

OEA/Ser.L/V/II.  
Doc. 101  
June 14, 2019  
Original: Spanish

## **REPORT No. 92/19**

### **CASE 11.624**

REPORT ON ADMISIBILITY AND MERITS (PUBLICATION)

JORGE DARWIN GARCÍA AND FAMILY  
ECUADOR

Approved electronically by the Commission on June 14, 2019.

**Cite as:** IACHR, Report No. 92/19, Case 11.624, Admissibility and Merits, Jorge Darwin García and family, Ecuador, June 14, 2019.



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## **I. SUMMARY**

1. On November 9, 1994, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission,” “the Commission,” or the IACHR) received a petition lodged by the Ecumenical Human Rights Commission (CEDHU) in which it alleged the international responsibility of the Republic of Ecuador (hereinafter “the Ecuadorian State,” “the State,” or “Ecuador”) for the homicide of Jorge Darwin García and for bullet wounds to his brother, Franklin Plutarco García, allegedly committed by a police officer. It further alleged shortcomings in the investigation and delays in the criminal proceedings.

2. According to the petitioner, on September 12, 1993, a police officer, accompanied by another policeman and his brother, fired his official weapon at Jorge Darwin García, causing his death. The same police officer also shot Franklin Plutarco García, causing serious injuries. The petitioner indicated that the proceedings in which a police officer was convicted were fraught with a series of irregularities and mistakes, and that they were prolonged over an unreasonable period of time. As far as admissibility requirements are concerned, the petitioner cited the exception established in Article 46.2.c) of the American Convention.

3. The State argued that the petition was inadmissible on the grounds that the victims had not exhausted domestic remedies at the time the petition was filed with the IACHR. It subsequently indicated that the duration of the proceedings was reasonable and so an exception to the failure to exhaust domestic remedies would not apply. Moreover, the State indicated that the facts of the case do not tend to establish possible violations under the American Convention, since a serious, full, and impartial investigation was conducted that led to determination of the responsibility of a police officer. It further contended, notwithstanding the foregoing, that the facts do not establish the responsibility of the State, since although the responsible party was a member of the National Police, he was not acting in an official capacity at the time the acts were committed.

4. After examining the available information, the Commission verified that the admissibility requirements set forth in Articles 46 and 47 of the American Convention have been met and it concluded that the State is responsible for violation of the rights enshrined in Articles 4.1, 5.1, 8.1, and 25.1 of the American Convention in relation to the obligations set forth in Articles 1.1 and 2 thereto.

## **II. PROCEEDINGS BEFORE THE IACHR**

5. On November 9, 1994, the Commission received the initial petition, which was forwarded to the State on April 24, 1995. On August 3, 1995 and March 1, 1996, the petitioner submitted additional information. On January 6, 1999, the Commission sent a communication to the State requesting that, in view of its failure to respond to the communications sent, it present information on the case.

6. The petitioner submitted additional information on May 31, 1999, March 2, 2000, and April 19 and December 20, 2001. On its behalf, the State submitted observations on January 4 and September 20, 2000, and on August 29, 2001.

7. On May 8, 2003, the IACHR notified the parties of its decision to apply Article 37.3 of its Rules of Procedure, and requested that they submit observations on the merits of the case. The petitioner presented its observations on August 6, 2003, November 4, 2004, April 7, 2006, February 6, 2008, July 16 and 19, 2013, and January 7, 2015. The State, for its part, presented information on August 25 and September 14, 2004, and on November 8, 2005.

8. All communications presented to the Commission were duly forwarded to the other parties.

### III. POSITION OF THE PARTIES

#### A. Position of the petitioner

9. The petitioner reported that on September 11, 1993, there was a dance party in the streets of the city of Otavalo organized by the Otavalo Transportation Cooperative, where 31 year-old Jorge Darwin García and his brother, 20 year-old Franklin Plutarco García, both Afrodescendants, were employed. It added that the García brothers were at the party chatting and laughing with their friends.

10. The petitioner stated that at approximately 2:00 a.m. on September 12, 1993, the following three persons approached the group which included the García brothers: i) the police officer Segundo Néstor de la Cruz from the Special Investigations Unit; ii) his brother José de la Cruz; and, iii) police officer Edwin Guzmán. It further reported that Mr. Segundo de la Cruz, who appeared to be inebriated, pointed his gun at one of the friends of the García brothers. Petitioner indicated that Segunda de la Cruz rebuked them for allegedly having made fun of him and said he was “an officer of the Police.”

11. The petitioner indicated that Jorge Darwin García protested to Mr. Segunda de la Cruz, whereupon Mr. Segunda de la Cruz proceeded to shoot him in the head. It indicated that Franklin Plutarco García tried to stop Police Officer Segunda de la Cruz, who nevertheless shot him twice in the chest and forearm. It reported that Jorge Darwin García was taken to Quito, and that he died en route. The petitioner alleged that Franklin Plutarco García was taken to San Vicente de Paul Hospital in the city of Ibarra, where he was hospitalized for three weeks.

12. With regard to admissibility requirements and jurisdiction, the petitioner asserts that the facts of the case occurred within the territory of the Republic of Ecuador, a state party to the Convention since December 28, 1977. As for its competence *ratione materiae*, it contended that the acts and omissions committed by a police officer are violations of the American Convention.

13. As regards the requirement of exhaustion of domestic remedies, the petitioner maintained that the State incurred an unwarranted delay in concluding the criminal proceedings opened in the domestic courts. It stated that the Supreme Court upheld the lower court’s conviction on January 28, 1998, or nearly four and a half years after the acts occurred, which, according to the petitioner, represents an unreasonable delay. Petitioner further reported that the convicted police agent filed an appeal for review [*recurso de revisión*] in February 1998, but that, according to its January 2015 brief, no decision had yet been issued on that appeal.

14. The petitioner argued that the State did not avail itself of the exception of failure to exhaust domestic remedies at the time it received the formal petition, as grounds for opposing admissibility. According to the petitioner, the State’s presentation of the exception of failure to exhaust domestic remedies at the time it presented its arguments on the merits of the case occurred beyond the statutory time, since the State had tacitly renounced that right in its earlier communications. The petition further maintained that at no time did the State refer specifically to which were the domestic remedies that needed to be exhausted.

15. As for the requirement that the petition be filed in a timely manner, the petitioner indicated that it was presented in November 1994, one year and two months after the events had occurred, but before the lower courts had issued a decision. Based on the foregoing, petitioner contended that the six-month period was not operative, since the exceptions to exhaustion of domestic remedies were applied.

16. The petitioner further indicated that this case is not pending in another international proceeding for settlement, and that it is not substantially the same as another petition previously studied by the Commission or by another international organization.

17. As regards the State’s argument related to the “fourth recourse” rule, the petitioner clarified that its intent was not that the Commission review the judgment issued by the domestic court, but rather that the State had violated the right to be tried by independent and impartial courts and the right to have judgment pronounced within a reasonable period of time. It alleged that the delays and failings in the investigation, and

the failure to deliver a decision on the appeal for review filed by the guilty party had deprived the next of kin of the alleged victim of the possibility of knowing the truth regarding the events.

18. With regard to the right to life, the petitioner reiterated the Court's jurisprudence on the State's duty to prevent its agents from violating that right. It held that the State's responsibility in this case is not based solely on the fact that one of its agents arbitrarily deprived Jorge Darwin García of his life, but is also incurred because the administration of justice failed to include a serious investigation.

19. As regards the rights to a fair trial and to judicial protection, the petitioner alleged that a series of obstacles and delays occurred in the domestic courts. It pointed out that initially the police had jurisdiction over the investigation. It argued that according to an expert document, there were shortcomings in the autopsy procedure and in the ballistic tests. It further maintained that the investigation omitted police officers Edwin Guzmán and José de la Cruz, who were with Mr. Segundo de la Cruz at the time the events occurred.

20. The petitioner stated that on September 3, 1995, the Imbabura Criminal Court issued a judgment convicting Segundo de la Cruz and sentencing him to six years in prison, for the homicide of Jorge Darwin García and the injuries to his brother Franklin. It indicated that Mr. de la Cruz appealed that judgment, which was upheld by the *Sala de Casación* of the Supreme Court of Justice on January 28, 1998. The petitioner further stated that Mr. de la Cruz filed a petition for review [*recurso de revisión*] against that judgment, for which no decision had been issued as of the January 2015 communication.

21. The petitioner pointed out that the proceeding did not comply with the legal time periods established in the Code of Criminal Procedure. It indicated that the duration of the proceeding—nearly four and a half years from the time the events occurred—constitutes a violation of the right of the victim's next of kin to obtain justice within a reasonable period of time. It alleged that if the Commission should not accept its argument regarding noncompliance with the time periods established in domestic legislation, it should take the following elements into account in its analysis: a) the complexity of the case; b) the proceedings; and c) the conduct of the judicial authorities.

22. On the first element, the petitioner considered that "the sole requirement is that the courts and the prosecution endeavor to resolve the matter and discover the truth." According to the petitioner, this case did not entail complex circumstances or extensive investigations, since from the outset of the judicial investigation, the perpetrator of the homicide was identified as a police officer who committed the act using the gun provided to him by the State.

23. As regards the second element, the petitioner maintained that "from the court records, it does not appear that the conduct of the family of Jorge Darwin García was incompatible with its role as parties to the proceedings" or that "they had blocked the processing of the case or had engaged in acts to delay proceedings." In fact, there is no evidence that the next of kin of Jorge Darwin García did anything to obstruct the judicial investigation and delay its development, or that they failed to cooperate throughout the proceedings, since they accused and identified the responsible party immediately after the events occurred, so that he could be punished.

24. With regard to the third element, the petitioner alleged that the case took four years and four months to be resolved, due to the slowness of the administration of justice and its unnecessary delays, since an appeal which should be resolved within 15 days took 10 months, the plenary took 11 months, and the appeal for reversal (*recurso de casación*) took 16 months.

