by Wilmo Rodrigo Hurtado Delgado on October 31, 1995 (case file of Merits, tomo I, folio 320); statement rendered by Oswaldo Efrén Ramírez Ramírez on October 31, 1995 (case file of Merits, tomo I, folio 321); police report no. 93-343 of the National Office of Investigations, on April 14, 1993 (case file of annexes to the brief of pleadings and motions, annex 2, folios 540 to 542); official letter 940-OID-SDC signed by the Chief of the Office of Criminal Investigations of Santo Domingo, addressed to the President of the CEDHU, of June 30, 1995 (case file of annexes to the application, annex 6, folio 16); police report 95-P2-34-SDC of the National Office of Investigations, on December 11, 1995 (case file of annexes to the application, annex 7, folio 19); police report 95-P2-33-SDC of the National Office of Investigations, addressed to the Chief of Command of the Rural Service of Pichincha No. 1, on December 4, 1995 (case file of annexes to the application, annex 19, folio 69), and clinical history of Pedro Miguel Vera Vera, First Internment, Emergency Services, Hospital of Santo Domingo (case file of annexes to the application, annex 8, folios 24 and 25).

⁴⁶ Cf. Clinical history of Pedro Miguel Vera Vera, First Internment, Emergency Services, Hospital of Santo Domingo de los Colorados (case file of annexes to the application, annex 8, folios 24 and 25); police report 95-P2-34-SDC of the National Office of Investigations, of December 11, 1995 (case file of annexes to the application, annex 7, folio 19), and police report 95-P2-33-SDC of the National Office of Investigations, addressed to Chief of the Command of Rural Services of Pichincha No. 1, of December 4, 1995 (case file of annexes to the application, annex 19, folio 69).

circumstances of his detention, the initial transport of the alleged victim in a taxi to the police station, and then, twenty minutes thereafter, to the Regional Hospital in Santo Domingo de los Colorados, constitute the State's failure to comply with the obligations derived from the Convention. Therefore, the Court will not rule on the possible violation of Mr. Vera Vera's human rights that may have been committed during this period.

B.2.2. First admission in the Public Hospital of Santo Domingo de los Colorados

48. Next, it is gathered from the body of evidence that on April 12, 1993, upon being admitted to the Emergency room of the Regional Hospital, Mr. Pedro Miguel Vera Vera was in an "inebriated state and with a gunshot wound at the height of his left thoracic region." He remained "hospitalized in the monitoring room" of the institution, and according to the records of the Emergency room, a radiograph of the thorax was pending.⁴⁷

49. At 2:00 hours on April 13, 1993, it was noted in the record that Mr. Vera Vera "continued complaining," and, at 7:00 hours of that same day, it was noted that he had spent the night "irritable and complaining," that he had undergone a radiograph, with "discharge pending," and that on two occasions he "vomited food residue of a brown color."⁴⁸ At noon, the alleged victim was discharged by three doctors on duty given that, according to their opinion, his wound did not merit hospitalization.⁴⁹ According to the medical record, at that point in time he was "in an improved state," and he was prescribed "general care." Mr. Vera Vera was discharged from the Hospital, escorted by members of the [Office of Criminal Investigations of Santo Domingo de los Colorados].⁵⁰

50. In this regard, the Court recalls that numerous decisions of international organizations invoke the United Nations Standard Minimum Rules for the Treatment of Prisoners in order to interpret the content of the right of prisoners to decent and humane treatment; these rules prescribe the basic rules for a prisoner's accommodation, hygiene, medical care, and

⁴⁷ Cf. Clinical history of Pedro Miguel Vera Vera, First Internment, Emergency Services, Hospital of Santo Domingo de los Colorados (case file of annexes to the application, annex 8, folio 25).

⁴⁸ Clinical history of Pedro Miguel Vera Vera, First Internment, Emergency Services, Hospital of Santo Domingo de los Colorados (case file of annexes to the application, annex 8, folio 25).

⁴⁹ Cf. Police report 95-P2-34-SDC of the National Office of Investigations, of December 11, 1995 (case file of annexes to the application, annex 7, folio 19); police report 95-P2-33-SDC of the National Office of Investigations, addressed to the Chief of the Command of Rural Services of Pichincha No. 1, on December 4, 1995 (case file of annexes to the application, annex 19, folio 69); Official letter addressed to the Subsecretary of the International Body of the Ministry of Foreign Affairs, signed by the Subsecretary of the Police of the Ministry of the Interior, of December 15, 1995 (case file of annexes to the application, annex 5, folio 14), and Clinical history of Pedro Miguel Vera Vera, First Internment, Emergency Services, Hospital of Santo Domingo de los Colorados (case file of annexes to the application, annex 8, folio 25).

⁵⁰ Clinical history of Pedro Miguel Vera Vera, First Internment, Emergency Services, Hospital of Santo Domingo de los Colorados (case file of annexes to the application, annex 8, folio 25).

exercise.⁵¹ In regard to medical services that should be provided to prisoners, the Rules state, *inter alia*, that “[t]he medical officer shall see and examine every prisoner as soon as possible after his admission and thereafter as necessary, with a view particularly to the discovery of physical or mental illness, and the taking all necessary measures[.]”⁵²

51. It is also relevant to recall that the Principle 24 for the Protection of All Persons under Any Form of Detention or Imprisonment establishes: “A proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge.”⁵³

52. In regard to this first hospitalization of Mr. Pedro Vera Vera in the Regional Hospital of Santo Domingo de los Colorados, the Court notes that pursuant to the expert report of Hans Petter Hougen and Önder Özkalipci, not contested by the parties (*supra* para. 20), during this stage, the doctors who cared for him committed various omissions that constituted “gross medical negligence.”⁵⁴ On the one hand, the expert witnesses noted that there is no record that “an assessment of his vital signs, including arterial tension, on the day he was discharged from the hospital” was carried out. Moreover, given that the registration record of the emergency room noted that the alleged victim had a bullet lodged in the subcutaneous tissue of the left side,⁵⁵ “more examinations were need[ed] in order to determine the bullet's trajectory and whether it w[as] necessary to initiate surgical treatment.” According to the experts, “[t]his is of general medical knowledge.”⁵⁶

53. Furthermore, the experts mentioned that given that on two occasions Mr. Vera Vera “vomited food residue of a brown color” (*supra* para. 49), the doctors of the Regional Hospital should have “verified whether there existed a gastrointestinal or intraperitoneal hemorrhage” by means of “some medical

⁵¹ Cf. *Case of Raxcacó Reyes V. Guatemala. Merits, Reparations and Costs*. Judgment of September 15, 2005. Series C No. 133, para. 99. Minimum Rules of Nations for the Treatment of Prisoners, adopted by the First Congress of the United Nations on the Prevention of the Crime and Treatment of Delinquents, held in Geneva in 1955, and approved by the Economic and Social Council in its resolution 663C (XXIV) of July 31, 1957 and 2076 (LXVII) on May 13, 1977

⁵² Rule 24 of the Minimum Rules of the United Nations for the Treatment of Prisoners, *supra* note 52.

⁵³ *Case of De la Cruz Flores V. Perú*, *supra* note 40, para. 133. Principle 24 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Adopted by the General Assembly in resolution 43/173, of December 9, 1988.

⁵⁴ Expert testimony of Messers. Hans Petter Hougen and Önder Özkalipci (case file of Merits, tomo I, folio 572).

⁵⁵ Cf. Clinical history of Pedro Miguel Vera Vera, First Internment, Emergency Services, Hospital of Santo Domingo de los Colorados (case file of annexes to the application, annex 8, folio 25).

⁵⁶ Expert testimony of Messers. Hans Petter Hougen and Önder Özkalipci (case file of Merits, tomo I, folio 572).

verification such as an ultrasound, x-rays, a diagnostic peritoneal lavage (DPL), a laparoscopy, basic blood cell count or hematological testing of vomit," among others. In this manner, they noted that given the lack of information to justify the discharge of a patient with "[Mr.] Pedro Miguel Vera Vera's medical history and the clinical findings," such as laboratory results or physical signs, the discharge of Mr. Pedro Miguel Vera Vera on April 13, 1993, from that institution "constituted gross medical negligence."⁵⁷

54. Given the foregoing, the Court considers that Mr. Vera Vera was discharged without having received appropriate examinations or diagnostic tests given the nature of his lesions (*supra* paras. 48 to 49).

B.2.3. Care in the Provisional Detention Center of Santo Domingo de los Colorados

55. This Court notes that on April 13, 1993, Mr. Vera Vera was transported to the Provisional Detention Center of Santo Domingo.⁵⁸ The next day, Mr. Vera Vera rendered a statement before the Eleventh Criminal Prosecutor of Pichincha,⁵⁹ and the Chief of the Office of Criminal Investigations of Santo Domingo de los Colorados took Mr. Vera Vera before the President of the Sorting Chamber.⁶⁰ Moreover, on that day, Mr. Vera Vera was treated by the doctor of the Police Unit, who certified that the alleged victim "had a wound caused by a firearm, on his left hemithorax, apparently without major complications and incurred before his detention."⁶¹ The same doctor clinically monitored Mr. Vera Vera at all times at the Provisional Detention Center of Santo Domingo. Pursuant to the statement of that doctor rendered before the National Directorate of Investigations of the National Police, "under the same

⁵⁷ Expert testimony of Messers. Hans Petter Hougen and Önder Özkalıpci (case file of Merits, tomo I, folio 572).

⁵⁸ Cf. Official letter addressed to the Subsecretary of International Bodies of the Ministry of Foreign Affairs, signed by the Subsecretary of the Police of the Ministry of the Interior, on December 15, 1995 (case file of annexes to the application, annex 5, folio 14); police report 93-343 of the National Office of Investigations, on April 14, 1993 (case file of annexes to the application, annex 2, folio 7); police report 95-P2-34-SDC of the National Office of Investigations, of December 11, 1995 (case file of annexes to the application, annex 7, folios 19 and 20); police report 95-P2-33-SDC of the National Office of Investigations, addressed to the Chief of the Command of Rural Services of Pichincha No. 1, of December 4, 1995 (case file of annexes to the application, annex 19, folio 69); statement of Dr. Luis Fernando Lara Yáñez, Chief of the Medical Unit of the Provisional Detention Center, addressed to the National Office of Investigations on November 15, 1995 (case file of annexes to the application, annex 10, folio 29), and certificate issued by Doctor Luis Fernando Lara Yáñez, on April 14, 1993 (case file of annexes to the brief of pleadings and motions, annex 3, folio 545).

⁵⁹ Cf. statement rendered by Mr. Pedro Miguel Vera Vera before the Eleventh Criminal Court of Pinchincha, on April 14, 1993 (case file of annexes to the application, annex 12, folios 43 and 44).

⁶⁰ Cf. official letter 93-686-OID-SDC-CP-1 of the Chief of the Office of Criminal Investigations de Santo Domingo de los Colorados addressed to the President of the Chamber of Sorteos, on April 14, 1993, and police report 93-343 of the National Office of Investigations, on April 14, 1993 (case file of annexes to the application, annex 2, folios 5 a 7).

⁶¹ Certificate issued by Dr. Luis Fernando Lara Yáñez, on April 14, 1993 (case file of annexes to the brief of pleadings and motions, annex 3, folio 545).

diagnosis and maintaining the same medical opinion that the wound was not serious[,] [Mr. Vera Vera] was administered the medicine he was prescribed at the hospital [of Santo Domingo de los Colorados], and remained under observation.”⁶²

56. Pursuant to her testimony rendered at the public hearing (*supra* para. 21), Ms. Francisca Mercedes Vera Valdez purchased at least some of the medications administered to her son while he was at the Provisional Detention Center, at the request of the doctor who treated him, who also requested the purchase of a “Gillette razor” in order to go forward with the extraction of the bullet. In this regard, the State noted that the “care received by Mr. Pedro Vera Vera was free,” and that “[t]hese facts have never been verified, nor analyzed.” Nevertheless, the Court notes that in his sworn statement, Mr. Francisco Rubén Vargas Balcázar, (*supra* para. 20), who according to Ms. Vera Vera's statement before the Court, accompanied her at the time, also mentioned that the doctor of the detention center told her that she should purchase, “a scalpel and [...] some pills” in order for him to extract the bullet from her son. The Court highlights that this declaration was not contested nor disputed by the State, who had the procedural opportunity to do so (*supra* para. 7). Thus, the Court considers it reasonable to infer that Ms. Vera Valdez did in fact provide some medicine for her son's care while he was detained in the cells of the police station in Santo Domingo de los Colorados.

