

INTER-AMERICAN COURT OF HUMAN RIGHTS

SUÁREZ ROSERO CASE

REPARATIONS

(ART. 63(1) OF THE AMERICAN CONVENTION ON HUMAN RIGHTS)

JUDGMENT OF JANUARY 20, 1999

In the Suárez Rosero Case,

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

Antônio A. Cançado Trindade, President
Hernán Salgado-Pesantes, Judge
Maximo Pacheco-Gómez, Judge
Oliver Jackman, Judge
Alirio Abreu-Burelli, Judge
Sergio García-Ramírez, Judge
Carlos Vicente de Roux-Rengifo, Judge

also present:

Manuel E. Ventura-Robles, Secretary, and
Renzo Pomí, Interim Deputy Secretary,

* On September 16, 1997, the President of the Court, Judge Hernán Salgado-Pesantes, in accordance with Article 4(3) of the Rules and by reason of being of Ecuadoran nationality, relinquished the Presidency for this case to Vice-President of the Court, Judge Antônio A. Cançado Trindade.

pursuant to Articles 29, 55, and 56 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure"), in relation to Article 63(1) of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") and in compliance with its November 12, 1997 Judgment, renders the following judgment on reparations in the present case, brought by the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") against the Republic of Ecuador (hereinafter "Ecuador" or "the State").

I JURISDICTION

1. Under the provisions of Articles 62 and 63(1) of the Convention, the Court has jurisdiction to determine reparations in the present case, inasmuch as Ecuador ratified the American Convention on December 28, 1977, and accepted the contentious jurisdiction of the Court on July 24, 1984.

II BACKGROUND

2. The present case was submitted to the Court by the Inter-American Commission by application dated December 22, 1995, which was accompanied by Report No. 11/95 approved September 12, 1995. The case originated with petition (No. 11.273) against Ecuador, lodged with the Secretariat of the Commission on February 24, 1994.

3. On November 12, 1997, the Court rendered a judgment on the merits of the case in the operative paragraphs of which the Court:

1. [Found] that the State of Ecuador violated, to the detriment of Rafael Iván Suárez-Rosero, Article 7 of the American Convention on Human Rights, in relation to Article 1(1) of the same, in the terms indicated in paragraphs 38 to 66 of [the] Judgment;

[...]

2. [Found] that the State of Ecuador violated, to the detriment of Rafael Iván Suárez-Rosero, Article 8 of the American Convention on Human Rights, in relation to Article 1(1) of the same, in the terms indicated in paragraphs 57 to 83 of [the] Judgment;

[...]

3. [Found] that the State of Ecuador violated, to the detriment of Rafael Iván Suárez-Rosero, Article 5 of the American Convention on Human Rights, in relation to Article 1(1) of the same, in the terms indicated in paragraphs 84 to 92 of [the] Judgment;

[...]

4. [Found] that the State of Ecuador violated, to the detriment of Rafael Iván Suárez-Rosero, Article 25 of the American Convention on Human Rights, in relation to Article 1(1) of the same, in the terms indicated in paragraphs 61 to 66 of [the] Judgment;

[...]

5. [Found] that the final paragraph of the unnumbered article after Article 114 of the Criminal Code of Ecuador violates Article 2 of the American Convention on Human Rights, in relation to Articles 7(5) and 1(1) of the same;

[...]

6. Decid[ed] that Ecuador must order an investigation to determine the persons responsible for the human rights violations referred to in [the] judgment and, where possible, punish them;

[...]

7. Decid[ed] that Ecuador is obliged to pay a fair indemnity to the victim and his relatives and to compensate them for any expenses incurred in their representations relating to this proceeding;

[...]

8. Order[ed] the initiation of the Reparations State, for which purpose it authorize[d] the President to adopt in due course such measures as may be necessary.

III PROCEEDINGS AT THE REPARATIONS STAGE

4. On December 10, 1997, the President of the Court for this case (hereinafter "the President"), in accordance with operative paragraph 8 of the November 12, 1997 Judgment, decided:

1. To grant the Inter-American Commission on Human Rights until February 10, 1998 to submit a brief and any evidence it may have in its possession, for the purpose of determining the compensation and expenses in this case.

2. To grant Rafael Iván Suárez Rosero, the victim in this case, and his family members or representatives until February 10, 1998 to submit a brief and any evidence they may have in their possession for the purpose of determining the compensation and expenses.

3. To grant the State of Ecuador until April 10, 1998 to make its observations on the briefs submitted by the Inter-American Commission on Human Rights, the victim and his family members or representatives in accordance with the preceding paragraphs.

5. On January 9, 1998 the non-governmental organization "Rights International, The Center for International Human Rights Law, Inc." submitted an *amicus curiae* brief.

6. On January 29, 1998 the Commission informed the Court that the petitioners had reported that they would require additional time to gather certain necessary evidence and that, for its part, the Commission also wanted to have that evidence before "finishing and submitting its brief." By resolution of that same day, the President extended the time periods

granted to the Commission and Mr. Suárez Rosero for the submission of their briefs until February 25, 1998 and gave the State until May 11 1998 to submit its respective observations.

7. On February 25, 1998 the Commission submitted its brief on reparations, in which it included its arguments and stated that, in its opinion, at this stage "the victim and his representatives are the appropriate persons to present the arguments and facts related to the scope and amount of the compensation and to present the evidence." For the reason stated, the Commission indicated that it was adopting the amounts and the evidence submitted by Mr. Suárez Rosero.

8. On February 25, 1998 Mr. Suárez Rosero submitted his brief on reparations in English. The Spanish translation was received on March 20 of the same year and was sent to the State on that day. In his brief, Mr. Suárez Rosero presented his claims, made his offer of documentary and testimonial evidence, and stated that the expenses related to the reparations stage would be submitted subsequently to the Tribunal. Mr. Suárez Rosero also informed the Court that on February 3, 1998 he named Richard Wilson and Alejandro Villacís as his representatives before the Court for the present stage.

9. By means of a March 7, 1998 Order, the President summoned Mr. Suárez Rosero, and his family members or their representatives, the Inter-American Commission, and Ecuador to a public hearing to be held on June 10, 1998 at the seat of the Tribunal.

10. On May 6, 1998 the State requested an extension of the deadline set by the President for the submission of its brief on reparations. In this regard, on May 11, 1998 the President granted the State an extension until May 22, 1998. The Secretariat of the Court (hereinafter "the Secretariat") never received the above-mentioned brief, however.

11. On May 14, 1998 Mr. Suárez Rosero confirmed his offer to produce as testimonial evidence the statements of Magdalena Rosero, Ana Burbano, and Cecilia Jaramillo. By Order of May 26, 1998 the President summoned Mrs. Rosero and Mrs. Burbano to give their testimony and

Mrs. Jaramillo to present her expert report during the public hearing to be celebrated at the seat of the Tribunal on June 10, 1998.

12. On May 28, 1998 Mr. Suárez Rosero asked the Court to also receive his testimony during the public hearing. The following day the President acceded to his request and summoned Mr. Suárez Rosero to give his statement.

13. The Court held a public hearing on reparations in this case on June 10, 1998.

There appeared

Mr. Rafael Iván Suárez-Rosero who also delivered his statement, and his representatives:

Richard J. Wilson, attorney and
Alejandro Ponce Villacís, attorney;

for the Inter-American Commission on Human Rights:

Oscar Luján Fappiano, delegate and
Elizabeth Abi-Mershed, attorney;

for the Republic of Ecuador:

Laura Donoso de León, agent and
Ambassador Francisco Proaño A.;

as expert and witnesses:

Cecilia Jaramillo, expert,
Magdalena Rosero, witness and
Ana Burbano, witness.

During the hearing Mr. Suárez Rosero submitted two drawings that he had made during his detention (*infra* 21), and the State submitted a brief and some documents (*infra* 23).