## **B. Position of the State**

25. The State held that the case should be considered inadmissible by virtue of the fact that the alleged facts do not constitute a violation of the human rights established in the American Convention that could be imputed to it. It contended that international responsibility cannot be ascribed to it for acts that were not committed by its agents. The State indicated that although there was a violation of the right to life of Jorge Darwin García committed by a citizen who was not acting with the support or authorization of the government

authorities or in a public capacity, the Ecuadorian judicial system redressed the violation when it punished the perpetrator.

26. It further alleged that the petitioner is appealing to the Commission to re-examine the domestic court proceedings to determine whether there were factual or legal errors committed in its opinion. Here it pointed out that the Commission may not act as a higher court or as a “court of fourth recourse” and review the decisions issued by domestic courts in observance of due process.

27. On this point, it indicated that the Imbabura Criminal Court sentenced Segunda de la Cruz to six years in prison, and stipulated that he would serve his sentence in the Social Rehabilitation Center of the city of Ibarra. The State also indicated that Segunda de la Cruz filed an appeal with the Supreme Court, which denied it on January 28, 1998, as well as an appeal for review, which was filed with the Supreme Court on February 25, 1998. The Commission notes that the State did not provide information as to whether a decision on that appeal had been handed down. The State reported that the Director of Rehabilitation Center No. 4 in Quito reduced the sentence of Segunda de la Cruz by 480 days, and so he finished serving his time on May 12, 1998, and has been free since May 21, 1998.

28. Furthermore, the State alleged the exception of failure to exhaust domestic remedies, in contending that the petition was inadmissible. It pointed out that when the petition was filed with the IACHR, the Ibarra courts had not yet handed down their decision, and so the Commission should wait until that proceeding was completed.

29. As regards the violation of the right to life, the State claimed that it is only in highly exceptional cases that a State may be held responsible for violation of this right for the sole reason that it failed to respond with due diligence. According to the State, justification for proceeding with a declaration of responsibility should in principle be based on the fact that the participation of State agents could not be clarified because the State allowed obstruction of justice.

30. The State maintained that the information provided shows that Ecuador made every effort to clarify the facts. More specifically, it indicated that it had responded promptly to the crime committed, detained the suspect, and ultimately demonstrated his guilt. It contended that there was a serious, full, and impartial investigation to prevent this crime from going unpunished, and the truth was established regarding the way in which the events occurred. It added that it had complied with its obligation to investigate and punish a violation committed in its territory by a person who, although a member of the National Police, was not at the time acting in the official capacity of his functions.

31. With regard to the violation of a reasonable period of time, the State argued that the following factors should be taken into account: i) the complexity of the case; ii) the conduct of the injured party in terms of his cooperation during the proceedings; iii) the way in which the preliminary proceeding was handled; and iv) the action of the judicial authorities. In the case of the first factor, the State is of the view that in any investigation, and especially those that involve a determination of the responsibility of persons accused of committing crimes against life, there is a special degree of complexity that requires the most detailed analysis, to the point that there is absolute certainty that a violation was committed and that the persons accused are responsible for it. For this reason, the State is of the opinion that the delay of four and a half years is justifiable in view of the complexity of the case in question.

32. As regards the second element, it maintained that “the interested parties never cooperated with the investigations conducted by the State agents, partly due to the delay in the proceedings on the part of the accused, and partly due to a lack of a proactive attitude on the part of the injured parties.” As for the third factor, the State indicated that the European Court of Human Rights had opined that “a temporary obstruction in the work of a court does not implicate the responsibility of the affected State” and that said Court had determined that the right to a reasonable period of time was violated in cases in which the proceedings were prolonged over more than ten years, which is not the situation in the present case.

33. Finally, the State considered that the periods established in domestic legislation could not be regarded as “the last word.” It stated that although the proceedings lasted for a little over four years and did not comply with the legally established time periods, that said duration was not *per se* a violation of Article 8 of the Convention, since there were various factors that caused that delay, in particular, the fact that the accused persons availed themselves of the remedies available in domestic legislation.

#### **IV. ANALYSIS ON ADMISSIBILITY**

##### **A. Jurisdiction of the Commission *ratione temporis*, *ratione personae*, *ratione materiae* y *ratione loci***

34. The petitioner is authorized by Article 44 of the Convention to file petitions. The alleged victims are natural persons under the jurisdiction of the State of Ecuador as of the date of the alleged events. For its part, Ecuador ratified the Convention on December 28, 1977. Consequently, the IACHR has jurisdiction *ratione personae* to examine the petition.

35. The Commission has jurisdiction *ratione loci* to examine the petition, because it alleges violations of rights protected by the Convention that are said to have occurred within the territory of a state party to that instrument. Moreover, the Commission has jurisdiction *ratione materiae* because the violation of rights protected by the American Convention is alleged in the petition. Finally, the IACHR has jurisdiction *ratione temporis*, since the obligations derived from the American Convention were already in effect for the State on the date the acts are said to have occurred.

##### **B. Exhaustion of domestic remedies**

36. Article 46.1.a) of the American Convention establishes that in order for a petition filed with the IACHR to be admissible pursuant to Article 44 of the Convention, remedies under domestic law must have been pursued and exhausted in accordance with generally recognized principles of international law. The purpose of this requirement is to permit the national authorities to be informed of the alleged violation of a protected right, and, if appropriate, to have the opportunity to resolve the matter before it is put before an international entity.

37. The State alleged that domestic remedies were not exhausted in this case, since at the time the petition was filed, the relevant case was still pending in the courts, and so the Commission should wait until proceedings are concluded. On the other hand, the petitioner stated that at the time the petition was lodged, one and a half years after the acts in question occurred, the lower court had still not handed down its judgment. Notwithstanding the foregoing, the petitioner further alleged that, the criminal proceedings lasted nearly four and a half years, and that the appeal for review [*recurso de revisión*] has not been settled. This constitutes an unreasonable delay, and so the exception for an unwarranted delay established in Article 46.2.c) would apply.

38. As the Commission has pointed out, in analyzing compliance with the requirement of exhaustion of domestic remedies, it must determine the adequate remedy to be exhausted depending on the circumstances of the case, that being understood as the one that would solve the violated legal situation.<sup>1</sup> In cases involving alleged arbitrary deprivation of life, as well as violations of one’s physical integrity, the adequate recourse is an investigation and criminal proceeding officially initiated and expedited by the State, to identify the responsible parties and impose the appropriate punishment.<sup>2</sup>

39. The Commission observes that from the time the petition was lodged, internal procedures triggered by the events evolved. Thus, the domestic process began on September 15, 1993, with the investigation opened by the Imbabura Police Station. The petition was filed on November 9, 1994, and, while

<sup>1</sup> IACHR, Report No. 51/08, Petition 299-07, Admissibility, Robert Ignacio Díaz Loreto et al, Venezuela, July 24, 2008; and Report No. 23/07, Petition 435-2006, Admissibility, Eduardo José Landaeta Mejías et al, Venezuela, March 9, 2007.

<sup>2</sup> IACHR, Report No. 23/07, Petition 435-2006, Admissibility, Eduardo José Landaeta Mejías et al, Venezuela, March 9, 2007, para. 43; and Report No. 15/06, Petition 618-01, Admissibility, Maria Emilia González, Paula Micaela González and María Verónica Villar, Argentina, March 2, 2006, para. 34.



the IACHR was processing the case, the domestic criminal proceedings were concluded in a final decision handed down on January 28, 1998 by the Supreme Court, in response to the appeal for annulment [*recurso de casación*]. In situations in which there is an evolution of the facts initially presented at domestic level which entails a change in compliance or noncompliance with admissibility requirements, the Commission has maintained that they should be analyzed on the basis of the situation in effect at the time admissibility is decided.<sup>3</sup>

40. With regard to the appeal for review [*recurso de revision*] filed by the convicted person which, according to information from the parties, has not been decided to date, the Commission considers that said appeal is an extraordinary remedy, in that it only applies when the judgment is already confirmed. The IACHR is of the view that in the circumstances of this case, the exhaustion of ordinary remedies fulfills the requirements of the American Convention.

41. Based on the aforesaid considerations, the Commission notes that on the date of this report, the criminal process is definitively closed in the domestic jurisdiction, following the Supreme Court decision on January 28, 1998 in response to the *recurso de casación*. Thus, the IACHR considers that it is unnecessary to decide on the application of an unwarranted delay initially alleged by the petitioner, and declares that as of this date, domestic remedies are definitively exhausted in compliance with Article 46.1.a of the American Convention.

### **C. Deadline for filing**

42. Pursuant to the provisions of Article 46.1.b) of the Convention, in order for a petition to be admitted, it must be lodged within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment issued by the domestic courts.

43. The Commission established in the previous section that domestic remedies were exhausted with the final judgment of January 28, 1998 issued by the Supreme Court. Compliance with the requirement of exhaustion of domestic remedies occurred during procedures on the admissibility and merits of this case. In these circumstances, the Commission has always held that compliance with the required term for filing the petition is intrinsically linked to exhaustion of domestic remedies, and therefore it is considered as in compliance.<sup>4</sup>

### **D. Duplication of international proceedings and *cosa juzgada***

44. Article 46.1.c) of the Convention stipulates that admission of a petition is subject to the requirement that the subject “is not pending in another international proceeding for settlement.” Article 47.d) of the Convention stipulates that the Commission shall consider a petition inadmissible if it is substantially the same as one previously studied by the Commission or by another international organization. The parties have not indicated that any of these circumstances apply, nor can they be deduced from the case records.

### **E. Colorable claim**

45. For purposes of admissibility, the Commission must decide if the petition states facts that tend to establish a violation, as stipulated in Article 47.b) of the American Convention, and if the petition is “manifestly groundless” or “obviously out of order,” in accordance with subparagraph c) of that Article. The standard for assessing these extremes is different from the one used to decide on the merits of a petition. The Commission must conduct a *prima facie* evaluation to determine whether the petition provides grounds for the apparent or potential violation of a right guaranteed by the Convention, and not to establish the existence of a violation. This examination consists of a summary analysis and does not imply any prejudice or advance opinion on the merits.

<sup>3</sup> IACHR, Report No. 2/08, Petition 506-05, Admissibility, José Rodríguez Dañín, Bolivia, March 6, 2008, para. 56; and Report No. 25/04, Case 12.361, Admissibility, Ana Victoria Sánchez Villalobos et al, Costa Rica, March 11, 2004, para. 45.