57. Likewise, pursuant to Ms. Vera Valdez's statement (*supra* para. 21), after purchasing the medications she was able to see her son, who “was on a wet floor, laying down; he was the color of office paper, and begged, “Mother, get me out of here, I can't handle it any more.” Upon seeing this, Ms. Vera Vera got an attorney, [who] filed a brief with a judge” in order for him to transport her son to a hospital [*infra* para. 60]. Similarly, Mr. Vargas Balcazar stated (*supra* para 20) that Ms. Vera Valdez “was [able to see her son...] through some filthy railings, and she saw that he was lying on the ground complaining of pain and stripped of his belongings[.] Pedro saw that she was there, and through the railings he yelled ‘Mother, mommy get me out of here[,] help me[,] I cant handle it any more[,] it hurts a lot.”

58. Moreover, it is clear from the body of evidence that on April 14, 1993, Ms. Vera Valdez, through an attorney, requested the Second National Police Commissioner to order the medical-legal evaluation of her son in order to assess his state of health and to make his hospitalization in a clinic possible, “so that he [could] receive immediate medical attention and his life [could] be saved, as he was detained in the jail cells of the city Police.”⁶³

59. Moreover, the Court also found that in response to this request, on April 14, 1993, the Second Commissioner appointed two medical experts to carry out the corresponding medical examination, which took place the same

⁶² Statement by doctor Luis Fernando Lara Yáñez, Chief of the Medical Unit of the Provisional Detention Center, rendered before the National Office of Investigations on November 15, 1995 (case file of annexes to the application, annex 10, folio 29).

⁶³ Brief of Mercedes Vera addressed to the Second National Police Commissioner of the Cantón de Santo Domingo on April 14, 1993, and order of authority to effectuate medical recognition (case file of annexes to the brief of pleadings and motions, annex 6, folio 555).

day in the presence of the Second Commissioner.⁶⁴ In a report dated that same date, the experts mentioned that Mr. Vera Vera "[...] suffer[ed] a gunshot wound," and recommended that he "get a radiograph done to rule out any permanent injury; that the projectile be surgically removed; that permanent medical monitoring be in place in order to prevent complications[, and] that he be [granted] no less than fifteen days of disability, except [if he were to experience] complications."⁶⁵ Similarly, they concluded that Mr. Vera Vera had "a small bruise on his left corner area of the left eye; an orifice of two centimeters deep due to a bullet entry to the inside of the left mammary gland, a bruise-like area at the back left lumbar area, where upon touch a small tumor mass was found compatible with a firearm projectile[, and an a]bdomen painful to the touch, both superficial and deep."⁶⁶

60. On April 16, 1993, Ms. Mercedes Vera presented a brief, through her attorney, to the Eleventh Criminal Judge of Pichincha so that he might order the immediate transfer of Mr. Vera Vera from the jail cells of the Police station of that city to a healthcare center to extract the bullet from the firearm.⁶⁷ On that same day, the judge ordered the transfer of Mr. Vera Vera to the Regional Hospital, with "the due police custody,"⁶⁸ for surgical intervention, and ordered that the Chief of the Police Command⁶⁹ and the Director of the Regional Hospital be sent official notes requiring them, in addition, to report on the patient's state of health in a periodic manner during the time he remained in the hospital.⁷⁰ The Prosecutor was also notified of this decision.⁷¹ Moreover, on that day, the Eleventh Judge initiated criminal proceedings against Mr. Vera Vera and ordered his preventive detention and that the

⁶⁴ Cf. Act of diligence of medical/legal recognition effectuated by the Second National Commissioner of the Police, on April 14, 1993 (case file of annexes to the brief of pleadings and motions, annex 7, folio 557).

⁶⁵ Medical report addressed to the Second National Commissioner of the Police and signed by the medical experts Tuesmann Merino and Verdi Cedeño, on April 14, 1993 (case file of annexes de Brief of pleadings and motions, annex 8, folio 559).

⁶⁶ Legal Medical report addressed to the Second National Commissioner of the Police and signed by the medical expert witnesses Tuesmann Merino and Verdi Cedeño, on April 14, 1993 (case file of annexes de Brief of pleadings and motions, annex 8, folio 559).

⁶⁷ Cf. Brief of Mercedes Vera addressed to the Eleventh Judge of the Criminal Court of Pichincha, of April 16, 1993 (case file of annexes to the brief of pleadings and motions, annex 9, folio 561).

⁶⁸ Order issued by the Eleventh Judge of the Criminal Court of Pichincha of April 16, 1993 (case file of annexes to the brief of pleadings and motions, annex 10, folio 563).

⁶⁹ Cf. Official letter N-93-488-JDPPP-SDC of the Of the Eleventh Criminal Court of Pichincha addressed to the Chief of the Command of Rural Services of Pichincha No. 1, of April 16, 1993 (case file of annexes to the brief of pleadings and motions, annex 11, folio 565).

⁷⁰ Cf. Official letter N-93-940-JDPPP-SDC of the Eleventh Judge of the Criminal Court of Pichincha and addressed to the Director of the Regional Hospital of Santo Domingo, of April 16, 1993 (case file of annexes to the brief of pleadings and motions, annex 12, folio 566).

⁷¹ Order issued by the Eleventh Judge of the Criminal Court of Pichincha of the April 16, 1993 (case file of annexes to the brief of pleadings and motions, annex 10, folio 563).

constitutional arrest warrant and order for his transfer to the Social Rehabilitation Center for Men of Quito be issued.⁷²

61. The record shows that on April 16, 1993, the Chief of Rural Police Command of Pichincha No.1 addressed a communication to the Eleventh Criminal judge reporting that the doctor of the police unit had stated that "the transfer of the detainee to the [h]ospital was not justified."⁷³ In a report issued on that date, the unit's doctor indicated that:

"the detainee h[ad] suffered an injury from a firearm projectile that, after entering at the front thorax[,] was diverted toward the renal fossa without causing complications. The detainee h[ad] received emergency care in the hospital of the locality and, given that there were no complications, [was] sent to [...that unit]; [it was] the doctor's opinion that the projectile should remain where [...] it was, given that a callous had formed around it and, since no complications had resulted, surgery was not justified."⁷⁴

62. Mr. Vera Vera remained in the Provisional Detention Center of Santo Domingo until April 17, 1993, the date on which, allegedly, "the first signs of complications from the injury appeared[, namely, a] moderate increase in body temperature[and] pain[.]"⁷⁵ It should be mentioned that in a statement rendered before the National Directorate of Investigations two years later, (*supra* para. 55), the abovementioned doctor noted that "the medical services of the unit did not have a laboratory nor X-rays, and therefore, they were unable to detect the complications in time and [that,] for this reason, he [was] transferred to the Hospital [...] to be treated and monitored by specialized doctors."⁷⁶

63. Given the facts proven in this section, the Court notes that the abovementioned Standard Minimum Rules of the United Nations for the Treatment of Prisoners, apart from requiring that medical examinations be carried out whenever necessary, (*supra* para. 50), it also notes, *inter alia*, that:

[s]ick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals. Where hospital facilities are provided in an institution, their equipment, furnishings and pharmaceutical

⁷² Cf. Indictment of the proceeding issued by the Eleventh Judge of the Criminal Court of Pichincha within the criminal proceeding no. 189/93, of April 16, 1993 (case file of annexes to the brief of pleadings and motions, annex 4, folios 547 to 550).

⁷³ Official letter No. 93-426-SRP-1 of the Chief of the Rural Commander Pichincha No. 1 addressed to the Eleventh Judge of the Criminal Court of Pichincha, of April 16, 1993 (case file of annexes to the brief of pleadings and motions, annex 12, folio 568).

⁷⁴ Medical Report of Pedro Miguel Vera Vera, signed by Doctor Luis Fernando Lara Yáñez, Chief of the Medical Unit of the Provisional Detention Center, of April 16, 1993, (case file of annexes to the brief of pleadings and motions, annex 13, folio 570).

⁷⁵ Statement by doctor Luis Fernando Lara Yáñez, Chief of the Medical Unit of the Provisional Detention Center, rendered before the National Office of Investigations on November 15, 1995, (case file of annexes to the brief of pleadings and motions, annex 5, folio 553).

⁷⁶ Statement by doctor Luis Fernando Lara Yáñez, Chief of the Medical Unit of the Provisional Detention Center, rendered before the National Office of Investigations on November 15, 1995 (case file of annexes to the brief of pleadings and motions, annex 5, folio 553).

supplies shall be proper for the medical care and treatment of sick prisoners, and there shall be a staff of suitable trained officers.⁷⁷

64. In this regard, the Court notes that, in accordance with the expert report of Mr. Hans Petter Hougen and Önder Özkalipci rendered in this case (*supra* para. 20), if Mr. Vera Vera “had been subject to an adequate physical examination in the police medical unit, the doctor responsible should have objected [sic] to the discharge of [the alleged victim] and [...] would have returned [Mr. Vera Vera] immediately to the hospital, particularly [given that] there was no way for him to receive the proper monitoring in the detention center [given his] condition.”

65. In addition to the foregoing, it is not clear from the body of evidence that Mr. Vera Vera was subject to special medical examinations at the time he was admitted at the Police Unit. The Court notes that without the necessary equipment, radiographic equipment in particular, to detect complications that could require treatment and supervision by specialized doctors, the doctor of the Police Unit concluded that the extraction of the bullet lodged in Mr. Vera Vera's side was not necessary, and thus Mr. Vera Vera was not taken to the hospital until five days later, upon showing signs of complications (*supra* paras. 55 and 62). All this occurred despite what was stated in the report and recommendations of medical experts appointed by the Second National Police Commissioner after the completion of Mr. Vera Vera's medical examination (*supra* para. 59). Therefore, the Court finds that the medical care received by Mr. Vera Vera in the police station was negligent.

B.2.4. Second admission at the Public Hospital of Santo Domingo de los Colorados, transfer to the Eugenio Espejo Hospital of Quito, and subsequent death of Mr. Pedro Miguel Vera Vera

66. The Court notes that it was not until April 17, 1993, at approximately 13:00 hours, that Mr. Vera Vera was transferred again to the Hospital of Santo Domingo de los Colorados,⁷⁸ where he remained until April 22, 1993. During his second admission in that hospital, he was diagnosed with “acute traumatic abdomen,” “[i]njury caused by the projectile of a fire arm to the left hemothorax” and “sepsis.”⁷⁹ Pursuant to the statement of Ms. Vera Valdez rendered during the public hearing (*supra* para. 21), at this stage of medical care, “her son was in poor shape, he no longer ate [nor] slept [and,] was handcuffed to a hospital bed, and was unable to relieve himself.” Moreover,

⁷⁷ Rule 22(2) of the the UN Standard Minimum Rules for the Treatment of Prisoners, adopted by the First United Nations Congress on Crime Prevention and Treatment of Offenders, held in Geneva en 1995, and approved by the Economic and Social Council in its resolutions 663C (XXIV) of July 31, 1957 and 2006 (LXVII) of May 13, 1977.

⁷⁸ Cf. Clinical history of Pedro Miguel Vera Vera, Second Internment, Emergency Services, Hospital of Santo Domingo de los Colorados (case file of annexes to the application, annex 14, folio 48).

⁷⁹ Official letter 123-DHSD-93 addressed to Elsie Monge, President of the CEDHU, signed by the Director of the Hospital of Santo Domingo de los Colorados, of July 13, 1993, to which the clinical history no. 100036 is attached, of the Internal Medical Services (case file of annexes to the brief of pleadings and motions, annex 14, folios 572 to 574).

Ms. Vera Valdez testified that upon arriving at the hospital, her son did not undergo surgery given that:

"[they] told her [...] that they were going to keep him there with blood serum and pills [...] until Monday when the doctor [on duty] was to arrive to perform the operation [...]. [As such, she] approached the police officer [in charge] and [asked him] 'but if there is no doctor, why don't we take him to the hospital in Quito?'. [He] told her, 'They have not given me the order to get out of here [...]. You will have to wait until Monday for the Judge to give the order to take him [*sic*].' [...] And, from there [...] her son remained there. [She] cried, [...] begging the nurses for help to [obtain] the order [...] to be able to take him to Quito, but it was impossible. [...] From there, Monday came. The doctor who was set to operate on her son examined him and told her, 'Madam, I will not operate on him, he must go to Quito,' [...] because his condition had advanced significantly [...]."

67. The Court highlights that these affirmations were not contested nor disputed by the State, and thus they are deemed as proven.

68. The Court notes that on April 22, Mr. Vera Vera was transferred in an ambulance from the Hospital of Santo Domingo de los Colorados to the Eugenio Espejo Hospital of Quito, allegedly "at the request of the police corps,"⁸⁰ and that he was hospitalized at the latter hospital at 14:55 hours. There, he underwent an "emergency exploratory laparotomy" from 21:10 hours on April 22, until 1:45 hours of the next day. As a result of the surgical intervention, Mr. Vera Vera was diagnosed with: "free flowing purulent liquid in the amount of more or less 2000cc," "with multiple abscesses, corredera parieto cólica and fosa esplénica", "a perforation of about 4cm in the antimesenteric border, with an intestinal escape," a "major area with dressing affecting the greater '*espilón*,' stomach, spleen, transverse and descending colon, and left anterolateral abdominal wall, purulent film diffusely distributed in the small and large intestinal loops," "necrosis in the transverse and descending colon adjacent to the perforation."⁸¹

69. In this context, the Court highlights that according to the statement of Ms. Vera Valdez (*supra* para. 21), she and her husband were forced to obtain a loan to cover the costs of the ambulance transfer of her son from the Hospital of Eugenio Espejo of Quito. Ms. Vera Valdez stated, moreover, that once at the hospital, Mr. Pedro Miguel Vera Vera was not seen until she obtained through her own means, using her lack of money, two of the four pints of blood requested by the hospital. Mr. Vera Vera was operated on "at about nine in the evening" of that day. The sworn statement of Mr. Vargas

⁸⁰ Official letter 123-DHSD-93 addressed to Elsie Monge, President of the CEDHU, and signed by the Director of the Hospital of Santo Domingo de los Colorados, on July 13, 1993, to which the clinical history no. 100036 is attached, of the Internal Medical Services (case file of annexes to the brief of pleadings and motions, annex 14, folios 572 to 574), and official letter no. 7972-OIDP del Chief of the Office of Criminal Investigations of Pichincha on May 6, 1993, addressed to Elsie Monge, annexed to the part on the lifting of the body of Pedro Miguel Vera Vera, on April 23, 1993, and report no. 2016-OIDP of the National Office of Investigations, of April 4, 1993 (case file of annexes to the brief of pleadings and motions, annex 17, folios 588 to 590).

⁸¹ Clinical history of Pedro Miguel Vera Vera, General Surgery Services, Hospital Eugenio Espejo of Quito (case file of annexes to the brief of pleadings and motions annex 15, folios 576 to 583).

Balcázar confirms these assertions. Moreover, the Court notes that the Register of the Eugenio Espejo Hospital on April 22, 1993, corroborates that Mr. Vera Vera was admitted to surgery as of 21:10 hours (*supra* para. 68), as indicated by his mother.

70. The Court further notes that Mr. Vera Vera died at the Eugenio Espejo Hospital on April 23, 1993, hours after the operation⁸² because of peritonitis and hemoperitoneum [*sic*] due to the laceration of the mesenteric vessels and bowel loops, caused by the penetration of a projectile from a firearm.”⁸³ The collection and the autopsy of his body were carried out at the Eugenio Espejo Hospital that same day by order of the Fifth National Commissioner.⁸⁴ The autopsy indicated that he also “had several surgical stitches in mesentery, necrotic bowel loops, with the presence of fibrin liquid and sero-purulent material with hemoperitoneum remains [*sic*] of 600cc, kidneys in shock[, and] an empty stomach with inflamed mucous[.]” It was not until the autopsy was performed that the bullet was removed.⁸⁵ On May 4, 1993, the Eleventh Judge declared the criminal proceedings against Mr. Vera Vera closed, in light his death. The prosecutor, among others was served notice of the decision “in his office.”⁸⁶

71. The Court notes that the Eleventh Criminal Judge ordered the surgical intervention of Mr. Vera Vera on April 16, 1993 (*supra* para. 60). Nevertheless, Ecuadorian authorities did not carry out this procedure until April 22, 1993, in the Eugenio Espejo Hospital of Quito (*supra* para. 68). In this regard, the Court highlights that it was due to the actions of Ms. Vera Valdez that her son was transferred to the Hospital Santo Domingo de los Colorados and then to the hospital in Quito in order for him to undergo surgery.

72. Now, the experts noted that “the immediate cause of [Mr. Vera Vera's] death was postoperative shock, but his condition prior to the surgery was very poor due to the complications caused by the gunshot wound, which was the underlying cause of his death.” The expert report also noted that “[t]here is no doubt that the gunshot wound caused all the described lesions (perforation of the diaphragm, spleen laceration, perforation of the intestinal blood vessels and the left flexure of the large intestine). They also indicated that sepsis, peritonitis, intraperitoneal hemorrhage and intestinal necropsies were complications caused by the untreated gunshot wound in the chest and abdomen.” The report concluded that if the alleged victim “had immediately

⁸² Cf. Official letter no. 93-1905-CP-1, of Coronel of Police of E.M., addressed to the Eleventh Judge of the Criminal Court of Pichincha, on April 23, 1993 (case file of annexes to the brief of pleadings and motions, annex 16, folio 585).

⁸³ Autopsy Protocol 301-24-JI-PA-93 of the Medical Legal Services, of April 23, 1993 (case file of annexes to the application, annex 1, folio 2).

⁸⁴ Cf. Part addressed to the Chief of the Office of Criminal Investigations de Pichincha, on April 23, 1993 (case file of annexes to the brief of pleadings and motions, annex 17, folio 589), and report no. 2016-OIDP of the Office of Criminal Investigations, on April 4, 1993 (case file of annexes to the brief of pleadings and motions, annex 17, folio 590).

⁸⁵ Cf. Autopsy Protocol 301-24-JI-PA-93 del Medical Legal Services, of April 23, 1993 (case file of annexes to the application, annex 1, folio 2).

⁸⁶ Order of the Eleventh Judge of the Criminal Court of Pichincha, on May 4, 1993 (case file of annexes to the brief of pleadings and motions, annex 20, folio 597).

undergone appropriate surgical treatment, his chances of surviving the gunshot wound would have been good." According to the experts, "[t]he lack of relevant medical intervention during the period of ten days after he was shot until he was transferred for operation is totally unacceptable and an example of gross medical negligence."⁸⁷

73. Mr. Pedro Miguel Vera Vera was shot with a firearm which caused an injury on April 12, 1993, and he did not undergo surgery until April 22 of that year (*supra* paras. 46 and 48). In light of this, though the Court deems that the ten day period that passed from the day he was shot until he underwent the ordered surgery caused a deterioration of his physical condition that led to his death. This occurred despite the existence of a judicial order that the operation be carried out. Due to this ten day delay, the medical care he received prior to undergoing surgery was not appropriate, as well as the fact that Ms. Vera Valdez was forced to push for her son's surgery to be carried out, the Court considers that Ecuadorian authorities did not offer adequate and timely medical care to Mr. Pedro Miguel Vera Vera.

74. Last, this Court notes that the expert report of Hans Petter Hougen and Önder Özkalipci (*supra* para. 20) mention that in the Eugenio Espejo Hospital, Mr. Vera Vera "was [admitted] in very poor conditions" and that "the fact that the doctors identified intestinal necrosis in the autopsy indicates that the surgery was not optimal." The expert report indicates, moreover, that "the fact that the bullet was not recuperated during the surgery, but rather during the autopsy, increases [the] suspicion [of the experts] of an insufficient operation."⁸⁸ In this regard, the Court considers that the evidence is insufficient to conclude that the surgery carried out in the Eugenio Espejo Hospital on April 22, 1993, was negligent. Moreover, neither the Commission nor the representatives have explained or proven why such surgery was inappropriate.

B.3. Violation of Articles 5(1), 5(2), and 4 of the Convention, in relation to Article 1(1) thereof

75. In short, the Court observes that in this case, the State of Ecuador did not provide adequate and timely medical care to Mr. Pedro Miguel Vera Vera because he was released after his first hospitalization at the Hospital of Santo Domingo de los Colorados without having undergone relevant diagnostic tests or examinations in light of the injuries he sustained (*supra* paras. 52 to 54); when he was held at the Provisional Detention Center in Santo Domingo, the State did not immediately transfer Mr. Vera Vera to hospitals with facilities that met his healthcare needs, but rather, he was negligently kept there until the complications from his wound became evident (*supra* para. 55, 62, and 65); once transferred to the Hospital of Santo Domingo de los Colorados, Mr. Vera Vera did not undergo surgery nor were the appropriate measures adopted to attend to his serious health condition, which only led to a more

⁸⁷ Expert testimony of Messers. Hans Petter Hougen and Önder Özkalipci (case file of Merits, tomo I, folios 571 to 573).

⁸⁸ Expert testimony of Messers. Hans Petter Hougen and Önder Özkalipci (case file of Merits, tomo I, folio 573).

serious deterioration of his health (*supra* para 66). Then, in the Hospital Eugenio Espejo of Quito, they were unable to save Mr. Vera Vera's life, given that his health condition was already very delicate. Ultimately, the surgery Mr. Vera Vera needed was not carried out until ten days after he received a gunshot wound and was arrested despite his serious health condition. (*supra* para. 70, 72, and 73) In addition, Ms. Vera Valdez repeatedly had to push for the care provided by the State (*supra* paras. 56 to 58, 60, 66, 69, 71, and 73). For the Court, the number of omissions of the State through its agents during the time that Pedro Miguel Vera Vera was in their custody amounts to medical negligence which resulted in his death and thereby implicates the State's international responsibility.

76. Additionally, the Court considers it useful to refer to the jurisprudence of the European Court of Human Rights in cases where there has been negligent or inadequate medical treatment of persons deprived of liberty to such an extent that the European Court has held that States have incurred a violation of Article 3 of the European Convention on Human Rights,⁸⁹ which enshrines the prohibition of cruel, inhumane, and degrading treatment, among other things. In this regard, the European Court considered that in the analysis of such violations:

75. "[...] ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum level is, in the nature of things, relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim [...]. Although the purpose of such treatment is a factor to be taken into account, in particular whether it was intended to humiliate or debase the victim, the absence of any such purpose does not inevitably lead to a finding that there has been no violation of Article 3 [...].

76. Moreover, it cannot be ruled out that the detention of a person who is ill may raise issues under Article 3 of the Convention [...].⁹⁰

77. Thus, the European Court took into account factors such as the lack of pertinent emergency and specialized medical care, excessive deterioration of the physical and mental health of the person deprived of liberty and exposure to severe or prolonged pain as a result of the lack of timely and diligent

⁸⁹ Convention for the Protection of Human Rights and Fundamental Freedoms.

⁹⁰ C.E.D.H., *Case of Sarban V. Moldova*, (No. 3456/05), Judgment of October 4, 2005. Final, January 4, 2006, paras. 75 and 76:

[I]ll-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum level is, in the nature of things, relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim[.]. Although the purpose of such treatment is a factor to be taken into account, in particular whether it was intended to humiliate or debase the victim, the absence of any such purpose does not inevitably lead to a finding that there has been no violation of Article 3[.]

[M]oreover, it cannot be ruled out that the detention of a person who is ill may raise issues under Article 3 of the Convention [...]."

medical care, excessive security conditions which the person undergoes despite his or her obvious serious health condition and with no grounds or evidence that would have required it, as well as public awareness or media communication of these situations, among other things, to assess whether there has been inhumane or degrading treatment of persons deprived of liberty.⁹¹

78. The Court notes that in the present case, the medical negligence by State authorities given the type of injury suffered by Mr. Vera Vera, that is, a gunshot wound, caused the painful deterioration of his physical condition during the course of ten days, culminating in his death, a consequence that could have been avoided with appropriate and timely medical treatment (*supra* para. 75). Moreover, given his health condition and his deprivation of liberty, it was clear that Mr. Vera Vera could not fend for himself in order to receive treatment in a timely manner; this was an obligation of the authorities that had custody over him. For the Court, these facts constitute inhumane and degrading treatment within the meaning of Article 5(2) of the Convention, to the detriment of Mr. Vera Vera.

79. Therefore, for this Court it is clear that the medical negligence of State authorities in this case generated violations to Mr. Vera Vera's rights to personal integrity and life, and as such, it deems that the Ecuadorian State violated Article 5(1), 5(2) and 4 of the Convention, in conjunction with Article 1(1) thereof, to the detriment of Mr. Pedro Miguel Vera Vera.

