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Title/Style of Cause: Dayra Maria Levoyer Jimenez v. Ecuador
Doc. Type: Report
Decided by: Chairman: Claudio Grossman;
First Vice-Chairman: Juan Mendez;
Second Vice-Chairman: Marta Altolaguirre;
Commissioners: Helio Bicudo, Robert K. Goldman; Peter Laurie. \ A member of the Commission, Mr. Julio Prado Vallejo, who is an Ecuadorian national, did not take part in the discussion and did not take part in the voting in the present case, in accordance with Article 17(2)(a) of the Regulations of the Commission.
Dated: 14 June 2001
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Represented by: APPLICANT: Comision Ecumenica de Derechos Humanos
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I. SUMMARY

1. In a petition received by the Inter-American Commission on Human Rights (hereinafter "the Commission" or the "IACHR") on December 29, 1997, the Comisión Ecuménica de Derechos Humanos [Ecumenical Commission for Human Rights] (hereinafter called "the petitioner") filed a complaint against the State of Ecuador (hereinafter called "Ecuador" or "the State") for violating the human rights of Mrs. Dayra María Levoyer Jiménez. The petitioner maintains that Mrs. Levoyer Jiménez was detained on June 21, 1992, without judicial order and held (incommunicado) for 39 days, during which time she was subjected to psychological torture. She was held, without a conviction being rendered, for six years, when finally all of the charges against her were dismissed.

2. During her detention, numerous writs of habeas corpus were filed unsuccessfully. Finally, on June 16, 1998, the Constitutional Court ruled in an appeal on the last habeas corpus that she be set free in view of the extended duration of her pretrial imprisonment. The petitioner further maintains that the detention and subsequent incarceration of Mrs. Levoyer Jiménez for more than five years is due exclusively to the fact that she is the companion of Hugo Jorge Reyes Torres,[FN1] who was accused of being the leader of a powerful gang of drug traffickers in Ecuador. The petitioner also alleges that the State violated her right to property, because the property seized when she was detained has not yet been returned to her.

[FN1] Mr. Jorge Hugo Reyes Torres was also detained in what was known as "Operación Ciclón" (Operation Cyclone).

3. Consequently, the petitioner alleges that the State violated her rights to humane treatment, personal liberty, due process, property, and access to simple and prompt recourse to have her rights recognized, in accordance with Articles 5, 7, 8, 21, and 25 of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention"). The State argues that domestic remedies have not been exhausted.

4. At its 106th regular session, the Commission in Report 29/00 (7/03/00) declared the petition of alleged violations of Articles 5, 7, 8, and 25 of the American Convention admissible. The Commission also decided to postpone for the report on the merits its decision on the admissibility of an alleged violation of Article 21 in conjunction with Articles 8 and 25 of the Convention. Following an examination of the facts of the case, the Commission concludes in the present report that the Ecuadorian State has violated Articles 5, 7, 8, and 25 of the American Convention.

II. PROCESSING BY THE COMMISSION

5. On March 19, 1998, the Commission opened Case 11.992. After substantiating that the proper procedures were followed, the Commission issued Report 29/00 on March 7, 2000 on admissibility, in which it determined that it was competent to examine the merits of the case. In its report, the Commission also indicated that it had decided to postpone for the report on the merits its findings on the admissibility of the alleged violation of Article 21 in conjunction with Articles 8 and 25 of the Convention.

6. In February and December 1999, before approving the report on admissibility, the Commission made itself available to the parties so that they could reach a friendly settlement. In report 29/00, the Commission again made itself available to the parties so that a friendly settlement could be reached in accordance with the principles established in the American Convention. In a letter dated April 7, 2000, the petitioner indicated that all previous attempts at a friendly settlement had been unsuccessful, and it therefore wanted the Commission to continue with its examination of the merits of the case. The State has not expressed its views on this point.

III. POSITIONS OF THE PARTIES

A. Position of the petitioner

7. According to the complaint lodged with the Commission, Mrs. Levoyer Jiménez was detained without a judicial order on June 21, 1992, in Operation Cyclone ("Operación Ciclón"), a police operation in which a large number of people suspected of being members of a gang of drug traffickers were arrested. At the time of her arrest, she was not told why she was being detained. She was held in solitary confinement for 39 days, during which time she is alleged to have been subjected to psychological torture in order to force her to make a statement. The

warrant for her arrest was issued by the police chief after she was detained, on July 30 and 31, 1992, charging her with the crimes of drug trafficking, acting as a “front”, illicit enrichment, and asset laundering (conversión de bienes). In addition, the judge of the criminal court of Pichincha issued an arrest warrant on August 11, 1992, nearly two months after her arrest. The petitioner alleges that the absence of a judicial warrant and the lack of compliance with the time periods and requisites established by law constitute an arbitrary and illegal detention in violation of Article 7 of the American Convention. The petitioner further alleges that incommunicado detention for 39 days was a violation of the period established in the domestic legislation and, therefore, of Article 7(2) of the Convention, as well as of Article 5 of the same treaty since it constitutes cruel, inhuman, and degrading treatment.

8. As a result of that arrest warrant, four sets of proceedings were instituted against Mrs. Levoyer Jiménez and other persons. One of the defendants, a Major General in the Army, was subject to special jurisdiction. Consequently, the proceedings were removed to the Superior Court of Quito.[FN2] The President of the Superior Court of Quito (hereinafter called “the Superior Court”) established jurisdiction for the judicial proceedings in September and November 1992, and upheld pre-trial detention in the four cases, and the detention orders were issued on December 1, 1992.

[FN2] Article 5.5 of the Code of Criminal Procedure of Ecuador establishes that "when, any member of a group charged with an offense is subject to special jurisdiction, all members of the group shall be tried by the same special court..." In addition, Article 11 of the same Code provides: "The President of the Supreme Court and the Presidents of the Superior Courts shall be the investigative judge in those cases of special jurisdiction which, by law, it falls to them to hear." One of the persons investigated with Mrs. Levoyer was a Major General in the Ecuadorian Army. Charges against officers in the Armed Forces must be tried in another court, that is special jurisdiction, and, therefore, according to the above-noted provision, determine that the President of the Superior Court shall have exclusive jurisdiction over them (see Law on Armed Forces Personnel, Organic Law of the Judicial Function, and Code of Criminal Procedure.

9. In the proceedings for illicit enrichment, although no charges were brought by the Prosecutor, the President of the Superior Court ruled that the proceedings be initiated on November 22, 1996. This ruling was appealed and brought before the bench in the Fourth Division of the Superior Court, which on April 29, 1998, dismissed the proceedings. In the proceedings for asset laundering, on September 30, 1996, the President of the Superior Court issued a temporary stay of the proceedings and sent up for consultation, which was resolved by the Fourth Division of the Superior Court on April 29, 1998, which again dismissed the proceedings.

10. In ruling on the legal consultation, the Fourth Division of the Superior Court ordered the dismissal of the proceedings for illicit enrichment and asset laundering, on the basis of Articles 76 and 77 of the Narcotics and Psychotropic Substances Act, which stipulate that a prerequisite

for bringing such charges is that the crime of drug trafficking must have been committed, which had not been proven in the case.

11. The Attorney General's Office (Ministerio Público) filed a motion for cassation (annulment) of the decision handed down by the Fourth Division in both cases (illicit enrichment and asset laundering). As the motion for annulment of the judgment was denied, the Prosecutor filed a motion of fact.[FN3] According to the information provided to the Commission, this last motion was being processed in July 1998. Consequently, the judgment dismissing the charges in the two cases of illicit enrichment and asset laundering was not final. The petitioner alleges that, according to the jurisprudence of the Supreme Court on motions for annulment, the filing of such a motion is unlawful since the Code of Procedure provides that it may only be used against judgments in the criminal courts when a violation of the law has occurred.[FN4] Therefore, the petitioner argues, the remedy may not be used against rulings for dismissal by a division of the Superior Court, as in the present case. The State has not responded to these assertions.

[FN3] A motion of fact is provided for in Article 395 of the Code of Criminal Procedure as follows: "The motion will be granted when magistrate or criminal court has denied a motion filed by the deadlines established and as specified in this Code". Accordingly, in denying the motion for reversal, a motion of fact must be filed so that the superior court, the Supreme Court in the present case, can rule on the merits of the motion.

[FN4] Article 373 of the Code of Criminal Procedure provides: "The motion for reversal shall be admissible before the Supreme Court of Justice when the law has been violated in a judgment, either because it rules expressly contrary to the wording of the law; or it has been falsely applied; or, because it has been wrongly interpreted."

12. In the proceedings relating to acting as a "front" for criminals, on April 29, 1996, the President of the Superior Court ordered that Mrs. Levoyer be released. On March 23, 1998, an order to initiate the proceedings was handed down and was appealed. On July 7, 1999, the First Division of the Superior Court upheld the dismissal of the case and ruled that the property be returned to her upon judgment being rendered. The petitioner alleges, therefore, that the right to property has been violated, since as the charge has been dismissed there will be no judgment, and the withholding of the property is, therefore, tantamount to confiscation. In the proceedings for drug trafficking, on July 19, 1995, a dismissal was ordered. Upon review, the First Division of the Superior Court upheld the dismissal on April 16, 1996.

13. As each of the various proceedings against Mrs. Levoyer was dropped, orders for her release were issued. However, these orders could not be executed since the Code of Criminal Procedure requires that all motions for dismissal must be sent up for consultation to the Superior Court. Accordingly, one after another the proceedings were reviewed by different divisions of the Superior Court of Quito as mentioned above. In proceedings that involve offenses punishable under the Narcotics and Psychotropic Substances Act, the defendant must remain in custody for the duration of the proceedings even though a case may have been dismissed. The petitioner maintains that for any other offense, the defendant would have been released before the dismissals were sent up for consultation.

14. The report the Commission received from the petitioner on December 10, 1998, noted that, after Mrs. Levoyer was detained, in addition to the four proceedings mentioned above, the following proceedings were instituted:

Proceedings for illegal possession of firearms, in which a provisional dismissal was ordered on November 7, 1994.

A customs proceeding, initiated on March 11, 1994, which was ordered dismissed on December 22, 1995.

Proceedings for asset laundering brought by Banco de los Andes, initiated on June 23, 1994, in which a full trial was ordered on January 23, 1998

Proceedings for asset laundering brought by Banco Sociedad General de Crédito, initiated on January 30, 1996. A ruling of provisional dismissal of these proceedings was issued in 1999 and they have now been sent up for consultation.

15. In the proceedings for asset laundering brought by the Banco de los Andes, the Second Division of the Superior Court, after several incidental pleas, referred the case to the associate judges of that same bench, who issued a ruling of (definitive) dismissal of the charges on July 5, 1999. Apparently, the bench found that three cases for asset laundering had been instituted arising out of "Operation Cyclone," in violation of the prohibition of double jeopardy.

16. The petitioner notes that during her detention Mrs. Levoyer filed many writs of amparo or habeas corpus in an effort to seek her release, on grounds that her detention violated the Constitution, the law, and human rights treaties. Writs were filed on July 26, 1994, on April 3, 1995, in March 1996, on October 18, 1997, and on November 18, 1997. All of these motions were filed with the President of the Supreme Court of Justice, who did not rule on any of them. Consequently, the petitioner claims that the filing of four writs of habeas corpus without success constitutes lack of access to simple and prompt recourse and therefore violates Article 25 of the Convention.

17. On April 15, 1998, a writ of habeas corpus was again filed, requesting that the Mayor of Quito[FN5] release Mrs. Levoyer immediately. The petition was denied on April 21, 1998, a ruling that was appealed on April 24, 1998 before the Constitutional Court.

[FN5] Article 93 of the Constitution of Ecuador provides that habeas corpus be filed "... with the mayor of the jurisdiction in which the person is charged, or before an individual acting in his stead..."

18. The Second Division of the Constitutional Court, in a ruling handed down on June 16, 1998, considered that the terms specified in Law 04[FN6] had been exceeded. It reversed the Mayor's decision and ordered that Mrs. Levoyer Jiménez be released. The Constitutional Court

noted in its ruling that the exception in the Narcotics and Psychotropic Substances Act as to the application of Article 114(1) of the Criminal Code, for offenses considered thereunder, had been declared unconstitutional by that same Court in Resolution N° 119-1-97 of December 24, 1997. Accordingly, it added, it was no longer in force. On these grounds, the Court considered the time requirements specified in Article 114(1) to be met and ordered the release of Dayra María Levoyer Jiménez, which occurred a few days later.

[FN6] Law 04 amended the Criminal Code, adding Article 114(1), which establishes: "Persons who, having been kept in detention for a time equal to or greater than one third of the period established in the Criminal Code as the maximum sentence for the offense with which they are charged, have neither had their case discontinued nor been committed to trial, shall be immediately released by the judge hearing the case. Persons who, having been kept in detention for a time equal to or greater than one half of the period established in the Criminal Code as the maximum sentence for the offense with which they are charged, have not been sentenced, shall be released immediately by the criminal court hearing the case."

19. Mrs. Levoyer Jiménez was released in June 1998, six years after she was detained. All charges against her have now been dismissed. The petitioner alleges that preventive detention for a period of five years contravenes Article 7(5) of the Convention because it is excessive, and also violates the principle of the presumption of innocence. It further alleges that the duration of the proceedings against her, which are not yet fully concluded, have exceeded the reasonable time established in Article 8(1) of the American Convention.

20. The petitioner also alleges that in the instant case there has been a violation of Article 21 of the Convention since the property seized when Mrs. Levoyer Jiménez was detained has not yet been returned to her.

B. The State's position

21. On July 27, 1998, the State's response was received. It maintains that in the instant case a violation of human rights cannot be considered to have occurred because domestic remedies have not been exhausted.

22. The State argues that, according to Article 249 of the Code of Criminal Procedure, once a provisional dismissal has been issued, the preliminary proceedings are suspended for five years, during which time new evidence may be presented as to the defendant's innocence or guilt. In addition, Article 252 of the Code provides that, once that period has lapsed, and provided that the proceedings have not been re-opened, the court shall issue a ruling of (definitive) dismissal.

23. Accordingly, the State considers that since the periods provided for in Article 249 have not expired, and until the proceedings are closed under the terms of Article 252, domestic remedies have not been exhausted. In this same vein, it notes that in the proceedings for illicit enrichment a full trial was ordered and, therefore, domestic proceedings have not yet concluded.

24. The State has reported that the following proceedings are ongoing against Mrs. Levoyer (as of May 14, 1998):

Proceedings 91-92, for illicit enrichment. The proceedings were initiated against her, as co-perpetrator, on November 25, 1996. That order is on appeal before the Fourth Division of the Superior Court of Quito.

Proceedings 92-92 on charges of being a “front”. The proceedings were initiated against her, as co-perpetrator, on March 23, 1998. It has been appealed and sent up for consultation.

Proceedings 93-92 for drug trafficking. A ruling of provisional dismissal was issued with respect to the proceedings and to the accused, on July 19, 1995. The ruling has been sent up for consultation and appeal to the First Division of the Superior Court of Quito.

Proceedings 94-92 for asset laundering and transfer. The case was dismissed. A motion for reversal was filed by the Office of the Public Prosecutor of Pichincha.

Proceedings 76-94 for money laundering. The proceedings were initiated against her, as co-perpetrator, on January 20, 1998. The order is on appeal before the Second Division of the Superior Court of Quito.

As mentioned earlier, the courts have ruled that most of the charges be dismissed.

IV. ANALYSIS OF THE MERITS

25. The Commission now moves on to determine in the present case whether the rights of personal liberty and humane treatment, judicial protection, the right to property, and access to a simple and prompt recourse, as established in Articles 1, 5, 7, 8, 21, and 25 of the American Convention, have been violated.

1. The right to personal liberty and humane treatment

i. The legality of the detention - Violation of Article 7(2) and 7(3)

26. According to the information and documentary evidence furnished by the parties, Dayra María Levoyer Jiménez was detained on June 21, 1992, at approximately 1:00 p.m. by a group of 15 individuals in civil dress and uniforms, who did not identify themselves as police officers, and did not have in their possession an arrest warrant issued by a competent authority. On July 30 and 31, 1992, the Police Chief issued a warrant for her arrest on charges of drug trafficking, acting as a “front”, illicit enrichment, and asset laundering. From August 11 to 13, 1992, the four judges to whom it fell to hear each of the cases, issued the respective warrants for arrest.

27. The petitioner alleges that these facts constitute an illegal and arbitrary detention in violation of Article 7(2) and 7(3) of the American Convention and Ecuadorian law.

28. In its response, the State did not specifically address the detention without a judicial order but maintained in general terms that: “The national courts have acted within their competence in the proceedings... against the petitioner, in what was known as Operation Cyclone, with utmost diligence in reaching a decision on the different and complex matters that cases of this kind entail... That is why this Commission must refer to the proceedings to establish that the rights relating to due process and personal liberty of the petitioner have been respected, in the manner established by the Commission and the Court.” [FN7]

[FN7] The Government’s response of January 26, 2000, received by the Commission on April 6, 2000.

29. Pursuant to Article 7(2) and (3) of the American Convention:

2. No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto.

3. No one shall be subject to arbitrary arrest or imprisonment.

30. It is therefore fitting to establish, first, what are the “conditions established beforehand by Law”, whether such conditions are consistent with the provisions of the Convention and lastly whether such provisions were observed in the present case.

31. The Commission now turns to an examination of the conditions established under domestic legislation for making an arrest. Article 22(19)(h) of the Ecuadorian Constitution, in effect at the time of the detention, set forth the following:

No one shall be deprived of his liberty except by written order of the competent authority, as appropriate, for the period and according to the procedures prescribed by law, save in the case of flagrante delicto, nor may he be held without a trial order for more than twenty-four hours. In either case, he may not be held incommunicado for more than twenty-four hours.

32. Moreover, Article 172 of the Code of Criminal Procedure provides for pre-trial detention in the following instances: “before criminal proceedings begin, the judge hearing the case may order the detention of an individual on the basis of personal acquaintance, or oral or written reports by officers of the National or Judicial Police or by any other person....”

33. Ecuadorian law further establishes, in Article 56 of the Code of Criminal Procedure, that detention without a judicial warrant may only occur in the case of an individual caught in the act of committing a crime or when a serious presumption of responsibility exists. Paragraph 6 of the same Article 56 establishes that one of the functions of the Judicial Police is:

To order and execute the temporary detention of any individual caught in the act of committing a crime or when a strong presumption of responsibility exists, and to bring the said individual

before the competent examining magistrate (juez de instrucción) within the following forty-eight hours.

34. The State has not alleged or presented evidence demonstrating that Mrs. Levoyer Jiménez was apprehended in flagrante delicto, a circumstance that would justify a detention without a judicial order. The Commission understands that the detention took place in accordance with the principle of “serious presumption of responsibility.”

35. It is appropriate to examine the standard of “serious presumption of responsibility” and how it applies to Ecuadorian law. Although local courts have the authority to determine the constitutionality of the provisions of domestic law, the Commission is empowered to analyze such provisions to determine whether their wording or application may be inconsistent with the provisions of the Convention.

36. As noted earlier, the Ecuadorian Constitution formally establishes the circumstances required for making an arrest, that is by order of a competent authority, save in the case of flagrante delicto. The Constitution provides only one exception to the rules, and that is the case of an individual in the act of committing a crime, where a warrant issued by a competent authority is not necessary in order to make an arrest. The Code of Criminal Procedure, however, departs from the Constitution by establishing additional grounds for an arrest without a warrant. The Commission is of the view that the law does not set forth the objective circumstances that would constitute a “serious presumption of responsibility,” leaving the definition to the discretion of the police officer making the arrest.

37. Moreover, the Commission considers that this provision also contravenes the Convention since it leaves the decision as to the appropriateness of the arrest to the subjective judgment of the police officer carrying out the arrest. The Commission understands that the requirement for a statutory description of a crime set out in the obligation to “establish beforehand” the conditions of arrest, requires that the law establish precisely and in specific detail the reasons for which, and the conditions in which, an arrest may be made. Such a criterion is not satisfied by a vague and general prescription such as “serious presumption of responsibility.”

38. Accordingly, the Commission considers that Mrs. Levoyer Jiménez was arrested on June 21, 1992, without a judicial warrant in circumstances not constituting an exception to the requirement set forth in the Constitution. According to the information presented in the instant case, the first arrest warrant was issued by the Chief of Police on July 30, 1992, or 39 days after the arrest was made. The first judicial arrest warrant was issued by a Judge on August 11, 1992, or 51 days after her arrest. The State has not presented any document to contradict these assertions. Therefore, it may be concluded that her arrest was not made on the grounds or in the circumstances provided for in the domestic legislation, and that Mrs. Levoyer was arbitrarily detained in violation of Articles 7(2) and 7(3) of the American Convention.

39. As indicated earlier, the Commission notes that the domestic legislation establishes a maximum period for detention without being charged. Article 22(19)(h) of the Ecuadorian Constitution states that such a period may not exceed 24 hours. On this basis, the Commission finds that Mrs. Levoyer Jiménez was detained on June 21, 1992, but having been transferred to a

detention center on July 30, 1992, was held incommunicado at police stations, for a period of 39 days. This was a violation of Article 7(2) of the American Convention since it was not carried out pursuant to law. In other words her detention w/o being charged violated the provisions of Ecuadorian law which establish that such a period may not exceed 24 hours.

40. Lastly, the Commission wishes to point out that the evidence produced by the parties shows that Mrs. Levoyer Jiménez remained in incommunicado detention in police stations. The Inter-American Court of Human Rights has ruled that a police station cannot be considered a suitable facility for persons in pre-trial detention.[FN8]

[FN8] Suárez Rosero Case, Judgment of November 12, 1997, paragraph 46.

ii. Deprivation of personal liberty – Violation of Articles 7(5) and 2

41. According to the documentation provided by the parties, Mrs. Levoyer Jiménez was detained on June 21, 1992, and remained in temporary detention until June 1998. Also, when she was initially detained, she was held for 51 days without being brought before a judicial authority. The petitioner alleges that these events constitute a violation of Article 7(5) of the American Convention.

42. Article 7(5) of the American Convention states:

Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings. His release may be subject to guarantees to assure his appearance for trial.

43. This provision reflects the State's duty to guarantee the rule of law and the determination of criminal responsibility through the judiciary consistent with the obligation to guarantee the fundamental rights of individuals accused of breaking the law. It is the State's task to strike a balance between the general interest of preventing a crime and of giving victims effective access to justice, and the interest, also general, of ensuring that the guarantees that the law itself provides in favor of those accused of crimes are safeguarded.

44. In fact, the principle of innocence implies that if it is necessary to deprive an accused person of personal liberty in the course of judicial proceedings, the legal position of the accused continues to be one of innocence. It is understood that Article 7(5) of the American Convention requires that once a trial has begun and the accused has been detained, if it is necessary to deprive him of his liberty, the public trial should take place, if not immediately, at least within a very short time...[FN9] After this brief interlude, the State has the right to continue the proceedings but the provision in this Article calls for the accused to be released.

[FN9] Maier, Julio B., *Derecho Procesal Penal*. Volume I. Editores Del Puerto, Buenos Aires, 2nd edition, 1996, page 537.

45. This principle is more evident still in a case where a dismissal of the proceedings comes into play, although this is not carved in stone when a consultation is pending. In fact, the principle of innocence requires that the temporary deprivation of a person's liberty "assumes that it is highly probable that there exists a punishable act attributable to the accused or, put in another way, the likelihood of a conviction..."[FN10] Obviously, the existence of a dismissal distances the State from the certainty of guilt that justifies the maintenance of a measure of preventive detention.

[FN10] Maier, *op. cit.* page 523.

46. As a general principle, individuals accused of a criminal offense may have their liberty restricted only after judgment has been rendered in a trial during which they have had the opportunity to defend themselves. The proceedings for determining the innocence or guilt of the accused must be substantiated within a reasonable period so as not to disregard their right to security and liberty. The restriction of such rights beyond the parameters established by law and the margin of what is reasonable on the pretext of ensuring an allegedly efficient investigation implies a presumption that the persons who are in detention as a result of such investigation are guilty.[FN11]

[FN11] Report 12/96, Giménez Case, Argentina, IACHR Annual Report 1995. Paragraphs 76, 77, and 78.

47. A presumption of this kind runs contrary not only to the letter of the American Convention, but also to the general principles of law that the Treaty has codified and which are also contained in Ecuador's domestic legislation. The obligation of the judiciary to make every effort to comply with these provisions and to strike a balance in protecting the different interests involved, which only appear to be opposed, is an essential part of the rule of law: the effective functioning of a judicial system that all individuals can trust, regardless of the circumstances.

48. In the present case, the State has not provided any evidence to justify that the deprivation of liberty was imposed based on the possibility of flight or the severity of the offense or penalty.

49. Article 7(5) of the Convention requires that the trial in the context of criminal proceedings take place within a reasonable time as a guideline for restricting personal liberty. Determining until when this restriction can be reasonably extended calls for a case-by-case analysis.[FN12] To this end, the Commission has adopted a test, whereby it must be determined, first, whether the deprivation of liberty without a conviction is justified in the light of relevant and sufficient criteria, determined objectively and reasonably by preexisting legislation; and

second, whether the judicial authorities have acted with due diligence in the advancement of the judicial proceedings. Should it be found that the detention and the duration of the proceedings are not justified, the accused must be set free, at least provisionally[FN13] and that is why measures may be adopted to guarantee his appearance in court.

[FN12] *Id.*, paragraph 70. See also European Court of Human Rights. *Stogmuller vs. Austria*, Series A 9 (1969).

[FN13] Report 12/96, *op. cit.* paragraph 218 (1991). European Court of Human Rights. *Neumeister vs. Austria*, Series A 8 (1968).

50. As to the content of the criteria of relevance and sufficiency, it is important to reiterate that, in principle, the provisional loss of personal liberty is justified only with respect to the possibility that the person will escape or will disregard other measures restricting his or her personal liberty that may be adopted to ensure his or her appearance in court or with regard to the danger he or she poses.

51. The seriousness of the offense and the severity of the sentence are factors that may be taken into account in evaluating the possible risk that the accused may try to evade justice. The deprivation of liberty without a conviction, however, should not be based exclusively on the fact that the detainee has been accused of a particularly objectionable offense from the standpoint of society. The adoption of a precautionary measure in the form of deprivation of liberty should not become a substitute for incarceration.[FN14]

[FN14] Report 12/96, *op. cit.* paragraph 83. See also European Court of Human Rights. *Kenmache vs. France*, Series A, paragraphs 86 and 89.

52. In the present case, it has not been expressly alleged nor has evidence been produced to demonstrate that Mrs. Levoyer Jimenez resorted to procedural mechanisms established by law for the purpose of obstructing the proceedings.

53. The conduct of the judicial authorities will be examined in light of the procedural norms in force, in analyzing whether the right to a fair trial within a reasonable period, as established in Article 8(1) of the Convention, has been violated.

54. Over and above the reasonableness of the preventive detention, in this case domestic law sets objective parameters as regards duration. In fact, Ecuador is one of those countries that establishes a maximum period of preventive detention in its domestic legislation.

55. Thus, Article 114 of the Criminal Code of Ecuador, in effect when Dayra María Levoyer was detained, establishes that:

Persons who, having been kept in detention for a time equal to or greater than one third of the period established in the Criminal Code as the maximum sentence for the offense with which they are charged, have neither had their case discontinued nor been committed to trial, shall be immediately released by the judge hearing the case.

Persons who, having been kept in detention for a time equal to or greater than one half of the period established in the Criminal Code as the maximum sentence for the offense with which they are charged, have not been sentenced, shall be released immediately by the criminal court hearing the case.

These provisions do not include persons charged with offenses under the Narcotics and Psychotropic Substances Act.

56. The Commission notes that the domestic law provides for four to eight years of imprisonment for the offenses of asset laundering, transfer of assets, and acting as a “front.”[FN15] Dayra Levoyer Jiménez was detained on June 21, 1992, and was kept in preventive detention for more than six years, a period equivalent to more than one third and more than one half of the maximum corresponding sentences.

[FN15] Articles 77 and 78 of the Narcotics and Psychotropic Substances Act.

57. However, the proceedings against Mrs. Levoyer Jiménez came within the exception provided in the last sentence of Article 114 of the Criminal Code of Ecuador and thus she was unable to benefit from the maximum periods of preventive detention established in the legislation. This exception, however, has now been invalidated both internally and internationally. In a judgment rendered on November 17, 1997, in the Suárez Rosero Case, the Inter-American Court declared that the wording of the final paragraph of Article 114 of the Criminal Code of Ecuador was a violation de jure of the obligation contained in the Convention to adopt the necessary measures in domestic law to render effective the right to personal liberty established in Article 7(5) of the American Convention.[FN16]

[FN16] Int.Ct.H.R. Suárez Rosero Case, Judgment of November 17, 1997, paragraph 99.

58. As the Inter-American Court has stated, although domestic law establishes objective conditions for the release of individuals imprisoned without a sentence, the exception established in the final paragraph of Article 114 deprives an entire category of persons in detention of the enjoyment of a right solely on the basis of the offense with which they are charged.[FN17]

[FN17] Id. Paragraph 98.

59. Moreover, as reported to the Commission in the present case, on December 24, 1997, a Plenary Session of the Constitutional Court of Ecuador declared that the last part of Article 114 of the Criminal Code was unconstitutional. This declaration made it possible to apply the maximum period of preventive detention to cases such as that of Mrs. Levoyer Jiménez.

60. As to the parameters of Article 7(5) of the Convention, the Commission has established that whenever preventive detention is extended beyond the period stipulated in domestic law, this should be considered *prima facie* illegal, regardless of the nature of the offense in question and the complexity of the case. In such circumstances, the burden of proof in justifying the delay rests with the State.[FN18]

[FN18] Report 12/96 op. cit., paragraph 101.

61. In the instant case, the declaration that the last part of Article 114 was unconstitutional did affect the deprivation of liberty, until six months later. In fact, on June 16, 1998, Mrs. Levoyer Jiménez was released as a result of a decision on one of the many writs of habeas corpus filed. At that time, the Second Division of the Constitutional Court considered the terms of preventive detention established in the Criminal Code to have been fulfilled through the application of the precedent noted. Consequently, for a period of six months, Mrs. Levoyer Jiménez remained in preventive detention, without any domestic law justifying her detention, in direct violation of the norm contained in Article 7(5) of the Convention, which establishes that every individual must be judged within a reasonable time or be set free, as well as Article 7(2) which stipulates that detention beyond the period specified in domestic law constitutes illegal detention.

62. Moreover, the Commission concludes that although the exception contained in Article 114 of the Ecuadorian Criminal Code was declared unconstitutional on December 24, 1997 (a ruling which benefited all individuals accused of offenses under the Narcotics and Psychotropic Substances Act), the fact that Dayra María Levoyer Jiménez was not released until six months after this ruling was made, is a violation of Article 2 of the American Convention because the State did not adopt the adequate measures under domestic law to render effective the right contained in Article 7(5) of the American Convention.

63. Lastly, the fact that Mrs. Levoyer Jiménez was not arraigned in Court immediately after she was detained is a further violation of Article 7(5).

iii. Incommunicado detention, personal liberty, and Habeas Corpus – Violation of Articles 7(6) and 25

64. The petitioner maintained that, when she was detained, Mrs. Levoyer Jiménez was taken to the former SIC facilities, where she was kept incommunicado in an underground cell for 39 days. In its submission on the merits of the case, on May 18, 2000, the petitioner alleged that Mrs. Levoyer Jiménez's incommunicado detention lasted from her detention on June 21, 1992, at

the Police Station, until July 30, 1992, the date on which she was taken to a prison. The State did not dispute this assertion in its response.

65. The Inter-American Court has established that:

Incommunicado detention is an exceptional measure the purpose of which is to prevent any interference with the investigation of the facts. Such isolation must be limited to the period of time expressly established by law. Even in that case, the State is obliged to ensure that the detainee enjoys the minimum and non-derogable guarantees established in the Convention and, specifically, the right to question the lawfulness of the detention and the guarantee of access to effective defense during his incarceration.[FN19]

[FN19] Int. Ct.H.R. Suárez Rosero Case, op. cit. paragraph 51.

66. Article 28 of the Constitution of Ecuador provides that:

Any person who believes that he is being unlawfully deprived of his liberty may seek the remedy of habeas corpus. He may exercise this right himself or through another person, without the need for a written request, before the Mayor, under whose jurisdiction he finds himself or whoever is serving as Mayor. The municipal authority shall order immediately that the accused appear before him, and the order for the deprivation of liberty will be shown.

67. While she was held incommunicado, Mrs. Levoyer Jiménez did not have the opportunity to have her detention reviewed by a court. In addition, after her period in incommunicado detention was over, she presented numerous writs of habeas corpus without success. Although access to recourse does not imply that a favorable result is guaranteed,[FN20] the right of access to a fair trial in this case required that a judge review the reasons for the detention and whether it was consistent with international law, something that did not occur when any of the writs of habeas corpus were filed.

[FN20] Int.Ct.H.R. Velásquez Rodríguez Case, Judgment of July 29, 1988, paragraph 63ff.

68. Accordingly, the Commission finds that Mrs. Levoyer Jiménez's incommunicado detention constituted a violation of Article 7(6) of the American Convention since it prevented the person detained from having contact with the outside world and did not allow her to exercise the remedy of habeas corpus.

69. The petitioner further alleges that the lack of a response or the delay in responding to the writs of habeas corpus filed in the present case violates the guarantees provided in Articles 7(6) and 25 of the American Convention. The State has not responded expressly to this allegation.

70. Article 7(6) of the Convention provides that:

Anyone who is deprived of his liberty shall be entitled to recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful. In States Parties whose laws provide that anyone who believes himself to be threatened with deprivation of his liberty is entitled to recourse to a competent court in order that it may decide on the lawfulness of such threat, this remedy may not be restricted or abolished. The interested party or another person in his behalf is entitled to seek these remedies.

71. Article 25 of the Convention states that:

Everyone 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.

72. Article 458 of the Code of Criminal Procedure establishes that whenever an individual who has been detained applies to a competent court to request release, the judge must immediately order the appearance of the individual and after evaluating the necessary information, is required to decide on the request within the next 48 hours.

73. The guarantee of access to simple and prompt recourse provided in the Convention is not satisfied by the mere formal existence of suitable remedies to ensure an order for release. The Court has noted that such remedies must be effective given their purpose of obtaining a prompt decision on the question of the legality of the arrest or the detention.[FN21]

[FN21] Idem.

74. These rights constitute one of the basic pillars of the rule of law in a democratic society.[FN22]

[FN22] Int.Ct.H.R. Castillo Páez Case, Judgment of November 3, 1997, paragraph 82.

75. The documentary evidence attached to the file indicates that the petitioner repeatedly appeared on behalf of Mrs. Levoyer Jiménez before the competent judges with the request that the precautionary measure be lifted or that her illegal detention be terminated. In each case, with the exception of the decision of June 22, 1998, which ordered her release, the writs of habeas corpus were ignored or denied with delay.

76. With respect to Article 25 of the American Convention, the Court ruled as follows in the Suárez Rosero Case:

Article 25 of the American Convention provides that everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal. The Court has ruled that this provision constitutes one of the fundamental pillars not only of the American Convention, but also of the very rule of law in a democratic society in the sense of the Convention.

Article 25 is closely linked to the general obligation contained in Article 1(1) of the American Convention, in assigning protective functions to the domestic law of States Parties. The purpose of habeas corpus is not only to ensure respect for the right to personal liberty and physical integrity, but also to prevent the person's disappearance or the keeping of his whereabouts secret and, ultimately, to ensure his right to life. (Castrillo Páez Case, Judgment of November 3, 1997. Series C No. 34, paras. 82 and 83)..[FN23]

[FN23] Suárez Rosero Case, op. cit., para. 65.

77. Therefore, the Commission, having weighed the evidence furnished by the parties, concludes that Dayra María Levoyer Jiménez's right to a simple and prompt recourse in order to protect her basic rights, pursuant to Articles 7(6) and 25 of the American Convention, was violated.

78. In addition, the Commission considers it necessary to examine the provisions of Article 28 of the Ecuadorian Constitution, transcribed above, which provide that the right of habeas corpus be modified to conform to the provisions of the American Convention. Article 7(8) of the Convention clearly states that: "Anyone who is deprived of his liberty shall be entitled to recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention" (emphasis added). However, the Ecuadorian Constitution establishes that the Mayor, as the head of the municipal administration,[FN24] is the one who decides on the legality or illegality of an arrest.

[FN24] Article 68 of the municipal system act provides that: "The councils shall have a Mayor to direct the municipal administration", and Article 26 of the same act states that: "The municipal government and administration is administered jointly by the Council and the Mayor...".

79. The review of the legality of a detention implies confirming, not only formally but also substantively, that the detention conforms to the requirements of the judicial system and that it does not violate any of the detained person's rights. That such confirmation is carried out by a judge, invests the proceeding with certain guarantees that are not duly protected if the decision is in the hands of an administrative authority, who lacks the proper legal training and the authority to exercise judicial functions.

80. The danger in having decisions of this kind left in the hands of a municipal authority has been noted previously by the same Ecuadorian Constitutional Court, which maintained that:

The lawfulness of the detention is an important aspect of the remedy of habeas corpus, and this is what must be examined; not the apparent lawfulness but the true lawfulness, in substance or in form [emphasis in the original]. In most cases, Mayors, most probably because they are unaware of constitutional provisions must limit themselves to verifying whether the person detained is present at the order of a judge and whether the latter has issued, even illegally and after the statute of limitations has passed, an order of preventive detention, and solely on this basis after a hearing denies the recourse of habeas corpus, which in substance implies ignorance of the significance of the right to liberty, as an important constitutional guarantee [emphasis added].[FN25]

[FN25] Case 241-98HC. Judgment of the Second Division of the Constitutional Court of June 16, 1998.

81. This constitutional provision violates Article 7(6) of the American Convention. The Commission considers it essential for the State of Ecuador to take the necessary steps to reform its legislation in this area as well as to take whatever action is necessary to implement this legislation immediately.

iv. Incommunicado detention. Cruel, inhumane, and degrading treatment. Violation of Article 5(2a)

82. The petitioner also alleged that the prolonged duration of the state of incommunicado detention to which Mrs. Levoyer Jiménez was subjected constituted cruel and inhumane treatment pursuant to Article 5(2) of the American Convention. This Article states:

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.

83. The Inter-American Court has considered that the mere fact that a person has been deprived of any communication with the outside world allows it to conclude that such person was subjected to cruel and inhuman treatment, and even more so when it is proven to be in violation of domestic law.[FN26]

[FN26] Suárez Rosero Case, op. cit. paragraph 91.

84. Hence, the Inter-American Court has maintained that:

One of the reasons that incommunicado detention is considered to be an exceptional instrument is the grave effect it has on the detained person. Indeed, isolation from the outside world

produces moral and psychological suffering in any person, places him in a particularly vulnerable position [...].^[FN27]

^[FN27] Idem, paragraph 90.

85. Therefore, based on its assessment of the evidence presented by the parties, the Commission concludes that the prolonged incommunicado detention to which Dayra María Levoyer Jiménez was subjected was a violation of the right established in Article 5(2) of the American Convention.

2. Respect for judicial protection

86. The petitioner has indicated that in the present case the State was unable to guarantee Mrs. Levoyer Jiménez's fundamental rights from the time she was detained in June 1992, and that the guarantees established in Article 8 of the American Convention were violated. In its admissibility report, the Commission maintained that "... a decision on the duration of the proceedings presupposes an analysis of the merits of the case. Accordingly, the Commission resolves to postpone the question of admissibility of the alleged violations of Articles 8, 21 and 25 of the Convention until its treatment of the merits of the case..."

87. The Commission turns now to an examination of the facts in light of the guarantee of a trial within a reasonable period and the general principles of a presumption of innocence and non bis in idem, as expressed in the American Convention.

i. The determination of guilt within a reasonable time - Violation of Article 8(1)

88. The petitioner maintained, during the instant case, that the delay in the proceedings against Mrs. Levoyer Jiménez violated her right to be tried within a reasonable period.

89. Article 8(1) of the American Convention states:

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 [...]

90. The purpose of the principle of "reasonable time" to which this Article refers is to prevent persons accused of an offense from remaining in that situation indefinitely. In criminal matters, the time covers the entire proceeding including any appeals that may be filed.^[FN28]

^[FN28] Idem, paragraphs 70 and 71.

91. As to whether the duration of a case is reasonable, in the jurisprudence of the Commission and the Inter-American Court, the reasonableness of the duration of a case has been developed to mean that it must be evaluated in light of the three following criteria: the complexity of the matter, the procedural activity of the individual concerned, and the conduct of the judicial authorities.[FN29]

[FN29] Report 12/96,. Suárez Rosero Case, op. cit., paragraph 25; Genie Lacayo Case, Judgment of January 29, 1997, paragraph 77. See also European Court of Human Rights, Series A 195; Ruiz Mateos vs. Spain, Series A 262 (1993).

92. With respect to the duration of proceedings, the State maintained in its response of January 26, 2000, that:

...the reasonableness of a measure or a period needs to be evaluated in its own specific context, and the State has resolved this case, within a period in keeping with the type of trial involved, within the scope of the possibilities at its disposal. Accordingly, the State of Ecuador cannot be accused of delaying the decision in the matter of Mrs. Dayra María Levoyer Jiménez, when, despite its complexity, it has moved rapidly through the competent tribunals. Given the fact that the periods within which the State acted to resolve the domestic proceedings are within the limits of reasonableness established by the Court and the Commission, it cannot be charged with having violated the guarantee established in Article 8.1.

93. The Commission is of the view that the State's assertion is not sufficient to justify the reasonableness of the period. In fact, the State limits itself to indicating what, in its judgment, are the requirements of reasonable time, and concludes that in the instant case the period was effectively reasonable without providing any grounds that would lead to such a conclusion.

94. In the present case, the detention of Mrs. Levoyer Jiménez on June 21, 1992, marks the beginning of multiple proceedings based on the same facts and evidence. According to the information furnished to the Commission, this case has not yet concluded.

95. The Commission is of the view that the nearly eight years that have elapsed since the investigation began is well beyond the principle of reasonable time within which to resolve a case, especially in light of the fact that according to Ecuadorian law even when a provisional dismissal has been issued, the case remains open for six years, a period during which the investigation may be reopened if fresh evidence is produced.[FN30] This situation is exacerbated when it is considered that to date proceedings against the accused have been dismissed in all of the cases that have concluded.

[FN30] Article 249 of the Code of Criminal Procedure of Ecuador provides that a provisional dismissal of the proceedings suspends substantiation for a period of five years, a period during which new evidence may be presented in connection with the offense or with the responsibility or innocence of the accused.

96. Therefore, the Commission, having weighed the evidence furnished by the parties, concludes that the State has violated Dayra María Levoyer Jimenez's right to be tried within a reasonable time, in accordance with Article 8(1) of the American Convention.

ii. The principle of presumption of innocence - Violation of Article 8(2)

97. The petitioner maintains that depriving Mrs. Levoyer Jiménez of her liberty is a violation of the principle of presumption of innocence established in the American Convention. It notes that in the present case the imposition of preventive detention for an indefinite period was tantamount to anticipating the punishment.

98. The State has not presented its position on the principle of presumption of innocence in the instant case.

99. Article 8(2) of the American Convention states that:

Every person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law.

100. The Inter-American Court has ruled that the very purpose of these judicial guarantees is founded upon the principle that a person is innocent until proven guilty in a final judicial decision.[FN31] Therefore, the universally accepted general principles of law prohibit anticipating the punishment before sentencing. Ignoring these rules would run the risk, as in the instant case, of restricting for an unreasonable time the liberty of a person whose guilt has not been proven. It should be recalled that in this case Mrs. Levoyer Jiménez was deprived of her liberty for a period that exceeded one half the maximum penalty established for the offense of which she was accused and acquitted, and she continued to be detained even after her acquittal had been upheld.

[FN31] Suárez Rosero Case, *op. cit.* paragraph 77.

101. Having considered the evidence presented by the parties, the Commission concludes, in the case of Dayra María Levoyer Jiménez, that the Ecuadorian State has violated the principle of presumption of innocence enshrined in Article 8(2) of the American Convention.

iii. Non bis in idem - Violation of Article 8(4)

102. In its submission of May 18, 2000, the petitioner alleged that the State of Ecuador violated the American Convention insofar as it initiated three sets of proceedings on the same facts and the same offense by three different courts in succession.

103. As noted by the petitioner, the first trial for asset laundering was instituted in 1992, with the first instance proceedings held before the President of the Superior Court, and the second instance before the Fourth Division of the same Court, which in April 1998 dismissed the case.

104. The second trial, also for asset laundering, was instituted in 1994 on the basis of an expanded report on the 1992 Operation Cyclone. The first instance proceedings were held before the President of the Superior Court and the second instance proceedings before the Second Division of the same Court, which in July 1999 dismissed the case.

105. The third trial for asset laundering was instituted in 1996, on the basis of a new expanded report on Operation Cyclone. These first instance proceedings were held before the First Criminal Court, and subsequently before the Eighth Court of Appeal, which in March 1999 issued a provisional dismissal. The case was appealed to the First Division of the Superior Court, which has not yet returned a decision.

106. It appears from the foregoing that Mrs. Levoyer Jiménez was tried simultaneously for the same offense of asset laundering and on the basis of these facts, on two occasions by the same judge (the President of the Superior Court of Quito), and on a third occasion by the Judge of the Eighth Criminal Court.

107. The Commission is of the view that such a situation, apart from disregarding principles of procedural economy, could only cause harm to Mrs. Levoyer Jiménez, who was compelled to defend herself before three different courts and the corresponding appeal courts, during all three sets of proceedings. The Commission considers that in the instant case the requirement of responding to the parallel proceedings constituted a serious interference with the exercise of the right to a defense and legal certainty in judicial proceedings.

108. As to the alleged violation of the American Convention, Article 8(4) states:

An accused person acquitted by a nonappealable judgment shall not be subjected to a new trial for the same cause.

109. The purpose of codifying the principle of non bis in idem is to establish a safeguard for persons acquitted in a nonappealable decision so that they may not be tried in new proceedings for the same offense for which they were tried during the first proceedings.

110. It has been determined that Mrs. Levoyer Jiménez was tried in three sets of proceedings for the same offense of asset laundering. Although these proceedings were instituted in parallel, the different courts rendered their decisions on the merits of the case successively, confirming a triple violation of the principle established in the Convention. The first violation occurred with the second proceedings, when the President of the Superior Court neglected to close the case after having seen that the Fourth Division of the Court dismissed the case in April 1998 in issuing judgment on appeal in the first case. The second violation occurred when the Eighth Criminal Court closed neither the third case nor the second when the first judgment was rendered. The third violation took place because the appeal court, that is the First Division of the Superior Court, has not resolved the matter to the present time.

111. This violation of the principle non bis in idem was recognized in the judgment of the Second Division where it was maintained that:

... having to do with ... an expanded investigation report ... of the investigation of Operation Cyclone, judges and courts run a real risk of violating the constitution and the law by judging a person more than once for the same offense or of continuing to institute proceedings against a group of persons as often as expanded reports of a police investigation which apparently has not concluded are prepared by continuing such reports ad infinitum, an act that violates constitutional guarantees and precepts, particularly what is established in paragraph 16 of Article 24 of the Constitution ... [FN32]

[FN32] Judgment rendered by the Second Division of the Superior Court of Quito, July 5, 1999, paragraph 7.

112. Based on the assessment of the evidence produced by the parties, the Commission concludes that the State violated Dayra María Levoyer Jiménez's right not to be tried more than once for the same offense, as established in Article 8(4) of the American Convention.

3. Violation of the right to own property - Violation of Article 21

113. The petitioner alleged that in the instant case Article 21 of the Convention was also violated insofar as the goods that were seized when Mrs. Levoyer Jiménez was arrested have not yet been returned to her.

114. In resolving the issue of the admissibility of the present case, the Commission considered that the analysis of the present issue concerned the merits of the case and therefore decided to defer its decision for the present report.

115. According to the petitioner's submission, when the charge of acting as a "front" was dismissed, it was requested that the many goods seized at the time of her arrest be returned to her. The judge denied the request, on grounds that the matter was still before the Courts, and that the goods would be returned when a final decision was taken. The petitioner alleges that this final decision could take more than five years, and that the goods would not be returned if the proceedings are dismissed, thus constituting a violation of Article 21 of the Convention.

116. The Ecuadorian Code of Criminal Procedure establishes the res judicata effect of the (definitive) dismissal of proceedings, but not those that are (provisionally) dismissed. The petitioner alleges that even if the case had been definitively dismissed, the result would not be a judgment and therefore the goods would never be returned. The relevant sections of Article 110 of the Narcotics and Psychotropic Substances Act state that "If the person charged with an offense is acquitted, any property he owns that has been seized shall be restored to him ... when so ordered by the court once the precautionary measures have been lifted..."

117. The Commission is of the view that the provisions cannot be construed to mean that a definitive dismissal is different from an acquittal because it is a decision that concludes the proceedings definitively and puts a stop to further investigation of the accused for the same facts. A violation of Article 21 would require a finding in the present case that the State refused to return the property once a final decision has been rendered, a case in which the right to property would be violated.

118. The Commission considers, therefore, that the petitioner has not presented facts that if true, would constitute a violation of the Convention, and therefore has decided

not to admit the complaint on this point.

V. ACTIONS TAKEN FOLLOWING THE ADOPTION OF REPORT No 81/00

119. On October 5, 2000, during the course of its 108th period of sessions, the Commission approved Report 81/00, pursuant to Article 50 of the American Convention. Report 81/00 was transmitted to the Ecuadorian State on October 26, 2000 with the corresponding recommendations and was granted a period of 60 days within which to inform the Commission regarding the measures it had taken in order to comply with these recommendations.

120. Since October 26, 2000, the State has not been in contact with the Commission regarding the instant case, nor does the Commission have information regarding the State's having taken any of the recommendations mentioned above.

VI. CONCLUSIONS

121. On the basis of the foregoing analysis of the facts and the law, the Inter-American Commission on Human Rights hereby concludes that with respect to Dayra Maria Levoyer Jimenez, the State of Ecuador has violated the right to humane treatment (Article 5), the right to personal liberty (Article 7), the right to due process (Article 25), together with the general obligation to respect and ensure set forth in Article 1(1) of the American Convention.

122. The Commission further considers that the complaint relating to the violation of Article 21 of the American Convention is not admissible because the evidence presented does not constitute a violation of the Convention.

VII. RECOMMENDATIONS

123. Based on the foregoing considerations presented in the present report and the conclusions reached, the Inter-American Commission on Human Rights recommends that the State of Ecuador:

1. Proceed to grant full reparations, which involves granting adequate compensation to Mrs. Dayra Maria Levoyer Jimenez;
2. Order an investigation to determine responsibility for the violations detected by the Commission and eventually to punish the individuals responsible;

3. Take such steps as are necessary to reform habeas corpus legislation as indicated in the present report, as well as to enact such reforms with immediate effect.

VIII. PUBLICATION

124. On February 28, 2001, the Inter-American Commission on Human Rights transmitted Report No. 16/01—the text of which appears above—to the Ecuadorian State and to the petitioners, pursuant to Article 51(2) of the American Convention and granted the State a period of one month in order to comply with the recommendations therein. Until the date of the approval of the present report no response has been received from the Ecuadorian State.

125. In light of the above considerations and the provisions of Article 51(3) of the American Convention, the Commission decides to reiterate the conclusions and recommendations contained in this report, to make them public and to include them in its Annual Report to the OAS General Assembly. The Commission, in compliance with its mandate, will continue to evaluate the measures taken by the State of Ecuador in relation with the above mentioned recommendations, until they have been completely complied with.

Done and signed at the headquarters of the Inter-American Commission on Human Rights, in the city of Washington, D.C., on the 14th day of the month of June in the year 2001. (Signed) Claudio Grossman, Chairman; Juan Mendez, First Vice-President; Marta Altolaguirre, Second Vice-President; Commissioners: Helio Bicudo, Robert K. Goldman; and Peter Laurie.