<sup>4</sup> IACHR, Report No. 8/10, Case 12.374, Admissibility, Jorge Enrique Patiño Palacios et al, Paraguay, March 16, 2010, para. 31; and Report No. 20/05, Petition 716/00, Admissibility, Rafael Correa Díaz, Peru, February 25, 2005, para. 34.



46. Moreover, neither the American Convention nor the IACHR Rules of Procedure require petitioners to identify the specific rights allegedly violated by the State when they submit the matter to the Commission, although petitioners may do so. However, it is the responsibility of the Commission, based on the jurisprudence of the system, to determine in its admissibility report which provisions of the relevant inter-American instruments are applicable and could establish a violation if there is sufficient evidence to prove the alleged facts.

47. The State alleged that the Commission is not a higher court for analyzing the errors of fact or of law that domestic judicial authorities might have made within their sphere of competence and in compliance with the guarantees of due process. It argued that in response to the homicide of Jorge Darwin and the injuries of his brother Franklin, it adopted the necessary measures to identify the responsible party, who was convicted and sentenced to six years in prison.

48. The Commission recalls that according to the consolidated jurisprudence of the organs of the inter-American human rights system, “clarification as to whether the State violated its international obligations by virtue of the proceedings of its judicial organs could lead “the Inter-American Commission and Court to examine the domestic proceedings in question to determine their compatibility with the American Convention, which could also include eventual decisions of the high courts.”<sup>5</sup>

49. In that context, the Commission points out that the purpose of this petition is not to review domestic decisions, but to determine whether the alleged acts and omissions of the different State authorities, including police officers and officials in charge of the investigation and criminal proceeding, implicated the international responsibility of the State of Ecuador.

50. In this regard, the Commission observes that facts described by the petitioners could represent violations of the rights to life, humane treatment, fair trial and judicial protection established in Articles 4.1, 5.1. 8.1 and 25.1 of the Convention, in conjunction with the obligations established in Articles 1.1 and 2 of that instrument.

## **V. ANALYSIS OF THE MERITS**

### **A. Proven facts**

#### **1. Regarding Jorge Darwin García and his family**

51. At the time of the events, Jorge Darwin García was 31 years of age.<sup>6</sup> He was an Afrodescendent and worked as a professional driver for the “Otavalo” Transportation Cooperative.<sup>7</sup> His brother, Franklin Plutarco García, was 20 years old. The case records include the names of the following family members of the Darwin García brothers: Luis Enrique García (father); Olga María Espinoza (mother); Elside María, Víctor Enrique, Flaiter Wladimir, Fabio Tarquino, Nelly Beatriz, Miriam Judith y Aida Marina García Espinoza (brothers and sisters); and, Darwin Wladimir and Jhonny Sebastián García Anangono (sons of Jorge).

<sup>5</sup> Inter-American Court, *Case of Gomes Lund et al (Guerrilha do Araguaia) Vs. Brazil*. Preliminary objections, Merits, Reparations, and Costs. Judgment of November 24, 2010, Series C No. 219, para. 49.

<sup>6</sup> Annex 1. Autopsy Report of September 12, 1993. Annexed to the petitioner’s initial petition.

<sup>7</sup> Annex 2. Certification of the “Otavalo” Transportation Cooperative, November 16, 1993. Annexed to the petitioner’s initial petition.

## 2. Regarding the death of Jorge Darwin García and the injuries of Franklin Plutarco

52. On September 11, 1993, there was a street party and dance in the city of Otavalo organized by the Otavalo Transportation Cooperative.<sup>8</sup> Jorge Darwin García, his brother Franklin Plutarco García, and other friends of theirs attended that party.<sup>9</sup>

53. At approximately 2:40 a.m. on September 12, 1993, the following three persons approached the group which included the García brothers: i) Segundo Néstor de la Cruz, a police officer in the Special Investigations Unit; ii) his brother José de la Cruz; and, iii) police officer Edwin Guzmán.<sup>10</sup>

54. Mr. Franklin Plutarco contended that Segundo de la Cruz, who appeared to be inebriated, pointed his gun at one of their friends.<sup>11</sup> He stated that Segundo de la Cruz rebuked them for allegedly having made fun of him.<sup>12</sup> He further reported that his brother, Jorge Darwin García, protested to Mr. Segundo de la Cruz who then shot him in the head.<sup>13</sup> He pointed out that he then tried to stop Mr. Cruz, who fired a couple of shots at him.<sup>14</sup>

55. According to the testimony of their friends:

(...) at one point we started laughing at what we were saying to each other, but all of a sudden some other persons showed up, including the one we now know as Segundo Néstor de la Cruz Chicaiza who to our surprise took a revolver he had out of his belt and put it to the right temple of Mesías Espinoza, saying that he was a police officer and why were we making fun of him; Jorge García immediately protested that if he were a police officer, he should have good manners; Segundo Néstor de la Cruz Chicaiza reacted to this by looking at Jorge García and shooting him in the left temple. He immediately fell to the ground, whereupon his brother Franklin García made a move to hit [*darle un trompón*] Segundo Néstor de la Cruz Chicaiza, who shot him twice, once in the chest and the other in the left hand, after which the two policemen tried to flee while threatening and shooting, so that it was impossible to catch them.<sup>15</sup>

56. As a result of the shots fired by Segundo de la Cruz using his official firearm,<sup>16</sup> Jorge Darwin García received a gunshot wound to the left side of his head.<sup>17</sup> Mr. Darwin was transferred to Quito and died en route.<sup>18</sup> His body was deposited at the Morgue of San Luis de Otavalo Hospital.<sup>19</sup> According to the autopsy report of September 12, 1993, the cause of the death of Jorge García was “a gunshot wound to the head, intracranial hemorrhage, and cardiorespiratory failure.”<sup>20</sup>

<sup>8</sup> Annex 3, Brief of the civil and criminal complaint lodged by Franklin Plutarco García Espinosa, November 5, 1993. Annexed to petitioner’s brief of August 3, 1995.

<sup>9</sup> Annex 3, Brief of the civil and criminal complaint lodged by Franklin Plutarco García Espinosa, November 5, 1993. Annexed to petitioner’s brief of August 3, 1995.

<sup>10</sup> Annex 4, Judgment of the Imbabura Criminal Court, September 3, 1995. Annexed to petitioner’s brief of June 11, 1999.

<sup>11</sup> Annex 3, Brief of the civil and criminal complaint lodged by Franklin Plutarco García Espinosa, November 5, 1993. Annexed to petitioner’s brief of August 3, 1995.

<sup>12</sup> Annex 3, Brief of the civil and criminal complaint lodged by Franklin Plutarco García Espinosa, November 5, 1993. Annexed to petitioner’s brief of August 3, 1995.

<sup>13</sup> Annex 3, Brief of the civil and criminal complaint lodged by Franklin Plutarco García Espinosa, November 5, 1993. Annexed to petitioner’s brief of August 3, 1995.

<sup>14</sup> Annex 3, Brief of the civil and criminal complaint lodged by Franklin Plutarco García Espinosa, November 5, 1993. Annexed to petitioner’s brief of August 3, 1995.

<sup>15</sup> Annex 4, Judgment of the Imbabura Criminal Court, September 3, 1995. Annexed to petitioner’s brief of June 11, 1999.

<sup>16</sup> Annex 4, Judgment of the Imbabura Criminal Court, September 3, 1995. Annexed to petitioner’s brief of June 11, 1999.

<sup>17</sup> Annex 5, Judgment of the Second Chamber of the Superior Court of Ibarra, August 29, 1995. Annexed to petitioner’s brief of March 21, 1996.

<sup>18</sup> Annex 5, Judgment of the Second Chamber of the Superior Court of Ibarra, August 29, 1995. Annexed to petitioner’s brief of March 21, 1996.

<sup>19</sup> Annex 5, Judgment of the Second Chamber of the Superior Court of Ibarra, August 29, 1995. Annexed to petitioner’s brief of March 21, 1996.

<sup>20</sup> Annex 1, Autopsy Report, September 12, 1993, annexed to the initial brief of the petitioner.

57. As for Franklin Plutarco García, who was shot in the chest and in the right hand, he was taken to San Vicente de Paul Hospital in Ibarra.<sup>21</sup> Franklin spent ten days recovering in the hospital.<sup>22</sup>

58. On the same day, September 12, 1993, Segundo de la Cruz went to his police division and told Lieutenant Iván Velasco that “he had been assaulted by a gang of blacks and had to use his gun,” whereupon he was detained.<sup>23</sup>

### 3. Domestic proceedings related to the death of Jorge Darwin García

59. The Commission does not have a copy of all of the case records of the domestic proceedings linked to the facts of this case. However, the parties agree on the information provided regarding both the police investigation and the criminal proceeding initiated in relation to the facts; therefore, that information will be used to vouch for the proven facts.

#### 3.1. Police investigation

60. On September 15, 1993, the Imbabura Police Station opened an investigation into the death of Jorge Darwin García and the wounding of Franklin Plutarco García.<sup>24</sup> During that investigation, the police took statements from Segundo Néstor de la Cruz Chicaiza,<sup>25</sup> Edwin Ramiro Guzmán Carrera,<sup>26</sup> and Franklin Plutarco García.<sup>27</sup>

61. Moreover, the Police: i) received the regulation firearms of police officers Chicaiza and Guzmán; ii) attached the hospital records of Franklin Plutarco García and the autopsy report of Jorge Darwin García; iii) took samples and performed the paraffin test on police officers Chicaiza and Guzmán;<sup>28</sup> and, iv) performed a ballistics analysis of the bullets extracted from the body of Jorge Darwin García<sup>29</sup> and a ballistics test of the regulation firearms.<sup>30</sup>

62. Segundo Néstor de la Cruz Chicaiza, 29 years of age, stated that he was a police officer in the Special Investigations Unit of Imbabura Police Station No. 12.<sup>31</sup> He maintained that his superior transferred him to the city of Otavalo, where he tried to get involved with a group of indigenous leaders to “gather information on the indigenous movement.”<sup>32</sup> He indicated that at around 11:00 pm on September 11, 1993, he was meeting with a group of the main indigenous leaders, whom he remained with for an hour, helping himself

<sup>21</sup> Annex 6, Judgment of the Second Chamber of the Superior Court of Imbarra, August 29, 1995. Annexed to petitioner’s brief of March 21, 19986. Annex, Police Report of October 1, 1993. Annexed to petitioner’s brief of November 22, 1995.

<sup>22</sup> Annex 4, Judgment of the Imbabura Criminal Court, September 3, 1995. Annexed to petitioner’s brief of June 11, 1999.

<sup>23</sup> Annex 7, Prosecutor’s Charged , Third Criminal Court of Imbabura, September 1, 1994. Annexed to petitioner’s brief received on November 22, 1995.

<sup>24</sup> Annex 7, Prosecutor’s Charges, Third Criminal Court of de Imbabura, September 1, 1994. Annexed to petitioner’s brief received on November 22, 1995.

<sup>25</sup> Annex 8, Statement of Segundo Néstor de la Cruz Chicaiza to the National Directorate of Police Investigations of Otavalo, September 17, 1993. Annex to the petitioner’s initial petition.

<sup>26</sup> Annex 9, Statement of Edwin Ramiro Guzman Carrera to the National Directorate of Police Investigations of Otavalo, September 17, 1993. Annex to petitioner’s brief of November 22, 1995.

<sup>27</sup> Annex 10, Statement of Franklin Plutarco García Espinosa of September 17, 1993. Annex to petitioner’s brief of November 22, 1995.

<sup>28</sup> Annex 11, Official Communication N° 600-LC-PN, Central Laboratories and Expert Appraisals, Examination of paraffin gloves and ballistics analysis of September 29, 1993. Annex to petitioner’s brief of November 22, 1995. According to this Report, the paraffin text on Néstor de la Cruz Chicaiza and Edwin Guzman Carrera was negative.

<sup>29</sup> Annex 12, Official Communication N° 600-LC-PN, Central Laboratories and Expert Appraisals, Examination of the bullets, September 29, 1993. Annex to petitioner’s brief of November 22, 1995.

<sup>30</sup> Annex 13, Police Report of October 1, 1993. Annex to petitioner’s brief of November 22, 1995. Annex, Official Communication N° 600-LC-PN, Central Laboratories and Expert Appraisals, Examination of paraffin gloves and ballistics analysis of September 29, 1993. Annex to petitioner’s brief of November 22, 1995. According to this Report, the revolvers had been fired, but it was impossible to determine the exact time the last shot was fired.

<sup>31</sup> Annex 8, Statement of Segundo Néstor de la Cruz Chicaiza to the National Directorate of Police Investigations of Otavalo, September 17, 1993. Annex to petitioner’s initial brief.

<sup>32</sup> Annex 8, Statement of Segundo Néstor de la Cruz Chicaiza to the National Directorate of Police Investigations of Otavalo, September 17, 1993. Annex to petitioner’s initial brief.

*“hervidos”* [a type of stew].<sup>33</sup> He claimed that afterwards, he left with his brother, José Ignacio de la Cruz Chicaiza, and police officer Edwin Ramiro Guzmán, and they went to where the Cooperative was having its street party and dance.<sup>34</sup> In his statement, he indicated as follows:

(...) before taking Bolívar street, we were surprised by a group of colored people numbering about six or seven persons, I received a blow to the back of my neck, losing my balance and falling to the ground, but when recovered I could see that my companion was also on the ground, and then these persons proceeded to search his entire body, at the same time punching him in the face, until he lost consciousness, but later he remembered when he was in the home of the sister of his companion, Ramiro Guzmán who was with him. (...) [T]hat night he was carrying a Smith Wesson 38-caliber revolver, which he was given as security in the performance of his duties as a police officer, and this revolver might have been grabbed from him by the colored people, as it was recovered later by his companion Ramiro Guzmán.<sup>35</sup>

63. For his part, police officer Edwin Ramiro Guzmán stated as follows:

Since it was already late and I had to go to González Suárez, we went to find the car, but our way was blocked by a group of black citizens who were at the street party, including the one who is now deceased, who first hit him knocking him to the ground, but later reacted and saw that my companion Segundo Néstor de la Cruz Chicaiza was bleeding heavily.<sup>36</sup>

64. On October 1, 1995, the police issued a report concluding that it could not establish motives for “the discussion and confrontation between the two groups.”<sup>37</sup> It indicated that, nevertheless, “the possibility that there could have been a retaliation of sorts against members of the police force, since they were presumably recognized as such, could not be ruled out.”<sup>38</sup>

65. The report concluded that the ballistics analysis of the regulation arms of the police officers showed that “the two copper fragments were part of the 38 caliber projectile units and that they were fired from Smith Wesson revolver No. J-334461, supplied to Police Officer [Segundo] Néstor de la Cruz Chicaiza.”<sup>39</sup> In this regard, it indicated that “presumably there was a third person who took advantage of the confusion and commotion of people and who took the revolver and shot it, causing the death of citizen Jorge Darwin García, and whose identity is still unknown.”<sup>40</sup> The report determined that the location of other witnesses to the incident was pending.<sup>41</sup>

66. According to the instructions of the prosecutor for the Third Criminal Court of Imbabura, Otavalo, the case was sent to a regular criminal court.<sup>42</sup> This was due to the fact that it was established that the two police officers charged, although active members of the National Police, were on leave at the time the incident occurred.<sup>43</sup>

<sup>33</sup> Annex 8. Statement of Segundo Néstor de la Cruz Chicaiza to the National Directorate of Police Investigations of Otavalo, September 17, 1993. Annex to petitioner’s initial brief.

<sup>34</sup> Annex 4. Judgment of the Imbabura Criminal Court, September 3, 1995. Annexed to petitioner’s brief of June 11, 1999.

<sup>35</sup> Annex 4. Judgment of the Imbabura Criminal Court, September 3, 1995. Annexed to petitioner’s brief of June 11, 1999.

<sup>36</sup> Annex 4. Judgment of the Imbabura Criminal Court, September 3, 1995. Annexed to petitioner’s brief of June 11, 1999.

<sup>37</sup> Annex 13. Police report of October 1, 1993. Annex to petitioner’s brief of November 22, 1995.

<sup>38</sup> Annex 13. Police report of October 1, 1993. Annex to petitioner’s brief of November 22, 1995.

<sup>39</sup> Annex 13. Police report of October 1, 1993. Annex to petitioner’s brief of November 22, 1995.

<sup>40</sup> Annex 13. Police report of October 1, 1993. Annex to petitioner’s brief of November 22, 1995.

<sup>41</sup> Annex 13. Police report of October 1, 1993. Annex to petitioner’s brief of November 22, 1995.

<sup>42</sup> Annex 7. Prosecutor’s Charges presented to the Third Criminal Court of Imbabura on September 1, 1994. Annex to the petitioner’s brief received on November 22, 1995.

<sup>43</sup> Annex 7. Prosecutor’s Charges presented to the Third Criminal Court of Imbabura on September 1, 1994. Annex to the petitioner’s brief received on November 22, 1995.

### 3.2. Criminal proceeding 208-93

67. The criminal proceeding for the murder of Jorge Darwin García took place at the Third Criminal Court of Imbabura, Otavalo. On October 22, 1993, the prosecutor in charge accused Segundo Néstor de la Cruz Chicaiza, Edwin Ramiro Guzmán Carrera, and José Ignacio de la Cruz Chicaiza of the murder of Jorge Darwin and the injuries to Franklin Plutarco.<sup>44</sup> He requested the temporary detention of the first two.<sup>45</sup> On November 22, 1993, Franklin Plutarco García filed a civil and criminal complaint [*escrito de constitución de querrela civil y penal*].<sup>46</sup>

68. On July 1, 1994, petitioner requested the National Attorney General to “do whatever he could to supervise the case and demonstrate that the courts operate independently (...) in view of the phenomenon of impunity that shields the commitment of such serious crimes, is detrimental to justice.”<sup>47</sup>

69. On September 1, 1994, the prosecutor for the case charged Segundo Néstor de la Cruz Chicaiza with the crime of homicide.<sup>48</sup> In his report, he indicated that there was a confrontation between the two police officers accused: “Guzmán complained to his colleague de la Cruz and asked why he was trying to involve him in this incident (...) and accused de la Cruz of being the one who had murdered and wounded the García brothers; the latter apologized to Guzmán for trying to involve him and further said “if I am going to go down, I will go down alone, without involving anyone else.”<sup>49</sup> The prosecutor maintained that Mr. de la Cruz indicated that “he was trying to settle with the injured parties, by offering a million and a half sucres.”<sup>50</sup>

70. Thus, the prosecutor decided not to indict Edwin Ramiro Guzmán Carrera and José Ignacio de la Cruz Chicaiza “due to insufficient evidence.”<sup>51</sup> He maintained that Mr. Guzmán “could not be charged as an accomplice because it was not proven that he had collaborated directly or indirectly in the execution of the crimes.”<sup>52</sup> He added that neither was there evidence that José Ignacio de la Cruz “was responsible as an accomplice or an abettor.”<sup>53</sup>

71. On September 16, 1994, the forensic medical examiner designated by the Judge of the Third Criminal Court of Imbabura examined the medical and legal autopsy report for Jorge Darwin García and the ballistics reports done on this case.<sup>54</sup> As regards the autopsy report, the medical expert identified the following irregularities: i) the opening of the entry of a bullet from a firearm is measured in millimeters and not in centimeters, because they are more precise, and because they can be related to the “diameter” of the bullet measured at its base; ii) there was no description of tattooing or a “Fisch halo” around the entry hole; iii) in the internal examination, the path of the bullet is not described; iv) the cause of the fracture of the left arm is not

<sup>44</sup> Annex 7. Prosecutor’s Charges presented to the Third Criminal Court of Imbabura on September 1, 1994. Annex to the petitioner’s brief received on November 22, 1995. Annexed to petitioner’s brief received on November 22, 1995.

<sup>45</sup> Annex 7. Prosecutor’s Charges presented to the Third Criminal Court of Imbabura on September 1, 1994. Annex to the petitioner’s brief received on November 22, 1995.

<sup>46</sup> Annex 3. Brief of civil and criminal complaint of Franklin Plutarco García Espinosa of November 5, 1993. Annex to petitioner’s brief of August 3, 1995.

<sup>47</sup> Annex 14. CEDHU brief to the National Attorney General on June 1, 1994. Annex to the petitioner’s initial brief.

<sup>48</sup> Annex 7. Prosecutor’s Charges presented to the Third Criminal Court of Imbabura on September 1, 1994. Annex to the petitioner’s brief received on November 22, 1995.

<sup>49</sup> Annex 7. Prosecutor’s Charges presented to the Third Criminal Court of Imbabura on September 1, 1994. Annex to the petitioner’s brief received on November 22, 1995.

<sup>50</sup> Annex 7. Prosecutor’s Charges presented to the Third Criminal Court of Imbabura on September 1, 1994. Annex to the petitioner’s brief received on November 22, 1995.

<sup>51</sup> Annex 7. Prosecutor’s Charges presented to the Third Criminal Court of Imbabura on September 1, 1994. Annex to the petitioner’s brief received on November 22, 1995.

<sup>52</sup> Annex 7. Prosecutor’s Charges presented to the Third Criminal Court of Imbabura on September 1, 1994. Annex to the petitioner’s brief received on November 22, 1995.

<sup>53</sup> Annex 7. Prosecutor’s Charges presented to the Third Criminal Court of Imbabura on September 1, 1994. Annex to the petitioner’s brief received on November 22, 1995.

<sup>54</sup> Annex 15. Communication of September 16, 1994 to the Judge of the Third Criminal Court. Annex to petitioner’s brief received on November 22, 1995.

indicated; v) the entry or exit hole of the bullet to the head is not indicated; and vi) in the external examination, the bullet holes are described, but they are not described at the level of the bone.<sup>55</sup>

72. On October 20, 1994, the Judge of the Third Criminal Court of Imbabura issued the order to begin the trial of Segundo Néstor de la Cruz Chicaiza, as the alleged perpetrator, and Edwin Ramiro Guzmán Carrera, as the alleged accomplice, of the crime of homicide.<sup>56</sup> At the same time, he temporarily dismissed charges against José Ignacio de la Cruz Chicaiza<sup>57</sup>.

73. On August 29, 1995, the Second Chamber of the Superior Court of Ibarra upheld the dismissal of criminal charges against José de la Cruz and the order to begin trial, but only in the case of Segundo Néstor de la Cruz Chicaiza, since there did not appear to be clear evidence of the liability of Edwin Ramiro Guzmán.<sup>58</sup>

74. On September 3, 1995, the Imbabura Criminal Court ruled that Segundo Néstor de la Cruz Chicaiza was responsible for the homicide of Jorge Darwin, pursuant to Article 449 of the Penal Code, and of the attempted homicide of Franklin Plutarco, in accordance with Articles 16, 49, and 449 of the Penal Code.<sup>59</sup> The Court maintained that according to the reports prepared, the shots fired at Jorge Darwin were fire directly in front of him and from a short distance; thus he rejected the statements by Mr. de la Cruz to the effect that he had been hit and was lying on the ground.<sup>60</sup>

75. The Court concluded that Mr. de la Cruz “is responsible for the crime described and punishable according to the terms of Article 449 of the Penal Code, which is the more serious crime, and since there are grounds for extenuating circumstances (Article 29 (6 and 7) of the Penal Code<sup>61</sup>), in accordance with the third paragraph of Art. 72 of that Code, the modified sentence of SIX YEARS of prison is imposed, to be served at García Moreno Prison in the city of Quito, with the deduction of time already served for this case.”<sup>62</sup>

76. The Court stated that the following evidence was considered in arriving at its judgment: the identification of the corpse, the autopsy report, the additional information provided by the expert witness in the case; the death certificate of Jorge Darwin García; the hospital records of Franklin Plutarco García; the medical and legal examination of Néstor de la Cruz Chicaiza; the laboratory ballistics test; the declaration of Edwin Ramiro Guzmán Carrera; the evidence gathered during the police investigation; the signed statement of Néstor de la Cruz Chicaiza; and, the testimony of Segundo Mesías Espinoza Méndez, Edgar Silvio Torres Carcelen, Segundo Eliecer Pijal Chicaiza, and Cesar Manuel Farinango Caiza.<sup>63</sup> It mentioned in particular the paraffin test, which was negative, possibly due to the fact that it was done 17 days after the events.<sup>64</sup>

77. In addition, the Court analyzed the testimony of José Vicente Ruiz Teran, who maintained “that (...) on the day of the events, he heard Segundo Néstor de la Cruz Chicaiza make the following comment: ‘now I have killed two, I have used my revolver.’”<sup>65</sup> The Court also examined the testimony of María Mónica Carmela Nogales Robes, who “indicated that she heard Segundo Néstor de la Cruz Chicaiza say that he had been attacked

<sup>55</sup> Annex 15. Communication of September 16, 1994 to the Judge of the Third Criminal Court. Annex to petitioner’s brief received on November 22, 1995.

<sup>56</sup> Annex 4. Judgment of the Imbabura Criminal Court of September 3, 1996. Annex to petitioner’s brief of June 11, 1999.

<sup>57</sup> Annex 4. Judgment of the Imbabura Criminal Court of September 3, 1996. Annex to petitioner’s brief of June 11, 1999.

<sup>58</sup> Annex 5. Judgment of the Second Chamber of the Superior Court of Ibarra, August 29, 1995. Annexed to petitioner’s brief of March 21, 1996.

<sup>59</sup> Annex 4. Judgment of the Imbabura Criminal Court of September 3, 1996. Annex to petitioner’s brief of June 11, 1999.

<sup>60</sup> Annex 4. Judgment of the Imbabura Criminal Court of September 3, 1996. Annex to petitioner’s brief of June 11, 1999.

<sup>61</sup> Ecuadorian Penal Code. Supplement 147 of the Official Record, January 22, 1971. Art. 29.- Extenuating circumstances are circumstances which, in reference to the causes of the offense, the physical and intellectual capacity of the perpetrators, and their conduct with respect to the act and its consequences, reduce the gravity of the offense, or the alarm caused to society, or show that the perpetrator poses little or no danger, as in the following cases: [...] 6o.- Exemplary conduct observed on the part of the guilty party subsequent to the offense; 7o.- Prior conduct of the guilty party that clearly shows that he/she is not a dangerous individual; [...]

<sup>62</sup> Annex 4. Judgment of the Imbabura Criminal Court of September 3, 1996. Annex to petitioner’s brief of June 11, 1999.

<sup>63</sup> Annex 4. Judgment of the Imbabura Criminal Court of September 3, 1996. Annex to petitioner’s brief of June 11, 1999.

<sup>64</sup> Annex 4. Judgment of the Imbabura Criminal Court of September 3, 1996. Annex to petitioner’s brief of June 11, 1999.

<sup>65</sup> Annex 4. Judgment of the Imbabura Criminal Court of September 3, 1996. Annex to petitioner’s brief of June 11, 1999.



by some black men and that in self-defense, he had pulled out his revolver and fired it, saying clearly: 'I have just killed two [people].'<sup>66</sup>

78. The Court also considered the information given to the Provincial Police Command in which it appears that Segundo Néstor de la Cruz Chicaiza indicated "that he had used the official firearm, namely, the small Smith Wesson 38 caliber revolver that was supplied to him 'but did not recall if he had hit anybody when he fired it, due to his state of inebriation at the time.'"<sup>67</sup>

79. Moreover, the Court considered that in the confrontation between police officers Edwin Ramiro Guzmán and Segundo Néstor de la Cruz Chicaiza, the latter had apologized, saying "clearly and precisely that he was the only one responsible for the death of Jorge Darwin García Espinoza," and also that "he was trying to make an arrangement with the family of the deceased, and had offered them one million five hundred thousand sucres."<sup>68</sup>

80. Segundo Néstor de la Cruz Chicaiza filed an appeal with the Supreme Court [*recurso de casación*] for reversal of the conviction, which was upheld on January 28, 1998.<sup>69</sup> He also filed an appeal for review, which was granted on February 25, 1998, and which is still pending a decision.<sup>70</sup>

81. According to the information provided by the Director of Rehabilitation Center No. 4 in Quito, he reduced the time served by 480 days in favor of Segundo la Cruz Chicaiza, and so he was released on May 21, 1998.<sup>71</sup>

## **B. Legal analysis**

### **1. The rights to life and humane treatment (Articles 4 and 5 of the American Convention in relation to Article 1.1 thereto)**

82. The right to life is a prerequisite for the enjoyment of all other human rights, and all other rights are meaningless unless it is respected.<sup>72</sup> As the Inter-American Court has held, compliance with the obligations of Article 4 in relation to Article 1.1 of the American Convention not only means that no one shall be arbitrarily deprived of his or her life; it also requires that the States take appropriate measures to protect and preserve the right to life, pursuant to their duty to guarantee the full and free exercise of the rights of all persons under their jurisdiction.<sup>73</sup>

83. With respect to the lethal use of force by law enforcement officers, the Commission has stated that such power must be restricted to times when it has a legitimate purpose, and is necessary and proportionate.<sup>74</sup> This means that if a person dies as a consequence of the use of force by law enforcement authorities without those requirements having been met, that act will amount to an arbitrary deprivation of life.<sup>75</sup> The Court has held that those requirements entail:

i) *Legitimate purpose*: the use of force must be [aimed] at achieving a legitimate purpose. (...)

<sup>66</sup> Annex 4. Judgment of the Imbabura Criminal Court of September 3, 1996. Annex to petitioner's brief of June 11, 1999.

<sup>67</sup> Annex 4. Judgment of the Imbabura Criminal Court of September 3, 1996. Annex to petitioner's brief of June 11, 1999.

<sup>68</sup> Annex 4. Judgment of the Imbabura Criminal Court of September 3, 1996. Annex to petitioner's brief of June 11, 1999.

<sup>69</sup> Information presented by the petitioner and the State.

<sup>70</sup> Information presented by the petitioner and the State.

<sup>71</sup> Annex 16. State's brief of September 20, 2000.

<sup>72</sup> I/A Court H.R., *Case of the "Street Children" (Villagrán-Morales et al.) v. Guatemala*. Merits. Judgment of November 19, 1999. Series C No. 63, para. 144.

<sup>73</sup> I/A Court H.R., *Case of Zambrano Vélez et al. v. Ecuador*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166, para. 80; *Case of the "Street Children" (Villagrán-Morales et al.) v. Guatemala*. Merits. Judgment of November 19, 1999. Series C No. 63, para. 144.

<sup>74</sup> IACHR. *Report on Terrorism and Human Rights*. OEA/Ser.L/V/II.116, doc. 5, para. 88.

<sup>75</sup> IACHR. Report No. 1/96, Case 10.559, Chumbivilcas (Peru). March 1, 1996; IACHR. Report No. 34/00, Case 11.291, Carandiru (Brazil). April 13, 2000, paras. 63, 67, 91.



ii) *Absolute necessity*: it is necessary to verify whether other less harmful means exist to safeguard the life and integrity of the person or situation [to be protected], according to the circumstances of the case. The Court has indicated that it cannot be concluded that the requirement of “absolute necessity” to use force against a person has been met when such a person does not represent a direct danger, “even when the failure to use force results in the loss of the opportunity to capture them.” (...)

iii) *Proportionality*: the level of force used must be in accordance with the level of resistance offered, which implies establishing a balance between the situation that the agent is facing and his response, considering the potential harm that could be caused. Thus, agents must apply a standard of differentiated use of force, determining the level of cooperation, resistance, or aggressiveness of the person involved and, on this basis, use tactics of negotiation, control or use of force, as appropriate.<sup>76</sup>

84. In the instant case, the Commission notes that the parties do not dispute the fact that Jorge Darwin García died on the way to the hospital and that Franklin Plutarco García was injured as a result of the shots fired by police officer Segundo de la Cruz on September 12, 1993. These facts were confirmed at the domestic level in the September 3, 1995 conviction of Mr. De la Cruz, which was affirmed on January 28, 1998. The court in that judgment found Mr. De la Cruz criminally responsible, and ruled out the allegation that the shots were fired in lawful self-defense or by a third party.

85. Based on the established facts, the Commission finds that it was clearly demonstrated that the use of deadly force by police officer Segundo de la Cruz was unjustified and disproportionate. Furthermore, the Commission takes into account that, as established *infra*, the investigation was conducted under the jurisdiction of the police; there were several irregularities during the process; the period the domestic courts took to issue a final judgment is not reasonable; and the appeal for review has not been decided to date. Finally, the Commission notes that there is no indication in the information provided by the parties that Mr. García or his relatives have received any compensation for the injuries he sustained, or for the death of his brother Jorge Darwin.

86. Accordingly, the IACHR concludes that the State violated Jorge Darwin García’s rights to life and humane treatment, established in Articles 4.1 and 5.1 of the American Convention, in relation to Article 1.1 thereto. The Commission additionally concludes that the State violated Franklin Plutarco García’s right to humane treatment, set forth in Article 5.1 of the American Convention, in relation to Article 1.1 thereto.

## **2. The rights to a fair trial and to judicial protection with respect to the investigations and proceedings initiated on the death of Jorge Darwin García (Articles 8 and 25 of the American Convention in relation to Articles 1.1 and 2 thereto)**

87. Article 8.1 of the American Convention states as follows:

1. 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.

88. Article 25.1 of the American Convention establishes the following:

1. 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

<sup>76</sup> I/A Court H. R., *Case of Landaeta Mejías Brothers et al. v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 27, 2014. Series C No. 281, para. 134.

though such violation may have been committed by persons acting in the course of their official duties.

89. In a preliminary fashion, the Commission notes the consistent jurisprudence regarding the possible analysis of domestic proceedings by organs of the inter-American system: In the words of the Inter-American Court:

[T]he clarification of alleged violations by a State of its international obligations through its judicial organs may entail a need for [the Commission and the Court] to examine the domestic proceedings in question. In so doing, the domestic proceedings must be considered as a whole, and the function of the international court is to determine whether the proceedings taken as a whole were consistent with international law."<sup>77</sup>

90. Furthermore, the Court has pointed out that:

States parties are required to provide effective judicial remedies to the victims of human rights violations (Article 25), remedies that must be substantiated in accordance with the rules of due legal process (Article 8.1), all as part of the general obligation of these States to guarantee the free and full exercise of the rights recognized by the Convention to all persons under their jurisdiction (Article 1.1).<sup>78</sup>

91. In this way, States have the duty to investigate violations of the human rights recognized in this instrument, such as those alleged in the present case, and to endeavor to reinstate the violated right, if possible, and, as applicable, to provide reparations for the damages resulting from the human rights violations.<sup>79</sup> Moreover, the Commission points out that Articles 8.1 and 25.1 of the American Convention also establish the right of the next-of-kin of victims of these violations to be heard throughout the domestic proceedings and to obtain the truth of the acts that occurred, and, if applicable, adequate punishment of the perpetrators and comprehensive reparations.

92. The jurisprudence of the inter-American system has established that although the obligation to investigate is an obligation of means and not results, it should be regarded by the State as its legal duty, and not as a mere formality doomed from the outset to be fruitless,<sup>80</sup> or as management of individual interests that rely on the procedural initiative of the victims or of their next-of-kin or on private contributions of evidence.<sup>81</sup> In the same way the Commission emphasizes that, regardless if the State issued a guilty verdict against those responsible, the irregularities and omissions produced during the investigation and the unreasonable delay of the process can constitute autonomous violations of the rights to a fair trial and judicial protection.

<sup>77</sup> Inter-American Court, *Case Zambrano Vélez et al Vs. Ecuador*. Merits, Reparations, and Costs. Judgment of July 4, 2007, Series C, No. 166, para. 142; *Case of Lori Berenson Mejía Vs. Peru*. Merits, Reparations, and Costs. Judgment of November 25, 2004, Series C No. 119, para. 133; *Case of Myrna Mack Chang Vs. Guatemala*. Merits, Reparations, and Costs. Judgment of November 25, 2003. Series C, No. 101, para. 200; and, *Case of Juan Humberto Sánchez Vs. Honduras*. Preliminary objections, Merits, Reparations, and Costs, Judgment of June 7, 2003, Series C No. 99, para. 120.

<sup>78</sup> Inter-American Court, *Case Godínez Cruz Vs. Honduras*. Preliminary Objections. Judgment of June 26, 1987, Series C No. 3, para. 93; and *Case of Miguel Castro Castro Prison Vs. Peru*, Judgment of November 25, 2006. Series C No. 160, para. 183.

<sup>79</sup> Inter-American Court, *Case García Prieto et al Vs. El Salvador*. Preliminary Objection, Merits, Reparations and Costs, Judgment of November 20, 2007, Series C No. 168. Para. 99.

<sup>80</sup> Inter-American Court, *Case of Velásquez Rodríguez Vs. Honduras*. Judgment of July 29, 1988. Series C No. 4, para. 177; *Case of Cantoral Huamani y García Santa Cruz Vs. Peru*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of July 10, 2007. Series C No. 167, para. 131; and *Case of Zambrano Vélez et al Vs. Ecuador*. Merits, Reparations, and Costs. Judgment of July 4, 2007. Series C No. 166, para. 120.

<sup>81</sup> Inter-American Court, *Case Velásquez Rodríguez Vs. Honduras*. Judgment of July 29, 1988. Series C No. 4, para. 177; *Case Zambrano Vélez et al Vs. Ecuador*. Merits, Reparations, and Costs. Judgment of July 4, 2007. Series C No. 166, para. 120.

93. In this sense, the investigations by the State must be carried out with due diligence so that inquiries are made using all available means and are directed at determining the truth.<sup>82</sup> The IACHR has had the following to say on this point:

Noncompliance with the obligation to investigate does not occur only because there is no conviction in the case or because, despite efforts made, it is impossible to substantiate the facts. Nevertheless, to establish in a convincing and credible way that this result was not the result of a mechanical execution of certain procedural formalities rather than the State's effective search for the truth, it must demonstrate that it has conducted an immediate, exhaustive, serious, and impartial investigation.<sup>83</sup>

94. As regards cases related to the use of lethal force on the part of state agents, the Court has indicated that "the general prohibition against the arbitrary deprivation of life by State agents would be ineffective if there were no procedures to verify the legality" of said use.<sup>84</sup>

95. Thus, the general obligation to guarantee rights "is particularly important in cases involving the use of lethal force."<sup>85</sup> The Court has commented as follows:

Once a State learns that its law enforcement agents have used firearms with lethal consequences, the State is obligated to act promptly on its own initiative to open a serious, independent, impartial, and effective investigation.<sup>86</sup> This obligation is a fundamental and determining factor in protecting the right to life which is cancelled in these situations.<sup>87</sup>

96. Along the same lines, the United Nations Special Rapporteur on Extrajudicial, Summary, and Arbitrary Executions has stated as follows:

Human Rights law on the use of force arises from the understanding of the irreversibility of death, which justifies rigorous safeguards for the right to life, especially with regard to guarantees of due process. A legal proceeding that respects due process guarantees and arrives at a final judgment is an essential requirement, without which the decision by a State and its agents to end a person's life violates the principle of "no one can be deprived of life arbitrarily."<sup>88</sup>

97. In fulfilling the duty to investigate a violation of the right to life with due diligence, States are obligated to act from the very outset with the utmost care and speed.<sup>89</sup> In this regard, both the IACHR and the Inter-American Court have followed the United Nations Manual on the Prevention and Effective Investigation of Extrajudicial, Arbitrary, and Summary Executions, finding that:

State authorities that lead an investigation must, *inter alia*: a) identify the victim; b) recover and preserve evidence related to the death, with a view to aiding in any investigation; c)

<sup>82</sup> Inter-American Court, *Case García Prieto et al Vs. El Salvador*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 20, 2007. Series C No. 168, para. 101.

<sup>83</sup> IACHR, Report N° 55/97, Case 11,137 (Juan Carlos Abella et al), Argentina, para. 412; and Report N° 52/97, Case 11,218 (Arges Sequeira Mangas), Nicaragua, paras. 96 and 97.

<sup>84</sup> Inter-American Court, *Case of Zambrano Vélez et al Vs. Ecuador*. Merits, Reparations, and Costs. Judgment of July 4, 2007. Series C No. 166, para. 88.

<sup>85</sup> Inter-American Court, *Case of Zambrano Vélez et al Vs. Ecuador*. Merits, Reparations, and Costs. Judgment of July 4, 2007. Series C No. 166, para. 88.

<sup>86</sup> Inter-American Court, *Case of Zambrano Vélez et al Vs. Ecuador*. Merit, Reparations, and Costs, Judgment of July 4, 2007, Series C No. 166, para. 88. In a similar sense, also see: ECHR, *Erdogan and Others v. Turkey*, paras. 88-89; *Kakoulli v. Turkey*, paras. 122-123; *Nachova and Others v. Bulgaria*, paras. 111-112.

<sup>87</sup> Inter-American Court, *Case of Zambrano Vélez et al Vs. Ecuador*. Merits, Reparations, and Costs, Judgment of July 4, 2007, Series C No. 166, para. 88.

<sup>88</sup> UN, Provisional report on the global situation regarding extrajudicial, summary, or arbitrary executions, presented by Special Rapporteur Philip Alston, United Nations General Assembly. (Doc. A/61/311), LIX session, September 5, 2006, para. 36.

<sup>89</sup> Inter-American Court, *Case of Zambrano Vélez et al Vs. Ecuador*. Merits, Reparations, and Costs. Judgment of July 4, 2007. Series C No. 166, para. 121.

identify possible witnesses and obtain their statements related to the death under investigation; d) determine the cause, manner, place, and time of death, as well as any procedure or practice that may have provoked it; and e) distinguish between natural death, accidental death, suicide, and homicide. Moreover, an exhaustive investigation of the crime scene must be conducted, autopsies must be performed, and human remains analyzed rigorously by competent professionals using the most appropriate procedures.<sup>90</sup>

98. The Court has also said that authorities must adopt reasonable measures to secure the evidentiary material needed to conduct the investigation.<sup>91</sup> As regards law enforcement officers, the Commission has specifically stated:

(...) procedures should be carried out and resolved by independent authorities; officials or agencies directly or indirectly involved in the facts under investigation should not participate in the pretrial investigation; and, victims should have the opportunity to participate in proceedings.<sup>92</sup>

99. As regards the importance of the action of the authorities who carry out the initial investigative proceedings, the Court has stated that “due diligence and the criteria of independence and impartiality are extended as well to nonjudicial organs that are responsible for investigation prior to judicial proceedings, to determine the circumstances of a death and the existence of sufficient evidence to warrant criminal proceedings. If these requirements are not fulfilled, the State will subsequently not be able to effectively and efficiently exercise its accusatory authority and the courts will not be able to carry out the judicial proceedings required for this type of violation.”<sup>93</sup>

100. Given the facts of this case, the Commission will examine whether in this case the Ecuadorian State undertook a serious and diligent investigation in order to clarify the facts of the death of George Darwin and the injuries to Franklin Plutarch, and if it took place within a reasonable time.

### **2.1. The duty to conduct an independent and impartial investigation with due diligence**

101. In the first place, the Commission points out that, once the events occurred, the investigation was conducted under the jurisdiction of the police and not the ordinary courts. The Commission emphasizes that special jurisdictions, such as the criminal police courts, must be restricted in scope and be used to protect special legal interests linked to the entity itself. Thus, the Inter-American Court had an opportunity to analyze the structure and composition of special tribunals, such as military courts, in the light of the United Nations Basic Principles regarding the Independence of the Judiciary. Some relevant elements are: i) the fact that its members are officers on active duty and are subordinate to their superiors through a chain of command; ii) the fact that their appointment is not made on the basis of their professional competence and ability to perform judicial functions; and iii) the fact that they do not have sufficient guarantees of security of tenure.<sup>94</sup> The Commission points out that these courts, and similarly police courts, lack the independence and impartiality needed to prosecute human rights violations.

102. In the matter at hand, the IACHR is of the opinion that the participation of police officers in investigative and judicial functions implies that the guarantees of independence and impartiality required in cases involving human rights violations were not provided. The Commission notes that virtually all of the evidentiary activities were carried out under the jurisdiction of the police. The IACHR also considers that the steps taken under that jurisdiction were oriented toward the assumption that police officers had been assaulted

<sup>90</sup> Inter-American Court, *Case the Moiwana Community Vs. Surinam*. Judgment of June 15, 2005. Series C No. 124, para. 149; and *Case of Miguel Castro Castro Prison Vs. Peru*, Judgment of November 25, 2006. Series C No. 160, para. 383.

<sup>91</sup> Inter-American Court, *Case of Zambrano Vélez et al Vs. Ecuador*. Merits, Reparations, and Costs. Judgment of July 4, 2007. Series C No. 166, para. 122.

<sup>92</sup> IACHR, Report on Citizen Security and Human Rights, OEA/Ser.L/V/II., Doc. 57, December 31, 2009, para. 163.

<sup>93</sup> Inter-American Court, *Case of Cantoral Huamaní and García Santa Cruz Vs. Peru*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of July 10, 2007. Series C No. 167, para. 166.

<sup>94</sup> Inter-American Court, *Case of Palamara Iribarne Vs. Chile*. Merits, Reparations, and Costs. Judgment of November 22, 2005, Series C, No. 135. Paras. 155 and 156.

and that a third party had fired the official firearm of Segundo Néstor de la Cruz. The Commission further notes that the police investigation itself concluded that the statements of all the witnesses to the event would not be taken. Moreover, the report of the forensic medical expert identified numerous irregularities in the autopsy performed on Jorge Darwin García, as well as a delay in performing the paraffin test on Mr. de la Cruz.

103. Thus, the fact that the primary procedures and measures were conducted under the jurisdiction of the police and failure of the authorities of that jurisdiction to take other important evidence constitutes in and of itself noncompliance with the duty to conduct an independent and impartial investigation with due diligence.

104. Secondly, and with regard to the ordinary jurisdiction, the IACHR notes that there were matters not covered in the investigation that, from the standpoint of the next of kin, did not make it possible to obtain full clarification of what had occurred. For instance, the context and specific circumstances in which the death of Jorge Darwin García and the wounds of Franklin Plutarco García occurred were not determined. More specifically, it was not determined if Segundo Néstor de la Cruz Chicaiza was acting as part of a police operation, if it was a deliberate act of lethal use of force, or if the death occurred in the context of a fight. The Commission further notes that the investigation did not clarify if there were a racial component or motive in the murder, taking into account the fact that the victims were Afrodescendants and the repeated references to “persons of color” in the statements made by Segundo Néstor de la Cruz. Another aspect not examined in the investigation has to do with the absence of any measures related to the alleged state of inebriation of the police officer at the time of the events, or the failure to provide timely assistance to the injured persons. Full clarification of all these circumstances, either as part of the criminal investigation or in the context of administrative or disciplinary investigations could have activated measures beyond a criminal conviction, to ensure an effective rendering of accounts and the nonrepetition of similar acts.

105. By virtue of the foregoing, the Commission concludes that although the party responsible for the death of Jorge Darwin García and the injuries to Franklin Plutarco García was convicted and sentenced to prison by the domestic authorities of Ecuador there were certain shortcomings and irregularities in the domestic proceedings leading up to the conviction that in themselves constitute separate violations of the rights to a fair trial and to judicial protection established in Articles 8.1 and 25.1 of the American Convention, considered in relation to Articles 1.1 and 2 of that instrument, to the detriment of Franklin Plutarco and his next of kin. Determination of a violation of Article 2 of the American Convention is based on domestic legislation which, at the time, permitted part of the domestic proceedings to be conducted under the jurisdiction of the police.

## **2.2. Reasonable time**

106. The IACHR notes that the death of Jorge Darwin García occurred on September 12, 1993 and the police investigation was opened on September 15, 1993. Subsequently, on September 30, 1993, the case was submitted to the Third Criminal Court of Imbabura, which issued a judgment convicting Segundo Néstor de la Cruz on September 3, 1995. That judgment was upheld by the Supreme Court on January 28, 1998. Moreover, Mr. de la Cruz filed an appeal for review of his conviction, which was granted on February 25, 1998. According to the brief submitted by the petitioner in January 2015 and not contested by the State, said appeal has not been decided.

107. The petitioner alleged that the four-year and four-month delay in processing the case constituted an unwarranted delay and violated the right of the victim’s next of kin to have the proceedings concluded in a reasonable period of time, in terms of both the deadlines established in domestic legislation and international standards. For its part, the State held that the time periods established in domestic legislation could not be considered as “written in stone.” It pointed out that cases on crimes against life have a “special degree of complexity,” and contended that the delay of the proceedings was linked to the fact that the accused parties availed themselves of remedies provided by domestic legislation.

108. On this point, Article 8.1 of the American Convention established as one of the elements of due process that courts decide the cases submitted to them within a reasonable time. In this context, a prolonged



delay could constitute, in and of itself, a violation of the right to a fair trial;<sup>95</sup> hence it is the responsibility of the State to explain and provide evidence as to why it required more than a reasonable time to deliver the final judgment in a particular case.<sup>96</sup>

109. On this point, the reasonability of a period of time should be assessed in relation to the total duration of the criminal proceeding.<sup>97</sup> According to the terms of Article 8.1 of the American Convention, the Commission will take into account, in light of the specific circumstances of a case, the elements that organs of the inter-American system have taken into account, i.e.: i) the complexity of the matter; ii) the procedural activity of the interested party; iii) the conduct of the judicial authorities; and iv) how the legal situation was affected by the person involved in the proceeding.<sup>98</sup>

110. As regards the complexity of the case, the Commission considers that the delay in developing the investigation cannot be justified by the complexity of the matter when i) the possible authors were specified; ii) there were witnesses; and iii) there are possible lines of investigation.<sup>99</sup> In any case, in order for an argument of complexity to apply, it is not enough that States invoke the complexity of a matter in general terms, but rather that they link the specific elements of the alleged complexity with specific delays in the investigation.

111. In this regard, the Commission notes that the person allegedly responsible for the death of Jorge Darwin García and the injury of Franklin Plutarco García was identified from the outset, both in the police investigation and in the criminal proceeding. In addition, the witnesses were also identified from the very beginning.

112. With regard to the conduct of the judicial authorities, the Commission points out that virtually all evidence was gathered during the police investigation. Thus, with the exception of the testimony of a few persons, the ordinary courts did not order additional procedures that could have taken more time. In fact, as is seen from the judgment of the Imbabura Criminal Court, the elements taken into account in determining the criminal responsibility of the accused person essentially consisted in the evidence obtained during the police investigation.

113. As for the participation of the interested parties, the Commission notes that the next of kin immediately reported the event. Moreover, Franklin Plutarco García became a private accuser. The petitioner also requested the National Attorney General to oversee the case. Thus the Commission considers that the legal representatives followed through on and furthered the investigation, and that there is no evidence to indicate that they had obstructed the proceeding.

114. In addition, the Commission notes that the accused filed an appeal against the indictment and an appeal against the conviction, yet the parties did not provide any evidence of possible attempts to delay proceedings on their part. In these circumstance, the Commission considers that the fact that it took over a year to issue the order to begin trial, and over a year to issue the conviction, and more than two years to issue the final judgment were not justified by the State in light of the specific characteristics of this case.

<sup>95</sup> Inter-American Court, *Case of García Asto y Ramírez Rojas Vs. Peru*, Judgment of November 25, 2005, Series C No. 137, para. 166; *Case of Gómez Palomino Vs. Peru*, Merits, Reparations, and Costs. Judgment of November 22, 2005, Series C No. 136, para. 85; and *Case of the Moiwana Community Vs. Surinam*. Judgment of June 15, 2005. Series C No. 124, para. 160.

<sup>96</sup> Inter-American Court, *Case of Ricardo Canese Vs. Paraguay*. Judgment of August 31, 2004. Series C No. 111, para. 142.

<sup>97</sup> Inter-American Court, *Case López Álvarez Vs. Honduras*, Judgment of February 1, 2006. Series C No. 141, para. 129; *Case of Acosta Calderón Vs. Ecuador*, Judgment of June 24, 2005, Series C No. 129, para. 104; and, *Case of Tibi Vs. Ecuador*, Judgment of September 7, 2004. Series C No. 114, para. 168. Also see: IACHR, Report No. 77/02, Case 11.506, Merits, Waldemar Gerónimo Pinheiro and José Víctor dos Santos, Paraguay, December 27, 2002, para. 76.

<sup>98</sup> IACHR, Report No. 111/10, Case 12.539, Merits, Sebastián Claus Furlan and family, Argentina, October 21, 2010, para. 100. Inter-American Court, *Case of Massacre of Santo Domingo Vs. Colombia*. Preliminary Objections, Merits, and Reparations, Judgment of November 30, 2012, Series C No. 259, para. 164.

<sup>99</sup> Inter-American Court, *Case Familia Barrios Vs. Venezuela*. Merits, Reparations, and Costs. Sentencia de 24 de noviembre de 2011. Serie C No. 237, para. 275.

115. By virtue of the foregoing, the Commission considers that in the present case, the period of four and one half years the domestic courts took to issue a final judgment is not reasonable. Moreover, the IACHR notes that according to information provided by the petitioner, which was not contested by the State, the appeal for review filed by Mr. de la Cruz more than 16 years ago has not been decided to date. In this regard, the Commission considers that the fact that this appeal has remaining pending decision for an unreasonable time has generated a situation of uncertainty as to whether the results of the criminal proceeding could be changed, to the detriment of the next of kin of Jorge Darwin García.

116. Consequently, the Commission concludes that the State violated the rights to a fair trial and judicial protection established in Articles 8.1 and 25.1 of the Convention, considered in relation to the obligations established in Article 1.1 of that instrument, due to noncompliance with the guarantee of a reasonable time, to the detriment of Franklin Plutarco and his next of kin.

## **VI. PROCEEDINGS SUBSEQUENT TO REPORT No.42/15**

117. On July 28, 2015, the Commission adopted Admissibility and Merits Report No.42/15 and sent it to the State on September 21 of the same year. In the Report, the Commission recommended that the State:

1. Provide full reparations for the human rights violations described in this report, including both moral and material damages.
2. To take steps to ensure non-repetition, including: i) training programs on international human rights standards in general for the national police; ii) measures to ensure an effective rendering of accounts in the criminal, disciplinary, or administrative jurisdiction, in cases involving an alleged abuse of power by a State agent in charge of law and order; and iii) legislative, administrative, and other measures for investigating with due diligence, and in accordance with relevant international standards, the need for and proportionality of the use of lethal force by police officers, so that there are effective protocols for implementing adequate mechanisms for control and rendering of accounts of the acts of said officers.

118. In the proceedings subsequent to notification of the admissibility and Merits Report, the Commission received several briefs from the State and the petitioner regarding compliance with the recommendations issued by the IACHR. During this period, the Commission granted a total of ten extensions to the State for the suspension of the term established in Article 51 of the American Convention. In these requests for extension, the State of Ecuador reiterated its willingness to comply with the recommendations. Likewise, it expressly waived the right to file preliminary objections for breach of the aforementioned deadline in the event that the case were submitted to the Inter-American Court.

119. After evaluating the available information on the status of compliance with the recommendations, on February 21, 2018, the Commission decided, by absolute majority, not to refer the case to the jurisdiction of the Inter-American Court and to proceed with the publication of the Admissibility and Merits Report.

## **VII. PROCEEDINGS AFTER REPORT No. 69/18**

120. The Commission approved Report No. 69/18 on May 10, 2018. In such Report the IACHR considered that the State fully complied with the first recommendation, taking into account that the State informed that it made a proposal of compensation, which was accepted by the petitioner. Ecuador also stated that the payment was completed on February, 2018 and the petitioner confirmed such information. In that sense, in its Report, the IACHR reiterated the recommendation contained in its Report No. 42/12:

1. To take steps to ensure non-repetition, including: i) training programs on international human rights standards in general for the national police; ii) measures to ensure an effective rendering of accounts in the criminal, disciplinary, or administrative jurisdiction, in cases



involving an alleged abuse of power by a State agent in charge of law and order; and iii) legislative, administrative, and other measures for investigating with due diligence, and in accordance with relevant international standards, the need for and proportionality of the use of lethal force by police officers, so that there are effective protocols for implementing adequate mechanisms for control and rendering of accounts of the acts of said officers.

121. Such Report was notified to the parties on August 21, 2018 and, based in Article 51 of the American Convention, the IACHR requested information on compliance in one month. The Commission notes that the parties have not presented information after the approval of Report No. 69/18. In the section included as follows, the Commission reiterated its conclusions on compliance with the recommendations.

#### **VIII. ANALYSIS ON COMPLIANCE WITH THE RECOMMENDATIONS**

122. The IACHR notes that on November 15, 2017, the parties signed a "Total Compliance Agreement" of the Admissibility and Merits Report No. 42/15.

123. With respect to the second recommendation, the State indicated that the courses "International human rights standards" and "Code of Police Ethics" of the continuous training program of the National Police included the study of the Admissibility and Merits Report No 42/15. It added that the National Police Regulations on the Legal, Adequate and Proportional Use of Force, and their Disciplinary Regulations comply with the recommendation of the IACHR. For its part, the petitioner indicated that "the family of Jorge Darwin agrees with the actions being developed by the State in order to give strict compliance" to this recommendation.

124. In this regard, the Commission appreciates the measures implemented by the Ecuadorian State, in particular the inclusion of the standards in the Admissibility and Merits Report No. 42/15 into the ongoing training courses for members of the National Police. The Commission expects to receive more detailed information on the impact of the non-repetition measures implemented by the Ecuadorian State, in connection with each of the aims of the second recommendation in order to consider such information prior to the publication of this report.

#### **IX. FINAL CONCLUSIONS AND RECOMMENDATIONS**

125. In accordance with the considerations of fact and law set forth in this report, the Commission concludes that the Republic of Ecuador is responsible for the violation of the following rights:

- Rights to life and personal integrity, enshrined in Articles 4.1 and 5.1 of the American Convention in relation to Article 1.1 of the same instrument, to the detriment of Jorge Darwin García.
- Right to personal integrity, enshrined in Article 5.1 of the American Convention in relation to Article 1.1 of the same instrument, to the detriment of Franklin Plutarco García.
- Rights to judicial guarantees and judicial protection, enshrined in Articles 8.1 and 25.1 of the American Convention in relation to Articles 1.1 and 2 of the same instrument, to the detriment of Franklin Plutarco and his relatives.

126. Under the previous conclusions,

**THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS RECOMMENDS THE ECUADORIAN STATE TO CONTINUE WITH THE NECESSARY EFFORTS TO ENSURE FULL COMPLIANCE WITH THE FOLLOWING RECOMMENDATION,**

1. To take steps to ensure non-repetition, including: i) training programs on international human rights standards in general for the National Police; ii) measures to ensure an effective rendering of accounts in the criminal, disciplinary, or administrative jurisdiction, in cases involving an alleged abuse of power by a State agent in charge of law and order; and iii) legislative, administrative, and other measures for investigating with due diligence, and in accordance with relevant international standards, the need for and proportionality of the use of lethal force by police officers, so that there are effective protocols for implementing adequate mechanisms for control and rendering of accounts of the acts of said officers.

**X. PUBLICATION**

127. Based on the foregoing considerations and pursuant to Article 47.3 of its Rules of Procedure, the IACHR has decided to publish this report and to include it in its Annual Report to the General Assembly of the Organization of American States. Pursuant to the provisions of the instruments governing its mandate, the Inter-American Commission will continue to evaluate measures adopted by Ecuador in respect of the above-mentioned recommendation until it finds that it has been implemented in full.