14. By means of notes of September 21, 1998 the Court required that Mr. Suárez Rosero submit the evidence that was not available when he submitted his brief on reparations (*supra* 8) and, that the State send the list of official exchange rates for the sucre, the Ecuadorian currency, in relation to the dollar of the United States of America for the years 1992 to 1996.

15. On October 19, 1998 Mr. Suárez Rosero submitted a brief on the costs and expenses incurred during the reparations stage by one of his representatives, Mr. Richard Wilson.

16. On October 20, 1998 the State submitted the tables of exchange rates for the United States dollar on the Ecuadorian exchange market for the years 1992 to 1996 issued by the Central Bank and the Monetary Board of Ecuador, as well as several documents from the Ecuadorian Department of Work and Human Resources, concerning the pay scales for domestic employees and drivers from 1992 to 1996. (*infra* 29 et seq.)

17. On October 27, 1998 Mr. Suárez Rosero submitted information concerning his psychiatric treatment and that of his wife, Mrs. Margarita Ramón Burbano, and the expenses of one of his representatives, Mr. Alejandro Ponce Villacís.

18. On November 24, 1998 the State submitted a communication, in which it stated that "it would not be able to accept the [new] amounts claimed [by Mr. Suárez Rosero], especially when the man referred to was convicted as an accessory after the fact by the Ecuadorian Courts," and it added that during the public hearing it had made "a concrete offer of an amount of compensation, a maximum amount that [...] it could accept, considering the grave economic crisis it was suffering."

19. On December 22, 1998 the Court required that Mr. Suárez Rosero submit his marriage certificate with Mrs Ramón Burbano and the birth certificate of his daughter, the minor Micaela Suárez Ramón. This requirement was satisfied on January 14, 1999.

IV EVIDENCE

A) DOCUMENTARY EVIDENCE

20. Mr. Suárez Rosero submitted the following documentary evidence with his brief on reparations:

- a. documents concerning his income and labor occupation before his detention

(cfr. copy of the contract for professional services signed in the city of Quito on March 1, 1991 between Rafael Iván Suárez Rosero and the Challenge Air Cargo Company; 16 income receipts from the Challenge Air Cargo Company in the name of Iván Suárez; income tax statements from the Challenge Air Cargo Company dated April 26, May 28, June 27, July 29, August 28, September 30, October 28, November 28, December 30, 1991, January 28, February 28, March 30, April 28, May 28, and June 26, 1992; estimate of income (unidentified document); document entitled "Challenge Air Cargo/No. flights/UIO");

- b. a document concerning the state of his mental health

(cfr. August 4, 1997 psychological evaluation of Mr. Rafael Iván Suárez Rosero performed by psychologist Cecilia Jaramillo);

- c. document concerning the appeal of his conviction.

(copy of the appeal filed by Mr. Rafael Iván Suárez Rosero before the President of the Superior Court of Justice on September 11, 1996);

- d. general documents concerning human rights and prison systems

(cfr. copy of the English version of a document issued by the Economic and Social Council of the Organization of the United Nations, cited as E/CN.4/1997/104, entitled "Question of the Human Rights of all persons

subjected to any form of detention or imprisonment;" photocopies of the document "Crimes and Criminal Procedure," in English, pages 486 to 492; copy of the document "Between shadows and silence, the intra-detention violence in the Provisional Detention Center of Quito," issued by the Regional Foundation of Legal Assistance on Human Rights; copy of Official Letter 96-293-CC-AJ-PN from the General Commander of the Ecuadorian National Police dated March 12, 1996);

e. documents concerning the salaries paid to the domestic help and driver of Mrs. Margarita Ramón Burbano

(cfr. copy of the certificate of settlement signed by Margarita Ramón and Mercedes Llumiquinga on November 24, 1995, before the Labor Inspector of Pichincha; copy of the letter of resignation of Mercedes Llumiquinga dated November 15, 1995; 22 documents concerning the benefits and the payroll reserve for domestic service, copies of 24 checks made out to the name of Mercedes Llumiquinga; copies of 18 checks made out to the name of Luz María Feria, copies of 10 checks made out to the name of Carlos Saa, sworn statement of Margarita Ramón Burbano, made in the city of Quito on February 16, 1998 concerning the employment of her domestic help and driver)

f. documents concerning the costs and expenses of his representatives

(cfr. copy of the power of attorney granted by Mr. Rafael Iván Suárez Rosero to Richard Wilson and Alejandro Ponce Villacís on February 3, 1998; sworn statement of Alejandro Ponce Villacís of January 1998; copy of the advance expense form 0016523 EXP of American University, dated April 22, 1997; copies of receipts for credit card and telephone calls from the Hotel Americano del Este; receipt number 0011234 from the Hotel Americano S.A. dated April 20, 1997; receipt number 0041 from the Editorial Department of the Inter-American Institute of Human Rights dated April 17, 1997; copies of three receipts for taxi service, dated April 16 and 20, 1997; copy of an airline ticket on American Airlines; copy of an e-mail dated February 23, 1998 and Richard Wilson's time sheet, that include the time he spent on the case from April 2 to June 15, 1997 (merits stage) and from January 6 to February 24, 1998 (reparations stage); and

g. information concerning the rate of exchange of the sucre and the dollar of the United States of America

(cfr. three documents in English, entitled "OANDA: 164 Currency converter/Currency Conversion Result; <http://www.oanda.com/cgi-bin/ncc>," concerning the exchange rate for the sucre on December 31 1993, 1994, and 1995 respectively).

21. During the public hearing on reparations, Mr. Suárez Rosero submitted two pictures that he had drawn during his detention.

22. The documents submitted by Mr. Suárez Rosero were neither contested nor challenged, nor was their authenticity questioned, therefore the Court accepts them as valid and orders their incorporation into the body of evidence in the present case.

23. During the public hearing, the State brought forward a document concerning the determination of reparations in the present case and other documents concerning legal reforms related to narcotic drugs and psychotropic substances.

(cfr. June 10, 1998 brief of the State of Ecuador; copy of the Official Register of the Government of Ecuador of October 15, 1997, number 173, pages 1 through 4, that contain the text of Law No. 25 "Reformation of the Code for the Enforcement of Punishment and Social Rehabilitation and the Law on Narcotic Drugs and Psychotropic Substances;" copy of the Official Register of the Government of Ecuador of December 18, 1997, number 218, pages 1 and 3, that contain the text of Law No. 44 "Reformation of the Code for the Enforcement of Punishment and Social Rehabilitation and the Law on Narcotic Drugs and Psychotropic Substances"; copy of the Supplement to the Official Register of the Government of Ecuador of December 24, 1997, number 222, pages 1 through 4, that contain the text of Resolution No. 119-1-97 of the Constitutional Tribunal"; copy of the Official Register of the Government of Ecuador of March 6, 1998 number 284, pages 1 through 3, that contain the text of law No. 72 "Interpretative Law of the second clause of Article 105 of the Law on Narcotic Drugs and Psychotropic Substances").

24. During the hearing Mr. Suárez Rosero, through his representatives, objected to the above-mentioned documents, based on the fact that the State had not submitted its brief on reparations during the time period specified by the President.

25. The Court deems that the brief submitted by the State can not be included in the body of evidence of the case, because it contains substantive arguments and a proposal for the payment of reparations. Therefore, the Tribunal will later specify the legal character of the brief (*infra* 43 et seq.) As to the references to the copies of the laws and the judicial decision submitted by Ecuador at the same time, the Court deems that their examination is useful for its decision on reparations in the present case. For that reason, in the exercise of the authority granted to it by Article 44 of its Rules of Procedure, which provides that at any stage of the proceedings, the Tribunal may "obtain, on its own motion, any evidence it considers helpful" it orders their inclusion in the body of evidence.

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26. On September 21, 1998 the Court asked Mr. Suárez Rosero for the submission of the evidence that, according to his statements, had not yet been available at the time he submitted his brief on reparations.

27. On October 19, 1998 Mr. Suárez Rosero submitted a brief on the costs and expenses of Mr. Richard Wilson. He also submitted copies of the "Time Sheet" of Mr. Wilson for this case, his plane ticket to the city of the seat of the Court and his hotel bills and expenses in that city, resulting from his attendance at the public hearing on reparations. On October 27, 1998 Mr. Suárez Rosero submitted a brief concerning his psychological treatment and that of Mrs. Ramón Burbano, as well as the expenses of Mr. Alejandro Ponce Villacís.

28. The above-described evidence submitted by Mr. Suárez Rosero has not been contested nor challenged, nor has its authenticity been ques-

tioned, therefore the Court accepts it as valid and orders its incorporation into the body of evidence in the present case.

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* *

29. On September 21, 1998 the Court requested from the State the submission of the list of official exchange rates for the sucre, Ecuadorian currency, to the dollar of the United States of America during during the years 1992 to 1996.

30. On October 20, 1998 the State sent exchange rate tables for the dollar of the United States of America on the Ecuadorian exchange market, issued by the Central Bank and the Monetary Board of Ecuador, for the years requested by the Court. The State also submitted copies of several official registers and documents form the Ecuadorian Department of Work and Human Resources concerning the monthly pay and annual benefits of domestic workers and drivers during the relevant time period.

31. The tables submitted by the State have not been contested or challenged, nor has their authenticity been questioned, therefore the Court accepts them as valid and orders their incorporation into the body of evidence in the present case.

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* *

32. On December 22, 1998 the Court required that Mr. Suárez Rosero submit the certificate of his marriage to Margarita Ramadán Burbano, as well as a copy of the birth certificate of his daughter, the minor Micaela Suárez Ramadán. This requirement was fulfilled on January 14, 1999.

33. The documents submitted by Mr. Suárez Rosero, which were referred to in the last paragraph, were required by the Court in the exercise of the authority conferred on it by Article 44 of its Rules of Procedure, inasmuch as they are helpful to determine the identity of the

beneficiaries of the reparations. Therefore, the Tribunal orders their inclusion in the body of evidence in the present case.

B) TESTIMONIAL EVIDENCE

34. On June 10, 1998 the Court received that statements of Mr. Suárez Rosero and of the witnesses in the present case. The Court will now summarize their relevant points.

a. Statement of Mr. Rafael Iván Suárez Rosero

Before his arrest he earned S/.700,000.00 (seven hundred thousand sucres) per month. He took classes for a year at a company called "Special Control Airport," for which he paid S/.500,000.00 (five hundred thousand sucres) per month; his only job had been as an airport security agent. He doesn't have specific training to do another job. An appeal that he made against the conviction in his case is still pending. The bad treatment to which he was subjected during his incarceration caused him grave psychological and physical consequences. He has a daughter, born on February 10, 1994, who was conceived during his imprisonment owing to the health problems of his wife. His imprisonment resulted in an ulcer that was partially cured thanks to a treatment that cost the equivalent of US\$ 500.00 (five hundred dollars of the United States of America). He also suffered a ruptured disk and jaw as a result of a beating given him by the police the day he entered the Barracks of Quito. As to the jaw, he was given therapy and with respect to the disc they recommended an operation, which he has not had because of its high cost. During the entire time of his detention, he felt confused, uncertain, impotent, and suffered greatly. For the purpose of improving his mental condition he has attended weekly sessions with a psychologist for the last eleven months. His wife also suffered greatly during his detention. She dealt with her pregnancy alone, with the further difficulty of her inability to drive, raised her daughter without the presence of her father during her first two years of life, was humiliated in the Courts, and lived in a permanent

situation of anguish and fear. She also receives psychological treatment biweekly. During his imprisonment, several of his workmates donated part of their salaries to him; moreover they had his wife's salary from her work in a high school in Quito. They also received help from their respective families. He painted and sold separators and bread in his cell block. Nonetheless their resources did not suffice to pay the necessities of their recently born daughter. On regaining his freedom, he had to begin his life again. With respect to Mrs. Margarita Ramadán, it was very difficult to return to live with her, owing to the situations that they both had been through. He has to learn to be a full time father, and his daughter had to overcome her fear that her father would abandon her. He refused to return to his work for fear of being detained again if there was another situation involving narcotics. He worked for a time in a utensils factory with people who knew his situation and had confidence in him; he is trying to start a business with a cousin and is administrating a living complex. Based on his history, he was denied his request to buy twenty dollars in the Bank of Ecuador, which caused him great insecurity and humiliation.

b. Testimony of Ana Burbano de Ramadán, mother-in-law of Mr. Rafael Iván Suárez Rosero

She lives in a condominium next door to the house of Mr. Rafael Iván Suárez Rosero. She has a very close relationship with him and all of his family. Her husband, who was very close to Mr. Suárez Rosero, died two years and ten months after his imprisonment. She visited her son-in-law once a week and brought him food. After the birth of her granddaughter she took her daughter to the prison on Monday mornings and brought her home in the afternoon, due to the difficulty caused by her daughter's inability to drive. Since her daughter became pregnant she practically went to live with her to help her with her chores and work, which wouldn't have been necessary if her son-in-law had been present. Mr. Suárez Rosero left the prison very affected. He was aggressive and had problems living with Mrs. Ramadán Burbano although not with the other members of the family.

c. Testimony of Magdalena Rosero de Suárez, mother of Mr. Rafael Iván Suárez Rosero

She lives in Ambato. Her husband, Rafael Suárez, died on May 24, 1998 as a result of an illness of emotional origins provoked by the suffering that his son's imprisonment caused him. During his youth, her son always behaved affectionately with his siblings and family and was very dear to his friends and the community in Ambato. On learning of the arrest of her son she felt distressed, desperate, and impotent before the injustice that was being committed against him. She and her husband tried by every means to hire an attorney but almost all of them refused. This made them feel humiliated. It took more than three hours to get to the jail to visit her son, and she could only visit him after a degrading personal search. Her husband felt great distress at having to visit his son in prison and for that reason did not visit every Tuesday as she did. One time it caused her a nervous shock to find herself in the prison. Owing to his confinement her son suffered many personality changes.

35. The State did not offer testimonial evidence.

36. The Court deems that the statement of Mr. Suárez Rosero should be evaluated in the context of the total body of evidence in the present case. It is appropriate to remember that the facts of the present case already were established during the merits stage. In this stage, the Tribunal will determine the nature and amount of the "fair compensation" and the reimbursement of expenses, which the State is obligated to make to Mr. Suárez Rosero and his relatives in compliance with operative paragraph seven of the Judgment of November 12, 1997.

C) EXPERT EVIDENCE

37. During the public hearing, the Court also received the report of the expert, Cecilia Jaramillo, in which she stated that

since July 10, 1997 she has treated Mr. Suárez Rosero and Mrs. Ramón Burbano. When the sessions began Mr. Suárez Rosero

was very affected. As a consequence of his detention and the conditions to which he was submitted, he suffered neurotic depressive reactions of anguish, a situation diagnosed as neurosis of the astenic type, in which the person feels weak, lacking in energy, afraid, and insecure. Mr. Suárez Rosero had been a self confident happy person with many friends and with big life plans. They took him away from his normal life, deprived him of his freedom, and deprived him of the possibility of developing his plans. He became an object of ill-treatment and humiliation. Even though the therapy had helped him to overcome certain fears, he continued to suffer. This also affects his daughter and Mrs. Margarita Ramón Burbano, who also needs psychological help. The conception of their daughter in the prison also constituted a humiliating situation for them, a violation of their intimacy and of their plans. It imposed on them a different plan of life than they had intended. The daughter was deprived of the possibility of having a father during her first years of life, which aroused great fears of losing her father. Mrs. Margarita Ramón Burbano had to deal with her pregnancy and raising her daughter for two years without the presence of her husband, with the additional burden of her inability to drive and under very bad economic conditions. The psychotherapy that they are receiving has a short, insufficient reach. For them all to definitely overcome this trauma they need the State's admission that Mr. Suárez Rosero is innocent, so that he can recover his dignity. The appeal that is pending before the domestic courts causes them increasing fear and insecurity. She receives a fee of twenty dollars for each psychological therapy session.

38. The State did not offer expert evidence.

V

OBLIGATION TO MAKE REPARATION

39. In operative paragraph seven of the November 12, 1997 Judgment, the Court decided that "Ecuador is obliged to pay a fair indemnity to the victim and his relatives and to compensate them for any expenses incurred in their representations relating to this proceeding."

40. In the matter of reparations, the applicable provision is Article 63(1) of the American Convention, which codifies one of the fundamental principles of general international law, and is repeatedly applied in case law. (*Factory as Chorzów*, Jurisdiction, Judgment No. 8, 1927, P.C.I.J., Series A, No 9, p. 21 and *Factory at Chorzów*, Merits, Judgment No. 13, 1928, P.C.I.J., Series A, No. 17, p 29; *Reparations for Injuries Suffered in the Service of the United Nations*, Advisory Opinion, I.C.J. Reports 1949, p. 184). This is the sense in which this Court has applied that provision (*inter alia*, *Neira Alegria Case, Reparations*, (Article 63(1) American Convention on Human Rights), Judgment of September 19, 1996, Series C. No. 29, para. 36; *Caballero Delgado and Santana Case, Reparations*, (Article 63(1) American Convention on Human Rights), Judgment of January 29, 1997, Series C. No. 31, para. 15; *Garrido and Baigorria, Reparations*, (Article 63(1) American Convention on Human Rights), Judgment of August 27, 1998, Series C. No. 39, para. 40; *Loayza Tamayo Case, Reparations*, (Article 63(1) American Convention on Human Rights), Judgment of November 27, 1998, Series C. No. 42, para. 84, and *Castillo Páez Case, Reparations*, (Article 63(1) American Convention on Human Rights), Judgment of November 27, 1998, Series C. No. 43, para. 50). When a wrongful act occurs that is imputable to a State, the State incurs international responsibility for the violation of international law, and thus incurs a duty to make reparation.

41. Reparations is a generic term that covers the different ways (*restitutio in integrum*, compensation, satisfaction, and assurances of guarantees that the violations will not be repeated, among others) in which a State can redress the international responsibility it has incurred.

42. The obligation to make reparations established by international courts is governed, as has been universally accepted, by international law in all its aspects: scope, nature, forms, and the determination of beneficiaries, none of which the respondent State may alter by invoking its domestic law (*See, inter alia*, *Neira Alegria et al. Case, Reparations, supra* 40, para. 37; *Caballero Delgado and Santana Case, Reparations, supra* 40, para. 16; *Garrido and Baigorria Case, Reparations, supra* 40, para. 42; *Loayza Tamayo, Reparations, supra* 40, para. 86; *Castillo Páez Case, Reparations, supra* 40, para. 49).

VI PRELIMINARY CONSIDERATIONS

43. The Court deems that it is necessary to first study the effects of the failure to submit, on the part of the State, a brief on reparations.

44. During the public hearing held by the Tribunal, Mr. Suárez Rosero, through his representatives, stated that

the Ecuadorian State was granted a time period to answer the brief on reparations [submitted by Mr. Suárez Rosero]. Subsequently, the Illustrious Court, by its President, granted it an additional period to respond to that brief. Nevertheless, the Ecuadorian State did not submit any response, neither within the initial time period, nor within the extended period.

[...]

We believe that this Court should apply a principle of International law set forth in the Statute of the International Court of Justice as well as in the Regulations of the Commission, that there is an irrefutable presumption that if the State is silent, the decision should be favorable, as long as other evidence does not lead to a different conclusion.

45. In this regard, the President stated that

the representatives of Mr. Suárez Rosero have the right to make that point in the hearing, and the Government of Ecuador has the right to submit its argument as part of the oral hearing [...The] Court will evaluate the argument of the Government of Ecuador at the appropriate time as part of the oral stage of the proceedings.

[...]

The Court has stated that the written stage of the proceedings has concluded and that the reparations brief of the respondent

Government was not submitted during the time period. The Court finds that the oral argument has been duly presented during this hearing. The Court finds that thus it is appropriate, based on the Court's Rules of Procedure, which permit that if a party fails to act at any time in the proceedings, the Court shall, on its own motion, take such measures as may be necessary to complete the consideration of the case. Moreover, the rules of the Court add that when a party enters a case at a later stage of the proceedings, it shall take up the proceedings at that stage.

46. The Court confirms the decision of its President.

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* *

47. Moreover, during the hearing on reparations, the State made the following oral statement:

the Ecuadorian State proposes fifty thousand American dollars (*sic*), as the amount of reparations that it considers covers all the categories of reparations cited by the petitioner including the moral damages caused to him and his family, as well as his loss of income during the time that he was detained, the payment of the remunerations that covers domestic expenses, and the professional honoraria of his lawyers and other professionals who assisted him during the proceedings and who helped improve his physical and psychological health [...]

The State also broke down the amount offered and included, as general headings the payment of compensation, the loss of earnings of Rafael Iván Suárez Rosero, his moral damages, the injuries inflicted on Mrs. Margarita Ramón Burbano and his daughter, the minor Micaela Suárez Ramón, the payment of the costs and expenses of his attorneys, the expenses of his rehabilitation, medical and psychological treatment, and the payment of the driver and domestic help.

48. In this respect, Mr. Suárez Rosero, through his representatives, stated that

the proposal of the State exclusively concerns the question of pecuniary damages and has not set forth any reparations that are not pecuniary in nature. Therefore, the victim considers it to be insufficient; [...] it can not be accepted [...].

49. For its part, the Commission stated that

the brief submitted by the representatives of the Illustrious Government of Ecuador is an appeasement [...] of the procedural reparations and compensation claims that are made in this stage. What it has recognized [...], is the loss of earnings, moral damages, damages to the family, the payment of honoraria and future expenses, minor payments, expenses of rehabilitation, etc. What can be discussed is the amount in those categories, if this offer to pay fifty thousand dollars is reasonable or if it should be more or less [...] However, in the view of the Commission it is a appeasement of the procedural claims for compensation and reparations.

The Commission also stated that there were categories not covered by the State in its offer of reparations, particularly, those referring to the obligation to investigate and to adopt measures of non repetition.

50. The Court finds that, as the Commission has stated, the statements of the State constitute an express acceptance of the categories of pecuniary reparations demanded by Mr. Suárez Rosero. Therefore, in respect to these categories, the Court will limit its analysis to the amount of the payments required.

51. The State did not include in its offer any reference to non pecuniary measures of reparations. For that reason, the Court will proceed to study their justification, using the information at its disposition.

VII BENEFICIARIES OF THE REPARATIONS

52. There is no dispute as to who are considered to be the beneficiaries of the measures of reparations. Mr. Suárez Rosero, the Commission, and

the State have agreed in stating that Mr. Suárez Rosero, Mrs. Ramón Burbano, and the minor, Micaela Suárez Ramón, are the beneficiaries.

53. The Court finds that this designation is in accordance with its case law and with the terms set forth in operative paragraph seven of its November 12, 1997 Judgment. Therefore, it names the aforementioned persons as beneficiaries of the reparations that it will order in the present judgment.

VIII

FACTS PROVED DURING THE REPARATIONS STAGE

54. For the purpose of determining reparations in this case, the Court will have as a base of reference the facts proved in the November 12, 1997 Judgment. However, during the present stage of the proceedings the parties have added to the file evidence to demonstrate the existence of complementary facts that are relevant to a determination of the measures of reparation. The Court has examined the arguments of the parties and the corresponding evidence and declares the following facts proved:

A) with respect to Mr. Suárez Rosero

a) when he was detained he worked for the company "Challenge Air Cargo," in charge of the supervision and control of flights. He received a monthly salary averaging S/.676,853.35 (six hundred seventy-six thousand, eight hundred fifty-three sucres and thirty-five cents), to which the corresponding tax deduction has already been made. That amount is approximately equivalent of US\$ 449.40 (four hundred forty-nine dollars of the United States of America and forty cents), based on the exchange rate of the sucre on the date of the detention of Mr. Suárez Rosero. (infra f)

(cfr. copy of the professional services contract signed in the city of Quito on March 1, 1991 between Rafael Iván Suárez Rosero and the Challenge Air Cargo Company; 16 income receipts from the Challenge Air Cargo Company in the name of Iván Suárez; income tax statements dated April 26, May 28,

June 27, July 29, August 28, September 30, October 28, November 28, and December 30, 1991, January 28, February 28, March 30, April 28, May 28, and June 26, 1992; income estimate (unidentified document); document entitled "Challenge Air Cargo/No. flights/UIO");

b) during his imprisonment and as a consequence of the cruel, inhuman, and degrading treatment to which he was subjected he suffered physical and psychological injuries.

(cfr. psychological evaluation of Mr Rafael Iván Suárez Rosero dated August 4, 1997, by psychologist Cecilia Jaramillo); expert report of Cecilia Jaramillo before the Inter-American Court of Human Rights; statement of Mr. Rafael Iván Suárez Rosero before the Inter-American Court of Human Rights);

c) he has not tried to return to the exercise of his profession in airport security, for which he trained for one year, for fear of being accused if there is a new incidence of drug trafficking.

(cfr. statement of Mr. Rafael Iván Suárez Rosero before the Inter-American Court of Human Rights);

d) at the present time he is working

(cfr. statement of Mr. Rafael Iván Suárez Rosero before the Inter-American Court of Human Rights);

e) he filed an appeal of the conviction in his case. The appeal is still pending resolution

(cfr. copy of the appeal filed by Rafael Iván Suárez Rosero on September 11, 1996 with the President of the Superior Court of Justice) and

f) on the day he was detained the exchange rate of the sucre, the national Ecuadorian currency to the US dollar was S/. 1,493.18 (one thousand, four hundred ninety-three sucres and eighteen cents) to buy and S/.1,519.09 (one thousand nineteen sucres and nine cents) to sell

(cfr. tables of the exchange rates of the US dollar on the Ecuadorian exchange market, issued by the Central Bank of Ecuador and the Monetary Board during the years 1992-1996).

B) with respect to Mrs. Margarita Ramadán Burbano and the minor Micaela Suárez Ramadán

a) Micaela Suárez Ramadán was conceived at the prison and was born on February 10, 1994, during the imprisonment of her father

(cfr. statement of Mr. Rafael Iván Suárez Rosero before the Inter-American Court of Human Rights); and

b) due to her physical incapacity, Mrs. Ramadán Burbano was obligated to hire the services of a domestic worker and a driver during the imprisonment of Mr. Suárez Rosero

(cfr. statement of Mr. Rafael Iván Suárez Rosero before the Inter-American Court of Human Rights; statement of Mrs Ana Burbano before the Inter-American Court of Human Rights; copy of the certificate of settlement signed by Margarita Ramadán, employer, and Mercedes Llumiquinga on November 24, 1995, before the Labor Inspector of Pichincha; copy of the letter of resignation of Mercedes Llumiquinga dated November 15, 1995; 22 documents concerning the benefits and the payroll reserve for domestic service; copies of 24 checks made out to the name of Mercedes Llumiquinga; copies of 18 checks made out to the name of Luz María Fera, copies of 10 checks made out to the name of Carlos Saa; sworn statement of Margarita Ramadán Burbano, made in the city of Quito on February 16, 1998 concerning the employment of her domestic help and driver)

C) with respect to the representation of Mr. Iván Rafael Suárez Rosero and the expenses related to this representation.

attorneys Alejandro Ponce Villacís and Richard Wilson represented Mr. Suárez Rosero in the proceedings before the Inter-American Commission and Inter-American Court, and they, or the institutions with which they are affiliated, assumed certain expenses related to those proceedings

(cfr. documents related to the expenses and honoraria of Mr. Richard Wilson; copy of the power of attorney granted by Mr. Iván Rafael Suárez Rosero to Richard Wilson and Alejandro Ponce Villacís on February 3, 1998; sworn statement of Alejandro Ponce Villacís of January 1998; copy of the advance expense form 0016523 EXP of American University, dated April 22, 1997; copies of receipts for credit card and telephone calls from the Hotel Americano del Este; receipt number 0011234 from the Hotel Americano S.A. of April 20, 1997; receipt number 0041 from the Editorial Department of the Inter-American Institute of Human Rights dated April 17, 1997; copies of three receipts for taxi service, dated April 16 and 20, 1997; copy of an airline ticket on American Airlines; copy of an e-mail dated February 23, 1998 and Richard Wilson's time sheet, that include the time he spent on the case from April 2 to June 15, 1997 (merits stage) and from January 6 to February 24, 1998 (reparations stage); airline ticket of Richard Wilson to the city of the seat of the Court).

IX REPARATIONS

A) MATERIAL DAMAGES

55. With respect to moral damages, Mr. Suárez Rosero requested that the Court order the payment of the following amounts:

- a) US\$ 47,308.03 (forty-seven thousand, three hundred eight dollars of the United States of America and three cents), which corresponds to the income which he lost from the day of his detention until his release, plus US\$ 6,874.39 (six thousand, eight hundred seventy-four dollars of the United States of America and thirty-nine cents) as interest;
- b) US\$ 1,497.00 (one thousand, four hundred ninety-seven dollars of the United States of America) for the employment of a driver and domestic help for his wife; and
- c) an amount corresponding to the reimbursement of expenses for his physical and psychological treatment, as well as for the psy-

chological treatment of his wife. During the public hearing, Mr. Suárez Rosero stated that he had paid US\$ 500.00 (five hundred dollars of the United States of America) for medical expenses due to an ulcer which was caused by his imprisonment. With respect to his psychological treatment, in his brief of October 28, 1998 he requested the amount of US\$ 6,300.00 (six thousand, three hundred dollars of the United States of America, which he allocated in the following manner: US\$ 240.00 (two hundred forty dollars of the United States of America) for the initial evaluation; US\$ 4,040.00 (four thousand forty dollars of the United States of America) for his treatment, and US\$ 2,020.00 (two thousand twenty dollars of the United States of America) for his wife's treatment.

56. The Commission adopted the calculations submitted by Mr. Suárez Rosero.

57. For its part, the State proposed the payment of the following amounts:

a) US\$18,000.00 (eighteen thousand dollars of the United States of America) for loss of earnings (*supra* 55(a));

b) US\$ 1,497.00 (one thousand, four hundred ninety-seven dollars of the United States of America for the employment of a driver and domestic help, (*supra* 55(b)) and

c) US\$ 3,609.00 (three thousand, six hundred nine dollars of the United States of America) for the physical and psychological treatment of Mr. Rafael Iván Suárez Rosero and the psychological treatment of his wife Mrs. Margarita Ramadán Burbano (*supra* 55(c)).

58. The Court has held that the compensation for lost wages should be calculated using the income of the victim, based on his actual wages. (*Neira Alegria et al. Case, Reparations, supra* 40, para. 49)

59. As to material damages, the Court has stated that in the case of survivors, the calculation of the compensation should include, among other

factors, the time that the victim remained unemployed. (*El Amparo Case, Reparations* (Art. 63(1) American Convention on Human Rights), Judgment of September 14, 1996. Series C. No. 28, para. 28) The Court holds that this criterion is applicable in the present case inasmuch as Mr. Suárez Rosero is alive. (*Loayza Tamayo Case, Reparations, supra* 40, para. 128)

60. Considering the information received, its jurisprudence, and the facts proved, the Court declares that the compensation for material damages in the present case should include the following categories:

a) the payment of US\$ 27,324.77 (twenty-seven thousand, three hundred twenty-four dollars of the United States of America and seventy-seven cents), corresponding to the lost wages of Mr. Suárez Rosero from the time of his detention on June 23, 1992 until the fulfillment of the order that mandated his release on April 29, 1996.

As a basis for the calculation, the Court has determined that Mr. Suárez Rosero received, at the time of his detention a monthly salary of S/676,853.35 (six hundred seventy-six thousand, eight hundred fifty-three sucres and thirty-five cents), which, calculated on the basis of the average exchange rate between the buying and selling rates on that date, yields the approximate amount of US\$ 449.40 (four hundred forty-nine dollars of the United States of America and forty cents). The calculation is based on twelve monthly paychecks per year. Interest was added to this amount to the date of the present judgment;

b) the payment of US\$ 1,497.00 (one thousand, four hundred ninety-seven dollars of the United States of America) for the expenses of transport and domestic help to assist Mrs. Ramadán Burbano during the imprisonment of her husband. The Court finds that the evidence for these expenses is sufficient to justify the complete payment of the amount demanded; and

c) the payment of the expenses of the physical treatment of Mr. Suárez Rosero and his psychological treatment and that of Mrs.

Ramadán Burbano, since the Court finds that there is sufficient evidence that shows that their ailments were the consequence of the imprisonment of Mr. Suárez Rosero. This fact has not been disputed by the State, which accepted the existence of these expenses and has offered a corresponding amount. Therefore, the Court deems it equitable to award US\$ 1,500.00 (one thousand, five hundred dollars of the United States of America) for physical treatment and US\$ 4,280.00 (four thousand, two hundred eighty dollars of the United States of America) for the psychological treatment of Mr. Rafael Iván Suárez Rosero; and US\$ 2,020.00 (two thousand, twenty dollars of the United States of America) for the psychological treatment of Mrs. Margarita Ramadán Burbano.

B) MORAL DAMAGES

61. As to moral damages, in his brief on reparations Mr. Suárez Rosero requested that the Court award him the payment of US\$ 20,000.00 (twenty thousand dollars of the United States of America). With regard to his family, Mr. Suárez Rosero requested the payment of US\$ 20,000.00 (twenty thousand dollars of the United States of America) for his wife and daughter and pointed out that in its judgment on the merits in this case the Court stated that the effects caused to his family by the violations of Articles 5(2) and 7(6) of the American Convention should be considered.

62. The Commission adopted Mr. Suárez Rosero's petition.

63. Both Mr. Suárez Rosero and the Commission pointed out that Mrs. Ramadán Burbano suffered intensely due to the *incommunicado* detention of her husband and the loss of the help and assistance that he provided to her. This situation was exacerbated due to her physical incapacity which required her to make a "great effort" to visit him. Finally, they stated that due to the state of health of Mrs. Ramadán Burbano and because of the uncertainty concerning the release of her husband, she conceived her daughter in a cell in the detention center, with all the humiliation which that implies. According to Mr. Suárez Rosero and the Commission, the little girl suffered on spending her first years without her father and experienced great fear that he would abandon her. They

also alleged that Mrs. Ramón Burbano had to raise their daughter alone during the years that her husband was detained.

64. During the public hearing held by the Court, the State offered to pay US\$ 10,000 (ten thousand dollars of the United States of America) to Mr. Suárez Rosero and US\$ 10,000 (ten thousand dollars of the United States of America) to Mrs. Margarita Ramón Burbano and the minor Micaela Suárez Ramón as compensation for moral damages.

65. The Court finds that the moral damages inflicted on Mr. Suárez Rosero are evident, for it is characteristic of human nature that anyone subjected to the kind of aggression and abuse that have been proved, experiences moral suffering. The Court holds that no evidence is required to arrive at this finding. (*Loayza Tamayo Case, supra* 40, para. 138)

66. Likewise, the Court finds that given the existence of grave violations to the detriment of Mr. Suárez Rosero, it must be presumed that they had an effect on Mrs. Ramón Burbano and his daughter, given the specific facts of this case.

67. Taking into account the particular circumstances of the case and the decisions on moral damages in other similar cases (*inter alia Neira Alegria et al. Case (Reparations) supra* 40, para. 58; *Caballero Delgado and Santana Case (Reparations), supra* 40, para. 50, and *Loayza Tamayo Case (Reparations), supra* 40, para. 139), the Court finds it equitable to award compensation for moral damages in the amount of US\$ 20,000.00 (twenty thousand dollars of the United States of America) to Mr. Rafael Iván Suárez Rosero, the amount of US\$ 20,000.00 (twenty thousand dollars of the United States of America) to Mrs. Margarita Ramón Burbano, and the amount of US\$ 10,000.00 (ten thousand dollars of the United States of America) to the minor Micaela Suárez Ramón.

X OTHER FORMS OF REPARATIONS

68. Mr. Suárez Rosero requested in his reparations brief and in the public hearing that the State apologize to him and his family and that 'it make

an official statement or arrive at a judicial decision that would restore his dignity, reputation, and legal rights." For its part, the Commission asked the Court to order the State to apologize to Mr. Suárez Rosero for the acts and omissions of the Ecuadorian authorities against him.

69. In the public hearing, Mr. Suárez Rosero submitted as expert evidence the statement of his therapist, who stated that the solution to overcoming the psychological problems of Mr. Suárez Rosero and the suffering that his entire family still experienced "is an admission on behalf of the State, a clearing of his name, a restoration of his dignity," and that this admission is "an indispensable, irreplaceable necessity."

70. Moreover, Mr. Suárez Rosero stated that the Ecuadorian Courts have not ruled on the appeal of his conviction, even though the respective time period established by law for this purpose has expired.

71. During the public hearing, the State argued that it had complied with the obligations set by the Court in its judgment on the merits of this case, that it has cooperated in other cases against it, and that it has fulfilled its obligation with the improvement of the general standards of human rights. With respect to the request of Mr. Suárez Rosero and the Commission that it apologize to him, the State commented that its presentation before the Court during this stage is a public expression of its recognition of the judgment rendered in favor of Mr. Suárez Rosero, and that it doesn't have a problem admitting this. Moreover, the State explained that it is not possible, at this time, to do more than that, because the appeal of the conviction of Mr. Suárez Rosero has not been decided. However, if that appeal were favorable, it would not have a problem and in fact, it would have an obligation "to make an admission or an apology."

72. With respect to the request that the State make an apology, the Court deems that the judgment on the merits in the present case constitutes, in itself, a significant and important form of reparation and moral satisfaction for Mr. Suárez Rosero and his relatives.

73. During the public hearing, Mr. Suárez Rosero stated that, as a result of the proceedings to which he was subjected, which still continues before the Ecuadorian court, he has been assessed a fine of S/.220,000,000.00 (two hundred twenty million sucres) and that the National Council on Narcotic Drugs and Psychotropic Substances has his name on a list of persons involved in the trafficking of drugs, which bars him from undertaking certain transactions, such as buying dollars of the United States of America.

74. For its part, the Commission requested that the Court order that the State "take effective measures to guarantee the expeditious and final processing of the motions still pending in the case before the courts of the domestic jurisdiction.

75. During the public hearing, the State argued that the appeal interposed by Mr. Suárez Rosero was still being processed by the Ecuadorian courts and stated that it was not possible for Ecuador to take any measure in this case until the domestic tribunals had decided the appeal.

76. In its Judgment of November 12, 1997, the Court declared that in the proceedings against Mr. Suárez Rosero there were violations of Articles 7, 8, and 25 of the American Convention, in relation to Article 1(1) of the same (first, second, and fourth operative paragraphs of that Judgment). In accordance with Article 63(1) of the Convention, the Court holds that the State has the duty to repair the consequences of these violations, in that it shall not collect the fine imposed on Mr. Suárez Rosero and not list his name, for this cause of action, in the Register of Criminal Records, or in the Register maintained by the National Council on Narcotic Drugs and Psychotropic Substances.

XI

THE DUTY TO TAKE DOMESTIC MEASURES

77. Mr. Suárez Rosero and the Commission requested that the Court order the State to investigate the facts and punish those responsible for the violated committed against Mr. Suárez Rosero.

78. The State did not make reference to this issue.

79. In this regard, the Court deems that it has already declared this duty of the State in its judgment on the merits. (*Suárez Rosero Case*, Judgment of November 12, 1997, Series C. No. 35, operative paragraph six) This obligation is incumbent upon the State whenever there has been a violation of human rights, an obligation that must be discharged seriously and not as a mere formality. (*see inter alia El Amparo Case, Reparations, supra* 59, para. 61) The Court also reiterated its consistent jurisprudence with respect to this issue, according to which the State's obligations continue until their complete fulfillment.

80. Consequently, the State is obligated to investigate the facts that resulted in the violations of the American Convention in the present case, identify and punish those responsible, and adopt the domestic legal measures necessary to ensure compliance with this obligation (Articles 1(1) and 2 of the American Convention). (*Loayza Tamayo Case, Reparations, supra* 40, para. 171)

*
* *

81. The Commission argued in its reparations brief that modification of the unnumbered article after Article 114 of the Criminal Code of Ecuador, to make it conform to the Convention, is a necessary measure to remedy deficiencies in the judicial system of the State.

82. During the public hearing the State revealed that on December 24, 1997, the Constitutional Court of Ecuador declared the cited article to be unconstitutional and submitted a copy of the respective pronouncement.

(cfr. copy of the Supplement to the Official Register of the Government of Ecuador dated December 24, 1997, number 222, pages 1 through 4, that contains the text of Resolution No. 119-1-97 of the Constitutional Court).

83. It has been shown that the unnumbered article after Article 114 of the Criminal Code of Ecuador was declared unconstitutional. Therefore,

the Court determines that it is not necessary to consider the request of the Commission on that issue.

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* *

84. Mr. Suárez Rosero requested in his reparations brief that the Court require that the State adopt measures to avoid a repetition of the violations in the future, including provision of human rights training to the officials in charge of applying the law, elimination of the practice of illegal *incommunicado* detentions, and improvement of the situation in the detention centers.

85. In this regard, the Commission stated in its brief on reparations, that it considered state action to correct the systematic deficiencies in the penal system to be of the utmost importance, and that the promulgation of "laws, regulations, instructions or orders" would be necessary to prevent prolonged *incommunicado* detention, as well as the adoption of the necessary measures to respect judicial guarantees.

86. In the public hearing, the State submitted a copy of a recent law (cfr. *copy of the Official Register of the Government of Ecuador of December 18, 1997, number 218, pages 1 through 3, containing the text of Law No. 44 "Reform of the Code of the Enforcement of Punishment and Social Rehabilitation and of the Law on Narcotic Drugs and Psychotropic Substances"*) which includes a provision similar to that which was declared in the judgment on the merits to be in violation of the Convention (the only article in fine of the Law cited). The State declared that

it [had] fulfilled all the commitments that it made in the hearing on the merits in April 1997, in that it not only modified the Law on Narcotic Drugs and Psychotropic Substances, but it also began an important process of change in the treatment of the convicts who took these substances.

87. With respect to the requests by the Commission and Mr. Suárez Rosero that the State be ordered to change its laws and internal policies,

the Court deems it pertinent to reiterate at this time its declaration in the judgment on the merits in this case, that

Ecuador is obligated, in accordance with the general duties to respect rights and adopt provisions under domestic law (Article 1(1) and (2) of the Convention), to adopt such measures as may be necessary to ensure that violations such as those established in the instant case never again occur in its jurisdiction. (*Suárez Rosero Case, supra* 79, para. 106)

Therefore, contrary to that adduced by the State, the Court finds that the new law that has been brought to its attention does not constitute an appropriate measure to fulfill the judgment on the merits in the present case and reiterates that Ecuador is obligated to recognize the rights set forth in the American Convention to all persons subject to its jurisdiction, without any exception (*Suárez Rosero Case, supra* 79, Chapter XIV: "Violation of Article 2 [of the American Convention on Human Rights]").

XII COSTS AND EXPENSES

88. Both Mr. Suárez Rosero and the Commission made reference to the judgment on the merits in this case, in which, according to their arguments, the Court ordered Ecuador to pay the costs and expenses incurred by the attorneys in the proceedings before the Inter-American Court as well as before the domestic tribunals. In this respect, the Commission stated that "indemnization of expenses and costs should correspond to that which is reasonable in light of the circumstances.

89. During the public hearing, the State offered to make a payment of a total amount to pay the expenses of the representatives of Mr. Suárez Rosero and the expenses resulting from the processing of the present case.

A) BEFORE THE DOMESTIC COURTS

90. As to costs in the domestic jurisdiction, Mr. Suárez Rosero requested the reimbursement of the costs and professional expenses, which he estimated to be approximately US\$ 2,300.00 (two thousand, three hun-

dred dollars of the United States of America). He stated, in respect to the expenses, that the Court "has recognized the difficulty of saving receipts and other documents in view of the living conditions of many of the families of the victims," and has ordered the reimbursement of expenses in the past, even in the absence of their proof. For its part, the Commission requested that compensation be granted for "all the reasonable costs and honoraria of the attorneys which were incurred to procure protection through internal remedies," including the unsuccessful attempt to file a judicial writ of *habeas corpus* for Mr. Suárez Rosero.

91. The State did not make reference to the costs and expenses in the domestic arena claimed by Mr. Suárez Rosero.

92. The consistent practice of the Court has been to award the reimbursement of expenses for representations made on behalf of the injured party before the authorities in the domestic jurisdiction. (*Garrido and Baigorria, Reparations, supra* 40, para. 81, in reference to the *Aloeboetoe et al. Case, Reparations* (Art. 63(1) American Convention on Human Rights), Judgment of September 10, 1993. Series C. No. 15, para. 94; *Caballero Delgado and Santana Case, Reparations, supra* 40, para. 47 and the second operative paragraph; *El Amparo Case, Reparations, supra* 59, para. 21, and *Neira Alegria et al. Case, Reparations, supra* 40, para. 42). The Court also deems that the reimbursement awarded can be established on an equitable basis, even in the absence of proof as to the precise amount of the expenses claimed. (*Ibid*, para.42).

93. For these reasons, the Court holds that in this situation it is equitable to award US\$ 2,000.00 (two thousand dollars of the United States of America) as reimbursement for the expenses generated by the representations made on behalf of Mr. Suárez Rosero before the domestic courts.

B. BEFORE THE INTER-AMERICAN SYSTEM

94. Mr. Suárez Rosero expressly renounced the reimbursement of costs and expenses resulting from the proceedings before the Commission. However, he requested those corresponding to the processing of the case before this Tribunal, which were broken down in the following manner:

- a. US\$ 3,694.80 (three thousand, six hundred ninety-four dollars of the United States of America and eighty cents), for the costs and expenses of his attorney Richard Wilson, which were covered by American University, during the preliminary objections and merits stages;
- b. US\$ 3,200.00 (three thousand, two hundred dollars of the United States of America), for the costs and expenses of attorney Alejandro Ponce Villacís during the preliminary objections and merits stages;
- c. US\$ 1,055.65 (one thousand, fifty-five dollars of the United States of America and sixty-five cents), for the expenses of attorney Richard Wilson during the reparations stage;
- d. US\$ 1,260.00 (one thousand, two hundred sixty dollars of the United States of America), for the costs of the Human Rights Clinic at American University during the reparations stage;
- e. US\$ 1,320.00 (one thousand, three hundred twenty dollars of the United States of America), for the costs of attorney Alejandro Ponce Villacís during the reparations stage.

95. The Commission requested that the Court order the State to pay the expenses resulting from the representation of Mr. Suárez Rosero.

96. During the public hearing, the State offered to make a payment of US\$ 3,694.80 (three thousand, six hundred ninety-four dollars of the United States of America and eighty cents) for the costs and expenses of Richard Wilson, an attorney affiliated with American University, and US\$ 3,200.00 (three thousand two hundred dollars of the United States of America) to Alejandro Ponce, both of whom have been described in subparagraphs (a) and (b) of paragraph 94. With respect to the request made subsequently by Mr. Rafael Iván Suárez Rosero for the reimbursement of additional expenses for the reparations stage (*supra* 27), the State did not make any statement.

97. The Court has ordered the payment of costs and expenses incurred in the course of the proceedings before the Inter-American system when the *quantum* is reasonable. Moreover, its recent practice has been to estimate those amounts "on an equitable basis, and consider the 'sufficient connection' that must exist between those costs and the results achieved." (*Garrido and Baigorria, Reparations, supra* 40, para. 82; cfr. *Eur. Court H.R., Brincat v. Italy, Judgment of 26 November, 1992, Series A no. 249-A*).

98. The Court observes that, in this case, the State has considered the amounts requested by Mr. Suárez Rosero to cover the expenses resulting from the merits stage before the Court to be reasonable

99. In cases in which the victim cannot provide receipts or other sufficient evidence to determine the actual amount of expenses, the Court discretionary authority to estimate their amount within reasonable limits, given the circumstances of the case. This discretionary power allows the Court to consider factors such as the duration and complexity of the case in its determination of the reasonableness of the amounts. (cfr. *Eur. Ct. H. R., König Judgment of 10 March 1980, Series. A No. 36, para. 24*; see also *Eur. Ct. H. R., Bozano Judgment of 2 December 1987, Series A No. 124-F*).

100. Given the practice of the Court and its discretion to consider the circumstances of the case, as well as the State's disposition during the merits stage to pay the amounts requested, the Court holds that it is reasonable to require Ecuador to pay to Mr. Suárez Rosero, as reimbursement of the expenses flowing from his representation before the Court in the merits stage, the amount of US\$ 6,894.80 (six thousand, eight hundred ninety-four dollars of the United States of America and eighty cents), and for the reparations stage, the amount of US\$ 3,635.65 (three thousand, six hundred thirty-five dollars of the United States of America and sixty-five cents).

XIII MODE OF COMPLIANCE

101. Both Mr. Suárez Rosero and the Commission stated that the payments ordered by the Court may be made in dollars of the United States

of America or their equivalent in Ecuadorian currency. They also requested that the Court order the State to pay the applicable interest in case of delay. The Commission requested, moreover, that the payments be made within a period of three months, that they be exempt from taxes, that the State continue with the investigation, and that the Court supervise compliance with the judgment.

102. The State did not comment on these requests.

103. The Court deems that the requests of Mr. Suárez Rosero and the Commission are reasonable, with the exception of the request made by the Commission which concerns the time period for payment. In its jurisprudence, the Tribunal has consistently granted the States a period of six months in which to comply with the obligations set forth in its judgments on reparations.

104. To comply with the present judgment, the State should carry out the payment of compensation, the reimbursement of costs and expenses, and the adoption of the other measures ordered, within a period of six months from the date of notification of this judgment.

105. The payment of the compensation awarded to Mr. Suárez Rosero and Mrs. Ramón Burbano shall be made directly to them. If either of them dies, payment shall be made to his or her heirs.

106. The reimbursement of the costs and expenses awarded to Alejandro Ponce Villacís and Richard Wilson shall be made directly to them. If either of them has died payment shall be made, in the case of Alejandro Ponce Villacís to his heirs, and in the case of Richard Wilson to American University.

107. As to the compensation awarded to the minor Suárez Ramón, the State shall set up within a period of six months from the date of notification of this judgment, a trust fund in a solvent and sound Ecuadorian banking institution, on the most favorable terms permitted by banking laws and practice. The interest earned shall be added to the principal, which shall be conveyed to Micaela Suárez Ramón outright when she

reaches the age of majority. In case of death, that right shall be passed to her heirs.

108. If within the period of one year from the date of notification of this judgment any of the persons named in paragraphs 105 and 106 do not present themselves to receive the payment awarded, the State shall deposit the amount in question in a trust in dollars of the United States of America in his or her name, in a banking institution of recognized solvency in Ecuador and under the most favorable conditions in accordance with banking practice. If after ten years from the date of the formation of the trust, these persons or their heirs have not claimed the funds, the sum shall be returned to the State and this judgment shall be deemed fulfilled.

109. The State can fulfill its obligations through payments in dollars of the United States of America or in their equivalent in Ecuadorian currency, using for the conversion the exchange rate for both currencies quoted on the New York market in the United States of America on the day prior to the date of payment.

110. The ordered payments shall be exempt from all existing or future taxes.

111. Should the State be in arrears with its payments, it shall pay interest on the amount owed at the interest rate in effect in Ecuador during the delay in payment.

112. In accordance with its consistent practice and the obligations imposed on it by the American Convention, the Court with supervise compliance with this judgment.

XIV OPERATIVE PARAGRAPHS

113. Now therefore,

THE COURT

DECIDES:

unanimously

1. To order the State of Ecuador not to collect the fine levied on Mr. Rafael Iván Suárez Rosero and to remove his name from both the Register of Criminal Records, as well as from the Register maintained by the National Council on Narcotic Drugs and Psychotropic Substances, as to the facts concerned in the present proceeding, in accordance with the terms of paragraph 76 of this judgment.

unanimously

2. To order the State of Ecuador to pay, in the manner and under the conditions set forth in paragraphs 101 to 112 of this judgment, a total amount of US\$ 86,621.77 (eighty-six thousand, six hundred twenty-one dollars of the United States of America and seventy-seven cents) or its equivalent in Ecuadorian currency, distributed in the following manner:

- a. US\$ 53,104.77 (fifty-three thousand, one hundred four dollars of the United States of America and seventy-seven cents) or the equivalent in Ecuadorian currency to Mr. Rafael Iván Suárez Rosero;
- b. US\$ 23,517.00 (twenty-three thousand, five hundred seventeen dollars of the United States of America) or the equivalent in Ecuadorian currency to Mrs. Margarita Ramón Burbano; and
- c. US\$ 10,000.00 (ten thousand dollars of the United States of America) or the equivalent in Ecuadorian currency to the minor Micaela Suárez Ramón.

unanimously

3. To order the State of Ecuador to pay costs and expenses, in the manner and conditions prescribed in paragraphs 101 to 112 of this judgment, the sum of US\$ 6,520.00 (six thousand, five hundred twenty dollars of the United States of America), or the equivalent in Ecuadorian currency, to Alejandro Ponce Villacís, and the sum of US\$ 6,010.45 (six thousand, ten dollars of the United States of America and forty-five cents), or the equivalent in Ecuadorian currency to Richard Wilson.

unanimously

4. To order the State of Ecuador to apply the following rules to the payments set forth in the present judgment:

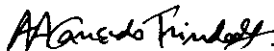
a. the payment of the lost wages ordered in the second operative paragraph (part a), will be exempt from any deduction other than those made by the Court when it made the respective calculations, in accordance with paragraph 55(A)(a) of the present judgment; and

b. the payments ordered shall be exempt from any existing or future tax or duty.

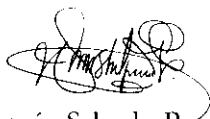
unanimously

5. To supervise fulfillment of this Judgment.

Done in Spanish and English, the Spanish being authentic, in San José, Costa Rica, this twentieth day of January, 1999.



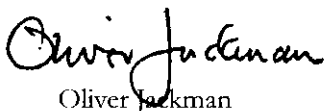
Antônio A. Cançado Trindade
President



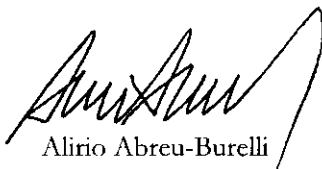
Hernán Salgado-Pesantes



Máximo Pacheco-Gómez




Oliver Jackman



Alirio Abreu-Burelli



Sergio García-Ramírez



Carlos Vicente de Roux Rengifo



Manuel E. Ventura-Robles
Secretary

So ordered,



Antônio A. Cañado Trindade
President



Manuel E. Ventura Robles
Secretary