B.4. The alleged prison conditions and health care services for those deprived of liberty in Ecuador at the time that the facts took place

80. In Chapter VI of this Judgment (*supra* para. 30), the Court already referred to the fact that in its application, the Commission referred to an alleged general situation in Ecuador of "overcrowding of prisoners in the State penitentiary system, [...] poor provisions for health clinics in penitentiary centers in terms of equipment and medicines, as well as the lack of minimum requirements such as [...] access to medical care," among others, to contextualize the human rights violations suffered by Mr. Pedro Miguel Vera Vera in 1993.

81. The Court notes that the only document submitted to support this affirmation by the Inter-American Commission is the *Report on the Situation of Human Rights in Ecuador*, of April 24, 1997, issued on the basis of an *in loco* visit conducted in the State in 1994 by the Commission. In this regard, the Court considers that, before the Tribunal, the report by itself is not sufficient to establish an alleged general situation in Ecuador during the time of the facts of this case with respect to the issues raised by the Commission. The Court highlights that the report focuses briefly on the availability of medical and psychological treatment for prisoners, without providing further details, statistics, and specific evidence about available resources and practices for the provision of medical care to those deprived of liberty in the

⁹¹ Cf. C.E.D.H., *Case of Sarban V. Moldova*, (No. 3456/05), *supra* note 90, and *Case of Paladi V. Moldova*, (No. 39806/05), G.C., Judgment of March 10, 2009.

State at that time the facts took place.⁹² In this regard, the Court considers that, said report itself is not sufficient evidence to prove the alleged generalized situation in Ecuador at the time of the facts of this case regarding that presented by the Commission.

VIII

JUDICIAL GUARANTEES AND JUDICIAL PROTECTION IN REGARD TO PEDRO MIGUEL VERA VERA AND FRANCISCA MERCEDES VERA VALDEZ

A. *Arguments of the parties*

82. The Commission noted that the facts of this case have not been investigated by the State and that Mr. Vera Vera's next of kin were not provided with an effective remedy to ensure access to justice, the determination of the truth of the facts, the investigation and prosecution of the perpetrators, and reparations for the damage caused, despite its obligation to do so *ex officio*. Therefore, it requested the Court to declare that the State violated the rights enshrined in Articles 8(1) and 25(1) of the American Convention, in relation to the obligations under Article 1(1) therein, to the detriment of Pedro Miguel Vera Vera and Francisca Mercedes Vera Valdez, among others.

83. Additionally, the representative noted that "[d]espite the fact that this case regards a public *ex officio* action, [the] investigations should have been initiated to ascertain the facts, and to date the State has not initiated any legal investigation in order clarify the circumstances in which the victim was shot by a firearm and to identify and punish those responsible [...]," and it has also not "investigated the reasons he died while in State custody." Due to the foregoing, much like the Commission, the representative requested the Court to declare the State in violation of the rights enshrined in Articles 8(1) and 25(1) of the Convention, in relation to the obligation established in Article 1(1) therein, to the detriment of Pedro Miguel Vera Vera and Francisca Mercedes Vera Valdez.

84. The State noted that in Ecuador there are "appropriate measures in place to protect and preserve the right to life of individuals under its jurisdiction, determining the investigation and action against the responsible person, and also offering the possibility to file a complaint that would allow persons to bring the cause before the authority, in order for the State to investigate in an adequate manner." In that sense, it argued that "[t]he appropriate channel is through the filing of a complaint, which must be recognized and promoted by the petitioners in order for the State to carry out the appropriate action which [it] is obligated to carry out and which did not take place [in this case]." The family of Mr. Vera Vera never filed any complaint, even though the State, at no time, restricted this possibility. Therefore, the State considered that it was not responsible for the violation of the rights recognized in Articles 8 and 25 of the American Convention.

⁹² Cf. Inter-American Commission on Human Rights, *Report on the Human Rights Situation in Ecuador*, on April 24, 1997 (case file of annexes to the application, annex 11, folios 34 and 35).

B. Considerations of the Court

85. The Court has already established in this Judgment that the State violated the rights recognized in Articles 4(1), 5(1) and 5(2) of the American Convention, to the detriment of Mr. Pedro Miguel Vera Vera for the noncompliance of its obligation to guarantee his rights to life and humane treatment [personal integrity] as a consequence of the medical negligence he suffered after he received a gunshot wound, and his subsequent death while under State custody. Below, the Court will analyze the alleged failure to investigate these facts by the State in light of the right to judicial guarantees and judicial protection recognized in the American Convention.⁹³

86. The Court noted that from Article 8 of the American Convention it is clear that victims of human rights violations or their next of kin should have ample opportunities to be heard and to participate in their respective processes, in order to clarify the facts and punish those responsible, as well as to seek a due reparation. The Court has held that States are under an obligation to provide effective judicial remedies to those who claim to be victims of human rights violations (Article 25), remedies that must be substantiated in accordance with the rules of due legal procedure (Article 8(1)), all within the general obligation of such States to guarantee free and full exercise of the rights recognized by the Convention to all persons under its jurisdiction (Article 1(1)). Moreover, the Court has noted that the obligation to investigate and the corresponding right of the alleged victim or their next of kin cannot be gathered merely from the conventional norms of international law which are imperative for the States Parties, but also from the right to investigate *ex officio* certain illicit conduct and the norms that permit the victims or their next of kin to file a complaint or present a lawsuit, evidence, or applications, or any other matter, in order to participate procedurally in the criminal investigation with the hope of establishing the truth of the facts.⁹⁴

⁹³ In relevant part, Article 8 of the American Convention establishes that:

Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

Article 25(1) of the American Convention notes that:

"[e]veryone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties."

⁹⁴ Cf. *Case of Velásquez Rodríguez V. Honduras*, *supra* note 3, para. 91; *Case of Ibsen Cárdenas and Ibsen Peña V. Bolivia. Merits, Reparations and Costs*. Judgment of September 1, 2010 Series C No. 217, para. 151, and *Case of Cabrera García and Montiel Flores V. México*, *supra* note 7, para. 151. See also, Cf. *Case of Gomes Lund (Guerrilha do Araguaia) V. Brazil*, *supra* note 4, para. 139.

87. In light of this duty, when it comes to the investigation of the death of a person who was in State custody, as in this case, the relevant authorities have a duty to initiate *ex officio* and without delay, a serious, impartial, and effective investigation. This investigation should be conducted using all available legal means and be aimed at determining the truth and investigation, prosecution, and punishment of those responsible for the facts, especially when they are or may be State agents involved.⁹⁵ It is pertinent to note that the duty to investigate is an obligation of means and not results. Nevertheless, it must be assumed by the State as a legal duty and not as a mere formality preordained to be ineffective, or as a mere step effectuated by private interests that depends upon the initiative of the victims or their relatives or their offer of proof.⁹⁶

88. The Court has established that the State is responsible, given its condition as guarantor of the rights enshrined in the Convention, for enforcement of the rights to life and personal integrity of every individual who is under its custody.⁹⁷ It is possible to consider the State responsible for cruel, inhumane, or degrading treatment suffered by a person who has been in the custody of State agents, or who has died in such circumstances if, in addition, the authorities have not conducted a serious investigation of the facts followed by the prosecution of those who appear to be responsible for them.⁹⁸ In this sense, it falls on the State to provide an immediate, satisfactory, and convincing explanation of what happened to a person who was under State custody and to rebut the allegations of its responsibility, through the use of appropriate evidentiary means.⁹⁹

⁹⁵ Cf. *Case of Velásquez Rodríguez V. Honduras*, *supra* note 11, para. 177; *Case of González et al. ("Cotton Fields") V. México*, *supra* note 21, para. 290, and *Case of Ibsen Cárdenas and Ibsen Peña V. Bolivia*, *supra* note 94, para. 155.

⁹⁶ Cf. *Case of Velásquez Rodríguez V. Honduras*, *supra* note 11, para. 177; *Case of Gomes Lund et al. (Guerrilha do Araguaia) V. Brazil*, *supra* note 4, para. 138, and *Case of Gelman V. Uruguay*, *supra* note 12, para. 184.

⁹⁷ Cf. *Case of Neira Alegría et al. V. Perú*, *supra* note 35, para. 60; *Case of Vélez Loor V. Panamá*, *supra* note 3, para. 198, and *Case of Cabrera García and Montiel Flores V. México*, *supra* note 7, para. 134.

⁹⁸ Cf. *Case of the "Street Children" (Villagrán Morales et al.) V. Guatemala*, *supra* note 29, para. 170; *Case of Baldeón García V. Perú. Merits, Reparations and Costs*. Judgment of April 6, 2006. Series C No. 147, para. 120, and *Case of the Miguel Castro Castro Prison V. Perú*, *supra* note 42, para. 273. Similarly, Cf. C.E.D.H., *Case of Yavuz V. Turquía*, (No. 67137/01), Judgment of January 10, 2006, para. 38; *Case of Aksoy V. Turquía*, (No. 100/1995/606/694), Judgment of December 18, 1996, paras. 61 and 62, and *Case of Tomasi V. Francia*, (No. 12850/87), Judgment of August 27, 1992, paras. 108 a 111.

⁹⁹ Cf. *Case of Juan Humberto Sánchez V. Honduras. Preliminary Objection, Merits, Reparations and Costs*. Judgment of June 7, 2003. Series C No. 99, para. 111; *Case of Baldeón García V. Perú*, *supra* note 107, para. 120, and *Case of the Miguel Castro Castro Prison V. Perú*, *supra* note 42, para. 273. It is important to include the jurisprudence of the European Court of Human Rights on the subject, which has held that, under Article 3 of the European Convention, which recognizes the right to personal integrity, the State has an obligation to give a "convincing explanation" regarding any injury suffered by a person deprived of liberty. Furthermore, based on a reading of Article 3 of the European Convention in relation to Article 1 of the same instrument, it has established that a formal and effective investigation is required when an individual makes a "plausible claim" that there has been a violation, by a State agent, to one of their rights under Article 3 of the Convention. In the same line, it has established that otherwise the general prohibition of cruel, inhuman and degrading treatment, among others, would be "ineffective in practice," since it would be possible for agents of the State to abuse the rights of those who are

89. The Court notes that the only investigation conducted by the State in relation to the facts of this case consists in a police report prepared in 1995, namely, two years after the incident, which allegedly was intended to clarify "the alleged violation of the human rights of [... Mr. Vera Vera] by members of the Police Institution."¹⁰⁰ In this document, it is stated that statements were taken from five policemen, including one who was the doctor who treated Mr. Vera Vera in the Provisional Detention Center of Santo Domingo de los Colorados, and three others. It also recounts the events that began with the chase of Mr. Vera Vera and culminates with his death at the Eugenio Espejo Hospital of Quito, and it makes certain conclusions about the circumstances of the arrest but not about the possible negligence of State actors charged with providing medical care to Mr. Vera Vera while he was in detention.¹⁰¹ In this regard, taking into account the reiterated jurisprudence of the Court regarding the investigation that should be performed whenever there are potential violations of life and physical integrity of a detainee who is under the custody of the State (*supra*, paras. 86 to 88), the Court considers that the Ecuadorian state police report made two years after the fact does not meet the standards established by this Court to fully discharge its obligation to investigate under the Convention, given that not all of the available legal means were used. The inquiry was not aimed at determining the truth and the investigation, prosecution, and punishment of those responsible for the facts, nor was it conducted by an impartial entity, but rather it was conducted by the police institution itself.

90. The State pointed out that during the pendency of this case, it could not be assumed that Mr. Vera Vera had been the victim of medical negligence (*supra* para. 36), given that at all times, he was treated by several doctors. Nevertheless, the Court considers it appropriate to specify that in this case, it was also alleged that, aside from the lack of investigation of medical negligence committed against Mr. Vera Vera, an investigation has also not been effectuated in order to determine responsibility for gunshot.

91. As such, the Court finds that under the duty of care, once Mr. Vera Vera was arrested and State agents realized that he had received a gunshot wound, the State should have initiated, *ex officio*, an investigation about the situation. Furthermore, this duty of care also meant that immediately after the death of Mr. Vera Vera it was the State's obligation to provide a satisfactory explanation regarding it, since it did not involve just any person but rather one that was under their custody.

their custody with impunity, and that investigation should be able to achieve the identification and punishment of those responsible. Cf. C.E.D.H., *Case of Elci et al. V. Turquía*, (No. 23141 and 25091/94), Judgment of November 13, 2003, paras. 648 and 649, and *Case of Assenov et al. V. Bulgaria*, (No. 24760/94), Judgment of October 28, 1999, para. 102.

¹⁰⁰ Police report 95-P2-33-SDC of the National Office of Investigations, addressed to the Chief of the Command of Rural Services of Pichincha No. 1, on December 4, 1995 (case file of annexes to the application, annex 19, folio 67).

¹⁰¹ Cf. Police report 95-P2-33-SDC of the National Office of Investigations, addressed to the Chief of the Command of Rural Services of Pichincha No. 1, of December 4, 1995 (case file of annexes to the application, annex 19, folio 67-71).

92. Now, the Court also notes that the duty to investigate *ex officio* the death of Mr. Vera Vera as well as facts regarding the gunshot wound he received was an obligation established in the Ecuadorian criminal law at the time of the facts. In this respect, in the public hearing, the representatives noted that the investigation for the crime of battery was to be initiated, a crime codified in the Ecuadorian Criminal Code as a crime of criminal public prosecution.¹⁰² Moreover, the expert Manuel Ramiro Aguilar Torres (*supra* para. 20), based on Article 13 of the Ecuadorian Criminal Code in force at the time,¹⁰³ stated that "[t]hose responsible for the death [of Mr. Vera Vera] either because of the firing of the weapon or because of the failure to adequately care for the patient, would have had to respond for manslaughter, deemed a felony or of willful intent, as appropriate; but [...] as the case was never judicialized to determine the identity of those responsible [...] and the true cause of his death, it is impossible to carry out an analysis about the way it applied, in particular, the criminal law in Ecuador."¹⁰⁴ However, the expert also noted that the crime of battery was established in the Ecuadorian Criminal Code, and it could have been "investigated *ex officio*" in accordance with Article 14 of the Code of Criminal Procedure in force at the time of the facts.¹⁰⁵ In this regard, the expert referred extensively to the way in which,

¹⁰² In this regard, from Article 463 of the Penal Code, mentioned in the chapter on injuries, it is clear that "if a person [due to] an injury dies, [the person responsible will have] a penalty that is very similar to murder [and] therefore[, upon] the initiation of a criminal investigation for criminal injuries and despite [the] death of the person in the operating room, the criminal proceeding will continue until it is determined [why ...] the person died, [ie,] whether it was directly due to the gunshot or by medical malpractice, or [if it was due to] both actions and [,] therefore [,] there would be more responsibility add[ed] to the facts. "

¹⁰³ This provision established (case file of Merits, tomo II, folio 847):

Art 13 .- The person who voluntarily commits a criminal offense shall be liable for it, and will incur the penalty prescribed for the resulting infringement, although the harm caused may vary, or harms a person not intended to offend.

In the case that there are preexisting causes of the punishable act, or of a simultaneous or supervening nature, independent of the will of the author, the following rules will be observed:

If the event, which was not in the author's intention, is done as a result of the addition of one or more of these causes with a criminal offense, the defendant is liable for felony offense.

If the event takes place as a result of one or more of these causes, without joining the punishable act, the author is not liable for the infringement but only for the act itself.

¹⁰⁴ Expert statement of Mr. Manuel Ramiro Aguilar Torres (case file of Merits, tomo I, folio 588).

¹⁰⁵ Expert statement of Mr. Manuel Ramiro Aguilar Torres (case file of Merits, tomo I, folios 581 a 582). Article 14 notes (case file of Merits, tomo II, folio 1047):

14 .- The criminal action is of a public nature. In general, it is carried out *ex officio*, the private prosecution may be admitted; and only in the cases mentioned in Article 428 of this Code, shall it be exercised by private prosecution. "

For its part, Article 428 of the Code of Criminal Procedure established (case file of Merits, volume II, page 1118):

Through private prosecution, criminal judges may only hear the following offenses:

a) Rape of a minor perpetrated on a woman over sixteen and under eighteen;

ex officio, the corresponding authorities should institute criminal proceedings by indictment, in accordance with Article 15 of the Code of Criminal Procedure.¹⁰⁶ The expert said that even without a formal complaint by the family of Mr. Vera Vera, various authorities learned that Mr. Vera Vera had been shot, and also that he had died, so the lack of a complaint was not an obstacle for the State to initiate the corresponding *ex officio* investigation.

93. In this regard, the Court recalls that the purpose of its mandate is the implementation of the American Convention and other treaties that confer jurisdiction. It is not up to this Court to determine individual responsibility,¹⁰⁷ whose determination is up to the domestic criminal courts or other international tribunals, but rather to recognize the facts brought to its knowledge and to characterize them in the exercise of its contentious jurisdiction, according to the evidence presented by the parties.¹⁰⁸ Likewise, this Court has held that the obligation to investigate the facts, prosecute, and where appropriate, punish those responsible for a crime that constitutes a violation of human rights, is a commitment that stems from the American Convention, and that criminal responsibility must be determined by the

b) The abduction of a woman over sixteen and under eighteen, who had consented to her abduction and voluntarily followed the abductor;

c) Defamatory libel and non-defamatory slander;

d) Damage caused to forests, woodlands or gardens of private ownership by cutting, stripping or destruction of trees, impacting the river, canal, stream, pond, cheering or tanks and destroying the aqueducts, dams, bridges or private property dams, and throwing substances to destroy fish and species, those caused by death or wounds and injuries to horses and other pets and domesticated animals; those caused by the destruction of fences or enclosures of any kind whatever; suppression or change of boundaries, and blinding of trenches and,

e) all other crimes of theft not mentioned in the previous paragraph.

¹⁰⁶ This provision established (case file of Merits, tomo II, folios 1047 and 1048):

Art. 15 .- Except for cases provided for in Article 428 of this Code, the exercise of public prosecution is initiated by indictment, and its background can be the following:

- 1 .- The investigation, that *ex officio*, is carried out by a competent judge or court;
- 2 .- The prosecutorial initiative;
- 3 .- The complaint;
- 4 .- The private accusation;
- 5 .- The police report or police investigation and,
- 6 .- The higher order by the authorities.

¹⁰⁷ Cf. *Case of Velásquez Rodríguez V. Honduras*, *supra* note 11, para. 134; *Case of Rosendo Cantú and otra V. México*, *supra* note 17, para. 105, and *Case of Ibsen Cárdenas and Ibsen Peña V. Bolivia*, *supra* note 94, para. 199.

¹⁰⁸ Cf. *Case of Cantoral Huamaní and García Santa Cruz V. Perú. Preliminary Objection, Merits, Reparations and Costs*. Judgment of July 10, 2007. Series C No. 167, para. 87; *Case of Fernández Ortega et al. V. México. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 30, 2010. Series C No. 215, para. 103, and *Case of Ibsen Cárdenas and Ibsen Peña V. Bolivia*, *supra* note 94, para. 199.

competent judicial authorities strictly guided by the rules of due process established in Article 8 of the Convention.¹⁰⁹

94. Given the foregoing, the Court is precluded from determining whether what happened to Mr. Vera Vera can be established as a crime of battery or homicide identified by the representative and the expert Manuel Ramiro Aguilar Torres as this, specifically, must be established by the competent State authority. Notwithstanding, the Court notes that pursuant to that stated by the expert Aguilar Torres, the Code of Criminal Procedure in Ecuador at the time of the events, which was provided by the State and the representative (*supra* para. 9), established a general rule under which the prosecution was always public, given some exceptions provided for in Article 428 of the Code, those of which are prosecuted via private prosecution (*supra* para. 92 footnote on page 114 and 115). Among these exceptions the crimes of battery and homicide are not found, for which the Court finds that the exercise of the criminal action for such crimes was always public and, therefore, should have been carried out *ex officio*. Therefore, the Court notes that the analysis of this section should not refer to actions regarding the investigation that Mr. Vera Vera's next of kin should have initiated, particularly, if they had to file a formal complaint, but rather, in dealing with a case of an *ex officio* obligation by the State, the Court must analyze the actions taken by it in this regard.

95. From the facts developed broadly in Chapter VII of this Judgment, it is clear that by means of different authorities with different responsibilities, as well as doctors from public hospitals, at all times the State was aware that Mr. Pedro Miguel Vera Vera had received a gunshot wound before his arrest, that he was injured during this, and that, as a consequence, he had died. As has already been mentioned, under the Criminal Code in force during the commission of the facts stated that "crimes against judicial activity" are those that involve a failure to prosecute by any officer, policeman, doctor, surgeon, among others, upon having knowledge of facts constituting a crime.¹¹⁰

96. In this regard, it arises from the case file, together with that indicated by the State, that it has not conducted any investigation into the causes of death of Mr. Vera Vera.

97. It is the jurisprudence of this Court that upon acting in a manifestly ommissive and negligent manner, State bodies are not acting in accordance

¹⁰⁹ Cf. *Case of Huilca Tecse V. Perú. Merits, Reparations and Costs*. Judgment of March 03, 2005. Series C No. 121, para. 106; and *Case of Radilla Pacheco V. México*, *supra* note 15, para. 47, and *Case of Ibsen Cárdenas and Ibsen Peña V. Bolivia*, *supra* note 94, para. 158.

¹¹⁰ The provisions establish (case file of Merits, tomo II, f. 923):

Article 292.- "Any public officer or any police officer who, having been informed of the commission of a crime, does not take action immediately to inform a judge shall be punished with imprisonment of fifteen days to six months.

Article 293.- Any physician, surgeon, dentist, midwife, or any other person in the exercise of a health profession, who while providing professional services, uncovers a fact that appears as a sign of the commission of a crime and does not divulge the information to the police or a judge, shall be punished by a fine of eighty to seventy and seven dollars of the United States of America, unless the complaint will lead to criminal responsibility of the person being assisted."

with the obligations of the American Convention, and even more so if fundamental legal rights are in play, such as life.¹¹¹ Therefore, the Court considers that in this case the State failed to comply with its general obligation to investigate *ex officio* the death of Mr. Pedro Miguel Vera Vera. The Court considers that this obligation is even more relevant in this case because his death occurred while Mr. Vera Vera was in State custody. The aforementioned has led to impunity of the facts in this case, which has been defined by the Court as the failure to carry out all of the following: investigate, arrest, prosecute, and convict those responsible for violations of rights protected by the American Convention.¹¹²

98. Given that Mr. Vera Vera remained alive ten days after his arrest until his death, during which he was under the custody of the State, the Court considers that the right of access to justice was his right, given that the State had an obligation to investigate the facts. After his death, this right was of his mother, Ms. Francisca Mercedes Vera Valdez.

99. In consideration of the foregoing, the Court concludes that the State violated Articles 8(1) and 25(1) of the American Convention, in conjunction with Article 1(1) thereof, to the detriment of Mr. Pedro Miguel Vera Vera and Francisca Mercedes Valdez Vera for the failure to investigate, prosecute and, where appropriate, punish those responsible for the death of Mr. Vera Vera while in State custody.

IX RIGHT TO HUMANE TREATMENT [PERSONAL INTEGRITY] IN RELATION TO THE OBLIGATION TO GUARANTEE RIGHTS OF MS. FRANCISCA MERCEDES VERA VALDEZ

100. This Court has jurisdiction –based upon the American Convention and grounded in the *iura novit curia* principle, which is solidly supported in international jurisprudence– to examine the possible violation of conventional provisions which have not been alleged in the briefs submitted thereto, in the understanding that the parties have had the opportunity to express their respective positions with regard to the relevant facts.¹¹³

101. In the present case, neither the Commission nor the representatives alleged the violation to the right to humane treatment [personal integrity] enshrined in Article 5(1) of the American Convention, to the detriment of Ms.

¹¹¹ Cf. *Case of Garibaldi V. Brazil. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 23, 2009. Series C No. 203, para. 130, and *Case of Ibsen Cárdenas and Ibsen Peña V. Bolivia*, *supra* note 94, para. 173.

¹¹² Cf. *Case of the "White Van" (Paniagua Morales et al.) V. Guatemala*, *supra* note 7, para. 173; *Case of Manuel Cepeda Vargas V. Colombia. Preliminary Objections, Merits, Reparations and Costs*. Judgment of May 26, 2010. Series C No. 213, para. 130, and *Case of Ibsen Cárdenas and Ibsen Peña V. Bolivia*, *supra* note 94, para. 172.

¹¹³ Cf. *Case of Velásquez Rodríguez V. Honduras*, *supra* note 11, para. 163; *Case of Usón Ramírez V. Venezuela*, *supra* note 6, para. 53, and *Case of Vélez Loor V. Panamá*, *supra* note 3, para. 184.

Francisca Mercedes Vera Valdez. Notwithstanding, the Court deems that the facts of this case, wherein the parties have had ample opportunity to present motions and defense, demonstrate a harm to this right, as is exposed below.

A. Considerations of the Court

102. The facts set forth in Chapter VII of this Judgment show the close bond between Ms. Francisca Mercedes Vera Valdez and her son Pedro Miguel Vera Vera and her efforts to try to ensure that he be hospitalized at the appropriate health institutions, given the type of lesion he presented and his physical condition at the time (*supra* paras. 56 to 58, 60, 66, 69, 71, 73, and 75). In this regard, the Court also considers it relevant to note that the statement rendered by Mr. Francisco Rubén Vargas Balcazar,¹¹⁴ the husband of Ms. Vera Valdez and stepfather of Peter Miguel Vera Vera, who according to the statement made at the public hearing, accompanied her at various times and shared in her efforts to get Mr. Vera Vera to receive adequate medical care, also states this.

103. In addition, during the public hearing, Ms. Vera Valdez expressed that her life has been sad since she lost her son, given that “they denied him all his rights [...] to live.” She also expressed that given the facts that he experienced, she felt “very bad” and was in poor health. Lastly, she mentioned that she hoped for “justice” and that while her son was injured, they did not “give him the medical care needed so that he [could] live.”

104. On other occasions, the Court has considered the existence of a violation to the right to mental and moral integrity of some next of kin due to the suffering they endured given the actions or omissions of State authorities,¹¹⁵ taking into account, among others, the existence of a close family relationship.¹¹⁶

105. For the Court, it is clear that the facts established in this Judgment demonstrate the suffering that Ms. Vera Valdez had to endure due to the poor treatment of her son while he was deprived of his liberty with a gunshot wound, for the treatment she received upon attempting to secure him proper medical care, and for the failure to determine responsibility for his death. The Court does not consider that it is not necessary to go into more depth, and therefore, deems that the State is responsible for the violation of the right enshrined in Article 5(1) of the Convention, in relation to Article 1(1) therein, to the detriment of Ms. Francisca Mercedes Vera Valdez.

¹¹⁴ Cf. Statement rendered before a notary public (affidavit) by Mr. Francisco Rubén Vargas Balcazar (case file of Merits, tomo I, folios 610 to 611).

¹¹⁵ Cf. *Case of the Mapiripan Massacre V. Colombia*, *supra* note 21, para. 144; *Case of Gomes Lund et al. (Guerrilha do Araguaia) V. Brazil*, *supra* note 4, para. 235, and *Case of Gelman V. Uruguay*, *supra* note 12, para. 133.

¹¹⁶ Cf. *Case of Bámaca Velásquez V. Guatemala. Merits*. Judgment of November 25, 2000. Series C No. 70, para. 163; *Case of Valle Jaramillo et al. V. Colombia. Merits, Reparations and Costs*. Judgment of November 27, 2008. Series C No. 192, para. 119, and *Case of Ibsen Cárdenas and Ibsen Peña V. Bolivia*, *supra* note 94, para. 127.

X
REPARATIONS
(Application of Article 63(1) of the American Convention)

106. Pursuant to the terms of Article 63(1) of the American Convention,¹¹⁷ the Court has indicated that any violation of an international obligation that has caused damage entails the duty to provide adequate reparation¹¹⁸ and that “this provision reflects a common-law norm that is one of the fundamental principles of contemporary international law regarding the responsibility of the State.”¹¹⁹

107. The Tribunal has established that reparations must have a causal link with the facts of the case, the alleged violations, the proven damages, as well as with the measures requested to repair the respective damages. Therefore, the Court must observe such concurrence in order to duly declare according to law.¹²⁰

108. In consideration of the violations of the American Convention so declared in the preceding chapters, the Tribunal shall address the requests for reparations made by the Commission and the representatives, as well as the State’s observations thereof, in light of the criteria embodied in the Court’s jurisprudence in connection with the nature and scope of the obligation to make reparations,¹²¹ in order to adopt the measures required to redress the damage caused to the victim.

A. Injured Party

109. This Tribunal considers as injured party, pursuant to Article 63(1) of the Convention, the person who has been declared to be the victim of the violation of some of the rights enshrined in the Convention. In the instant case, the victims are Mr. Pedro Miguel Vera Vera and Ms. Francisca Mercedes

¹¹⁷ This article states that: “[i]f the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party.”

¹¹⁸ Cf. *Case of Velásquez Rodríguez V. Honduras. Reparations and Costs*. Judgment of July 21, 1989. Series C No. 7, para. 25; *Case of Salvador Chiriboga V. Ecuador. Reparations and Costs*. Judgment of 3 de marzo de 2011 Series C No. 222, para. 32, and *Case of Abrill Alosilla et al. V. Perú*, *supra* note 7, para. 86.

¹¹⁹ *Case of the “Street Children” (Villagrán Morales et al.) V. Guatemala. Reparations and Costs*. Judgment of 26 de mayo de 2001. Series C No. 77, para. 62; *Case of Salvador Chiriboga V. Ecuador*, *supra* note 127, para. 32, and *Case of Abrill Alosilla et al. V. Perú*, *supra* note 7, para. 86.

¹²⁰ Cf. *Case of Ticona Estrada et al. V. Bolivia. Merits, Reparations and Costs*. Judgment of November 27, 2008. Series C No. 191, para. 110; *Case of Gelman V. Uruguay*, *supra* note 12, para. 248, and *Case of Abrill Alosilla et al. V. Perú*, *supra* note 7, para. 87.

¹²¹ Cf. *Case of Velásquez Rodríguez V. Honduras*, *supra* note 127, paras. 25 a 27; *Case of Cabrera García and Montiel Flores V. México*, *supra* note 7, para. 210, and *Case of Abrill Alosilla et al. V. Perú*, *supra* note 7, para. 88.

Vera Valdez, both of whom shall be considered the beneficiaries of the reparations ordered by this Tribunal.

B. Obligation to ascertain the facts

B.1. Arguments of the parties

110. The Commission requested the Court to order the State to “carry out a prompt, diligent, and effective investigation, so as to identify, prosecute, and punish those responsible for the violations detailed in the [...] application [...].” Moreover, the representative asked the Court to order the State to carry out “a complete and impartial investigation of the facts in order to punish those persons responsible for the violations in the present case.” The State did not formulate specific arguments in this regard.

B.2. Considerations of the Court

111. In its application, the Inter-American Commission noted that “[s]ince the facts took place in April 1993 to date, no investigation or legal proceeding aimed at ascertaining the circumstances of the gunshot received by Pedro Miguel Vera Vera or the circumstances related to his death under State custody has been initiated. Pursuant to Ecuadorian legislation, in the present case, the statute of limitations has passed on the criminal action.”

112. As has been established by the Judgment (*supra* Chapter VII), on April 12, 1993, Mr. Vera Vera received a gunshot wound that caused him injuries, he received negligent medical care, and lastly, he died on April 23, 1993, as a consequence of both while in State custody (*supra* paras. 37). Likewise, from the case file of the present case it is evident that on November 8, 1994, the Inter-American Commission received from the CEDHU the corresponding petition of the facts of the present case. On August 6, 2009, namely, almost fifteen years later, the Inter-American Commission approved the Admissibility and Merits Report 82/09, wherein it declared, specifically, the admissibility of the case, analyzed the merits of the case, and formulated several recommendations for the State. Approximately six months later, the Inter-American Commission presented the respective application before the Court. (*supra* para. 1). The Court deems that Article 101 of the Criminal Code in force at the time of the facts establishes the period for the statute of limitation of the criminal action to be 5, 10 and 15 years, depending on the circumstances. In this sense, the Court notes that, in any case, pursuant to the maximum period of 15 years, the statute of limitations lapsed on the criminal action in this case in 2008, while in the admissibility stage before the Inter-American Commission.¹²² In this regard, the expert witness Manuel Ramiro Aguilar Torres (*supra* para. 20) noted that “any civil[,] criminal, or administrative action to determine the cause of death of Mr. Pedro Miguel

¹²² Cf. “Pertinent parts of the Criminal Code of Ecuador applicable in the case” (case file of annexes to the application, annex 22, folios 79 and 80).

Vera Vera and to identify those responsible has lapsed under the statute of limitations in Ecuador.”¹²³

113. Notwithstanding, in the application, Commission requested the Court to order the State “[t]o carry out a prompt, diligent, and effective investigation, and to punish those responsible for the violations detailed in the [...] application, including those State employees who, given their actions and omissions, contributed to the denial of justice,” without arguing why this is appropriate in the present case. In this regard, during the public hearing (*supra* para. 8), the Court asked the Commission to establish the basis for said request. The Commission noted that, notwithstanding the possibility of extending its response in writing, it was “important to take into consideration accountability or the establishment of responsibility from different perspectives[, which could be] administrative or criminal[,...] depending a bit on the different moments and serious shortcomings that the Commission[,...] the representatives, and the State] have presented in their various briefs.” Moreover, it mentioned that “in various cases, the Court has noted [that] concepts like the statute of limitation can constitute, in specific cases, an obstacle to the investigation and ascertainment of the facts in violation of human rights.” Even though in the case of *Albán Cornejo*, the Court [...] explained that because it does not necessarily involve an imprescriptible crime under international law, it did not follow to order the relevant investigation[,],” it noted that recently in the last Monitoring of Compliance Order in the case of *Bámaca Velásquez v. Guatemala*, “the Court introduced a position regarding a case in review that it must be done to the judicial authorities when there is a link between, on the one hand, the rights of the next of kin of the victims of human rights violations to know what occurred, and on the other hand, the possible procedural guarantees of the accused,” and that it should be done on a case by case basis. The Commission noted that given that in this case no investigation carried out, “the specific nature of the facts cannot be understood, if the responsibility falls on the detention, on the bullet, in medical negligence, or whether there might be an act of torture by omission at hand,” namely, “what happened is not known nor are the levels of responsibility known so as to prevent *a priori* that the investigations be carried out.” In this regard, it claimed that “at minimum, an investigation is required that would allow for clarification and [that] it falls on the domestic judicial authorities to consider the possible procedural guarantees in terms of figures such as statute of limitations or *non bis in idem*, and others.”

114. In its final written arguments, the Commission noted that pursuant to the constant jurisprudence of the bodies of the Inter-American System, “the invocation of procedural concepts such as statute of limitations is not admissible, in order to avoid the obligation to investigate and punish serious human rights violations.” According to the Commission, “this concept has been applied to both contexts of widespread and systematic violations, as to certain violations that, in the particular circumstances of the case, are of a significant level of gravity.” It indicated that, recently, in the mentioned Order in the case of *Bámaca Velásquez v. Guatemala* (*supra* para. 113), the Court developed some guidelines to consider in cases in which there may be tension between the procedural rights of potential defendants and the rights of

¹²³ Expert statement of Mr. Manuel Ramiro Aguilar Torres (case file of Merits, tomo I, folio 590).

victims of human rights violations to know the truth and obtain justice, and that the Court “did not limit its application to crimes against humanity or to those that are inalienable under other international treaties, but rather it continued to consolidate the jurisprudence of the Court in the sense that certain procedural concepts are inadmissible in cases of ‘serious violations of human rights.’” The Commission also noted that it was not unaware of the decision by the Court in the case of *Albán Cornejo v. Ecuador* “in the sense that in that case the application of a statute of limitation was not at hand, given that the facts were not imprescriptible in the terms covered by the relevant international treaties.” However, the Commission referred to what it called “factual differences” between said case and the present case, and mentioned that under a “comprehensive analysis of the Court’s pronouncements on the subject in the Inter-American System, the exclusion of the statute of limitations has gone beyond the assumptions of applicability enshrined in international treaties, providing more relevance, in some cases, to the rights of the victims or their relatives to know the truth of what happened and to obtain justice and reparation.”

115. The Commission considered as a basis of its request, the fact that “the various violations to the right to life and personal integrity occurred as a consequence of a series of actions and omissions that occurred between April 12 and 23, 1993, without the possibility of determining one single factor that caused the suffering and subsequent death of Mr. Vera Vera[; said] actions and omissions were committed by various police, ministerial, and judicial authorities, as well as by medical personnel[.]” It indicated that the “possible nature of the specific role and level of responsibility could not be established with certainty in the framework of the present international proceeding.” On the other hand, it also noted that in the present case, there were “various elements that allowed for the determination of the severity of the violation[.]” Lastly, it argued that “the passage of time that made the statute of limitation applicable in the present case, occurred as a consequence of clear negligence.”

116. The Court will analyze the arguments of the Inter-American Commission, which basically consist of the following points: a) the non-applicability of the statute of limitations has followed even in cases that do not relate to gross violations of human rights; b) seriousness of the violations in this case; c) the chain of events and level of involvement of different authorities makes it impossible to establish with certainty the responsibilities in this international process, to which the investigation should be handled domestically; d) time passed because of the negligence of State authorities, and e) the need for a review trial of the rights of the accused and the rights of the victims or their families.

117. In the first place, regarding point a), the Court has noted that in criminal cases, the statute of limitations causes the lapse of time to terminate the right to bring action for punishment and, as a general rule, it sets a restriction on the punishing authority of the State to prosecute and punish defendants for unlawful conduct.¹²⁴ As noted by the Commission, the Court

¹²⁴ Cf. *Case of Albán Cornejo et al. V. Ecuador*, *supra* note 38, para. 111, and *Case of Ibsen Cárdenas and Ibsen Peña V. Bolivia*, *supra* note 94, para. 207.

specified in the Judgment of *Albán Cornejo v. Ecuador*, criteria that consists in that "[n]otwithstanding the aforementioned, the statute of limitations is inadmissible in connection with and inapplicable to a criminal action where gross human rights violations in the terms of International Law are involved. So has been held in the Court's constant and consistent decisions."¹²⁵ In the instant case, the inapplicability of the statute of limitations was not declared because it involved medical negligence and for not complying with the Court's criteria. In a more recent manner, in the Judgment of the Court in the case of *Ibsen Cárdenas and Ibsen Peña v. Bolivia*, said criteria was established upon stating that "in some circumstances, International Law considers the statute of limitations to be inadmissible and inapplicable, as well as amnesty provisions and the establishment of exceptions to responsibility, in order to maintain the States punishing authority in force against conduct where the gravity makes repression necessary in order to avoid repeated commission of said conduct."¹²⁶ This criteria, specifically, the non-admissibility of a statute of limitations, was applied in the mentioned case in regard to "the torture and murder committed during a context of massive and systematic human rights violations."¹²⁷ Now, though this did not regard a case in which the criminal statute of limitations had been argued, in the Judgment also issued recently, in the case of *Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil*, the Court reiterated that "[...] the statute of limitation provisions [...] that are intended to prevent the investigation and punish those responsible for serious violations to human rights such as torture, summary, extrajudicial, or arbitrary executions, and enforced disappearance are not admissible, all of which are prohibited for contravening irrevocable rights recognized by International Law of Human Rights."¹²⁸ This jurisprudence was also maintained in the last case before the Court wherein serious violations were alleged, namely, *Gelman v. Uruguay*.¹²⁹ From the aforementioned, it is clear that the inadmissibility of the statute of limitations in the Court's most recent jurisprudence has been declared in cases that involve serious human rights violations, such as forced disappearance, extrajudicial killing of persons, and on occasions, torture, among others, and in cases of human rights violations that occurred in a context of massive and systematic violations.

118. In relation to point b), the Court deems that any human rights violation involves a level of severity by its own nature, because it implies a breach of certain State obligations to respect and guarantee the rights and freedoms for people. However, this should not be confused with what the Court throughout its jurisprudence has deemed to be "serious violations of human rights" which, as is clear from the provisions above (*supra* para. 117), have their own connotation and consequences. To accept the point made by the Commission in the sense that by its nature this case involves a level of gravity for which the statute of limitations is inapplicable, would imply that any case before the Court, as all cases involve violations of human rights in

¹²⁵ Case of *Albán Cornejo et al. V. Ecuador*, *supra* note 38, para. 111.

¹²⁶ Cf. Case of *Ibsen Cárdenas and Ibsen Peña V. Bolivia*, *supra* note 94, para. 207.

¹²⁷ Cf. Case of *Ibsen Cárdenas and Ibsen Peña V. Bolivia*, *supra* note 94, para. 208.

¹²⁸ Cf. Case of *Gomes Lund et al. (Guerrilha do Araguaia) V. Brazil*, *supra* note 4, para. 171.

¹²⁹ Cf. Case of *Gelman V. Uruguay*, *supra* note 12, para. 225.

themselves and thereby imply the corresponding degree of severity, the procedural instance would not follow. This is not in-line with the criteria specified by the Court regarding the inapplicability of the statute of limitations (*supra* para. 117).

119. In regard to point c), the Court reiterates that which has been indicated previously in this Judgment, (*supra* para. 93) in the sense that it is not for the Court to determine individual responsibilities, whose determination is a matter for domestic criminal courts or other international tribunals, but rather to know the facts brought to its attention and characterize their nature in the exercise of its contentious jurisdiction. Precisely because of the series of events and level of involvement of various authorities, it is not possible to establish with certainty the corresponding responsibility in this international process, to which domestic investigations must be carried out, it is not enough for this Court to determine that in this case the statute of limitations was inapplicable.

120. In regard to point d), the Court deems that, given the nature of this case, the fact that the State has not carried out any type of investigation to date, as has been established in this Judgment, is not enough to determine that the statute of limitations should not apply.

121. Finally, in regard to the point e), the Court considered that although the Inter-American Commission made reference to the possibility of carrying out a judgment of consideration, it did not develop or apply its argument in this case. Similarly, the Court recalls that the case of *Bámaca Velásquez v. Guatemala* is about the enforced disappearance of Efraín Bamaca Velasquez, which is considered by this Court as a serious violation of human rights. Therefore, the aforementioned Order does not apply to this case as indicated by the Commission.

122. In light of the aforementioned, and in consideration of the Court's repeated and most recent jurisprudence, the Court deems that it is not able to determine the inapplicability of the criminal statute of limitations to the facts of the present case that have been duly proven and established in this Judgment.

123. Notwithstanding, the Court considers that due to the right of the mother and family to know what exactly happened Mr. Vera Vera, the State must satisfy, in some manner, as a complementary measure of satisfaction to that established in the Judgment, said minimum expectation, reporting to the Court on the measures taken and results achieved. Upon receiving the corresponding comments of the Inter-American Commission and the representative, the Court may order the publication of such results.

C. Measures of satisfaction and guarantees of non-repetition

C.1. Publication of the relevant parts of the present Judgment and public dissemination

124. The Commission requested the Court to order the State to "publish the relevant parts of the [J]udgment [...] rendered by the Court." On its behalf,

the representatives requested as a measure of reparation, the “publication [of] the decision that the Court adopts in the present case.” The State did not address this request specifically.

125. As it has ordered on other occasions, in light of the facts and human rights violations declared in this Judgment, the Court considers that the State must publish, once, the present Judgment, paragraphs 1 to 18, 25 to 38, 45 to 79, 82 to 84, 89, 103, 105, 106, 108, 110 to 125, 128, 131 to 133, 135 to 137, 140, 143 to 145, and 153, including the respective titles and subtitles of each chapter, without the corresponding footnotes, and including the operative paragraphs hereto. The State must also publish the official summary issued by the Court in a newspaper with widespread national circulation. In addition, as has been ordered in the past by the Court, this Judgment must be published in its entirety on an appropriate web site, and it must remain available for, at least, one year. To carry out the publications in the newspapers and newsletters, the Court sets a period of six and two months, respectively, from the notification of this Judgment. Moreover, as a guarantee of non-repetition, the State must assure the dissemination of this Judgment within the police and prison authorities, as well as medical personnel charged with carrying for persons deprived of their liberty.

C.2. Public apology and public acknowledgment of international responsibility

126. The Commission requested that the Court order the State to “carry out an act of acknowledgment of international responsibility[.]” The representative requested the Court to order the State to carry out “an act of public apology to the victim and the victim’s family, [and to] reproach the material and intellectual perpetrators of the events that occurred[.]” The State did not formulate specific arguments regarding this point.

127. The Court deems that, to repair the violations proven in the present case, the issuance and publication of the Judgment are sufficient, as well as the ordering of measures of a pecuniary nature (*infra* paras. 131, 132, 136 and 137).

D. Compensatory damages

D.1 Pecuniary damage

128. The Court has developed in its jurisprudence the concept of pecuniary damages, which encompasses the “loss or detriment to earnings of the victims, the expenses incurred based on the facts, and the consequences of a pecuniary nature that have a causal link with the facts of this case.”¹³⁰

D.1.1 Arguments of the parties

¹³⁰ Cf. *Case of Bámaca Velásquez V. Guatemala. Reparations and Costs*. Judgment of February 22, 2002. Series C No. 91, para. 43; *Case of Gelman V. Uruguay*, *supra* note 12, para. 290, and *Case of Abrill Alosilla et al. V. Perú*, *supra* note 7, note 91.

129. The Commission requested the Court to, where applicable, establish the sum, in equity, for compensation that corresponds to the pecuniary damaged caused as a consequence of the violations alleged in the application. In its brief of motions and pleadings, the representative requested, in relation to Ms. Francisca Mercedes Vera Valdez, "for pecuniary damages" to set a value of US\$ 30,000.00 dollars of the United States of America. In relation to Mr. Pedro Miguel Vera Vera, the representative did not formulate any request in the brief of pleadings and motions, but did generally state that "a balancing system should be taken into account [, ...among others] that includes a minimum wage in force in the country, that is not below what the basic food basket was at the time of the facts of the present case." However, in the final arguments, the representative requested the Court to establish the sum, in equity, of "a reasonable amount for pecuniary damage," taking into account the minimum wage of a worker, "which to date" is of US\$ 264.00 dollars of the United State of America per month "as well as a food basket of US\$ 360.00 dollars of the United States of America.

130. The State noted that "the costs incurred by the family members of the victims should be justified in an appropriate manner, as they were attended by the State, in public hospitals, those of which do not charge and therefore medical costs were not mentioned." Likewise, it argued that the pretensions of the representatives "are not in any way related to the [...] amounts that have been foregone, because Mr. Pedro Vera dedicated himself to unlawful activities."

D.1.2. Considerations of the Court

131. In the first place, the Court noted that the representative did not provide evidence to support the amounts designated as minimum wage in the country at the time of the incident or regarding his probable life expectancy, pursuant to the allegations. Nevertheless, for the violations found in this Judgment to the detriment of Mr. Pedro Miguel Vera Vera, the Court decides to set, in equity, the amount of US\$ 20,000.00 (twenty thousand dollars of the United States of America) for pecuniary damage, which must be distributed to Ms. Francisca Mercedes Vera Valdez. This amount must be paid within the time established by the Court for this purpose (*infra* para. 146 and 147).

132. On the other hand, the Court does not count on evidentiary elements that account for the amounts afforded by Ms. Francisca Mercedes Vera Valdez in order for her son to receive medical care in the Detention Center of Santo Domingo de los Colorados and at the two hospitals where he was attended. (*supra* paras. 56, 69, 71, and 73). Nevertheless, as noted in this Judgment (*supra* para. 56, 67, 69, 71, 73), the Court established those facts as proven. The Court also includes in this section the attorney costs incurred by Ms. Vera Vera's when she sought to have her son transported to a hospital in order for the bullet to be removed (*supra* para. 58 and 60). The Court also takes into account pursuant to a question asked at the public hearing, the representative expressed that the next of kin of Mr. Vera Vera do not have receipts of the costs incurred at the time, which the Court deems reasonable given the facts established in this Judgment. As such, the Court decides to

establish the sum, in equity, of \$US 2,000.00 (two thousand dollars of the United States of America) for pecuniary damage in favor of Ms. Francisca Mercedes Vera Valdez. This amount must be paid in the period set by the Court for said purpose. (*infra* para. 146).

D.2 Non-pecuniary damages

133. The Court has developed in its jurisprudence the concept of non-pecuniary damage and has established that non-pecuniary damage consists of “the suffering and the harm caused to the direct victims and their relatives, the erosion of values of great significance to people, as well as the alterations of a non-pecuniary nature, in the living conditions of the victim or the victim’s family.”¹³¹

D.2.1 Arguments of the parties

134. The Commission requested the Court to, as it deems necessary, establish the sum, in equity, for compensation that corresponds to non-pecuniary damages caused as a consequence of the violations alleged in the application. The representative requested that the Court establish the sum, in equity, of US\$ 80,000.00 dollars of the United States of America for Ms. Francisca Mercedes Vera Valdez for the suffering caused when she had to “beg daily” for her son to be appropriately cared for, in addition to the “irreparable pain [caused] by the loss of her loved one.” The State expressed that the amount requested by the representative was not in-line with the violations alleged.

D.2.2 Considerations of the Court

135. International jurisprudence has repeatedly established that the Judgment may constitute *per se* a form of reparation.¹³² However, considering the circumstances of the case *sub judice*, the Court finds it pertinent to establish a sum, in equity, as compensation for non-pecuniary damage.¹³³

136. In this regard, the Court notes that Mr. Pedro Miguel Vera Vera was submitted to cruel, inhumane, and degrading treatment while he remained injured due to a gunshot wound, under State custody, until his death. In consideration of the nature of the violations committed, the Court deems it relevant to establish the sum, in equity, of US\$ 10,000.00 (ten thousand dollars of the United States of America), in his favor, which should be delivered

¹³¹ Cf. *Case of the “Street Children” (Villagrán Morales et al.) V. Guatemala*, *supra* note 119, para. 84; *Case of Salvador Chiriboga V. Ecuador*, *supra* note 118, para. 105, and *Case of Abrill Alosilla et al. V. Perú*, *supra* note 7, para. 116..

¹³² Cf. *Case of Neira Alegría et al. V. Perú. Reparations and Costs*. Judgment of September 19, 1996. Series C No. 29, para. 56; *Case of Salvador Chiriboga V. Ecuador*, *supra* note 118, para. 112, and *Case of Abrill Alosilla et al. V. Perú*, *supra* note 7, para. 132.

¹³³ Cf. *Case of Neira Alegría et al. V. Perú*, *supra* note 132, para. 56; *Case of Salvador Chiriboga V. Ecuador*, *supra* note 118, para. 112, and *Case of Abrill Alosilla et al. V. Perú*, *supra* note 7, para. 132.

to Ms. Francisca Mercedes Vera Valdez in the period set by the Court for this purpose. (*infra* paras. 146 and 147).

137. Likewise, it was fully proven in this Judgment that Ms. Francisca Mercedes Vera Valdez suffered anguish and pain due to the medical negligence experienced by her son while he was in permanent detention with a gunshot wound, the death of her son under State custody, and the subsequent denial of justice in relation to the facts (*supra* paras. 101 to 105). In this regard, the Court highlights that the civil, criminal, or administrative action were barred by the statute of limitations in this case, given that the investigation of the facts *ex officio* was an obligation of the State. Given the aforementioned, the Court deems it pertinent to establish a sum, in equity, of US\$ 20,000.00 (twenty thousand dollars of the United States of America) in favor of Ms. Francisca Mercedes Vera Valdez, as compensation for non-pecuniary damage, in the period set by the Court for this purpose. (*infra* para. 145).

E. Other claims for reparation

138. The Commission requested the Court to order the State to “adopt all the legal, administrative, and other measures necessary to assure that the persons deprived of liberty have timely access to the medical services that they may require pursuant to their health condition.” On his behalf, the representative asked the Court to order the State to “create a public policy that allows access to healthcare for persons deprived of liberty;” a “[s]anitary policy in prisons [...] included in the national public health policy [...] to which it corresponds;” “[t]hat the inmates have access to health services offered in the country without any discrimination based on their legal status;” “[t]hat inmates benefit from the medical, surgical, and psychiatric care required[,] including those available in a free society,” and “to provide the detention centers with medicine and the right equipment to prevent and treat the illnesses of persons deprived of liberty.”

139. In this Judgment, the Court noted that there was insufficient evidence on the prison conditions at the time of the facts alleged in the present case, and that the alleged current conditions of the prison system do not form part of the factual basis at hand. (*supra* paras. 31, 33, and 81). Therefore, it is inappropriate for the Court to refer to the reparations requested by the Commission and representatives in this regard.

F. Costs and expenses

140. As indicated by the Court in prior occasions, the costs and expenses are consolidated under the concept of reparations enshrined in Article 63(1) of the American Convention.¹³⁴

¹³⁴ Cf. *Case of Garrido and Baigorria V. Argentina. Reparations and Costs*. Judgment of August 27, 1998. Series C. No. 39, para 79; *Case of Salvador Chiriboga V. Ecuador*, *supra* note 118, para. 132, and *Case of Abrill Alosilla et al. V. Perú*, *supra* note 7, para. 133.

F.1. Arguments of the parties

141. The Commission requested the Court, “after hearing the representatives of the victims and their families,” to order the State to pay costs and expenses that have been generated both domestically and before the Inter-American System of Human Rights. The representative noted that he has incurred expenses to deal with the case before the Inter-American System for the last 17 years, and as such requested that the Court order, in equity, the payment of \$ 15,000.00 dollars of the United States of America. The State indicated that the cost must be “appropriately justified[.]”

F.2. Considerations of the Court

142. Costs and expenses constitute the amounts incurred both before the domestic authorities, as well as those before the Inter-American System. In this regard, the Court reiterates that the claims of the victims or their representatives concerning costs and expenses, and the evidence to support them, must be submitted to the Court at the first procedural occasion granted to them, namely, in the brief of pleadings and motions, notwithstanding the possibility that these claims may be updated subsequently, in keeping with the new costs and expenses that may have been incurred as a result of the proceedings before this Court.¹³⁵ Furthermore, the Court reiterates that it is not sufficient that the parties merely submit probative documents; rather they are required to submit arguments that connect the evidence to the fact that it is supposed to represent, and in the case of alleged financial disbursements, the items and their justification must be clearly explained.¹³⁶

143. The Court notes that the representatives did not present any evidence regarding the processing of the present case before the Inter-American Commission. Moreover, regarding some of the evidence regarding costs incurred due to this process, the representative did not specify or argue what sort of cost was applicable to the receipts and their relation to this case. Nevertheless, in this regard, it is also evident from the case file that the representative presented some receipts regarding costs incurred from the public hearing held in the present case (*supra* paras. 8 and 9), such as travel, housing, visas, yellow fever vaccinations, and exit fees.¹³⁷ The Court also takes into account that in this case there was no investigation conducted at

¹³⁵ Cf. *Case of Chaparro Álvarez and Lapo Íñiguez. V. Ecuador*, *supra* note 16, para. 275; *Case of Salvador Chiriboga V. Ecuador*, *supra* note 118, para. 138, and *Case of Abrill Alosilla et al. V. Perú. Merits Reparations and Costs*, *supra* note 7, para. 137.

¹³⁶ Cf. *Case of Chaparro Álvarez and Lapo Íñiguez. V. Ecuador. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 21, 2007. Series C No. 170, para. 277; *Case of Gelman V. Uruguay. Merits and Reparaciones*. Judgment of February 24, 2011. Series C No. 221, para. 302, and *Case of Salvador Chiriboga V. Ecuador. Reparations and Costs*. Judgment of March 3, 2011. Series C No. 222, para. 138.

¹³⁷ These costs ascend to approximately US \$2,568.12 (two thousand five hundred and sixty-eight dollars and twelve cents of the United States of America). “Annex 4. Documents regarding airplane tickets, accommodation, and food in Costa Rica, sending mail, obtaining visas, vaccinations, exit fees in Costa Rica, and so on.” (Case file of Merits, tome II, folios 1301 to 1311 and 1323) .

the domestic level, and that the attorney costs incurred to achieve a transfer of Mr. Vera Vera from the police unit to the hospital were contemplated upon determining the pecuniary damage in favor of Ms. Vera Valdez (*supra* para. 132).

144. The Court reiterates that it must prudently assess the costs, in consideration of the circumstances of the specific case and the nature of the international jurisdiction for the protection of human rights. This assessment can be made based on the principle of equity and taking into account the expenses indicated by the parties, provided that the *quantum* is reasonable,¹³⁸ providing the reimbursement by the State to the victims or representatives of the costs deemed reasonable and duly proven.

145. Based on the foregoing, the Court takes into account the expenses proven by the representative related to the public hearing held in this case. On the other hand, the Court notes that the processing of it in the Inter-American System has totaled sixteen and a half years, during which, the Court assumes costs due to communication, transportation, and supplies, among others. Therefore, the Court considers that the State should pay for expenses and costs in the amount of US. \$10,000.00 (ten thousand dollars from the United States of America). This amount should be given directly to the representative. Similarly, the Court also states that in the monitoring of compliance procedures of the present Judgment, the Court may order the State to reimburse the victims and their representatives for reasonable costs that are duly proven.

G. Method of Compliance with the Ordered Payments

146. The State shall make the payment of the compensation for pecuniary and non-pecuniary damage directly to Ms. Francisca Mercedes Vera Valdez, and the payment for costs and expenses directly to the representative, within the term of one year as of the notice of this Judgment, in the terms of the following paragraphs

147. Should the beneficiary die before the pertinent above compensatory amounts are paid thereto, such amounts shall provided to the benefit of the heirs, pursuant to the applicable domestic law.

148. The State must comply with its obligations by payment in dollars of the United States of America.

149. If, for reasons that can be attributed to the beneficiaries of the compensation or to their heirs, it is not possible to pay the amounts established within the time indicated, the State shall deposit the amount in their favor in an account or a deposit certificate in a solvent Ecuadorian financial institute in dollars of the United States of America and in the most favorable financial conditions permitted by law and banking practice. If, after

¹³⁸ Cf. *Case of Garrido and Baigorria V. Argentina*, *supra* note 134, para. 82; *Case of Salvador Chiriboga V. Ecuador*, *supra* note 118, para. 139, and *Case of Abrill Alosilla et al. V. Perú*, *supra* note 7, para. 137.

10 years, the compensation has not been claimed, the amounts shall revert to the State with the accrued interest.

150. The amounts allocated in this Judgment as compensation and for reimbursement of costs and expenses must be delivered to the persons indicated integrally, as established in this Judgment, without any deduction arising from possible taxes or charges.

151. If the State should fall into arrears, it shall pay interest on the amount owed, corresponding to the banking interest on arrears in Ecuador.

XI OPERATIVE PARAGRAPHS

152. Therefore,

THE COURT

DECLARES,

unanimously, that:

1. The preliminary objection presented by the State must be dismissed, in the terms of paragraphs 13 to 17 of this Judgment.

2. The State is responsible for the violation to the right to humane treatment [personal integrity] and life established in Articles 5(1), 5(2), and 4(1) of the American Convention on Human Rights, in relation with Article 1(1) therein, to the detriment of Mr. Pedro Miguel Vera Vera, in the terms of paragraphs 38 to 70 of this Judgment.

3. The State is responsible for the violation of the right to judicial guarantees and judicial protection established in Articles 8(1) and 25(1) of the American Convention on Human Rights, in relation to Article 1(1) of said instrument, to the detriment of Pedro Miguel Vera Vera and Francisca Mercedes Vera Valdez, in the terms of paragraphs 85 to 99 of this Judgment.

4. The State is responsible for the violation of the right to humane treatment [personal integrity] established in Article 5(1) of the American Convention on Human Rights, in relation to Article 1(1) therein, to the detriment of Francisca Mercedes Vera Valdez, in the terms of paragraphs 100 to 105 of this Judgment.

AND ORDERS:

unanimously, that,

1. This Judgment constitutes *per se* a form of reparation.
2. The State must adopt, in a reasonable period, the measures necessary for the mother of Pedro Miguel Vera Vera to know the facts of what occurred to her son, in the terms of paragraph 123 of this Judgment.
3. The State must carry out the publications of this Judgment and disseminate them pursuant to that established in paragraph 125 of this Ruling.
4. The State must pay the amounts set in paragraphs 131, 132, 136, 137 and 145 of this Judgment, as compensation for pecuniary and non-pecuniary damage, and for reimbursement of costs and expenses, as so corresponds, pursuant to paragraphs 131, 132, 136, 137, 143, 145, and 146 to 151 herein.
5. The Court shall monitor full compliance with this Judgment in exercise of its authority and in compliance with its duties, in keeping with the provisions of the American Convention on Human Rights. It will consider this case closed once the State has fully complied with this Judgment's provisions.
6. Within one year of the notification of this Judgment, the State shall submit a report to the Tribunal on the measures adopted regarding compliance.

Written in Spanish and English, the Spanish text being authentic, in San Jose, Costa Rica, on May 19, 2011.

Diego García-Sayán
President

Leonardo A. Franco
Robles

Manuel Ventura

Margarette May Macaulay
Blondet

Rhadys Abreu

Alberto Pérez Pérez

Eduardo Vio Grossi

Pablo Saavedra Alessandri
Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary