**INTER-AMERICAN COURT OF HUMAN RIGHTS**

# CASE OF VÉLEZ LOOR *v.* PANAMA

## JUDGMENT OF NOVEMBER 23, 2010
## *(Preliminary Objections, Merits, Reparations and Costs)*

In the case of *Vélez Loor,*

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

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

also present:

Pablo Saavedra Alessandri, Secretary, and
Emilia Segares Rodríguez, Deputy Secretary,

In accordance with Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter, the "Convention" or the "American Convention") and with Articles 30, 32, 38(6), 56(2), 58, 59, and 61 of the Court Rules of Procedure[1] (hereinafter, "the Rules of Procedure"), renders this Judgment, which is structured as follows:

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[1] In accordance with Article 79(1) of the Court's Rules of Procedure that entered in force on June 1, 2010, "[c]ontentious cases submitted for the consideration of the Court before January 1, 2010, will continue to be processed in accordance with the previous Rules of Procedure until the delivery of a Judgment." Consequently, the Court's Rules of Procedure applied in this Judgment correspond to the instrument approved by the Court at its 49th Regular Period of Sessions, held from November 16 to 25, 2000, partially amended at its 82nd Regular Period of Sessions held from January 19 to 31, 2009, and in force from March 24, 2009 until January 1, 2010.

## I
## INTRODUCTION TO THE CASE AND PURPOSE OF THE DISPUTE

1. On October 8, 2009, the Inter-American Commission on Human Rights (hereinafter, the "Commission" or the "Inter-American Commission"), in accordance with Articles 51 and 61 of the Convention, submitted an application against the Republic of Panama (hereinafter, the "State" or "Panama") in relation to case 12.581, *Jesús Tranquilino Vélez Loor*, originating from the petition received by the Commission on February 10, 2004, and registered under N° P-92/04. On March 17, 2005, Mr. José Villagrán became the lawyer for the petitioner. On October 21, 2006, the Commission declared the petition admissible by accepting the Report on Admissibility N° 95/06. On May 25, 2007, Mr. Vélez Loor transferred his legal representation to the Center for Justice and International Law (hereinafter, "CEJIL"). On March 27, 2009, the Commission adopted the Report on the Merits,[2] under the terms of Article 50 of the Convention. On April 8, 2009, the State was notified of the report and granted a term of two months to report on the measures adopted for complying with the Commission's recommendations.[3] After determining that Panama had not adopted its recommendations, the Commission decided to submit the present case to the Court's jurisdiction. The Commission appointed Mr. Paolo Carozza, then member of the Commission and its Executive Secretary, Santiago A. Cantón, as delegates, and Deputy Executive Secretary Elizabeth Abi-Mershed, Mrs. Silvia Serrano Guzmán, Mrs. Isabel Madariaga and Mr. Mark Fleming as legal advisors.

2. The application concerns the alleged arrest in Panama of Mr. Jesús Tranquilino Vélez Loor, a citizen of Ecuador, and his subsequent prosecution for crimes relating to his immigration status, without being afforded due guarantees and or the possibility of being heard or of exercising his right of defense; the alleged failure to investigate the report on torture filed by Mr. Vélez Loor before Panamanian authorities as well as the alleged inhumane conditions he experienced in several Panamanian prisons where he was detained after his arrest on November 11, 2002, and until his deportation to Ecuador on September 10, 2003.

3. The Commission asked the Court to declare the State responsible for the violation of Articles 5 (Right to Humane Treatment [personal integrity]), 7 (Right to Personal Liberty), 8 (Right to a Fair Trial [judicial guarantees]) and 25 (Right to Judicial Protection), in relation to the obligations established in Articles 1(1) and 2 of the American Convention, as well as Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture (hereinafter, "Convention Against Torture"), to the detriment of Mr. Jesús Tranquilino Vélez Loor. Finally, the

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[2] In that Report, the Commission concluded that the Panamanian State is responsible for the violation of Articles 5 (Right to Humane Treatment), 7 (Right to Personal Liberty), 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection), in conjunction with the violations of Articles 2 and 1(1) of the American Convention and that the State violated Articles 1, 6, and 8 of the Convention Against Torture for failure to properly investigate the alleged torture committed against Mr. Vélez Loor. The Commission, however, concluded that the petitioners had not provided sufficient evidence to declare the violation of Article 21 of the American Convention. Finally, the Commission explained that "it does not address the petitioner's new claim of violations of Article IX of the American Convention because it was not presented at the admissibility stage and the petitioner d[id] not provide a sufficient grounds to show a violation." (Evidence file, volume I, annex 1 of the application, pages 30 and 31).

[3] In that Report, the Commission recommended that the Panamanian State: fully compensate the victim, Jesús Vélez Loor, in both moral and material terms for human rights violations as determined in the Merits Report; implement measures to prevent inhumane treatment from occurring at La Joya-Joyita and La Palma Prisons and to ensure their compliance with Inter-American standards; report to the Commission on the application of Decree Law No. 3 of February 22, 2008, eliminating incarceration as a penalty for repeated illegal entry into Panama and Article 66 of Decree No. 3; implement laws to ensure that immigration proceedings are conducted before a competent, independent and impartial judicial authority; and implement the necessary measures to ensure that the accusations of torture by Mr. Jesús Tranquilino Vélez Loor within the State's jurisdiction are properly investigated as required under Articles 1, 6, and 8 of the Convention Against Torture.

Commission asked the Court to order the State to adopt various measures of reparation, and to pay costs and expenses.

4. On January 9, 2010, Mrs. Viviana Krsticevic, Alejandra Nuño, Gisela De León, and Marcela Martino of CEJIL, the organization representing the alleged victim (hereinafter, the "representatives"), submitted a brief to the Court containing pleadings, motions and evidence, under the terms of Article 24 of the Rules of Procedure. The representatives argued that the State was responsible for the violation of the same rights alleged by the Commission, though in connection with Articles 24, 1(1) and 2 of the Convention. In addition, they alleged the violation of Article 2 of the Convention Against Torture. Finally, they asked the Court to order the State to adopt certain measures of reparation.

5. On April 23, 2010,[4] the State submitted its answer brief to the application along with its observations to the brief of pleadings, motions and evidence. In the brief, the State raised two preliminary objections related to the application filed by the Commission, namely: i) failure to exhaust domestic legal remedies and ii) lack of jurisdiction *ratione materiae* in relation to the Convention Against Torture (*infra* Chapter III). In its observations to the representatives' brief, the State also raised the following issues, which it called "preliminary matters": i) the inadmissibility *ratione materiae* of new claims put forward by the representatives and ii) CEJIL's legitimacy to represent the alleged victim regarding the alleged violations of the obligations contained in the Convention Against Torture (*infra* Chapter IV). In that brief, the State also objected to and denied certain requests filed by the Commission and the representatives and made a partial acknowledgment of international responsibility (*infra* Chapter VI). The State asked the Court to declare that Panama had no obligation to pay costs and expenses, except for the violations it expressly acknowledged. On December 11, 2009, the State appointed Mrs. Iana Quadri de Ballard as Agent and Mr. Vladimir Franco Sousa as its Deputy Agent.

6. On June 30, 2010, the representatives and the Commission forwarded their written arguments in response to the preliminary objections and the State's partial acknowledgment of responsibility, in accordance with Article 38(4) of the Rules of Procedure.

## II
## PROCEEDING BEFORE THE COURT

7. Notice of the application was served to the State on November 11, 2000, and to the representatives on November 9, 2009.

8. In an Order issued on July 30, 2001[5] the President of the Court required the testimony of seven witnesses and one expert witness to be received by affidavit, and summoned the parties to a public hearing to receive the testimonies of the alleged victim, one witness and three expert witnesses proposed by the Commission, the representatives and the State, as well as the oral arguments of the parties regarding the preliminary objections and possible merits, reparations and costs. Also, in an Order issued on August 10, 2010,[6] the President, in exercise of the authority vested in Article 50(3) of the Rules of Procedure, decided that the expert witness Arturo Hoyos Phillips should render his expert opinion before a notary public (affidavit).

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[4] In a note dated May 31, 2010, the Secretariat reported that on April 22, 2010, this Court had technical problems with the receipt of electronic communications; therefore, it considered that the brief forwarded by the State on April 23, 2010, without attachments, was presented within the period granted for its submission.

[5] See http://corteidh.or.cr/docs/asuntos/velez.pdf

[6] See http://corteidh.or.cr/docs/asuntos/velez1.pdf

9. On August 13 and 15, 2010, the representatives and the State forwarded the statements rendered before a notary public. On August 24, 2010, the parties presented their observations to the forwarded statements.

10. The public hearing took place on August 25 and 26, 2010, at the seat of the Court.[7]

11. On September 30, 2010, the Commission, the representatives and the State presented their final written arguments. On November 3, 2010, the State and the representatives presented their observations to the annexes of the final written arguments presented by the other party, and, in a brief received on November 4, 2010, the Commission stated that "it had no observations to make."

12. The Court received an *amicus curiae*[8] brief, presented by the Public Interest Clinic of the Sergio Arboleda University (Colombia), on the issues of discrimination, torture, liberty and prison conditions.

## III
## PRELIMINARY OBJECTIONS

13. In accordance with the provisions of Article 38(6), as well as the provisions of Articles 56(2) and 58 of the Rules of Procedure, the Court shall analyze the State's preliminary objections, on the understanding that they cannot limit, contradict or annul the content of the State's partial acknowledgment of responsibility *infra* Chapter VI). Accordingly, the Court proceeds to examine the arguments presented by the parties.

### 1. Failure to exhaust domestic legal remedies

#### a) Arguments of the Parties

##### *i. Arguments of the State*

14. The State asked the Court to reject the application submitted by the Commission *in limine litis*, based on the following arguments: the petitioner never made use of the mechanisms available to him under domestic law for claiming his rights to personal liberty, judicial guarantees and judicial protection; the petitioner did not exhaust existing domestic remedies to exercise his right to have an investigation conducted on the alleged acts of torture committed against him; the Commission incorrectly applied the exception contained in Article 46(2)(b) of the Convention; the State pointed out that non-compliance with the requirement to exhaust domestic remedies existed since its first communications to the Commission and that the Commission affected the procedural balance and the State's right to defense because it did not clearly state the purpose of the hearing held on March 13, 2006; some of

[7] The following persons appeared at this hearing: a) for the Inter-American Commission: Commissioner María Silvia Guillén, Delegate; Silvia Serrano and Karla Quintana, Advisors; b) for the representatives: Mrs. Alejandra Nuño, Gisela De León, Marcela Martino and Adeline Neau, of CEJIL; c) for the Republic of Panama: Iana Quadri de Ballard, Agent; Vladimir Franco, Deputy Agent; José Javier Mulino, Ambassador of Panama in Costa Rica; Mariela Vega de Donoso, Human Rights Director; Sophia Lee, Legal Assistant; Yarissa Montenegro, Attorney of the Bureau of Legal Affairs and Treaties; Francisco Rodríguez Robles, Legal Assistant; María de Lourdes Cabeza, Immigration Legal Advisor and Luz Divina Arredondo, Representative of the Embassy of Panama in Costa Rica. Furthermore, the alleged victim, Mr. Jesús Tranquilino Vélez Loor, rendered a statement; Mrs. Maria Cristina González rendered a testimony and Mrs. Gabriela Rodriguez Pizarro and Mr. Marcelo Flores Torrico rendered their expert opinions.

[8] The brief was submitted and signed on July 29, 2010, by Luis Andrés Fajardo Arturo, Director of the Public interest Clinic at the Sergio Arboleda University and José María del Castillo Abella, Dean of the Law School at Sergio Arboleda University.

the facts considered in the Report on Admissibility were provided by the petitioner without having been forwarded to the State, in violation of the State's opportunity to object to them; and paragraph 46 of the Report on Admissibility clearly shows the "lack of consistency between the facts described as the basis for the report and those [..] that led the Commission to decide the merits of applying the exception."

15. Specifically, the State argued that the failure to exhaust domestic remedies refers to those related to: (a) Resolution 7306 of December 6, 2002, issued by the National Immigration and Naturalization Office of the Ministry of the Interior and Justice of Panama (hereinafter, "National Immigration Office"), for which reason the punishment of imprisonment was imposed on the alleged victim; and (b) the complaint and investigation of alleged acts of torture committed against him. Regarding Resolution 7306 of December 6, 2002, the State indicated that at the time of the events, the remedies existing under Panamanian law for the review of this administrative act were the Request for Reconsideration and Appeal, the Appeal for Administrative Review, the Appeal for Protection of Human Rights, the Writ of Amparo and the Writ of Habeas Corpus. According to the State**,** all the remedies mentioned above were in force, were effective for the exercise the right to judicial protection and were accessible to the petitioner. Regarding the alleged acts of torture, the State argued that Mr. Vélez Loor did not file any complaint or claim in that respect, despite having had access to the relevant mechanisms and opportunities to do so.

16. Moreover, regarding the appropriate procedural moment, the State indicated that notices of non-compliance with the requirement to exhaust domestic remedies were given in the first stages of the proceeding before the Commission and since "the State never stopped alleging the non-exhaustion of domestic remedies, […] it cannot be argued there is a tacit waiver of the State's right to raise [...] this objection."

*ii. Arguments of the Commission*

17. The Commission alleged that the arguments put forward by the State are extemporaneous. In that regard, it argued that although the State's first response of March 6, 2006, made reference to Article 46(1)(a) of the Convention, "the State did not present any argument to support the claim that domestic remedies had not been exhausted in the case or to explain the remedies that were at the victim's disposal and might have been considered suitable and effective in view of the facts alleged in the petition." Furthermore, it noted that at the hearing held on March 13, 2006, the State "separately mentioned some remedies or 'mechanisms' to which the [alleged] victim could have resorted;" nevertheless, "before the Court [it submitted] a broader list of specific remedies that cannot be considered equivalent to the ones presented previously before the [Commission]."

*iii. Arguments of the Representatives*

18. For their part, the representatives pointed out that "with the exception of the *writ of habeas corpus*, the State did not argue the existence of [the] remedies [mentioned in the answer to the application] at the admissibility stage in the proceeding before the Commission." Moreover, they held that "regarding the mistreatment and acts of torture of which Mr. Vélez was [allegedly] a victim, [that] the State d[id] not expressly state which remedies would have been suitable and adequate."

### b) Decision of the Court

19. In accordance with its case-law, the Court shall determine whether the formal and material conditions have been met in this case in order to admit the preliminary objection of non-exhaustion of domestic remedies. As for the formal requirements, considering that this objection is a defense available to the State, the Court shall first analyze the purely procedural issues, such as the procedural moment of the objection (whether it was opportunely raised); the facts on which the objection is based and whether the interested party has demonstrated that the decision on admissibility was based on erroneous information or on an action taken to impair the State's right to defense. Regarding the material requirements, the Court shall verify whether the domestic remedies have been filed and exhausted according to the generally accepted principles of international law, in particular, whether the State raising this objection has specified the domestic remedies that have not yet been exhausted. The State must also demonstrate that such remedies were available to the victim and were adequate, suitable and effective. Considering that this question concerns the admissibility of a petition before the Inter-American system, the assumptions of this rule must be verified as alleged, even though the analysis of the formal requisites takes precedence over the material conditions, and in certain occasions the latter are related to the merits of the case.[9]

20. According to the Court's reiterated case-law[10] an objection to its jurisdiction based on an alleged failure to exhaust domestic remedies must be submitted in a timely manner from the procedural standpoint, namely at the stage of admissibility of the Commission's proceeding; otherwise, the State will have missed the opportunity to present this defense to the Court.

21. This case file shows that during the admissibility proceeding before the Commission, the State was neither clear nor explicit in raising its objection regarding the failure to exhaust domestic remedies, because it did not refer to the detailed list of remedies which it mentioned for the first time in its answer to the application (*supra* para. 15). On this point, the State itself admitted that in its first communication to the Commission on March 6, 2006, it only invoked the rule of Article 46(1) of the Convention "without providing a complete list of the available remedies which had not been exhausted in this case." The State also acknowledged that "[e]ven though the information provided [in the brief and in the hearing before the Commission on March 13, 2006,] was not a complete list of the remedies available at the time of the events, [it was] in fact sufficient for the Commission to become aware of the existence of judicial remedies that were neither utilized nor exhausted by the petitioner."

22. In terms of the arguments concerning the alleged violation of the State's right to defense, the Court has confirmed that the Commission has autonomy and independence to exercise its mandate as established by the American Convention[11] and, in particular, to exercise its inherent powers in the proceedings relating to the

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[9] *Cf. Case of Velásquez Rodríguez v. Honduras. Preliminary Objections*. Judgment of June 26, 1987. Series C No. 1, para. 91; *Case of Garibaldi*, *supra* note 9, para. 46 and *Case of Perozo et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs.* Judgment of January 28, 2009. Series C No. 195, para. 42.

[10] *Cf. Case of Velásquez Rodríguez, supra* note 9, para. 88; *Case of Usón Ramírez v. Venezuela. Preliminary Objections, Merits, Reparations and Costs.* Judgment of November 20, 2009. Series C No. 207, para. 19 and *Case of Dacosta Cadogan v. Barbados. Preliminary Objections, Merits, Reparations and Costs.* Judgment of September 24, 2009. Series C No. 204, para. 18.

[11] *Cf. Control of Legality in the Exercise of the Authorities of the Inter-American Commission of Human Rights* (Arts. 41 & 44 to 51 of the American Convention) Advisory Opinion OC-19/05 of November 28, 2005. Series A No. 19, Operative Paragraph 1; *Case of Manuel Cepeda Vargas v. Colombia. Preliminary Objections, Merits, Reparations and Costs.* Judgment of May 26, 2010. Series C No. 213, para. 31 and *Case of Garibaldi, supra* note 9, para. 35.

processing of individual petitions, under the terms of Articles 44 to 51 of the Convention.[12] However, one of the Court's responsibilities is to monitor the legality of the Commission's actions with regard to the processing of matters being heard by the Court. [13] This does not necessarily mean reviewing the proceedings carried out before the Commission, unless there is a grave error violating the right to defense of the parties.[14] Finally, the party claiming that the Commission's actions during the proceedings have been conducted in an irregular manner and have affected the party's right to a defense must effectively demonstrate this.[15] Therefore, a complaint or a difference of opinion in relation to the Commission's actions is not sufficient.[16]

23. On this point, the Commission argued that "although the State indicate[d] that it was not aware of the matter that would be discussed at the hearing, during that hearing the State presented arguments regarding the admissibility of the petition," the hearing having afforded an additional procedural opportunity to those already granted by the Commission for the State to present all its arguments concerning admissibility. For their part, the representatives did not present specific arguments in this respect.

24. It is worth recalling that neither the Court nor the Commission has an obligation to identify *ex officio* the domestic remedies to be exhausted; rather, it is incumbent upon the State to opportunely point out the domestic remedies which must be exhausted and to show their effectiveness. Nor is it up to international bodies to rectify the lack of precision in the arguments made by the State,[17] which in spite of having had several procedural opportunities, did not raise the objection of failure to exhaust domestic remedies.

25. Furthermore, taking into account the nature of this case and the arguments put forward by the parties in this regard, the Court considers that a preliminary analysis of the availability and/or effectiveness of the *writ of habeas corpus;* of the investigations into the alleged acts of torture; or of consular assistance in the particular circumstances of this case, would imply an evaluation of the State's proceedings in relation to its obligation to respect and guarantee the rights embodied in the international treaties, which are alleged to have been infringed. This issue must not be analyzed as a preliminary matter, but rather when examining the merits of the dispute.

26. Consequently, the Court considers that the State's right to defense has not been affected and thus finds no reason to depart from the decision made previously in the proceeding before the Commission. Therefore, the State's lack of specificity at the proper procedural moment before the Commission regarding the domestic remedies

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12 *Cf. Control of Legality in the Exercise of the Authorities of the Inter-American Commission of Human Rights (*Arts. 41 & 44 to 51 of the American Convention*), supra* note 11, Operative Paragraph 2; *Case of Manuel Cepeda Vargas, supra* note 11, para. 31 and *Case of Garibaldi, supra* note 9, para. 35.

13 *Cf. Control of Legality in the Exercise of the Authorities of the Inter-American Commission of Human Rights (Arts. 41 and 44 to 51 of the American Convention), supra* note 11, Operative Paragraph 3; *Case of Manuel Cepeda Vargas, supra* note 11, para. 31 and *Case of Garibaldi, supra* note 9, para. 35.

14 *Cf.* Case of the Dismissed Congressional Employees (*Aguado - Alfaro et al.)* v. Peru*. Preliminary Objections, Merits, Reparations and Costs.* Judgment of November 24, 2006. Series C No. 158, para. 66; *Case of Manuel Cepeda Vargas, supra* note 11, para. 31 and *Case of Garibaldi, supra* note 9, para. 35.

15 *Cf. Case of the Dismissed Congressional Employees (Aguado - Alfaro et al.), supra* note 14, para. 66; *Case of Manuel Cepeda Vargas, supra* note 11, para. 31 and *Case of Garibaldi, supra* note 9, para. 36.

16 *Cf. Case of Castañeda Gutman v. United States of Mexico. Preliminary Objections, Merits, Reparations and Costs.* Judgment of August 6, 2008. Series C No. 184, para. 42; *Case of Manuel Cepeda Vargas, supra* note 11, para. 31 and *Case of Garibaldi, supra* note 9, para. 36.

17 *Cf. Case of Reverón Trujillo v. Venezuela. Preliminary Objections, Merits, Reparations and Costs.* Judgment of June 30, 2009. Series C No. 197, para. 23 and *Case of Usón Ramírez, supra* note 10, para. 22.

allegedly not exhausted, as well as its failure to argue their availability, suitability and effectiveness, means that the claim presented before this Court is extemporaneous.

27. Finally, it is necessary to point out that the State made a partial acknowledgment of international responsibility (*infra* Chapter VI), specifying and admitting that Mr. Vélez Loor was not notified of the content of Order 7306 of December 6, 2002, and that the process by which he was sentenced to two years imprisonment was conducted without any guarantees of the right to defense. In this respect, the Court finds that the filing of the preliminary objection of non-exhaustion of domestic remedies is incompatible with that acknowledgment,[18] with the understanding that the notification of said decision was a requisite for the exercise of some of the remedies the State mentioned in its response[19] and that the lack of guarantee of due process of law to pursue the remedies constitutes an enabling factor for the jurisdiction of the international system of protection.

28. Consequently, based on the aforementioned reasons, the Court dismisses the first preliminary objection raised by the State.

### 2. The Court's lack of jurisdiction *ratione materiae* to consider an alleged breach of the Convention Against Torture

#### a) Arguments of the Parties

##### *i. Arguments of the State*

29. The State requested that the Commission's application be declared inadmissible, given the "the Court's lack of jurisdiction […] to hear the alleged non-compliance with the obligation to investigate established in the [Convention against Torture], based on the content of Articles 33 and 62 of the American Convention, which expressly limit the Court's jurisdiction to the interpretation or application of the [latter]." In this respect, the State argued that, "it cannot be assumed that the Panamanian State's acceptance of the jurisdiction of the American Convention […] can be applied to [confer] jurisdiction upon the Court regarding the application and interpretation of the Convention [Against Torture], without considering that such assumption constitutes an act against the principle of consent." Similarly, it pointed out that this Court is not competent to hear violations of the obligations contained in the Convention Against Torture in this case given that the State, apart from giving its consent to be bound to such treaty, must expressly state and accept the competence of the Court to apply and interpret its content. Finally, the State argued that the Court has limited jurisdiction over international treaties which "do not expressly grant it the authority to determine the compatibility of the acts and the norms of the States, such as the [Convention Against Torture]."

30. Should the objection be dismissed, the State asked the Court to elaborate, in a broader manner, on its jurisprudence on this issue in the last decade, given that its view "is based on facts that are insufficient to determine, with complete certainty, the scope of jurisdiction over the application and interpretation of the [Convention Against Torture]."

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[18] *Cf. Case of the "Mapiripán Massacre" v. Colombia*. *Preliminary Objections*. Judgment of March 7, 2005 Series C No. 122, para. 30 and *Case of the Ituango Massacre v. Colombia. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 1, 2006 Series C No. 148, para. 104.

[19] In fact, the State pointed out that although "[t]he resolution ordering the deportation of Mr. Vélez Loor was subject to a request for reconsideration and appeal by the Ministry of Interior and Justice, the National Immigration Office failed to formally notify the contents of the Resolution. It is possible, therefore, to understand that the petitioner was not, at the time of the implementation of the resolution, aware of the remedies or in a position to file these remedies".

*ii. Arguments of the Commission and the representatives*

31. The Commission recalled that, both it and the Court, had determined the existence of violations of Articles 1, 6, and 8 of the Convention Against Torture, on the understanding that subsection three of Article 8 of the Convention contains a general clause of acceptance of jurisdiction by the States upon the ratification or adherence to the treaty. Therefore, according to the Commission, there are no reasons for the Court to depart from its reiterated opinion, which is in accordance with international law. For their part, the representatives requested that the Court, "in conformity with [its] consolidated case-law on the issue, dismiss the preliminary objection filed by the State of Panama."

**b) Decision of the Court**

32. It is appropriate to recall that, in response to the legal argument formulated by some States asserting that each Inter-American treaty requires a specific declaration granting the Court jurisdiction, this Court has determined it may exercise its contentious jurisdiction regarding Inter-American instruments other than the American Convention when these instruments establish a system of petitions subject to international supervision in the regional sphere.[20] Thus the special statement accepting the contentious jurisdiction of the Court, based on Article 62 of the American Convention, allows the Court to examine violations of the Convention as well as other Inter-American instruments that grant it jurisdiction.[21]

33. Although Article 8 of the Convention Against Torture[22] does not explicitly mention the Inter-American Court, this Court has referred to its own jurisdiction to interpret and apply said Convention, using a complementary means of interpretation, such as working papers, given the possible ambiguity of the provision.[23] Thus, in its Judgment in the case of *Villagrán Morales et al. v. Guatemala,* the Court referred to the historic reason for said article, namely that at the time of drafting the Convention Against Torture some member countries of the Organization of American States were not yet parties to the American Convention, and indicated that "with a general clause [of jurisdiction that did not expressly and exclusively make reference to the Inter-American Court], the possibility was opened for a greater number of States to ratify or adhere to the Convention Against Torture. It was considered important at that time to attribute jurisdiction to an international body to apply the Convention Against Torture, whether it be a commission, a committee, an existing court or one that would be created in the future."[24]

34. On this point, it is necessary to emphasize that the system of international protection must be understood as an integral whole, a principle reflected in Article 29 of the American Convention, which provides a framework of protection which always gives preference to the interpretation or standard which best supports the rights of the human being, which is the main objective of the Inter-American System.

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[20] *Cf. Case of Las Palmeras v. Colombia. Preliminary Objections.* Judgment of February 4, 2000. Series C No. 67, para. 34 and *Case of González et al. ("Cotton Field") v. Mexico. Preliminary Objections, Merits, Reparations and Costs.* Judgment of November 16, 2009. Series C No. 205, para. 37.

[21] *Cf. Case of González et al. ("Cotton Field"), supra* note 20, para. 37.

[22] This precept applies with respect to the jurisdiction to apply that "[a]fter all the domestic legal system of the respective State and the recourses it provides have been exhausted, the case may be submitted to the international bodies whose competence has been recognized by that State" to which the violation of the treaty is attributed.

[23] *Cf. Case of González et al. ("Cotton Fields"), supra* note 20, para. 51.

[24] *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits.* Judgment of November 19, 1999. Series C No. 63, paras. 247 and 248 and *Case of Cantoral Huamaní and García Santa Cruz v. Peru. Preliminary Objections, Merits, Reparations and Costs.* Judgment of July 10, 2007. Series C No. 167, footnote 6.

Accordingly, the adoption of a restrictive interpretation of the scope of the Court's jurisdiction would not only be contrary to the purpose and aim of the Convention, but would also affect the effective application of the treaty and its guarantee of protection, with negative consequences for the alleged victim in the exercise of his right to access justice.[25]

35. Based on the foregoing considerations, the Court reiterates its case-law[26] that it is competent to interpret and apply the Convention Against Torture and to declare the responsibility of a State that has agreed to be bound by this Convention and that has also accepted the Court's jurisdiction. From this understanding, the Court has already had an opportunity to apply the Convention Against Torture and to declare the responsibility of various States based on the violation.[27] Given that Panama is a party to the Convention Against Torture and has acknowledged the contentious jurisdiction of this Court (*infra* Chapter V), the Court has jurisdiction *ratione materiae* to rule, in this case, on the State's alleged responsibility for violating said treaty, which was in force at the time of the events.

36. Based on the foregoing arguments, the Court dismisses the State's second preliminary objection.

## IV
## PRELIMINARY MATTERS

37. Next, the Court will refer to the two issues raised by the State, considering these to be preliminary matters related to the representatives' brief of pleadings and motions.

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[25] *Cf. Case of Radilla Pacheco v. Mexico. Preliminary Objections, Merits, Reparations and Costs.* Judgment of November 23, 2009. Series C No. 209, para. 24.

[26] *Cf. Case of the "Street Children" (Villagrán Morales et al.), supra* note 24, paras. 247 and 248; *Case of González et al. ("Cotton Field"), supra* note 20, para. 51; *Case of Las Palmeras, supra* note 20, para. 34 and *Case of Cantoral Huamaní* and *García Santa Cruz, supra* note 24, footnote 6.

[27] The Court has applied the Convention Against Torture in the following cases: *Case of the "White Van" (Paniagua Morales et al.) v. Guatemala*. *Merits*. Judgment of March 8, 1998. Series C No. 37, para. 136*; Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits.* Judgment of November 19, 1999. Series C No. 63, paras. 248 to 252; *Case of Cantoral Benavides v. Peru. Merits.* Judgment of August 18, 2000. Series C No. 69, paras. 185 and 186*; Case of Las Palmeras v. Colombia. Preliminary Objections.* Judgment of February 4, 2000. Series C No. 67, para. 34; *Case of Bámaca Velásquez v. Guatemala. Merits.* Judgment of November 25, 2000. Series C No. 70, paras. 218 and 219; *Case of Maritza Urrutia v. Guatemala. Merits, Reparations and Costs*. Judgment of November 27, 2003. Series C No. 103, para. 98; *Case of the Gómez-Paquiyauri Brothers v. Peru. Merits, Reparations and Costs*. Judgment of July 8, 2004. Series C No. 110, paras. 117 and 156; *Case of Tibi v. Ecuador. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 7, 2004. Series C No. 114, para. 159; *Case of Gutiérrez Soler v. Colombia. Merits, Reparations and Costs*. Judgment of September 12, 2005. Series C No. 132, para. 54; *Case of Blanco Romero et al. v. Venezuela. Merits, Reparations and Costs*. Judgment of November 28, 2005. Series C No. 138, para. 61; *Case of Baldeón García v. Peru. Merits, Reparations and Costs*. Judgment of April 6, 2006. Series C No. 147, para. 162; *Case of Vargas Areco v. Paraguay. Merits, Reparations and Costs*. Judgment of September 26, 2006. Series C No. 155, para. 86; *Case of the Miguel Castro-Castro Prison v. Peru. Merits, Reparations and Costs*. Judgment of November 25, 2006. Series C No. 160, para. 266; *Case of Cantoral Huamaní and García Santa Cruz v. Peru. Preliminary Objections, Merits, Reparations and Costs.* Judgment of July 10, 2007. Series C No. 167, footnote 6; *Case of Heliodoro Portugal v. Panama. Preliminary Objections, Merits, Reparations and Costs.* Judgment of August 12, 2008. Series C No. 186, para. 53; *Case of Bayarri v. Argentina. Preliminary Objections, Merits, Reparations and Costs.* Judgment of October 30, 2008. Series C No. 187, para. 89; *Case of The Dos Erres Massacre v. Guatemala. Preliminary Objections, Merits, Reparations and Costs.* Judgment of November 24, 2009. Series C No. 211, para. 54; *Case of González et al. ("Cotton Field") v. Mexico. Preliminary Objections, Merits, Reparations and Costs.* Judgment of November 16, 2009. Series C No. 205, para. 51; *Case of Fernández Ortega et al. v. Mexico. Preliminary Objections, Merits, Reparations and Costs.* Judgment of August 30, 2010. Series C No. 215, para. 131 and *Case of Rosendo Cantú et al. v. Mexico. Preliminary Objections, Merits, Reparations and Costs.* Judgment of August 31, 2010. Series C No. 216; para. 131.

### 1. Inadmissibility *ratione materiae* of new claims by the representatives

#### a) Arguments of the Parties

##### *i. Arguments of the State*

38. The State argued that the brief submitted by the representatives "seeks to introduce new claims that were not included in the Commission's application [and that these] new claims vary and modify the scope of this case" and therefore should not be admitted by the Court in the present litigation.

39. In the Court's view, the claims which the State considers were introduced by the representatives into this case refer to both facts and rights, namely: the alleged acts of torture, the alleged violation of Articles 2 of the Convention against Torture and 24 of the American Convention, and the State's alleged responsibility for failing to adequately define torture, all of which the State asked the Court not to admit.

40. The State's argument refers to the representatives' assertions that while in Panamanian custody, Mr. Vélez Loor suffered mistreatment, sexual abuse and torture. In particular, the representatives held that Mr. Vélez Loor "was the victim of multiple acts of humiliation and mistreatment, which must be considered as torture." In this respect, they stated that on June 1, 2003, after he began a hunger strike and stitched his own mouth closed, Mr. Vélez was transferred to maximum security Block 12 at La Joyita Prison, where "they beat him," poured tear gas in his face and eyes, "sprayed tear gas onto his genitals" and where "he was raped by a police officer who inserted a pencil covered with tear gas powder into his anus."

##### *ii. Response to the arguments of the State*

41. The representatives alleged that in their brief they elaborated on the facts, legal claims and proposed reparations, guided by the factual framework established in the Commission's application, without raising different facts and limiting themselves to explaining or contextualizing the alleged violations; as such, they asked that this preliminary matter be dismissed. They also indicated that "the description of the torture acts experienced by Mr. Jesús Vélez Loor while in Panamanian custody does nothing more than develop the facts presented by the Commission in the brief containing the application [, and] forms an integral part of it." Hence, they considered that it is up to the Court, in view of the evidence provided, to assess and rule on the State's responsibility for the alleged acts of torture. The representatives also held that although the Commission made no reference to "the violation of the right to humane treatment through torture," "[t]he Court has expressly acknowledged that [the representatives may introduce new claims]."

42. The Commission did not present specific considerations on this issue.

#### b) Decision of the Court

43. In its constant jurisprudence this Court has held that the alleged victim, his family members or representatives in the contentious proceedings before this Court, may invoke the violation of rights different from those included in the Commission's application, provided they refer to facts already included in the application,[28] which

[28] *Cf. Case of the "Five Pensioners" v. Peru. Merits, Reparations and Costs.* Judgment of February 28, 2003. Series C No. 98, para. 155; *Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia.* Merits, Reparations and Costs. Judgment of September 1, 2010. Series C No. 217, para. 228 and *Case of The Xákmok Kásek Indigenous Community v. Paraguay. Merits, Reparations and Costs.* Judgment of August 24, 2010. Series C No. 214, para. 237.

constitutes the factual framework of the proceeding.[29] In turn, the alleged victim or his representatives may refer to facts that explain, contextualize, clarify or reject those mentioned in the application or even respond to its claims,[30] depending on their arguments and the evidence they provide. The purpose of this possibility is to establish the procedural power of *locus standi in judicio* which is recognized in the Court's Rules of Procedure, without this invalidating the conventional limitations to their participation and the exercise of the Court's jurisdiction, or impairing or infringing the State's right to defense,[31] since the latter has the procedural opportunities to respond to the Commission's and representatives' arguments at each stage of the process. Furthermore, supervening facts may be submitted to the Court at any stage of the proceeding before the Judgment is issued.[32] Finally, it is up to the Court to decide in each case on the admissibility of such arguments to protect the procedural balance of the parties.[33]

44. In light of the foregoing criteria, the Court must determine whether the facts alleged within the factual framework established in the Commission's application should be classified as acts of torture.

45. The Court notes that in the Report on Admissibility N° 95/06, the Commission considered that in the case of Mr. Vélez Loor the alleged acts of torture described in the petition and the lack of information about criminal investigations and penalties relating to these facts amounted to a possible violation of Articles 5, 8, and 25 of the American Convention and Articles 1, 6, and 8 of the Convention Against Torture.[34] Upon examination of the evidence brought before the Commission as possible acts of torture, the Commission found, in the Report on the Merits N° 37/09 adopted in this case, that it did not have "sufficient evidence that Mr. Vélez Loor was tortured during the time he was in Panamanian custody;"[35] however, it found the State responsible "for not conducting an appropriate modern investigation into Mr. Vélez Loor's torture allegations."[36]

46. In its application to the Court, the Commission referred only in general terms to allegations of torture made in the context of this case, but did not relate them to facts or acts that would constitute torture; nor did it make references to the circumstances, the manner, time and place in which they occurred. Moreover, it

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[29] *Cf. Case of the "Mapiripán Massacre" v. Colombia. Merits, Reparations and Costs*. Judgment of September 15, 2005. Series C No. 134, para. 59; *Case of The Xákmok Kásek Indigenous Community, supra* note 28, para. 237 and *Case of Manuel Cepeda Vargas, supra* note 11, para. 49.

[30] *Cf. Case of the "Five Pensioners," supra* note 28, para. 153; *Case of The Xákmok Kásek Indigenous Community, supra* note 28, para. 237 and *Case of Manuel Cepeda Vargas, supra* note 11, para. 49.

[31] *Cf. Case of Perozo et al., supra* note 9, para. 32 and *Case of Reverón Trujillo, supra* note 17, para. 135.

[32] *Cf. Case of the "Five Pensioners," supra* note 28, para. 154; *Case of The Xákmok Kásek Indigenous Community, supra* note 28, para. 237 and *Case of Manuel Cepeda Vargas, supra* note 11, para. 49.

[33] *Cf. Case of the "Mapiripán Massacre", supra* note 29, para. 58; *Case of The Dos Erres Massacre*, *supra* note 27, para. 165 and *Case of Reverón Trujillo, supra* note 17, para. 135.

[34] *Cf.* Report N° 95/06 (Admissibility), Petition 92/04, Jesús Tranquilino Vélez Loor – Panama, issued by the Commission on October 21, 2006 (Evidence file, volume I, appendix 2 to the application, page 50).

[35] In this respect, it concluded that, "given the nature of the contradictory allegations regarding alleged acts of torture and the lack of specific information of the parties, the Commission does not have sufficient information to conclude that the State had committed acts of torture. […] Therefore, taking into account the lack of sufficient evidence of acts of torture, the Commission concludes that the State has not violated article 2 of the Convention Against Torture in relation to the allegations of Mr. Vélez Loor". Report N° 37/09 (Merits), Case 12.581, Jesús Tranquilino Vélez Loor - Panama, March 27, 2009 (Evidence file, volume I, appendix 1 to the application, page 31).

[36] Report No. 37/09, *supra* note 35.

referred to a medical and psychological examination conducted on Mr. Vélez Loor in Bolivia in June 2008, and noted it is consistent in some aspects with the complaints of torture filed by Mr. Vélez Loor in the context of another petition against Ecuador that the Commission also processed.

47. The representatives, in their brief of pleadings and motions, and the alleged victim, in his testimony before this Court, referred in detail to the events constituting the alleged acts of torture. The Court considers that these facts cannot be considered separately as constituting a violation because they are not part of the Commission's complaint; nevertheless, the information presented by the representatives and the alleged victim himself with respect to the alleged acts of torture and the manner, time, and place in which they occurred, is complementary to the factual framework of the complaint, inasmuch as it clarifies the events which require investigation, (*supra* para. 43). Therefore, the Court shall refer to the facts that allegedly constitute torture, according to the representatives of the presumed victims, only as a means of proceeding to analyze the alleged obligation to investigate the acts included by the Commission in its application.

48. Consequently, based on the factual framework of the case, it is not feasible to analyze the events presented by the representatives as a separate violation in relation to Articles 5(2) of the American Convention and 2 of the Convention Against Torture. However, these events shall be taken into account, inasmuch as they give content to the State's responsibility to immediately initiate an official investigation into the supposed acts of torture.

49. Notwithstanding the above, in analyzing the facts of the complaint relative to the conditions under which Mr. Vélez Loor was deprived of his liberty, the Court shall rule on other legal aspects concerning humane treatment as established in Article 5 of the Convention.

50. Regarding the arguments of the representatives concerning the alleged violation of Article 24 of the American Convention, the Court considers that, in the current state of evolution of the system of protection of human rights, the alleged victim's representatives have the authority to include legal claims different from those filed by the Commission, provided that these are within the factual framework of the application. Moreover, the State has had every procedural opportunity to submit its defense in response to the pleadings before this Court.[37] Therefore, the Court will analyze these arguments in the merits of this Judgment (*infra* Chapter VIII-3).

51. Thus the Court partially accepts the first preliminary matter prior to the proceeding filed by the State.

### 2. CEJIL´s legitimacy to represent the alleged victim regarding alleged violations of the obligations enshrined in the Convention Against Torture.

52. The State argued that CEJIL does not have the legitimacy "to act at [this] stage [...] on behalf of the alleged victim [...] regarding the alleged violations of obligations enshrined in the [Convention Against Torture]," because the power-of-attorney granted by Mr. Vélez Loor authorizes CEJIL to "represent him […] only in relation to the violation of 'some rights embodied in the Convention (sic)' and not to represent him for the alleged violations [...] contained in other international conventions."

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[37] *Cf. Case of Garibaldi, supra* note 9, para. 39.

53. The representatives argued that the power-of-attorney complies with all the formalities previously established by the Court as essential and "unequivocally demonstrates [the will of the alleged victim] for CEJIL to take all the actions and measures related to the proceeding […] conducted against the State […] 'ensuring the correct processing of the case'"; therefore, the power-of-attorney is valid and effective in relation to all the pertinent actions within the context of this proceeding. For its part, the Commission did not submit any comments in this respect.

54. The Court has previously stated that it is not essential for the power-of-attorney granted by alleged victims who are to be represented in the proceeding before the Court to conform to the same formalities established by the domestic laws of the respondent State.[38] Moreover, although the usual practice of this Court regarding the rules of representation has been flexible, there are certain limits upon accepting the constituent instruments dictated for the purpose of that representation. First, the instruments must clearly identify the party bestowing the power-of-attorney and reflect a clear and unambiguous manifestation of free will. They must also name the person to whom the power-of-attorney is granted and finally, they must specifically state the purpose of the representation. The instruments that meet these requirements are valid and have full effect once submitted to the Court.[39]

55. The Court confirms that the power-of-attorney granted to CEJIL[40] does not contain any express limitation on which articles may be invoked by the representatives in the proceeding before the Court, since the American Convention was mentioned in a general way; moreover, an intention to limit the authority or capacity of the representatives in the Court proceedings is not apparent in the draft of the instrument. On the contrary, the power-of-attorney states that the attorneys must "ensure the correct processing of the [present] case,"[41] and thus the Court understands that they been given the capacity to present any legal claims considered relevant or appropriate in the case.

56. Accordingly, the Court considers that the purpose of the power-of-attorney has been precisely indicated, in compliance with the requirements previously established by the Court, and that the power-of-attorney granted to the representatives does not contain any limitations that would prevent them from arguing the violation of certain rights of the Convention Against Torture before this Court; therefore, the Court rejects the second preliminary matter.

## V
## JURISDICTION

57. In accordance with the terms of Article 62(3) of the Convention, the Court has jurisdiction to hear the present case. The State of Panama ratified the American Convention on June 22, 1978, and it entered in force on July 18, 1978. On May 9, 1990, Panama accepted "the binding jurisdiction of the Court over all cases related to the interpretation and application of the American Convention […]." Furthermore, on

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38 *Cf. Case of Loayza Tamayo v. Peru. Reparations and Costs*. Judgment of November 27, 1998. Series C No. 42, paras. 97 and 98; *Case of Acevedo Jaramillo et al. v. Peru. Preliminary Objections, Merits, Reparations and Costs*. Judgment of February 7, 2006. Series C No. 144, para. 145 and *Case of Yatama v. Nicaragua. Preliminary Objections, Merits, Reparations and Costs*. Judgment of June 23, 2005. Series C No. 127, para. 94.

39 *Cf. Case of Loayza Tamayo, supra* note 38, paras. 98 and 99; *Case of Acevedo Jaramillo et al., supra* note 38, para. 145 and *Case of Yatama, supra* note 38, para. 94.

40 *Cf.* Special power-of-attorney granted by Jesús Tranquilino Vélez Loor to CEJIL through Mrs. Viviana Krsticevic and Marcela Martino by means of deed N° 367/2009 of April 29, 2009 (Evidence file, volume III, annex 33 to the application, pages 1544 to 1545).

41 Special power-of-attorney granted by Jesús Tranquilino Vélez Loor, *supra* note 40.

August 28, 1991, Panama deposited the instrument of ratification of the Convention Against Torture, which came into force on September 28, 1991.

## VI
## PARTIAL ACKNOWLEDGMENT OF INTERNATIONAL RESPONSIBILITY

58. In this case, the State made a partial acknowledgment of the facts and of its international responsibility for several alleged violations of the rights enshrined in the Convention. Thus, in its response to the application, the State assumed partial responsibility:

> - For the violation of the right to personal liberty, enshrined in Articles 7(1), 7(3), 7(4) and 7(5) of the Convention, in relation to Article 1(1) therein, regarding Mr. Jesús Tranquilino Vélez Loor, under the following terms:
>
> i) The violation of Article 7(1) of the Convention on the grounds of not fully complying with the guarantees contained in Articles 7(3), 7(4), 7(5), and 7(6) of the Convention regarding his arrest through Order 7306 of December 6, 2002;
>
> ii) The violation of Article 7(3) of the Convention for not having notified Mr. Vélez Loor of the content of Order 7306 of December 6, 2002, issued by the National Immigration Office;
>
> iii) The violation of Article 7(4) of the Convention for not formally informing him of the charges to be considered by the National Immigration Office for the imposition of the sentence of two years imprisonment; and,
>
> iv) The violation of Article 7(5) of the Convention for not having brought Mr. Vélez Loor before an official of the National Immigration Office in order to determine his responsibility for the alleged violation of the terms of his deportation ordered in January 2002.
>
> - For the violation of the right to humane treatment [personal integrity] enshrined in Article 5(1) and 5(2) of the Convention, in conjunction with Article 1(1) thereof, with respect to Mr. Jesús Tranquilino Vélez Loor, regarding the conditions of detention limited to the time of the events, specifically excluding the alleged mistreatment and acts of torture, as well as the lack of medical care while imprisoned in Panama.
>
> - Partially, for the violation of the right to a fair trial [judicial guarantees], enshrined in Articles 8(1) and 8(2) sub-paragraphs (b), (c), (d) and (f), and 25 of the Convention, in conjunction with Article 1(1) thereof, regarding the application of the two-year prison sentence ordered through Order 7306 of December 6, 2002, issued by the National Immigration Office.

59. At the public hearing, the State reiterated its partial acceptance of responsibility, specified the aspects recognized in relation to the conditions of detention, but indicated that such acknowledgment does not extend to: i) Article 2 of the American Convention given that Panama's legal system establishes the mechanisms of protection necessary to ensure personal liberty; ii) the alleged acts of torture referred to by the representatives; and iii) the alleged violation of the right to appeal the judgment contemplated in subsection h) Article 8(2) of the Convention.

60. In its final written arguments, the State reiterated that "it maintains the partial acknowledgment of responsibility,"

> Regarding the right of personal liberty, "it acknowledge[d] responsibility for the application of the punishment established by Article 67 of Decree Law 16 of 1960 […] without having guaranteed Mr. Vélez the opportunity to prepare his defense before the application of the punishment in this case. This measure resulted in the violation of the right to personal liberty, enshrined in Articles

7(1), 7(3), 7(4), 7(5), and 7(6) of the [American Convention] in conjunction with the general obligation contained in Article 1(1) [therein]."

Regarding Article 7(1) of the American Convention, "it expressed its acceptance of responsibility for partial non-compliance with the obligation contained in Article 1(1) of the Convention, insofar as the arrest ordered by the Resolution of December 6 only partially considered the guarantees contained in Articles 7(3), 7(4), and 7(5), which in turn constitutes non-compliance with the general obligation to respect the standards of the Convention."

As to Article 7(3) of the American Convention, "regarding Order 7306, [t]he State accepted responsibility for the violation of the right embodied in Article 7(3) in relation to Article 1(1) of the Convention in view of its non-compliance with the obligation to promptly notify Mr. Vélez Loor of the reasons for his arrest after the issuance of the aforementioned Order 7306 of December 6, 2002."

In relation to Article 7(4) of the American Convention, the State explained that "[d]espite the State having orally informed Mr. Vélez Loor of the reasons for imposing the punishment, from the moment of his arrest and, despite Mr. Vélez Loor having been deported in January, 2002, under penalty of the punishment contained in Article 67 of [Decree Law] 16, the State admits that, in light of its domestic legal system and its international obligations, such actions were not sufficient to adequately comply with the obligation to present formal notification of the specific charges being considered by the [National Immigration Office] and with which Mr. Vélez Loor could be punished according to Decree Law 16 [...]. There is no record of the formal written notification of the charges brought against Mr. Vélez Loor."

Regarding the right to humane treatment [personal integrity], "[t]he State assum[ed] responsibility for not having guaranteed appropriate conditions of detention to Mr. Vélez Loor, in that the general conditions in the prisons of Panama's National Prison System, in which he was detained, (La Palma and La Joyita) did not comply with standards to guarantee and safeguard his right to humane treatment, which resulted in the violation of Articles 5(1) and 5(2) of the [American Convention]."

The State accepted "responsibility for the violation of the right to a fair trial [judicial guarantees] and judicial protection enshrined in Articles 8(1), 8(2), and 25 of the American Convention in relation to Article 1(1) thereof, in relation to the imposition of a two year prison sentence for Mr. Vélez Loor through Resolution N° 7306[,] of December 6, 2002." The State mentioned that "the issuance of Resolution N° 7306[,] despite being a formal administrative act, had to consider and provide for the procedural guarantees inherent in criminal procedures, insofar as its application affected the fundamental right to liberty. There is no record in the present case that such obligation was adequately met at the stage of prosecution of the administrative proceeding where the punishment was determined. […T]he sentence of imprisonment was decided without permitting the victim to be heard […]. Such failure constitutes a violation of the guarantees contemplated in Article 8(2)." Therefore, the State "acknowledge[d] responsibility for the violation of Article 8(1) and 8(2) subsection (b), (c), (d) and (f) in conjunction with Article 1(1) of the American Convention, given that no written and detailed formal notice was served on Mr. Vélez Loor for the charges brought against him; he was not provided time or the adequate means to prepare his defense; he was not assisted by counsel nor was he allowed to exercise his right to defend himself during the administrative proceeding resulting in his imprisonment."

61. The Commission appreciated the State's acknowledgment, but noted that "some aspects of the language used [...] are ambiguous and thereby impede a clear determination of the scope of the acknowledgment of responsibility"; therefore, it asked the Court to provide a "detailed description of the facts and [of] the [alleged] human rights violations committed, considering the remedial effect of the [present

sentence] for the [alleged] victim, as well as its contribution to the non-repetition of similar facts."

62. The representatives argued that "the State's acknowledgment of responsibility is extremely confusing and ambiguous," given that it merely indicates the Articles it considers violated, without clearly establishing which events caused these violations or making reference to reasons other than the ones alleged by the Commission and the representatives. Furthermore, they emphasized that certain contradictions have arisen from the State's arguments. Consequently, they argued that this lack of clarity in the State's allegations does not make it possible to determine the true scope of its acknowledgment of responsibility. They therefore asked the Court to "examine all the facts, claims and requests in this dispute."

63. According to Articles 56(2) and 58 of the Rules of Procedure,[42] and in the exercise of its power regarding the international judicial protection of human rights, which is a matter of international public order that extends beyond the will of the parties, the Court must ensure that acts of acquiescence are acceptable for the purposes of the Inter-American system. Consequently, the Court does not limit itself to merely confirming, recording, or taking note of the State's acknowledgement, or verifying the formal conditions of such actions. It must weigh them against the nature and seriousness of the alleged violations, the requirements and interests of justice, the particular circumstances of the specific case and the attitude and position of the parties,[43] in order to determine, insofar as is possible and in the exercise of its competence, the truth of what occurred in the case.

64. The Court notes that the State did not clearly and specifically detail the facts of the application that serve as the legal basis for its partial acknowledgment of responsibility. However, it has confirmed that the State explicitly objected to certain facts mentioned in the application.[44] Therefore, given that the State accepted the alleged violations of Articles 7(1), 7(3), 7(4), 7(5), 5(1), 5(2), 8(1), and 8(2) (b), (c), (d) and (f) of the American Convention, related to the obligation established in Article 1(1) therein, this Court finds that Panama has acknowledged the facts that, according

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[42] Articles 56(2) and 58 of the Court's Rules of Procedure establish that:

Article 56. Dismissal of the case.

[…]

2. If the respondent informs the Court of its acceptance of the claims of the party that has brought the case as well as the claims of the alleged victims or their representatives, the Court, after hearing the opinions of the other parties to the case, shall decide whether such acceptance and its juridical effects are acceptable. In that event, the Court shall determine the corresponding reparations and costs.

Article 58. Continuation of investigation of the case.

The Court may, notwithstanding the existence of the conditions indicated in the preceding paragraphs, and bearing in mind its responsibility to protect human rights, decide to continue the consideration of a case.

[43] *Cf. Case of Kimel v. Argentina. Merits, Reparations and Costs.* Judgment of May 2, 2008. Series C No. 177, para. 24; *Case of Ibsen Cárdenas and Ibsen Peña, supra* note 28, para. 34 and *Case of Rosendo Cantú et al.*, *supra* note 27, para. 22.

[44] The State objected to "the statement made in the Commission's application indicating that Mr. Vélez Loor did not have access to legal counsel provided by the State and that he was not afforded the possibility of contacting the Ecuadorian [C]onsulate," and "to the fact regarding the lack of specialized medical care that Mr. Vélez required due to an apparent cranial fracture he had suffered." It held that "it is not true that a request for deportation has been presented to the [National Immigration Office ] by the Ombudsman's Office in favor of Mr. Vélez Loor"; that "the statement that the Ecuadorian consulate heard, only in the month of February, about the request for the costs of tickets to obtain the commutation of the sentence imposed on Vélez Loor is not accurate" and that "it denies the allegation regarding the lack of investigation into the acts of torture denounced by the petitioner."

to the application (the factual framework of this proceeding) constitute these violations, with the exception of those mentioned previously.

65. Accordingly, the Court decides to accept the State's acknowledgement and to classify it as a partial acknowledgment of facts and a partial acceptance of the legal claims contained in the Inter-American Commission's application.

66. Regarding Article 25 of the Convention, the Court considers that the State's acceptance does not convey the precise scope of its acknowledgment,[45] given that the State itself admitted that there is still a dispute over the right to have recourse to a competent judge or court in order decide promptly on the legality of his arrest or detention (Article 7(6)); the right to appeal the judgment to a higher court (Article 8(2)(h)); and the right to judicial protection (Article 25), all enshrined in the American Convention.

67. Finally, the Court notes that a dispute remains between the parties as to the alleged violation of:

- Article 7(2) and 7(5) of the American Convention with respect to his initial detention, for not having brought Mr. Vélez Loor before a judge or a competent judicial authority and for not having provided written notification of the requirements to leave the country;
- Article 7(3) of the American Convention regarding Detention Order N° 1430 of November 12, 2002;
- Article 7(3) of the American Convention regarding the punishment imposed by Order 7306 of December 6, 2002;
- Article 7(4) of the American Convention regarding the notification provided to Mr. Vélez Loor concerning his right to consular assistance;
- Articles 7(6) and 25 of the American Convention regarding the right to appear before a judge to assess the legality of his detention;
- Article 8(2)(h) and 25 of the American Convention regarding the right to appeal the judgment;
- Article 8(2)(e) of the American Convention regarding the right to legal assistance and in relation to the information and access to consular assistance from Ecuador;
- Article 25 of the American Convention regarding the right to judicial protection;
- Article 5(1) and 5(2) of the American Convention regarding the conditions of his detention in relation to the alleged lack of medical care during Mr. Vélez Loor's imprisonment in Panama and the drinking water supply at La Joyita Prison;
- The obligation to guarantee Article 5 of the American Convention, as well as Articles 1, 6, and 8 of the Convention Against Torture, for failing to conduct a serious and diligent investigation into Mr. Vélez Loor's allegations of torture;
- Article 2 of the American Convention for failing to adapt its domestic law to Articles 7, 8 and 25 of the American Convention in view of the application of Decree Law 16 of June 30, 1960;
- Articles 24, 1(1), and 2 of the American Convention in relation to the violation of the principle of equal protection and non-discrimination; and
- Articles 2 of the American Convention and 1, 6, and 8 of the Convention Against Torture for the alleged failure to properly classify the crime of torture.

[45] In this respect, in its response to the application, the State indicated: "[a]lthough it has acknowledged partial responsibility for the non-compliance with its duty to provide judicial guarantees for the punishment imposed on Mr. Vélez Loor, it has not accepted responsibility for the violation of the obligation to offer effective recourses through judges and courts (judicial control) to protect him from acts that, in breach of the domestic legal system, violated the petitioner's right."

68. With respect to the claims for reparations, the State recognized the determination of the alleged victim, accepted its duty to redress the violations acknowledged for the infringement of the rights to humane treatment [personal integrity], personal liberty, a fair trial [judicial guarantees] and judicial protection established in Articles 5, 7, 8, and 25 of the Convention and described some of the measures it has adopted or is offering to adopt, which shall be analyzed in the corresponding chapter. Nevertheless, it objected to the State being ordered to conduct a serious and diligent investigation into the allegations of torture allegedly committed under its jurisdiction to the detriment of Mr. Vélez Loor; the obligation to bring domestic legislation on immigration and its application into line with the minimum guarantees established in Articles 7 and 8 of the American Convention; the obligation to adopt the measures necessary to ensure that Panamanian detention centers comply with minimum standards for providing humane treatment and permitting those deprived of liberty to have a dignified life; to initiate investigations *ex officio* upon the filing of a complaint or upon reasonable grounds to believe that an act of torture was committed under its jurisdiction and to pay all the costs and expenses incurred in the processing of this case before the Inter-American Commission and the Inter-American Court. For their part, the Commission and the representatives questioned the scope of the results cited by the State, regarding which a dispute still exists in relation to other forms of reparation sought by the Commission and the representatives. Consequently, the Court will rule as appropriate.

69. In this case, the Court finds that the State's partial acknowledgement of the facts and acceptance of some of the legal claims and claims for reparation contribute positively to the conduct of these proceedings and to the exercise of the principles that inspire the American Convention,[46] and in part satisfy the need for reparation required by victims of human rights violations.

70. However, the Court finds it necessary to establish the facts and all the remaining aspects of the merits and possible reparations, as well as the corresponding consequences, pursuant to the Inter-American jurisdiction on human rights.[47]

## VII
## EVIDENCE

71. Based on the provisions of Articles 46, 47, and 49 of the Rules of Procedure, as well as on the Court's jurisprudence regarding evidence and its assessment,[48] the Court shall now examine the evidence forwarded by the parties at different procedural stages, the testimonies provided through affidavits and those rendered during the public hearing, as well as the evidence required to facilitate adjudication of the case.

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[46] *Cf. Case of the Caracazo v. Venezuela. Merits.* Judgment of November 11, 1999. Series C No. 58, para. 43; *Case of Ibsen Cárdenas and Ibsen Peña, supra* note 28, para. 37 and *Case of Rosendo Cantú et al., supra* note 27, para. 25.

[47] *Cf. Case of the "Mapiripán Massacre," supra* note 29, para. 69; *Case of Manuel Cepeda Vargas, supra* note 11, para. 18 and *Case of Tiu Tojín v. Guatemala. Merits, Reparations and Costs.* Judgment of November 26, 2008. Series C No. 190, para. 22.

[48] *Cf. Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua. Merits*, *Reparations and Costs.* Judgment of August 31, 2001. Series C No. 79, para. 86; *Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Reparations and Costs.* Judgment of May 25, 2001. Series C No. 76, para. 50 and *Case of Bámaca Velásquez v. Guatemala. Reparations and Costs.* Judgment of February 22, 2002. Series C No. 91, para. 15. *See also, Case of the Miguel Castro-Castro Prison*, *supra* note 27, paras. 183 and 184; *Case of Almonacid Arellano et al. v. Chile. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 26, 2006. Series C No. 154, paras. 67, 68, and 69; and *Case of Servellón García et al. v. Honduras. Merits, Reparations and Costs*. Judgment of September 21, 2006. Series C No. 152, para. 34.

In doing so, the Court will adhere to the principles of sound judgment within the relevant legal framework.[49]

### 1. Documentary, testimonial and expert evidence

72. The Court received the affidavits rendered by the following witnesses and expert witnesses:[50]

1) *Leoncio Raúl Ochoa Tapia*, witness proposed by the representatives who rendered a statement about the facts known to him regarding the alleged arrest of Mr. Jesús Vélez Loor; the presumed victim's alleged treatment by the Panamanian authorities during his alleged detention at La Palma Prison; and the conditions of incarceration to which Mr. Vélez Loor was subjected at La Palma Prison Center.

2) *Sharon Irasema Díaz Rodríguez,* witness proposed by the representatives who rendered a statement about prison conditions in Panama and, in particular, at La Palma Prison and at La Joya-La Joyita Prison Complex at the time of the events and at present; cases identified by the Ombudsman's Office of Panama related to alleged human rights violations in State prisons and its proposals to address these concerns.

3) *Ricardo Julio Vargas Davis,* witness proposed by the State who rendered a statement regarding the legal authority of the Ombudsman's Office of Panama, its role, the constitutional nature and scope of its role and the procedures and measures it has adopted in relation to the facts of this case.

4) *Luis Adolfo Corró Fernández,* witness proposed by the State who rendered a statement the process leading up to the amendment of Decree Law 16 of 1960 and the process of consultation and debate on Decree Law 3 of 2008.

5) *Alfredo Castillero Hoyos*, witness proposed by the State who rendered a statement on the public policies adopted by the State for the defense of human rights and the plans implemented by the State for the regularization of immigration in Panama.

6) *Carlos Benigno González Gómez*, witness proposed by the State who rendered a statement on procedures of deportation and consular notification in Panama and the alleged process of notification followed in the case of Mr. Vélez Loor with the Ecuadorian Consulate in Panama.

7) *Roxana Méndez de Obarrio,* witness proposed by the State who rendered a statement concerning the administrative restructuring of the former Ministry of Interior and Justice through the enactment of Law 19 of May 3, 2010, and how it relates to the conditions of incarceration of those detained in the prisons of La Palma and La Joya-La Joyita.

8) *Andrés Gautier Hirsch,* psychologist-psychotherapist, witness proposed by the representatives who rendered an expert assessment of the results obtained from the psychological evaluation of the alleged victim; the aftereffects currently suffered by Mr. Vélez Loor as a consequence of the facts of this case, and the measures necessary to redress the alleged violations.

9) *Arturo Hoyos Phillips,* former President of the Supreme Court of Justice of the Republic of Panama (1994-2000), expert witness proposed by the State

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[49] *Cf. Case of the "White Van" (Paniagua Morales et al.)*, *supra* note 27, para. 76; *Case of Ibsen Cárdenas and Ibsen Peña, supra* note 28, para. 39 and *Case of Rosendo Cantú et al., supra* note 27, para. 27.

[50] In the Order of August 10, 2010, the President required the expert witness Arturo Hoyos Phillips to render his expert report before a notary public (affidavit) (*supra* para. 8, Operative Paragraph 2).

who rendered an expert opinion on the background and jurisprudence of the Panamanian justice system in relation to human rights protection and means of defense in force in Panama at the time of the events related to the facts of this case.

73. Also, at the public hearing, the Court heard statements from the following individuals:

1) *Jesús Tranquilino Vélez Loor,* alleged victim proposed by the Commission and the representatives, who testified on the facts related to his alleged imprisonment in Panama; the prison conditions he was subjected to at La Palma and La Joya-Joyita Prisons; the alleged violations of his personal integrity and other rights during his imprisonment in Panama; the steps he took to seek his repatriation and to expedite the investigation into the alleged acts, including the alleged mistreatment and acts of torture; and the manner in which the State should repair the alleged violations.

2) *Maria Cristina González Batista,* witness proposed by the State who rendered a statement on the application of the Panamanian immigration law in force at the time of the events; the immigration law currently in force; the modifications contemplated in relation to human rights protection.

3) *Gabriela Elena Rodríguez Pizarro*, expert witness proposed by the Commission, former United Nations Special Rapporteur for the Rights of Migrants and current Chief of Mission of the Organization for International Migrations, who rendered an expert opinion on the minimum guarantees which, according to international human rights standards, must be applied in a criminal proceeding or any other proceeding to determine a person's immigration status, or that may result in a punishment as a consequence of this status.

4) *Marcelo Flores Torrico*, physician and expert witness proposed by the representatives, who rendered an expert opinion on the results of the medical evaluation conducted on the alleged victim; the aftereffects that Mr. Vélez Loor would currently experience as a consequence of the facts of the present case; and the measures necessary to redress the alleged violations.

### 2. Admission of documentary evidence

74. In this case, as in others, the Court admits the evidentiary value of the documents submitted by the parties at the appropriate procedural stage, which have neither been contested nor challenged, and whose authenticity has not been questioned.[51]

75. The State objected to the use as evidence "of the independent investigations, reports of the Ombudsman's Office[, except for those reports containing statistics corresponding to the period 2002-2003,] and reports of organizations that have monitored the situation in prisons[, specifically, annexes 24,[52] 27[53] and 32[54] of the

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[51] *Cf. Case of Velásquez Rodríguez v. Honduras*. *Merits*. Judgment of July 29, 1988. Series C No. 4, para. 140; *Case of Ibsen Cárdenas and Ibsen Peña, supra* note 28, para. 42 and *Case of Rosendo Cantú et al., supra* note 27, para. 31.

[52] Identified as "Psychological Medical Expert of Possible Torture and/or Cruel Treatment issued in July, 2008, by Dr. Marcelo Flores Torrico (Medical Expert) and Dr. Andrés Gautier (Psychological Expert)."

[53] Identified as "Clinic of International Human Rights Law of Harvard University, 'Human Rights Stop at These Doors: Injustice and Inequality in Panamanian Prisons,' in March 2008".

[54] Identified as "Letter of January 11, 2008, of the IACHR to the State in the context of the request for precautionary measures related to the conditions of detention in La Joya-Joyita Prison."

application,] given that they were all prepared five years after the conclusion of Mr. Vélez Loor' detention in the Panamanian prisons," and which in its view lack evidentiary value and should only be considered for their investigative value in the general context. The State specifically referred to the Report of the International Human Rights Clinic of Harvard University entitled, "Human Rights Stop at These Doors: Injustice and Inequality in Panamanian Prisons," published in March 2008; the Alternative Report on the Situation of Human Rights in Panama," of the Human Rights Network/Panama submitted to the Office of the United Nations High Commissioner for Human Rights in March 2008; the Expert Psychological and Medical Assessment conducted on Jesús Tranquilino Vélez Loor in July, 2008; and the Commission's communications related to the request for precautionary measures, dated January, 2008. Moreover, the State did not consider pertinent the references made to the proceedings undertaken by the petitioner in the State of Ecuador and before the authorities of that country to file complaints against Panama. In this regard, the Court takes note of the State's observations and decides to admit these documents and assess them, as appropriate, taking into account the body of evidence, the observations of the State and the rules of sound judgment.

76. Regarding the newspaper articles submitted by the Commission and the representatives, the Court has ruled that these may be assessed when they refer to well-known public facts or statements by State officials, or corroborate aspects related to the case.[55] The Court confirmed that in some of those documents the date of publication is illegible. However, none of the parties objected to these documents on those grounds nor did they question their authenticity. Therefore, the Court decides to admit those documents that are complete, or at least those whose source and date of publication can be verified, and shall assess them taking in to account the body of evidence, the observations of the parties and the rules of sound judgment.

77. Likewise, the Court admits other documents into the body of evidence, in application of Article 47(1) of the Rules of Procedure, upon considering them useful for the resolution of the present case.[56]

78. Similarly, together with the observations to the preliminary objections, the Commission attached a compact disc containing the recording of the hearing that took place before that body on March 13, 2006. The State also forwarded, in the final lists of deponents, a copy of Law 19 of May 3, 2010, related to the Organizational System of the Ministry of Interior. During the public hearing, expert witness Flores Torrico presented his expert opinion and delivered copies of it, which were distributed among the parties. Finding them useful for the resolution of this case, the Court decides to admit these documents to the body of evidence in accordance with Articles 46(2), 46(3) and 47 of the Rules of Procedure.

79. Finally, the representatives and the State submitted different documents as evidence, as requested by the Court, based on the provisions of Article 47(2) of the

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[55] *Cf. Case of Velásquez Rodríguez, supra* note 51, para. 146; *Case of Ibsen Cárdenas and Ibsen Peña, supra* note 28, para. 43 and *Case of Rosendo Cantú et al., supra* note 27, para. 35.

[56] IACHR, Second Progress Report of the Rapporteur on Migrant Workers and their Family Members in the Hemisphere, OAS/Ser./L/V/II.IIIdoc. 20 rev; April 16, 2001 (http://www.cidh.oas.org/Migrantes/migrantes.00sp.htm#DETENCI%C3%93N); Criminal Code, in force as of June, 2009, adopted by Law 14 of 2007, with the modifications and additions introduced by the Law 26, 2008, enacted on June 9, 2008 (http://www.asamblea.gob.pa/busca/legislacion.html); High Commissioner of the United Nations for Refugees, Background Document, "Refugee Protection and International Migration in the Americas: Trends, Protection, Challenges and Responses," 2009 (http://www.unhcr.org/refworld/docid/4c59329b2.html), and European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Second General Report, 1992 (http://www.cpt.coe.intlen/annual/rep-02.htm).

Court's Rules of Procedure;[57] the Court admits these to be assessed as appropriate according to the body of evidence, the observations of the parties and the rules of sound judgment.

80. In relation to the documents forwarded by the representatives referring to costs and expenses, the Court shall only consider those documents submitted with the final written arguments that refer to new costs and expenses incurred in the proceeding before this Court, in other words, those incurred subsequent to the brief containing pleadings and motions.

### 3. Admission of the statements of the alleged victim, of the testimonial and expert evidence

81. The Court shall assess the testimonies and expert opinions rendered by the witnesses and expert witnesses at the public hearing and in affidavits, insofar as these relate to the purpose defined by the President in the Order requiring them and the purpose of this case, taking into account the observations of the parties.

82. As to the statement of the alleged victim, this is useful insofar as it may provide additional information on the violations and their consequences.[58] However, because he has a direct interest in this case, such statement will be assessed together with all the other evidence in the proceedings.[59]

83. The Court notes that the representatives and the State presented their observations to the affidavits on August 24, 2010. Moreover, on that same date, the Commission stated it had no observations to make regarding the sworn statements.

84. As to the testimony of Mrs. Sharon Irasema Diaz, the State pointed out that "apart from referring to the facts of which she has personal knowledge and the facts known to her because of her duties, her statement contains a number of opinions and views that constitute an expert opinion rather than a testimony, since it refers to opinions derived from her special knowledge or expertise."

85. For their part, the representatives pointed out that, "when assessing the statements of witnesses Carlos Benigno González Gómez, Alfredo Castillero Hoyos, and Roxana Méndez, [the Court] must take into account that they are public officials."

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[57] In particular, they were asked to refer to and, if applicable, forward supporting documentation regarding:

a) the alleged "generalized context of discrimination and criminalization of immigration in order to reduce migratory flows into Panama, especially of illegal immigrants".

b) the places where, in 2002, the State detained the migrants arrested throughout the country in accordance with Decree Law 16 of 1960 and the places where the State currently confines those arrested for immigration issues.

c) the real effectiveness of the domestic remedies existing at the time of the events in relation to the specific conditions of detention of Mr. Vélez Loor.

d) the real possibilities of having access to a telephone or other means of communication, free of charge, and to information on the consulates existing in Panama at the time of the events, both at La Palma and at La Joya-Joyita Prisons.

e) the judgment issued by the Supreme Court of Panama on December 26, 2002, which upheld the legality of holding foreigners punished in application of Article 67 of Decree Law 16, 1960, in facilities of the national prison system other than the Coiba Penal Colony.

[58] *Cf. Case of the "White Van" (Paniagua Morales et al.), supra* note 48, para. 70; *Case of Ibsen Cárdenas and Ibsen Peña, supra* note 28, para. 47 and *Case of Rosendo Cantú et al., supra* note 27, para. 52.

[59] *Cf. Case of Loayza Tamayo v. Peru*. *Merits*. Judgment of September 17, 1997. Series C No. 33, para. 43; *Case of Ibsen Cárdenas and Ibsen Peña, supra* note 28, para. 47 and *Case of Rosendo Cantú et al., supra* note 27, para. 52.

They also indicated that the statement of witness Luis Adolfo Corró Fernández "is not related to the facts established in the application and [...] provides no relevant elements for the determination or the scope of measures of reparation that the Court will [...] eventually order, since it refers to different initiatives to reform immigration law, which for the most part have not yet been approved and therefore are not part of the Panamanian legal system." As to the statement of witness Alfredo Castillero Hoyos, they noted that, "most of the matters he refers to are not related to any of the facts of the case, neither to violations committed nor to the aspects that could be brought before the Court regarding the scope of reparations that should be ordered." They further indicated that witness Carlos Benigno González Gómez made statements that went beyond the purpose defined, "when he referred not only to the deportation process of Mr. Vélez Loor in January, 2002, but also to proceedings conducted by the Ecuadorian Consulate in Panama, when he should have limited himself to the alleged notification of the proceedings." Finally, regarding the statement of witness Roxana Méndez de Obarrio, they pointed out that it "is not related to the prison conditions at the centers where Mr. Vélez Loor was confined."

86. In this regard, the Court takes note of the objections and observations presented by the State and the representatives; however, the Court considers that such arguments relate to questions of evidentiary value and not of admissibility of evidence.[60] Consequently, the Court admits the statements mentioned, without prejudice to the fact that their evidentiary value may only be considered in relation to the purpose defined by the President (*supra* para. 8), taking into account the body of evidence, the observations of the parties and the rules of sound judgment.

87. As to the opinion rendered by expert witness Gautier Hirsch, the State pointed out that the expert evidence offered is not admissible because "the application filed against the State did not include the Commission's charge of acts of torture against Mr. Vélez Loor." Furthermore, it indicated that this expert report "constitut[ed] an extension of the evidence originally furnished by the Commission, evidence that, at the time of its presentation, was objected to by the State insofar as there is no correlation to unequivocally determine that the pathology and physical after-effects suffered by Mr. Jesús Vélez Loor [,] were indeed related to situations that took place in Panama or that they [could] be the responsibility of Panamanian State agents." Finally, the State mentioned that "in his report, the expert witness makes reference to facts he has no knowledge of and that are not part of his area of expertise, such as the description of the Mr. Vélez Loor's living conditions, or that the national justice did not produce positive results, etc. [F]acts that could only be referred to in a testimony, inasmuch as they concern facts known through his own perception, which are not the result of a special knowledge or expertise."

88. Regarding the opinion of the State's expert witness, Hoyos Phillips, the representatives noted that the content of his expert opinion went beyond the purpose defined by the President, inasmuch as the expert witness made statements "on several occasions about the facts of the case and even specifically referred to orders wherein the [alleged] victim was punished, and finish[ed] his expert opinion with specific conclusions about the remedies which, in his opinion, the [alleged] victim had access to." They also pointed out that the expert opinion "reveal[ed] that the expert witness was not aware of the facts of the case, despite having insist[ed] on making reference to them without explaining what or how he k[new] about what he was claiming." Finally, they noted that the expert opinion "is very brief and does not provide [the] Court with relevant information [...] to assess the suitability and effectiveness of the remedies to which he refers."

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[60] *Cf. Case of Reverón Trujillo, supra* note 17, para. 43; *Case of Manuel Cepeda Vargas, supra* note 11, para. 57 and *Case of Anzualdo Castro v. Peru. Preliminary Objections, Merits, Reparations and Costs.* Judgment of September 22, 2009. Series C No. 202, para. 28.

89. The Court deems it pertinent to point out that, unlike witnesses, who should avoid giving personal opinions, expert witnesses may offer technical or personal opinions provided that these are related to their special knowledge or experience. Experts may also refer both to specific matters of the *litis* or any other relevant subject of the litigation, as long as they limit themselves to the purpose for which they were summoned[61] and their conclusions are well founded. The Court notes that the State challenged the opinion of the expert witness offered by the representatives, Gautier Hirsch, on the grounds that his statement referred to facts that were not included in the factual framework of the application. Likewise, it indicated that the report amounted to an expansion of the evidence furnished by the Commission and that the expert witness made reference to facts of which he had no knowledge and which were not the result of his special knowledge. Meanwhile, the representatives indicated that the content of Mr. Hoyos Phillips' expert opinion went beyond the purpose defined by the President. This Court shall assess, in the relevant chapter of the Judgment, the content of the opinions provided by the experts witnesses insofar as these coincide with the purpose opportunely defined by the President (*supra* para. 8), according to the object of the case, taking into account the body of evidence, the observations of the parties and the rules of sound judgment.

## VIII
## MERITS

90. Having resolved the preliminary objections (*supra* Chapter III), the two issues raised by the State as preliminary matters (*supra* Chapter IV) and having analyzed the terms of the State's partial acknowledgment of international responsibility, the Court proceeds to consider and rule on the merits of the case.

### VIII-1
### RIGHT TO PERSONAL LIBERTY, FAIR TRIAL [JUDICIAL GUARANTEES], PRINCIPLE OF LEGALITY AND JUDICIAL PROTECTION IN RELATION TO THE OBLIGATIONS TO RESPECT AND GUARANTEE RIGHTS AND TO ADOPT PROVISIONS OF DOMESTIC LAW

91. Having established the scope of the State's partial acknowledgment of responsibility (*supra* Chapter VI, the Court shall now consider the matters on which there is still a dispute in relation to Articles 7,[62] 8,[63] and 25[64] of the American

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[61] *Cf. Case of Reverón Trujillo, supra* note 17, para. 42; *Case of Rosendo Cantú et al., supra* note 27, para. 68 and *Case of Fernández Ortega et al.*, *supra* note 27, para. 61.

[62] Article 7 of the American Convention provides that:

1. Every person has the right to personal liberty and security.

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

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

4. Anyone who is detained shall be informed of the reasons for his detention and shall be promptly notified of the charge or charges against him.

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

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

Convention, in relation to Articles 1(1)[65] and 2[66] of the American Convention, according to the facts of this case, the evidence furnished and the arguments of the parties.

92. It is an undisputed fact that Mr. Jesús Tranquilino Vélez Loor, an Ecuadorian national, was stopped at the Tupiza Police Post in Darien Province, Panama, on November 11, 2002, because "he did not have the necessary documentation to justify his presence in Panama."[67] The area in which Mr. Vélez Loor was apprehended is a jungle area near the border. The absence of immigration authorities in the area leaves the National Police responsible for immigration control.[68] On that day, the person responsible for the Nueva Esperanza Post prepared an incident report

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[63] Article 8 of the Convention provides that:

1. Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial court, 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.

2. Every person accused of a criminal offense has the right to be presumed innocent until proven guilty according to law. During the proceedings, every person is entitled, with full equality, to the following minimum guarantees:

[…]

b) prior notification in detail of the charges against him;

c) adequate time and means for the preparation of his defense;

d) the right to defend himself personally or to be assisted by legal counsel of his own choosing, and to communicate freely and privately with his counsel;

e) the inalienable right to be assisted by counsel provided by the state, paid or not as the domestic law provides, if the accused does not defend himself personally or engage his own counsel within the time period established by law;

f) the right of the defense to examine witnesses present in the court and to obtain the appearance of experts or other persons as witnesses who may establish the facts;

[…]

h) the right to appeal the judgment to a higher court.

[64] Article 25(1) establishes that:

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

[65] Article 1(1) establishes that:

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

[66] Article 2 of the Convention provides that:

If the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to restore those rights or freedoms.

[67] Official Letter N° ZPD/SDIIP 192-02 issued by the Subdirectorate of Information and Police Investigation, Darien Police District of the Ministry of Government and Justice of Panama on November 12, 2002 (Evidence file, volume VI, annex 2 of the response to the application, page 2482).

[68] The State explained that "Tupiza, a town in the Province of Darien where Mr. Vélez was apprehended, does not have an immigration post; therefore, the National Police is responsible for immigration control." *See also,* Wing, Fernando. "Refugees and the Legislation on the Right to Asylum in the Republic of Panama" published in *Asylum and Refugee on the Borders of Colombia*, PCS, Bogotá, 2003 (Evidence file, volume IV, annex 17 of the brief containing pleadings, motions and evidence, pages 1621 to 1622).

addressed to the Director of the Darien Police Zone[69] informing of "the capture of two (2) foreigners" at 2:13 AM, including Mr. Vélez Loor.

93. Mr. Vélez Loor was, according to the official letter N° ZPD/SDIIP 192-02, "placed in the custody" of the Darien Office of Migration and Naturalization on November 12, 2002.[70] In the town of Metetí, an immigration "Registration" form was completed with Mr. Vélez Loor's personal information,[71] and subsequently the National Immigration Office issued Arrest Warrant N° 1430.[72] Mr. Vélez Loor was transferred to La Palma Prison, according to the records, because "the National Immigration Office d[id] not have special facilities to accommodate undocumented persons."[73]

94. On December 6, 2002, through Resolution 7306, the Director of the National Immigration Office, after confirming that Mr. Vélez Loor had been previously deported from Panama via Resolution 6425 of September 18, 1996, for having entered national territory "illegally,"[74] decided to sentence him "to serve a two (2) year prison term in one of the country's prisons" for "ignoring the warnings […] of the prohibition against his entry to Panama" and therefore for violating the terms of Decree Law 16 of 1960 on Immigration, of June 30, 1960 (hereinafter, "Decree Law 16 of 1960" or "Decree Law 16").[75] Mr. Vélez Loor was not notified of that order (*supra* para. 60 and *infra* para. 175) and was subsequently transferred to La Joyita Prison.[76]

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69 *Cf.* Report of new developments issued by the National Police of the Darien Police District, Panama, on November 11, 2002 (Evidence file, volume III, annex 8 of the application, page 1211). Note N° AL-0874-04 from the Legal Advisory Services Office of the National Police of the Ministry of Interior and Justice of Panama of March 30, 2004 (Evidence file, volume III, annex 6, page 1206); Note N° 208-DGSP.DAL issued by the General Office of the Penitentiary System of the Ministry of the Interior and Justice addressed to the General Office of Legal Affairs and Treaties of the Ministry of Foreign Affairs on February 22, 2006 (Evidence file, volume VIII, annex 25 of the answer to the application, pages 3192 to 3194); Report of the General Director of the National Police of Panama addressed to the General Office of Legal Affairs and Treaties, on February 24, 2006 (Evidence file, volume IV, annex 5 of the brief of pleadings, motions and evidence, page 1572); Note N° 268-DGSP.DAL issued by the Office of Panamanian National Prison System addressed to the General Director of the Office of Legal Affairs and Treaties on April 12, 2007 (Evidence file, volume IV, annex 13 of the brief of pleadings, motions and evidence, page 1605).

70 *Cf.* Official Letter N° ZPD/SDIIP 192-02, *supra* note 67; Note N° DNMYN-AL-32-04 from the Panamanian National Immigration Office of February 17, 2004 (Evidence file, volume III, annex 5 of the application, page 1203); Report of the General Director of the Panamanian National Police, *supra* note 69; and Arrest Warrant N° 1430-DNMYN-SI issued by the National Immigration Office on November 12, 2002 (Evidence file, volume IV; annex 2 of the response to the application, page 2480 to 2481).

71 *Cf.* Information on Mr. Vélez Loor in the Immigration Registry of the National Immigration Office of November 12, 2002 (Evidence file, volume VI, annex 2 of the response to the application, page 2456).

72 Arrest Warrant N° 1430-DNMYN-SI, *supra* note 70.

73 Note N° 208-DGSP.DAL, *supra* note 69, and Note N° 268-DGSP.DAL, *supra* note 69. See also, Wing, Fernando. "Refugees and the Legislation of the Right to Asylum in the Republic of Panama," *supra* note 68, page 1619).

74 Although Mr. Vélez Loor had been deported from Panama in January 2002, the resolution did not show that this fact had been considered in imposing the penalty. *Cf.* Order N° 6425 issued by the National Immigration Office on September 18, 2006 (Evidence file, volume III, annex 3 of the application, page 1197) and Resolution N° 0185 issued by the National Immigration Office on January 9, 2002 (Evidence file, volume IV, annex 1 of the answer to the application, page 2396).

75 *Cf.* Resolution N° 7306 issued by the National Immigration Office on December 6, 2002 (Evidence file, volume VI, annex 1 of the answer to the application, page 2394 to 2395); Report of the General Director of the Panamanian National Police, *supra* note 69, page 1573, and Note N° 268-DGSP.DAL, *supra* note 69.

76 *Cf.* Communication No. DNMYN-SI-1265-02 issued by the National Immigration Office addressed to the Director of the Darien Police Zone of the National Police on December 12, 2002 (Evidence file, volume VI, annex 2 of the answer to the application, page 2483); Communication No. DNMYN-SI-1264-02 issued by the National Immigration Office directed to the Supervisor of Migration in Metetí, Darien Province on December 12, 2002 (Evidence file, volume VI, annex 2 to the answer to the application, page 2484); Communication No. DNMYN-SI-1266-02 issued by the National Immigration Office addressed to the Director of La Joya Prison on December 12, 2002 (Evidence file, volume VI, annex 2 to the answer to the application, page 2485), and Communication No. 2778 T issued by the General Director of the Prison

95. On September 8, 2003, the National Immigration Office, by Resolution N° 8230, commuted Mr. Vélez Loor's sentence, since he had a ticket to leave the country,[77] and the next day, he was transferred from La Joyita Prison to the premises of the National Immigration Office in Panama City.[78] On September 10, 2003, Mr. Vélez Loor was deported to Ecuador.[79]

96. Mr. Vélez Loor's detention was ordered based on the terms of Decree Law 16,[80] which was annulled by means of Article 141 of Decree Law N° 3 of February 22, 2008.[81] Subsequent to the facts that gave rise to the present case, reforms were introduced into the Panamanian legal framework regarding immigration. However, it is for this Court to rule on the immigration laws in force in Panama at the time of the events of this case, and applied to Mr. Vélez Loor *vis-à-vis* its obligations under the American Convention.

97. This Court has already stated that, in the exercise of their authority to set immigration policies,[82] States may establish mechanisms to control the entry into and departure from their territory of individuals who are not nationals, provided that these are compatible with the standards of human rights protection established in the American Convention.[83] Indeed, although States enjoy a margin of discretion when determining their immigration policies, the goals of such policies should take into account respect for the human rights of migrants.[84]

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System addressed to the National Immigration Office on December 11, 2002 (Evidence file, volume VI, annex 2 to the response to the application, page 2486).

77 *Cf.* Resolution N° 8230 issued by the National Immigration Office of September 8, 2003 (Evidence file, volume VI, annex 1 of the answer to the application, page 2398 to 2399) and Note N° 268-DGSP.DAL, *supra* note 69.

78 *Cf.* Discharge record of Mr. Jesús Vélez from La Joyita Prison on September 9, 2003 (Evidence file, volume VI, annex 3 of the answer to the application, page 2536); and Report of the General Director of the Panamanian National Police, *supra* note 69, page 1574).

79 *Cf.* Note A.J. N° 551 issued by the Ministry of Foreign Affairs of Panama to the Ambassador of Panama in Ecuador of March 10, 2004 (Evidence file, volume IV, annex 3 of the autonomous brief of pleadings, motions and evidence, page 1567 to 1568); Safe conduct N° 59/03 issued by the Consul General of Ecuador in Panama on September 10, 2003 (Evidence file, volume III, annex 21 of the application, page 1254); Note N° DNMYN-AL-32-04, *supra* note 70; Note N° 4-2-105/2009 issued by the Ecuadorian Embassy in Panama addressed to the Panamanian Ministry of Foreign Affairs on September 15, 2009 (Evidence file, volume VI, annex 1 of the response to the application, page 2437).

80 *Cf.* Decree Law N° 16 of June 30, 1960, published in the Official Gazette on July 5, 1960 (Evidence file, volume VIII, annex 54 of the answer to the application, pages 3619 to 3635), and Decree Law No. 16 of June 30, 1960, on Immigration, integrated text, with its respective modifications, subrogations, derogations and additions (Evidence file, volume III, annex 1 of the application, pages 1145 to 1155).

81 *Cf.* Decree Law N° 3 of February 22, 2008 that creates the National Immigration Service, the Immigration Career and other provisions published in the Digital Official Gazette of February 26, 2008 (Evidence file, volume VII, annex 10 of the response of the application, page 2895).

82 The immigration policy of a State includes any institutional act, measure or omission (laws, decrees, resolutions, directives, administrative acts, etc.) that refers to the entry, departure or residence of national or foreign persons in its territory. *Cf. Juridical Condition and Rights of Undocumented Immigrants.* Advisory Opinion OC-18/03 of September 17, 2003, Series A N.18, para. 163.

83 *Cf. Case of Haitians and Dominicans of Haitian-origin in the Dominican Republic regarding the Dominican Republic. Provisional Measures*. Order of the Court of August 18, 2000, Considering fourth.

84 *Cf. Juridical Condition and Rights of Undocumented Immigrants. supra* note 82, para. 168. Also, the Special Rapporteur on the Human Rights of Immigrants of the United Nations Human Rights Council has sustained that "[a]lthough it is the sovereign right of all States to safeguard their borders and regulate their immigration policies, States should ensure respect for the human rights of migrants while enacting and implementing national immigration laws." United Nations, Human Rights Council, Report of the Special Rapporteur on the Human Rights of Immigrants, Mr. Jorge Bustamante, entitled, "Promotion and Protection of All Human, Civil, Political, Economic, Social and Cultural Rights, including the Right to Development," of February 25, 2008, A/HRC/7/12, para. 14 (Evidence file, volume V, annex 24 of the brief of pleadings, motions and evidence, page 2017).

98. In this regard, the Court has established that special responsibilities arise from the general obligations to respect and guarantee rights, which may be determined according to the particular needs of protection of the subject of laws, considering the personal condition or specific situation of the individual.[85] Thus, migrants who are undocumented or in an irregular situation have been identified as a group in a vulnerable situation[86] because "they are the most vulnerable to potential or actual violations of their human rights"[87] and because of their situation they suffer a greater lack of protection of their rights and "differences in their access […] to public resources administered by the State [in relation to nationals or residents]."[88] Clearly, this situation of vulnerability has "an ideological dimension and occurs in a historical context that is different for each State and is maintained by *de jure* (inequalities between nationals and foreigners in the laws) and *de facto* (structural inequalities) situations."[89] Moreover, cultural prejudices about migrants perpetuate the situation of vulnerability, making it difficult for migrants to integrate into society.[90] Finally, it is worth mentioning that human rights violations committed against migrants often go unpunished, *inter alia,* due to cultural factors that justify them, the lack of access to power structures in a given society and the legal and practical obstacles that make effective access to justice illusory.[91]

99. In application of the principle of effectiveness and given the need to provide protection for individuals or groups in situations of vulnerability,[92] the Court shall interpret and give content to the rights enshrined in the Convention, in accordance with the development of the international *corpus juris* in relation to the human rights of migrants, taking into account that the international community has recognized the need to adopt special measures to ensure the protection of the human rights of this group.[93]

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85 *Cf. Case of the Massacre of Pueblo Bello v. Colombia. Merits, Reparations and Costs*. Judgment of January 31, 2006. Series C No. 140, para. 111; *Case of González et al. ("Cotton Field")*, *supra* note 20, para. 243 and *Case of Anzualdo Castro*, *supra* note 60, para. 37.

86 Similarly, the United Nations General Assembly highlighted "the situation of vulnerability in which migrants frequently find themselves, owing, among other things, to their absence from their State of origin and to the difficulties they encounter because of differences of language, custom and culture, as well as the economic and social difficulties and obstacles for their return to the States of origin of migrants who are undocumented or in an irregular situation." United Nations, General Assembly, Resolution A/RES/54/166 on "Protection of Migrants" of February 24, 2000, Preamble, para. Fifth, cited in *Juridical Condition and Rights of Undocumented Migrants, supra* note 82, para. 114.

87 United Nations, Economic and Social Council, "Specific Groups and Individuals: Migrant Workers. Human Rights of Migrants," Report of the Special Rapporteur, Mrs. Gabriela Rodriguez Pizarro, submitted in accordance with Order 1999/44 of the Commission on Human Rights, E/CN.4/2000/82, of January 6, 2000, para. 28.

88 *Juridical Condition and Rights of Undocumented Immigrants, supra* note 82, para 112.

89 *Juridical Condition and Rights of Undocumented Immigrants, supra* note 82, para 112.

90 *Cf. Juridical Condition and Rights of Undocumented Immigrants, supra* note 82, para 113.

91 *Cf.* United Nations, Economic and Social Council, "Specific Groups and Individuals: Migrant Workers. Human Rights of Migrants," Report of the Special Rapporteur, Mrs. Gabriela Rodriguez Pizarro, submitted in accordance with Order 1999/44 of the Commission on Human Rights, E/CN.4/2000/82, of January 6, 2000, para. 73, and *Juridical Condition and Rights of Undocumented Immigrants, supra* note 82, para 112.

92 *Cf. Case of the Sawhoyamaxa Indigenous Community v. Paraguay. Merits, Reparations and Costs.* Judgment of March 29, 2006. Series C No. 146, para. 189; *Case of Ibsen Cárdenas and Ibsen Peña*, *supra* note 28, para. 90 and *Case of the Xákmok Kásek Indigenous Community*, *supra* note 28, para. 250.

93 *Cf. Juridical Condition and Rights of Undocumented Immigrants, supra* note 82, para. 117, quoting United Nations, World Summit for Social Development, held in Copenhagen, March 6 to 12, 1995, A/CONF.166/9, of April 19, 1995, Annex II, Programme of Action, paras. 63, 77, and 78, available at: http://www.inclusion-ia.org/espa%F1ol/Norm/copspanish.pdf; United Nations, Report of the United Nations International Conference on Population and Development, held in Cairo, September 5 to 13, 1994, A/CONF.171/13, October 18, 1994, Programme of Action, Chapter X.A. 10.2 to 10.20, available at: http://www.un.org/popin/icpd/conference/offspa/sconf13.html, and United Nations General Assembly, World Conference on Human Rights, held in Vienna, June 14 to 25 June, 1993, A/CONF.157/23, July 12,

100. This does not mean that States cannot take any action against migrants who do not comply with their legal system, but rather that upon adopting the relevant measures, States should respect human rights and guarantee their exercise and enjoyment to all persons who are within their territory, without discrimination based on their regular or irregular status, or their nationality, race, gender or any other reason.[94] Likewise, the evolution of this aspect of international law has placed certain limits on the application of immigration policies, which must always be applied with strict regard for the guarantees of due process and respect for human dignity,[95] regardless of the migrant's legal status.

101. Based on the foregoing, the Court considers it necessary to conduct a differentiated analysis in relation to the various actions and moments when Mr. Vélez Loor's personal liberty was restricted, according to the arguments presented by the parties and for which the State has not accepted its international responsibility. In that regard, the Court shall refer to the following matters: a) the initial arrest by the Tupiza Police on November 11, 2002; b) Arrest Warrant 1430 of November 12, 2002; c) effective remedies to challenge the legality of the detention; d) the proceedings before the National Immigration Office from November 12 to December 6, 2002; e) the right to information and effective access to consular assistance; f) deprivation of liberty under the terms of Article 67 of Decree Law 16 of 1960; g) notification of Order 7306 of December 6, 2002, and remedies regarding the punitive ruling and h) the illegality of the place of confinement for foreigners sanctioned under Decree Law 16 of 1960.

### *a) Initial arrest by the Tupiza Police on November 11, 2002*

102. The representatives alleged that, since Mr. Vélez Loor was never brought before the Director of the National Immigration Office and never received a written notification of the conditions required to leave the country, his arrest was not lawful and therefore was contrary to Article 7(2) of the Convention. Moreover, the representatives alleged that Mr. Vélez Loor was never brought before a judge, who would exercise judicial control over the terms and conditions of his arrest. They therefore asked the Court to declare that Mr. Vélez Loor was not brought before a competent judge after his arrest and that no effective judicial control was exercised over the arrest made in violation of Article 7(5) of the Convention.

103. In this regard, the Commission argued that "[e]ven if Mr. Vélez Loor had been brought before the National Immigration Office, the violation of Article 7(5) of the Convention would remain unchanged given that this authority is not a judicial authority and exercises no judicial functions." Moreover, during the ten months that Mr. Vélez Loor was held in custody in Panama, he was never brought before a judge or any other official authorized by law to exercise judicial power; therefore, the

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1993, Declaration and Programme of Action, I.24 and II.33-35, available at: http://www.cinu.org.mx/temas/dh/decvienapaccion.pdf.

94 *Cf. Juridical Condition and Rights of Undocumented Immigrants, supra* note 82, para. 118.

95 *Cf. Juridical Condition and Rights of Undocumented Immigrants, supra* note 82, para. 119. Moreover, the African Commission of Human Rights and Peoples has pointed out that " [...] [The Commission] does not wish to call into question nor is it calling into question the right of any State to take legal action against illegal immigrants, such as to deport them to their countries of origin, if the competent courts so decide. It is, however, of the view that it is unacceptable to deport individuals without giving them the possibility to plead their case before the competent national courts as this is contrary to the spirit and letter of the [African] Charter [of Human Rights and Peoples] and international law." *African Commission of Human and Peoples´ Rights, Communication No: 159/96- Union Inter Africaine des Droits de l'Homme, Federation Internationale des Ligues des Droits de l'Homme, Rencontre Africaine des Droits de l'Homme, Organisation Nationale des Droits de l'Homme au Sénégal and Association Malienne des Droits de l'Homme au Angola,* decision of November, 11, 1997, para. 20.

administrative detention ordered on November 12, 2002, was not under any judicial control.

104. The State contested these allegations, arguing that on the day after his arrest, Mr. Vélez Loor was physically brought before the competent immigration authority to determine his migratory status and apply the relevant legal measures. He was then informed of the reasons for his arrest, and was heard by the officer in charge of the National Immigration Office in Metetí, who verified the breach of legal requirements of Mr. Vélez Loor's entry into Panama.

105. The Court has previously stressed that, under Article 7(5) of the Convention, a judge is responsible for guaranteeing the rights of the detained person, authorizing the adoption of precautionary or coercive measures when strictly necessary and, in general, ensuring that the accused is treated in a manner in keeping with the presumption of innocence[96] as a guarantee aimed at avoiding arbitrariness or illegality in detentions,[97] as well as guaranteeing the right to life and humane treatment.[98]

106. In previous cases, the Court has referred, *inter alia*, to the deprivation of liberty carried out in the context of criminal proceedings before ordinary[99] or military courts[100], as a precautionary and punitive measure[101], to collective and programmed arrests,[102] and to those conducted outside the law, which have constituted the first action toward perpetrating an extrajudicial execution[103] or a forced disappearance.[104] In this case, it is worth mentioning that the rights holder is a foreign national, who was arrested because he was not authorized by State law to enter and stay in Panama. In other words, the measures to restrict Mr. Vélez Loor's personal liberty were not related to the commission of a criminal offense, but to his irregular migratory status for having entered Panama in an unauthorized area, without the

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96 *Cf. Case of Tibi*, *supra* note 27, para. 114; *Case of Barreto Leiva v. Venezuela. Merits, Reparations and Costs.* Judgment of November 17, 2009. Series C No. 206, paras. 119 a 121 and *Case of Bayarri*, *supra* note 27, para. 63.

97 *Cf. Case of Juan Humberto Sánchez v. Honduras. Preliminary Objections, Merits, Reparations and Costs.* Judgment of June 7, 2003. Series C No. 99, para. 83; *Case of Bayarri*, *supra* note 27, para. 63 and *Case of Yvon Neptune v. Haiti. Merits, Reparations and Costs.* Judgment of May 6, 2008. Series C No. 180, para. 107.

98 *Cf. Case of Tibi*, *supra* note 27, para. 118; *Case of López Álvarez v. Honduras. Merits, Reparations and Costs*. Judgment of February 1, 2006. Series C No. 141, para. 87 and *Case of Palamara Iribarne*, *supra* note 100, para. 221.

99 *Cf. Case of García Asto and Ramírez Rojas v. Peru. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 25, 2005. Series C No. 137, paras. 115 and 134; *Case of Yvon Neptune*, *supra* note 97, para. 100, and *Case of Chaparro Álvarez* and *Lapo Íñiguez v. Ecuador. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 21, 2007. Series C No. 170, paras. 66, 73, 86, and 87.

100 *Cf. Case of Loayza Tamayo*, *supra* note 59, para. 61; *Case of Usón Ramírez*, *supra* note 10, para. 148 and *Case of Palamara Iribarne v. Chile. Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 135, paras. 195 and 228.

101 *Cf. Case of Suárez Rosero v. Ecuador*. *Merits*. Judgment of November 12, 1997. Series C No. 35, paras. 70, 74, and 75; *Case of Barreto Leiva*, *supra* note 96, paras. 121 to 123 and *Case of Bayarri*, *supra* note 27, paras. 75 to 77.

102 *Cf. Case of Bulacio v. Argentina. Merits, Reparations and Costs*. Judgment of September 18, 2003. Series C No. 100, para. 38 and *Case of Servellón García*, *supra* note 48, para. 96.

103 *Cf. Case of the "Street Children" (Villagrán Morales et al.)*, *supra* note 24, paras. 132 and 143; *Case of Escué Zapata v. Colombia. Merits, Reparations and Costs.* Judgment of July 4, 2007. Series C No. 165, para. 86 and *Case of La Cantuta v. Peru. Merits, Reparations and Costs.* Judgment of November 29, 2006. Series C No. 162, para. 109.

104 *Cf. Case of Velásquez Rodríguez*, *supra* note 51, para. 186; *Case of Chitay Nech et al. v. Guatemala. Preliminary Objections, Merits, Reparations and Costs.* Judgment of May 25, 2010. Series C No. 212, para. 121 and *Case of Anzualdo Castro*, *supra* note 60, para. 79.

necessary documents and in violation of a prior deportation order. Also, the Court deems it appropriate to point out that, from the evidence and arguments of the parties, it does not appear that Mr. Vélez Loor had requested international protection,[105] or that he held any other status to which other areas of international law might apply such as *lex specialis.*

107. Unlike the European Convention for the Protection of Human Rights and Fundamental Freedoms,[106] the American Convention does not set a limit on the exercise of the guarantee established in Article 7(5) of the Convention based on the reasons or circumstances under which the person has been arrested or detained. Therefore, under the principle *pro persona,* this guarantee must be met whenever the person's detention or arrest is based on his or her migratory status, in accordance with the principles of judicial control and procedural immediacy.[107] In order to establish a true mechanism of control in the face of unlawful and arbitrary detentions, the judicial review must be carried out promptly and in such a way as to guarantee compliance with the law and the detainee's effective enjoyment of his rights, taking into account his special vulnerability.[108] The United Nations Working Group on Arbitrary Detention also established that "[a]ny [...] immigrant placed in custody must be brought promptly before a judicial or other authority."[109]

108. This Court considers that in order to satisfy the guarantee established in Article 7(5) of the Convention in relation to immigrants, domestic legislation must ensure that the official legally authorized to conduct judicial functions fulfills the requirements of impartiality and independence that should govern any body authorized to determine the rights and obligations of persons. In this respect, the Court has already established that these requirements do not only apply to judicial bodies, but that the provisions of Article 8(1) of the Convention also apply to the decisions of administrative bodies.[110] In relation to this guarantee, each time the official has the task of preventing or ending unlawful and arbitrary detentions,[111] it is imperative for the official to have the authority to order the release of the person if his or her detention is illegal or arbitrary.

109. The Court notes that Decree Law 16 of 1960 established that foreigners would be placed in the custody of the Director of the National Immigration Office.[112]

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105 Including with this statement the Statute on Refugees according to the relevant United Nations instruments, the corresponding domestic laws, and territorial asylum in accordance with the various Inter-American conventions on the matter.

106 In the European Convention, the right to be promptly brought before a judge or other officer, contemplated in Article 5, paragraph 3, is exclusively related to the category of detainees mentioned in the first paragraph, subparagraph c; that is, the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority for reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent them from committing an offence or fleeing after having done so.

107 *Case of Tibi*, *supra* note 27, para. 118; *Case of López Álvarez*, *supra* note 98, para. 87 and *Case of Palamara Iribarne*, *supra* note 100, para. 221.

108 *Cf. Case of Bayarri*, *supra* note 27, para. 67. In the same sense, *ECHR, Iwanczuk v. Poland* (Application no. 25196/94) Judgment of 15 November 2001, para. 53.

109 United Nations, Working Group on Arbitrary Detention, Group Report, Annex 2, Deliberation No. 5: Situation regarding immigrants and asylum-seekers, 1999, E/CN.4/2000/4, Principle 3.

110 *Cf. Case of the Constitutional Court v. Peru. Merits, Reparations and Costs.* Judgment of January 31, 2001. Series C No. 71, para. 71; *Case of Escher et al. v. Brazil. Preliminary Objections, Merits, Reparations and Costs.* Judgment of July 6, 2009. Series C No. 200. para. 208 and *Case of Claude Reyes et al. v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151, para. 119.

111 *Cf. Case of Bayarri*, *supra* note 27, para 67.

112 In this regard, Articles 58 and 60 stated:

> Article 58. "Notwithstanding the provisions of Article 22 of this Decree Law, any foreigner who is found by any authority without valid documents proving their income, residence, or establishment in the country shall l be placed in the custody of the Director of the National Immigration Office.

According to the facts and the evidence of this case, after his arrest in Tupiza, Mr. Vélez Loor was "remitted" or placed in the custody of the Darien Office of Immigration by the National Police of the Darien District through Official letter N° ZPD/SDIIP 192-02.[113] The Court considers that placing someone in the custody of an authority does not necessarily mean bringing someone before the Director of the National Immigration Office. Admittedly, as has already been established, in order to satisfy the requirement of Article 7(5) of "being taken" without delay before a judge or other officer authorized by law to carry out judicial functions, the detainee must appear in person before the competent authority, who should hear the detained person personally and evaluate all the explanations that the latter provides in order to decide whether to release him or continue the deprivation of liberty.[114]

110. Moreover, the Court notes that once Mr. Vélez Loor was transferred to Metetí, the "registration" form was completed with his personal information and his reason for being in Panama.[115] From this action, it does not appear that Mr. Vélez Loor had received written notification of the alternatives established in Article 58 of the Decree Law, in relation to his obligation to legalize his presence in the country or leave by his own means, within a minimum reasonable term of three (3) days and a maximum term of thirty (30) days, without prejudice to the other established penalties. Furthermore, there is no record of the position of the official who completed the document and, therefore, of whether he or she assessed all the explanations provided by Mr. Vélez Loor in order to decide whether or not to release him, or even if that official had the authority to decide on his continued detention or release.

111. Based on the foregoing, the Court considers that the State has not provided sufficient elements to demonstrate that it complied with the terms established in Article 7(5) of the Convention.

### *b) Arrest warrant 1430 of November 12, 2002*

112. The Commission argued that the arrest of Mr. Vélez Loor was arbitrary, from the moment the arrest warrant was issued on November 12, 2002, to the moment of his deportation on September 10, 2003. In the Commission's opinion, the arrest is only acceptable on the basis of an individualized evaluation and in pursuit of a legitimate State interest, "such as ensuring the appearance of a person at a proceeding to determine their immigration status and possible deportation." Furthermore, it argued that the "threat to public security" could only be based on "exceptional circumstances where there are indications that a person represents a serious risk." In this regard, the Commission pointed out that there is no reference in the decision of November 12, 2002, to "the specific situation of the [alleged] victim, the reasons why detention was appropriate instead of another less detrimental

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> This official shall give written notice to the foreigner of the obligation to legalize his presence or leave the country through his own means within a reasonable time, which shall not be less than three (3) days or more than thirty (30), without prejudice to any other penalties established by this Decree Law."
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> Article 60. "Immigration officials have power to arrest any foreigner who, in the official's presence or view, attempts to enter the territory of the Republic in violation of the provisions of this Decree Law or who is found in the country without documents proving his legal entry, residence, or permanence in the country, in accordance with legal requirements. The foreigner shall be placed in the custody of the Director of the National Immigration Office within (24) hours."

*Cf.* Decree Law No. 16 of June 30, 1960, *supra* note 80, page 1152.

113 *Cf.* Order No. ZPD/SDIIP 192-02, *supra* note 67; Note No. DNMYN-AL-32-04, *supra* note 70; Report of the General Director of the Panamanian National Police, *supra* note 69; Arrest Warrant No. 1430-DNMYN-SI, *supra* note 70.

114 *Cf. Case of Chaparro Álvarez* and *Lapo Íñiguez*, *supra* note 99, para. 85 and *Case of Bayarri*, *supra* note 27, para. 65.

115 *Cf.* Registration form of Mr. Vélez Loor, *supra* note 71.

measure or the reasons why Mr. Vélez Loor represented a risk to security or public order; [therefore] it was arbitrary." The only justification given for the decision was that Mr. Vélez Loor's presence was "illegal" for reasons of "security and public order."

113. The State pointed out that the arrest warrant was preventive in nature and was issued while the immigration authority was examining the case. It alleged that Mr. Vélez's enjoyment of the right to personal liberty was suspended according to the forms prescribed by law, based on a reason previously stipulated by law and ordered by a competent authority; it was not arbitrary, he was informed of the reasons of his arrest, and was brought before the authorized official.

114. The Court notes that Detention Order 1430 (*supra* para. 93) mentions that Mr. Vélez Loor had been placed in the custody of the National Immigration Office "for having been arrested because he did not possess any legal documentation to justify or authorize his physical presence on national territory and because he had a legal impediment to enter Panama."[116] Based on these considerations, it was decided to order his arrest "for having entered the country illegally and for reasons of security and public order to apply any of the measures established in Decree Law 16."[117]

115. The Court confirms that the immigration authority who issued the arrest warrant and who was authorized to do so, established as legal grounds for the validity of the measure several articles of Decree Law N° 16.[118] In this regard, the Court notes that the rules mentioned as the basis of the arrest warrant establish, *inter alia*, the following: 1) the Ministry of Interior and Justice may deny the entry or transit in the country of any foreigner who is found residing in it, provided that it is necessary or appropriate for reasons of security, public health, or public order (Article 36); 2) immigration is prohibited (Article 37, f) to those foreigners who have been deported from Panama; 3) immigration officers have the power to arrest any foreigner who, in their presence or sight, seeks to enter the national territory in violation of the provisions of the Decree Law or who is apprehended in the national territory without any document to accredit his legal entry, residence or permanence in the country, according to the legal requirements; such persons shall be placed in the custody of the Director of the National Immigration Office within the twenty-four (24) hours (Article 60); 4) transient foreigners or immigrants providing false information to obtain the benefits of this Decree Law will be forced to leave the country immediately upon confirmation of the offense (Article 61); 5) if any foreigner is unable to present the documents he or she requires according to the Decree Law based on a just cause, the Director of the National Immigration Office shall be immediately notified, and that foreigner shall be placed in his custody for all relevant purposes (Article 62); 6) those foreigners who entered the country without complying with the legal requirements for entry or who remained in the country after the expiry of their visas, shall be placed in the custody of the Ministry of Interior and Justice in order to be deported or to apply the corresponding measures (Article 65, first paragraph); 7) foreigners sentenced to deportation who evade this order by staying in the country in a clandestine manner or who circumvent the penalty by returning to the country, shall be sentenced to two (2) years of agricultural work in the Penal Colony of Coiba and shall be obliged to leave the country at the end of that period (Article 67) and 8) the Director of the National Immigration Office shall deal with and decide in first instance matters related to immigration in general (Article 85).

116. Even when an arrest is made for reasons of "security and public order" (*supra* para. 114), it must comply with all the guarantees of Article 7 of the Convention. In this respect, the resolution adopted by the Director of the National Immigration Office

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116 Arrest Warrant N° 1430-DNMYN-SI, *supra* note 70.

117 Arrest Warrant N° 1430-DNMYN-SI, *supra* note 70.

118 *Cf.* Decree Law N° 16 of June 30, 1960, *supra* note 80.

does not clearly show a reasoned and objective legal basis regarding either the source or the need of such a measure. The mere listing of all the standards that could be applicable does not meet the requirement of sufficient justification that would allow for an evaluation of compatibility with the American Convention.[119] In this respect, the Court has established in its case-law that rulings by domestic bodies that may impair human rights, such as the right to personal liberty, and which are not properly substantiated, are arbitrary.[120]

117. Similarly, from the rules invoked or the resolution adopted it does not appear that such measure had a time limit. On this aspect, the Working Group on Arbitrary Detention had established that when a person is detained due to his or her irregular immigration status, "a maximum period should be set by law and the custody may in no case be unlimited or of excessive length."[121] Finally, there were no clear limits to the powers of the administrative authority, which favors undue prolongation of the detention of immigrants, turning these into a punitive measure.

118. Consequently, the Court considers that the arrest warrant issued in this case was arbitrary, given that it contained no grounds to justify or explain its purpose, according to the facts of the case and the particular circumstances of Mr. Vélez Loor. On the contrary, it appears that the arrest warrant for irregular immigrants was automatically issued after the initial arrest without consideration of the particular circumstances.[122] Therefore, the Court considers that the State violated Article 7(3) of the Convention in relation to Article 1(1) thereof, to the detriment of Mr. Vélez Loor, by having deprived him of liberty for a period of twenty-five days on the basis of an arbitrary order.

### *c) Effective remedies to challenge the legality of the detention*

119. The Commission held that although remedies for challenging the legality of a detention did formally exist, "they were not effectively made available to the [alleged] victim," considering that in the absence of information, lack of judicial control and absence of procedural guarantees, Mr. Vélez Loor was prevented from filing a writ of *habeas corpus* by his own means.

120. The representatives argued that although Panamanian legislation contemplates the possibility of filing a writ of *habeas corpus* to challenge the legality of a detention, in this case Mr. Vélez Loor "never had a real opportunity to do so," because he was an undocumented immigrant; therefore, he was in a situation special vulnerability. Moreover, the representatives argued that due to the violation of several procedural guarantees, he was prevented from having access to the corresponding judicial remedy, namely: i) he was never notified of the proceeding instituted against him; ii) he was not provided with legal aid; iii) he was not informed of his rights and iv) during the whole time the alleged victim was in Panamanian territory, he was held in custody by the State authorities and was never brought before a judicial authority.

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119 *Cf. Case of García Asto* and *Ramírez Rojas*, *supra* note 99, para. 128 and 143; *Case of Barreto Leiva*, *supra* note 96, para. 116 and *Case of Yvon Neptune*, *supra* note 97, para. 98.

120 *Cf. Case of Yatama*, *supra* note 38, para. 152; *Case of Escher et al.*, *supra* note 110, para. 208, and *Case of Tristán Donoso v. Panama. Preliminary Objections, Merits, Reparations and Costs.* Judgment of January 27, 2009. Series C No. 193, para. 153.

121 United Nations, Working Group on Arbitrary Detention, Group Report, Annex II, Deliberation No. 5: Situation regarding immigrants and asylum-seekers, 1999, E/CN.4/2000/4, Principle 7.

122 According to the statement of the Chief of Investigations of the National Immigration Office at the time of the events, upon finding a person in an irregular immigration status, "his or her identity was registered […] and an Arrest Warrant was issued, signed by the Director and personally notified to the party involved." Statement rendered by Carlos Benigno González Gómez before a notary public (affidavit) on August 13, 2010 (Evidence file, volume IX, affidavits, page 3779).

According to the representatives, all these omissions prevented the alleged victim from having access to an effective legal remedy to challenge his detention. Consequently, they considered that the State was responsible for the violation of Articles 7(6) and 25 of the Convention.

121. The State argued that the domestic legal system, which establishes the legality of administrative actions, also provides a broad range of effective remedies which were available to Mr. Vélez Loor, with legal assistance provided by the State through the Ombudsman's Office or by means of assistance from the Consulate of Ecuador, who was aware of Mr. Vélez Loor's situation. However, Mr. Vélez Loor did not request assistance to challenge the legality of the proceeding conducted by the National Immigration Office, nor did he take any action to expedite some of the mechanisms of judicial control at his disposal. Furthermore, it referred to the lack of formality and effectiveness of the writ of *habeas corpus* in the arrests ordered by the National Immigration Office.

122. As noted previously, the State has opposed any declaration that it has violated Articles 7(6), 8(2)(h), and 25 of the Convention (supra paras. 59 and 66), because at the time of the events, there were no adequate and effective domestic remedies to review the legality of the arrest of Mr. Vélez Loor's arrest. In this regard, the Court notes that the State based its position on the review of the legality of the penalty of deprivation of liberty ordered by Order N° 7306 of December 6, 2002, but did not mention the arrest ordered by means of Order N° 1430, of November 12, 2002.

123. In that regard, the Court recalls that Articles 7(6), 8(2)(h) and 25 of the Convention concern different aspects of protection. In this section, the Court will consider whether the State offered Mr. Vélez Loor the possibility of having access to a competent judge or court, in order for a decision to be made, without delay, on the legality of his arrest or detention and, if these were illegal, to order his release in accordance with Article 7(6) of the Convention. Furthermore, the Court notes that although the Commission independently alleged the violation of Article 7(6) of the Convention, the representatives asked the Court to declare the violation of this norm in conjunction with Article 25 of the Convention for the same facts. Given that Article 7(6) of the Convention has its own legal content and the principle of effectiveness (*effet utile*) applies to the protection of al rights embodied in the treaty, the Court considers it unnecessary to analyze such provision in connection with Article 25 of the Convention.[123] The possibility of appealing the penalty imposed by Order 7306 shall be analyzed in section g) *infra* (para. 173 to 181).

124. In fact, as mentioned previously, Article 7(6) of the Convention has its own legal content, consisting of the protection of personal or physical freedom, by means of a judicial decree ordering the appropriate authorities to bring the detained person before a judge so that the legality of the detention may be determined and, if appropriate, order the release of the detainee.[124]

125. First, the Court notes that, according to Article 88 of Decree Law 16 of 1960, all the decisions of the National Immigration Office were subject to the following administrative remedies: 1) the request for reconsideration before the Director of the National Immigration Office and 2) the appeal before the Ministry of Interior and Justice.[125]

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123 *Cf. Case of Anzualdo Castro*, *supra* note 60, para. 77.

124 *Cf. Habeas corpus in Emergency Situations (Arts. 27(2), 25(1) and 7(6) American Convention on Human Rights)*. Advisory Opinion OC-8/87 of January 30, 1987. Series A No. 8, para. 33.

125 *Cf.* Decree Law N° 16 of June 30, *supra* note 80, pages 1155.

126. Article 7(6) of the Convention clearly establishes that the authority which decides on the legality of an "arrest or detention" must be "a judge or court." The Convention is therefore ensuring that there is judicial control over the deprivation of liberty. Given that in this case the detention was ordered by an administrative authority on November 12, 2002, the Court finds that the review by a judge or court is a fundamental requirement to guarantee adequate control and scrutiny of the administrative acts which affect fundamental rights.

127. In this regard, the Court considers that the Director of the National Immigration Office, as well as the Ministry of Interior and Justice, though they may be competent by law, are not a judicial authority in a strict sense; therefore, neither of the two remedies available through government channels satisfied the requirements of Article 7(6) of the Convention. Moreover, any other remedy through government channels, or one that would require the prior exhaustion of those remedies available,[126] did not guarantee the direct judicial control of administrative acts due to its dependence on their exhaustion.

128. The Court also notes that at the time of the events in Panama a judicial remedy existed specifically to allow for the review of the legality of deprivation of liberty, namely the writ of *habeas corpus*, stipulated in Article 23 of the National Constitution.[127] Furthermore, the Court notes that a remedy existed to protect human rights through contentious-administrative channels before the Third Chamber of Panama's Supreme Court of Justice, which could have been useful for overseeing the proceedings conducted by the public administration and protecting human rights; this did not require the exhaustion of government channels.[128]

129. In this regard, this Court has also established in its case-law that such remedies must not only exist formally in the legislation, but they must also be effective, that is, they must fulfill the objective of obtaining, without delay, a decision on the legality of the arrest or detention.[129]

130. On this point, the Commission noted that between the moment of his arrest and the date on which the penalty of imprisonment was imposed, Mr. Vélez Loor did not "have the opportunity to be assisted by a defense attorney of his choice or by a defense attorney provided by the State, in the event of not exercising his right." The representatives also stated that during his imprisonment, Mr. Vélez Loor "was unable to communicate with any other person" and that "at no time did he have legal counsel to defend himself or to appeal the sentence imposed on him."

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126 *Cf.* Affidavit rendered before a notary public by expert witness Arturo Hoyos Phillips on August 10, 2010 (Evidence file, volume IX, affidavits, pages 3733 to 3735).

127 *Cf.* Political Constitution of the Republic of Panama of 1972 (Evidence file, volume VIII, annex 5 to the answer to the application, pages 2659 and 2660); Affidavit rendered before a notary public by expert witness Arturo Hoyos Phillips, *supra* note 126, pages 3726 to 3727, and Statement rendered by Carlos Benigno González Gómez, *supra* note 122, pages 3782 to 3783.

128 *Cf.* Affidavit rendered before a notary public by expert witness Arturo Hoyos Phillips, *supra* note 126, pages 3734 to 3735.

129 This point is illustrated by the comments of the Special Rapporteur on Migrants who affirmed that "[s]ome national laws do not provide for the judicial review of administrative detention of migrants. In other instances, the judicial review of administrative detention is initiated only upon request of the migrant. In these cases, a lack of awareness of the right to appeal; a lack of awareness of the grounds for detention; difficult access to relevant files; a lack of access to free legal counsel; the lack of interpreters and translation services and a general absence of information in a language detainees can understand; the right to instruct and retain counsel and the situation of the facilities where they are being held can prevent migrants from exercising their rights in practice. In the absence of lawyers and/or interpreters, migrants can often feel intimidated and obliged to sign papers without understanding their content." United Nations, Human Rights Council, Report of the Special Rapporteur on the Human Rights of Migrants, *supra* note 84, page 2029, para. 46.

131. The State argued that Mr. Vélez Loor "had access to legal counsel provided free of charge by the Panamanian Ombudsman's Office [and,] also that he could have made use of the mechanisms of cooperation between the Ombudsman's Offices of Ecuador and Panama, given that they exist and are valid." Moreover, the State referred to "[the] direct access that persons deprived of liberty have to free legal counsel provided by a court-appointed counsel in Panama." Finally, it referred to Mr. Vélez Loor's access to consular assistance.

132. In this context, it is worth emphasizing the importance of legal aid in cases like this one, involving a foreigner who may not know the country's legal system and who is in a particularly vulnerable situation by being deprived of liberty. This requires the State to take into account the particular characteristics of the person's situation so that he or she has effective access to justice on equal terms.[130] Hence, the Court rules that legal aid must be provided by a legal professional to meet the requirements of a procedural representation, through which the accused is advised, *inter alia*, about the possibility of filing appeals against acts affecting individual rights. If the right to defense exists from the moment that an investigation of the person is ordered, or the authority orders or executes actions that entail an infringement of rights,[131] the person subjected to a punitive administrative proceeding must have access to procedural representation from that moment forward. To prevent the accused from being advised by counsel is to severely limit the right to defense, which leads to procedural imbalance and leaves the individual unprotected before the sanctioning authority.[132]

133. Notwithstanding the powers of the Ombudsman's Office of Panama,[133] the Court considers that any proceeding that this institution may conduct, in response to a claim or complaint filed against an authority responsible for public administration, is clearly separate from the State's obligation to provide adequate legal aid to those who cannot defend themselves or appoint a private counsel. Therefore, the realm or scope of its actions does not satisfy the guarantee of a counsel provided by the State who, in principle and for conventional purposes, must exercise legal assistance and representation from the first stages of the proceeding. Otherwise, the legal aid is unsuitable due to its lack of timeliness. In particular, the Court emphasizes that the legal aid provided by the State cannot be confused with the activities carried out by the Ombudsman's Office in the course of its work.[134] In fact, both may complement each other, but for conventional purposes they are clearly different.

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130 See *mutatis mutandis Case of the Yakye Axa Indigenous Community v. Paraguay. Merits, Reparations and Costs*. Judgment of June 17, 2005. Series C No. 125, paras. 51 and 63; *Case of Rosendo Cantú et al.*, *supra* note 27, para. 184 and *Case of Fernández Ortega et al.*, *supra* note 27, para. 200.

131 See *mutatis mutandis Case of Suárez Rosero*, *supra* note 101, para. 70; *Case of Barreto Leiva*, *supra* note 96, para. 29 and *Case of Bayarri*, *supra* note 27, para. 105.

132 *Case of Barreto Leiva, supra* note 96, para. 61 to 62.

133 The Ombudsman is an independent institution created by Law N° 7 of February 5, 1997, that acts with full functional, administrative and financial autonomy, without receiving instructions from any other authority, state body or person. *Cf.* Article 1 of Law N° 7 of February 5, 1997, when the Ombudsman of the Republic of Panama was created (Evidence file, volume VII, annex 8 of the answer to the application, page 2768).

134 In what is permissible, Article 5 of Law No. 7 of February 5, 1997, states:

> The Head by the Ombudsman's Office is procedurally legitimized to exercise class actions and appeals for legal protection of constitutional guarantees, as well as for contentious-administrative appeals of full jurisdiction and protection of human rights.
>
> The Defender or Ombudsman shall exercise these powers in cases it considers appropriate in view of the objectives of the Office.

Law No. 7 of February 5, 1997, *supra* note 133, page 2772.

134. Furthermore, it should be emphasized that while he was detained at La Palma Prison, Mr. Vélez Loor did not have access to the Ombudsman, given that at the time of the events this institution did not have offices in the border region.[135] According to the records, the Ombudsman's Office only became aware of Mr. Vélez Loor's case between May and June of 2003, during one of its visits to La Joyita Prison.[136]

135. As to the mechanisms of cooperation between the Ombudsman's Offices of Panama and Ecuador, the Court notes that the State did not substantiate this or provide evidence to enable the Court to rule on this point; in addition, these were not the appropriate means to guarantee the rights enshrined in the Convention (*supra* para. 133).

136. Regarding the alleged direct access that persons deprived of liberty may have to free legal representation provided by the Panamanian Public Legal Aid, it does not appear from the body of evidence of this case that Mr. Vélez Loor had been informed or that he was aware of having access to free legal representation by a court-appointed counsel or by any other free legal counsel provided by the State. Moreover, it appears from the evidence provided in the case that at the time of Mr. Vélez Loor's detention, the National Immigration Office did not offer public legal aid for those who lacked financial means to take on a legal defense.[137]

137. For his part, Carlos Benigno González Gómez indicated in his statement that at the time of the events, "[t]he person was held in custody at the premises of the [National Immigration Office] in Panama City, where there was a permanent presence of non-governmental organizations providing legal representation to detained migrants […] These organizations had full access to all the detainees at [that place]."[138] In this respect, the Court notes that Mr. Vélez Loor was not held in custody at the premises of the National Immigration Office in the Panama City, given that he was confined in State prisons during the time he was detained. Furthermore, the Court notes that any assistance which non-governmental organizations might provide does not replace the State's obligation to offer free legal counsel (*infra* paras. 146).

138. The issue related to the consular assistance will be considered by the Court in section e) *infra* (paras. 149 to 160).

139. Finally, the actual existence of remedies is not sufficient if their effectiveness is not demonstrated. In this case, the State has not proven how, in the specific circumstances in which Mr. Vélez Loor was detained at La Palma Prison in Darien, these remedies were effective, taking into account the fact that he was a detained foreigner with no legal counsel or knowledge of persons or organizations that could offer him legal assistance. Therefore, the Court rules that the State violated Article 7(6) of the Convention in relation to Article 1(1) thereof, given that it did not guarantee Mr. Vélez Loor the use of the available remedies to question the legality of his arrest.

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135 *Cf.* Affidavit rendered before a notary public by Mrs. Sharon Irasema Diaz Rodriguez on August 12, 2010 (Evidence file, volume IX, affidavits, page 3672) and Note DDP-RP-DRI No. 24-2010 of the Ombudsman of September 23, 2010 (Evidence file, volume X, annex 5 to the final arguments of the representatives, pages 3794 and 3795).

136 *Cf.* Note DDP-RP-DRI N° 64-08 issued by the Ombudsman addressed to the Head of the Human Rights Department of the Ministry of Foreign Affairs on October 2, 2008 (Evidence file, volume VI, annex 1 of the answer to the application, page 2427), and Order No. 1046a-03 issued by Panamanian Ombudsman on June 30, 2003 (Evidence file, volume VII, annex 4 to the response to the application, pages 2649 to 2650).

137 *Cf.* Statement rendered by María Cristina González at the public hearing held before the Court on August 25, 2010

138 Statement rendered by Carlos Benigno González Gómez, *supra* note 122.

### *d) Proceedings before the National Immigration Office between November 12 and December 6, 2002*

140. The Commission and the representatives argued that the sentence imposed on Mr. Vélez Loor is of a criminal nature; therefore, the guarantees of due process established in Article 8 of the American Convention should have been respected in the proceedings before the National Immigration Office. At the same time, the State explained that when the events occurred, Panama's Supreme Court had established that any administrative act that might affect fundamental rights should assist and offer the victim guarantees inherent to judicial proceedings. Therefore, "[t]he issuance of Order N° 7306 of December 6, 2002, despite being a formal administrative act, was obligated to assist and provide the procedural guarantees inherent to criminal proceedings, insofar as its application affected fundamental rights of liberty," "which did not occur in this case."

141. Even though the exercise of legal functions largely concerns the Judiciary, in some States other public bodies or authorities may also exercise judicial functions and take decisions, as in this case, which affect fundamental rights such as the personal liberty of Mr. Vélez Loor. However, the administration's intervention in such cases has insurmountable limits, first and foremost the need to respect human rights, making it necessary for its conduct to be regulated.[139]

142. For this reason any administrative, legislative or judicial authority whose decisions may affect the rights of persons, is required to take such decisions in strict compliance with the guarantees of due process of law.[140] Hence, Article 8 of the Convention establishes the guidelines of due process of law, which includes all the requirements that must be observed by procedural bodies to ensure that individuals may adequately defend themselves with regard to any act of the State that could affect their rights.[141] Moreover, the Court has determined that the set of minimum guarantees established in Article 8(2) of the Convention also applies in the determination of rights and obligations of "a civil, labor, fiscal or any other nature."[142] Therefore, the administration may not dictate punitive administrative actions without granting those subjected to these processes the minimum guarantees, which apply *mutatis mutandis* as appropriate.[143]

143. The right to due legal process must be guaranteed to everyone, regardless of their migratory status.[144] This means that the State must ensure that every foreigner, even, an immigrant in an irregular situation, has the opportunity to exercise his or her rights and defend his or her interests effectively and in full procedural equality with other individuals subject to prosecution.[145]

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139 *Case of Baena Ricardo et al. v. Panama. Merits, Reparations and Costs.* Judgment of February 2, 2001. Series C No. 72, para. 126.

140 *Cf. Case of the Constitutional Court*, *supra* note 110, para. 71; *Case of Baena Ricardo et al.*, *supra* note 139, para. 127; *Case of the Sawhoyamaxa Indigenous Community*, *supra* note 92, para. 82 and *Case of the Yakye Axa Indigenous Community*, *supra* note 130, para. 62.

141 *Cf. Judicial Guarantees in States of Emergency (Arts. 27(2), 25 and (8) American Convention on Human Rights).* Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9, para. 27; *Case of Claude Reyes et al.*, *supra* note 110, para. 116 and *Case of Yatama*, *supra* note 38, para. 147.

142 *Case of the Constitutional Court*, *supra* note 110, para. 70; *Case of Ivcher Bronstein v. Peru. Merits, Reparations and Costs.* Judgment of February 6, 2001. Series C No. 74, para. 103 and *Case of Baena Ricardo et al.*, *supra* note 139, para. 125.

143 *Cf. Case of Baena Ricardo et al.*, *supra* note 139, para. 128. *See also,* Second Progress Report of the Rapporteur on Migrant Workers and Members of Their Families in the Hemisphere, OAS/Ser./L/V/II.III doc. 20 rev. of April 16, 2001, paras. 98 to 100.

144 *Cf. Rights of Undocumented Immigrants, supra* note, para. 121 and 122.

145 *Cf. The Right to Information on Consular Assistance in the Context of the Guarantees of the due Process of Law.* Advisory Opinion OC-16/99 of October 1, 1999. Series A No. 16, para. 117 and 119; and

144. It is an acknowledged fact that, since there was no specific regulation of Decree Law 16 of 1960, its substantiation was subject to the procedure established in Law 38 of 2000, related to administrative procedures in general.[146] In fact, it was necessary to resort to supplemental norms. In this respect, the procedure that resulted in the punitive administrative act causing Mr. Vélez Loor to be detained, was not only decided *inaudita parte* (*supra* para. 60) but also did not offer him the possibility of exercising his right to defense, to a hearing or to safeguards to the adversarial proceeding as part of the guarantees of due process of law, leaving the arrested immigrant to the absolute discretion of the sanctioning power of the National Immigration Office. In fact, the State "accept[ed] responsibility [given that] the accused received no formal written and detailed communication regarding the charges brought against him; he was not given time or adequate means to prepare his defense; he was not assisted by a counsel and he was also not permitted to exercise his right to defense during the substantiation of the administrative procedure that resulted in the deprivation of his liberty."

145. Furthermore, the Court has argued that the right to defense requires the State to treat the individual as a true party to the proceeding at all times, in the broadest sense of this concept, and not simply as an object thereof.[147] Article 8(2)(d) and (e) establish the right of the accused *to defend himself personally or to be assisted by legal counsel of his own choosing*, and, if the accused does not so chose, he has the *inalienable right to be assisted by a counsel provided by the State, paid or not as the domestic law provides.* In this regard, and in cases concerning non-criminal procedures, the Court has previously established that "the circumstances of a particular proceeding, its significance, its nature and its context in a particular legal system are among the factors that influence the determination of whether legal representation is or is not necessary for due process."[148]

146. The Court has considered that in administrative or judicial proceedings where decisions are taken concerning deportation, expulsion or deprivation of freedom, the provision of free public legal aid is necessary to avoid the violation of the right to due process.[149] In fact, in cases such as this, in which the consequence of immigration procedures could be deprivation of liberty of a punitive nature, free legal representation becomes an imperative in the interests of justice.[150]

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*Juridical Condition and Rights of Undocumented Immigrants*, *supra* note 82, para. 121 and *Case of Hilaire, Constantine* and *Benjamin et al. v. Trinidad* and *Tobago*. *Merits, Reparations and Costs*. Judgment of June 21, 2002. Series C No. 94, para. 146.

146 In this respect, the State pointed out that "[a]s an administrative act, Resolution [7306] was subject, in first instance, to the General Administrative Procedure contained in Law 38 of July 31, 2000, a rule that governs the State's administrative actions and establishes with the utmost clarity the remedies for the annulment and reversal of unlawful administrative acts." See also, Statement rendered by María Cristina González at the public hearing before the Court on August 25, 2010, and Law N° 38 of July 31, 2000, that approves the Organic Statutes of the Administration's Office, regulates the General Administrative Procedure and stipulates the Special Provisions published in the Official Gazette on August 2, 2000 (Evidence file, volume VII, annex 9 of the response to the application, page 2792 to 2855).

147 *Case of Barreto Leiva v. Venezuela, supra* note 96, para. 29.

148 *Exceptions to the Exhaustion of Domestic Remedies (Articles 46(1), 46(2)(a) and 46(2)(b) American Convention on Human Rights).* Advisory Opinion OC-11/90 of August 10, 1990. Series A N.11 para. 28.

149 *Cf. Juridical Condition and Rights of Undocumented Immigrants, supra* note 82, para. 126.

150 *Cf.* ECHR, *Case of Benham v. The United Kingdom* (Application no 19380/92*)* Judgment, 10 June 1996, para. 61 ("The Court agrees with the Commission that where deprivation of liberty is at stake, the interests of justice in principle call for legal representation") and para. 64 ("In view of the severity of the penalty risked by Mr. Benham and the complexity of the applicable law, the Court considers the interests of justice demanded that in order to receive a fair hearing, Mr Benham ought to have benefited from free legal representation during the proceedings before the magistrates").

147. Consequently, the Court considers that the fact that the accused was not allowed the right to defense before the administrative body that decided to apply the penalty of deprivation of liberty, affects the entire proceeding and goes beyond the decision of December 6, 2002. The punitive administrative procedure is a single proceeding in various stages,[151] including the processing of the appeals filed against the decision adopted.

148. Therefore, the Court considers that the State of Panama violated the right to a hearing contained in Article 8(1) of the Convention and the right to be assisted by a counsel contained in Articles 8(2)(d) and 8(2)(e) of the Convention, in relation to Article 1(1) therein to the detriment of Mr. Vélez Loor.

### *e) Right to information and effective access to consular assistance*

149. The Commission referred to the State of Panama's omissions which "prevented the access to adequate and timely consular assistance." In this respect, it argued that "the right to seek consular assistance implies that the person arrested or subjected to a proceeding must be informed of his right to communicate with consular officials and provided with the means to do so," which "did not occur in this case, given that the State unilaterally decided to inform the Ecuadorian State of the situation, without providing the means for the [alleged] victim to communicate with the consular officials and seek the assistance required." Furthermore, the Commission noted that, "there is no evidence that the State of Ecuador was officially informed of the proceeding conducted against the [alleged] victim or of the criminal penalty that such proceeding could entail." The representatives agreed with the Commission that "[t]he State did not inform [Mr. Vélez Loor] of his right to seek consular assistance." They alleged that "this right is not satisfied with the mere notification by the authorities to the recipient State," given that "it is the individual who is entitled to the right to information and consular notification; therefore, Panama should have informed Mr. Vélez Loor immediately of his right to contact the consulate of his country and also provided the conditions to enable him to do so."

150. The State pointed out that the "Consulate of the Republic of Ecuador was notified by telephone by the National Immigration Office [...] of Mr. Vélez Loor's detention on November 12, 2002," and that Mr. Vélez Loor had proven assistance from consular officials from his country "starting in early December [2002]." The State also argued that "at the time of the events, [...] Panama, like most countries, applied a State criterion regarding consular notification [, according to which] it understood that the right to consular notification was a right of the sending State, and not a right of the individual." Therefore, the State considers that "[a]t the moment of Mr. Vélez Loor's detention, the notification served on the consul [of Ecuador] regarding the detention of the individual was, according to the international standards, adequate and sufficient [and] the obligation contemplated in Article 36 of the Vienna Convention had been fully met."

151. The Court has previously ruled on the right to consular assistance in cases related to the deprivation of liberty of a person who is not a national of the country where he is detained. In 1999, in the advisory opinion on *The Right to Information on Consular Assistance in the Context of the Guarantees of the Due Process of Law*, the Court declared that the right of a detained foreign national to consular assistance, enshrined in Article 36 of the Vienna Convention on Consular Relations (hereinafter, "Vienna Convention") is an individual right and a minimum guarantee protected within

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[151] *Cf. mutatis mutandi Case of Castillo Petruzzi et al. v. Peru. Merits, Reparations and Costs.* Judgment of May 30, 1999. Series C No. 52, para. 161; *Case of Radilla Pacheco*, *supra* note 25, para. 208 and *Case of García Prieto et al. v. El Salvador. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 20, 2007. Series C No. 168, para. 43.

the Inter-American system.[152] This principle was upheld by the International Court of Justice in the case of *La Grand* in 2001.[153] In addition, there are other non-binding international treaties in existence establishing this right.[154] Therefore, the State's affirmation that, at the time of the events in 2002, the notification to the consulate was sufficient is not correct.

152. The Court notes that foreigners detained in a social and juridical environment different from their own, and often with a language unknown to them, experience a situation of particular vulnerability. The right to information on consular assistance, in line with the conceptual universe of human rights, attempts to remedy this so that the detained foreigner may enjoy true access to justice and benefit from due process of law, on an equal footing with those not having those disadvantages, conducted with respect for the person's dignity. To accomplish its objectives, the judicial process must recognize and resolve any real disadvantages faced by those brought to justice. This is how the principle of equality before the law and the courts, and the correlative prohibition of discrimination are addressed. The existence of conditions of true disadvantage necessitates countervailing measures to help reduce or eliminate the obstacles and deficiencies that impair or diminish an effective defense of one's interests.[155]

153. From the standpoint of the rights of a detained person, there are three essential components of the right due to a person by the State Party:[156] 1) the right to be informed of his rights under the Vienna Convention;[157] 2) the right to have effective access to communicate with the consular official and 3) the right to the assistance itself.

154. To prevent arbitrary detentions, the Court reiterates the importance of notifying the arrested person of the right to establish contact with a third party, such

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[152] *Cf. The Right to Information on Consular Assistance in the Context of the Guarantees of the due Process of Law, supra* note 145, paras. 84 and 124.

[153] *Cf.* ICJ, *La Grand Case (Germany v. United States of America)*, ICJ. Reports 2001, Judgment of 27 June 2001, page 494, para. 77.

[154] *Cf.* Minimum Standard Rules for the Treatment of Prisoners. Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Geneva, 1955, and approved by the Economic and Social Council in its orders 663C (XXIV) of July 31, 1957 and 2076 (62), of May 13, 1977, Rule 38(1) and Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by the United Nations General Assembly in its resolution 43/173 of December 9 1988, principle 16(2).

[155] *Cf. The Right to Information on Consular Assistance in the Context of the Guarantees of Due Process of Law, supra* note 145, para. 119, and *Juridical Condition and Rights of Undocumented Immigrants*, *supra* note 82, para. 121 and *Case of Baldeón García*, *supra* note 27, para. 202.

[156] It must be taken into account that the following standards are not applicable to those detainees who have requested international protection (Supra para. 106). If they are arrested, such persons enjoy the rights enshrined in the Vienna Convention. However, there are other considerations to protect the interests of refugees, which the Court shall not examine in this Judgment.

[157] Hence, the detained foreigner shall be entitled to be informed of his right: 1) that the authorities of the receiving State inform, without delay, the competent consular post of his situation and 2) to have any communication addressed to the consular post by the person detained be forwarded by the authorities without delay. *Cf.* Article 36(1)(b) of the Vienna Convention. Document (A/CONF.25/12) (1963) of April 24, 1963, in force as of March 19, 1967, and in effect since that date for Ecuador (which ratified the Convention on 11 March 1965), and to Panama from the thirtieth day following the deposit of its instrument of ratification, held on August 28, 1967. This notification must be served before the arrested person "renders his first statement." *The Right to Information on Consular Assistance in the Context of the Guarantees of Due Process, supra* note 145, para. 106; *Case of Chaparro Álvarez* and *Lapo Íñiguez*, *supra* note 99, para. 164 and *Case of Bueno Alves v. Argentina. Merits, Reparations and Costs.* Judgment of May 11, 2007. Series C No. 164, para. 116. This right, along with other rights the person deprived of liberty is entitled to, "constitutes a mechanism to avoid illegal or arbitrary detentions from the first moment of imprisonment and, at the same time, ensures the individuals right to defense." See *mutatis mutandis Case of Juan Humberto Sánchez*, *supra* note 97, para. 82; *Case of Usón Ramírez*, *supra* note 10, para. 147 and *Case of Yvon Neptune*, *supra* note 97, para. 105.

as a consular official, to inform them that he is in the State's custody. This must be carried out in conjunction with the obligations under Article 7(4) of the Convention. When the arrested person is not a national of the State in which he is held in custody, the notification to consular assistance is based on a fundamental guarantee of the access to justice and allows the effective exercise of the right to defense, given that the consul may assist the detainee in various acts of defense, such as granting or hiring legal counsel, obtaining evidence in the country of origin, corroborating the conditions under which legal assistance is provided and observing the situation of the accused while he is in prison.[158]

155. The Court shall now determine whether the State informed Mr. Vélez Loor of his rights. From the case file before the Court, there is no evidence to prove that the State had notified Mr. Vélez Loor, a foreign detainee, of his right to communicate with a consular official from his country in order to seek the assistance contemplated in Article 36(1)(b) of the Vienna Convention. The Court considers that the State had the obligation to prove that, in this case, it complied with its obligation to notify Mr. Vélez Loor of the right to seek the consular assistance to which every foreign detainee is entitled, and not only notify the Embassy of Ecuador. In this regard, it is important to emphasize that the Vienna Convention allows the detainee to decide whether or not to be visited by a consular official.[159]

156. Now, although all the parties agree that at some point the consular authorities were informed that Mr. Vélez Loor was in the custody of the Panamanian State (*supra* paras. 149 and 150), there is still a dispute about the date of this notification. The evidence furnished is not consistent in terms of the date and the manner in which the Consulate of Ecuador in Panama was informed that Mr. Vélez Loor was being held in custody by the State.[160] The fact is that by December 5, 2002, the Ecuadorian consular mission had already begun proceedings to deport Mr. Vélez Loor.[161] In this respect, Mr. Vélez Loor stated that, while he was imprisoned at La Palma Prison, he had an interview with immigration officials; however, he indicated that "he was unaware" of the proceedings the Ecuadorian Consulate was conducting on his behalf in December 2002. Furthermore, he mentioned that "he never knew how the deportation occurred" and that "he does not know what proceedings were conducted for that purpose."[162]

157. It is pertinent to recall that the right of a foreign detainee to request consular assistance from his country of nationality has been considered within the framework

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158 *Cf. The Right to Information on Consular Assistance in the Context of the Guarantees of Due Process*, *supra* note 145, para. 86; *Case of Chaparro Álvarez* and *Lapo Íñiguez*, *supra* note 99, para. 164 and *Case of Bueno Alves*, *supra* note 157, para. 116.

159 Article 36(1)(c) of the Vienna Convention states that "[…] consular officers shall refrain from taking action on behalf of a national who is in prison, custody or detention, if he expressly opposes such action."

160 In this regard, Mr. González stated that the Consulate of the Republic of Ecuador was notified of Mr. Vélez Loor's the detention by telephone by the National Immigration Office. *Cf.* Statement rendered by Carlos Benigno González Gómez, *supra* note 122, page 3787. Furthermore, Mr. Vélez Loor maintained that, "I once had the opportunity to call the Consulate of Ecuador using a clandestine telephone." Statement rendered by Jesús Tranquilino Vélez Loor at the public hearing held before the Court on August 25, 2010. Finally, Mr. Ochoa stated "[a] few days before Christmas, [w]hen I was taken to the Ecuadorian Embassy to be fingerprinted and establish my nationality, I was able to speak to the ambassador; [I] told her about Mr. Vélez Loor's case and she indicated that I had to talk to the Director of the National Immigration Office." Statement rendered before a notary public (affidavit) by Mr. Leoncio Raúl Ochoa Tapia on August 6, 2010 (Evidence file, volume IX affidavits, page 3656).

161 *Cf.* Note N° 3-6-3/2002 issued by the Consulate of Ecuador in Panama addressed to the Chief of Staff of the Navy of Panama on December 5, 2002 (Evidence file, volume VIII, annex 51 of the answer to the application, page 3531).

162 Statement rendered by Jesús Tranquilino Vélez Loor at the public hearing that took place before the Court on August 25, 2010.

of the "minimum guarantees to offer foreigners the opportunity to adequately prepare their defense."[163] In this regard, the Court has pointed out several cases where the consul may assist the detainee in different actions of defense (*supra* para. 154), and the importance of guaranteeing compliance with the right "to be assisted by a counsel" under Article 8(2)(d) of the Convention. Thus, "[n]on-observance or impairment of the detainee's right to information is prejudicial to the judicial guarantees,"[164] and may result in a violation thereof.

158. With regard to effective access to consular communication, the Vienna Convention provides that the detainee should be permitted to: 1) freely communicate with consular officials and 2) be visited by consular officials.[165] According to this treaty, "consular officers shall have the right to visit a national of the sending State [and] to arrange for his legal representation."[166] That means the recipient State must not prevent the consular official from providing legal services to the detainee. Furthermore, the detainee has the right to seek consular assistance, which binds the State of which the detainee is a national to protect the rights of its nationals in a foreign country by providing consular protection. The visits of consular officials should be made with a view to facilitating "the protection of interests" of the national detainee, especially those associated with "his defense before the courts."[167] In this respect, the right to the consular visit offers the potential to guarantee and enforce the rights to personal liberty, humane treatment [personal integrity] and defense.

159. The Court notes that, although Mr. Vélez Loor had proven communication with Ecuadorian consular officials in the State of Panama,[168] the administrative proceeding conducted between November 12 and December 6, 2002, which resulted in the decision sentencing him to imprisonment, did not give him the opportunity to avail himself of the right to defense, to a hearing, or to the safeguards of adversarial proceedings, and even less, guaranteed that this right could actually be exercised (*supra* para. 144). In other words, although Mr. Vélez Loor was visited by consular officials at La Joyita Prison after his sentencing,[169] when they provided him with personal hygiene products, money in cash and medicine, and also requested that doctors be sent to examine him, Mr. Vélez Loor could not exercise his right to defense with consular assistance, due to the fact that the sanctioning administrative procedure did not allow for consular assistance as part of due process of law.

160. Accordingly, the Court concludes that in this case the absence of information to Mr. Vélez Loor regarding his right to communicate with the consulate of his country and the lack of effective access to consular assistance as a component of the right to defense and due process, violated Articles 7(4), 8(1) and 8(2)(d) of the American Convention, in relation to Article 1(1) therein, to the detriment of Mr. Vélez Loor.

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163 *The Right to Information on Consular Assistance in the Framework of the Guarantees of Due Process*, *supra* note 145, para. 122; *Case of Chaparro Álvarez* and *Lapo Íñiguez*, *supra* note 99, para. 164 and *Case of Bueno Alves*, *supra* note 157, para. 116.

164 *The Right to Information on Consular Assistance in the Context of the Guarantees of Due Process*, *supra* note 145, para. 129; *Case of Acosta Calderón v. Ecuador. Merits, Reparations and Costs.* Judgment of June 24, 2005. Series C No. 129, paras. 125 and 126 and *Case of Tibi*, *supra* note 27, paras. 195 and 196.

165 *Cf.* Vienna Convention, Articles 36(1)(a) and 36(1)(b).

166 Vienna Convention, Article 36(1)(c).

167 *Cf. The Right to Information on Consular Assistance in the Context of the Guarantees of Due Process*, *supra* note 145, para. 87; *Case of Chaparro Álvarez* and *Lapo Íñiguez*, *supra* note 99, para. 164 and *Case of Bueno Alves*, *supra* note 157, para. 116.

168 *Cf.* Note N° 4-2-105/2009, *supra* note 79, page 2435 and 2436, and Note N° 3-8/09/2003 issued by the Embassy of Ecuador in Panama addressed to the Director of La Joyita Prison of February 26, 2003 (Evidence file, volume VIII, annex 53 of the response to the application, page 3611).

169 *Cf.* Note N° 4-2-105/2009, *supra* note 79, page 2435 and 2436.

### *f) Deprivation of liberty in application of Article 67 of Decree Law 16 of 1960*

161. Both the Commission and the representatives alleged the violation of Article 7(3) of the Convention because the two-year sentence imposed on Mr. Vélez Loor by Order 7306 was of a criminal nature. On the one hand, the Commission argued that "[w]hile this second decision stated the legal basis for the sanction and the fact that Mr. Vélez Loor was a re-offender, the penalty *per se* was the result of a proceeding that openly disregarded all the guarantees of due process." For their part, the representatives argued that it is not sufficient that every cause for deprivation or restriction of the right to liberty be embodied in the law; however, it is necessary that the law and its application respect the fact that the measure must have a compatible aim, be appropriate, necessary and proportional, so that the detention is not considered arbitrary. According to the representatives, the sentence imposed on Mr. Vélez Loor "was not only unnecessary, but it seriously and disproportionately affected his right to personal liberty," and the Order 7306 through which he was sentenced does not contain any grounds to consider whether the restriction complies with the aforementioned conditions.

162. The representatives also emphasized what they termed "the phenomenon of the criminalization of migrants." They argued that the law in force in Panama at the time of the events clearly illustrates this, since it called for the imposition of the penalty of imprisonment on recidivists who illegally entered the country. Furthermore, they stressed that this tendency to criminalize migrants is reinforced by "practices or discourses that encourage the perception that migrants [were] dangerous, that they caus[ed] an increase of insecurity, that they p[ut] pressure on public services and, therefore, that they constitut[ed] a burden to society." Finally, the representatives argued that this rule was "discriminatory and stigmatizing, [given] that it equated the irregular immigrant with a criminal; however, it did not offer any guarantees of due process."

163. In this section, the Court shall rule on the authority of States to impose a punitive penalty for non-compliance with immigration laws, such as the two-year sentence contemplated in Article 67 of Decree Law 16 of 1960[170] applied in this case. To that end, it is necessary to consider whether the domestic legislation applied to this case was compatible with the requirements of the American Convention.

164. Article 7(2) of the Convention establishes no one shall be deprived of his liberty except for the reasons and under the conditions established beforehand by the Political Constitution of the State Party concerned or by a law compatible with it. Thus, under the principle of definition of criminality, States are obliged to establish, as specifically as possible and "in advance" the "reasons" and "conditions" for the deprivation of physical liberty.[171]

165. Moreover, Article 7(3) of the Convention provides that "no one shall be subject to arbitrary arrest or imprisonment." In previous cases, the Court has held that:

> No one may be subjected to arrest or imprisonment for reasons and using methods that, although classified as legal, can be considered incompatible with regard for the fundamental

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[170] Article 67 stated that "[t]he foreigners who evade their deportation orders by staying in the country in a clandestine manner or circumvent them by returning to the country, shall be sentenced to two (2) years of agricultural work in the Penal Colony of Coiba and shall be obliged to leave the country at the end of that period; they may be released at the discretion of the Ministry of Interior and Justice if they present a ticket to abandon the country." Decree Law No. 16 of June 30, 1960, *supra* note 80, page 1153.

[171] *Cf. Case of Chaparro Álvarez* and *Lapo Íñiguez*, *supra* note 99, para. 57; *Case of Usón Ramírez*, *supra* note 10, para. 145 and *Case of Yvon Neptune*, *supra* note 97, para. 96.

rights of the individual, because they are, *inter alia,* unreasonable, unpredictable or disproportionate.[172]

166. Consequently, without prejudice to the legality of a detention, it is necessary in each case to assess the compatibility of the legislation with the Convention, understanding that this law and its application must respect the requirements enumerated below, in order to ensure that the measure is not arbitrary:[173] i) that the purpose of measures that deprive or restrict a person's liberty is compatible with the Convention; ii) that the measures adopted are appropriate for complying with the intended purpose; iii) that the measures are necessary, in the sense that they are absolutely indispensable for achieving the intended purpose and that no other measure less onerous exists, in relation to the right involved, to achieve the intended purpose. Hence, the Court has indicated that the right to personal liberty assumes that any limitation of this right must be exceptional;[174] and iv) that the measures are strictly proportionate,[175] so that the sacrifice inherent in the restriction of the right to liberty is not exaggerated or unreasonable compared to the advantages obtained from this restriction and the achievement of the intended purpose. Any restriction of liberty not based on a justification that allows an evaluation of whether it is in-keeping with the conditions set out above will be arbitrary and, therefore, will violate Article 7(3) of the Convention.[176]

167. It is for this reason that, in this case, the analysis is related to the compatibility of punitive custodial measures for controlling migratory flows, particularly those of an irregular nature, with the American Convention, so as to determine the scope of the State's obligations in the context of its responsibility for the violations of the rights enshrined in the treaty. Therefore, the Court shall proceed to evaluate whether the custodial measure applied to Mr. Vélez Loor complied with the requirements provided for by law, served a legitimate purpose and was appropriate, necessary and proportional. The Court notes that the sentence of imprisonment imposed on Mr. Vélez Loor by means of Order 7306 (*supra* para. 94) was based on Article 67 of Decree Law 16 of 1960, issued on June 30, 1960, by the President of the Republic, with the endorsement of the Cabinet and the prior approval of the Permanent Legislative Commission of the General Assembly.[177] None of the parties questioned whether this provision was in compliance with the principle of legal exception, in accordance with this Court's jurisprudence.[178] Hence the Court does not have sufficient elements to rule on this issue.

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[172] *Case of Gangaram Panday v. Surinam. Merits, Reparations and Costs.* Judgment of January 21, 1994. Series C No. 16, para. 47; *Case of Usón Ramírez*, *supra* note 10, para. 146 and *Case of Yvon Neptune*, *supra* note 97, para. 97.

[173] *Cf. Case of Chaparro Álvarez* and *Lapo Íñiguez*, *supra* note 99, para. 93 and *Case of Yvon Neptune*, *supra* note 97, para. 98.

[174] *Cf. Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs*. Judgment of August 31, 2004. Series C No. 111, para. 129; *Case of Chaparro Álvarez* and *Lapo Íñiguez*, *supra* note 99, para. 93 and *Case of Yvon Neptune*, *supra* note 97, para. 98.

[175] *Cf. Case of Ricardo Canese*, *supra* note 174, para. 129; *Case of Chaparro Álvarez* and *Lapo Íñiguez*, *supra* note 99, para. 93 and *Case of Yvon Neptune*, *supra* note 97, para. 98.

[176] *Cf. Case of García Asto and Ramírez Rojas*, *supra* note 99, para. 128; *Case of Barreto Leiva*, *supra* note 96, para. 116 and *Case of Yvon Neptune*, *supra* note 97, para. 98.

[177] *Cf.* Decree Law N° 16 of June 30, 1960, *supra* note 80.

[178] The principle of legal exception provides that the right to personal liberty can only be affected by a law, understanding this, according to Article 30 of the Convention, a general legal standard closely related to the general welfare, enacted by democratically elected legislative bodies established by the Constitution, and formulated according to the procedures set forth in the Constitutions of the States Parties for that purpose. Advisory Opinion, *The Word "Laws" in Article 30 of the American Convention.* Advisory Opinion OC-6/86 of May 9, 1986, Series A Nº 6. *See also*, *Case of Chaparro Álvarez and Lapo Íñiguez*, *supra* note 99, para. 56; *Case of Usón Ramírez*, *supra* note 10, para. 145 and *Case of Yvon Neptune*, *supra* note 97, para. 96.

*Legitimate purpose and suitability of the measure*

168. With regard to the possibility of establishing limitations or restrictions on the right to personal liberty, it is necessary to note that, unlike the European Convention for the Protection of Human Rights and Fundamental Liberties,[179] the American Convention does not establish, explicitly or implicitly, the reasons, cases or circumstances that would be considered legitimate in a democratic society for authorizing a custodial measure under domestic legislation.

169. As previously established, States have the authority to control and regulate the entry and presence of foreigners in their territory (*supra* para. 97); therefore, this could be a legitimate purpose according to the Convention. In fact, the application of preventive custody may be suitable to regulate and control irregular immigration to ensure that the individual attends the immigration proceeding or to guarantee the application of a deportation order. However, and in the view of the Working Group on Arbitrary Detention, "criminalizing an irregular entry into a country goes beyond the legitimate interest of States to control and regulate illegal immigration and leads to unnecessary detention."[180] Moreover, the United Nations Rapporteur on the human rights of migrants has argued that "[d]etention of migrants because of their irregular status should under no circumstance be of a punitive nature."[181] In this case, the Court considers that the purpose of imposing a punitive measure on an immigrant who reenters a country in an irregular manner subsequent to receiving a deportation order cannot be considered legitimate purpose according to the Convention.

*Need for the measure*

170. The Court further notes that the measure contemplated in Article 67 of Decree Law 16 of 1960 was an administrative measure of a punitive nature. In this respect, the Court has already stated that both administrative and criminal sanctions constitute an expression of the State's punitive power and that on occasions the nature of the former is similar to that of the latter.[182] In a democratic society punitive power is exercised only to the extent that is strictly necessary to protect fundamental legal rights from serious attacks that may impair or endanger them. The opposite would result in the abusive exercise of the punitive power of the State.[183] Similarly, the Working Group on Arbitrary Detention argued that the right to personal liberty "requires that States resort to deprivation of liberty only insofar as it is necessary to meet a pressing social need and in a manner proportionate to that need."[184]

171. According to this principle, it is clear that detaining people for non-compliance with migration laws should never involve punitive purposes. Hence, a custodial measure should only be applied when it is necessary and proportionate in the specific case, to the purposes mentioned *supra* and only for the shortest period of time.

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179 *Cf.* Article 5 on the right to liberty and security of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

180 United Nations, "Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights, including the Right to Development," Working Group on Arbitrary Detention, Group Report, A/HRC/7/4, January 10, 2008, para. 53.

181 United Nations, "Specific Groups and Individuals: Migrant Workers. Human Rights of Migrants," Report of the Special Rapporteur, Ms. Gabriela Rodriguez Pizarro, submitted in accordance with Order 2002/62 of the Human Rights Commission, E/CN.4/2003/85, December 30, 2002, para. 73 (Evidence file, volume V, annex 22 of the brief of pleadings, motions and evidence, page 1993).

182 *Cf. Case of Baena Ricardo et al., supra* note 139, para. 106.

183 *Cf. Case of Kimel, supra* note 43, para. 76; *Case of Usón Ramírez*, *supra* note 10, para. 73 and *Case of Tristán Donoso*, *supra* note 120, para. 119.

184 United Nations, Working Group on Arbitrary Detention, Group Report, Civil and Political Rights, in Particular Those Issues Related to Torture and Detention, E/CN.4/2006/7, December 12, 2005, para. 63.

Therefore, it is essential that States devise a range of alternative measures[185] that may be effective to accomplish these purposes. Consequently, migratory policies based on the mandatory detention of irregular migrants, without ordering the competent authorities to verify, in each particular case and by means of an individualized evaluation, the possibility of using less restrictive measures to achieve the same ends, are arbitrary.[186]

172. Accordingly, the Court rules that Article 67 of Decree Law 16 of 1960 did not pursue a legitimate purpose and was disproportionate, given that it established a punitive penalty for foreigners who evade previous orders for deportation and, therefore, result in arbitrary detentions. In short, the deprivation of liberty imposed on Mr. Vélez Loor, based on this standard, constituted a violation of Article 7(3) of the Convention in relation to Article 1(1) of the same treaty.

### *g) Notification of Order 7306 of December 6, 2002, and remedies regarding the punitive ruling*

173. The Commission argued, in the first place, that according to the immigration law in force at the time of the events, "the right to appeal before a court which would ensure the guarantees of independence and impartiality did not exist;" in the second place, that the "criminal penalty was imposed by means of an administrative act," which in Panama "had a presumption of legality and could only be judicially challenged when a series of administrative remedies had been exhausted and based on grounds sufficiently capable of disproving the presumption;" in the third place, that the remedies mentioned by the State "cannot be considered adequate to obtain the full review of the criminal penalty like the one imposed on the [alleged] victim and finally, that due to the lack of notice and legal counsel, the remedies were not accessible to Mr. Vélez Loor."

174. The representatives indicated that, "the Panamanian legislation in force at the time of the events did not provide for a second instance review by a judge or a court" of the decision made by the General Director of the National Immigration Office. Furthermore, they pointed out that the alleged victim had no effective access to the remedies established in Law N° 16 of 1960, since "there is no record that the resolution which sentenced Mr. Jesús Vélez Loor to imprisonment had been formally notified," and also because "such resolution was unsubstantiated, thus preventing a challenge to its validity."

175. The State acknowledged "non-compliance with the obligation to notify Mr. Vélez Loor [of the] content of Order 7306 of December 6, 2002," insofar as there is "no record of proceedings undertaken to serve notice, as required by Article 22 of the National Constitution." However, it pointed out that the resolution "was subject to a series of measures of judicial and non-judicial control that could have been performed by the alleged victim at any moment following [its] issuance [...], disregarding the lack of notice," which "was not carried out" and that due to "its administrative nature, it not appropriate to bring the detainee before a judicial authority." Moreover, it argued that "[a]lthough Mr. Vélez Loor, having noted the lack of notification of this act, could not appeal the penalty imposed by the National Immigration Office through government channels, he had an opportunity to request its annulment." Furthermore, it explained that from the lack of notification of the administrative act "arise judicial remedies contemplated within the domestic remedies, *amparo, habeas corpus* and remedies for the protection of Human Rights." In this respect, the State emphasized

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185 *Cf.* United Nations, "Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights, including the Right to Development," Working Group on Arbitrary Detention, Group Report, A/HRC/10/21, February 16, 2009, para. 67.

186 *Cf.* United Nations, Human Rights Committee, *C. v. Australia*, Communication No 900/1999: Australia. 13/11/2002, CCPR/C/76/D/900/1999, of November 13, 2002, para. 8.2

that Mr. Vélez Loor had the possibility of resorting to different kinds of actions and remedies, of a governmental or administrative, judicial or non-judicial nature, established in the Panamanian legal system in force before his arrest and punishment.

176. The State also argued that "during the period after Order 7306 was issued, [Mr. Vélez Loor] had proven access to the Ombudsman's Office and to the consular officials of his country," considering that "during his imprisonment at La Joya Prison [sic] he had access, through this institution, to the judicial mechanisms for the control of administrative proceedings which the domestic legislation in force offered to him for the protection of his rights."

177. According to the arguments of the Commission and the representatives, there is still a dispute over whether the State respected and guaranteed the right to appeal the sanction imposed by means of Order 7306, before a judge or a higher court, in accordance with Articles 8(2)(h) and 25 of the American Convention.

178. In this regard, the Court considers that the facts of this case are confined to the sphere of application of Article 8(2)(h) of the Convention, which embodies a specific type of remedy that must be offered to every individual in custody, as guarantee of the individual's right to defense, and it rules that here there are no grounds for the application of Article 25(1) of the treaty. Mr. Vélez Loor's helplessness was due to the impossibility of appealing the punitive ruling, a situation covered by Article 8(2)(h) in question.

179. The Court's jurisprudence has emphasized that the right to appeal a judgment seeks to protect the right of defense, inasmuch as it affords the possibility of a remedy to prevent a flawed ruling, containing errors that are unduly prejudicial to a person's interests, from becoming final.[187] The right to a review by a higher court, expressed through the complete review of the condemnatory or punitive ruling, confirms the rationale and gives greater credibility to the judicial acts of the State, while offering greater security and protection to the rights of the accused.[188] In this respect, the right to appeal a judgment recognized in the Convention, is not satisfied by the mere existence of a court higher than the one that tried and convicted the accused and to which the latter has or may have recourse. For a thorough review of the judgment, in the sense required by the Convention, the higher court must have the jurisdictional authority to take up the particular case in question.[189] In this regard, while States have a margin of discretion in regulating the exercise of that appeal, they may not establish restrictions or requirements that infringe on the very essence of the right to appeal a judgment. The possibility of "appealing the judgment" must be accessible, without allowing for the kind of complex formalities that would render this right illusory.[190]

180. In this case, the Court deems it inadmissible that Order 7306 of December 6, 2002, issued by the National Immigration Office by which Mr. Vélez Loor was detained for almost ten months, was not notified as the State itself acknowledged (*supra* para. 60). The Court finds that the lack of notification constitutes, *per se*, a violation of Article 8 of the Convention, because it placed Mr. Vélez Loor in a situation of legal uncertainty and made the exercise of the right to appeal a judgment impracticable. Consequently, the Court considers that this case is framed in a situation of *de facto*

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187 *Cf. Case of Herrera Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs.* Judgment of July 2, 2004. Series C Nº 107, para. 158 and *Case of Barreto Leiva*, *supra* note 96, para. *88.*

188 *Cf. Case of Barreto Leiva, supra* note 96, para. 89.

189 *Cf. Case of Castillo Petruzzi et al.*, *supra* note 151, para. 161; *Case of Lori Berenson Mejía v. Peru. Merits, Reparations and Costs*. Judgment of November 25, 2004. Series C No. 119, para. 192 and *Case of Herrera Ulloa*, *supra* note 187, para. 159.

190 *Cf. Case of Herrera Ulloa, supra* note 187, paras. 161 and 164.

impediment for ensuring real access to the right to appeal and also a lack of guarantees and judicial insecurity. Therefore, it is not appropriate to analyze the remedies mentioned by the State or the State's argument regarding the Ombudsman's Office as a non-jurisdictional remedy because it does not meet the requirement of a higher level judicial reviewing body, as well as the requirement of a broad remedy that would allow for a thorough analysis or examination of all the issues debated and analyzed before the authority that issued the action subject to appeal. Therefore, it is not a remedy that the people must necessarily seek.

181. In view of the above, the Court rules that the State violated the right of Mr. Vélez Loor recognized in Article 8(2)(h) of the Convention, in relation to Articles 1(1) thereof.

### *h) Illegality of the place of confinement for foreigners punished under Decree Law 16 of 1960*

182. The State argued that "[t]he legality of placing foreigners sentenced under Article 67 of Decree Law 16 of 1960 in national prisons was based not only on the content of the regulation itself, but also on the Supreme Court's interpretation regarding the legality of such measure."

183. Under the rule of law, the principles of legality and non-retroactivity govern the actions of all State bodies in their respective spheres of competence, particularly when the exercise of its punitive power is at issue.[191] The Court has already ruled on the application of Article 9 of the Convention to the administrative punitive action. In this respect, it has held that "in the interest of legal certainty, it is essential for the punitive rule, whether of a criminal or administrative nature, to exist and to be known or potentially known, before the action or omission that violates it, and which is punishable. The definition of an act as illegal, and the determination of its legal effects must precede the conduct of the subject regarded as a violator. Otherwise, individuals would not be able to adjust their behavior according to a valid and certain legal order in which social reproach and its consequences were expressed. These are the foundations of the principles of legality and of unfavorable non-retroactivity of a punitive rule."[192]

184. In spite of the fact that neither the Commission nor the representatives expressly alleged the violation of Article 9[193] of the Convention that embodies the principle of legality, the Court is not precluded from applying it. The precept contained therein constitutes one of the fundamental principles of the Rule of Law to impose limits on the punitive power of the State and would be applicable, in any case by virtue of a general principle of law, *iura novit curia*, on which international jurisprudence has repeatedly relied and under which a court has the power and the duty to apply the juridical provisions relevant to a proceeding, even when the parties do not expressly invoke them.[194] In this respect, the Court rules that the facts of this

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191 *Cf. Case of Baena Ricardo et al.*, *supra* note 139, para. 107; *Case of Yvon Neptune*, *supra* note 97, para. 125 and *Case García Asto and Ramírez Rojas*, *supra* note 99, para. 187.

192 *Case of Baena Ricardo et al., supra* note 139, para. 106, citing *cf., inter alia, ECHR,* Ezelin v. France (Application no. 25196/94) Judgment of 15 November 2001, para. 45 and *ECHR,* Müller et al. v. Switzerland (Application no. 10737/84) Judgment of 24 May 1988, para. 29.

193 Article 9 of the Convention states:

> No one shall be convicted of any act or omission that did not constitute a criminal offense, under the applicable law, at the time it was committed. A heavier penalty shall not be imposed than the one that was applicable at the time the criminal offense was committed. If subsequent to the commission of the offense the law provides for the imposition of a lighter punishment, the guilty person shall benefit therefrom.

194 *Cf. Case of Velásquez Rodríguez*, *supra* note 51, para. 163; *Case of Usón Ramírez*, *supra* note 10, para. 53 and *Case of Garibaldi*, *supra* note 9, para. 33.

case, acknowledged by the State, and to which the parties have had ample opportunity to make reference, constitute a violation of this principle under the terms mentioned below.

185. As already mentioned, Article 67 of Decree Law 16 of 1960, established that "any foreigner who evades a deportation order by remaining in the country in a clandestine way or who circumvents the penalty by returning to the country, shall be sentenced to two (2) years of agricultural work in the Penal Colony of Coiba and shall be obliged to leave the country at the end of that period." Instead, Mr. Vélez Loor was given a "two-year prison term in one of the country's prisons" when he reentered Panama subsequent to a deportation order (*supra* para. 94). Even if the Court had already declared the incompatibility of this type of measure with the Convention (*supra* paras. 161 to 172), the penalty imposed on Mr. Vélez Loor is not consistent with that established under domestic legislation.

186. The State defended the legality of such a proceeding invoking the ruling issued by Panama's Supreme Court on December 26, 2002, and other precedents. In that ruling, it was established that "the literal application of this precept is ineffective, particularly at present when everyone is aware of the effort by the competent public institutions to convert the Penal Colony of Coiba into a tourist and ecological site. Therefore, it is illogical, in the face of such circumstances, to require the immigration authorities to literally apply the aforementioned Article 67, when it is known to be inapplicable […]. Consequently, the full Court rules that an interpretation of Article 67 more in keeping with reality and effective application, leads to the conclusion that the penalty of imprisonment, which the law allows the immigration authority to impose on deported foreigners who have failed to comply with the order implied in the decision, can be carried out in the country's prisons other than the Penal Colony of Coiba, according to the rule in question."[195] However, the State pointed out that this situation ceased when the rule in question was repealed; therefore the current penalty of imprisonment for foreigners who repeat the offense of violating deportation orders is repealed.

187. The State provided some rulings of Panama's Supreme Court of Justice concerning the legality of ordering a measure such as the one applied to Mr. Vélez Loor.[196] However, the Court finds that the application of an administrative penalty or sanction materially different to the one provided by the law violates the principle of legality, given that it is based on extensive interpretations of criminal law. In this case, the Court notes that the National Immigration Office did not provide any reasons in its Order 7306 regarding the grounds for applying the penalty in a facility other than the one stipulated in the rule. As to the compatibility with international

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[195] Judgment of the Panamanian Supreme Court of December 26, 2002, wherein it ruled on the legality of the holding of foreigners punished via the application of Article 67 of Decree Law 16 of 1960 in the national prison system centers other than the Coiba Penal Colony. (Includes judgments mentioned with background; see items 16 to 21) (Evidence file, volume X, annex 15 to the State's final arguments, pages 4046 to 4054).

[196] *Cf.* Judgment of the Full Court of the Supreme Court. Writ of *Habeas Corpus* in favor of Jorge Perlaza Royo and against attorney Eric Singares and attorney Rosabel Vergara, Director and Deputy Director of the National Immigration Office. Magistrate: Arturo Hoyos. Panama, January 12, 2001, (Evidence file, volume X, annex 16 to the final arguments of the State, pages 4055 to 4060); Judgment of the Full Court of the Supreme Court. Writ of *Habeas Corpus* filed by attorney Magaly Castillo, in favor of Vicente Limones, against the Director of the National Immigration Office. Magistrate: Mirtza Angélica Franceschi de Aguilera. Panama, July 25, 2001, (Evidence file, volume X, annex 17 to the final arguments of the State, pages 4061 to 4066); Judgment of the Full Court of the Supreme Court. Writ of *Habeas Corpus* filed by Attorney Anda J. Jurado Zamora, in favor of Guillermo Goicochea against the Director of the National Immigration Office. Magistrate: José A. Troyano. Panama, April 30, 2001, (Evidence file, volume 10, annex 19 to the final arguments of the State, pages 4073 to 4077), Judgment of the Full Court of the Supreme Court. Writ of *Habeas Corpus* filed by attorney Víctor Orobio in favor of Jairo González and against the National Immigration Office. Magistrate: Rogelio Fábrega Z. Panama, February 14, 2001, (Evidence file, volume X, annex 20 to the final arguments of the State, pages 4078 to 4083).

obligations of keeping migrants in custody alongside individuals accused or convicted of criminal charges, see *infra* (paras. 206 to 210).

188. Based on the foregoing reasons, the Court considers that the application of a heavier sanction than the one stipulated in Article 67 of Decree Law 16 of 1960 violates the principle of legality and consequently Article 9 of the Convention, in conjunction with Articles 1(1) therein, to the detriment of Mr. Vélez Loor.

### *i) Conclusion*

189. The parties have presented arguments on Article 7 of the American Convention, regarding its different subparagraphs. Based on the Court's jurisprudence, the Commission and the State agreed that any violation of subparagraphs 2 to 7 of Article 7 of the Convention necessarily entails the violation of Article 7(1) thereof, because the failure to respect the guarantees of the person deprived of liberty leads to the lack of protection of that person's right to liberty.

190. In this regard, the Court has already noted that the standard establishes a general regulation and a specific regulation composed of a series of guarantees. In fact, Article 7(1) of the American Convention provides, in general terms, that "[e]very person has the right to personal liberty and security." Even though this right may be exercised in many ways, the American Convention regulates "the limits or restrictions that the State may impose," by means of different guarantees established in the different subparagraphs of the standard, which must be provided when depriving a person of their liberty.[197] These subparagraphs protect the right: i) not to be deprived of liberty unlawfully (Art. 7)(2)) or in an arbitrary manner (Art. 7(3)); ii) to be informed of the reasons for the detention and the charges brought against him (Art. 7(4)); iii) to the judicial control of the deprivation of liberty and the reasonable length of time of the remand in custody (Art. 7(5)); iv) to contest the lawfulness of the arrest (Art. 7(6)); and v) to not be detained for debt (Art. 7(7)).

191. Based on the foregoing considerations, and taking into account the State's acknowledgment of responsibility, the Court declares that the State violated the right enshrined in Articles 7(3), and the guarantees contained in Articles 7(4), 7(5), and 7(6) of the Convention to the detriment of Mr. Vélez Loor, in relation to the obligations enshrined in Article 1(1) thereof. Consequently, the State violated the right to personal liberty of the victim enshrined in Article 7(1) of the Convention, in relation to its obligation to respect rights established in Article 1(1) therein. The State also violated Articles 8(1), 8(2)(b), 8(2)(c), 8(2)(d), 8(2)(e), 8(2)(f) and 8(2)(h) of the American Convention, in relation to the obligations recognized in Article 1(1) therein. Finally, the State violated Article 9 of the American Convention, in relation to its failure to comply with its obligation to respect rights contained in Article 1(1) therein.

### *j) Clarifications regarding Article 2 of the American Convention*

192. The Commission took a positive view of the issuance of Decree Law N° 3 of February 22, 2008, which eliminates the penalty of imprisonment for repeated illegal entries into Panama. However, it stated that such a change in domestic law "does not resolve the violation of Article 2" due to the application of Decree Law No. 16 of June 30, 1960, in Mr. Vélez Loor's case, and the consequent lack of due process afforded to him as a migrant. Therefore, it concluded that the State "did violate Article 2 by failing to bring its domestic law into line with the rights enshrined in Articles 7, 8, and 25." The representatives pointed out that the State violated Article 2 of the American

[197] *Cf. Case of Chaparro Álvarez and Lapo Íñiguez*, *supra* note 99, para. 53.

Convention related to its non-compliance with the obligations contained in Articles 5, 7, 8, 25, and 24 therein.

193. The State denied the violation of Article 2 of the American Convention. In this regard, it pointed out that the application of Article 67 of Decree Law 16 of 1960 contained "sufficient provisions to guarantee to all persons under its jurisdiction, nationals or foreigners, without discrimination, the enjoyment of the rights established in the Convention [...] especially those aimed at protecting the rights of personal liberty, a fair trial [judicial guarantees] and judicial protection." Finally, the State noted that "Article 141 of Decree Law 3 of 2008, repealed Decree [Law] 16 of 1960 and any other standard contrary to it, as from its entry into force," making the question moot.

194. Article 2 of the Convention establishes the general obligation of each State Party to adapt its domestic laws to the Convention's provisions, in order to guarantee the rights protected therein, which means that the provisions of domestic law must be effective (principle of *effet utile)*.[198] Even though Article 2 of the Convention does not define which measures are appropriate for adapting domestic law to the Convention, the Court has held that the general duty set forth in Article 2 implies the adoption of measures in two directions or aspects: i) the elimination of any norms or practices of any kind that entail violations of guarantees provided for in the Convention or disregard the rights embodied therein or impede the exercise of such rights and ii) the issuance of rules and the development of practices leading to the effective observance of these guarantees.[199] The Court considers that the obligation of the first aspect is violated as long as the standard or practice that violates the Convention remains in the legal system[200] and is therefore satisfied with the modification,[201] the repeal or otherwise annulment[202] or reformation[203] of such rules or practices as appropriate.[204]

195. The reforms introduced into Panama's legal framework in relation to immigration issues do not annul the violations committed to the detriment of Mr. Vélez Loor through the application of Decree Law N° 16 of 1960 and the State's failure to comply with the duty to adapt such legislation to its international obligations from the date of the ratification of the American Convention (*supra* Chapter 5). Therefore, the Court rules that the State violated Article 2 of the American Convention

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198 *Cf. Case of Garrido* and *Baigorria v. Argentina. Reparations and Costs*. Judgment of August 27, 1998. Series C No. 39, paras. 68 and 69; *Case of Rosendo Cantú et al.*, *supra* note 27, para. 163 and *Case of Fernández Ortega et al.*, *supra* note 27, para. 179.

199 *Cf. Case of Castillo Petruzzi et al.*, *supra* note 151, para. 207; *Case of Chitay Nech et al.*, *supra* note 104, para. 213 and *Case of The Dos Erres Massacre*, *supra* note 27, para. 122.

200 *Cf. Case of "The Last Temptation of Christ" (Olmedo-Bustos et al.) v. Chile. Merits, Reparations and Costs.* Judgment of February 5, 2001. Series C N° 73, para. 88; *Case of Zambrano Vélez et al. v. Ecuador. Merits, Reparations and Costs.* Judgment of July 4, 2007. Series C No. 166, para. 57 and *Case of La Cantuta*, *supra* note 103, para. 172.

201 *Cf. Case of Hilaire, Constantine* and *Benjamin et al.*, *supra* note 145, para. 113; *Case of Zambrano Vélez et al.*, *supra* note 200, para. 57 and *Case of La Cantuta*, *supra* note 103, para. 172.

202 *Cf. Case of Caesar v. Trinidad and Tobago. Merits, Reparations and Costs*. Judgment of March 11, 2005. Series C N°. 123, para 94; *Case of Salvador Chiriboga v. Ecuador. Preliminary Objections* and *Merits.* Judgment of May 6, 2008. Series C No. 179, para. 122 and *Case of Zambrano Vélez et al.*, *supra* note 200, para. 57.

203 *Cf. Case of Raxcacó Reyes v. Guatemala. Merits, Reparations and Costs*. Judgment of September 15, 2005. Series C No. 133, para. 87; *Case of Salvador Chiriboga*, *supra* note 202, para. 122 and *Case of Zambrano Vélez et al.*, *supra* note 200, para. 57.

204 *Cf. Case of "The Last Temptation of Christ" (Olmedo-Bustos et al.)*, *supra* note 200, para. 87; *Case of Salvador Chiriboga*, *supra* note 202, para. 122 and *Case of Zambrano Vélez et al.*, *supra* note 200, para. 57.

in relation to Articles 7 and 8 therein. These mentioned reforms will be considered for all pertinent purposes in the chapter corresponding to reparations (*infra* Chapter IX).

## VIII-2
## RIGHT TO HUMANE TREATMENT [PERSONAL INTEGRITY] IN RELATION TO THE OBLIGATION TO RESPECT RIGHTS AND THE OBLIGATIONS ENSHRINED IN THE CONVENTION AGAINST TORTURE

196. The arguments of the Commission and the representatives, under Article 5 of the American Convention and the Convention Against Torture, refer to: i) the prison conditions and ii) the obligation to investigate acts of torture. In addition, the representatives presented arguments regarding the alleged acts of torture and the obligation to define torture as a crime; these arguments will be considered since they complement the obligation to investigate alleged acts of torture (*supra* para. 47). The State, for its part, acknowledged its international responsibility for the violation of the right to humane treatment [personal integrity] contained in Articles 5(1) and 5(2) of the American Convention, in relation to Article 1(1) thereof, but only with regard to certain prison conditions that Mr. Vélez Loor was subjected to while incarcerated, with the exception of the obligation to provide adequate medical care and the water supply. (*supra* para. 67).

197. In fact, the State "acknowledg[ed] that serious deficiencies in the national prison system negatively affect the right to integrity [humane treatment] of the individuals deprived of liberty." In this respect, it especially emphasized "the serious physical, structural and functional deficiencies," which violate domestic laws and international standards adopted by the country. In relation to La Palma Prison and the La Joya-La Joyita Complex, "it acknowledg[ed] the existence, as documented by the different Panamanian authorities, of the following problems, *inter alia*: structural deficiencies in the detention centers; problems in the water supply; prison overcrowding; flawed systems for classifying prisoners and shortcomings in the re-socialization and education programs." The State also explained in detail that "it has adopted short and medium-term measures" to remedy the situation of overcrowding in the country's prisons. In this regard, it acknowledged its responsibility[205] and submitted to the Court's decision.

198. This Court has held that, under the terms of Articles 5(1) and 5(2) of the Convention,[206] all persons deprived of liberty have the right to live in detention conditions compatible with their personal dignity. Consequently, since the State is the institution responsible for prisons, it is the guarantor of these prisoners' rights.[207] This

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[205] In relation to the prison conditions acknowledged by the State, the Court notes that at the end of the visit to Panama and, specifically, to La Joyita Prison in June 2001, the Commission issued a press release referring to prison conditions that are incompatible with human dignity. It made reference, *inter alia*, to overcrowding; the large number of prisoners who have to sleep on the floor or in hammocks, which are sometimes located four meters above the floor; the inadequate and deteriorated sanitation facilities, which pose health risks to the current population. Furthermore, the Commission noted serious deficiencies in the health services available to detainees and a lack of employment opportunities, rehabilitation programs and recreational activities. *Cf.* Press Release N° 10/01 of the Commission of June 8, 2001 (Evidence file, volume III, annex 29 of the application, page 1529 and 1530).

[206] Article 5 of the American Convention, provides as appropriate, that:

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

[207] *Cf. Case of Neira Alegría et al. v. Peru*. *Merits*. Judgment of January 19, 1995. Series C No. 20, para. 60; *Case of Yvon Neptune*, *supra* note 97, para. 130 and *Case of Montero Aranguren et al. (Retén de Catia) v. Venezuela. Merits, Reparations and Costs*. Judgment of July 5, 2006. Series C No. 150, paras. 85 and 87.

implies the State's duty to guarantee the health and welfare of inmates by providing them, *inter alia*, with the required medical care, and to ensure that the manner and method of any deprivation of liberty does not exceed the unavoidable level of suffering inherent in incarceration.[208] Lack of compliance may constitute a violation of the absolute prohibition against torture and cruel, inhumane, or degrading punishment or treatment.[209] In this sense, States cannot invoke economic hardship to justify prison conditions that do not comply with the minimum international standards or respect the inherent dignity of the human being.[210]

199. From the evidence presented in this case, it appears that when Mr. Vélez Loor was arrested, only one shelter for immigrants existed in the country, in Panama City, to accommodate irregular immigrants while the State defined their situation and decided whether or not to deport them.[211] Currently, the country has two shelters for immigrants, both located in Panama City,[212] and therefore those individuals arrested in border areas, whether they are irregular immigrants or persons seeking international protection, are initially sent to prisons in the provinces or police stations until their transfer to the National Immigration Office shelters in the Panama City.[213]

200. Thus, when Mr. Vélez Loor was arrested in Darien Province, he was transferred together with four other foreign nationals[214] to La Palma Prison[215] (*supra* para. 93), which is the main detention center in the area.[216] According to the testimony rendered by Mr. Vélez Loor regarding his imprisonment at La Palma, there were also "Peruvian detainees with their wives, and Colombian detainees [...] with their

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208 *Cf.* Case of the "*Juvenile Reeducation Institute" v. Paraguay. Preliminary Objections, Merits, Reparations and Costs.* Judgment of September 2, 2004. Series C N° 112, para. 159; *Case of Yvon Neptune*, *supra* note 97, para. 130 and *Case of Boyce et al. v. Barbados. Preliminary Objection, Merits, Reparations and Costs.* Judgment of November 20, 2007. Series C N° 169, para. 88.

209 *Case of Cantoral Benavides*, *supra* note 27, para. 95; *Case of Boyce et al.*, *supra* note 208, para. 88 and *Case of Bueno Alves*, *supra* note 157, paras. 75 and 76. In this respect, the Committee Against Torture has expressed that "[o]vercrowding, lack of amenities and poor hygiene in prisons; the lack of basic services and appropriate medical attention in particular, the inability of the authorities to guarantee the protection of detainees in situations involving violence within prisons […] in addition to contravening the United Nations Standard Minimum Rules for the Treatment of Prisoners, these and other serious inadequacies worsen the deprivation of liberty of prisoners serving sentences and those awaiting trial, making such deprivation cruel, inhuman and degrading punishment and, in the case of the latter, punishment served in advance of sentence." United Nations, Report of the Committee against Torture, 25th Period of Sessions (November 13 to 14, 2000) / 26th Period of Sessions (April 30 to May 18, 2001), A/56/44, May 10, 2001, para. 95f.

210 *Cf. Case of Montero Aranguren et al. (Detention Center of Catia), supra* note 207 and *Case of Boyce et al.*, *supra* note 208, para. 88.

211 *Cf.* Statement rendered by María Cristina González at the public hearing held by the Court on August 25, 2010.

212 *Cf.* Statement rendered by María Cristina González at the public hearing held by the Court on August 25, 2010.

213 *Cf.* Affidavit rendered by Mrs. Sharon Irasema Diaz Rodriguez, *supra* note 135, page 3667, and Note DDP-RP-DRI No. 24-2010, *supra* note 135.

214 *Cf.* Note N° 061 Judicial Section issued by the Chief of the First Battalion of Support and Service of La Palma Prison addressed to the Deputy Prosecutor of the Republic on September 2, 2009 (Evidence file, volume VI, annex 1 of the answer to the application, page 2400) and Note No. 163-02 Regional Metetí issued by the Regional Supervisor of Migration of Metetí addressed to the Chief of the Police of the Darien District on November 12, 2002 (Evidence file, volume VI, annex 1 to the response to the application, page 2401).

215 *Cf.* Affiliation Form, La Palma Prison, Darien, Prison System, Ministry of Interior and Justice, November 12, 2002 (Evidence file, volume III, annex 11 of the application, page 1219) and case file of Mr. Jesús Tranquilino Vélez Loor in the National Prison System (Evidence file, volume VI, annex 3 of the response to the application, pages 2624 and 2625).

216 *Cf.* Information on La Palma Prison available at the webpage of the General Office of the Prison System (Evidence file, volume IV, annex 8 of the brief of pleadings, motions and evidence, page 1581).

children, pregnant women [and] a pregnant Peruvian adolescent."[217] There were three cells for men on the premises: the large cell, the preventive cell and the "block" cell, which were old warehouses, lacking natural or artificial ventilation.[218] Furthermore, there was a room for the women detainees, with no security or a physical divide.[219] Mr. Vélez Loor was imprisoned in a cell where the individuals with good behavior and the elderly were confined.[220] It was located next to a fuel tank.[221] In this compound, he was held along with persons imprisoned for crimes.[222]

201. Subsequently, on December 18, 2002, Mr. Vélez Loor was transferred to La Joya-La Joyita Prison Complex,[223] where he was admitted on the following day[224] and held in Block 6, a section intended for foreign nationals deprived of liberty,[225] where he also shared the cell with detainees imprisoned for crimes.[226] This center is located in the Correctional Facility of Pacora, Panama City, and it has become the country's largest prison.[227]

202. In 2003, La Palma Prison had the physical capacity to house 108 inmates, both men and women.[228] According to official information of the Panamanian Prison System,[229] in 2002, it had a total population of 146 inmates and in 2003 there were 149 inmates. Moreover, in 2003 La Joyita Prison Complex had the physical capacity to

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[217] Statement rendered by Jesús Tranquilino Vélez Loor at the public hearing held before the Court on August 25, 2010.

[218] *Cf.* Statement of Mrs. Sharon Irasema Díaz Rodríguez, *supra* note 135, pages 3664 to 3665 and Special Report of the Ombudsman of the Republic of Panama on the Situation of the Jails in the Interior of the Country on April 12, 2005 (Evidence file, volume VIII, annex 42 to the response to the application, page 3438).

[219] Statement rendered by Sharon Irasema Díaz Rodríguez, *supra* note 135, pages 3664 to 3665 and Special Report of the Ombudsman of the Republic of Panama, *supra* note 218.

[220] *Cf.* Note No. 208-DGSP.DAL, *supra* note 69.

[221] *Cf.* Note No. 208-DGSP.DAL, *supra* note 69, and statement rendered by Leoncio Raúl Ochoa Tapia, *supra* note 160, page 3657.

[222] Statement rendered by Jesús Tranquilino Vélez Loor at the public hearing held before the Court on August 25, 2010, and statement rendered by Mr. Leoncio Raul Ochoa Tapia, *supra* note 160, page 3657. Witness Gonzalez indicated that people arrested by order of the National Immigration Office were not held in the same area at La Palma Prison as individuals arrested for criminal or police reasons. *Cf.* Statement rendered by Carlos Benigno González Gómez, *supra* note 122, page 3789.

[223] *Cf.* Communication No. DNMYN-SI-1265-02, *supra* note 76; Communication No. DNMYN-SI-1264-02, *supra* note 76; Communication No. DNMYN-SI-1266-02, *supra* note 76, and Order No. 2778 T, *supra* note 76.

[224] *Cf.* Case file of Mr. Jesús Tranquilino Vélez Loor, *supra* note 215, page 2643, Note No. 208-DGSP.DAL, *supra* note 69 and Report of the General Director of the National Police of Panama, *supra* note 69, page 1574.

[225] *Cf.* Report of the General Director of the National Police of Panama, *supra* note 69, page 1574; Information on La Joyita Prison, available at the webpage of the General Direction of the Office of the Prison System (http://sistemapenitenciario.gob.pa/detailcentros.php?centID=2) (Evidence file, volume IV, annex 10 to the brief of pleadings, motions and evidence, page 1582), and Note No. 1420-DGSP.DAL issued by the General Director of the Prison System addressed to Assistant Attorney General of the Republic on October 13, 2009 (Evidence file, volume VI, annex 3 to the response to the application, page 2553).

[226] *Cf.* Statement rendered by Jesús Tranquilino Vélez Loor at the public hearing that took place before the Court on August 25, 2010.

[227] *Cf.* Information on La Joyita Prison, *supra* note 225.

[228] *Cf.* Statement rendered by Mrs. Sharon Irasema Díaz Rodríguez, *supra* note 135, page 3664.

[229] *Cf.* Report of the Department of Statistics of the Administrative Bureau of the Ministry of Interior and Justice, entitled "Prison population in the Republic per year according to Prison Center 2000-2007") (Evidence file, volume IV, annex 12 of the brief of pleadings, motions and evidence, page 1601). Similarly, statement rendered by Mrs. Sharon Irasema Díaz Rodríguez, supra note 135, page 3664.

house 1,770 inmates.[230] According to official information of the Panamanian Prison System,[231] in 2002, its total population was 2,430 inmates and in 2003 it rose to 2,917.

203. Having surpassed their capacity limits, both prison units had high rates of overcrowding at the time of the events. Furthermore, given that the population density was higher than 120% over its officially established limit, the Court considers that the overpopulation reached dangerous levels. Consequently, during the time Mr. Vélez Loor was imprisoned at La Palma and La Joyita, there were high levels of overcrowding with a population density of 135% and 164%, respectively.

204. As this Court has already pointed out,[232] such conditions of overcrowding endanger the routine performance of essential functions at the centers, as such health care, daily rest periods, hygiene, food provision, security, visitation periods, education, employment, recreational activities and conjugal visits. This causes an overall deterioration in the physical facilities, creates problems of coexistence and fosters prison violence. All of this is detrimental to the prisoners and prison staff, given the harsh and dangerous conditions in which they perform their daily tasks.

205. Given that these arguments and the acknowledgment refer to a situation that occurred while Mr. Vélez Loor was held in custody by the State because of his irregular immigration status, confined in prisons of the national system, the Court will now refer to the requirements that persons detained because of their immigration status to be held in places other than those intended for detainees accused or convicted of serious crimes, in order to then analyze the issues that remain in dispute.

### *a) Requirement that persons detained because of their immigration status be held in places other than those intended for persons accused or sentenced for criminal offences*

206. Both the Commission and the representatives argued that States have an obligation to separate prisoners who have committed criminal offences from those who are detained for immigration issues. The State did not present a specific argument regarding this issue, but it accepted "the existence of a serious deficiency in the classification systems of those deprived of liberty." As to Block 6 of La Joyita Prison where Mr. Vélez Loor was imprisoned, the State indicated that, "it is a medium to low security block which housed people who were deprived of liberty for the same reasons as Mr. Vélez Loor, as well as others detained for reasons not considered dangerous." Likewise, it alleged that the opening of migrant shelters by the National Immigration Office, which house only migrants, guarantees the separation.

207. Although the Court has already referred to the particularly vulnerable situation in which migrants find themselves (*supra* para. 98), in this case it is important to emphasize how this vulnerability is increased when, due to their irregular immigration status, they are incarcerated in prisons with individuals facing criminal trials and/or

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230 *Cf.* Statement rendered by Mrs. Sharon Irasema Diaz Rodriguez, *supra* note 135, page 3664, and *Alianza Ciudadana Pro Justicia, Audito Ciudadano* of Criminal Justice in Panama City, Panama, 2004 (Evidence file, volume IV, annex 18 of the brief of pleadings, motions and evidence, page 1732).

231 *Cf.* Report of the Department of Statistics, *supra* note 229, page 1602. Similarly, statement rendered by Mrs. Sharon Irasema Díaz Rodríguez, *supra* note 135, page 3664.

232 *Cf. Case of Montero Aranguren et al. (Detention Center of Catia)*, *supra* note 207, para. 90 and *Case of Boyce et al.*, *supra* note 208, para. 93.

serving time for committing crimes.[233] This situation makes migrants more likely to suffer abusive treatment, since it implies *de facto* lack of protection for an individual in relation to the rest of the detainees. This, in the context of its obligations to guarantee the rights recognized in the Convention, the State must refrain from acting in such a way that favors, promotes, fosters or deepens that vulnerability[234] and it must adopt, when appropriate, the measures necessary and reasonable to prevent or protect the rights of anyone in that situation.

208. Therefore, if in a specific case detention is necessary and proportionate, migrants should be held in facilities specifically designed for that purpose, in accordance with the migrant's legal situation, and not in common prisons, the purpose of which is incompatible with the purpose of the possible detention of a person for his immigration status, or other places where they are placed together with those accused or convicted of crimes. This principle of separation clearly serves the different purposes of deprivation of liberty. In fact, when dealing with convicted persons, the conditions of imprisonment must pursue the "essential aim" of custodial measures, which is the "reform and social re-adaptation of the convicted prisoners."[235] In the case of migrants, detention and imprisonment of persons solely for their irregular migratory status should only be used as necessary and proportionate to a specific case, only for the shortest period of time possible and according to the legal purposes mentioned (*supra* paras. 169 and 171). Indeed, by the time Mr. Vélez Loor was imprisoned, several international organizations had ruled on the need to separate persons imprisoned for a violation of immigration laws from those persons accused or convicted of criminal offences.[236] Therefore, the Court considers that States must provide separate public establishments specifically allocated for each purpose,[237] and if the State does not have such establishments, it must provide other premises, which should never be prison.[238]

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233 Similarly, United Nations, Report presented by the Special Rapporteur, Mrs. Gabriela Rodriguez Pizarro, according to Resolution 2002/62 of the Commission on Human Rights E/CN.4/2003/85, December 30, 2002, para. 16, and United Nations, Report of the Special Rapporteur on the Human Rights of Migrants, *supra* note 84, page 2027, para. 41.

234 *Cf. Juridical Condition and Rights of Undocumented Immigrants, supra* note 82, paras. 112 and 172; *Case of Manuel Cepeda Vargas*, *supra* note 11, para. 172 and *Case of Perozo*, *supra* note 9, para. 118.

235 Article 5(6) of the American Convention establishes that: [pu]nishments consisting of deprivation of liberty shall have the reform and social re-adaptation of the prisoners as their essential aim.

236 The European Court on Human Rights, in a decision in the year 2000, indicated that, "it is undesirable for prisoners awaiting deportation to be held in the same location as convicted prisoners." *ECHR,* Ha You ZHU *v.* United Kingdom (Application no. 36790/97) Admissibility of September 12, 2000, page 6. Likewise, the Rapporteurship on Immigrant Workers and Their Families in the Hemisphere, in 2001, considered that undocumented migrants deprived of liberty for the sole fact of being undocumented should be held "in detention centers and not in regular prisons." Organization of American States, Annual Report of the Commission, 2000. Second Progress Report of the Rapporteurship on Immigrant Workers and Their Families, Chapter VI Special Studies, April 16, 2001, OAS/Ser./L/V/II.III, doc. 20 rev. para. 110, Likewise, in 2003, the Working Group on Arbitrary Detention recommended "to end the current practice of detaining foreigners for reasons related to immigration together with individuals charged with ordinary offences." United Nations, Working Group on Arbitrary Detention, Group Report, The civil and political rights, in particular the issues related to torture and detention, E/CN.4/2004/3/Add.3, December 23, 2003, Recommendation 75.

237 The International Convention on the Protection of the Rights of all Migrant Workers and their Family Members, of December 18, 1990, in its article 17(3) provides that: "[a]ny migrant worker or member of his or her family who is detained in a State of transit or in a State of employment for violation of provisions relating to migration shall be held, in so far as possible, separately from convicted persons or persons detained pending trial." International Convention on the Protection of the Rights of All Migrant Workers and Their Family Members. Adopted by General Assembly resolution 45/158 of December 18, 1990. Likewise, in 2002, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment took the view that "in those cases where it is deemed necessary to deprive persons of their liberty for an extended period under immigration laws, they should be accommodated in centers specifically designed for that purpose, offering them material conditions, an appropriate system for their legal status, and whose staff is appropriately qualified. European Committee for the Prevention of

209. Although deprivation of liberty often entails, as an inevitable consequence, the violation of other human rights in addition to the right to personal liberty, in the case of persons detained exclusively for immigration issues, they should be accommodated in centers specifically designed for the purpose of guaranteeing "material conditions and a system appropriate to their legal status and staffed by appropriately qualified personnel,"[239] avoiding as far as possible the disintegration of family groups. Consequently, the State must adopt certain positive, specific measures, aimed not only at guaranteeing the enjoyment and exercise of those rights whose restriction is not a collateral effect of the situation of imprisonment, but also at ensuring that the deprivation of liberty does not entail a greater risk to the infringement of rights, the integrity and the personal and family welfare of migrants.

210. The Court considers that, given that Mr. Vélez Loor was first deprived of his liberty at La Palma Prison and subsequently at the La Joyita Prison, facilities that form part of the national prison system and where he was detained together with people awaiting criminal trial and/or serving time for the commission of a crime, the State violated Articles 5(1) and 5(2) of the American Convention, in relation to Article 1(1) thereof, to the detriment of Mr. Vélez Loor.

### *b) Prison conditions at La Palma Public Prison and La Joyita Prison*

211. Considering the State's partial acknowledgment of responsibility, (*supra* Chapter VI), there is still a dispute over the issues related to the provision of water at La Joyita and the medical care provided to Mr. Vélez Loor there. This will be analyzed below.

#### *1) Provision of water at La Joyita*

212. With respect to La Joyita Prison, the Commission pointed out, *inter alia*, "the shortcomings in access to basic services, such as the lack of showers, drinking water and an adequate system for disposing of the prisoners' waste." The representatives pointed out that Mr. Vélez Loor was imprisoned "without sufficient water for human consumption, and the little water available was of poor quality" and that the lack of water at the facility lasted for two weeks.

213. The State argued that "[i]t is not true that prisoners had been without water for more than two weeks [at La Joyita]," because urgent steps were taken at that time to guarantee the supply through "the use of tank trucks." The immediate causes of the problem were identified and the necessary repairs made to normalize the water supply. In this regard, the State disputed "the existence of malicious acts against

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Torture and Inhumane or Degrading Treatment or Punishment (CPT), CPT Standards, Sections of General Reports CPT Merits issues, CPT/Inf/E (2002) 1 - Rev. 2004, Chapter IV. Foreign nationals detained under immigration legislation, extract of the 7th General Report [CPT/Inf (97) 10], para. 29.

[238] *Cf.* In 2002, the United Nations Rapporteurship on Migrant Workers and their Families recommended that States take measures "[e]nsuring that migrants under administrative detention are placed in a public establishment specifically intended for that purpose or, when this is not possible, in facilities other than those intended for persons imprisoned under criminal law." United Nations, "Specific Groups and Individuals: Migrant Workers," Report of the Special Rapporteur, Ms. Gabriela Rodriguez Pizarro, submitted in accordance with Order 2002/62 of the Commission on Human Rights, E/CN.4/2003/85, December 30, 2002, para. 75.1).

[239] European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), CPT Standards, Sections of General Reports CPT Merits issues, CPT/Inf/E (2002) 1 - Rev. 2004, Chapter IV. Foreign nationals detained under immigration legislation, extract of the 7th General Report [CPT/Inf (97) 10], para. 29. In the same line, the Organization of American States, Annual Report of the Commission, 2000. Second Progress Report of the Rapporteurship on Migrant Workers and Their Members, Chapter VI, Special Studies, April 16, 2001, OAS/Ser./L/V/II.III, doc. 20 rev., para. 110.

those deprived of liberty," and emphasized that "[i]t is misleading to claim that the shortage of water is used as a form of punishment for those deprived of liberty."

214. Evidence suggests that during an inspection conducted by personnel of the Supervision Program of Inmates' Rights of the Ombudsman's Office on June 23, 2003, a group of inmates of La Joyita Prison complained about the lack of drinking water at the facility for a fortnight, which caused dehydration, diarrhea and conjunctivitis among the inmates of some blocks, as well as the overflow of sewage. On July 1, 2003, the Ombudsman accepted the complaint, and personnel of the Ombudsman's Office conducted another inspection, and verified that, "there was still no water at the facility due to an electrical problem affecting the water supply."[240] The deficiencies and lack of drinking water and its poor quality at La Joyita Prison, were also the subject of a study and a report by the Ombudsman's Office in 2004. [241]

215. The Court considers it proven that in June 2003, while Mr. Vélez Loor was held at La Joyita Prison, there was a problem in the water supply that affected the prison population. The evidence provided demonstrates that the shortages of drinking water at La Joyita had been frequent (*supra* para. 197) and that in 2008 the State took some measures in that regard.[242] The Court notes that the lack of drinking water is a particularly important aspect of prison conditions. In relation to the right to drinking water, the United Nations Committee on Economic, Social and Cultural Rights has called on States Parties to adopt measures to ensure that "[p]risoners and detainees are provided with sufficient and safe water for their daily individual requirements, noting the requirements of international humanitarian law and the United Nations Standard Minimum Rules for the Treatment of Prisoners."[243] Furthermore, the

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[240] Press release issued by the Ombudsman's Office through its website: http://defensoriadelpueblo.gob.pa/mainprensa.php?page=1&catid=&start=1900 on July 1, 2003 (Evidence file, volume III, annex 30 of the application, page 1536). See also, Newspaper article of "La Prensa," entitled, "Sanitation crisis at La Joya and La Joyita" of July 2, 2003 (Evidence file, volume V, annex 29 of the brief of pleadings, motions and evidence, page 2197).

[241] In the Special Report of the Public Defender of the Republic on the Quality, Analysis of Drinking Water for Human Consumption at the La Joya-Joyita Prison and in the Investigation of the Public Defender at the La Joya Prison in relation to the sewage situation, deficiencies and lack of drinking water and its poor quality were documented. *Cf.* Special Report of the Ombudsman of the Republic of Panama on the quality, analysis of water for human consumption in La Joya–Joyita Prison, Panama, September 17, 2004, pages 8 to 9 and 23 to 25 (Evidence file, compact disc, annex 31 to the brief of pleadings, motions and evidence). Furthermore, in the Special Report of the Public Defender of the Republic regarding the Right to Health in the Penitentiary Centers of 2008, this state body warned that, according to Report No. 05-1773-2007 issued by the Experimental Center of Chemical Laboratory Engineering and Applied Physics, La Joyita Prison "included a water treatment plant which ran to a storage tank currently functioning by gravity, since the pumps were damaged;" furthermore, "the water supply came from the National Institute of Aqueducts and Sewage Systems with an alternate supply;" also, "the pipes that carried the sewage from the different blocks, generally have collapsed, almost all of them are shut off because they are blocked," and "[t]he sewage runs in the open air." Special Report of the Ombudsman's Office of the Republic of Panama in regard to Health in the Prisons in 2008 and its annex 2 (Evidence file, volume VIII, annex 43 to the answer to the application, pages 3452 to 3453 and 3467 to 3469). In turn, the Harvard University International Human Rights Clinic, in the visits made in March and October, 2007, to the facility also documented, *inter alia*, the problems with the access to drinking water and the lack of water, due to the water shortages and the frequent suspensions of the supply over long periods of time, coupled with the poor quality of the water and the overflow of sewage. *Cf.* Report prepared by the Harvard University International Human Rights Clinic, entitled "Human Rights Stop at These Doors: Injustice and Inequality in Panamanian Prisons," in March 2008 (Evidence file, volume III, annex 27 of the application, page 1326, 1342, 1349, 1362 and 1363).

[242] In this regard, in the proceedings before the Commission, the Director General of the Penitentiary System of the Republic reported that "[t]he water problems were evident with the increase in the population at La Joya Complex," and that after many efforts, "in late 2008, the water treatment plant was upgraded with suction equipment, processing, storage and new distribution, was accomplished, providing full coverage of potable water, 24 hours a day, to all of La Joya Complex." Note No. 0045-DGSP-AFP issued by the Director General of the Prison System Addressed to the Deputy Minister of Public Security on May 27, 2009 (Evidence file, volume VIII, annex 29 of the answer to the application, pages 3242 and 3243).

[243] United Nations, Committee on Economic, Social and Cultural Rights, General Observation No. 15 (2002) on the Right to Water (Articles 11 and 12 of the International Covenant on Economic, Social, and Cultural Rights), approved by the Committee in its 29th Period of Sessions (2002), HRI/GEN/1/Rev.7, 2002,

Minimum Rules establish that "[p]risoners shall be required to keep their persons clean, and to this end they shall be provided with water and with toilets as are necessary for health and cleanliness," and that "[d]rinking water shall be available to every prisoner whenever needed."[244] Consequently, States must take steps to ensure that prisoners have sufficient safe water for daily personal needs, *inter alia*, the consumption of drinking water whenever they require it, as well as water for personal hygiene.[245]

216. The Court considers that the absence of minimum conditions to guarantee the supply of drinking water within a prison constitutes a serious failure by the State in its duty to guarantee the rights of those held in its custody, given that the circumstances of incarceration prevent detainees from satisfying their own personal basic needs by themselves, even though these needs, such as access to sufficient and safe water, are essential for a dignified life[246]

217. As to the other matter referred to by the State (*supra* para. 213), the Court does not have sufficient elements to determine whether this practice was used as a method of punishment against the prison population.

*2) Medical care*

218. Regarding the lack of adequate medical care, the Commission argued that "[t]he information available indicates that during his detention at La Joya-Joyita, Mr. Vélez Loor received basic medical attention; however, he did not receive the specialized treatment he required for an apparent skull fracture he suffered." Moreover, the representatives stated that there is no record that Mr. Vélez Loor had undergone a medical examination when he was admitted to La Palma Prison or when he was transferred to La Joya-La Joyita Center, and that the State, "at no time, provided adequate and thorough medical care to the [alleged] victim." In particular, they referred to its failure to conduct the only medical examination prescribed, a CAT scan for his skull.

219. For its part, the State argued that, "Mr. Vélez received timely and adequate medical treatment, given the restrictions that the prison imposed equally on other inmates confined at La Joya Prison." It objected to the statement made by the Commission and the representatives regarding the lack of specialized medical treatment and referred in detail to the activities and medical care recorded in "Mr. Vélez Loor's medical record" at the Clinic of La Joya Prison. Furthermore, it pointed out that Mr. Vélez Loor himself refused to accept the care on some occasions.

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para. 16.g) (Evidence file, volume V, annex 23 to the brief of pleadings, motions, and evidence, page 2002). *See also*, Organization of American States, General Assembly, AG/RES. 2349 (37-O/07), Order on "water, health and human rights," Approved in the Fourth Plenary Session, held on June 5, 2007, Operative Paragraphs 1 to 3.

[244] Standard Minimum Rules for the Treatment of Prisoners, adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Geneva, 1955, approved by the Economic and Social Council by its resolutions 663C (24) of July 31, 1957 and 2076 (62) of May 13, 1977, Rules 15 and 20(2).

[245] Recently, the United Nations General Assembly declared "the right to safe and clean drinking water and sanitation is a human right that is essential for the full enjoyment of life and all human rights." United Nations, General Assembly, Order 64/292 in its 108th Plenary Session on July 28, 2010, on "Resolution on the Human Right to Water and Sanitation." A/Res/64/292, August 3, 2010, para. 1.

[246] *Cf. Case of the "Juvenile Reeducation Institute"*, *supra* note 208, para. 152; *Case of Montero Aranguren et al. (Detention Center of Catia)*, *supra* note 207, para. 87 and *Case of García Asto* and *Ramírez Rojas*, *supra* note 99, para. 221.

220. This Court has pointed out that the State has the duty to provide detainees with regular medical checkups and care and adequate treatment whenever needed.[247] Principle 24 for the Protection of All Persons Under Any Form of Detention or Imprisonment provides that: "[A] proper medical examination shall be offered to a detained or imprisoned person as soon as possible after his [or her] admission to the detention center or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge."[248] The care given by a physician not related to the prison or detention center authorities is an important safeguard against torture and physical or mental mistreatment of inmates.[249] Moreover, lack of adequate medical assistance could be considered *per se* a violation of Articles 5(1) and 5(2) of the Convention depending on the specific circumstances of the person, the type of ailment, the time spent without medical attention and its cumulative effects.[250]

221. In this regard, the Court notes that from Mr. Vélez Loor's medical record it appears that on March 20, 2003, he was evaluated for migraines and dizziness, the result of a previous cranial fracture, which according to the physician had been there for almost a year; therefore a brain CAT scan was ordered.[251] On April 10, 2003, Mr. Vélez Loor was summoned for a medical evaluation but he refused to go; however, upon reviewing the medical record, the doctor determined that the inmate had a fractured skull and that a CAT scan had not been carried out, for which reason he suggested ruling out a brain injury with the ordered CAT scan.[252] On April 22, 2003, Mr. Vélez Loor was examined for headaches and dizziness, resulting from a previous cranial fracture and a CAT scan was prescribed; however, due to its cost, the CAT scan was not performed.[253]

222. The Court notes that, despite the recurring problems of migraines and dizziness and the reason for which a CAT scan was ordered by the physicians who treated him, the scan was never performed and Mr. Vélez Loor did not receive adequate and timely medical care for this ailment. This could have caused harmful consequences for his current health condition, and it is also contrary to required dignified treatment. According to expert witness Flores Torrico, "the headaches, migraines, blurred vision, tearing, vertigo and dizziness experienced by Mr. Vélez Loor can perfectly well be related to the blow to the head that he received with a blunt object, causing an injury and a scar […] in the right front-parietal region."[254]

223. Consequently, the Court considers proven that the medical services available to Mr. Vélez Loor were not provided in a timely, adequate and complete manner,

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247 *Cf. Case of Tibi*, *supra* note 27, para. 156; *Case of Montero Aranguren et al. (Catia Detention Center)*, *supra* note 207, para. 102 and *Case of García Asto* and *Ramírez Rojas*, *supra* note 99, para. 227.

248 United Nations, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Adopted by the General Assembly in Order 43/173, December 9, 1988, Principle 24.

249 *Cf. Case of Montero Aranguren et al. (Catia Detention Center)*, *supra* note 207, para. 102

250 *Cf. Case of García Asto* and *Ramírez Rojas*, *supra* note 99, para. 226; *Case of the Miguel Castro-Castro Prison*, *supra* note 27, para. 302 and *Case of Montero Aranguren et al. (Catia Detention Center)*, *supra* note 207, paras. 102 and 103.

251 *Cf.* Note of Dr. Guillermo A. Garay M. of March 20, 2003 in the medical file of Mr. Vélez Loor in La Joya-Joyita Complex (Evidence file, volume VIII, annex 53 to the response to the application, page 3609).

252 *Cf.* Communication of the Clinic of La Joyita to the Director of La Joyita Prison of April 10, 2003 (Evidence file, volume III, annex 53 of the answer to the application, page 3612); Medical note of Dr. Mastellari of April 10, 2003 in medical file of Mr. Vélez Loor at La Joya-Joyita Complex (Evidence file, volume III, annex 53 of the application, page 3609), and Note N° 208-DGSP.DAL, *supra* note 69.

253 *Cf.* Note N° 208-DGSP.DAL, *supra* note 69, and Official Letter N° 450-SP issued by the Head of the Prison Healthcare of the Ministry of Interior and Justice addressed to Mr. Jesús Vélez Loor on April 22, 2003 (Evidence file, volume VIII, annex 53 of the answer to the application, page 3613).

254 Expert opinion rendered by Marcelo Flores Torrico at the public hearing that took place before the Court on August 25, 2010.

given that he did not receive specialized medical treatment or medication for the apparent cranial fracture he suffered and was never properly treated.

224. Finally, the representatives argued that Mr. Vélez Loor's conditions of imprisonment "constituted cruel, inhumane and degrading treatment," given that "[d]uring the ten months he was in the custody of the Panamanian authorities [...] where he lived in inhumane conditions, with no respect for his dignity."

225. The Court appreciates the political will shown by the State to improve the conditions of imprisonment of its prisoners and to reform the entire penal system.[255] However, the fact is that Mr. Vélez Loor, imprisoned for almost ten months, was subjected to prison conditions that did not respect his integrity and dignity.

226. As regards the alleged "context of violence and the accusations of police abuse in the Panamanian prisons to the detriment of a foreign person whose guarantees have been denied," the Court notes that the representatives did not offer sufficient or varied evidence referring to the time of the events, which would allow the Court to confirm such statements.

227. Based on the State's acknowledgment and the evidence provided, the Court finds that the overall conditions of imprisonment at La Palma Prison and La Joyita Prison, constituted a cruel, inhumane and degrading treatment, contrary to human dignity and, therefore, constituted a violation of Articles 5(1) and 5(2) of the American Convention, in relation to Article 1(1) thereof, to the detriment of Mr. Vélez Loor.

### *c) Obligation to initiate properly and immediately an investigation into the alleged acts of torture*

228. Both the Commission and the representatives stated that following his deportation to his country, on January 24, 2004, Mr. Vélez Loor filed a complaint before the Embassy of Panama in Quito, Ecuador, through his lawyer at the time, alleging acts of torture supposedly committed while he was deprived of liberty in Panama. However, it was not until the notification of the report on the merits issued by the Commission that the State initiated a criminal investigation into the complaints. Therefore, the Commission considered it evident that the State had not complied with the obligation to thoroughly investigate the complaint of possible acts of torture occurring under its jurisdiction.

229. The State emphasized that, "while Mr. Vélez Loor was in Panamanian territory, he never filed a complaint against the State for acts of torture committed against him." Likewise, the State noted that "on March 30, 2003, Mr. Vélez Loor filed a request at the Ombudsman's Office to secure its intervention with respect to his deportation to Ecuador [and that t]his request made no reference to mistreatment, torture, denial of medical assistance or other complaints which, that according to him, occurred from the first day of his detention. Thus, "the first information that State authorities had about the alleged acts of torture and mistreatment committed against

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[255] *Cf.* Statement rendered by Mrs. Roxana Méndez by affidavit on August 12, 2010 (Evidence file, volume IX, affidavits, pages 3738 to 3746); Master Plan for the Construction of the Panama Prison Infrastructure undated (Evidence file, volume VIII, annex 52 to the response to the application, pages 3533 to 3558); Opening for Bids for the Contract to Design, Construct, and Equip the New Joya Complex, under the Key Modality at the hands of the Department of Institutional Procurement and Supplier of the Ministry of the Interior and Justice on March 17, 2010 (Evidence file, volume VIII, annex 52 to the response to the application, pages 3559 to 3579), Report of the Evaluation Commission, Prequalification No. 1 for the Bid to Design, Construct, and Equip the New Joya Prison Complex under the Key Modality of March 27, 2010 (Evidence file, volume VIII, annex 52 to the answer to the application, pages 3580 to 3604) and Resolution No. 125-2010 issued by the Ministry of the Interior and Justice on April 7, 2010 (Evidence file, volume VIII, annex 52 of the answer to the application, pages 3605 to 3606).

Mr. Vélez Loor was that reported to the Embassy of Panama in Ecuador, on January 24, 2004." The State pointed out that "it immediately initiated an administrative investigation" but "the results of the inquiry revealed a lack of consistency between the facts and the circumstances described in [said] communication […] and the information forwarded by the different Panamanian authorities." As a result, "[t]he case file of this complaint remained open but no formal complaint was filed regarding the events since there were no longer any elements to adequately support the complaint." Finally, the State referred to the existence and progress of the criminal investigation conducted by the Public Prosecutor's Office in April 2009. In this regard, it argued that the State had made several requests to obtain Mr. Vélez Loor's initial statement but that it was impossible without his direct cooperation.

230. The Court has pointed out that according to Article 1(1) of the American Convention, the obligation to guarantee the rights embodied in Articles 5(1) and 5(2) of the American Convention imply the duty of the State to investigate possible acts of torture and other cruel, inhumane or degrading treatment.[256] The duty to investigate is reinforced through the provisions of Articles 1, 6, and 8 of the Convention Against Torture,[257] which require the State to "take […] effective measures to prevent and punish torture within its jurisdiction" and to "prevent and punish […] other cruel, inhumane, or degrading treatment or punishment." In addition, according to the provision of Article 8 of said Convention, State Parties shall guarantee

> […] that any person making an accusation of having been subjected to torture within their jurisdiction shall have the right to an impartial examination of his case [and]
>
> [i]f there is an accusation or well-grounded reason to believe that an act of torture has been committed within their jurisdiction, […] that their respective authorities will proceed

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256 *Cf. Case of Ximenes Lopes v. Brazil. Merits, Reparations and Costs.* Judgment of July 4, 2006. Series C No. 149, para. 147; *Case of González et al. ("Cotton Field")*, *supra* note 20, para. 246 and *Case of Bayarri*, *supra* note 27, para. 88.

257 Article 1 of the Convention Against Torture states that:

> The State Parties undertake to prevent and punish torture in accordance with the terms of this Convention.

Article 6 also states that:

> In accordance with the terms of Article 1, the States Parties shall take effective measures to prevent and punish torture within their jurisdiction.
>
> The States Parties shall ensure that all acts of torture and attempts to commit torture are offenses under their criminal law and shall make such acts punishable by severe penalties that take into account their serious nature.
>
> The States Parties likewise shall take effective measures to prevent and punish other cruel, inhuman, or degrading treatment or punishment within their jurisdiction.

Article 8 states that:

> The States Parties shall guarantee that any person making an accusation of having been subjected to torture within their jurisdiction shall have the right to an impartial examination of his case.
>
> Likewise, if there is an accusation or well-grounded reason to believe that an act of torture has been committed within their jurisdiction, the States Parties shall guarantee that their respective authorities proceed properly and immediately to conduct an investigation into the case and to initiate, whenever appropriate, the corresponding criminal process.
>
> After all the domestic legal procedures of the respective State and the corresponding appeals have been exhausted, the case may be submitted to an international body whose competence has been recognized by that State.

> *ex officio* and immediately to conduct an investigation into the case and to initiate, whenever appropriate, the corresponding criminal process[258].

231. This obligation to investigate is based on information that the Court has seen in the pleadings and arguments of the representatives and statements received in public hearings taking place before the Court, as well as through information that was filed opportunely with the Commission and assessed by it.[259]

232. The representatives declared that "from the first moment of his detention," Mr. Vélez Loor "was mistreated by State agents," and during the ten months that he was in prison, "he was tortured as reprisal for demanding his rights." They refer in detail to the alleged acts that constitute "torture and mistreatment[,] including sexual torture," in the following terms:

> a) Upon detaining him on [November 11, 2002], agents of the National Police of Panama fired several shots, compelling Mr. Vélez Loor to throw himself facedown on the floor. Subsequently, one of the agents put his foot on Mr. Vélez Loor's head [and] the other stood on his hands, and heavily pressed his bayonet on the [alleged] victim's back, threatening to kill him. Afterwards, they handcuffed him, put shackles on his feet and made him walk barefoot to a small barracks, where he remained handcuffed to a pole for approximately eight hours.
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> b) In the Public Prison of La Palma, Mr. Jesús Vélez Loor and others in irregular migratory situations initiated a hunger strike in order to demand their immediate deportation. In reprisal, the [alleged] victim received, in his own words, "a blow to the spine, a fracture on my head with a wooden stick, from which I able to recognize the aggressor was from the police."
>
> c) [In the Complex of La Joya-Joyita], he suffered a wound to the hip, as a result of a fall from a hammock caused when members of the Police entered into Block 6, throwing tear gas bombs. Despite having requested medical attention on repeated occasions for the injuries he suffered […] he was not provided [with such]. Faced with the lack of response to his requests, on June 1, 2003, Mr. Vélez Loor sewed his mouth closed and initiated a new hunger strike in Block 6 in order to demand assistance. [As] punishment, he was transferred to Block 12, considered to be maximum security, where, in the words of the alleged victim, "they took off my clothes and threw me to the floor totally naked. They started beating me with the Billy club on the back, on the legs, and the soles of the feet; they stomped on my head, and scraped my scalp with their boots while I was face down. Afterwards, they lifted my head, pouring tear gas on my face and eyes; I couldn't breathe and I had to break open the stitching on my mouth so I could breath […] After this long torture [a] Lieutenant […] locked me up in a small cell called the Discotheque, […] then they threw tear gas powder on my body and around the cell [which produces a] terrible suffocation […] A few hours later a homosexual guard arrived and proposed that if I had sexual relations with him, he would send me to a different place […] When I refused, he began to beat me, giving me a tremendous beating, and he took out a container of powder, I do not know what it was, and he poured it on my back and private parts, then he put a little on some paper and with a pencil that he had in his pocket, he covered it in powder and inserted that strange material in my anus, almost two centimeters to the inside part of my rectum with the eraser-end of the pencil. That powder burned me like fire."

233. During the public hearing, Mr. Vélez Loor testified in detail that:

> […] From the moment that I was detained […] the police opened fire with rifles […], and forced me to throw myself on the floor; they closed in, stood on my arms, made me spread my arms in the form of a cross on the floor, stood on the palms of my open

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[258] As of September 28, 1991, the date when the Convention Against Torture entered into force in Panama, according to its Article 22, the State has the duty to comply with all the obligations contained in the treaty (*supra* para. 57).

[259] Original petition received by the Commission on February 10, 2004 (Evidence file, volume I, Appendix 3 to the application, pages 225 to 228), and letters received by the Commission on August 3, 2004 (Evidence file, volume I, Appendix 3 to the application, pages 214 to 218). In the same vein, Comments on the *Merits* filed by the petitioner to the Commission on January 31, 2007 (Evidence file, volume VIII, annex 38 to the answer to the application, pages 3326 to 3329) .

> hands, and stripped me of my belongings. Later, they took off my shoes and socks and put shackles on my arms and my feet, and forced me to walk barefoot […] up to a small barracks of the village of Nueva Esperanza in Darien Province. […] What they did afterward [was] to hang me from a pole […] from my right arm, where I remained for nearly eight hours […].
>
> [In the Prison of La Palma,] all the prisoners who were there for their migratory situation [made the] decision [… to] stage a peaceful strike, holding hands, facing outside at the time that they took us out, [and] at that point a lot of police arrived and began to drag us by our feet, and as we were caught, they began to beat us with clubs and sticks, […] and in that beating that they gave us, they broke my skull […].
>
> [Concerning the hunger strike at the La Joyita Prison] on June 1[, 2003], I sewed my mouth shut [… in response, the police] made me walk to the maximum security block 12, far from the other blocks […], then a police officer […] said: 'bring that guy over here; why have you sewn your mouth shut?' Well, I did not say anything because I had my mouth stitched closed; at that moment they began to spray gas in my face; I felt that I had to force open my lips; I ripped open the stitching in my lips so that I could breath, and I bled everywhere, and from there they took off my clothes, […] left me naked and put cuffs, […] on my feet; [they laid me [sic] on the floor and] began to walk around in a circle, first hitting me with thick clubs on the soles of my feet, and then walking on the backs of the naked detainees while opening up bottles of tear gas and pouring it on their naked bodies and spraying them with water […], it was agonizing; it felt like fire on the skin. From there, they went around again, made [us] [sic] turn face up, and came walking on our bellies […] From there […], they took me to a small room that they call 'the Discotheque' [… and] they continued spraying me with that powder […] From there, they locked me up in a small cell […] there they continued spraying me with gas [and] a police officer entered taunting and laughing at me, and he asked me: 'ah, you want to have sex with me?' And laughing, […], he kicked me with his boots, then, there he inserted a powder in my anus with the eraser-end of a pencil, and he kicked me […].[260]

234. The Court notes that after he was deported to Ecuador (*supra* para. 95), Mr. Vélez Loor filed a complaint before the State institutions of his own country alleging that he was subjected to acts of torture and mistreatment, both at La Palma and La Joyita Prisons.[261] Specifically, he sent a communication to the Commission on Human Rights of the National Congress of Ecuador on September 15, 2003,[262] and to the Ombudsman's Office of Ecuador on November 10, 2003.[263]

235. Subsequently, on January 24, 2004, as affirmed by the State, a brief was filed at the Embassy of Panama in Ecuador by a person who indicated he was Mr. Vélez Loor's attorney,[264] and a copy of the complaint submitted to the Ombudsman's Office of Ecuador was attached to the brief (*supra* para. 234). The parties agree that this was the first time that the authorities of Panama learned of the allegations of torture and mistreatment. Likewise, on September 15, 2004, Mr. Vélez Loor brought the facts to the attention of the Panamanian Ministry of Foreign Affairs.[265] The Court notes

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260 Statement rendered by Mr. Jesús Tranquilino Vélez Loor in the public hearing held at the Court on August 25, 2010.

261 He mentioned having been detained in Darien Province by the Panamanian State authorities; that they tied his hands and feet and drove him to the village of Metetí; that in the Prison of La Palma he staged a hunger strike as a protest and was tortured in reprisal; that in Block 6 of the La Joyita Prison he staged a hunger strike and sewed his mouth shut; they then sent him to the maximum security Block 12 and there he was the object of physical and psychological torture.

262 *Cf.* Brief of Mr. Vélez Loor to the Commission on Human Rights of the National Congress of Ecuador with acknowledgment of receipt of this body on September 15, 2003 (Evidence file, volume III, annex 22 of the application, page 1256).

263 *Cf.* Brief of Mr. Vélez Loor to the Ombudsman's Office of Ecuador with acknowledgment of receipt of this body on November 10, 2003 (Evidence file, volume III, annex 19 of the application, page 1242).

264 *Cf.* Note E.G. N° 035-04 issued by the Embassy of Panama in Ecuador addressed to the Panamanian Ministry of Foreign Affairs on January 27, 2004 (Evidence file, volume VIII, annex 22 of the response to the application, page 3170 to 3182).

265 *Cf.* Complaint signed by Mr. Jesús Tranquilino Vélez Loor filed before the Panamanian Foreign Office on September 15, 2004 (Evidence file, volume VIII, annex 48 of the response to the application, page 3508).

that, in both briefs, the Panamanian State was notified of the allegations of torture and mistreatment committed in Panama, at the time of his arrest in Darien as well as while he was imprisoned at La Palma and La Joyita Prisons. After that, on October 7 and 24, 2004, Mr. Vélez Loor sent two emails to the Office of Foreign Affairs – Legal Matters and Treaties of Panama.[266]

236. The Court notes that Mr. Vélez Loor presented the aforementioned briefs before the State of Panama when he was no longer in its custody. In this respect, it is important to point out that the victim tends to refrain, because he is afraid, from denouncing acts of torture or mistreatment, especially if he is confined in the same place where these events occurred.[267] Considering the situation of vulnerability and defenselessness created by an institution such as a prison, the interior of which is completely beyond public scrutiny, it is important to emphasize the need to perform periodic inspections at detention centers,[268] in order to guarantee the independence of the medical and health care personnel responsible for examining and providing assistance to those detained,[269] and for these to have adequate and effective means available to assert their claims and file complaints while deprived of liberty.[270]

237. From the evidence submitted, it is clear that after the complaint was received at the Embassy of Panama (*supra* para. 235), on January 27, 2004, the brief was forwarded to the Ministry of Foreign Affairs of Panama,[271] and on February 10, 2004, the Office of Legal Affairs and Treaties of the Ministry of Foreign Affairs informed the Embassy that it had requested information from the National Police and the Panamanian National Immigration Office[272] in order to determine "whether Mr. Vélez Loor was arrested [in Panama] and subsequently deported."[273] In response to this, on February 17 and March 30, 2004, the National Immigration Office and the National Police reported, respectively, on the migratory status of Mr. Vélez Loor in Panama without mentioning the acts of torture and mistreatment he denounced.[274]

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266 In both he stated in a consistent manner that "[he was] a victim of a cruel imprisonment by the Director of Immigration," during which time they sent him to Block 12 of La Joyita Prison where "[he was] savagely mistreated physically[,] morally, and sexually." Furthermore, he stated that during his imprisonment "they broke [his] head with a stick, opening a wound of almost four [c]centimeters, the effects of which even now [he is] still suffering." In the second brief, he added that "a homosexual police officer from La Joyita asked [him] to let [him] do oral sex on his penis in exchange for removing [him] from the torture room known as the Discotheque of Block 12 […]." Note A.J. No. 2865 issued by the General Director of Legal Affairs and Treaties of the Ministry of Foreign Relations of Panama addressed to the Chief of Consular Affairs of the Embassy of Panama in Ecuador on November 17, 2004 (evidence file, volume VIII, annex 23 of the answer to the petition, pages 3184 to 3186).

267 *Cf. Case of Bayarri*, *supra* note 27, para. 92.

268 *Cf.* United Nations, Committee Against Torture, *General Observation No. 2: Application of Article 2 by States Parties*, CAT/C/GC/2, January 24, 2008, para. 13.

269 *Cf. Case of Bayarri*, *supra* note 27, para. 92. *See also*, United Nations, Office of the High Commissioner on Human Rights, Istanbul Protocol *(Manual for the Effective Investigation and Documentation of Torture and other Cruel, Inhumane, and Degrading Treatment)* New York and Geneva, 2001, paras. 56, 60, 65, and 66, and United Nations, Committee Against Torture, General Observation No. *2, supra* note 268.

270 *Cf.* United Nations, Committee Against Torture, General Observation No. *2, supra* note 268.

271 Note E.G. N° 035-04, *supra* note 264.

272 *Cf.* Note A.J. N° 323 issued by the Panamanian Ministry of Foreign Affairs to the Ambassador of Panama in Ecuador on February 10, 2004 (Evidence file, volume III, annex 25 of the application, page 1305).

273 Note A.J. N° 324 issued by Panama's Ministry of Foreign Affairs to the Director of the National Office Immigration on February 10, 2004 (Evidence file, volume VI, annex 2 of the answer to the application, pages 2509 to 2510), and Note A.J. N° 322 issued by the Panamanian Ministry of Foreign Affairs to the Director of the National Police on February 10, 2004 (Evidence file, volume VIII, annex 33 of the answer to the application, pages 3265 to 3266).

274 *Cf.* Note N° DNMYN-AL-32-04, *supra* note 70, pages 1202 to 1204, and Note No. AL-0874-04, *supra* note 69, pages 1206 to 1207.

238. In response to the communication of September 15, 2004, on September 27, 2004, the General Office of Foreign Policy referred to additional facts mentioned by Mr. Vélez Loor, but without presenting information related to the alleged acts of torture.[275] Furthermore, on October 7 and 24, 2004, Mr. Vélez Loor sent emails referring to the communication of September 15 (*supra* para. 235) to the General Office of Foreign Policy of Panama. In response to this, on November 17, 2004, the Office of Legal Affairs and Treaties of the Ministry of Foreign Affairs requested information from the head of Consular Affairs of the Embassy of Panama in Ecuador, again without referring to the alleged acts of torture.[276]

239. Regarding these inquiries, the State denied that it failed to undertake a serious and diligent investigation into allegations of torture presented by Mr. Vélez Loor since, in the State's opinion, the obligation to investigate established in the Convention Against Torture "is subject to the existence of a well-grounded reason to believe such acts have been committed. Otherwise, any unfounded accusation that such acts have occurred would require the State to conduct proceedings based on trivial accusations which, far from being useful for the prevention and punishment of acts of torture, would result in a useless weakening of legal remedies."

240. In that regard, the Court clarifies that the Convention Against Torture contemplates two situations that activate the State's duty to investigate: on the one hand, when an accusation is filed and, on the other, whenever there is a well-founded reason to believe that an act of torture has been committed within State jurisdiction. In these situations, the decision to initiate and conduct an investigation is not up to the State, meaning it is not a discretional power; instead, this duty to investigate constitutes an imperative obligation of the State which derives from international law and cannot be disregarded or conditioned by domestic acts or legal provisions of any kind.[277] In this case, given that Mr. Vélez Loor had filed, through a third person, a complaint with the Embassy of Panama (*supra* para. 235) in order to inform the State of the facts, this was sufficient reason to activate the State's duty to conduct a prompt and impartial investigation. Moreover, as the Court has stated, even when the application of torture or cruel, inhumane or degrading treatment has not been reported to the competent authorities by the victim, whenever there are indications that it has occurred, the State must initiate, *ex officio* and immediately, an impartial, independent and detailed investigation to determine the nature and origin of the injuries, identify those responsible and prosecute them.[278]

241. In this case, the Court notes that the State authorities did not proceed according to expectations, given that the proceedings conducted by the State only verified the detention and presence of Mr. Vélez Loor in Panama during the period mentioned (*supra* para. 237). It was not until October 14, 2008, that the Ministry of Foreign Affairs, through its Human Rights Department, forwarded to the Ombudsman's Office the brief that was filed, as well as the complaint signed by Mr. Vélez Loor (*supra* para. 235), which was received on October 16, 2008.[279] In relation to Mr. Vélez Loor's briefs of September 15, October 7 and 24, 2004, there is no

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[275] *Cf.* Note N° DOPE-DC-2666-04 issued by the Ministry of Foreign Affairs on September 27, 2004 (Evidence file, volume III, annex 7 of the application, page 1209).

[276] *Cf.* Note A.J. N° 2865, *supra* note 266.

[277] *Cf. Case of the Miguel Castro-Castro Prison*, *supra* note 27, para. 347; *Case of Escué Zapata*, *supra* note 103, para. 75 and *Case of Bueno Alves*, *supra* note 157, para. 90.

[278] *Cf. Case of Gutiérrez Soler*, *supra* note 27, para. 54; *Case of Bayarri*, *supra* note 27, para. 92 and *Case of Bueno Alves*, *supra* note 157, para. 88.

[279] *Cf.* Order A.J.D.H. No. 106 submitted by the Head of the Human Rights Department of the Ministry of Foreign Affairs of the Republic of Panama to the Ombudsman of October 14, 2008 (Evidence file, volume IV, annex 1 to the answer to the application, page 2422).

record that the State conducted any proceeding regarding the alleged acts of torture and mistreatment denounced. Thus, the authorities who learned of these charges did not present the respective accusations to the corresponding authorities in Panama in order to initiate *ex officio* and immediately an impartial, independent and detailed investigation to guarantee the collection and preservation of evidence that would establish what happened to Mr. Jesús Tranquilino Vélez Loor. On the contrary, they challenged the veracity of the allegations of torture without conducting a thorough investigation (*supra* para. 239). Likewise, in the context of this proceeding, the State denied that the alleged acts of torture were committed which, as the Commission mentioned, compromises the proper conduct of the domestic criminal proceeding.

242. Finally, it is worth noting that it was not until the notification of the Commission's Report on the Merits 37/09, that the Deputy Prosecutor of the Public Prosecutor's Office of Panama learned of the events denounced by Mr. Vélez Loor, and on July 10, 2006, the investigation was initiated. The Prosecutor's Office, upon considering that "[w]hat was mentioned constitut[ed] a *noticia criminis,"* ordered an immediate summary investigation into the crime against liberty to the detriment of Mr. Vélez Loor, "in order to shed light on all the circumstances leading to the determination of the illicit act, its nature and the consequences of criminal relevance, as well as those allegedly responsible."[280] In that regard, on August 11, 2009, it requested information concerning Mr. Vélez Loor's arrest in Panama from all the authorities involved, according to his version.[281] This request was repeated on October 19, 2009.[282] By December 2009, some public institutions had forwarded the information requested, while other responses were pending.[283] Finally, on April 5, 2010, a visual inspection was conducted at La Joyita Prison; however, it could not be completed given that the documents to be inspected "were books containing old dates and were filed."[284]

243. As to the State's arguments that it was impossible to gather certain evidence (*supra* para. 229), the Court considers that the State cannot attribute its failure to comply with its conventional obligations and/or its delay in complying with the coordination efforts that must be conducted at the international level in order to effectively process evidence. It is a duty of the State to adopt such pertinent measures as are required to comply with this obligation and, in particular, to adopt all necessary measures to take the witnesses' testimony, and to take any other steps that may contribute to the progress of the investigations, using all the administrative, judicial, diplomatic or other means available to further the investigation, as well as to adopt all measures and procedures required to that effect.[285] In this respect, it is worth mentioning the importance of the victim's cooperation in order to be able to carry out some of the procedures ordered by the body responsible for the investigation.

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[280] Order to initiate the investigations issued by the Deputy Prosecutor of the Republic of the Public Prosecutor's Office of Panama on July 10, 2009 (Evidence file, volume VI, annex 1 of the answer to the application, page 2373).

[281] *Cf.* Order issued by the Deputy Prosecutor of the Republic of the Public Prosecutor's Office of Panama on August 11, 2009 (Evidence file, volume VI, annex 1 of the response of the application, page 2374 to 2378).

[282] *Cf.* Case file N° 1219 of the Deputy Prosecutor of the Republic regarding the investigation of the crime against liberty to the detriment of Mr. Jesús Tranquilino Vélez Loor (Evidence file, volume VI, annex 1 of the answer to the application, page 2428 to 2440).

[283] *Cf.* Case file N° 1219, *supra* note 282.

[284] Case file N° 1219, *supra* note 282, pages 2254, 2255, 2272 to 2279 and 2289.

[285] *Cf. Case of Cantoral Benavides v. Peru. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights on November 20, 2009, Considering clause 19.

244. With regard to the representatives' argument that the State is responsible for failing to adequately define the crime of torture, the Court recalls that in the case of *Heliodoro Portugal v. Panama* it ruled on the State's non-compliance with the obligations established in the Convention Against Torture in this regard, with general effects extending beyond that specific case.[286]

245. Consequently, the Inter-American Court concludes that serious violations are alleged to Mr. Vélez Loor's right to personal integrity which may constitute torture in this case, and the local court must investigate. Thus, the Court finds that the State did not initiate, until July 10, 2009, a prompt investigation into the allegations of torture and mistreatment to which Mr. Vélez Loor had been subjected; therefore, it failed to comply with the duty to guarantee the right to humane treatment [personal integrity] enshrined in Articles 5(1) and 5(2) of the American Convention, in relation to Article 1(1) thereof, and the obligations contained in Articles 1, 6, and 8 of the Convention Against Torture, to the detriment of Mr. Vélez Loor.

## VIII-3
## NON-DISCRIMINATION AND EQUAL PROTECTION

246. The representatives argued that the violations committed against Mr. Vélez Loor "are framed within a general context of discrimination and criminalization of migration," in an attempt to reduce the migration flows into Panama, particularly of irregular migrants.

247. The State categorically denied that the alleged context exists and argued that the different bodies of the Panamanian State, each within the scope of its jurisdiction, had taken, and continue to take, measures to promote integration and equality among the population, whether nationals or foreigners, with no consideration as to the nationality or immigration status of the foreigners under its jurisdiction. In this regard, the State referred to the regularization and amnesty programs for migrants, laws on employment and social security and access to public education and health, *inter alia*.

248. This Court has already considered that the principle of equality before the law, equal protection before the law and non-discrimination belongs, at the present stage of development of international law, in the domain of *jus cogens*.[287] Consequently, States may not discriminate or tolerate discriminatory situations that prejudice migrants. However, the State may grant different treatment to documented migrants with respect to undocumented migrants, or between migrants and nationals, provided that this differentiated treatment is reasonable, objective and fair and does not impair human rights.[288] Consequently, States have an obligation not to introduce discriminatory regulations into their laws; to eliminate regulations of a discriminatory nature; to combat practices of this nature; and to establish norms and other measures recognizing and guaranteeing all persons effective equality before the law.[289]

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286 *Cf. Case of Barrios Altos v. Peru. Interpretation of the Judgment on the Merits*. Judgment of September 3, 2001. Series C No. 83, para. 18; *Case of Ibsen Cárdenas and Ibsen Peña*, *supra* note 28, para. 194 and *Case of Anzualdo Castro*, *supra* note 60, para. 191.

287 *Cf. Juridical Condition and Rights of Undocumented Immigrants, supra* note 82, para. 101; *Case of The Xákmok Kásek Indigenous Community*, *supra* note 28, para. 269 and *Case of Servellón García et al.*, *supra* note 48, para. 94.

288 *Cf. Juridical Condition and Rights of Undocumented Immigrants, supra* note 82, para. 119

289 *Cf. Proposed Amendments of the Naturalization Provisions of the Constitution of Costa Rica.* Advisory Opinion OC-4/84 of January 19, 1984. Series A No. 4, para. 54; *Case of the Yean* and *Bosico Girls v. Dominican Republic. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 8, 2005. Series C No. 130, para. 141 and *Case of Yatama*, *supra* note 38, para. 185.

249. In this respect, this Court has established that it cannot ignore the particular gravity of finding that a State Party to the Convention has conducted or has tolerated a generalized practice of human rights violations in its territory. This requires the Court "to apply a standard of proof which considers the seriousness of the charge and which, notwithstanding what has already been said, is capable of establishing the truth of the allegations in a convincing manner."[290] The Court has established that "the mere confirmation of a single case of violation of human rights by the authorities of a State is not in itself sufficient grounds to presume or infer the existence in that State of widespread, large-scale practices, to the detriment of the rights of other citizens."[291]

250. The alleged context of generalized discrimination constitutes, then, a matter of fact. Therefore, the party alleging such a situation must offer evidence to support its allegation. In this respect, the Court notes that the representatives did not refer to any specific evidence or to evidence provided in the case file upon which to base their affirmation. After the request for evidence to facilitate adjudication of the case in this regard (*supra* para. 79), the representatives referred to reports by United Nations Rapporteurs, other reports by non-governmental organizations and those of private individuals.

251. With the documents provided by the representatives, the Court does not find grounds to consider the context proven, given that some of the references do not relate to the particular situation in Panama; other documents were prepared after the time of the events of this case; and those documents that make reference to alleged discriminatory practices refer specifically to refugees and migrants coming from Colombia. Finally, there are not sufficient antecedents in the case file for this Court to rule that this case was framed within the alleged context. Moreover, the phenomenon of criminalizing irregular immigration has already been analyzed in light of the obligations contained in Articles 7 and 2 of the American Convention (*supra* paras. 161 to 172).

252. The representatives also considered that the human rights violations committed against Mr. Vélez Loor must necessarily be assessed in light of the obligations established in Articles 24 and 1(1) of the Convention and by virtue of the fact that the State failed to take steps to remedy Mr. Vélez Loor's vulnerable situation given his status as an irregular migrant. Furthermore, they argued that "it issued and applied clearly arbitrary standards[,] based on discriminatory ideas and prejudices[,] and blatantly violated the guarantees embodied in the legal code to prevent and remedy the breach of fundamental rights." The Commission did not analyze the alleged violations in light of these obligations. The State insisted that Panama's domestic legislation contained sufficient provisions to guarantee all persons under its jurisdiction, nationals and foreigners alike, equal and non-discriminatory treatment.

253. Regarding the allegations of the representatives, the Court recalls that the general obligation contained in Article 1(1)[292] refers to the State's duty to respect and guarantee "non-discrimination" in the enjoyment of the rights enshrined in the

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290 *Case of Velásquez Rodríguez*, *supra* note 51, para. 129; *Case of Perozo*, *supra* note 9, para. 148 and *Case of Ríos et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs.* Judgment of January 28, 2009. Series C No. 194, para. 136.

291 *Case of Gangaram Panday*, *supra* note 172, para. 64.

292 Article 1(1) of the Convention states that:

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

American Convention, while Article 24[293] protects the right to "equal treatment before the law."[294] In other words, if the State discriminates in relation to respect for or guarantee of a conventional right, the facts must be analyzed in accordance with Article 1(1) and the substantial right in question. If, on the contrary, the alleged discrimination refers to unequal protection by domestic law, the facts must be analyzed in light of Article 24 therein.[295] Therefore, the alleged discrimination of rights contained in the Convention as presented by the representatives must be analyzed in accordance with the general duty to respect and guarantee the conventional rights without discrimination, enshrined in Article 1(1) of the American Convention.

254. The Court has emphasized the measures that States must necessarily adopt to guarantee effective and equal access to justice for all persons who are in a situation of special vulnerability, such as an irregular migrant subjected to a measure of deprivation of liberty. Thus, it referred to the importance of notification of the right to consular assistance (*supra* para. 152) and the requirement to provide legal counsel in Mr. Vélez Loor's circumstances (*supra* paras. 132 and 146). In this case, it has been proven that Mr. Vélez Loor did not receive such assistance, which prevented him from effectively accessing and pursuing remedies to challenge the measures that deprived him of liberty, constituting an unjustifiable impairment of his right of access to justice. Based on the foregoing, the Court considers that the State failed to comply with its obligation to guarantee, without discrimination, the right to access to justice under the terms of Articles 8(1) and 25 of the American Convention, in relation to Article 1(1) thereof, to the detriment of Mr. Vélez Loor.

## IX
## REPARATIONS
## *(Application of Article 63(1) of the American Convention)*

255. Based on the provisions of Article 63(1) of the American Convention,[296] the Court has indicated that any violation of an international obligation that has caused harm entails the duty to provide adequate reparation[297] and that "this provision "reflects a customary norm that constitutes one of the fundamental principles of contemporary international law on a State's responsibility."[298]

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293 Article 24 of the Convention states that:

> All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law.

294 *Cf. Proposed Amendments of the Naturalization Provisions of the Constitution of Costa Rica. supra* note 289, paras. 53 and 54, *Case of Rosendo Cantú*, *supra* note 27, para. 183 and *Case of Fernández Ortega et al.*, *supra* note 27, para. 199.

295 *Cf. Case of Fernández Ortega et al.*, *supra* note 27, para. 199 and *Case of Rosendo Cantú et al.*, *supra* note 27, para. 183.

296 Article 63(1) of the Convention provides that "[I]f the Court finds that there has been a violation of a right or freedom protected by [this] Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party".

297 *Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and Costs*. Judgment of July 21, 1989. Series C No. 7, para. 25; *Case of Ibsen Cárdenas and Ibsen Peña*, *supra* note 28, para. 231 and *Case of Rosendo Cantú et al.*, *supra* note 27, para. 203.

298 *Cf. Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Reparations and Costs.* Judgment of May 26, 2001. Series C No. 77, para. 62; *Case of Ibsen Cárdenas and Ibsen Peña*, *supra* note 28, para. 231 and *Case of Rosendo Cantú et al.*, *supra* note 27, para. 203.

256. Furthermore, the Court has established that reparations must have a causal relationship with the facts of the case, the violations declared, the damages proved and the measures requested to repair the respective damage. Therefore, the Court must observe this concurrence in order to rule appropriately and in accordance with the law.[299]

257. Having regard to the violations of the American Convention and the Convention Against Torture declared in the preceding chapters, the Court shall address the requests for reparations made by the Commission and the representatives, together with the arguments of the State, in light of the criteria embodied in the Court's jurisprudence concerning the nature and scope of the obligation to make reparation,[300] in order to establish measures to repair the harm caused to the victim.

258. When ordering measures of reparation in this case, the Court shall take into account the fact that Mr. Vélez Loor is neither a national nor a resident of the State of Panama and that, in light of his situation as a detained migrant at the time of the events, he found himself in a situation of special vulnerability (*supra* paras. 28, 132, and 207).

### *A. Injured Party*

259. In accordance with Article 63(1) of the Convention, this Court considers as the injured party the person who has been declared a victim of the violation of some of the rights embodied in the Convention. In this case, the victim is Mr. Jesús Tranquilino Vélez Loor, who shall be considered as the beneficiary of the reparations ordered by this Court.

### B. *Measures of rehabilitation, satisfaction, obligation to investigate and guarantees of non-repetition*

260. The Commission considered it important that the Court order the Panamanian State to implement measures of compensation and rehabilitation. It mentioned that the measures "must take into particular consideration the victim's expectations as a foreigner in Panama, and provide the necessary means so that his migratory status does not constitute an obstacle to compliance with such reparations." It added that the State is also obliged to prevent further human rights violations. The representatives indicated that these reparations are very important, not only for the present case, but also to prevent the recurrence of these violations. The State, for its part, mentioned that it has adopted some measures that coincide with those described in the petitioner's claims and these are being fully implemented.

261. The Court shall decide on the measures to redress the non-pecuniary damages and those which are not of a pecuniary nature and shall order measures with public repercussions or impact.[301]

#### *1. Measures of rehabilitation*

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[299] *Cf. Case of Ticona Estrada v. Bolivia. Merits, Reparations and Costs.* Judgment of November 27, 2008. Series C No. 191, para. 110; *Case of Ibsen Cárdenas and Ibsen Peña*, *supra* note 28, para. 262 and *Case of Rosendo Cantú et al.*, *supra* note 27, para. 204.

[300] *Cf. Case of Velásquez Rodríguez*, *supra* note 297, paras. 25 a 27; *Case of Garrido* and *Baigorria*, *supra* note 198, para. 43 and *Case of the "White Van" (Paniagua Morales et al.), supra* note 48, paras. 76 a 79.

[301] *Cf. Case of the "Street Children" (Villagrán Morales et al.)*, *supra* note 298, para. 84; *Case of Manuel Cepeda Vargas*, *supra* note 11, para. 219 and *Case of Chitay Nech et al.*, *supra* note 104, para. 242.

*a) Provide the victim with adequate medical and psychological treatment*

262. The Commission asked the Court to order the State to provide medical and psychological treatment to mitigate the physical and psychological effects of the inhumane conditions of imprisonment suffered by Mr. Vélez Loor. The representatives, for their part, asked the Court to order the State to provide, free of charge, medical and psychological treatment to Mr. Vélez Loor, including any medications he may require. They specified that "[b]ased on the fact that the victim does not reside in Panama, the State must adopt measures so that he can be treated in Santa Cruz, Bolivia, where he currently resides, by personnel and institutions specialized in the treatment of victims of acts of violence, such as those committed in this case." The relevant treatment "must be administered as soon as the victim has undergone a complete examination" and according to a plan for its implementation. The State agreed that there are grounds for this, and did not object to the Court ordering measures of rehabilitation in favor of Mr. Vélez Loor, "in relation to pecuniary and non-pecuniary damage for the harm caused to him for the violation of his right to humane treatment [personal integrity], personal liberty, a fair trial [judicial guarantees] and judicial protection."

263. The Court considers, as it has in other cases,[302] that it is necessary to provide a measure of reparation to ensure treatment appropriate to the physical and psychological suffering inflicted on the victim. Therefore, having confirmed the violations and damage caused to Mr. Vélez Loor while in custody of the State of Panama (*supra* para. 227), the Court considers it necessary to order measures of rehabilitation in this case, taking into account the victim's expectations and his immigration status (*supra* para. 258). For that reason, this Court considers it inappropriate for Mr. Vélez Loor to receive medical and psychological treatment in Panama; instead, Mr. Vélez Loor must be able to exercise his right to rehabilitation in the place where he lives in order to comply with the object and purpose of such rehabilitation. Accordingly, taking into account the aforementioned considerations, (*supra* para. 258), the Court finds it necessary for the State to provide Mr. Vélez Loor with a sum to cover the expenses of specialized medical and psychological treatment, as well as other related expenses, in the place where he resides.

264. Consequently, the Court orders the State to pay the sum of US$ 7,500 (seven thousand five hundred dollars of the United States of America) to Mr. Vélez Loor, within six months as of notification of this Judgment, as a one-time payment to cover specialized medical and psychological treatment and care, as well as medications and other future related expenses.

### *2. Measures of Satisfaction*

*a) Publication of the Judgment*

265. The Commission did not refer to this measure of satisfaction. For their part, the representatives asked the Court "to order the Panamanian State to publish the Judgment in its entirety, in the Official Gazette of Panama and in two newspapers with national circulation, selected in common agreement with the victim and his representatives." In their final arguments, they specified that, in order to restore the honor and dignity of Mr. Vélez Loor with respect to his family in Ecuador, the pertinent parts of the Judgment should also be published in a newspaper with wide national circulation in Ecuador. The State pointed out that the publication of the

[302] *Cf. Case of Barrios Altos v. Peru. Reparations and Costs*. Judgment of November 30, 2001. Series C No. 87, paras. 42 and 45; *Case of Rosendo Cantú et al.*, *supra* note 27, para. 252 and *Case of Fernández Ortega et al.*, *supra* note 27, para. 251.

Judgment issued by the Court is already guaranteed under the provisions of Article 31 of its Rules of Procedure, and therefore it objected to this request.

266. The Court finds that this measure of satisfaction is appropriate and important to restore the dignity of the victim, who suffered physically and emotionally as a result of the arbitrary deprivation of his liberty, the cruel, inhumane and degrading conditions to which he was subjected during his imprisonment and the frustration and harm caused to him by being subjected to an immigration proceeding without the due guarantees. Therefore, as this Court has ruled on other occasions,[303] the State shall publish this Judgment, once only, in the Official Gazette of Panama, with its corresponding headings and subheadings, but without the corresponding footnotes, as well as the operative paragraphs of the Judgment. Furthermore, the State shall publish the official summary of the Judgment prepared by the Court in a newspaper with wide national circulation in Panama and another in Ecuador. In addition, as the Court has ordered on previous occasions,[304] the present Judgment must be published in its entirety on an official website and be available for a period of one year. The Court establishes a term of one year, as of notification of this Judgment, for the publication of the Judgment in the Official Gazette, the newspapers, and on the Internet.

### *3. Obligation to investigate the alleged acts of torture and other actions committed to the detriment of Mr. Vélez Loor and to identify, prosecute and, if applicable, punish those responsible*

267. The Commission asked the Court to order the State to conduct a thorough and diligent investigation into the complaints of torture allegedly committed under the jurisdiction of the Panamanian State to the detriment of Mr. Vélez Loor.

268. The representatives held that the Panamanian State must investigate properly and exhaustively the acts of torture allegedly committed to the detriment of Mr. Vélez Loor, in relation to all the participants who must be punished in accordance with the serious nature of the violations committed. Furthermore, they pointed out that it is essential to ascertain the identity of the officials responsible for other violations committed against the victim and punish them accordingly. They indicated that, "as soon as the investigation is initiated, the victim shall have full access and capacity to act in all the procedural stages according to the domestic law and the American Convention and that the State should guarantee him and all those involved in the investigations, effective protection." In addition, they requested that the results of the investigations be publicly and broadly disseminated, so that Panamanian society would be made aware of them. Finally, they emphasized Mr. Vélez Loor's need to obtain justice and that what happened to him should be "condemned in Panama" in order to "restore his honor and dignity."

269. For its part, the State reported that the Public Prosecutor's Office had opened a criminal investigation in order to determine those responsible for the events mentioned in this case. Regarding the other violations, the State pointed out that the obligation to adopt measures such as this is not possible and objected to such a request, given "that these measures can be ordered only when it has been effectively determined that there was a violation of rights protected by the Convention."

270. Considering that since July 10, 2009, a summary investigation has been conducted into the deprivation of liberty to the detriment of Mr. Vélez Loor (*supra*

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303 *Cf. Case of Barrios Altos*, *supra* note 302, Operative Paragraph 5.d); *Case of Ibsen Cárdenas and Ibsen Peña*, *supra* note 28, para. 244 and *Case of Rosendo Cantú et al.*, *supra* note 27, para. 229.

304 *Cf. Case of the Serrano Cruz Sisters v. El Salvador. Merits, Reparations and Costs*. Judgment of March 1, 2005. Series C N°. 120, para. 195; *Case of Ibsen Cárdenas and Ibsen Peña*, *supra* note 28, para. 244 and *Case of The Xákmok Kásek Indigenous Community*, *supra* note 28, para. 298.

paras. 242 and 245), and bearing in mind this Court's jurisprudence[305], the Court orders the State to effectively continue and conduct, with diligence and within the most reasonable period of time, the criminal investigation begun into the events mentioned by Mr. Vélez Loor. To that end, the State must diligently undertake all the actions necessary to identify, prosecute and, if applicable, punish all the perpetrators and participants in the actions denounced by Mr. Vélez Loor, for the criminal and any other purposes that may arise from the investigation into the facts. In the investigation into the allegations of torture, the competent authorities must take into account the international standards for documentation and interpretation of forensic evidence proving the commission of acts of torture, particularly those defined in the "Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment" ("Istanbul Protocol").[306]

### *4. Guarantees of Non-Repetition*

#### *a) Adoption of measures to guarantee the separation of persons detained for immigration reasons from those imprisoned for criminal offenses*

271. The Commission did not refer to this measure. The representatives pointed out that current Panamanian legislation provides that undocumented migrants who are detained shall be placed in "short-stay, preventive shelters." However, such shelters only exist in Panama City and therefore, irregular migrants who are arrested in other areas are detained in prisons along with inmates accused and convicted for criminal offenses. Consequently, they asked the Court to order the Panamanian State to adopt effective measures to ensure that persons detained for suspected immigration violations are placed in centers intended for them, where their needs are adequately met. The State referred to the opening of shelters of the National Immigration Office and described their characteristics, emphasizing that only migrants are housed in these shelters.

272. In this case, the Court determined that, due to his irregular migratory status, Mr. Vélez Loor was imprisoned at La Palma Prison and subsequently at La Joyita Prison, both part of the national prison system, where he was confined along with people accused and/or convicted of criminal offenses (*supra* para. 210). In order to ensure that persons detained for suspected immigration violations are not taken, under any circumstances, to prisons or other facilities where they may be held together with people who have been accused or convicted of crimes, the Court orders the State to adopt, within a reasonable time, the measures necessary to provide facilities with sufficient capacity to accommodate persons whose detention is necessary and proportionate, specifically for immigration reasons. These establishments must offer suitable physical conditions and an appropriate regimen for migrants, and the staff working at such facilities must be properly qualified and trained civilians. These facilities must provide visible information written in several languages regarding the legal situation of the detainees, forms with names and telephones of consulates, legal advisors and organizations to which these individuals may appeal for support, should they choose to do so.

#### *b) Adaptation of prison conditions of La Palma Prison and La Joya-La Joyita Prison Complex to international standards*

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[305] *Cf. Case of the Miguel Castro-Castro Prison*, *supra* note 27, para. 441; *Case of Rosendo Cantú et al.*, *supra* note 27, para. 211 and *Case of Fernández Ortega et al.*, *supra* note 27, para. 228.

[306] *Cf.* United Nations Office of the High Commissioner for Human Rights, Istanbul Protocol (Manual for Effective Research and Documentation of Torture and other Cruel, Inhumane, or Degrading Treatment), New York and Geneva, 2001.

273. The Commission asked the Court to order the State to ensure that Panamanian prisons meet minimum standards that are compatible with humane treatment and a life with dignity for those deprived of their liberty.

274. The representatives reiterated that most of the "inhumane conditions" which Mr. Vélez Loor experienced still exist today. Therefore, they asked the Court to order the State "to create a plan for the short, medium and long-term to ensure that the Prison System has the necessary resources to operate adequately within a reasonable time," and "to create an inter-institutional mechanism to improve prison conditions in the country and therefore, the inmates' quality of life." In particular, they asked the Court to order the State to ensure that those responsible for the custody of detainees are civilians with appropriate training and not members of the National Police; to adopt effective measures to improve prison conditions for inmates held in Panamanian prisons and to guarantee that the Panamanian Prison System has sufficient doctors, who should be independent in order to properly perform their duties, and to draw up protocols for the medical examination of those detained.

275. The State offered a detailed report on the measures currently being implemented to improve the living conditions of those deprived of liberty. It mentioned that since July 2009, it has adopted additional measures aimed at reducing overcrowding in the country's prisons. It added that under "the direct coordination of the Interior Minister, the National Prison System Office is implementing, aside from measures with an immediate impact on improving conditions for those deprived of liberty, more comprehensive programs to address the deficiencies, shortages and irregularities in the medium term." The State also reported on specific health care measures, emphasizing the implementation of medical visits to prisons in the country's interior, and the provision of medical supplies to prison clinics. Furthermore, the State explained that it had signed an agreement with the Ministry of Health to increase medical services at the Clinic of La Joya Prison.

276. The Court takes note of the poor conditions in prisons, acknowledged by the State (*supra* paras. 60 and 197) at La Palma and La Joya-La Joyita Prisons, which are incompatible with the American Convention. Given that this case refers to migrants and that it has been established that they cannot be held in such places, the Court considers that in this case it is not pertinent to order a measure such as the one requested. Nevertheless, the Court recalls the special position of the State as guarantor with respect to persons deprived of liberty. This means that the State is especially obliged to guarantee the rights of persons deprived of liberty[307] and, in particular, ensure an adequate supply of water at La Joya-La Joyita Prison and that the conditions of imprisonment there as well as in La Palma Prison conform to international standards.

*c) Training for government officials*

277. The representatives asked the Court to "order the State to implement training programs directed at officials of the National Immigration Office with regard to guarantees of due process and the right of every person […] to have effective access to these" and to define the content of these programs in common agreement with recognized organizations in the field of migrants' rights. The State did not present any argument regarding the implementation of training programs.

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[307] *Cf. Matter of Urso Branco Prison*. Provisional measures regarding Brazil. Order of the Court of June 18, 2002, Considering clauses 6 and 8; *Matter of Prison of Aragua "Cárcel de Tocorón."* Provisional measures regarding Venezuela**.** Order of the Court of November 24, 2010, Considering clause 12, and *Matter of Guerrero Larez.* Provisional measures regarding Venezuela**.** Order of the Court of November 17, 2009, Considering Clause 13.

278. After analyzing the evidence provided by the Commission and the representatives, and taking into account the State's acknowledgment of responsibility, this Court determined that the violations of the rights of Mr. Vélez Loor were characterized by the action or omission of officials of the then National Immigration Office and National Prison System. In light of this, and given the circumstances of this case, the Court considers that the State must implement, within a reasonable time, an education and training program for personnel of the National Immigration and Naturalization Services, as well as for other officials whose jurisdiction brings them into contact with migrants, in relation to international standards on the human rights of migrants, guarantees of due process and the right to consular assistance. In this program, the State must make special reference to the present Judgment and the international human rights treaties to which Panama is a Party.

279. The Commission asked the Court to order the State to adopt measures so that "the Panamanian authorities may learn about and comply with the obligation to initiate *ex officio* investigations whenever there is an accusation or well-grounded reason to believe that an act of torture has been committed under its jurisdiction."

280. The Court considers it appropriate to order the State to implement, within a reasonable time, training programs regarding the obligation to initiate investigations *ex officio* whenever there is an accusation or a well-grounded reason to believe that an act of torture has been committed under its jurisdiction, directed at personnel of the Public Prosecutor's Office, the Judiciary, the National Police as well as medical personnel with authority in this type of case and who, because of their functions, constitute the first line of care for torture victims.

*d) Measures to ensure that Panamanian immigration laws and their application conform to the American Convention on Human Rights*

281. The Commission asked the Court to order the State to guarantee that the domestic immigration laws and their application conform to the minimum guarantees established in Articles 7 and 8 of the American Convention, including the legislative reforms that are necessary to ensure that conventional guarantees are strictly observed in all immigration proceedings. It also emphasized that, although Decree Law N° 3 of 2008 eliminated the criminalization of migratory recidivism, several aspects of this decree are still not compatible with the American Convention.[308] Therefore, it requested that the Court order the State to take the necessary efforts to complete the process of bringing immigration laws into line with the American Convention.

282. The representatives agreed with the Commission that the legislation in force still does not respect the guarantees of due process of migrants subjected to proceedings, since "it still contains several of the flaws that prompted and propitiated the violations of the rights of the victim in this case."[309] Accordingly, the representatives asked the Court to order the State to amend its legislation so that it guarantees the right to due process of migrants and, in particular, to reform its legislation to ensure judicial review of the detention of immigrants, the right to be assisted by a court-appointed defense counsel and the right to consular information.

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[308] In particular, it referred to the application of the detention of migrants as a general rule and not as an exception; to the possibility of extending such detention for eighteen months and to the lack of judicial control of the imprisonment of migrants, unless judicial remedies, which are not necessarily at the disposal of undocumented or irregular migrants, are filed.

[309] They referred, *inter alia,* to the fact that the National Migration Services still has authority to order the detention of foreigners and may extend the detention up to eighteen months, without following mechanisms to guarantee the automatic judicial control of such detention and measures to assure the foreigner's due process, such as providing them with translations into their language, legal assistance or consular assistance.

283. The State indicated that "[i]t is not possible to request […] the amendment of the current immigration law given that the [a]pplication filed by the Commission does not include any argument regarding Decree Law 3 of 2008." In addition, it pointed out that "[t]he Convention contains no provision that allows the Court to rule […] on a law which has not yet infringed the rights and liberties of certain individuals; therefore, such a claim should not be admitted under the premise of a measure of satisfaction." Therefore, the State objected to such request.

284. The Court recognizes that the Republic of Panama made changes in its legislation and, in particular, in the immigration law, during the time that this case was being considered by the bodies of the Inter-American System for the protection of Human Rights. Indeed, the State repealed Decree Law 16 of 1960 through Decree Law 3 of 2008, eliminating incarceration as a penalty for reentry into Panama, subsequent to a previous deportation order.

285. In this respect, the Court has previously stated that the purpose of the Court's contentious jurisdiction is not to review national legislations in the abstract,[310] but to resolve specific cases where it is alleged that an action by a State against certain individuals is contrary to the Convention. Thus, upon hearing the merits of the case, the Court considered whether the State's conduct was in compliance with the Convention in relation to the legislation in force at the time of the events. Considering that in the present case Decree Law 3 of 2008 was not applied to Mr. Vélez Loor, the Court will not issue a ruling on the compatibility of this standard with the Convention.

286. However, the Court considers it appropriate to remind the State that it must prevent further human rights violations like the ones committed and, to that end, it must adopt all the legal, administrative and other measures necessary to ensure that similar events are not repeated in the future, in compliance with its duty to prevent and guarantee the fundamental rights embodied in the American Convention. Furthermore, it must adopt "the necessary legislative or any other measures to uphold" the rights recognized in the American Convention.[311] For this reason the State's obligation to adapt its domestic legislation to the provisions in the Convention is not limited to the wording of the Constitution or laws, but rather it must extend to all legal provisions of a statutory or regulatory nature and translate into the effective enforcement of standards for the protection of the human rights of migrants. In particular, protection relative to the notification of arrested foreigners of their right to consular assistance, and guaranteeing them a direct judicial review before a competent court or tribunal that may decide on the legality of the arrest or detention.

287. It is also important to emphasize that when a State has ratified an international treaty such as the American Convention, the authorities performing judicial duties are also subject to it; this obliges them to ensure that the *effect utile* of the Convention is not reduced or annulled by the application of laws contrary to its provisions, object and purpose. In other words, the organs of any of the powers whose authorities perform judicial duties should exercise not only a control of constitutionality, but also of "conventionality" *ex officio* between the domestic standards and the American Convention, obviously in the context of their respective spheres of competence and the relevant procedural rules.[312]

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310 *Cf. Case of Genie Lacayo v. Nicaragua. Preliminary Objections*. Judgment of January 27, 1995. Series C No. 21, para. 50; *Case of Manuel Cepeda Vargas*, *supra* note 11, para. 51 and *Case of Usón Ramírez*, *supra* note 10, para. 154.

311 *Case of the "White Van" (Paniagua Morales et al.)*, *supra* note 48, para. 203; *Case of Salvador Chiriboga*, *supra* note 202, para. 122 and *Case of Zambrano Vélez et al.*, *supra* note 200, para. 153.

312 *Cf. Case of Almonacid Arellano*, *supra* note 48, para. 124; *Case of Ibsen Cárdenas and Ibsen Peña*, *supra* note 28, para. 202 and *Case of Rosendo Cantú et al.*, *supra* note 27, para. 219.

288. Consequently, the Court reminds the State that its conduct in all areas related to immigration must conform to the American Convention.

*e) Appropriate definition of the crime of torture*

289. The Commission did not present any claim with respect to this measure. The representatives, for their part, pointed out that to date the crime of torture has not been adequately defined. Consequently, they asked the Court to order the Panamanian State to amend its legislation, "so as to define the crime of torture, in accordance with the terms ordered in its judgment of the case of *Heliodoro Portugal v. Panama* and according to the provisions of the Convention Against Torture." The State pointed out that it already has a preliminary draft of a bill for the complete definition of the crime of torture.

290. The Court has already referred to the general obligation of States to adapt their domestic legislation to the standards of the American Convention (*supra* para. 194). This is also applicable when dealing with adherence to the Convention Against Torture, since it derives from the rule of customary law according to which a State, having entered into an international agreement, must include within its domestic law the necessary amendments to ensure compliance with the obligations undertaken.

291. In its Judgment in the case of *Heliodoro Portugal v. Panama*, the Court had already declared the State's non-compliance with obligations and ordered the corresponding reparation under the following terms:

> [T]he Court considers it appropriate to order the State to adapt, within a reasonable time, its domestic laws to define [the offense] of torture in the terms and in compliance with the obligations assumed in relation [to] the Convention Against Torture […].[313]

292. Accordingly, the Court does not consider it pertinent to again order the definition of the crime of torture, given that this measure of reparation was already ordered in the Judgment mentioned *supra* and said ruling has general effects that extend beyond the specific case. Furthermore, the Court continues to assess compliance with the provisions of that Judgment in the monitoring compliance stage.

*f) Other measures requested*

293. In addition, the representatives asked the Court to order the State: a) to organize an event to acknowledge its responsibility for the violations committed and ensure that similar events do not occur again; b) to conduct an effective and thorough investigation into the identity of the officials who failed to open an investigation into the alleged acts of torture committed against the victim; c) to draw up "protocols making it compulsory to conduct thorough physical examinations of persons deprived of liberty at the moment of their detention and admission to different prison facilities, and when there is any sign of mistreatment or torture or with respect to different prison centers;" d) to create a mechanism of "daily visits to prison facilities, in order to prevent, detect and punish any conduct which implies the infringement of the rights to security, humane treatment and to life of those deprived of liberty" and e) to implement "a mechanism whereby those deprived of liberty have the possibility of directly informing the relevant authorities of acts of aggression to which they are subjected by their custodians."

294. Regarding these requests, the Court considers that the issuance of this Judgment and the reparations ordered in this Chapter are sufficient and adequate to

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313 *Cf. Case of Heliodoro Portugal*, *supra* note 27, para. 259.

repair the consequences of the violations suffered by the victim.[314]

295. The representatives also asked the Court to order the State to comply with Law N° 55 of July 30, 2003, and to ensure that the management of prisons and the custody of those deprived of liberty is carried out by properly trained civilian public servants. The State mentioned that the National Prison System has worked to recruit personnel interested in receiving formal training to work as guards in the country's prisons. However, it acknowledged that this effort has not met with much acceptance by the public. Therefore, it indicated that it will continue to issue notifications of job vacancies to locate people with a suitable profile to perform this work. It mentioned that the job vacancy notifications are issued through national media. Furthermore, it indicated that at present the recruitment program for Civilian Guards has established a quota of 200 guards and B/30,000.00 (thirty thousand Balboas) for the initial training.

296. The Court appreciates the efforts made by the State to incorporate and train qualified civilian personnel to work as guards in the State's prisons. However, it notes that in this case it has not ruled on its considerations of the merits regarding the domestic law provisions related to Law 55 of 2003; therefore, it is not possible to order reparations in this regard.

297. In the closing written arguments, the representatives asked the Court to order the State to guarantee the separation of individuals under arrest pending trial from those persons already convicted.

298. The Court notes that this request was not submitted at the appropriate procedural moment, namely, in the brief of pleadings and motions. Consequently, the Court will not consider this measure of reparation since it is was presented extemporaneously.

### *C. Compensatory damages*

#### *1. Pecuniary damage*

299. The Court has established in its case law that pecuniary damage implies "the loss of earnings or detriment to the victims' income, the expenses incurred as a result of the events and the financial consequences that have a causal relationship with the facts of the case."[315]

300. The Commission requested the Court to "to order in equity the amount of compensation for consequential damages and loss of earnings, using its extensive powers on this matter." Although the representatives did not make specific reference to consequential damages, they did, however, made specific requests regarding the loss of earnings. The State declared that, with regard to the compensation for pecuniary and non-pecuniary damages, it will accept the Court's decision regarding the violations for which it has accepted responsibility.

301. The Court shall now determine the compensation for pecuniary damage in relation to the violations declared in Chapters VIII-1, 2 and 3 of this Judgment, taking into account the particular circumstances of the case, the evidence provided by the parties and their arguments.

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[314] *Cf. Case of Radilla Pacheco*, *supra* note 25, para. 359; *Case of Rosendo Cantú et al.*, *supra* note 27, para. 267 and *Case of Manuel Cepeda Vargas*, *supra* note 11, para. 238.

[315] *Case of Bámaca Velásquez v. Guatemala. Reparations and Costs*. Judgment of February 22, 2002. Series C No. 91, para. 43; *Case of Ibsen Cárdenas and Ibsen Peña*, *supra* note 28, para. 260 and *Case of Rosendo Cantú et al.*, *supra* note 27, para. 270.

*a) Loss of earnings*

302. The representatives pointed out that loss of earnings refers to the loss of the victim's economic income as a consequence of the "interruption of [his] profitable activities while he was in Panamanian custody […]." They stated that from 1998 to 2002, Mr. Vélez Loor was engaged in buying and selling clothing, vehicles and livestock in Quito, Ecuador. According to the representatives, at the time of his arrest he was on his way to the United States of America to raise money to build up his business. Since the representatives do not have exact figures needed to calculate the victim's lost earnings during the ten months of his detention, they asked the Court to take this into account and establish in equity the corresponding amount. For its part, the State did not present any argument regarding the loss of earnings.

303. Compensation for loss of earnings must be calculated based on the period the victim did not work while he was detained. In this case, the Court considers already proven that Mr. Jesús Tranquilino Vélez Loor was deprived of liberty from November 11, 2002, to September 10, 2003, and that this imprisonment constituted a violation of his rights to liberty and personal integrity (*supra* Chapters VIII-1 and 2). On this occasion, the Court considers that, despite the fact that the representatives pointed out that the victim worked buying and selling clothing, vehicles and livestock in Quito, Ecuador, the Court does not have sufficient evidence to determine which specific work activities the victim was engaged in at the time of the events.

304. Based on the above reasons, the Court determines in equity that the State must pay the sum of US$ 2,500 (two thousand five hundred dollars of the United States of America) to Mr. Vélez Loor, as compensation for the earnings he lost during the ten months he was imprisoned in violation of Article 7 of the American Convention.

*b) Consequential Damages*

305. The Commission asked the Court to establish the amount in equity for consequential damages. The representatives stated that when the victim was deported, he tried to obtain justice for the violations committed against him. Regarding this, they indicated that Mr. Vélez Loor requested legal aid and together with his attorney, followed up on the complaint presented before the Embassy of Panama in Quito, maintaining contact with the Embassy. In addition, they pointed out that within the context of the international proceeding, the victim incurred expenses related to defense counsels, stationery, postage, a trip to Washington, DC, USA, to participate in the hearing on admissibility before the Commission and a trip from Santa Cruz to La Paz, Bolivia, to document and prepare the case together with the representatives. They pointed out that all these actions generated expenses and therefore asked the Court to set an amount in equity. The State presented no arguments in this regard.

306. Although the representatives identified the expenditures incurred by the victim as part of the legal costs and expenses, the Court considers that such costs and expenses are part of the consequential damages, insofar as they are the result of the economic efforts made by Mr. Vélez Loor in his pursuit of justice.

307. In this regard, the Court notes that Mr. Vélez Loor was provided with legal assistance to file the complaints for the violations he suffered. However, based on the evidence in the case file, the Court is unable to quantify the amount the victim spent. In view of the foregoing, and taking into account the time elapsed, the Court determines in equity the amount of US$ 5,000 (five thousand dollars of the United States of America) which shall be paid by the State to Mr. Vélez Loor as reimbursement of expenses incurred in legal assistance and other expenses at the

international level.

### *2. Non-pecuniary damage*

308. In its jurisprudence the Court has developed the concept of non-pecuniary damages and established that these "may include both the suffering and distress caused to the direct victim and his family, the loss of values very significant to them, and other effects of a non-financial nature on the living conditions of the victim or his family."[316]

309. The Commission asked the Court to determine the amount in equity of compensation for non-pecuniary damage. The representatives also asked the Court "to order the State to compensate for the damage caused to [Mr.] Vélez Loor as a result of the violations committed against him." Therefore, they asked the Court "to also take into account the suffering caused as a result of the violations and their consequences and to determine an equitable amount." The State indicated that it would submit to the Court's decision regarding this measure.

310. In its jurisprudence the Court has developed the concept of non-pecuniary damage and established the cases when this compensation is due. Non-pecuniary damage may include both the suffering and distress caused to the direct victims and those close to them, as well as non-pecuniary changes in the living conditions of the victim or his family. Since it is not possible to assign a specific monetary value to non-pecuniary damage, it can only be compensated in two ways. One is by payment of an amount of money or delivery of goods or services that can be quantified in monetary terms, which the Court will establish by applying judicial discretion rationally and in equitable terms. The other is by carrying out actions or works that are public in their scope or impact, such as broadcasting a message of official disapproval of the particular human rights violations involved and making commitments and efforts to avoid their repetition and to ensure acknowledgment of the victim's dignity, *inter alia*.[317]

311. International jurisprudence has repeatedly established that the Judgment may constitute *per se* a form of reparation.[318] However, considering the circumstances of the case *sub judice*, the Court considers it appropriate to set, in equity, an amount as compensation for non-pecuniary damages.[319]

312. In determining the amount of compensation for non-pecuniary damages in this case, it is necessary to consider that Mr. Jesús Tranquilino Vélez Loor was subjected to cruel, inhumane and degrading conditions of confinement, which caused him intense physical pain and emotional suffering, as well as physical and mental consequences that still persist (*supra* paras. 222 and 227).

313. Furthermore, the proceedings against him did not comply with the requirements of due process (There was arbitrary detention and lack of judicial guarantees). Naturally, a person subjected to arbitrary detention endures profound

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316 Case of the "Street Children" (*Villagrán Morales et al*), *supra* note 298, para. 84; *Case of Ibsen Cárdenas and Ibsen Peña*, *supra* note 28, para. 278 and *Case of Rosendo Cantú et al.*, *supra* note 27, para. 275.

317 *Cf. Case of the "Street Children" (Villagrán Morales et al.)*, *supra* note 298, para. 84; *Case of González et al. ("Cotton Field")*, *supra* note 20, footnote 547 and *Case of Anzualdo Castro*, *supra* note 60, para. 218.

318 *Cf. Case of Neira Alegría et al. v. Peru. Reparations and Costs*. Judgment of September 19, 1996. Series C No. 29, para. 56; *Case of Ibsen Cárdenas and Ibsen Peña*, *supra* note 28, para. 282 and *Case of Rosendo Cantú et al.*, *supra* note 27, para. 278.

319 *Cf. Case of Neira Alegría et al.*, *supra* note 318, para. 56; *Case of Ibsen Cárdenas and Ibsen Peña*, *supra* note 28, para. 282 and *Case of Rosendo Cantú et al.*, *supra* note 27, para. 278.

suffering,[320] which is further aggravated when the mistreatment and alleged acts of torture are not investigated. For these reasons, the Court considers that violations of this nature presumably cause non-pecuniary damage to those who suffer them.[321]

314. Consequently, the Court determines, in equity, the amount of US$ 20,000 (twenty thousand dollars of the United States of America) in favor of Mr. Vélez Loor, as compensation for non-pecuniary damages.

### *D. Costs and Expenses*

315. After hearing the representatives of the victim, the Commission asked the Court to order the State to "pay the costs and expenses incurred in pursuing this case at the domestic level, as well as those arising from its processing before the Inter-American System of Human Rights." The representatives, moreover, pointed out that in his pursuit of justice, Mr. Vélez Loor incurred many expenses arising from the proceedings at both the domestic and the international level. CEJIL, in its capacity as representative of the victim, has also incurred expenses arising from the international proceeding. Thus, the victim's representatives indicated that the expenses it incurred in the processing of the case at the domestic and international level are indicated in the following paragraph.

316. The representatives asked the Court to order the State to reimburse the costs and expenses incurred by the victim for the legal assistance provided for his defense in the proceedings conducted at the domestic and international level. Moreover, they asked for the reimbursement of the expenses incurred by CEJIL in its role as representative before international instances, mainly for the trips made by the CEJIL lawyers to document and prepare the case, but also for the trips made during the processing of the case before the Commission. Additionally, they included the expenses for the corresponding legal work, investigation, gathering and presentation of evidence, interviews and drafting of briefs. In this regard, the representatives estimated expenses for the approximate sum of US$ 10,700 (ten thousand seven hundred dollars of the United States of America) related to the various expenses they incurred during the proceeding. Furthermore, in the brief of final arguments, they updated the amounts originally indicated by forwarding vouchers for the expenses incurred in relation to the public hearing that took place at the seat of the Court, such as travel, lodging and meals of the representatives, expert witnesses, and victim, for the approximate sum of US$ 13,339 (thirteen thousand three hundred and thirty nine dollars of the United States of America). In all, the representatives requested expenses for a total sum of approximately US$ 24,000 (twenty four thousand dollars of the United States of America). Regarding future expenses, the representatives asked the Court "to grant them the opportunity during the corresponding procedural stage to submit figures and up-to-date receipts for expenses to be incurred during the proceeding of the case at the international contentious level."

317. The State argued that "[t]here are no grounds for the claim that the Panamanian State should be ordered to pay for the totality of the legal costs and expenses incurred in the processing of the present case before the Commission and the Court." It specified that some of the expenses listed do not correspond to this process and have already been paid by the Panamanian government. It also referred in particular to "the receipts detailing the purchase of a ticket for the verification of the compliance with the Judgment in the case of *Heliodoro Portugal*."

318. Regarding reimbursement of costs and expenses, it is up to the Court to prudently assess their scope. This includes the costs incurred before the domestic

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320 *Cf. Case of Bulacio*, *supra* note 102, para. 98; *Case of La Cantuta*, *supra* note 103, para. 217 and *Case of Tibi*, *supra* note 27, para. 244.

321 *Cf. Case of Tibi*, *supra* note 27, para. 244.

authorities, as well as those arising during the proceedings before the Inter-American System, taking into account the circumstances of the specific case and the nature of the international jurisdiction for the protection of human rights. This assessment must be made on an equitable basis and taking into account the expenses incurred by the parties, provided their sum is reasonable.[322] The Court has held that "the claims of the victims or their representatives, regarding costs and expenses and the supporting evidence, must be presented to the Court at the first opportunity granted to them, that is, in the brief of pleadings and motions, without prejudice to the fact that such claim may be updated in the future, according to new costs and expenses incurred during the processing of the case before this Court."[323]

319. Based on the foregoing considerations, the evidence provided and the State's only specific objection regarding the receipts presented, in order to compensate for the costs and expenses incurred before the domestic authorities, as well as those arising from the processing of the case before the Inter-American System, the Court determines that the State must reimburse the amount of US$ 24,000 (twenty-four thousand dollars of the United States of America) directly to CEJIL. In the procedure to monitor compliance with this Judgment, the Court shall order the reimbursement by the State to the victims or their representatives of any reasonable expenses duly demonstrated.

320. The Court does not order the payment of costs and expenses in favor of the victim given that this was already considered in the Chapter on consequential damages (*supra* para. 307).

### *E. Method of Compliance with the Ordered Payments*

321. The State shall make the payment of the compensation for pecuniary and non-pecuniary damages as well as the reimbursement of costs and expenses within the term of one year as of the notification of this Judgment.

322. The compensatory amounts established in favor of the victim shall be paid directly to him. If Mr. Jesús Tranquilino Vélez Loor should die before the respective compensation is paid to him, such amounts shall be paid to his heirs.

323. The State shall discharge its pecuniary obligations through payment in dollars of the United States of America.

324. If, for reasons attributable to the beneficiary of the above compensation payments, it is not possible for him to receive them within the period set for that purpose, the State shall deposit those amounts in an account held in Mr. Jesús Tranquilino Vélez Loor's name or draw a certificate of deposit from a reputable Panamanian financial institution, in US dollars and under the most favorable financial terms allowed by law and banking practices. If after ten years the compensation has not been claimed, those amounts shall be returned to the State with the accrued interest.

325. The amounts allocated in this Judgment as compensation shall be delivered to the victim in their entirety in accordance with the provisions herein. The amounts allocated in this Judgment as reimbursement of costs and expenses shall be delivered directly to the Center for Justice and International Law (CEJIL). The amounts shall be

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[322] *Cf. Case of Garrido and Baigorria*, *supra* note 198, para. 82; *Case of Ibsen Cárdenas and Ibsen Peña*, *supra* note 28, para. 288 and *Case of Rosendo Cantú et al.*, *supra* note 27, para. 284.

[323] *Case of Chaparro Álvarez* and *Lapo Íñiguez*, *supra* note 99, para. 275; *Case of Rosendo Cantú et al.*, *supra* note 27, para. 285 and *Case of Fernández Ortega et al.*, *supra* note 27, para. 298.

paid without deductions derived from future taxes.

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

## 10
## OPERATIVE PARAGRAPHS

327. Therefore,

**THE COURT**

**DECIDES,**

Unanimously, to:

1. Dismiss the first and second preliminary objections filed by the State, in accordance with paragraphs 14 to 36 of this Judgment.

2. Partially accept the first preliminary issue raised by the State, in accordance with paragraphs 38 to 51 of this Judgment.

3. Dismiss the second preliminary issue raised by the State, in accordance with paragraphs 52 to 56 of this Judgment.

4. Accept the State's partial acknowledgment of international responsibility, under the terms of paragraphs 58 to 70 of this Judgment.

**DECIDES,**

Unanimously, that:

5. The State is responsible for the violation of the right to personal liberty, embodied in Articles 7(1), 7(3), 7(4), 7(5), and 7(6), in relation to Articles 1(1) and 2 of the American Convention on Human Rights, to the detriment of Mr. Jesús Tranquilino Vélez Loor, in accordance with paragraphs 102 to 139, 149 to 172, and 189 to 195 of this Judgment.

6. The State is responsible for the violation of the right to a fair trial [judicial guarantees], recognized in Articles 8(1), 8(2)(b), 8(2)(c), 8(2)(d), 8(2)(e), 8(2)(f), and 8(2)(h), in relation to Articles 1(1) and 2 of the American Convention on Human Rights, to the detriment of Mr. Jesús Tranquilino Vélez Loor, in accordance with paragraphs 140 to 160, 173 to 181, and 191 to 195 of this Judgment.

7. The State is responsible for the violation of the principle of legality, recognized in Article 9, in relation to Article 1(1) of the American Convention on Human Rights, to the detriment of Mr. Jesús Tranquilino Vélez Loor, in accordance with paragraphs 182 to 188 of this Judgment.

8. The State is responsible for the violation of the right to humane treatment [personal integrity] recognized in Articles 5(1) and 5(2), in relation to Article 1(1) of the American Convention on Human Rights, with respect to the conditions of detention, to the detriment of Mr. Jesús Tranquilino Vélez Loor, in accordance with paragraphs 196 to 227 of this Judgment.

9. The State is responsible for the failure to guarantee the right to humane treatment [personal integrity] embodied in Article 5(1) and 5(2), in relation to Article 1(1) of the American Convention on Human Rights, and for non-compliance with Articles 1, 6, and 8 of the Convention Against Torture, regarding the obligation to investigate alleged acts of torture, to the detriment of Mr. Jesús Tranquilino Vélez Loor, in accordance with paragraphs 228 to 245 of this Judgment.

10. The State did not fulfill its obligation to guarantee, without discrimination, the right to access to justice, established in Articles 8(1) and 25, in relation to Article 1(1) of the American Convention on Human Rights, to the detriment of Mr. Jesús Tranquilino Vélez Loor, under the terms of paragraphs 252 to 254 of this Judgment.

**AND ORDERS,**

Unanimously, that:

11. This Judgment constitutes *per se* a form of reparation.

12. The State shall pay the amount established in paragraph 264 of this Judgment, for specialized medical and psychological treatment and care, as well as for medications and other related expenses, within a period of six months.

13. The State shall issue the aforementioned publications, in accordance with the terms of paragraph 266 of this Judgment.

14. The State shall continue to carry out, effectively and with the utmost diligence and within a reasonable period of time, the criminal investigation initiated in regard to the events alleged by Mr. Vélez Loor, in order to determine the corresponding criminal liabilities and apply, as appropriate, the punishment and other consequences provided by the law, in accordance with paragraph 270 of this Judgment.

15. The State shall, within a reasonable period of time, adopt the necessary measures to create establishments with sufficient capacity to hold persons whose detention is necessary and reasonable for migratory reasons, specifically adapted for such purposes, which offer appropriate physical conditions and a regimen suitable for migrants and which are staffed by properly qualified and trained civilians, in accordance with paragraph 272 of this Judgment.

16. The State shall implement, within a reasonable period of time, an education and training program for personnel of the National Immigration and Naturalization Service, and for officials whose work requires them to deal with issues related to

migrants, focusing on international standards related to the human rights of migrants, due process guarantees and the right to consular assistance, in accordance with paragraph 278 of this Judgment.

17. The State shall implement, within a reasonable period of time, training programs on the obligation to initiate *ex oficio* investigations whenever there is a complaint or reason to believe that acts of torture have been committed under its jurisdiction, for members of the Public Prosecutor's Office, the Judiciary, the National Police as well as health workers with jurisdiction in these matters whose duties imply that they are the first to assist victims of torture, in accordance with paragraph 280 of this Judgment.

18. The State shall pay the amounts stipulated in paragraphs 304, 307, 314, and 319 of this Judgment, as compensation for pecuniary and non-pecuniary damages and reimbursement of costs and expenses, within a period of one year as of notification of this Judgment, under the terms specified in paragraphs 321 to 326 herein.

19. The Court shall monitor full compliance with this Judgment, in exercise of its authority and in compliance with its obligations pursuant to the American Convention on Human Rights, and shall consider this case concluded once the State has fully complied with the measures ordered therein. The State shall, within a period of one year from the notification of this Judgment, submit a report to this Court regarding the measures adopted in compliance with this Judgment.

Done in Spanish and English, the Spanish text being authentic, in San Jose, Costa Rica on November 23, 2010.

Diego García-Sayán
President

Leonardo A. Franco

Manuel E. Ventura Robles

Margarette May Macaulay

Rhadys Abreu Blondet

Alberto Pérez Pérez

Eduardo Vio Grossi

Pablo Saavedra Alessandri
Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary