INTER-AMERICAN COURT OF HUMAN RIGHTS[*]

CASE OF RODRÍGUEZ VERA *ET AL.* (THE DISAPPEARED FROM THE PALACE OF JUSTICE) *v.* COLOMBIA

JUDGMENT OF NOVEMBER 14, 2014

(Preliminary objections, merits, reparations and costs)

In the case of *Rodríguez Vera et al. (the Disappeared from the Palace of Justice),*

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

Roberto F. Caldas, acting President
Manuel E. Ventura Robles, Judge
Diego García-Sayán, Judge
Eduardo Vio Grossi, Judge, and
Eduardo Ferrer Mac-Gregor Poisot, Judge;

also present,

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

pursuant to Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") and to Articles 31, 32, 42, 65 and 67 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure" or "the Court's Rules of Procedure"), delivers this judgment structured as follows:

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[*] The President of the Court, Judge Humberto Antonio Sierra Porto, a Colombian national, did not take part in the hearing and deliberation of this case, in accordance with the provisions of Article 19(1) of the Rules of Procedure of the Court. Consequently, pursuant to Articles 4(2) and 5 of the Court's Rules of Procedure, Judge Roberto F. Caldas, Vice President of the Court, became the acting President for this case. In addition, for reasons beyond his control, Judge Alberto Pérez Pérez, did not take part in the deliberation and signature of this judgment.

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I
INTRODUCTION OF THE CASE AND PURPOSE OF THE DISPUTE

1. *The case submitted to the Court.* On February 9, 2012, in accordance with Articles 51 and 61 of the American Convention and Article 35 of the Court's Rules of Procedure, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") submitted the case entitled *Carlos Augusto Rodríguez Vera et al. (Palace of Justice) v. the Republic of Colombia* (hereinafter "the State" or "Colombia") to the jurisdiction of the Inter-American Court. According to the Commission the facts of this case occurred in the context of the events known as the taking and retaking of the Palace of Justice in Bogota, which took place on November 6 and 7, 1985. In particular, the case relates to the presumed forced disappearance of Carlos Augusto Rodríguez Vera, Cristina del Pilar Guarín Cortés, David Suspes Celis, Bernardo Beltrán Hernández, Héctor Jaime Beltrán Fuentes, Gloria Stella Lizarazo, Luz Mary Portela León, Norma Constanza Esguerra Forero, Lucy Amparo Oviedo Bonilla, Gloria Anzola de Lanao, Ana Rosa Castiblanco Torres and Irma Franco Pineda during the operation to retake the building. The case also relates to the presumed disappearance and subsequent execution of Justice Carlos Horacio Urán Rojas, as well as to the presumed detention and torture of Yolanda Santodomingo Albericci, Eduardo Matson Ospino, Orlando Quijano and José Vicente Rubiano Galvis, and to the alleged failure of the courts to clarify all these events and to punish all those responsible.

2. *Procedure before the Commission.* The procedure before the Commission was as follows:

a) *Petition and Report on Admissibility and Merits.* The petition was lodged before the Commission in December 1990.[1] On October 31, 2011, the Commission approved Report on Admissibility and Merits No. 137/11, pursuant to Article 50 of the Convention (hereinafter "the Admissibility and Merits Report" or "the Merits Report"). In this report, the Commission reached a series of conclusions and made several recommendations to the State:[2]

- *Conclusions.* The Commission concluded that the State was responsible for:

i. The violation of the rights to personal liberty, humane treatment, life, recognition of juridical personality (Articles 7, 5, 4 and 3 of the American Convention in relation to Article 1(1) of this instrument) in relation to Articles I(a) and XI of the Inter-American Convention on Forced Disappearance of Persons (hereinafter "Inter-American Convention on Forced Disappearance"), to the detriment of Carlos Augusto Rodríguez Vera, Cristina del Pilar Guarín Cortés, David Suspes Celis, Bernardo Beltrán Hernández, Héctor Jaime Beltrán Fuentes, Gloria Stella Lizarazo Figueroa, Luz Mary Portela León, Norma Constanza Esguerra Forero, Lucy Amparo Oviedo Bonilla, Gloria Anzola de Lanao, Ana Rosa Castiblanco Torres, Irma Franco Pineda and Carlos Horacio Urán Rojas.

ii. The violation of the rights to personal liberty and to humane treatment (Articles 7 and 5 of the

[1] The initial petition was lodged by Enrique Rodríguez Hernández based on the alleged disappearance of Carlos Augusto Rodríguez Vera, Cristina del Pilar Guarín Cortés, David Suspes Celis, Bernardo Beltrán Hernández, Héctor Jaime Beltrán Fuentes, Gloria Stella Lizarazo Figueroa, Luz Mary Portela León, Ana Rosa Castiblanco Torres, Norma Constanza Esguerra Forero, Lucy Amparo Oviedo Bonilla, Gloria Anzola de Lanao and Irma Franco Pineda. Subsequently, while the case was being processed by the Commission, the *Colectivo de Abogados "José Alvear Restrepo*" and the Center for Justice and International Law (CEJIL) joined the case as co-petitioners, and allegations were added relating to the presumed disappearance and subsequent execution of Auxiliary Justice Carlos Horacio Urán Rojas, and also to the presumed detention and torture of Yolanda Santodomingo Albericci, Orlando Quijano, José Vicente Rubiano Galvis and Eduardo Matson Ospino.

[2] The Commission's recommendations in its Merits Report correspond to its claims before the Court and are therefore described in the chapter on reparations of this judgment.

American Convention in relation to Article 1(1) of this instrument) to the detriment of Yolanda Santodomingo Albericci, Orlando Quijano, José Vicente Rubiano Galvis and Eduardo Matson Ospino.

iii. The violation of the rights to judicial guarantees and judicial protection (Articles 8(1), 25(1) and 1(1) of the American Convention) in relation to Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture (hereinafter "Inter-American Convention against Torture") of Yolanda Santodomingo Albericci, Orlando Quijano, José Vicente Rubiano Galvis and Eduardo Matson Ospino.

iv. The violation of the rights to judicial guarantees and judicial protection (Articles 8(1), 25(1) and 1(1) of the American Convention) in relation to Article I(b) of the Inter-American Convention on Forced Disappearance of Carlos Augusto Rodríguez Vera, Cristina del Pilar Guarín Cortés, David Suspes Celis, Bernardo Beltrán Hernández, Héctor Jaime Beltrán Fuentes, Gloria Stella Lizarazo Figueroa, Luz Mary Portela León, Norma Constanza Esguerra Forero, Lucy Amparo Oviedo Bonilla, Gloria Anzola de Lanao, Irma Franco Pineda, Ana Rosa Castiblanco Torres and their next of kin, and of the next of kin of Carlos Horacio Urán Rojas.

v. The violation of the right to personal integrity recognized in Article 5(1) of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of the next of kin of the victims of forced disappearance, execution and torture.

b) *Notification of the State.* The Admissibility and Merits Report was notified to the State on November 9, 2011, which was granted two months to report on compliance with the recommendations. After an extension to this time frame had been granted, the State presented a report on the measures taken to comply with the recommendations on January 30, 2012.

3. *Submission to the Court.* On February 9, 2012, the Commission submitted this case to the Court "due to the need to obtain justice for the [presumed] victims, since the State had made no substantial progress in complying with the recommendations." The Commission appointed Commissioner José de Jesús Orozco Henríquez and then Executive Secretary, Santiago A. Canton, as delegates, and Elizabeth Abi-Mershed, Deputy Executive Secretary, and Karla I. Quintana Osuna, Executive Secretariat specialist, as legal advisers.

4. *Requests of the Inter-American Commission.* Based on the foregoing, the Inter-American Commission asked this Court to declare the international responsibility of Colombia for the violations indicated in its Merits Report and to order the State, as measures of reparation, to comply with the recommendations included in the report.

II
PROCEEDINGS BEFORE THE COURT

5. *Notification of the State and the representatives.* The submission of the case was notified to the State and to the representatives of the presumed victims on April 24 and 25, 2012, respectively.

6. *Brief with motions, arguments and evidence.* On June 25, 2012, the *Colectivo de Abogados José Alvear Restrepo* (CCAJAR), the Center for Justice and International Law (CEJIL), the lawyers Jorge Eliecer Molano Rodríguez and Germán Romero Sánchez, and the *Comisión Intereclesial de Justicia y Paz*, acting in representation of the presumed victims (hereinafter "the representatives") presented the brief with motions, arguments and evidence (hereinafter "motions and arguments brief"), in accordance with Articles 25 and 40 of the Court's Rules of Procedure.[3]

[3] The representatives presented the 581 annexes to the motions and arguments brief, starting on the day following the expiry of the 21-day period for their presentation established in Article 28 of the Rules of Procedure. The State did not submit objections in this regard. During its ninety-ninth regular session, the Court admitted the annexes presented on the two days following the expiry of the time frame, considering that this constituted a minimal delay that did not affect the State's right of defense, or legal certainty and procedural equality between the parties, taking into account the particular circumstances of the case, the number of annexes presented by the representatives, and the Court's practice in this regard. The parties and the Commission were advised of this decision on June 11, 2013.

7. *Answering brief*. On November 24 and 25, 2012, Colombia submitted to the Court its brief with preliminary objections, answering the Commission's submission of the case, and with observations on the motions and arguments brief (hereinafter "answering brief"). Based on the principle of good faith that should guide the actions of the parties to the proceedings before this Court, the Court will consider that the first answering brief presented by the State is the definitive version.[4] In that brief, the State filed six preliminary objections, and contested the description of the facts provided by the representatives and the Commission, as well as all the alleged violations. As of August and September 2013, the agents appointed by the State for this case were Julio Andrés Sampedro Arrubla, Agent, and Juan David Riveros Barragán, Deputy Agent.[5]

8. *Observations on the preliminary objections*. On March 17, 2013, the representatives and the Inter-American Commission presented their observations on the preliminary objections filed by the State.

9. *Supervening facts*. The representatives presented information and documentation on alleged supervening facts with their brief with preliminary observations of March 17, 2013 (*supra* para. 8), and with their final list of deponents submitted on June 24, 2013, The State and the Commission were able to present any observations they deemed pertinent on these facts in their oral arguments during the hearing and in their final written arguments.[6]

10. *Request for a special hearing on preliminary objections.* Following a request by the State, the Court issued an Order on May 30, 2013, deciding that a special public hearing would be held on the preliminary objections filed by the State during the same session of the Court as the hearing on eventual merits, reparations and costs.[7]

11. *Summons to public hearings.* On October 16, 2013, the President of the Court issued an Order,[8] in which he convened the State, the representatives and the Inter-American Commission to two public hearings: one on the preliminary objections (hereinafter "public hearing on the preliminary objections") and the other on eventual merits, reparations and costs (hereinafter "public hearing on the merits"), to hear the final oral arguments of the parties, and the final oral observations of the Commission on these matters. In addition, in

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[4] The State submitted its answering brief on the day the time limit for its presentation expired (November 24, 2012). The following day, it presented an answering brief with some modifications, indicating that, in the version transmitted previously "there was an editing problem and some paragraphs were in the wrong order" and therefore asked that this new version be considered the definitive document. On December 4, 2012, the President of the Court, in a note of the Secretariat, advised the State that "although it [would] be considered that the answering brief was presented on November 24, 2012, the version of the said brief that was received on November 25, 2012, would be considered the final version […], in the understanding that any changes related exclusively to editing and did not affect the content of the said brief." However, following an observation by the Commission, the Court verified that several paragraphs of the version of the answering brief forwarded on November 24 referred to the facts of the Santo Domingo Massacre and were replaced by the facts relating to this case in the version received on November 25. The Court considers that this substitution does not constitute a simple "editing problem" but rather affects the content of the answering brief.

[5] Initially, on May 24, 2012, the State appointed Luz Marina Gil García and Jorge Enrique Ibáñez Najar as Agents. Subsequently, on November 21, 2012, Colombia substituted these agents, appointing Rafael Nieto Loaiza as Agent. He, in turn, was substituted by Julio Andrés Sampedro Arrubla and Juan David Riveros Barragán, who were appointed Agents on August 26 and September 26, 2013, respectively.

[6] In notes of the Secretariat of the Court of March 19 and June 27, 2013, on the instructions of the President of the Court, the State and the Commission, respectively, were advised that they could submit any observations they deemed pertinent on the alleged supervening facts in their oral arguments during the hearing or in their final written arguments.

[7] *Cf. Case of Rodríguez Vera et al. v. Colombia.* Order of the Inter-American Court of May 30, 2013. Available at: http://www.corteidh.or.cr/docs/asuntos/rv_30_05_13.pdf

[8] *Cf. Case of Rodríguez Vera et al. v. Colombia.* Order of the President of the Court of October 16, 2013. Available at: http://www.corteidh.or.cr/docs/asuntos/rodriguez_16_10_13.pdf

this Order, the President required that the statements of forty-five presumed victims, six witnesses and six expert witnesses be received by affidavit, and these were presented by the parties and the Commission on November 4, 5, 6, 7 and 10, 2013.[9] The representatives and the State were given the opportunity to pose questions to the deponents offered by the other party and to make observations. In addition, in the said Order, three presumed victims, three witnesses, one deponent for information purposes, and two expert witnesses were summoned to testify during the public hearing on the eventual merits.[10]

12. *Partial acknowledgement of responsibility.* On October 17 and November 10, 2013, the State forwarded briefs to the Court in which it made a partial acknowledgement of responsibility with regard to the violations alleged by the Commission and the representatives in this case. This partial acknowledgement was repeated during the public hearings held in this case, and the State clarified its scope in a brief of December 2, 2013, and in its final written arguments (*infra* para. 15).

13. *Public hearings.* The public hearings took place on November 12 and 13, 2013, during the forty-third special session of the Court, held in Brasilia, Brazil.[11] The statements of three presumed victims, two witnesses, one deponent for information purposes, and two expert witnesses were received at the hearing, together with the final oral arguments of the parties and the final oral observations of the Inter-American Commission.[12] During these hearings the parties submitted certain documents and the judges of the Court requested specific information and explanations.

14. *Amici curiae.* The Court received *amicus curiae* briefs submitted by the Pax Romana International Catholic Movement for Intellectual and Cultural Affairs (ICMICA)[13] on October 17 and November 28, 2013, the American Bar Association[14] on October 8, 2013, the Colombian Association of Retired Military Officers (ACORE) on November 11 and 12, 2013,[15]

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[9] In notes of the Secretariat of October 29 and November 6, 2013, the Inter-American Commission and the State, respectively, were granted an extension of the deadline, until November 10, 2013, to present the affidavits of Carlos Castresana and Carlos Delgado Romero

[10] On October 9, 2013, prior to the issue of the Order of October 16, 2013, the State presented a brief to the Court withdrawing twelve of the statements it had offered originally in its answering brief: three expert opinions and nine testimonial statements. In his Order of October 16, 2013, the acting President at the time took note of these withdrawals (*supra* nota 8).

[11] There appeared at these hearings: (a) for the Inter-American Commission: José de Jesús Orozco Henríquez, President of the Inter-American Commission, Elizabeth Abi-Mershed, Deputy Executive Secretary, and Silvia Serrano Guzmán, Adviser to the Executive Secretariat of the Commission; (b) for the presumed victims: Rafael Barrios Mendivil, Jomary Ortegón and Angie Fernández of the *Colectivo de Abogados José Alvear Restrepo* (CCAJAR); Jorge Molano and Germán Romero, private lawyers; Danilo Rueda, Liliana Ávila and Father Alberto Franco of the *Comisión Intereclesial de Justicia y Paz*, and Viviana Krsticevic and Alejandra Vicente of the Center for Justice and International Law (CEJIL), and (c) for the State: Miguel Samper, Vice Minister of Justice; María Consuelo Rodríguez, Head of Cabinet of the Ministry of Defense; Martha Lucía Zamora, from the Prosecutor General's Office; Adriana Guillén Arango, Director of the National Agency for the Legal Defense of the State; Julio Andrés Sampedro Arrubla, Agent; Juan David Riveros Barragán, Deputy Agent; Juana Inés Acosta López, Adviser to the National Agency for the Legal Defense of the State; Camilo Vela Valenzuela, Adviser to the National Agency for the Legal Defense of the State, and Javier Coronado, lawyer.

[12] In his Order of October 16, 2013, the President summoned María Nelfi Díaz, witness proposed by the State, to testify at the public hearing on the merits. However, Ms. Nelfi Díaz did not attend this hearing. The State advised that, despite its "repeated requests," Ms. Nelfi Díaz had not answered its summons to testify.

[13] The brief was submitted by Eugenio Gay Montalvo, President of this organization.

[14] The brief was signed by James R. Silkenat, President of this organization, and by Barry Sullivan, Emmanuel Daoud and Safya Akorri, as consultant lawyers.

[15] The brief was submitted by Hilda Lorena Leal Castaño on behalf of this organization. In addition, the National Committee of Victims of the Guerrilla (VIDA) and the Association of Civilian Victims of the Colombian Guerrilla "contributed" to the brief.

the German Association of Judges on November 14, 2013,[16] and Human Rights in Practice on November 28, 2013.[17]

15. *Final written arguments and observations.* On December 15, 2013, the parties and the Commission presented their final written arguments and observations, respectively.[18] The parties presented some of the information, explanations and helpful evidence requested by the judges of this Court with their final written arguments (*supra* para. 11), as well as certain documentation. On January 24, 2014, the Secretariat of the Court, on the instructions of the acting President, requested the parties and the Commission to present any observations they deemed pertinent on the said documentation, and the representatives and the Commission to present any observations it deemed pertinent on the arguments of the State concerning supposed "new facts presented by the victims' representatives in the motions and arguments brief," as well as on the State's partial acknowledgement of responsibility and the consequences of this acknowledgement on the State's other defense arguments included in its final written arguments. After an extension of the time frame had been granted, the parties and the Commission presented these observations on February 10, 2014.

16. *Helpful evidence and information.* On May 8, June 10 and November 3, 2014, the acting President of the Court for this case asked the State and the representatives to submit specific helpful information, explanations and documentation, all of which was presented on June 6, 24, 25 and 26 and November 5, 2014.

17. *Observations on the helpful information and evidence, and on the supervening evidence concerning expenses.* On June 24 and 25, July 3 and 4, and November 7, 2014, the State and the representatives presented their observations on the helpful information, explanations and documentation that had been submitted.

18. *Deliberation of this case.* The Court commenced deliberation of this Judgment on November 10, 2014.

III
COMPETENCE

19. The Court is competent to hearing this case, under Article 62(3) of the Convention, because Colombia has been a State Party to the American Convention since July 31, 1973, and accepted the contentious jurisdiction of the Court on June 21, 1985.

IV
PARTIAL ACKNOWLEDGEMENT OF INTERNATIONAL RESPONSIBILITY

A. Declarations by the State

20. During the public hearing held on November 12, 2013, the State offered public apologies to the presumed victims and their families for the facts of this case as follows:

> The events of the Palace of Justice have no precedent in our recent history. It was a ruthless act perpetrated by violent individuals. This incident resulted in many other traumatic events and, as the President of the Republic indicated […] in a recent address rendering homage to the victims: 'the wounds have not healed; the anguish for the fallen and the uncertainty about those who disappeared continues in the hearts of the members of their families.' Hence, this is a time to honor them; it is a time to honor the family members of those regarding whom there is still no exact information on their whereabouts, and those here present as victims. The Colombian State deeply regrets their pain, their

[16] The brief was signed by Sigrid Hegmann, President of the organization.

[17] The brief was signed by Helen Duffy.

[18] In addition, on December 17, 2013, the Commission forwarded a list of corrections to the said brief with observations.

> uncertainty, and the special circumstances they have had to endure over all these years. The Colombian State will not cease to seek the truth and justice in this case. This commitment is not mere rhetoric; the Government is determined to take advantage of this historic opportunity of peace-building, learning from the lessons of the past, and building on what has already been created. This acknowledgement of responsibility is an expression of this determination; it seeks to provide a rational and considered response to the claims of the petitioners. This acknowledgement is a result of a thorough and objective analysis of the facts, conducted in a serious and rigorous manner, that never ignored the respect due to the victims.

21. Colombia also made a partial acknowledgement of responsibility in successive communications of October 17, November 10 and December 2, 2013, as well as at the public hearings held in this case on November 12 and 13, 2013. In these interventions, the State partially acknowledged its responsibility with regard to the alleged detentions and torture, the presumed forced disappearances, its obligation to investigate, and some of the violations committed to the detriment of the next of kin of the presumed victims. The State partially acknowledged its international responsibility as follows:[19]

a. With regard to the presumed victims of detention and torture and their next of kin:

   i. By act: owing to the violation of the rights to personal liberty and to humane treatment (Articles 7 and 5 of the American Convention in relation to Article 1(1) of this instrument), to the detriment of Yolanda Santodomingo Albericci and Eduardo Matson Ospino. The State indicated that it "acknowledges that these victims were tortured while in the custody of State agents."

   ii. Owing to the violation of the right to personal integrity recognized in Article 5(1) of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of the next of kin of Yolanda Santodomingo Albericci and Eduardo Matson Ospino.

b. With regard to those who were allegedly forcibly disappeared and their next of kin:

   i. By act: owing to the forced disappearance of Carlos Augusto Rodríguez Vera and Irma Franco Pineda in violation of Articles 3, 4, 5 and 7 of the American Convention, in relation to Article 1(1) of this instrument.

   ii. By omission: owing to violation of the obligation to ensure the right to recognition of juridical personality and to humane treatment, recognized in Articles 3 and 5 of the Convention, in relation to Article 1(1) of this instrument, to the detriment of Cristina del Pilar Guarín Cortés, David Suspes Celis, Bernardo Beltrán Hernández, Héctor Jaime Beltrán Fuentes, Gloria Stella Lizarazo Figueroa, Luz Mary Portela León, Norma Constanza Esguerra Forero, Lucy Amparo Oviedo Bonilla and Gloria Anzola de Lanao because, owing to "errors committed in processing the scene of the incident and in identifying mortal remains, as well as the unjustified delay in the investigations," their whereabouts remains unknown. Colombia clarified that this acknowledgement "does not imply that it accepts that the wrongful act of forced disappearance of persons was perpetrated against these nine victims."

   iii. By omission: owing to the violation of the rights to personal integrity and to freedom of conscience and religion recognized in Articles 5 and 12 of the Convention, in relation to Article 1(1) of this instrument, to the detriment of the next of kin of Carlos Augusto Rodríguez Vera, Irma Franco Pineda, Cristina del Pilar Guarín Cortés, David Suspes Celis, Bernardo Beltrán Hernández, Héctor Jaime Beltrán Fuentes, Gloria Stella Lizarazo Figueroa, Luz Mary Portela León, Norma Constanza Esguerra Forero, Lucy Amparo Oviedo Bonilla, Gloria Anzola de

[19] The Court has summarized the different briefs in which the State made its acknowledgement of responsibility.

Lanao and Ana Rosa Castiblanco Torres,[20] and also only with regard to Article 5 of the Convention to the detriment of the next of kin of Carlos Horacio Urán Rojas.

c. With regard to the obligation to investigate:

i. By omission: owing to "the protracted delay in the investigations," in violation of judicial guarantees and judicial protection, established in Articles 8 and 25 of the Convention in relation to Article 1(1) of this instrument, to the detriment of Yolanda Santodomingo Albericci, Eduardo Matson Ospino, José Vicente Rubiano Galvis and Orlando Quijano, as well as in relation to Articles 1, 6 and 8 of the Inter-American Convention against Torture to the detriment of the first two and of Article 6(3) of the Inter-American Convention against Torture to the detriment of the last two.[21]

ii. By omission: owing to "the protracted delay in the investigations,"[22] in violation of Articles 8 and 25 of the Convention, in relation to Article 1(1) of this instrument, to the detriment of Carlos Augusto Rodríguez Vera, Irma Franco Pineda, Cristina del Pilar Guarín Cortés, David Suspes Celis, Bernardo Beltrán Hernández, Héctor Jaime Beltrán Fuentes, Gloria Stella Lizarazo Figueroa, Luz Mary Portela León, Norma Constanza Esguerra Forero, Lucy Amparo Oviedo Bonilla and Gloria Anzola de Lanao, as well as their respective next of kin and the next of kin of Ana Rosa Castiblanco Torres and Carlos Horacio Urán Rojas. It also acknowledged these violations with regard to Articles I(a), I(b) and XI of the Inter-American Convention on Forced Disappearance to the detriment of Carlos Augusto Rodríguez Vera and Irma Franco Pineda. In addition, with the exception of Ana Rosa Castiblanco Torres and Carlos Horacio Urán Rojas, this acknowledgement by the State was made owing to "errors in the investigations conducted in this case, related to the following aspects: (i) the handling of the corpses; (ii) the lack or rigor in the protection and inspection of the scene of the events; (iii) improper handling of the evidence collected, and (iv) the methods used were inappropriate to maintain the chain of custody." Regarding Carlos Horacio Urán Rojas, the State acknowledged these last three irregularities, but not those relating to the "handling of the corpses."

iii. By omission: owing to the violation of Articles 3, 8 and 25, in relation to Article 1(1) of the Convention, to the detriment of Ana Rosa Castiblanco Torres "due to the State's unjustified delay in identifying and returning her remains." Colombia indicated that this acknowledgement "did not imply that it accepted that the wrongful act of forced disappearance of persons had been perpetrated against this victim." However, it acknowledged that "the uncertainty […] during all the time it took to identify her remains deprived her of her juridical personality."

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[20] The State acknowledged the said violations to the detriment of the next of kin indicated by the Commission and the representatives, with the exception of Paola Fernanda Guarín Muñoz, niece of Cristina del Pilar Guarín Cortés, and Esmeralda Cubillos Bedoya, alleged daughter of Ana Rosa Castiblanco Torres, because, according to the State, their status as victims of the facts has not been proved.

[21] The State clarified that its obligation to investigate the cases of these victims "is not related to the obligations to investigate and to punish established in Articles 1, 6 and 8 of the Inter-American Convention [against] Torture, but rather to paragraph 3 of Article 6 of that Convention, because the State considers that the complaints filed by the victims describe acts that are less severe than torture, but that do warrant a prompt and effective investigation."

[22] Regarding those who disappeared and the presumed victims of detention and torture, the State acknowledged that "the protracted delay in the investigations […] constituted a violation of judicial guarantees and judicial protection," "in similar terms to the conclusions of the […[Commission," because the judicial authorities failed to respect the guarantee of a reasonable time, so that the proceedings have not been effective, since they have not complied with the purpose for which they were instituted.

iv. By omission: owing to the violation of Articles 8 and 25 of the Convention, in relation to Article 1(1) thereof, as well as of the obligation to guarantee Article 4 of the Convention, to the detriment of Carlos Horacio Urán Rojas, "because the State has been unable to establish the circumstances in which he died" due to "the errors committed in processing the scene of the events and the unjustified delay in the investigations." It clarified that "the acknowledgement does not imply that it accepts that either the wrongful act of forced disappearance of persons or an extrajudicial execution have been perpetrated against this victim."

22. The State clarified that the acknowledgements concerning the obligations to investigate and to punish (including their relationship to the obligations established in the Inter-American Convention against Torture and the Inter-American Convention on Forced Disappearance), as well as the violation of freedom of conscience and religion, "are made by omission, because [it did] not consider that the violation occurred owing to deliberate acts of State agents." It also indicated that it did "not agree that these acts occurred in the context of supposed patterns or practices of human rights violations." It stressed that its partial acknowledgement of responsibility did "not imply the admission of circumstances that have been presented […] as 'Context,' or the other alleged facts and violations that continue in dispute"; furthermore, "it should not be understood as a waiver of its right […] to contest the extent of the harm caused to the victims and the measures of reparation."

B. Observations of the representatives and of the Commission

23. The representatives indicated that the next of kin considered that the State's acknowledgement was "an opportunistic gesture designed to lessen the impact of the Court's eventual judgment," because it is at variance with, and more limited than, the acknowledgements made in domestic judicial decisions.[23] Regarding the lack of investigation, they observed that the State had only acknowledged its responsibility by omission, while "this responsibility should be attributed to acts," because "initial actions" relating to the processing of the crime scene and the intervention of the military criminal justice system "were determinant in the denial of justice." They emphasized that "the dispute subsists [with regard to other issues] relating to the State's obligation to investigate." They also indicated that the dispute subsists as regards the alleged violations of Articles 11 and 22 of the Convention, because the State had not referred to those rights. In addition, the representatives considered it inconsistent that the State should acknowledge certain violations, but request the Court to restrict the reparations for those violations.

24. In particular, with regard to José Vicente Rubiano Galvis and Orlando Quijano, the representatives argued that the State's position, "in addition to re-victimizing them, is not consistent with the conclusions" of the Merits Report or the statements of the presumed victims which reveal that "they were detained unlawfully and subjected to torture." In addition, they underlined that the State had not acknowledged the violation of the personal integrity of the next of kin of these two individuals. Regarding Carlos Augusto Rodríguez Vera and Irma Franco Pineda, the representatives indicated that, apart from the violations acknowledged by the State, "additionally" they asked that the State be declared responsible for the violation of Articles I(a) and (b), III and XI of the Inter-American Convention on Forced Disappearance. They considered that, by referring to the irregularities that it had acknowledged in the investigation of the events as "errors," the State was not respecting

[23] In particular, during the public hearing held on November 12, 2013, one of the victims, speaking on behalf of the others, stated that: "[t]he change in strategy on the eve of the hearing continues to offend the dignity of the victims, of their families, and of Colombian society, because it is belated, incongruent, opportunistic and re-victimizing. It is unacceptable that today, 28 years after the events, the denial, lies and farce that have characterized the response of all the Governments persists, cynically accommodating the official position to what, momentarily, is most expedient, hiding the truth, and further intensifying the injuries and the torture."

the right to the truth of the victims and was contesting the evidence before the Court and the testimony provided during the hearing. With regard to the State's acknowledgement in relation to Article 12 of the Convention, they indicated that, although they had not alleged its violation, "it is consistent with the suffering endured by the next of kin and, therefore, [they] considered that, if admitted by the Court, it would be a reasonable evolution of the Court's case law." Furthermore, regarding the other presumed victims of forced disappearance, including Ana Rosa Castiblanco Torres, the representatives indicated that the State's acknowledgement corresponded to the theory of missing persons and not of disappeared persons, so that "it does not constitute an acknowledgement of responsibility [but rather] a different version of the facts." With regard to Carlos Horacio Urán Rojas, the representatives argued that the State's acknowledgement "does not really correspond to an acknowledgement of responsibility." In the case of the next of kin with regard to whom the State did not acknowledge its responsibility, the representatives argued that Paola Fernanda Guarín Muñoz and Esmeralda Cubillos Bedoya should be considered victims.

25. The Commission indicated that the State's partial acknowledgement of responsibility was "a constructive step in these proceedings." However, it pointed out that only part of this was an acquiescence according to the Rules of Procedure and "relate[d] to a very limited part of the case," while "a significant part of the State's position does not truly constitute an acknowledgement, […] but rather disputes the basic aspects of the case." In particular, the Commission observed that, although the State had acknowledged the forced disappearance of Irma Franco Pineda and Carlos Augusto Rodríguez Vera and the detention and torture suffered by Yolanda Santodomingo and Eduardo Matson Ospino "in the same terms as the Merits Report," "as regards its legal conclusions," the dispute remained in relation to the facts that substantiate these violations owing to "the position adopted by the Colombian State during the public hearing with regard to the facts surrounding the operation to retake the Palace of Justice." In addition, it clarified that, considering that Carlos Augusto Rodríguez Vera and Irma Franco Pineda remained disappeared, the application of Article I(a) of the Inter-American Convention on Forced Disappearance "should, indeed, be for the perpetration of forced disappearance" and not based on "omission." In addition, the Commission indicated that "fundamental factual differences" remain between its conclusions concerning what happened to the other presumed victims in this case and the State's so-called partial acknowledgement of those conclusions. According to the Commission, the State's partial acknowledgement is based on a different version of the facts, so that, "conceptually, it does not represent an acknowledgement of responsibility, but rather a dispute of the facts and a different legal definition." Lastly, the Commission observed that "the acknowledgements with regard to all the domestic investigations related to the case are based on the existence of an excessive delay and specific irregularities in the investigations," without taking into account the Commission's other conclusions in this regard.

C. Considerations of the Court

26. This Court considers that the partial acknowledgement of international responsibility made by the State makes a positive contribution to the progress of these proceedings and to the implementation of the principles that inspire the American Convention,[24] as well as to meeting the needs for reparation of the victims of human rights violations.[25] The Court

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[24] *Cf. Case of El Caracazo v. Venezuela. Merits.* Judgment of November 11, 1999. Series C No. 58, para. 43, and *Case of the Constitutional Tribunal (Camba Campos et al.) v. Ecuador. Preliminary objections, merits, reparations and costs.* Judgment of August 28, 2013. Series C No. 268, para. 20.

[25] *Cf. Case of Manuel Cepeda Vargas v. Colombia. Preliminary objections, merits, reparations and costs.* Judgment of May 26, 2010. Series C No. 213, para. 18, and *Case of the Constitutional Tribunal (Camba Campos et al.) v. Ecuador. Preliminary objections, merits, reparations and costs.* Judgment of August 28, 2013. Series C No. 268, para. 20.

underscores the goodwill shown by the State, both by its offer of a public apology and by its partial acknowledgement of responsibility with regard to the facts of this case, which was made for the first time before this Court. This allows the dispute concerning some of the main facts to cease, so that the Court may concentrate its efforts on other aspects of the case. Moreover, the Court considers that this partial acknowledgement of responsibility vindicates the search for justice by the victims and their next of kin who have fought to clarify what happened 29 years ago. The Court emphasizes the importance of the State's partial acknowledgement and assesses it positively as a significant step towards clarifying the facts and overcoming impunity in this case.

27. In accordance with Articles 62 and 64 of the Rules of Procedure,[26] and in exercise of its powers concerning the international judicial protection of human rights, a matter of international public order that transcends the will of the parties, it is incumbent on this Court to ensure that acknowledgements of responsibility are in keeping with the objectives of the inter-American system. This task is not limited to merely confirming, recording or taking note of the acknowledgements made by the State or to verifying the formal conditions of such acknowledgements; rather the Court must weigh them in light of the nature and severity 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,[27] so that it is able to determine, insofar as possible and in the exercise of its competence, the truth of what occurred.[28] The Court notes that the acknowledgment of specific isolated acts and violations may have effects and consequences on its analysis of the other alleged acts and violations in the same case, to the extent that they are all part of the same set of circumstances.

28. In this case, the State has presented a partial acknowledgement of responsibility for the violations of the American Convention or other inter-American instruments. The State has not admitted clearly and specifically all the facts described in the Merits Report of the Commission or the motions and arguments brief of the representatives, on which its partial acknowledgement of responsibility is based. Nevertheless, as it has in other cases,[29] the Court understands that Colombia has acknowledged the facts relating to the detention and torture suffered by Yolanda Santodomingo Albericci and Eduardo Matson Ospino, the forced disappearance of Carlos Augusto Rodríguez Vera and Irma Franco Pineda, and also specific irregularities committed in the course of the investigation (particularly "errors in the processing of the scene of the events and in the procedures to identify the mortal remains," as well as "the unjustified delay in the clarification of the facts").

29. Also, taking into account the violations acknowledged by the State (*supra* para. 21), as well as the observations of the representatives and of the Commission, the Court

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[26] Articles 62 and 64 of the Court's Rules of Procedure establish: "Article 62. Acquiescence: If the respondent informs the Court of its acceptance of the facts or its total or partial acquiescence to the claims stated in the presentation of the case or the brief submitted by the alleged victims or their representatives, the Court shall decide, having heard the opinions of all those participating in the proceedings and at the appropriate procedural moment, whether to accept that acquiescence, and shall rule upon its juridical effects." "Article 64. Continuation of the case. Bearing in mind its responsibility to protect human rights, the Court may decide to continue the consideration of a case notwithstanding the existence of the conditions indicated in the preceding articles."

[27] *Cf. Case of Kimel v. Argentina. Merits, reparations and costs.* Judgment of May 2, 2008. Series C No. 177, para. 24, and *Case of Gutiérrez and family v. Argentina. Merits, reparations and costs.* Judgment of November 25, 2013. Series C No. 271, para. 21.

[28] *Cf. Case of Manuel Cepeda Vargas v. Colombia. Preliminary objections, merits, reparations and costs.* Judgment of May 26, 2010. Series C No. 213, para. 17, and *Case of Gutiérrez and family v. Argentina. Merits, reparations and costs.* Judgment of November 25, 2013. Series C No. 271, para. 21.

[29] *Cf. Case of Kawas Fernández v. Honduras. Merits, reparations and costs.* Judgment of April 3, 2009. Series C No. 196, para. 25, and *Case of García and family members v. Guatemala. Merits, reparations and costs.* Judgment of November 29, 2012. Series C No. 258, para. 18.

considers that the dispute has ceased as regards: (a) the forced disappearance of Carlos Augusto Rodríguez Vera and Irma Franco Pineda and the consequent violation of Articles 3, 4, 5, 7 and 1(1) of the American Convention; (b) the detention and torture of Yolanda Santodomingo Albericci and Eduardo Matson Ospino and the consequent violation of Articles 7, 5 and 1(1) of the Convention; (c) the failure to comply with the guarantee of a reasonable time and with the obligation of due diligence, owing to certain irregularities in the processing of the scene of the crime and the removal of corpses (*supra* para. 21), in violation of Articles 8 and 25 of the Convention, in relation to Article 1(1) of this instrument, with regard to the presumed victims of forced disappearance and also in relation to Articles I(a), I(b) and XI of the Inter-American Convention on Forced Disappearance, to the detriment of Carlos Augusto Rodríguez Vera and Irma Franco Pineda, and of Articles 1, 6 and 8 of the Inter-American Convention against Torture, with regard to Yolanda Santodomingo Albericci and Eduardo Matson Ospino, and only of Article 6(3) of the Inter-American Convention against Torture with regard to Orlando Quijano and José Vicente Rubiano Galvis, and (d) the violation of Article 5 of the Convention, to the detriment of the victims' next of kin named by the State.

30. The Court also notes that the State has acknowledged the violation of other rights (*supra* para. 21.b.ii, ii and iii) to the detriment of Cristina del Pilar Guarín Cortés, David Suspes Celis, Bernardo Beltrán Hernández, Héctor Jaime Beltrán Fuentes, Gloria Stella Lizarazo Figueroa, Luz Mary Portela León, Norma Constanza Esguerra Forero, Lucy Amparo Oviedo Bonilla, Gloria Anzola de Lanao, Ana Rosa Castiblanco Torres and Carlos Horacio Urán Rojas. These assertions by the State do not represent an acknowledgement of the claims submitted by the Commission and the representatives, because they are based on a version of the facts and an assessment of the evidence that differs from those alleged by the Commission and the representatives. Therefore, the Court finds that the dispute subsists in relation to the facts and violations that have been alleged to the detriment of the said presumed victims. In the respective part of this Judgment, the Court will examine the alleged violation of the right to freedom of conscience and religion (Article 12 of the Convention), introduced by the State in its brief acknowledging responsibility and subsequently adopted by the representatives.

31. Consequently, the dispute subsists with regard to the facts and claims relating to: (a) the alleged forced disappearance of: (i) Cristina del Pilar Guarín Cortés, David Suspes Celis, Bernardo Beltrán Hernández, Héctor Jaime Beltrán Fuentes, Gloria Stella Lizarazo Figueroa, Luz Mary Portela León, Norma Constanza Esguerra Forero, Lucy Amparo Oviedo Bonilla, Gloria Anzola de Lanao, Ana Rosa Castiblanco Torres and Carlos Horacio Urán Rojas, as well as the presumed extrajudicial execution of the latter, and the consequent violations of Articles 3, 4, 5, 7 and 1(1) of the American Convention and Articles I, III and XI of the Inter-American Convention on Forced Disappearance, and (ii) the alleged violation of Articles I, III and XI of the Inter-American Convention on Forced Disappearance owing to the forced disappearance of Carlos Augusto Rodríguez Vera and Irma Franco Pineda; (b) the alleged unlawful and arbitrary detention and torture of Orlando Quijano and José Vicente Rubiano Galvis and the consequent violation of Articles 7, 5 and 1(1) of the Convention and Articles 1, 6 and 8 of the Inter-American Convention against Torture; (c) the other irregularities that have been alleged regarding the investigation of the events and the access to justice of the presumed victims under Articles 8 and 25 of the Convention, in relation to Article 1(1) of this instrument, Article I and III of the Inter-American Convention on Forced Disappearance and Articles 1, 6 and 8 of the Inter-American Convention against Torture, as well as Article 13 of the Convention as regards the alleged violation of the right to the truth; (d) the violation of Article 5 of the Convention, to the detriment of Paola Fernanda Guarín Muñoz and Esmeralda Cubillos Bedoya, who were not recognized as victims by the State, as well as to the detriment of the next of kin of Orlando Quijano and José Vicente Rubiano Galvis; (e) the presumed violations of Articles 11 and 22 of the

American Convention alleged by the representatives, to the detriment of the next of kin of the presumed victims, and (f) the presumed violation of the obligation to prevent the taking of the Palace of Justice by the adoption of the necessary and sufficient measures to ensure the right to life of the presumed victims present in the building when it was taken. In addition, the dispute subsists in relation to the determination of possible reparations, costs and expenses and, in this regard, the Court will establish measures of reparations that are appropriate for this case in the corresponding chapter taking into account the requests of the representatives and the Commission, the relevant standards of the inter-American system for the protection of human rights, and the observations of the State.

32. As in other cases,[30] the Court considers that the acknowledgement made by the State has full legal effects in keeping with the above-mentioned Articles 62 and 64 of the Court's Rules of Procedure, and has important symbolic value to ensure the non-repetition of such events.

33. However, taking into consideration the egregious nature of the facts and the alleged violations, as well as its powers as an international organ for the protection of human rights, the Court will proceed to make a specific and comprehensive determination of the facts, because this will contribute to making reparation to the victims, to preventing the repetition of similar events and, in sum, to the purposes of the inter-American human rights jurisdiction.[31] The Court will also analyze and describe, as pertinent, the scope of the violations alleged by the Commission or the representatives, as well as the respective consequences as regards reparations in the following chapters.

34. Lastly, due to the change in the State's position during the processing of this case before the Court, in this judgment, the Court will only reflect the arguments of the State and the corresponding replies of the representatives and the Commission that relate to the final and definitive position of Colombia with regard to the alleged facts and violations. The Court will not refer to disputes that could arise from the State's initial arguments when those are contrary to its actual position, or when they have been expressly waived by the State subsequently, nor will it refer to the preliminary objections or preliminary considerations that are contrary to the actual position of the State.[32]

V
PRELIMINARY OBJECTIONS

35. The Court recalls that preliminary objections are mechanisms by which a State seeks to prevent the analysis of the merits of the matter concerned and, to this end, it may contest the admissibility of a case or the competence of the Court to hear a specific case or any of aspect of it, based on either the person, the matter, the time or the place, provided

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30 *Cf. inter alia, Case of Torres Millacura et al. v. Argentina. Merits, reparations and costs.* Judgment of August 26, 2011. Series C No. 229, para. 37, and *Case of the Constitutional Tribunal (Camba Campos et al.) v. Ecuador. Preliminary objections, merits, reparations and costs.* Judgment of August 28, 2013. Series C No. 268, para. 20.

31 *Cf. Case of Tiu Tojín v. Guatemala. Merits, reparations and costs.* Judgment of November 26, 2008. Series C No. 190, para. 24, and *Case of the Constitutional Tribunal (Camba Campos et al.) v. Ecuador. Preliminary objections, merits, reparations and costs.* Judgment of August 28, 2013. Series C No. 268, para. 23.

32 The Court understands that the State withdrew the preliminary objections concerning the joinder of the stages of admissibility and merits in the procedure before the Commission, the facts relating to Eduardo Matson Ospino, and the supposed failure to exhaust domestic remedies with regard to the contentious-administrative jurisdiction. The Court also considers that the State's arguments in its answering brief concerning the absence of "due representation of the presumed victims" in this case is contrary to its partial acknowledgement of responsibility, and will therefore not rule in this regard.

that such objections are of a preliminary nature.[33] If these objections cannot be considered without a prior analysis of the merits of the case, they cannot be examined by means of a preliminary objection.[34]

36. Following its partial acknowledgement of responsibility (*supra* para. 21), the State reformulated its arguments in relation to: (i) the joinder of the stages of admissibility and merits in the procedure before the Commission, indicating that this would "not have the effect of annulling the competence of the […] Court"; rather, it asked the Court that, owing to the joinder, it carry out a "control of legality" of the Commission's action, and (ii) the preliminary objection of exhaustion of the contentious-administrative jurisdiction, indicating that "this did not impede the Court from hearing the instant case," but "would prevent the Court ordering the State to pay compensation." Since they no longer constitute preliminary objections, the arguments on the request to carry out a "control of legality" of the procedure before the Commission will be examined *infra* in the chapter on preliminary considerations, while the arguments on the remedies available under the contentious-administrative jurisdiction will be examined in the chapter on reparations of this Judgment.

37. Nevertheless, the Court understands that the following preliminary objections remain in effect: (i) lack of material competence due to the need to apply international humanitarian law as the special, main and exclusive law, and (ii) lack of temporal competence to examine the presumed violations of the Inter-American Convention on Forced Disappearance, in relation to Ana Rosa Castiblanco Torres. The Court recalls that preliminary objections may not limit, contradict or render ineffective the content of a State's acknowledgement of responsibility.[35] The preliminary objections that remain in this case comply with these requirements and, therefore, the Court will proceed to examine them in the above order.[36]

A. Alleged lack of material competence due to the need to apply international humanitarian law

A.1) Arguments of the State and observations of the Commission and the representatives

38. In its answering brief, the State argued that "the applicable law is international humanitarian law, not as a law that supplements international human rights law […], but rather as the special, main and exclusive law"; hence the Court could not rule on certain facts and rights.[37] Following its partial acknowledgement of responsibility, the State indicated that "[b]oth the [Commission] and the representatives have clarified […] that they

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[33] *Cf. Case of Las Palmeras v. Colombia. Preliminary objections.* Judgment of February 4, 2000. Series C No. 67, para. 34, and *Case of the Pacheco Tineo Family v. Bolivia. Preliminary objections, merits, reparations and costs.* Judgment of November 25, 2013. Series C No. 272, para. 15.

[34] *Cf. Case of Castañeda Gutman v. Mexico. Preliminary objections, merits, reparations and costs.* Judgment of August 6, 2008. Series C No. 184, para. 39, and *Case of the Pacheco Tineo Family v. Bolivia. Preliminary objections, merits, reparations and costs.* Judgment of November 25, 2013. Series C No. 272, para. 15.

[35] *Cf. Case of Manuel Cepeda Vargas v. Colombia. Preliminary objections, merits, reparations and costs*. Judgment of May 26, 2010. Series C No. 213, para. 26, and *Case of the Constitutional Tribunal (Camba Campos et al.) v. Ecuador. Preliminary objections, merits, reparations and costs.* Judgment of August 28, 2013. Series C No. 268, para. 27.

[36] The preliminary objections mentioned *supra* were maintained either partially or conditionally by the State. The Commission indicated that, taking into account the State's acknowledgement of responsibility, "at the present time, all the preliminary objections are meaningless," so that it would not be necessary to examine them. However, the State denied that this was the case.

[37] Colombia did not explain the facts and rights to which it was referring because, in its answering brief, the State referred to facts relating to the case of the *Santo Domingo Massacre v. Colombia* rather than to this case (*supra* footnote 4).

did not seek for the […] Court to apply the norms of [international humanitarian law, which] is partially satisfactory." It added that, "insofar as [the facts relating to the supposed excessive use of force] are excluded from the judgment, it can be understood that the State withdraws this preliminary objection."[38] The Commission indicated that, on several occasions, the Court had referred to the principles of international humanitarian law "merely in order to guide the decision on whether the State concerned incurred in a violation of the American Convention," and this is what it is called on to do in the instant case. For their part, the representatives clarified that "[e]ach and every one of the alleged violations […] refers to rights protected by the [Convention] and other inter-American treaties ratified by Colombia," and underlined that this objection "ignores all the Court's previous case law concerning its competence with regard to violations of [international humanitarian law]," without indicating why the Court should diverge from this case law.

A.2) Considerations of the Court

39. In the instant case, neither the Commission nor the representatives have asked the Court to declare the State responsible for possible violations of norms of international humanitarian law. In accordance with Article 29(b) of the American Convention and the general rules for the interpretation of treaties contained in the 1969 Vienna Convention on the Law of Treaties, the American Convention can be interpreted in relation to other international instruments.[39] Starting with the case of *Las Palmeras v. Colombia,* the Court has indicated that the relevant provisions of the Geneva Conventions may be taken into account as elements for interpreting the American Convention.[40] Therefore, when examining the compatibility with the Convention of a State's actions or norms, the Court may interpret the obligations and the rights contained in this instrument in light of other treaties. In this case, by using international humanitarian law as a norm of interpretation that complements the Convention, the Court is not ranking the different laws, because the applicability and relevance of international humanitarian law in situations of armed conflict is not in doubt. It merely means that the Court may observe the rules of international humanitarian law as a specific law in the matter, in order to apply the norms of the Convention more precisely when defining the scope of the State's obligations.[41] Hence, if necessary, the Court may refer to provisions of international humanitarian law when interpreting the obligations contained in the American Convention in relation to the facts of this case.[42] Consequently, the Court rejects this preliminary objection.

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[38] The arguments concerning the facts that allegedly fall outside the factual framework will be examined in the chapter on preliminary considerations of this Judgment.

[39] *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. 148, and *Case of Liakat Ali Alibux v. Suriname. Preliminary objections, merits, reparations and costs.* Judgment of January 30, 2014. Series C No. 276, paras. 77 and 78. In this regard, Article 31.3.c of this Vienna Convention establishes as a general rule of interpretation that: "[t]here shall be taken into account, together with the context: […] (c) any relevant rules of international law applicable in the relations between the parties."

[40] *Cf. Case of Las Palmeras v. Colombia. Preliminary objections*. Judgment of February 4, 2000. Series C No. 67, paras. 32 to 34. See also, *Case of Bámaca Velásquez v. Guatemala. Merits.* Judgment of November 25, 2000. Series C No. 70, para. 209; *Case of the Mapiripán Massacre v. Colombia*. *Merits, reparations and costs*. Judgment of September 15, 2005. Series C No. 134, para. 115, and *Case of the Santo Domingo Massacre v. Colombia. Preliminary objections, merits and reparations*. Judgment of November 30, 2012. Series C No. 259, para. 23.

[41] *Cf. Case of the Santo Domingo Massacre v. Colombia. Preliminary objections, merits and reparations.* Judgment of November 30, 2012. Series C No. 259, para. 24.

[42] In this regard, the Court's ruling in the *case of the Mapiripán Massacre v. Colombia* is applicable: "when determining the international responsibility of the State in this case, the Court cannot disregard the existence of the State's general and special obligations to protect the civilian population arising from international humanitarian law, in particular Article 3 common to the four Geneva Conventions of August 12, 1949, and the norms of the Protocol Additional to the Geneva Conventions relating to the Protection of Victims of Non-international Armed Conflicts

B. Alleged lack of competence of the Court to examine violations of the Inter-American Convention on Forced Disappearance with regard to Ana Rosa Castiblanco

B.1) Arguments of the State and observations of the Commission and the representatives

40. Initially, this preliminary objection had been filed with regard to Ana Rosa Castiblanco Torres and Carlos Horacio Urán Rojas. In its final written arguments, the State "withdrew this preliminary objection partially" with regard to Carlos Horacio Urán Rojas, because the Commission had "rectified" the error by which it declared a violation of Article I(a)) of the Inter-American Convention on Forced Disappearance to the detriment of both victims. However, the State "insist[ed that the Court] is not competent to examine the presumed violation of the obligation to investigate the forced disappearance of persons established in Article I(b)) of the Inter-American Convention on Forced Disappearance" in relation to Ana Rosa Castiblanco Torres, because the facts relating to Ms. Castiblanco Torres "do not characterize the presumed internationally wrongful act of forced disappearance in light of international human rights law." The Commission considered "that the State is partially right about the inapplicability [of Article 1.a] of the Inter-American Convention on Forced Disappearance […] to the situation of Ana Rosa Castiblanco [Torres] and Carlos Horacio Urán Rojas," but clarified that this Convention is still applicable "as regards the failure to comply with the obligation to investigate forced disappearance." In addition, it stressed that establishing whether what happened to Ana Rosa Castiblanco Torres was a forced disappearance is an argument relating to the merits of the case "that in no way affects the Court's competence." The representatives argued that "even though [the Inter-American Convention on Forced Disappearance] was ratified after the discovery of the whereabouts of Ana Rosa Castiblanco Torres (in 2001), and Carlos Horacio Urán Rojas (November 8, 1985), the absence of appropriate investigation and punishment extends until the present, so that [the said Convention] is applicable as of the date of its ratification in relation to that aspect of the State's obligations."

B.2) Considerations of the Court

41. The Court reiterates that, as any organ with jurisdictional functions, it has the authority inherent in its attributes to determine the scope of its own competence (*compétence de la compétence/Kompetenz-Kompetenz*). The instruments accepting the optional clause of the compulsory jurisdiction (Article 62(1) of the Convention) presume that the States presenting them accept the Court's right to resolve any dispute concerning its jurisdiction.[43]

42. Colombia ratified the Inter-American Convention on Forced Disappearance on April 12, 2005. The State's arguments on this preliminary objection question the material competence of the Court in relation to this inter-American Convention by affirming that the Court is unable to exercise its contentious jurisdiction to declare a violation of the norms of this international instrument for facts that, according to the State, do not constitute forced disappearance.

43. Article XIII of the Inter-American Convention on Forced Disappearance, in relation to Article 62 of the American Convention, establishes the Court's authority to examine matters

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(Protocol II)." *Case of the Mapiripán Massacre v. Colombia. Merits, reparations and costs.* Judgment of September 15, 2005. Series C No. 134, para. 114.

[43] *Cf. Case of Ivcher Bronstein v. Peru. Competence.* Judgment of September 24, 1999. Series C No. 54, para. 32, and *Case of J. v. Peru. Preliminary objection, merits, reparations and costs.* Judgment of November 27, 2013. Series C No. 275, para. 18.

related to compliance with the commitments made by the States Parties to this instrument.[44] This article establishes that:

> For the purposes of this Convention, the processing of petitions or communications presented to the Inter-American Commission on Human Rights *alleging the forced disappearance of persons* shall be subject to the procedures established in the American Convention on Human Rights and to the Statue and Regulations of the Inter-American Commission on Human Rights and to the Statute and Rules of Procedure of the Inter-American Court of Human Rights, including the provisions on precautionary measures (*italics added).*

44. Therefore, the argument that what happened to Ana Rosa Castiblanco Torres could constitute forced disappearance is sufficient for the Court to exercise its competence to examine a possible violation of that Convention. The determination of whether or not what happened to Ana Rosa Castiblanco Torres constituted forced disappearance is a matter relating to the merits of the case that it is not incumbent on the Court to rule on in a preliminary manner.[45] Consequently, the Court rejects this preliminary objection.

VI
PRELIMINARY CONSIDERATIONS

A. The factual framework of the case

A.1) Arguments of the parties

45. Following the public hearing the State asked that the Court exclude from the examination of this case what it called "new facts" included by the representatives in their motions and arguments brief. In its final written arguments, the State described these facts and asked that the following should be excluded from the examination of this case: (1) the supposed excessive use of force during the retaking of the Palace of Justice; (2) facts relating to the National Security Statute, the alleged practices of extrajudicial executions, arbitrary detentions, forced disappearances and torture, and of impunity for human rights violations, and the alleged implementation of military intelligence plans and manuals; (3) the presumed intentional withdrawal of security from the Palace of Justice; (4) the presumed responsibility of the President of the Republic at the time, Belisario Betancur Cuartas, for the facts of this case; (5) the supposed radio communications among the Military Forces; (6) the presumed threats and persecution of officials, witnesses and family members; (7) the facts relating to the presumed violation of the right to movement and residence (Article 22 of the Convention) to the detriment of René Guarín Cortés, Yolanda Santodomingo Albericci and the family of Auxiliary Justice Carlos Horacio Urán Rojas.

46. The representatives alleged that the State's arguments did not constitute a preliminary objection, and "the Court should therefore reject them"; moreover, "the State had not filed them in its answering brief," so that they were time-barred. Despite this, they indicated that "all the facts included in [their motions and arguments brief] were based on facts included in the Merits Report." They added that "the State has been aware of the said facts since the start of the proceedings before the Court and has had numerous opportunities to contest them, so that their inclusion does not violate the State's right of defense." They also stressed that "the facts that the State seeks to see excluded from litigation have been examined by different Colombian judicial bodies, including the ordinary

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[44] *Cf. Case of Gómez Palomino v. Peru. Merits, reparations and costs.* Judgment of November 22, 2005. Series C No. 136, para. 110; *Case of Radilla Pacheco v. Mexico. Preliminary objections, merits, reparations and costs.* Judgment of November 23, 2009. Series C No. 209, para. 303, and *Case of Osorio Rivera and family members v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of November 26, 2013. Series C No. 274, para. 29.

[45] *Cf. Case of Osorio Rivera and family members v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of November 26, 2013. Series C No. 274, para. 34.

jurisdiction and the Council of State." They therefore asked that the Court reject the State's request and consider the said facts when deciding the dispute.

A.2) Considerations of the Court

47. The Court recalls that the factual framework of the proceedings before this Court is constituted by the facts contained in the Merits Report submitted to its consideration. Consequently, it is not admissible for the parties to submit new facts that differ from those contained in this report, although they may present those that explain, clarify or reject the facts mentioned in the report that have been submitted to the Court's consideration.[46] The exception to this principle are facts that are classified as supervening, or when the parties subsequently become aware of facts or obtain access to evidence on them, provided these are related to the facts in the proceedings. In addition, the presumed victims and their representatives may cite the violation of rights other than those included in the Merits Report, provided that they bear a relationship to the facts contained in that document, because the presumed victims are the holders of all the rights recognized in the Convention.[47] In sum, in each case, it is for the Court to decide on the admissibility of arguments relating to the factual framework in order to ensure the procedural equality of the parties.[48]

48. Even though the facts in the Merits Report submitted to the Court's consideration constitute the factual framework of the proceedings before the Court,[49] the Court is not limited by the classification of the facts and the assessment of the evidence made by the Commission in the exercise of its powers.[50] It is for the Court, in each case, to reach its own conclusions on the facts of the case, assessing the evidence offered by the Commission and the parties and the helpful evidence requested, respecting the right of defense of the parties and the purpose of the *litis.*[51] Although the State's arguments regarding the factual framework are indeed time-barred because they were presented after its answering brief, the Court determines, *ex officio*, the conformity of the facts alleged by the representatives with the facts alleged in the factual framework submitted by the Commission.[52]

49. The Court notes that not all the facts or chapters of the motions and arguments brief that the State alleges are new fall outside the factual framework submitted by the Inter-

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[46] *Cf. Case of Five Pensioners v. Peru. Merits, reparations and costs.* Judgment of February 28, 2003. Series C No. 98, para. 153, and *Case of Norín Catrimán et al. (Leaders, members and activist of the Mapuche Indigenous People) v. Chile. Merits, reparations and costs.* Judgment of May 29, 2014. Series C No. 279, para. 38.

[47] *Cf. Case of Five Pensioners v. Peru. Merits, reparations and costs.* Judgment of February 28, 2003. Series C No. 98, para. 155, and *Case of Tarazona Arrieta et al. v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of October 15, 2014. Series C No. 286, para. 18.

[48] *Cf. Case of the Mapiripán Massacre v. Colombia. Merits, reparations and costs.* Judgment of September 15, 2005. Series C No. 134, para. 58, and *Case of the Pacheco Tineo Family v. Bolivia. Preliminary objections, merits, reparations and costs.* Judgment of November 25, 2013. Series C No. 272, para. 22.

[49] *Cf. Case of Díaz Peña v. Venezuela. Preliminary objection, merits, reparations and costs.* Judgment of June 26, 2012. Series C No. 244, para. 34, and *Case of J. v. Peru. Preliminary objection, merits, reparations and costs.* Judgment of November 27, 2013. Series C No. 275, para. 27.

[50] *Cf. inter alia, Case of Fairén Garbi and Solís Corrales v. Honduras. Merits.* Judgment of March 15, 1989. Series C No. 6, paras. 153 to 161, and *Case of Vélez Restrepo and family members v. Colombia. Preliminary objection, merits, reparations and costs.* Judgment of September 3, 2012. Series C No. 248, para. 32.

[51] *Cf. inter alia, Case of Yvon Neptune v. Haiti. Merits, reparations and costs.* Judgment of May 6, 2008. Series C No. 180, para. 19, and *Case of Vélez Restrepo and family members v. Colombia. Preliminary objection, merits, reparations and costs.* Judgment of September 3, 2012. Series C No. 248, para. 32.

[52] See, for example, *Case of Gudiel Álvarez et al. (Diario Militar) v. Guatemala. Merits, reparations and costs*. Judgment of November 20, 2012. Series C No. 253**,** paras. 33 and 34, and *Case of Norín Catrimán et al. (Leaders, members and activist of the Mapuche Indigenous People) v. Chile. Merits, reparations and costs.* Judgment of May 29, 2014. Series C No. 279, paras. 38 to 47.

American Commission in this case. Thus, the Court notes that the following elements are inserted within the factual framework described by the Commission in its Merits Report: (1) the facts relating to the supposed excessive use of force during the retaking of the Palace of Justice;[53] (2) the facts relating to the National Security Statute and the alleged implementation of military intelligence plans and manuals;[54] (3) the withdrawal of security from the Palace of Justice;[55] (4) the facts that could involve the presumed responsibility of the President of the Republic at the time for the facts of this case,[56] and (5) the presumed threats and harassment of family members.[57] Although the representatives provided a more extensive description of the facts contained in the Merits Report, the Court considers that these are considerations that explain and describe in greater detail factual situations that

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[53] Specifically, the Commission referred to the supposed excessive use of force by the military authorities paragraphs 160 to 163 of the Merits Report. Thus these facts are part of the factual framework. However, the Court notes that the possible responsibility of the State for the excessive use of force during the retaking of the Palace of Justice does not form part of the purpose of this case owing to a request of the petitioners during the processing of the case before the Commission. *Cf.* Report on Admissibility and Merits, para. 22 (merits file, folio 14); brief of the representatives with observations on the merits of July 8, 2008, during the processing of the case before the Commission (evidence file, folio 4127). Therefore, although the facts relating to the use of force form part of the case and will be taken into account as part of the context in which the specific facts of this case occurred, the Court will not rule on the use of force by the State in the military operation known as the retaking of the Palace of Justice.

[54] The Court notes that the Commission included a reference to the military plans used during the events of this case in its Merits Report, and also the activity of the State's intelligence services before and during the taking of the Palace of Justice in paragraphs 150, 151, 152, 158, 164 and 165 of the Merits Report, where it describes the implementation of the "Tricolor Plan" "to deal with grave situations of public order," as well as the description of the chain of command, the deployment of the troops, and the activities of the intelligence agencies during the taking and retaking of the Palace of Justice and before these events.

[55] The withdrawal of the security forces from the Palace of Justice on November 4, 1985 (two days before the taking of the Palace commenced), was included by the Inter-American Commission in paragraphs 155 and 156 of the Merits Report. The representatives' allegation that this withdrawal was intentional is a classification of this fact based on the theory of the presumed victims and their representatives and cannot be considered outside the factual framework. Similarly, see *Vélez Restrepo and family members v. Colombia. Preliminary objection, merits, reparations and costs.* Judgment of September 3, 2012. Series C No. 248, para. 56.

[56] In this regard, see paragraphs 158, 162, 166, 173, 421 and 469 of the Merits Report, which describe the actions and the instructions given by the President of the Republic at the time in relation to the taking of the Palace of Justice by the M-19, as well as paragraphs 325, 352, 353 of the Merits Report, which describe the proceedings instituted based on his possible responsibility in the said events. However, the Court is not a criminal tribunal that examines the criminal responsibility of individuals. Hence, the purpose of this case does not relate to the innocence or guilt of the different State authorities who presumably participated in the events of the case, but rather to whether the State's actions conformed to the American Convention. Therefore, in this case the Court will not rule on the alleged criminal responsibility of Belisario Betancur, the President at the time, or of any other person, because this is a matter for the Colombian domestic jurisdiction. However, in the exercise of its contentious function, this Court can refer to events, acts or omissions of individuals that give rise to the State's international responsibility. Thus, the Court notes that the conduct of former President Belisario Betancur in relation to the facts of this case, as well as the judicial investigations and proceedings that have been instituted against him for his possible responsibility in the said facts, together with the results, do form part of the factual framework of this case. *Cf. Case of Velásquez Rodríguez v. Honduras. Merits.* Judgment of July 29, 1988. Series C No. 4, para. 134, and *Case of the Santo Domingo Massacre v. Colombia. Preliminary objection, merits and reparations.* Judgment of November 30, 2012. Series C No. 259, para. 193.

[57] In this regard, see, in the Merits Report paragraphs: 223, which describes how Mario David Beltrán Fuentes, brother of Héctor Jaime Beltrán Fuentes, "had to cease his inquiries owing to the anonymous threatening calls he received"; 241, which describes presumed threats received by Francisco José Lanao Ayarza, Gloria Anzola de Lanao's husband; 301, which cites José Vicente Rubiano Galvis indicating that he "was going to sue the Government because of […] the torture that [he] had suffered, and the Army threatened [him] that if [he] sued, it would kill [him] and [his] family"; 383, where the Commission indicates that "some of the next of kin of the disappeared received anonymous telephone calls advising them that their relatives were detained in the Casa del Florero or in military garrisons; however, when they went to such places to ask for them, they did not get an answer or they were answered evasively and, in some cases, were threatened so that they would not continue trying to discover the fate of their loved ones," and 493, where the Commission indicates that "the next of kin of those who had disappeared suffered […] psychological problems as a result of the accusations and threats against the families of the disappeared." Therefore, the Court considers that the alleged threats to the family members and presumed victims in this case are within the factual framework and are not limited to the specific examples described by the Commission in its Merits Report.

the Commission had included in its Merits Report. Therefore, the Court does not find the State's objection to these facts admissible.

50. Furthermore, the Court notes that the supposed radio communications among the Military Forces, the exclusion of which was requested by the State, constitute evidence used by the representatives to substantiate the facts relating to the implementation of the military operations to retake the Palace of Justice, the orders given, and the differentiated treatment of individuals who were suspected of belonging to the M-19, all of which is part of the factual framework submitted by the Commission.[58] Consequently, the Court considers that it is not in order to exclude this evidence from the analysis of the events of this case, without prejudice to assessing it in the context of the whole body of evidence and pursuant to the rules of sound judicial discretion, taking into account the observations of the State.

51. However, the Court notes that the Commission did not include the following elements in its Merits Report, and they are not facts that explain, clarify or reject those included in that report: (1) the presumed threats and harassment of officials and witnesses, with the exception of the presumed threats received by Mr. Sánchez Cuesta and the supposed removal of the prosecutor Ángela María Buitrago, and (2) the facts relating to the presumed violation of the right to movement and residence (Article 22 of the Convention) to the detriment of René Guarín Cortés, Yolanda Santodomingo Albericci and the family of Carlos Horacio Urán Rojas. Consequently, the Court will not take them into account in its decision in this case. The Court has also verified that the presumed practices of extrajudicial executions, arbitrary detentions, forced disappearances, torture and impunity for human rights violations alleged as context by the representatives does not fall within the factual framework submitted by the Commission. The Merits Report contains a more limited context, restricted to a supposed practice under which presumed members of the guerrilla were taken to military facilities where they were ill-treated.[59] The Court will only refer to and take into account this more limited context included in the Merits Report and not the additional supposed practices described by the representatives in their briefs.

B. Request to carry out a control of legality of the actions of the Inter-American Commission

B.1) Arguments of the State and of the Commission

52. During the public hearing on the preliminary objections and in its brief with final arguments, the State "expressly waive[d] its request to annul the procedures before the […] Commission," as well as the preliminary objection that the Court did not have competence "to examine certain facts, rights and victims that were insufficiently identified, established and delimited, even at this procedural stage, as a result of the illegality of some actions [of the Commission]." Nevertheless, the State asked the Court to make a ruling in which it declared that: (i) the Commission's actions led to a violation of the basic guarantees of due process; (ii) the Commission's decisions that may affect the rights of the parties must always be reasoned, irrespective of the regulatory provisions that require this," and (iii) "the reason why the procedure [lasted] 20 years before the […] Commission, is not

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[58] In this regard, see paragraphs 158 to 174, 409 and 415 of the Merits Report.

[59] In paragraph 382 of its legal considerations in the Merits Report, the Commission took into account the assessment included in a domestic decision according to which "at the time of the events, the transfer to military garrisons, especially the Cavalry School, and the ill-treatment meted out to those who, in any way, were suspected of belonging to illegal armed groups, was usual." The Court will only take into account the references to this possible practice to the extent that they are useful to analyze the specific facts of this case. The Court inserts the facts that are the subject of this case within their context in order to understand them and to rule on the State's responsibility for the specific facts of this case; but, in doing so, it does not seek to issue a ruling that evaluates the different circumstances included in this context. *Cf. Case of the La Rochela Massacre v. Colombia. Merits, reparations and costs.* Judgment of May 11, 2007. Series C No. 163, para. 32, and *Case of Vélez Restrepo and family members v. Colombia. Preliminary objection, merits, reparations and costs.* Judgment of September 3, 2012. Series C No. 248, para. 53.

the result of any action by the State."

53. In this regard, the Commission argued that: (i) the possible review by the Court of the procedure before the Commission "should be made only in exceptional circumstances" and, in this specific case, the presumptions required to warrant such a review are not present; (ii) the Commission does not have a treaty-based obligation to issue a separate admissibility report; (iii) this case was processed under two different rules: the 1980 Regulations did not indicate the issue of a separate admissibility report, and the 2000 Rules of Procedure did indicate this, but retained the possibility of ruling jointly in certain cases; (iv) while the 1980 Regulations were in force, the State presented defenses relating to admissibility and merits, and while the 2000 Rules of Procedure were in force the State had the opportunity to submit its arguments on the merits as soon as the Commission advised it that it would issue a joint report, in other words, since 2004; (v) when the 2000 Rules of Procedure established the possibility of issuing separate reports, "it was never considered that the inexistence of separate reports could violate the State's right of defense"; (vi) the State only contested the joinder of the admissibility and merits stages in 2010, and (vii) in response to the State's concerns, the Commission informed it of the reasons for this procedural decision in its first subsequent communication; namely, in the Admissibility and Merits Report.

B.2) Considerations of the Court

54. The control of legality of the procedure before the Commission is only applicable in those cases in which evidence is provided of the existence of a serious error that harms the State's right to defense, justifying the inadmissibility of a case before this Court.[60] The Court recalls that, pursuant to the American Convention, the Inter-American Commission has autonomy and independence to exercise its mandate.[61] It is outside this Court's competence to conduct a control of legality in the abstract – merely with a declarative purpose – of the processing of a case before the Commission. In this case, Colombia expressly waived the presentation of these arguments as a preliminary objection and, in the actual circumstances of the case, they would be incompatible with the State's partial acknowledgement of responsibility. Therefore, the Court considers that this request by the State is not admissible.

VII
EVIDENCE

A. Documentary, testimonial and expert evidence

55. The Court received diverse documents presented as evidence by the Commission and the parties, attached to their main briefs (*supra* paras. 1, 6 and 7). The Court also received from the parties documents it had requested as helpful evidence under Article 58 of the Rules of Procedure. In addition, the Court received the affidavits made by: the presumed victims Sandra Beltrán Hernández, Luz Dary Samper Bedoya, Héctor Beltrán, René Guarín Cortés, Cecilia Saturia Cabrera Guerra, María del Pilar Navarrete Urrea, Orlando Quijano, Jorge Eliécer Franco Pineda, Eduardo Matson Ospino, José Vicente Rubiano Galvis, Xiomara Urán Bidegain, María Consuelo Anzola Mora, Rosa Milena Cárdenas León, Raúl Lozano Castiblanco, Damaris Oviedo Bonilla, Deyamira Lizarazo, Deborah Anaya Esguerra,

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60 *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, and *Case of Brewer Carías v. Venezuela. Preliminary objections.* Judgment of May 26, 2014. Series C No. 278, para. 102.

61 *Cf. Control of Due Process in the Exercise of the Powers of the Inter-American Commission on Human Rights* (Arts. 41 and 44 to 51 American Convention on Human Rights). Advisory Opinion OC-19/05 of November 28, 2005. Series A No. 19, first operative paragraph, and *Case of Brewer Carías v. Venezuela. Preliminary objections.* Judgment of May 26, 2014. Series C No. 278, para. 102.

Alejandra Rodríguez Cabrera, Esmeralda Cubillos Bedoya, Martha Amparo Peña Forero, Mario David Beltrán Fuentes, Bernardo Beltrán Monroy, Francisco José Lanao Ayarza, Juan Francisco Lanao Anzola, Edison Esteban Cárdenas León, Julia Figueroa Lizarazo, Luis Carlos Ospina Arias, Marixa Casallas Lizarazo, María del Carmen Celis de Suspes, Myriam Suspes Celis, Ludy Esmeralda Suspes Samper, Stephanny Beltrán Navarrete, Fabio Beltrán Hernández, Elizabeth Franco Pineda, Flor María Castiblanco Torres, Mairée Urán Bidegain, Helena Urán Bidegain, Anahí Urán Bidegain, Adalberto Santodomingo Ibarra, Ángela María Ramos Santodomingo, Sonia Esther Ospino de Matson, Yusetis Barrios Yepes, Lucía Garzón Restrepo and María de los Ángeles Sánchez; the witnesses Julia Navarrete, Ignacio Gómez, Oscar Naranjo Trujillo and Dimas Denis Contreras Villa, and also the expert opinions of Clemencia Correa, Ana Deutsch, Michael Reed Hurtado, Mario Madrid Malo, Carlos Castresana and Carlos Delgado Romero.[62] As regards the evidence received during the public hearing, the Court heard the statements of: the presumed victims César Enrique Rodríguez Vera, Yolanda Santodomingo and Ana María Bidegain; the witnesses Ángela María Buitrago Ruíz and Jaime Castro Castro; the deponent for information purposes Carlos Bacigalupo Salinas, and the expert witnesses Federico Andreu Guzmán and Máximo Duque Piedrahíta.

B. Admission of the evidence

B.1) Admission of the documentary evidence

56. In this case, as in others, this Court admits those documents presented at the appropriate moment by the parties and the Commission that were not contested or opposed, and the authenticity of which was not challenged.[63] This is notwithstanding the Court's decision in relation to the annexes to the motions and arguments brief (*supra* para. 6).

57. Regarding the newspaper articles presented by the parties and the Commission together with their different briefs, the Court has considered that they may be assessed when they refer to well-known public facts or declarations of State officials, or when they corroborate aspects of the case.[64] The Court decides to admit those documents that are complete or that, at least, allow their source and date of publication to be verified.

58. Also, with regard to some documents indicated by the parties and the Commission by means of electronic links, the Court has established that if a party provides at least the direct electronic link to the document cited as evidence, and it is possible to access this, neither legal certainty nor procedural equality is affected, because it can be located immediately by the Court and by the other parties.[65] In this case, neither the parties nor the Commission opposed or made observations on the content and authenticity of such

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[62] The purpose of these statements was established in the Order of the President of October 16, 2013 (*supra* footnote 8). Although the witnesses José Vicente Rodríguez Cuenca and Nubia Stella Torres had been summoned to testify by affidavit in this Order of the President, the State did not present their statements and advised that "they were asked to comply with the order [of the President …]; but no reply was received." In addition, the representatives did not present the testimony of Rafael Armando Arias Oviedo. In their final written arguments they indicated that this could not be presented because "he was not in the country and could not be located."

[63] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits.* Judgment of July 29, 1988. Series C No. 4, para. 140, and *Case of the Landaeta Mejías Brothers et al. v. Venezuela. Preliminary objections, merits, reparations and costs*. Judgment of August 27, 2014. Series C No. 281, para. 34.

[64] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits.* Judgment of July 29, 1988. Series C No. 4, para. 146, and *Case of the Landaeta Mejías Brothers et al. v. Venezuela. Preliminary objections, merits, reparations and costs.* Judgment of August 27, 2014. Series C No. 281, para. 35.

[65] *Cf. Case of Escué Zapata v. Colombia. Merits, reparations and costs.* Judgment of July 4, 2007. Series C No. 165, para. 26, and *Case of Norín Catrimán et al. (Leaders, members and activist of the Mapuche Indigenous People) v. Chile. Merits, reparations and costs.* Judgment of May 29, 2014. Series C No. 279, para. 59.

documents.

59. Regarding the procedural occasion for the presentation of documentary evidence, under Article 57(2) of the Rules of Procedure, generally it must be presented with the briefs submitting the case, with motions and arguments, or answering the submission of the case, as applicable. Evidence provided outside the appropriate procedural opportunities is not admissible, save under the exceptions established in the said Article 57(2) of the Rules of Procedure; namely, *force majeure,* grave impediment, or if it relates to an event that occurred after the above-mentioned procedural opportunities.

60. During the public hearing on the merits (*supra* para. 11), the deponents Carlos Bacigalupo, Máximo Duque Piedrahíta, Federico Andreu Guzmán[66] and Ana María Bidegain presented documents, reports or written summaries of their statements,[67] copy of which was forwarded to the parties and to the Commission and they were able to present their observations. The admissibility of these documents was not opposed, and their authenticity and veracity was not challenged. The observations of the parties referred to the probative assessment and scope that should be accorded to these documents, which does not affect their admissibility as evidence. Considering them useful for deciding this case, the Court admits as evidence the documents provided by the said deponents insofar as they refer to the purpose of the said statements duly defined by the President (*supra* para. 11), in accordance with Article 58 of the Rules of Procedure.

61. The State also presented certain documents with its final written arguments.[68] Then, on June 6, 24, 25 and 26, 2014, it submitted documentation in answer to a request for information by the acting President of the Court (*supra* para. 16). The representatives and the Commission were able to present their observations on this information and documentation and its admissibility was not opposed, and its authenticity and veracity was not challenged. In accordance with Article 58(a) of the Rules of Procedure, the Court finds it in order to admit the documents provided by the State with its final written arguments and on the said subsequent dates, insofar as they may be useful to decide this case, contribute to contextualize other evidence provided to the case file, and explain some arguments of the parties.

62. In addition, with their final written arguments, the representatives forwarded vouchers for expenses incurred following the presentation of the motions and arguments brief. The State was able to make observations on this documentation; consequently, the Court admits this documentation and incorporates it into the body of evidence.

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[66] Expert witness Andreu Guzmán presented a "written summary" of his opinion at the end of the public hearing on the merits. Subsequently, on November 15 and 27, 2013, he forwarded the Court a version of this "written summary" with some modifications in relation to the version handed over during the forty-ninth special session of the Court held in Brazil. In response to a request of the President of the Court, the expert witness confirmed that the last version forwarded should be considered the final version.

[67] *Cf.* Record of delivery of documents. Public hearing of November 12 and 13, 2013 (merits file, folio 3575).

[68] The State presented the following information: (1) Judgment of the Second Criminal Court of the Bogota Special Circuit of April 2, 2013; (2) Report on the status of the proceedings instituted for the events relating to the taking of the Palace of Justice on November 6 and 7, 1985. Proceedings instituted by the Fourth Prosecutor delegated to the Supreme Court of Justice; (3) Communication of December 9, 2013, sent by the Director for Human Rights and International Humanitarian Law of the Ministry of Foreign Affairs of Colombia to the *Colectivo de Abogados José Alvear Restrepo*, advising it of the procedure for reparation to victims in the *Case of the Santo Domingo Massacre v. Colombia;* (4) Resolution No. 9122 of July 2, 1996, in which the Ministry of Defense established the payment of the reparations ordered by the Administrative Court of Cundinamarca in favor of Carlos Horacio Urán; (5) Resolution No. 04922 of April 21, 1986, recognizing the *post mortem* retirement pension and social benefits resulting from the death of Carlos Horacio Urán, under article 8 of Law 126 of December 27, 1985; (6) Resolution No. 06399 of May 27, 1986, recognizing the request to recalculate Carlos Horacio Urán's pension; (7) Action for direct reparation filed by Gloria Ruth Oviedo and others before the Administrative Court of Cundinamarca, Third Section, Subsection "A", of March 29, 2012.

63. The State asked the Court not to admit annex 1 of the written notes of the deponent for information purposes, Carlos Bacigalupo, consisting in a statistical report, because this evidence "was never requested by the Inter-American Commission or by the representatives […] in compliance with the procedure established in the Rules of Procedure," and also "its authenticity cannot be corroborated and the State has not been able to question its author." In this regard, the Court notes that the deponent Carlos Bacigalupo attached a statistical report prepared by the *Human Rights Data Analysis Group* as grounds for his conclusions on the possibility that the cafeteria employees were among the bodies that have been inadequately identified, in keeping with what Mr. Bacigalupo indicated during his statement at the public hearing on the merits in this case. The Court considers that this annex constitutes information provided by the deponent as grounds for his conclusions and does not constitute a statement that must be submitted to the said regulatory requirements, or regarding which the possibility of questioning the other party could be required.

64. The representatives presented alleged supervening facts and the corresponding supporting documentation with their brief with observations on the preliminary objections and when forwarding their final list of deponents (*supra* para. 9). In particular, the representatives presented alleged "supervening facts" concerning: (i) the judicial proceedings that are underway in relation to the events of this case, and (ii) on constitutional and legal reforms that allegedly contain provisions that are contrary to the Convention, which would affect the State's obligation to investigate.[69] In this regard, the Court notes that not all the information and documentation on the criminal proceedings is subsequent to the presentation of the motions and arguments brief.[70] The Court considers that it is in order to admit the evidence of events subsequent to June 25, 2012, pursuant to Article 57(2) of the Rules of Procedure. The Court also considers that the other documents relating to the criminal proceedings correspond to judicial actions that took place very close to the date of presentation of the motions and arguments brief, so that it is reasonable that the representatives did not have access to a copy until after June 25, 2012. Consequently, and considering their usefulness to understand all the domestic criminal proceedings, the Court also finds it in order to admit the said documentation. In addition, regarding the information and documents concerning the constitutional and legal reforms, the Court admits them procedurally in accordance with the said Article 57(2) of the Rules of Procedure, because they refer to norms adopted after the presentation of the motions and arguments brief. However, the Court recalls that it is not its function to review domestic law in the abstract.[71] The Court does not find it necessary to rule on the said reforms in this

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[69] In their brief with observations on the preliminary objections of March 17, 2013, the representatives presented information and documents regarding: legislative decision No. 1 of July 31, 2012, "establishing juridical instruments of transitional justice under article 22 of the Constitution and issuing other provisions"; legislative decision No. 2 of December 27, 2012, reforming the military criminal justice system, and "amending articles 116,152 and 221 of the 1991 Colombian Constitution," and open letter from mandate holders under the Special Proceedings of the Human Rights Council to the Government and to the members of Congress of the Republic of Colombia, presented by the Office of the United Nations High Commissioner for Human Rights on October 22, 2012. In addition, in their brief of June 24, 2013, they presented information on the approval of the statutory law on the military criminal jurisdiction (Statutory bill No. 211 of 2013 Senate and 268 of 2013 Chamber), and documents relating to the "Proposal for the second plenary debate of the statutory bill by the Senate of the Republic"; Communication of the "Office of the United Nations for Human Rights commenting on the military jurisdiction" of June 14, 2013, and the "Comments of the Office in Colombia of the United Nations High Commissioner for Human Rights on some aspects of the statutory bill regulating the recent constitutional reform of the scope of military criminal justice" of June 3, 2013.

[70] In their brief with observations on the preliminary objections of March 17, 2013, the representatives presented information on activities between March 6, 2012, and February 4, 2013. In particular, annexes 1 (decision of the 55th Criminal Court of March 6, 2012), 4 (report of the Prosecutor General's Office of June 8, 2012), 5 (report of the Prosecutor General's Office of June 15, 2012), 6 (report of the Prosecutor General's Office of June 8, 2012) and 12 (report of April 10, 2012) are not, in fact, subsequent to the presentation of the motions and arguments brief the time limit for which expired on June 25, 2012.

[71] *Cf. Case of Genie Lacayo v. Nicaragua. Merits, reparations and costs.* Judgment of January 29, 1997. Series C

Judgment, because there is no record that they have been applied in this specific case, and it is not sufficiently clear whether they can affect the enjoyment of the rights of the presumed victims in this case.

65. The representatives also presented information on a folder containing a presumed Army report dated November 15, 1985, and other documents on the events of the Palace of Justice that it became aware of in June 2013, in the context of another criminal proceeding, following a judicial inspection conducted at the 13th Brigade. At the request of the representatives, the President of the Court asked the State to provide a color copy of this report,[72] and this was presented on November 7, 2013, and at the meeting held prior to the public hearings in this case. The State did not contest the admission of this documentation. Therefore, the Court finds it admissible under Article 58(b) of the Rules of Procedure.

66. On November 7, 2013, the State forwarded information and documentation concerning a decision of October 16, 2013, in which the Prosecutor General decided to assign the hearing of the criminal proceedings relating to the events of this case to a special working group, headed by the Fourth Prosecutor delegated to the Supreme Court of Justice. The Court notes that this information is subsequent to the presentation of the State's answering brief, and therefore finds its admission in order under Article 57(2) of the Rules of Procedure.

67. The representatives argued that the State, in its observations on the helpful evidence, "in addition to providing specific observations on the documents submitted, included conclusions […] that are not derived […] from the documents, but rather are subjective inferences"; hence, they asked that the said arguments be rejected. The Court notes that the State's observations refer to the helpful evidence submitted and its relationship to Colombia's arguments in this case. Therefore, the Court does not find the representatives' argument pertinent and considers that the observations are admissible.

68. The State indicated that the copy of the second instance judgment of October 24, 2014, against the Commander of the 13th Brigade, forwarded by the parties on November 5, 2014, is an unofficial version. It advised that it was not possible to provide an official copy owing to a strike of the judiciary. In this regard, the Court considers that, for the analysis of this case, the unofficial copy of this decision of October 24, 2014, together with its annexes, is sufficient and adequate for the Court to consider it in this Judgment, because no one has objected to its contents. Moreover, the Court notes that the representatives had already included their observations on this judgment in their brief of November 5, 2014, when they presented the copy of this domestic judgment. Even though the President only requested such observations after the judgment had been received, the Court considers that the observations included by the representatives in the said brief are admissible, because the acting President requested them subsequently.

B.2) Admission of the testimonial and expert evidence

69. The Court also finds it pertinent to admit the statements of the presumed victims, the witnesses, the deponent for information purposes, and the expert opinions provided during the public hearing and by affidavit insofar as they are in keeping with the purpose defined by the President in the Order requiring them (*supra* para. 11) and the purpose of this case.

70. The State asked that "when assessing the evidence, [the Court] take into account" that the statements of Raúl Lozano Castiblanco, María de los Ángeles Sánchez and Fabio

No. 30, para. 50, and *Case of J. v. Peru. Preliminary objection, merits, reparations and costs.* Judgment of November 27, 2013. Series C No. 275, para. 213.

[72] The representatives had presented a black and white copy with their brief of June 24, 2013.

Beltrán Hernández were not made before notary public. The representatives explained why it was not possible to provide these statements before notary public and to notarize them.[73] Regarding the reception and assessment of evidence, the Court has indicated that the proceedings before the Court are not subject to the same formalities as domestic judicial proceedings, and that the incorporation of certain elements of the body of evidence must be made paying special attention to the circumstances of the specific case.[74] Furthermore, on other occasions, the Court has admitted sworn statements that were not made before notary public, when this does not affect legal certainty and the procedural equality of the parties,[75] both of which are respected and ensured in this case. Therefore, the Court admits the said statements and will take into account that they were not made before notary public, to the extent that this is pertinent, when assessing the said evidence.

71. Colombia also argued that all the questions posed by the State were not answered in the statements of Sandra Beltrán Hernández, Consuelo Anzola Mora, Edison Esteban Cárdenas, Julia Figueroa, Luis Carlos Ospina, Ludy Esmeralda Suspes, Stephanny Beltrán, Fabio Beltrán Hernandez, Orlando Quijano and José Vicente Rubiano "and, consequently, they were obtained disregarding the principle of adversarial proceedings that should be ensured to the State."[76] In this regard, the Court recalls that it has indicated that the fact that the Rules of Procedure establish the possibility of the parties posing written questions to the deponents offered by the other party and, when appropriate, by the Commission, imposes the related obligation of the party offering the testimony to coordinate and take the necessary steps to forward the questions to the deponents and to ensure that they include the respective answers. In certain circumstances, the failure to answer different questions may be incompatible with the obligation of procedural cooperation and the principle of good faith that regulate the international proceedings. Nevertheless, this Court has considered that failure to answer the questions of the other party does not affect the admissibility of a statement and, based on the implications of a deponent's silence, may have an impact on the probative value of the respective statement, an aspect that must be assessed when examining the merits of the case.[77]

72. The representatives presented observations on the expert opinions of Carlos Delgado and Máximo Duque Piedrahíta, and asked that the Court take them into account "when

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[73] The representatives explained that María de los Ángeles Sánchez, Orlando Quijano's mother, is very elderly – 100 years old – so that, even though "she is extremely lucid, […] it was difficult for her to go to the notary's office"; it therefore asked the Court "to take into account this special circumstance of *force majeure* when assessing the validity of her statement." Regarding Fabio Beltrán Hernández, the representatives indicated that he had lost his identification documents, and provided evidence of this. With regard to Raúl Lozano, the representatives requested an extension of the time limit to present the notarized version of his testimony because he lived in a distant rural area. On the instructions of the President, an extension was granted until November 15, 2013, but the representatives did not present the notarized version. This is recorded in the Secretariat's letter REF.: CDH-10.738/134 of December 2, 2013.

[74] *Cf. Case of Lori Berenson Mejía v. Peru. Merits, reparations and costs.* Judgment of November 25, 2004. Series C No. 119, para. 64, and *Case of the Landaeta Mejías Brothers et al. v. Venezuela. Preliminary objections, merits, reparations and costs.* Judgment of August 27, 2014. Series C No. 281, para. 32.

[75] *Cf. Case of the Miguel Castro Castro Prison v. Peru. Merits, reparations and costs.* Judgment of November 25, 2006. Series C No. 160, para. 189, and *Case of Artavia Murillo et al. (In vitro fertilization) v. Costa Rica. Preliminary objections, merits, reparations and costs.* Judgment of November 28, 2012. Series C No. 257, para. 58.

[76] The State also asked that the Court "exclude from [its] assessment of the evidence all those statements that exceed the limits indicated by the President" in his Order requesting them. In particular, the State argued that, in their statements, some of the presumed victims made references that went beyond their own family profile and were related to other presumed victims or to the events of the case and the actions of the authorities. As previously indicated, the Court admits the said statements only insofar as they are in keeping with the purpose defined by the President in the Order requiring them (*supra* para. 69).

[77] *Cf. Case of Díaz Peña v. Venezuela. Preliminary objection, merits, reparations and costs.* Judgment of June 26, 2012. Series C No. 244, para. 33, and *Case of Veliz Franco et al. v. Guatemala. Preliminary objections, merits, reparations and costs.* Judgment of May 19, 2014. Series C No. 277, para. 56.

granting these opinions probative value." The State also presented observations on the assessment that should be made of the testimony for information purposes of Carlos Bacigalupo Salinas, specifically that "under no circumstances, can [his statement] have the persuasive power of an expert opinion," and on the coherence, consistency and exactitude of the content of his statement and also that of expert witness Federico Andreu Guzmán. The Court will take these observations into account when assessing this evidence while examining the merits of the case.

73. On December 12, 2013, the representatives forwarded a video identified as a "10-minute spot" as an attachment to the affidavit of Juan Francisco Lanao Anzola. The State objected to the admission of this attachment, considering it time-barred. The Court notes that the time limit for the forwarding of the affidavit expired on November 7, 2013, as established in the Order of the President of October 16, 2013. Therefore, the Court finds that the said video is inadmissible due to its late presentation.

C. Assessment of the evidence

74. Based on Articles 46, 47, 48, 50, 51, 57 and 58 of the Rules of Procedure, as well as on its consistent case law concerning evidence as its assessment,[78] the Court will examine and assess the documentary probative elements forwarded by the parties and the Commission, the statements, testimony, and expert opinions, and also the helpful evidence requested and incorporated by this Court in order to establish the facts of this case and to rule on the merits. To this end, it will abide by the principles of sound judicial discretion, within the corresponding legal framework, taking into account the whole body of evidence and all the arguments presented in the case.[79]

75. Regarding the videos presented by the representatives and the Commission, the Court will assess their content in the context of the body of evidence and applying the rules of sound judicial discretion.[80] Also, as regards articles or texts referring to events related to the case, the Court considers that these have been published and contain statements or affirmations by their authors for public distribution. Accordingly, the assessment of their contents is not subject to the formalities required of testimonial evidence. However, their probative value will depend on whether they corroborate or refer to aspects related to this specific case.[81]

76. Furthermore, in keeping with this Court's case law, the statements made by the presumed victims cannot be assessed in isolation, but only together with all the evidence in the proceedings, to the extent that they may provide further information on the presumed violations and their consequences.[82]

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[78] *Cf. Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Merits.* Judgment of March 8, 1998. Series C No. 37, paras. 69 to 76, and *Case of Tarazona Arrieta et al. v. Peru. Preliminary objection, merits, reparations and costs.* Judgment of October 15, 2014. Series C No. 286, para. 28.

[79] *Cf. Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Merits.* Judgment of March 8, 1998. Series C No. 37, para. 76, and *Case of Tarazona Arrieta et al. v. Peru. Preliminary objection, merits, reparations and costs.* Judgment of October 15, 2014. Series C No. 286, para. 28.

[80] *Cf. Case of Ríos et al. v. Venezuela. Preliminary objections, merits, reparations and costs.* Judgment of January 28, 2009. Series C No. 194, para. 93, and *Case of Osorio Rivera and family members v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of November 26, 2013. Series C No. 274, para. 40.

[81] *Cf. Case of Radilla Pacheco v. Mexico. Preliminary objections, merits, reparations and costs.* Judgment of November 23, 2009. Series C No. 209, para. 72, and *Case of Gutiérrez and family v. Argentina. Merits, reparations and costs.* Judgment of November 25, 2013. Series C No. 271, para. 38.

[82] *Cf. Case of Loayza Tamayo v. Peru. Merits.* Judgment of September 17, 1997. Series C No. 33, para. 43, and *Case of J. v. Peru. Preliminary objection, merits, reparations and costs.* Judgment of November 27, 2013. Series C No. 275, para. 49.

VIII
FACTS

77. This Court underlines that this case is inserted in more wide-ranging facts to those submitted to the Court. On November 6 and 7, 1985, the guerrilla group known as the M-19 seized the premises of the Palace of Justice, where the Colombian Supreme Court of Justice and the Council of State were located with great violence taking hundreds of people hostage, including justices, auxiliary justices, lawyers, and administrative and service employees, as well as visitors to the two courts. In response to this armed incursion by the guerrilla, known as "the taking of the Palace of Justice," the response of the State's security forces is known as "the retaking of the Palace of Justice." This military operation has been categorized as disproportionate and excessive by both domestic courts and the Truth Commission on the Events of the Palace of Justice (hereinafter "the Truth Commission"), created by the Supreme Court of Justice (*infra* para. 85).

78. This Court has established that the State has the obligation to ensure security and maintain public order in its territory and, therefore, has the legitimate right to use force to re-establish this.[83] This power is not unlimited, because the State has the obligation, at all times, to apply procedures that are in accordance with the law and respectful of the fundamental rights of every person subject to its jurisdiction.[84] However, the Court recalls that the purpose of this case does not include the possible international responsibility of the State for the presumed excessive use of force when retaking the Palace of Justice[85] (*supra* nota 53). In the context of those events, this case only covers the alleged violation of the obligation to prevent the taking of the Palace of Justice by the M-19, owing to the State's supposed prior knowledge, as well as the presumed international responsibility of the State for its actions following the retaking of the Palace of Justice.

79. Specifically with regard to the subsequent actions, in this case the Court has been asked to examine the State's international responsibility for the presumed forced disappearances of 12 persons who were in the Palace of Justice and who allegedly survived the events, although the whereabouts of 11 of them remain unknown at this time; the presumed forced disappearance followed by the extrajudicial execution by the State's forces of an auxiliary justice of the Council of State; the alleged detention and torture of four other persons in relation to these facts, three of whom also survived the taking and retaking of the Palace of Justice, and the investigations conducted by the State to elucidate all these facts.

80. Therefore, the Court points out that the facts of this case are inserted in a context of events that are more serious, complex and extensive than those submitted to its jurisdiction, in which hundreds of individuals, in addition to the presumed victims in this case, were victims. The Court also takes note of the special significance and repercussions of these events for Colombian society. In this regard, the State itself indicated before this Court that: "[t]he events of the Palace of Justice have no precedents in our recent history";

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[83] See, for example: *Case of Montero Aranguren et al. (Retén de Catia) v. Venezuela. Preliminary objection, merits, reparations and costs.* Judgment of July 5, 2006. Series C No. 150, para. 66, and *Case of the Landaeta Mejías Brothers et al. v. Venezuela. Preliminary objections, merits, reparations and costs.* Judgment of August 27, 2014. Series C No. 281, para. 126.

[84] *Cf. Case of Bámaca Velásquez v. Guatemala. Merits.* Judgment of November 25, 2000. Series C No. 70, para. 174, and *Case of J. v. Peru. Preliminary objection, merits, reparations and costs.* Judgment of November 27, 2013. Series C No. 275, para. 124.

[85] As mentioned by the State, the presumed responsibility for the excessive use of force during the retaking of the Palace of Justice was excluded by the petitioners in their brief with final observations on admissibility and merits during the processing of the case before the Commission. *Cf.* Report on Admissibility and Merits, para. 22 (merits file, folio 14), and brief of the representatives with final observations on admissibility and merits of July 8, 2008, during the processing of this case before the Commission (evidence file, folio 4127).

while the Truth Commission indicated that "[t]he insane taking of the temple of justice by the M-19 guerrilla movement and the disproportionate reaction of the State's Armed Forces and Police truly constitute one of the most egregious and disturbing attacks on the institutional framework of the long history of violence experienced by Colombia."[86]

81. This Court underscores that the international jurisdiction is complementary and reinforcing in nature and that it does not perform the functions of a court of "fourth instance."[87] In addition, it recalls that, contrary to a criminal court, it is not necessary to prove the State's responsibility beyond any reasonable doubt in order to establish that a violation of the rights recognized in the Convention has occurred, or to identify, individually, the agents to which the violations are attributed. This Court must be convinced that acts or omissions that can be attributed to the State have occurred that have permitted the perpetration of those violations, or that the State had an obligation with which it failed to comply. Thus, for an international court, the criteria for assessing the evidence are less rigid that under the domestic legal system and the Court is able to assess the evidence freely.[88] The Court must assess the evidence in a way that takes into account the gravity of attributing international responsibility to a State and that, despite this, establishes the truth of the alleged facts in a convincing manner.[89]

82. Bearing in mind these considerations, in this chapter, the Court will establish the facts of the case, based on the facts submitted to its consideration by the Commission and taking into consideration the body of evidence in the case, especially the domestic judicial decisions and the conclusions of the Truth Commission, as well as the motions and arguments brief of the representatives and the arguments of the State. The Court recalls that, in accordance with Article 41(3) of the Rules of Procedure,[90] it may consider those facts that have not been expressly denied and those claims that have not been expressly contested as accepted, without this meaning that it will automatically consider them accepted in all cases in which they are not opposed by one of the parties, and without an assessment of the specific circumstances of the case and of the body of evidence. The silence of the defendant or any elusive or ambiguous answers may be interpreted as an acceptance of the facts in the Merits Report while the contrary does not emerge during the proceedings or as a result of the Court's conclusions.[91]

83. The Court will refer to the events related to the alleged violations in this case in the following order: (A) the background to the taking of the Palace of Justice; (B) the events of

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[86] *Informe de la Comisión de la Verdad sobre los hechos del Palacio de Justicia,* 2010 (hereinafter "Report of the Truth Commission") (evidence file, folio 419).

[87] The preamble to the American Convention affirms that the international protection "reinforce[s] or complement[s] the protection provided by the domestic law of the American States." See also, *The effect of Reservations on the Entry into Force of the American Convention on Human Rights* (arts. 74 and 75). Advisory Opinion OC-2/82 of September 24, 1982. Series A No. 2, para. 31; *The Word "Laws" in Article 30 of the American Convention on Human Rights*. Advisory Opinion OC-6/89 of May 9, 1986. Series A No. 6, para. 26, *Case of Velásquez Rodríguez v. Honduras*. *Merits.* Judgment of July 29, 1988. Series C No. 4, para. 61, and *Case of Mémoli v. Argentina. Preliminary objections, merits, reparations and costs.* Judgment of August 22, 2013. Series C No. 265, para. 140.

[88] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits.* Judgment of July 29, 1988. Series C No. 4, paras. 127 and 128, and *Case of J. v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of November 27, 2013. Series C No. 275, para. 305.

[89] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits.* Judgment of July 29, 1988. Series C No. 4, para. 129, and *Case of J. v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of November 27, 2013. Series C No. 275, para. 305.

[90] Article 41(3) of the Court's Rules of Procedure establishes that "[t]he Court may consider those facts that have not been expressly denied and those claims that have not been expressly contested as accepted."

[91] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits.* Judgment of July 29, 1988. Series C No. 4, para. 138, and *Case of J. v. Peru. Preliminary objection, merits, reparations and costs.* Judgment of November 27, 2013. Series C No. 275, para. 51.

November 6 and 7, 1985; (C) the presumed victims in this case; (D) the processing of the crime scene; (E) the autopsies and the identification of the bodies, and (F) the investigation of the events. However, before analyzing the facts of the case, the Court finds it pertinent to include some considerations on the probative value of the Report of the Truth Commission, which was contested by the State as a source of evidence of the facts of this case.

84. The State acknowledged "the important effort made by the Truth Commission, but [noted] that it is not an official or a judicial body for the establishment of the [truth]." In this regard, it indicated that the commission was created by the Supreme Court of Justice, "an institutional victim" of the events, and "its composition did not represent the different sectors and components of the Colombian nation or, at least, those involved in the events of November [6 and 7,] 1985." In addition, the State asserted that, pursuant to its internal rules, the Supreme Court of Justice "did not and does not have competence […] to create […] a truth commission with the nature of a public entity or organization." The State noted that, "since it was unofficial, the commission did not receive logistic, material or human support from any State body." Consequently, it argued that "the Final Report of the Truth Commission […] is an important source, but not the truth, especially if it also suffers from substantive problems." Neither the Commission nor the representatives presented specific arguments on the legitimacy of the Report of the Truth Commission; however, they both used this report to found their arguments.

85. In this regard, the Court notes that the Truth Commission was created by a decision of the Supreme Court of Justice, in a regular session on August 18, 2005, so that the report of this commission would "represent an obligatory reference point for those who wished to know what really happened [during the taking and retaking of the Palace of Justice]," bearing in mind that, "for the Supreme Court of Justice, as an institutional victim, and for the next of kin of those who died, their right to the truth has not been satisfied." Three former presidents of the Supreme Court of Justice, Jorge Aníbal Gómez Gallego, Nilson Pinilla Pinilla and José Roberto Herrera, were appointed members of the commission. In addition, it was explained that "[i]n the preparation of the report, the Supreme Court of Justice did not, and could not, allude to the exercise of any jurisdictional function, because this was not so; [nor does it involve the] exercise of punitive powers."[92] The Truth Commission issued its final report in 2010.

86. According to the Report of the Truth Commission, when preparing it:

> [T]he Commission designed and implemented an investigative strategy that consisted in consulting official and private sources, an activity that allowed it to collect and systematize the information contained in the disciplinary, contentious-administrative, and criminal proceedings; the news, stories, and articles published in the different social media; the archives of some Ministries, the National Institute of Forensic Medicine and Science, the Attorney General's office, the Office of the President of the Republic, the Chamber of Representatives, as well as abundant bibliography, academic research and articles on the events, from the most diverse sources."[93]

87. Also, on the 25th anniversary of the taking of the Palace of Justice, the President of Colombia, Juan Manuel Santos, stated that:

> The Report of the [Truth] Commission […], presents […] a complete diagnosis and a report on the background, the events themselves, and what happened after the violent taking of the Palace of Justice by the M-19 commandos. This document must be considered seriously and it is essential that all the proceedings undertaken to clarify the events are duly concluded.[94]

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[92] *Cf.* Minutes No. 23 of the regular session of the Plenary Chamber held on August 18, 2005 (evidence file, folios 37770 and 37771).

[93] *Cf.* Report of the Truth Commission (evidence file, folio 28).

[94] Presidency of the Republic of Colombia, *President Santos rindió sentido homenaje a las víctimas de la toma del Palacio de la Justicia.* Available at http://wsp.presidencia.gov.co/Prensa/2010/Noviembre/Paginas/ 20101104_03.aspx

88. The Court considers that, pursuant to its purpose, procedure, structure and the objective of its mandate, the establishment of a truth commission can contribute to the construction and preservation of the historical memory, the clarification of the facts, and the determination of institutional, social and political responsibilities during certain historical periods of a society.[95] The historical truths obtained by these mechanisms should not be understood as a substitute for the State's obligation to ensure the judicial establishment of individual or State responsibilities by the corresponding jurisdictional means, or for the determination of international responsibility that corresponds to this Court. These are complementary determinations of the truth, because they each have their own meaning and scope, as well as their specific possibilities and limitations, which depend on the context in which they arise and of the particular cases and circumstances they analyze.[96] Similarly, the use of this report does not exempt the Court from assessing the whole body of evidence according to the rules of logic and based on experience, without being subject to rules concerning the *quantum* of evidence.[97] Hence, this Court will take into account the Report of the Truth Commission as one more piece of evidence that must be assessed together with the rest of the body of evidence and any observations that the State may have made in this regard.

A. Background to the taking of the Palace of Justice

89. The 19th of April Movement (M-19) was a guerrilla group that emerged following the 1970 presidential elections. Among other actions, it is attributed with the theft of "5,000 weapons kept […] in one of the country's most heavily protected military facilities," the taking of the Embassy of the Dominican Republic in Bogota, "the abduction and subsequent murder of the president of the Colombian Workers' Confederation, and the 1985 taking of the Palace of Justice (*infra* para. 93). The Truth Commission (*supra* para. 85) considered that "an episode that occurred on September 30, 1985, in which 11 members of the M-19 died and a defenseless civilian was injured, after a milk van had been stolen in the southeastern part of Bogota," and the "attempt on the life of Army Commander, General Rafael Samudio Molina, by the M-19, in Bogota on October 23, 1985,"[98] were the events that immediately preceded the taking of the Palace of Justice.

90. According to the Truth Commission "the possible taking of the Palace of Justice and the approximate date were widely known by [the Military Forces and the State's security agencies]; its purpose was the abduction of the 24 justices of the Supreme Court." Thus, on October 16, 1985, the Commander General of the Military Forces received "an anonymous letter stating: '[t]he M-19 plan[ned] to take the building of the Supreme Court of Justice on Thursday, October 17, when the justices [were] sitting.'" Also, following the attempt on the life of General Samudio Molina (*supra* para. 89) on October 23, "a message was sent to a radio station announcing the implementation of 'something of such significance that the world will be amazed.'" That same day, the Intelligence Service of the National Police (SIJIN) raided a house where they found plans for the storming of the Palace of Justice.[99]

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[95] *Cf. Case of Myrna Mack Chang v. Guatemala. Merits, reparations and costs.* Judgment of November 25, 2003. Series C No. 101, paras. 131 and 134, and *Case of J. v. Peru. Preliminary objection, merits, reparations and costs*. Judgment of November 27, 2013. Series C No. 275, para. 55.

[96] *Cf. Case of the Miguel Castro Castro Prison v. Peru. Merits, reparations and costs.* Judgment of November 25, 2006. Series C No. 160, para. 197, and *Case of García and Family v. Guatemala. Merits, reparations and costs.* Judgment of November 29, 2012. Series C No. 258, para. 176.

[97] *Cf. Case of Ríos et al. v. Venezuela. Preliminary objections, merits, reparations and costs.* Judgment of January 28, 2009. Series C No. 194, para. 101, and *Case of J. v. Peru. Preliminary objection, merits, reparations and costs.* Judgment of November 27, 2013. Series C No. 275, para. 55.

[98] *Cf.* Report of the Truth Commission (evidence file, folios 39, 47, 51, 75 and 89).

[99] *Cf.* Special Investigative Court, *Informe sobre el Holocausto del Palacio de Justicia*, published in the Official

91. In parallel, starting in mid-1985, the justices of the Supreme Court of Justice began to receive death threats relating to the declaration of non-enforceability of the extradition treaty between Colombia and the United States of America. The members of the Council of State also received threats.[100] In response to these threats, an assessment was made of the physical security of the Palace of Justice, the origin of the threats was investigated, and the Government took over the personal protection of some of the justices. In addition, orders were given to reinforce the surveillance services of the Palace of Justice with "a contingent [composed of] an officer, a sergeant, and 20 agents," which ceased on November 4, 1985.[101] On November 6, 1985, the security apparatus that had been ordered for the building owing to the threats was not present, and the Palace of Justice "only had basic surveillance consisting of no more than six employees of Cobasec, a private company."[102] In addition, a few days earlier the metal detectors in the entries had been removed.[103] These facts are examined more thoroughly in Chapter XII of this Judgment in relation to the State's alleged violation of its obligation to adopt the pertinent measures to prevent the taking of the Palace of Justice by the M-19.

92. Furthermore, according to the Truth Commission there were "two elements that characterize[d] the situation of the Judiciary at the end of the 1970s and the beginning of the 1980s": (i) the violence that affected the Judiciary, with an annual average of 25 judges and lawyers victims of attempts on their life, and (ii) "decisive rulings adopted by the Supreme Court of Justice and the Council of State that denoted the independence of the Judiciary in relation to the Executive and that, on several occasions, irritated different sectors in the country."[104]

B. The events of November 6 and 7, 1985

Gazette of June 17, 1986 (hereinafter "Report of the Special Investigative Court") (evidence file, folios 30486 and 30487); Judgment of the Contentious-Administrative Chamber of the Council of State in file 11377 of July 24, 1997 (evidence file, folio 527); National Police, *Informe: toma "Palacio de Justicia"* (evidence file, folio 31810), and Report of the Truth Commission (evidence file, folios 89, 93 and 103).

[100] *Cf.* Report of the Special Investigative Court (evidence file, folios 30483 and 30484), and Report of the Truth Commission (evidence file, folios 94 and 98).

[101] *Cf.* Report of the Special Investigative Court (evidence file, folios 30484, 30485 and 30490); Report of the Truth Commission (evidence file, folios 89, 94, 98, 101 and 104); Judgment of the Contentious-Administrative Chamber of the Council of State of July 24, 1997 (evidence file, folios 526 and 527), and Judicial and Investigative Police Directorate, *Estudio de Seguridad: Palacio de Justicia,* October 1985 (evidence file, folio 31730).

[102] *Cf.* Report of the Truth Commission (evidence file, folio 111); Judgment of the 51st Criminal Court of the Bogota Circuit of December 15, 2011 (evidence file, folio 20873); Testimony of January 13, 1986, provided by Julia Alba Navarrete Mosquera (evidence file, folio 14617), and Ana Carrigan, *The Palace of Justice. A Colombian Tragedy*, 1993 (evidence file, folio 28672). See also: request for surveillance services of October 17, 1985, signed by the Director General of the Rotating Fund of the Ministry of Justice and addressed to the company Cobasec (evidence file, folio 31637), and statements of Belisario Betancur Cuartas of April 10, 1986, March 2, 3 and 5, 1987, and January 17, 2006 (evidence file, folios 15132, 15139, 15153, 15167 and 15201).

[103] Julia Alba Navarrete Mosquera, journalist of the news program "*Alerta Bogotá*" during the events of the taking of the Palace of Justice, met with Justice Reyes Echandía, who advised her informally that "they installed metal detectors for about eight days and then, three days before the taking of the Palace, they removed them." *Cf.* Testimony of July 5, 2006, provided by Julia Alba Navarrete Mosquera to the Special Commission of the Attorney General's office appointed to investigate the events of the Palace of Justice (hereinafter "the Special Commission") (evidence file, folio 14771), and affidavit made on November 5, 2011, by Julia Alba Navarrete Mosquera (evidence file, folio 35903).

[104] In particular, the Supreme Court of Justice at the time took certain decisions that limited the scope of the Executive's powers in states of emergency and economic emergency. Furthermore, "the Council of State was also characterized by its judgments convicting the Colombian State for human rights violations committed by the security forces." *Cf.* Report of the Truth Commission (evidence file, folios 67, 69, 70 and 73), and *Case of the La Rochela Massacre v. Colombia. Merits, reparations and costs.* Judgment of May 11, 2007. Series C No. 163, para. 80.

93. During the morning of November 6, 1985, the M-19 took the Palace of Justice in what it called the "Antonio Nariño Human Rights Operation."[105] 35 individuals took part in the operation:[106] 25 men and 10 women. The Palace of Justice is located on the northern side of Bolivar Plaza in Bogota.[107]

94. Between "10.30 and 11 a.m., seven armed individuals in civilian clothing, members of the M-19 entered the building [of the Palace of Justice]" and went to different offices in the Palace. Subsequently, three vehicles carrying 28 members of the guerrilla entered the basement of the Palace "firing indiscriminately," "they killed two private guards," and an exchange of fire began between the guerrillas and "some of the bodyguards of the justices who were there at the time." At the same time, on hearing the first shots, the group that had entered dressed in civilian clothing "took out their weapons and announced the armed takeover by the M-19." The M-19 took those who were present in the Palace of Justice at the time hostage. One of the first places seized by the guerrilla was the cafeteria located on the first floor.[108]

95. The President of the Republic, after consulting with his ministers and former Presidents, decided "not to negotiate with the insurgents, but […] to try and get them to surrender and to save the lives of the hostages."[109] At approximately 1 p.m., the military operation to retake the Palace of Justice commenced with the entry of tanks into the basement of the building, where there was a violent confrontation between the guerrilla group and the soldiers. In this regard, the Special Court established by the State to investigate the events (*infra* para. 156) indicated that "the bloody and prolonged battle resulted in numerous deaths on both sides, caused the first fire in the basement, and was characterized by the use of automatic weapons, bombs and explosives."[110]

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[105] The State alleged that the taking of the Palace of Justice was funded by drug-traffickers. In this regard, the Special Investigative Court indicated that "[t]he suspicion of this supposed connection […] has not been confirmed during the investigation." Also, the Truth Commission considered that the M-19 "[n]ever had a submissive relationship with [drug-trafficking groups], but [assistance in transferring people and objects existed, as well as to obtain weapons]." However, it concluded that "there was a connection between the M-19 and the Medellin Cartel for the attack on the Palace of Justice," even though "not all the members of the M-19 knew about the connection." The Truth Commission also indicated that the drug-traffickers had offered the M-19 specific sums, for example, to eliminate files and to murder the President of the Supreme Court of Justice. *Cf.* Report of the Special Investigative Court (evidence file, folio 30489), and Report of the Truth Commission *(*evidence file, folios 312 to 314 and 320).

[106] Carlos Bacigalupo, deponent for information purposes, who acted as an expert witness for the Truth Commission, stressed that "even though, to date, the figure of 35 is used for the number of M-19 guerrillas who took part in the attack, this has never been fully corroborated. It is known that 42 individuals had been scheduled to take part in the attack on the Palace, and that only 35 of them entered. Numerous lists exist, although none of them is final, with the names and aliases in some cases, but in many other cases only the alias is known. Moreover, the names vary and the number of names that are on all the lists is always less than the 35 individuals who supposedly executed the attack. In addition, some people had several alternate names or aliases; hence, drawing up a final list of names is difficult." Written notes by Carlos Bacigalupo (evidence file, folio 36325).

[107] *Cf.* Report of the Truth Commission (evidence file, folios 112, 115 and 116). See also: report of the Special Investigative Court (evidence file, folios 30487 and 30493), and Judgment of the 30th Itinerant Criminal Investigation Court Bogota of January 31, 1989 (evidence file, folio 24200).

[108] *Cf.* Report of the Truth Commission (evidence file, folios 115, 116 and 117); Testimony of Enrique Parejo González provided to the Prosecution Service on December 4, 2007 (evidence file, folio 14764), and Report of the Special Investigative Court (evidence file, folios 30530 and 30493 to 30496).

[109] *Cf.* Minutes of the Council of Ministers No. 176, for the special session of November 7, 1985 (evidence file, folio 31851).

[110] *Cf.* Minutes of the Council of Ministers No. 176, for the special session of November 7, 1985 (evidence file, folio 31851); Testimony of Jaime Castro Castro, Minister of the Interior at the time of the events, during the public hearing on the merits in this case; Report of the Special Investigative Court (evidence file, folio 30497); Testimony of Belisario Betancourt Cuartas of November 18, 1988, before the Impeachment Committee of the Chamber of Representatives (evidence file, folio 32005); Report of the Truth Commission (evidence file, folios 127, 128, 129 and 139), and Judgment of the Superior Court of Bogota of January 30, 2012 (evidence file, folio 23345).

96. Another group of tanks entered the Palace of Justice by the entry on Bolivar Plaza. At the same time, "several squadrons of law enforcement agents" entered, including police and soldiers. Also, three police helicopters circled over the area. The armed forces used machine guns, grenades, rockets, and explosives in the operation.[111]

97. The President of the Supreme Court at the time, who was on the fourth floor of the Palace of Justice, tried by different means to obtain a ceasefire. He also tried unsuccessfully to communicate by telephone with the President of the Republic directly and through several people, including the President of Congress. However, his requests were broadcast by the media.[112]

98. At around 5 p.m., the security forces broke down a steel door located on the terrace in order to access the fourth floor of the Palace of Justice. This was followed by a fight between the M-19 and the Army which lasted until around 2 a.m. On the morning of November 7, "the tanks began to fire again." At 9 a.m., the President of the Republic announced by radio that "the Army now has total control of the Palace and only one guerrilla redoubt remains, so that Operation *Rastrillo* would begin."[113] The Court was not informed of any further facts relating to the actions of the then President of the Republic in relation to the presumed victims in this case. On hearing this statement, the hostages who were in the bathroom between the second and third floor sent an emissary to advise that there were still civilians in the building (*infra* para. 102).[114]

99. Between November 6 and 7, three fires occurred inside the Palace of Justice, "two lesser ones and one that totally destroyed the building and probably killed those who may have survived the gunfire and explosions on the fourth floor."[115] In this regard, the Truth Commission added that:

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[111] *Cf.* Report of the Truth Commission (evidence file, folios 130 and 132); Report of the Special Investigative Court (evidence file, folio 30496); Judgment of the Superior Court of Bogota of January 30, 2012 (evidence file, folios 23345, 23395 and 23396), and Affidavit made on November 5, 2013, by Julia Alba Navarrete Mosquera (evidence file, folio 35904).

[112] The message transmitted was: "Please, help us, stop firing! The situation is extreme; we are surrounded by members of the M-19. Please, stop firing immediately! Inform public opinion, this is urgent; it's a matter of life or death. Do you hear me? […] We cannot talk to them unless there is an immediate ceasefire. Please, let the President finally order a ceasefire […]. We are at death's door. You must help us. You must ask the Government to order the ceasefire. Beg the Army and the Police to stop… They don't understand. They are pointing their guns at us. I am asking you to stop the firing because they are prepared to do anything… We are justices, employees, we are innocent… I have tried to talk to all the authorities. I have tried to communicate with the President, but he is not there. I have been unable to talk to him […]." Report of the Truth Commission (evidence file, folios 135 and 136). See also, report of the Special Investigative Court (evidence file, folios 30505 and 30506).

[113] *Cf.* Report of the Truth Commission (evidence file, folios 148 to 150, 157 and 158); Report of the Special Investigative Court (evidence file, folio 30522), and Testimony of Samuel Buitrago Hurtado of November 21, 1985, before the 27th Criminal Investigation Judge (evidence file, folio 30621). Similarly, see the testimony of Reinaldo Arciniega Baedecker transcribed in the judgment of the 51st Criminal Court of the Bogota Circuit of April 28, 2011 (evidence file, folios 24445 and 24446).

[114] *Cf.* Report of the Truth Commis*sion* (evidence file, folio 158), and Testimony of Samuel Buitrago Hurtado of November 21, 1985, before the 27th Criminal Investigation Judge (evidence file, folio 30622). According to the Truth Commission, the emissary informed the Secretary of the Ministry of Defense that there were still civilians in the building. The Secretary told him "don't worry, Operation *Rastrillo* has been cancelled." However, "[t]he statements of the Ministers and of the President of the Republic are consistent in affirming that they never received the message […], and did not know, at the time, that [the emissary] had come out as the bearer of a message to the Government, which means that those in charge of the military operation who received the message not only did not allow the emissary to deliver it to the Government, but never forwarded it to those to whom it was addressed." […] After [the emissary] had left [the Palace] the Army knew where the hostages were." *Cf.* Report of the Truth Commission (evidence file, folios 158, 160 and 161).

[115] *Cf.* Report of the Truth Commission (evidence file, folio 152), and Report of the Special Investigative Court (evidence file, folio 30512)

> Finally, it was not possible to know with any certainty how the hostages and guerrillas who were on the fourth floor died, or even the real number of persons there. It is impossible to know who died before the flames consumed everything, because not one of this group survived. However, the fact is that most of the bodies were found dismembered, mutilated, apparently by the effects of the explosions, and almost all of them were carbonized.[116]

100. The first survivors left the Palace of Justice in the afternoon of November 6; most of them by the main doors. However, according to the Truth Commission, other hostages left by the basement throughout the operation; nevertheless, little documentation exists in this regard.[117]

101. During the taking and retaking of the Palace of Justice, hostages and guerrillas took refuge in the bathrooms located on the mezzanine floors of the building. One group took refuge in the bathroom between the third and fourth floors. Another group occupied the bathroom "located between the first and second floors, but then moved [to the bathroom] between the second and third [floors]." In total, around 60 hostages and 10 guerrillas took refuge in the bathroom located between the second and third floors.[118]

102. During the morning of November 7, after an emissary had exited the Palace (*supra* para. 98), there was an explosion against one of the walls of the bathroom, and this initiated an intense confrontation between the guerrillas and the security forces. According to the Truth Commission, the attack "caused an immediate reaction by the guerrillas who fired their weapons against some hostages who were in the bathroom." In addition two guerrillas changed out of their uniforms into civilian clothing, one of whom was Irma Franco Pineda, a presumed victim in this case (*infra* para. 111). The survivors "remained [in the bathroom] until midday on Thursday, November 7." Initially, the guerrillas did not allow the hostages to leave. Subsequently, they allowed the women to go, and the leader of the guerrilla indicated that "[a]ll those who remained w[ould] die." However, the men who were wounded were allowed to leave and then the remaining hostages.[119]

103. A building near the 20 de Julio Museum, the "*Casa del Florero,*" was used by the security forces to coordinate the operation, and also to identify those who came out of the Palace of Justice.[120] Military intelligence authorities searched, interrogated and identified the survivors and separated those who it suspected of belonging to the M-19.[121] Subsequently, most of the survivors "were allowed to go home or were taken to hospitals."[122] However,

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116 *Cf.* Report of the Truth Commission (evidence file, folio 155).

117 *Cf.* Report of the Truth Commission (evidence file, folios 130 and 165).

118 *Cf.* Report of the Truth Commission (evidence file, folios 155, 156 and 162); Report of the Special Investigative Court (evidence file, folio 30524), and Testimony of Magalis María Arevalo Mejía of November 29, 1985 (evidence file, folio 15250), and 2011 documentary entitled "*La Toma,"* directed by Angus Gibson and Miguel Salazar (interviews with justices who were in the bathroom) (evidence file, folio 3552).

119 *Cf.* Report of the Truth Commission (evidence file, folios 155, 156, 163, 164 and 165); Report of the Special Investigative Court (evidence file, folios 30526 and 30527); Testimony of Samuel Buitrago Hurtado of November 21, 1985, before the 27th Criminal Investigation Judge (evidence file, folio 30622), and Judgment of the Second Criminal Court of the Bogota Special Circuit of April 2, 2013 (evidence file, folios 35097 and 35098). See also, Testimony of Jaime Castro during the public hearing on the merits in this case.

120 *Cf.* Judgment of the Superior Court of Bogota of January 30, 2012 (evidence file, folio 23349); Testimony of Sergeant second-class Fredy Benavides Mantilla of May 22, 1989, before the Special Attorney assigned to the Military Forces (evidence file, folio 14526), and Testimony of Luis Eduardo Suárez Parra before the Prosecution Service of June 21, 2007 (evidence file, folio 14957).

121 *Cf.* Testimony of Fredy Benavides Mantilla of May 22, 1989, before the Special Attorney assigned to the Military Forces (evidence file, folio 14526); Report of the Truth Commission (evidence file, folio 175); Testimony of Ángela María Buitrago Ruíz during the public hearing on the merits in this case; Judgment of the Superior Court of Bogota of January 30, 2012 (evidence file, folios 23349 and 23350), and Testimony of Julia Alba Navarrete Mosquera before the Prosecution Service of July 5, 2006 (evidence file, folios 14771, 14774 and 14778).

122 *Cf.* Report of the Truth Commission (evidence file, folio 175).

the survivors considered "special" by the armed forces were taken to the second floor of the Casa del Florero.[123] Several of them were transferred to military facilities, including the Cavalry School of the Colombian National Army (hereinafter "the Cavalry School") and the "General Ricardo Charry Solano" Intelligence and Counter-intelligence Battalion (BINCI) (hereinafter "Charry Solano Battalion").[124] Once they had been detained, "some of them [were] tortured and then disappeared."[125] The determination of whether the presumed victims in this case are among this group of rescued individuals will be made in the corresponding chapters.

104. There is no certainty about the number of people who died during the events. The Institute of Forensic Medicine received 94 corpses from the Palace of Justice.[126] However, the Report of the Truth Commission indicates that "the problems that arose during the identification process give rise to serious doubts about the identity of some of them, and the irregularities, particularly in the case of the charred remains, could suggest the existence of a greater number of deceased."[127] In addition, according to the evidence in the case file, lists prepared by State personnel recorded between 159 and 325 survivors.[128]

105. Owing to the way in which the armed forces carried out the operation to take back the Palace of Justice, the Council of State, in proceedings instituted by the presumed victims in

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123 *Cf.* Judgment of the Superior Court of Bogota of January 30, 2012 (evidence file, folio 23388); Judgment of the 51st Criminal Court of the Bogota Circuit of April 28, 2011 (evidence file, folio 24569); Judgment of the Third Criminal Court of the Bogota Special Circuit of June 9, 2010 (evidence file, folio 23957); Report of the Truth Commission (evidence file, folio 176); Testimony of Ángela María Buitrago Ruíz during the public hearing on the merits in this case; Testimony of Julia Alba Navarrete Mosquera before the Prosecution Service of July 5, 2006 (evidence file, folio 14774), and Testimony of Pedro León Acosta Palacio of February 21, 1986, before the Special Commission (evidence file, folio 15266).

124 *Cf.* Report of the Truth Commission (evidence file, folio 176); Judgment of the Superior Court of Bogota of January 30, 2012 (evidence file, folio 23388); Testimony of Ángela María Buitrago Ruíz during the public hearing on the merits in this case; Judgment of the 51st Criminal Court of the Bogota Circuit of April 28, 2011 (evidence file, folio 24569); Testimony of Orlando Arrechea Ocoro before the Prosecution Service of July 18, 2007 (evidence file, folio 15220), and testimony of Orlando Arrechea Ocoro before the Special Commission of November 28, 1985 (evidence file, folios 1220 and 1221).

125 *Cf.* Report of the Truth Commission (evidence file, folio 176); Judgment of the Superior Court of Bogota of January 30, 2012 (evidence file, folios 23388 and 23403); Testimony of Ángela María Buitrago Ruíz during the public hearing on the merits in this case, and Judgment of the 51st Criminal Court of the Bogota Circuit of April 28, 2011 (evidence file, folio 24569).

126 *Cf.* Testimony of Carlos Bacigalupo during the public hearing on the merits in this case and notes written by this deponent (evidence file, folio 36326); expert opinion of Máximo Duque during the public hearing on the merits in this case and written report of this deponent (evidence file, folio 36423), and unnumbered note signed by Brigadier General José Luis Vargas Villegas, Commander, Bogota Police Department, reporting on the context and development of the events related to the taking of the Palace of Justice to the Director General of the Police (evidence file, folios 31463 to 31466).

127 In addition, based on the results of the exhumation procedures, the Report of the Truth Commission also concluded that "there is inconsistency between the information handed over by the Institute of Forensic Medicine and what was found in the grave." So that "the number of persons reported deceased is less than the real number, which could be more than 94 individuals." *Cf.* Report of the Truth Commission (evidence file, folios 202 to 207, 214, 247 and 248).

128 In this regard, the Court notes that there are different lists that record different numbers of survivors. A list attached to the Report of the Special Court records 244 survivors, while the text of the report indicates that 215 individuals survived. In addition, on the "List of Persons Liberated from the Palace of Justice," found during a judicial inspection of the B-2 of the 13th Brigade, 325 persons are recorded, and the Report of the AZ records 159 persons. Lastly, the report of the National Police lists 207 survivors. *Cf.* Report of the Special Investigative Court (evidence file, folios 664 to 666); Report of the AZ (merits file, folios 3437 to 3450); List of Persons Liberated from the Palace of Justice (evidence file, folios 38119 to 38132), and unnumbered note, National Police, Bogota Police Department, signed by Brigadier General José Luis Vargas Villegas, entitled "*Informe: toma 'Palacio de Justicia'*" (evidence file, folios 31468 to 31483).

this case as well as other persons, has repeatedly condemned the State (*infra* para. 216), considering that it incurred in a "service-related failure" because:

> The hasty, unconsidered and irresponsible way in which the Armed Forces quashed the taking of the Palace of Justice, leaving the judge with the depressing sensation of the insignificance of the lives of the victims in the skirmish, whose petitions, supplications, and lamentation were futile. Their captors, whose unjustifiable recklessness, supported by the State's negligence, led to the tragedy, were annihilated. But, at the same time, almost a hundred people were annihilated, including eleven justices of the Supreme Court and eight officials and employees of this body and of the Council of State. Moreover, 'to protect the institutions,' the judicial branch was de-institutionalized, generating appalling and justified fears among its members and a lack of confidence among the population with regard to the institutional strength of the judiciary, in a process of de-legitimization that has still not ended. The precipitate chain of circumstances, some distressing, others scandalous, all of them extremely serious, witnessed by the helpless population, has prevented a conscientious evaluation of the disastrous effects, at all levels, that the atrocious acts that are being tried here produced and continue to produce, the mere description of which horrifies the spirit and saddens the soul of a noble people such as the Colombians, contrary to any concept of civilization.[129]

C. The presumed victims in this case

106. Both parties and the Commission agree that Carlos Augusto Rodríguez Vera, Cristina del Pilar Guarín Cortés, David Suspes Celis, Bernardo Beltrán Hernández, Héctor Jaime Beltrán Fuentes, Gloria Stella Lizarazo Figueroa, Luz Mary Portela León, Norma Constanza Esguerra Forero, Lucy Amparo Oviedo Bonilla, Gloria Anzola de Lanao and Irma Franco Pineda (hereinafter also referred to as the "disappeared victims"), Ana Rosa Castiblanco Torres, Carlos Horacio Urán Rojas, Yolanda Santodomingo Albericci, Eduardo Matson Ospino and Orlando Quijano were in the Palace of Justice when it was taken by the M-19.[130] The Court also notes that it has no evidence to establish exactly where the presumed victims were in the building during the taking and retaking of the Palace of Justice. Even though the cafeteria was on the first floor, in the absence of additional evidence, this is not sufficient to assert that the presumed victims remained there; nevertheless, there is no evidence to affirm that they were on higher floors.

107. However, with the exception of the cases of Carlos Augusto Rodríguez Vera, Irma Franco Pineda, Yolanda Santodomingo Albericci and Eduardo Matson Ospino, the State contested the conclusions of the Commission and the representatives regarding what happened to each of these victims following the assault on the Palace of Justice. In this section, the Court will establish the facts concerning the situations that have not been contested, and decide the disputes regarding the forced disappearance of the other presumed victims and the alleged detention and torture of Orlando Quijano and José Vicente Rubiano Galvis in the respective chapters on the merits in this Judgment (*infra* Chapters IX and X). The Court will now establish the facts with regard to: (1) the forced disappearance of Carlos Augusto Rodríguez Vera and Irma Franco Pineda; (2) general information on the other presumed victims of forced disappearance; (3) the detention and torture of Yolanda Santodomingo Albericci and Eduardo Matson Ospino, and (4) general information on the other presumed victims of detention and torture.

C.1) The forced disappearance of Carlos Augusto Rodríguez Vera and Irma Franco Pineda

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[129] Judgment of the Council of State of July 24, 1997 (evidence file, folios 536 to 537). See, similarly, Judgment of the Council of State of October 13, 1994 (evidence file, folio 2942 and 2943), and Judgment of the Council of State of October 13, 1994 (evidence file, folio 3234 and 3235).

[130] Similarly, the second instance judgment against the Commander of the Cavalry School concluded that Carlos Augusto Rodríguez Vera, Cristina del Pilar Guarín Cortés, David Suspes Celis, Bernardo Beltrán Hernández, Héctor Jaime Beltrán Fuentes, Gloria Stella Lizarazo, Luz Mary Portela León, Norma Constanza Esguerra, Lucy Amparo Oviedo Bonilla, Gloria Anzola Mora de Lanao, Ana Rosa Castiblanco Torres and Irma Franco Pineda were in the Palace of Justice. *Cf.* Judgment of the Superior Court of Bogota of January 30, 2012 (evidence file, folios 22989, 23065, 23082, 23101, 23140, 23141, 23354, 23381, 23404 and 23437).

108. Carlos Augusto Rodríguez Vera was 29 years of age in 1985 and was married to Cecilia Cabrera Guerra, with whom he had a daughter. He was the manager of the cafeteria of the Palace of Justice and studied law at the Universidad Libre. On November 6, 1985, Mr. Rodríguez Vera left home early in the morning to work in the Palace cafeteria. At least one person saw him that morning in the cafeteria before the takeover began.[131]

109. Mr. Rodríguez Vera survived the taking and retaking of the Palace of Justice. According to the evidence in the case file, the State authorities suspected him of collaborating with the M-19 because he was the cafeteria manager (*infra* paras. 237 to 243). Thus, the case file contains the testimony of two people who assure that Carlos Augusto Rodríguez Vera exited the Palace of Justice and was taken to the Casa del Florero.[132] Furthermore, relatives or acquaintances have identified him in at least five videos of the events walking out alive in the custody of soldiers on November 7, 1985.[133] The family received information from individuals who saw Mr. Rodríguez Vera in the Casa del Florero[134] and advised that he was subsequently transferred to the North Canton.[135] This is consistent with the testimony of former members of the Army who confirm that he was taken to the Cavalry School, where there is information that he possibly died as a result of

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131 *Cf.* Registration of the birth of Carlos Augusto Rodriguez Vera (evidence file, folio 26368); Testimony of Enrique Alfonso Rodríguez Hernández of February 20, 2006, before the Prosecution Service (evidence file, folio 27882); Testimony of Cecilia Cabrera of July 21, 2006, before the Prosecution Service(evidence file, folios 27839 and 27840); Report of the Truth Commission (evidence file, folios 261, 262, 457 and 458), and Testimony of Julia Alba Navarrete Mosquera of January 13, 1986, before the Special Commission (evidence file, folio 14623).

132 *Cf.* Testimony of César Augusto Sánchez Cuestas before the Prosecution Service of September 19, 2007 (evidence file, folios 1104 and 1105); Testimony of César Augusto Sánchez Cuestas before the Prosecution Service of December 18, 2007 (evidence file, folio 27849), and brief of Ricardo Gámez Mazuera of August 1, 1989, notarized and addressed to the Attorney General (evidence file, folio 27964).

133 In 1986, on seeing one of the videos that showed people leaving the Palace of Justice, Enrique Alfonso Rodríguez Hernández stated that "the person who appears in the video is not [his] son," even though "initially [the family] was convinced that the image corresponded to [his] son." However, subsequently, in 2006, Mr. Rodríguez Hernández indicated that "each time I see it, I am more convinced that it could be my son." Also, Carlos Augusto's wife, Cecilia Cabrera, recognized him in three videos (one obtained during the inspection of the residence of the Commander of the Cavalry School, another handed over by Ana María Bidegain, and another obtained during an inspection in the Attorney General's office), and César Enrique Rodríguez Vera and René Guarín Cortés recognized him in the TVE video, and the latter also recognized him in another video marked "DVD 01" obtained from the Colombian Film Heritage Foundation (*Patrimonio Fílmico Colombiano)*. *Cf.* Identification procedure in films or video cassettes by some of the next of kin of the supposed disappeared on April 11, 1986, before the 27th Criminal Investigation Judge (evidence file, folio 30981); extract from the testimony of Enrique Alfonso Rodríguez Hernández of May 15, 2006, in the judgment of the Superior Court of Bogota of January 30, 2012 (evidence file, folio 23221); Testimony of César Enrique Rodríguez Vera of July 21, 2006, before the Prosecution Service (evidence file, folio 27813); Testimony of Cecilia Cabrera Guerra of August 16, 2007, before the Prosecution Service (evidence file, folio 27808); Testimony of René Guarín of July 26, 2006, before the Prosecution Service (evidence file, folio 27947). See also, the judgment of the Superior Court of Bogota of January 30, 2012 (evidence file, folios 23221 to 23234).

134 *Cf.* Extract from the testimony of Enrique Rodríguez Hernández of November 19, 1985, before the Attorney General's Office in the judgment of the Superior Court of Bogota of January 30, 2012 (evidence file, folio 23199); expansion of the complaint filed by Enrique Alfonso Rodríguez Hernandez on August 29, 2001 (evidence file, folio 1064), and Testimony of Enrique Alfonso Rodríguez Hernández of August 15, 1989, before the 26th Itinerant Criminal Investigation Court (evidence file, folio 27877). In addition, according to Carlos Augusto's father, Ariel Serrano Sánchez told him that he had seen a person with his son's characteristics in the Casa del Florero. However, Mr. Serrano Sánchez denied this. *Cf.* Testimony of Enrique Alfonso Rodríguez Hernández of December 6, 1985, before the Ninth Itinerant Criminal Investigation Court (evidence file, folio 27888), and Testimony of Carlos Ariel Serrano Sánchez of March 1, 2007, before the Prosecution Service (evidence file, folio 27822).

135 *Cf.* Expansion of the complaint filed by Enrique Alfonso Rodríguez Hernandez on August 29, 2001 (evidence file, folio 1064); Testimony of Enrique Alfonso Rodríguez Hernández of August 15, 1989, before the 26th Itinerant Criminal Investigation Court (evidence file, folios 27877 and 27878), and Testimony of Enrique Alfonso Rodríguez Hernández of February 20, 2006, before the Prosecution Service (evidence file, folio 27883).

the torture to which he was subjected while he was detained.[136] However, the whereabouts of Mr. Rodríguez Vera or of his remains are still unknown today.

110. Carlos Augusto Rodríguez Vera's family members went to the Palace of Justice during the evening of November 6 to look for him, without success. In addition, immediately after the events of the taking and retaking of the Palace of Justice, they went to the Institute of Forensic Medicine where they examined the corpses there. They also visited hospitals and clinics; they went to the Colombian Army's 13th National Brigade (hereinafter "the 13th Brigade"), to the Cavalry School, to the offices of the National Police, the Administrative Department of Security (hereinafter "the DAS"), and to the F-2 looking for him, without success.[137]

111. Irma Franco Pineda was 28 years of age in 1985 and was a law student. On November 6, 1985, she was in the Palace of Justice, as part of the M-19.[138] In the final moments of the retaking of the Palace she was in the bathroom between the second and third floors, where she changed her clothes with those of someone who had died and left with a group of hostages.[139] In the Casa del Florero she was identified by several survivors as a member of the M-19, and was therefore considered a suspect by the State authorities. Accordingly, she was taken to the second floor of the Casa del Florero and, according to the caretaker of the Casa del Florero, "between 7 and 8 p.m. on the evening of [November] 7, under strict security measures," "she was placed in a four-wheel drive vehicle," and to date her whereabouts are unknown.[140]

112. After the operation to retake the Palace of Justice had concluded, her next of kin went to the police, the DAS, and the Cavalry School where she was being held according to the information they had received, but without success (*infra* para. 261).[141]

C.2) The other presumed victims of forced disappearance

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136 *Cf.* Undated statement signed by Edgar Villarreal, which is attributed to Edgar Villamizar (evidence file, folio 22770), and brief of Ricardo Gámez Mazuera of August 1, 1989, notarized and addressed to the Attorney General (evidence file, folios 29084 to 29087). See also, Judgment of the Superior Court of Bogota of January 30, 2012 (evidence file, folios 23271 and 23272). The considerations on the validity of these statements are included in Chapter IX of this Judgment.

137 *Cf.* Testimony of Cecilia Cabrera of July 21, 2006, before the Prosecution Service (evidence file, folio 27841); Testimony of César Rodríguez Vera of November 11, 1986, before the Inspectorate of the Office of the Special Attorney's assigned to the Military Forces (evidence file, folio 27867); Testimony of César Rodríguez Vera of January 18, 1986, before the Ninth Military Criminal Instruction Court (evidence file, folio 27863), and Testimony of César Enrique Rodríguez Vera of July 21, 2006, before the Prosecution Service (evidence file, folio 27812).

138 *Cf.* Judgment of the Second Criminal Court of the Bogota Special Circuit of April 2, 2013 (evidence file, folios 34944, 35120 and 35121); registration of the birth of Irma Franco Pineda (evidence file, folio 27562), and Testimony of Jorge Eliécer Franco Pineda of August 14, 2006, before the Prosecution Service (evidence file, folio 28981).

139 *Cf.* Testimony of Magalis María Arévalo Mejía of November 29, 1985, before the Commission investigating the taking of the Palace of Justice (evidence file, folios 29035 and 29036), and Testimony of Héctor Darío Correa Tamayo of December 5, 1985, before the Special Commission (evidence file, folio 29019).

140 *Cf.* Testimony of Edgar Alfonso Moreno Figueroa of September 11, 2006, before the Prosecution Service (evidence file, folio 28998); Testimony of Magalis María Arévalo Mejía of November 29, 1985, before the Special Commission (evidence file, folio 29042); Testimony of Jose William Órtis of December 6, 1985, before the Special Commission (evidence file, folio 28991); Continuation of the Testimony of Magalis María Arévalo Mejía of December 2, 1985 (evidence file, folios 15256 and 15257); Testimony of Francisco César de la Cruz Lara of December 18, 1985, before the Special Commission (evidence file, folio 1135); Testimony of Héctor Dario Correa Tamayo of December 5, 1985, before the Special Commission (evidence file, folio 29027); Judgment of the Superior Court of Bogota of January 30, 2012 (evidence file, folios 23076 and 23077), and Report of the Special Investigative Court (evidence file, folio 30540).

141 *Cf.* Testimony of August 14, 2006, provided by Jorge Eliécer Franco Pineda (evidence file, folios 28982 and 28983).

113. As mentioned previously, there is no dispute between the parties as regards the presence of all these persons in the Palace of Justice at the time of the attack by the M-19 (*supra* para. 106). However, with the exception of Ana Rosa Castiblanco Torres and Carlos Horacio Urán Rojas (*infra* paras. 133 and 136), none of them appeared among the survivors of the Palace of Justice and their remains have not been identified among the corpses retrieved from the events of the Palace of Justice; hence their fate remains unknown.

C.2.a) Cristina del Pilar Guarín Cortés[142]

114. Cristina del Pilar Guarín Cortés was 26 years of age in 1985 and had a degree in social science. At the time of the events she was working on a temporary basis as a cashier in the Palace of Justice cafeteria, replacing Carlos Augusto Rodríguez Vera's wife, who had been on maternity leave since October 1985. On November 6, 1985, Ms. Guarín Cortés left her home at 9 a.m. to go to work. Her diary and the umbrella she was carrying that day were found among the debris of the Palace of Justice.

115. On the evening of November 7, the father of Cristina del Pilar Guarín Cortés entered the Palace of Justice to look for his daughter. Her family also looked for her in the Institute of Forensic Medicine, the Military Hospital, police stations, and the 13th Brigade, and they also approached the Presidency of the Republic, without obtaining information on her whereabouts. Also, over the following days, they went to military facilities in one of which a colonel allegedly told them that "it was very suspicious that [Ms. Guarín Cortés] was […] working as a cashier when she had a university degree." Subsequently, the next of kin have contacted different ministries and Presidents of the Republic, without obtaining information.

C.2.b) David Suspes Celis[143]

116. David Suspes Celis was 26 years old in 1985; he lived with his companion, Luz Dary Samper Bedoya, with whom he had a daughter, and he worked as a chef in the Palace of Justice cafeteria. On November 6, 1985, he left home at around 8 a.m. to go to work.

117. Following the events, his family looked for him in hospitals, the Institute of Forensic Medicine, the 13th Brigade, the Military Institutes Brigade, and the DAS offices, among other places, without obtaining any results.

C.2.c) Bernardo Beltrán Hernández[144]

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142 The evidence relating to this victim can be found in: birth registration of Cristina del Pilar Guarín Cortés (evidence file, folio 26208); Testimony of Cecilia Cabrera of August 16, 2007, before the Prosecution Service (evidence file, folio 1059); Testimony of Cecilia Cabrera of July 21, 2006, before the Prosecution Service (evidence file, folio 27840); Testimony of José María Guarín Ortiz of January 20, 1986, before the Ninth Criminal Investigation Court (evidence file, folios 28056 and 28057); Testimony of Carlos Leopoldo Guarín Cortés of November 12, 1986, before the Inspectorate of the Office of the Special Attorney assigned to the Military Forces (evidence file, folio 28018); Testimony of Elsa María Osorio de Acosta of January 3, 1986, before the Prosecution Service (evidence file, folio 28024); expansion of the criminal complaint on August 29, 2001, by Elsa María Osorio de Acosta (evidence file, folios 28001 and 28002); Testimony of René Guarín Cortés of September 5, 2006, before the Prosecution Service (evidence file, folio 28072); Affidavit made by René Guarín Cortés on November 6, 2013 (evidence file, folios 35745, 35746 and 35747), and Testimony of Elsa María Osorio de Acosta of July 26, 2006, before the Prosecution Service (evidence file, folio 28025).

143 The evidence relating to this victim can be found in: Testimony of Myriam Suspes Celis of June 8, 2012, before the 71st notary of the Bogota Circuit (evidence file, folio 27335); expansion of the complaint on August 29, 2001, by María del Carmen Celis de Suspes (evidence file, folio 1125); Testimony of Luz Dary Samper Bedoya of November 10, 1986, before the Inspectorate of the Office of the Special Attorney's assigned to the Military Forces (evidence file, folio 28274); birth registration of David Suspes Celis (evidence file, folio 27248); affidavit made by Ludy Esmeralda Suspes Samper on November 5, 2013 (evidence file, folio 35642); Testimony of Luz Dary Samper Bedoya of December 21, 1985, before the Ninth Itinerant Criminal Investigation Court of Bogota (evidence file, folios 28245 and 28246), and Testimony of Myriam Suspes Celis of April 8, 1986, before the 27th Itinerant Criminal Investigation Court of Bogota (evidence file, folio 28263).

144 The evidence relating to this victim can be found in: Testimony of Bernardo Beltrán Monroy of August 25, 2006, before the Prosecution Service (evidence file, folio 29283); Testimony of Fabio Beltrán Hernández of July 13, 2012, before the 71st notary of the Bogota Circuit (evidence file, folio 27413); Report of the Truth Commission (evidence

118. Bernardo Beltrán Hernández was 24 years old in 1985 and worked as a waiter in the Palace of Justice cafeteria. On November 6, 1985, Bernardo Beltrán Hernández left home at around 7.20 a.m. to go to work.

119. Following the events, his family went to the Palace of Justice to identify the body of Mr. Beltrán Hernández among the corpses. They then looked for him in hospitals, the Institute of Forensic Medicine, and the 13th Brigade, without obtaining information on his fate.

C.2.d) Héctor Jaime Beltrán Fuentes[145]

120. Héctor Jaime Beltrán Fuentes was 28 years old in 1985; he was married to María del Pilar Navarrete Urrea, with whom he had four daughters, and he worked as a waiter at the Palace of Justice cafeteria. On November 6, 1985, he left home at 6 a.m. to go to work. At 11 a.m. his wife called him, but he did not answer. His brother found Mr. Beltrán Fuentes' identity document in the cafeteria when he entered the Palace of Justice after it had been retaken.

121. Mr. Beltrán Fuentes' brother, who worked in the DAS, went to the Casa del Florero to look for his brother on both November 6 and 7 (*infra* para. 263). On the evening of November 6, his father approached the Palace of Justice and asked those who were outside the Casa del Florero about the cafeteria employees and he was allegedly told that "they were taken out alive and [were being held] in the Casa del Florero." Following the events, the family of Héctor Jaime Beltrán Fuentes looked for him in the Institute of Forensic Medicine, hospitals, clinics and military facilities, including the Cavalry School and other places where it was rumored that the survivors of the Palace of Justice had been taken.

C.2.e) Gloria Stella Lizarazo Figueroa[146]

122. Gloria Stella Lizarazo Figueroa was 31 years of age in 1985; she lived with Luis Carlos Ospina and had three daughters and one son. She worked in the self-service section of the Palace of Justice cafeteria. On November 6, 1985, it was she who opened the cafeteria in the morning.

123. Following the events, her family members approached the Palace of Justice and looked for her in hospitals, clinics, the Cavalry School, the 13th Brigade, the DAS, the Sacromonte caves and the Ministry of Justice, but obtained no information about her whereabouts. According to a statement made by Luis Carlos Ospina, on one occasion, "three or four days after the events," a soldier at the Cavalry School told him that people had been brought

file, folios 454 and 456); birth registration of Bernardo Beltrán Hernández (evidence file, folio 27395); expansion of the complaint of Bernardo Beltrán Monroy on August 29, 2001 (evidence file, folio 1115); Testimony of Omaira Beltrán de Bohórquez of August 25, 2006, before the Prosecution Service (evidence file, folio 29378), and unsworn statement of Fabio Beltrán Hernández of November 5, 2013 (evidence file, folio 35690).

[145] The evidence relating to this victim can be found in: Testimony of Héctor Jaime Beltrán of June 15, 2012, before the first notary of the Soacha Circuit, Cundinamarca (evidence file, folio 27386); Testimony of María del Pilar Navarrete of June 12, 2012, before the 54th notary of the Bogota Circuit (evidence file, folio 27390); expansion of the complaint on August 29, 2001, of María del Pilar Navarrete Urrea (evidence file, folio 28888); birth registration of Evelyn Beltrán Navarrete (evidence file, folio 27347); expansion of the criminal complaint of Héctor Jaime Beltrán on August 29, 2001 (evidence file, folio 1121); Testimony of Mario David Beltrán Fuentes of April 10, 2006, before the Prosecution Service (evidence file, folios 28935, 28936 and 28937), and Testimony of Héctor Jaime Beltrán of February 20, 2006, before the Prosecution Service (evidence file, folio 28897).

[146] The evidence relating to this victim can be found in: Testimony of Marixa Casallas Lizarazo of June 13, 2012, before the 71st notary of the Bogota Circuit (evidence file, folios 26363 and 26364); Testimony of Luis Carlos Ospina Arias of December 10, 2007, before the Prosecution Service (evidence file, folios 27933, 27934 and 27939); ten-print fingerprint record of Gloria Stella Lizarazo (evidence file, folio 28007); Testimony of Cecilia Cabrera of August 16, 2007, before the Prosecution Service (evidence file, folio 29556); Testimony of Lira Rosa Lizarazo of December 12, 1985, before the Ninth Itinerant Criminal Investigation Court of Bogota (evidence file, folio 29541); affidavit made by Deyamira Lizarazo on November 6, 2013 (evidence file, folio 35711).

there from the Palace of Justice. However, the soldier could not tell him whether his wife was among those taken to the School.

C.2.f) Luz Mary Portela León[147]

124. Luz Mary Portela León was 24 years of age in 1985; she worked as a dishwasher in the Palace of Justice cafeteria replacing her mother, Rosalbina León, who had been on sick leave since October 29, 1985. On November 6, 1985, Luz Mary Portela León left home at 6 a.m. to go to work.

125. Following the events, her family looked for her in the Casa del Florero, the Cavalry School, the Institute of Forensic Medicine and the DAS offices, among other places, without obtaining any information about her fate.

C.2.g) Norma Constanza Esguerra Forero[148]

126. Norma Constanza Esguerra Forero was 29 years of age in 1985 and, at the time of the events, she worked selling pastries in different places, including the Palace of Justice. On November 6, Ms. Esguerra Forero took pastries to the Senate cafeteria, after which she went to make a delivery to the Palace of Justice cafeteria, entering the building before the start of the attack by the M-19. That day she was making deliveries accompanied by her sister, Martha Amparo Peña Forero, who remained waiting in the car, which was parked in front of the Cathedral, and who saw her enter the Palace of Justice.

127. On November 9, her family entered the cafeteria of the Palace of Justice and found several of her belongings on the counter, including "her wallet […], but the contents had been taken." The family also looked for her in hospitals and her mother went to the North Canton to look for her, without obtaining information on her fate.

C.2.h) Lucy Amparo Oviedo Bonilla[149]

128. Lucy Amparo Oviedo Bonilla was 25 years of age in 1985; she was married to Jairo Arias Mendez, she had two children, she worked in a handicraft shop and she was going to study law. On November 6, 1985, Ms. Oviedo Bonilla left home at 9.30 a.m. and had a work interview with Justice Raúl Trujillo near the Palace of Justice. The family supposes "that

[147] The evidence relating to this victim can be found in: Testimony of Rosa Milena Cárdenas León of June 9, 2012, before the 71st notary of the Bogota Circuit (evidence file, folios 27551 and 27552); Testimony of Rosalbina León of December 12, 1985, before the Ninth Itinerant Criminal Investigation Court of Bogota (evidence file, folios 29901 and 29902); ten-print fingerprint record of Luz Mary Portela León (evidence file, folio 28008), and Testimony of José Esteban Cárdenas Martínez of January 2, 1986, before the Ninth Itinerant Criminal Investigation Court of Bogota (evidence file, folio 29905).

[148] The evidence relating to this victim can be found in: birth registration of Norma Constanza Esguerra (evidence file, folio 27416); Testimony of Elvira Forero de Esguerra of December 20, 1985, before the Ninth Itinerant Criminal Investigation Court of Bogota (evidence file, folios 29342, 29343 and 29344); Testimony of Ricardo Esguerra of December 16, 1985, before the Ninth Itinerant Criminal Investigation Court of Bogota (evidence file, folios 30391, 30392 and 30393); expansion of the testimony of Elvira Forero de Esguerra of February 17, 1988, before the 30th Criminal Investigation Court (evidence file, folio 30287 to 30290); affidavit made by Martha Amparo Peña Forero on November 2, 2013 (evidence file, folio 35547), and Judgment of the Superior Court of Bogota of January 30, 2012 (evidence file, folio 23082).

[149] The evidence relating to this victim can be found in: testimony of Damaris Oviedo of June 14, 2012, before the 71st notary of the Bogota Circuit (evidence file, folios 27522, 27523 and 27525); Testimony of Ana María Bonilla de Oviedo of April 2, 1986, before the 27th Itinerant Criminal Investigation Court of Bogota (evidence file, folios 30969 and 30970); Testimony of Jairo Arias Mendez of December 19, 1985, before the Ninth Itinerant Criminal Investigation Court of Bogota (evidence file, folios 29623 and 29629); birth registration of Lucy Amparo Oviedo Bonilla (evidence file, folio 27474); letter of Rafael María Oviedo Acevedo and Ana María Bonilla de Oviedo of December 3, 1985 (evidence file, folio 29663); Testimony of Damaris Oviedo Bonilla of July 25, 2006, before the Prosecution Service (evidence file, folios 29597 and 29598); Testimony of Ana María Bonilla de Oviedo of April 2, 1986, before the 30th Itinerant Criminal Investigation Court of Bogota (evidence file, folios 30970 and 30971), and Testimony of Armida Eufemia Oviedo Bonilla of July 24, 2008, before the Prosecution Service (evidence file, folio 29572).

when she left […] Justice Trujillo's office, as she was so near the Palace of Justice, [she went] to talk to Justice [Reyes Echandía] or to his secretary [Herminda Narváez] to seek their help in obtaining the job for which she was applying." However, this supposition could not be confirmed by Herminda Narváez, who left the Palace of Justice before the attack on the building began, and did not see Ms. Oviedo Bonilla.

129. Following the events, her family looked for her in the Institute of Forensic Medicine, hospitals, cemeteries, and the Charry Solano Battalion, and in the Bogota network of hospitals, and requested the help of the media and of senators of the Republic, without obtaining information on her fate.

C.2.i) Gloria Anzola de Lanao[150]

130. Gloria Anzola de Lanao was 33 years of age in 1985; she was a lawyer and was married to Francisco José Lanao Ayarza, with whom she had a son. Her office was near the Palace of Justice and, as her aunt was a justice of the Council of State, she used to park her car in the Palace of Justice. On November 6, 1985, at 10.50 a.m., she left her son in his kindergarten in the center of Bogota and parked her car in the Palace of Justice, where she was when the attack by the M-19 began. Her car was found "parked in the place that [she generally used in the first basement of the Palace of Justice] and it had not suffered any damage at all." Ms. Anzola de Lanao had a lunch appointment that day, which she did not attend.

131. Following the events, her family went to the Palace of Justice and looked for her among the rubble and the corpses that were in the Palace of Justice and in the Institute of Forensic Medicine, unsuccessfully. They also looked for her in the 13th Brigade and the Cavalry School, but obtained no information on her fate.

C.2.j) Ana Rosa Castiblanco Torres[151]

132. Ana Rosa Castiblanco Torres was 31 years of age in 1985 and worked as an assistant chef of the Palace of Justice cafeteria. At the time of the events, she was seven months pregnant. On November 6, 1985, Ms. Castiblanco Torres left home at 5 a.m. to go to the Palace cafeteria.

133. Following the events, her family went to the Institute of Forensic Medicine, hospitals and police stations, without obtaining any information on her fate. They also went to the 13th Brigade and to a women's prison, but they were told that there were no detainees

[150] The evidence relating to this victim can be found in: Testimony of Francisco José Lanao Ayarza of February 12, 2008, before the Prosecution Service (evidence file, folios 29951, 29952 and 29953); Testimony of Francisco José Lanao Ayarza of February 18, 1986, before the Ninth Court of Criminal Investigation of Bogota (evidence file, folios 29957 and 299959); certification of Gloria Anzola Mora de Lanao (evidence file, folio 27448); Testimony of Oscar Anzola Mora of February 3, 1986, before the Ninth Itinerant Criminal Investigation Court of Bogota (evidence file, folio 30001); Testimony of Oscar Enrique Anzola Mora of February 12, 2008, before the Prosecution Service (evidence file, folios 1128 and 1129); Testimony of María de Jesús Triana Silva of February 19, 1986, before the Ninth Itinerant Criminal Investigation Court of Bogota (evidence file, folio 29992); Testimony of María Bibiana Mora de Anzola of February 17, 1986, before the Ninth Itinerant Criminal Investigation Court of Bogota (evidence file, folio 29997); Testimony of María Consuelo Anzola of January 3, 1985, before the Ninth Itinerant Criminal Investigation Court of Bogota (evidence file, folio 31002); Testimony of María Consuelo Anzola of June 22, 2012, before the second notary of Chía, Cundinamarca (evidence file, folio 27468), and expansion of the testimony of Consuelo Anzola Mora of February 25, 1986, before the Ninth Itinerant Criminal Investigation Court of Bogota (evidence file, folio 29940).

[151] The evidence relating to this victim can be found in: Testimony of Ana Lucía Castiblanco Torres of April 14, 1986, before the 27th Itinerant Criminal Investigation Court of Bogota (evidence file, folios 28435 and 28436); Testimony of María del Carmen Castiblanco of April 10, 1986, before the 27th Itinerant Criminal Investigation Court of Bogota (evidence file, folios 28527, 28528 and 28529); Testimony of Ana Lucía Castiblanco Torres of January 1986, before the Ninth Itinerant Criminal Investigation Court of Bogota (evidence file, folio 28437); ten-print fingerprint record of Ana Rosa Castiblanco Torres (evidence file, folio 28013); expansion of the testimony of María del Carmen Castiblanco of February 10, 1988, before the 30th Itinerant Criminal Investigation Court of Bogota (evidence file, folio 28531), and record of return of the remains of Ana Rosa Castiblanco Torres of November 2, 2001 (evidence file, folio 1202).

there from the events of the Palace of Justice. In November 2001, the body of Ms. Castiblanco Torres was identified among the remains that were exhumed from the mass grave of the South Cemetery and, following DNA testing, it was returned to her family (*infra* para. 318).

C.2.k) Carlos Horacio Urán Rojas

134. Carlos Horacio Urán Rojas was 43 years of age in 1985 and was married to Ana María Bidegain, with whom he had four daughters. He worked as an Auxiliary Justice of the Council of State and was pursuing doctoral studies at the University of Paris.[152] On November 6, 1985, Carlos Horacio Urán Rojas was in the Palace of Justice. His wife spoke to him by telephone several times that day and in the evening he told her that "there was smoke but that he was uninjured."[153]

135. On November 7, the family were told that Mr. Urán Rojas had left the Palace of Justice injured but alive (*infra* paras. 336 and 338). Following this information, the next of kin and friends of Carlos Horacio Urán Rojas looked for him in the Military Hospital, and the Vice Minister of Health at the time "made inquiries in all the city's clinics and hospitals but could not find him."[154] Furthermore, according to Ms. Bidegain, she met with a general to show him a video showing the moment when Mr. Urán Rojas left the Palace of Justice (*infra* para. 338).

136. During the evening of November 8, a friend of Carlos Horacio Urán Rojas identified his body in the "room for the members of the guerrilla" in the Institute of Forensic Medicine. The identification of the body was ratified by Victor Manuel Urán, the nephew of Mr. Urán Rojas, and was therefore returned to his family.[155] The State alleges that Carlos Horacio Urán Rojas died in the Palace of Justice. The different theories about what happened to Mr. Urán Rojas will be analyzed in Chapter IX of this Judgment.

C.3) The detention and torture of Yolanda Santodomingo Albericci and Eduardo Matson Ospino

137. Yolanda Santodomingo Albericci[156] and Eduardo Matson Ospino[157] were 22 and 21 years of age in 1985 and were law students at the Universidad del Externado. On November 6, 1985, they both went to the Palace of Justice so that Ms. Santodomingo Albericci could take an examination on criminal practice with a professor who was a justice and so that Mr. Matson Ospino could research an assignment.[158] They both indicated that they entered the

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[152] *Cf.* Testimony of Ana María Bidegain before the Prosecution Service on August 16, 2007 (evidence file, folio 14600); Testimony of Ana María Bidegain during the public hearing on the merits in this case, and Testimony of Julia Alba Navarrete of October 15, 2010, before the Sixth Office of the National Human Rights and International Humanitarian Law Unit (evidence file, folio 14705).

[153] *Cf.* Testimony of Ana María Bidegain of November 14, 1985, before the Second Special Court of Bogota, D.C. (evidence file, folio 30594); Testimony of Víctor Manuel Uribe Urán of March 5, 2007, before the Prosecution Service (evidence file, folio 9516); Testimony of Ana María Bidegain of February 22, 2007, before the Prosecution Service (evidence file, folio 14606), and Testimony of Germán Castro Caycedo of April 2, 2012, before the 35th notary of the Bogota Circuit (evidence file, folio 14684).

[154] *Cf.* Testimony of Ana María Bidegain during the public hearing on the merits in this case, and affidavit made by Teresa Morales de Gómez on May 11, 2012 (evidence file, folio 14691).

[155] *Cf.* Testimony provided by Luz Helena Sánchez Gómez before the Prosecution Service on August 16, 2007 (evidence file, folios 14636 and 14637); record of corpse identification (evidence file, folio 20179); Testimony of Ana María Bidegain during the public hearing on the merits in this case, and Testimony of Ana María Bidegain of February 22, 2007, before the Prosecution Service (evidence file, folio 1295).

[156] Ms. Santodomingo Albericci now has a son and a daughter.

[157] At the time of the events, Mr. Matson Ospino had a permanent companion with whom he had a son and, actually, he is married to Yusetis Barrios Yepes, with whom he has a daughter and a son.

[158] *Cf.* Birth registrations of Yolanda Santodomingo Albericci and Eduardo Matson Ospino (evidence file, folio 27680

Palace of Justice at around 11 a.m. and were on their way to the cafeteria when the taking of the Palace of Justice by the M-19 began.[159]

138. Yolanda Santodomingo Albericci and Eduardo Matson Ospino survived the events of the taking and retaking of the Palace of Justice and left the Palace on November 6, 1985, accompanied by members of the security forces. The State authorities "presumed they had participated in the taking of the Palace of Justice"; thus, after being evacuated, they were taken to the second floor of the Casa del Florero, where they were subjected to lengthy interrogations during which they were beaten and ill-treated.[160] According to the domestic courts, the Army officials did not include them on all the lists of survivors (*infra* para. 245).

139. After the Casa del Florero, they were taken to the offices of the Directorate of the Judicial and Investigative Police (DIJIN), where they were subjected to a test with paraffin wax on their hands, known as the "gauntlet" test, to verify whether they had fired a weapon, with what they both described as "the hottest paraffin wax in the world." According to Mr. Matson Ospino, the agents gave instructions to "pour even hotter wax on them."[161] Finally, they were transferred to the Charry Solano Battalion, blindfolded and handcuffed there they were separated and once again they were subjected to physical and mental abuse while they were interrogated to make them "collaborate."[162]

140. Eduardo Matson Ospino "stressed that he had friends whose parents were members of Congress or well-known people," mentioning General Miguel Maza Márquez, and his uncle, the Governor of Bolivar. According to Mr. Matson Ospino, after this, the agents returned and apologized to him; they told him that "it had all been a mistake and that there was no

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and 27711); Testimony of Eduardo Matson of April 11, 1986, before the 77th Criminal Investigation Court Bogota (evidence file, folios 30781 and 30782); Testimony of Eduardo Arturo Matson Ospino of April 10, 2006, before the Prosecution Service (evidence file, folios 1212 and 1213); Testimony of Yolanda Santodomingo of February 7, 1986, before the 41st Criminal Investigation Court of Bogota (evidence file, folios 14966 and 14967); Testimony provided by Yolanda Santodomingo before the Prosecution Service on August 1, 2006 (evidence file, folios 1011 and 1012); Testimony of Yolanda Santodomingo Albericci of December 2, 1985, before the Attorney General's office (evidence file, folio 14551); Affidavit made on November 5, 2013, by Eduardo Arturo Matson Ospino (evidence file, folio 37522); Affidavit made on November 5, 2013, by Yusetis Barrios Yepes (evidence file, folio 35725), and Affidavit made on November 5, 2013, by Ángela María Ramos Santodomingo (evidence file, folio 35814).

[159] Yolanda Santodomingo Albericci indicated that: "we heard a loud noise […] and I saw that Eduardo appeared stunned, looking towards the back of the cafeteria, looking at a woman who, at that moment, we did not know who it was, or what was happening; who was pointing a gun with her arms stretched out; who shouted at us not to move." Eduardo Matson Ospino stated that, in response to this, he took Yolanda Santodomingo Albericci's hand and told her to run, and he ran in the direction of the stairs leading to the second floor. He indicated that, on the way, someone fired at them and when they reached the second floor they lay down close to the wall. Then, according to Yolanda Santodomingo Albericci, a man approached them who said he was a member of the M-19 guerrilla, and he told them to stay where they were because the guerrilla was taking the Palace of Justice. *Cf.* Testimony of Yolanda Santodomingo Albericci of August 1, 2006, before the Prosecution Service (evidence file, folios 1013 and 1014), and Testimony of Eduardo Matson Ospino of April 10, 2006, before the Prosecution Service (evidence file, folio 1213).

[160] Their departure was recorded in a photograph where people can be seen leaving the Palace of Justice accompanied by the security forces. *Cf.* Judgment of the Third Criminal Court of the Bogota Special Circuit of June 9, 2010 (evidence file, folios 23955 and 23957); Note of the DIJIN of November 14, 1985 (evidence file, folio 18793); Testimony of Yolanda Santodomingo Albericci of August 1, 2006, before the Prosecution Service (evidence file, folios 1017 and 1020); Testimony of Yolanda Santodomingo Albericci during the public hearing on the merits in this case, and photograph provided by Yolanda Santodomingo Albericci in August 2006 (evidence file, folio 23818).

[161] *Cf.* Testimony of Yolanda Santodomingo Albericci during the public hearing on the merits in this case; Testimony of Eduardo Matson Ospino of April 10, 2006, before the Prosecution Service (evidence file, folio 1215); Report of the Truth Commission (evidence file, folio 180), and affidavit made on November 5, 2011, by Eduardo Matson Ospino (evidence file, folio 35717).

[162] *Cf.* Testimony of Yolanda Santodomingo Albericci of August 1, 2006, before the Prosecution Service (evidence file, folios 1022 and 1023); Testimony of Yolanda Santodomingo Albericci during the public hearing on the merits in this case; Testimony of Eduardo Arturo Matson Ospino of April 10, 2006, before the Prosecution Service (evidence file, folio 1215); affidavit made on November 5, 2011, by Eduardo Matson Ospino (evidence file, folio 35717), and Report of the Truth Commission (evidence file, folio 180).

problem."[163] Similarly, Ms. Santodomingo Albericci has testified that, when they released her, they told her; "you understand [that] you were retained, it never occurred to us to do anything. They repeatedly mentioned that [they had been] retained, never detained [… and] they apologized profusely." On November 7, 1985, they were released in the center of Bogota in a sector known as San Victorino, where they were picked up by a taxi driven by Marlio Quintero Pastrana, who was a member of the intelligence network of the Charry Solano Battalion.[164]

141. On November 8, Yolanda Santodomingo Albericci and Eduardo Matson Ospino went to the North Canton offices to obtain the return of their documents, but no one would receive them on that occasion. The following week they attended a meeting in the offices of the Ministry of Defense, coordinated by Mr. Matson Ospino and his father through the office of the Governor of Bolivar. Two generals attended the meeting, apologized for the treatment they had received, and returned their documents to them.[165]

C.4) The other presumed victims of detention and torture

C.4.a) Orlando Quijano[166]

142. Orlando Quijano[167] was 31 years of age in 1985. He is a lawyer and, at the time of the events, he wrote and edited a journal on the jurisprudence of the high courts and was therefore a frequent visitor to the Palace of Justice. On November 6 he was inside the Palace of Justice, specifically in the Secretariat of the Criminal Chamber. He survived the events of the taking and retaking of the Palace of Justice. He left the building on November 6, 1985, and was taken to the second floor of the Casa del Florero, where he was interrogated and presumably subjected to ill-treatment by the security forces. He was then taken to the North Canton, where he was searched and presumably interrogated and again subjected to ill-treatment, after which he was taken to the SIJIN, where he remained until November 8, when he was released. Since the facts relating to this victim are disputed, they will be examined in Chapter X of this Judgment.

C.4.b) José Vicente Rubiano Galvis

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163 *Cf.* Testimony of Eduardo Matson Ospino of April 10, 2006, before the Prosecution Service (evidence file, folio 1215), and affidavit made on November 5, 2011, by Eduardo Matson Ospino (evidence file, folio 35718).

164 *Cf.* Testimony provided by Yolanda Santodomingo before the Prosecution Service on August 1, 2006 (evidence file, folios 1023 and 1024); Testimony of Marlio Quintero Pastrana cited in the judgment of the 51st Criminal Court of the Bogota Circuit of April 28, 2011 (evidence file, folio 24462); Testimony of Marlio Quintero Pastrana of June 17, 2008, before the Prosecution Service (evidence file, folios 14574 and 14575), and Testimony of Marlio Quintero Pastrana of April 6, 2010, before the Second Criminal Judge of the Neiva Circuit (evidence file, folios 21469 and 21496).

165 *Cf.* Testimony of Eduardo Arturo Matson Ospino of April 10, 2006, before the Prosecution Service (evidence file, folio 1216), and Testimony of Yolanda Santodomingo Albericci of February 7, 1986, before the 41st Criminal Investigation Court of Bogota (evidence file, folio 14973).

166 *Cf.* Testimony of Orlando Quijano of June 2, 2006, before the Prosecution Service (evidence file, folios 1263 and 1264); birth registration of Orlando Quijano (evidence file, folio 27762); Testimony of Orlando Quijano of January 8, 1986, before the 41st Itinerant Criminal Investigation Court (evidence file, folios 24124 and 24128); spontaneous testimony provided by Orlando Quijano on June 15, 2012, before the third notary of Bogota (evidence file, folio 14994); Article by Orlando Quijano in "*El Derecho del Derecho,*" 1986 (evidence file, folio 15990); Testimony of Orlando Arrechea Ocoro of July 18, 2007, before the Prosecution Service (evidence file, folio 15216); Testimony of Pedro León Acosta Palacio, employee of the Casa del Florero, of February 21, 1986, before the 30th Itinerant Criminal Investigation Court (evidence file, folio 15266); release order of November 8, 1985 (evidence file, folio 20171); Report of the Truth Commission (evidence file, folios 180 to 182), and Judgment of the Superior Court of Bogota of January 30, 2012 (evidence file, folio 23354).

167 At the time of the events, he had a permanent companion with whom he had a son; he now lives with Luz Marina Cifuentes, with whom he has a daughter and a son.

143. José Vicente Rubiano Galvis[168] was 26 years of age in 1985 and worked in construction, but at the time of the events he was on sick leave. According to Mr. Rubiano Galvis, on November 7, 1985, he was traveling by bus with a colleague, when the bus was detained at a military checkpoint in the municipality of Zipaquirá, on the outskirts of Bogota. The soldiers presumably found weapons on the bus (two revolvers and one pistol) and therefore detained José Vicente Rubiano Galvis and two other individuals accusing them of being subversives and that they had taken weapons into the Palace of Justice.[169]

144. According to the testimony of Mr. Rubiano Galvis, they were taken from the military checkpoint to the Zipaquirá base, where they were presumably ill-treated (including being beaten and subjected to electric shocks). From the Zipaquirá base they were transferred to "Usaquén" in Bogota, where they were again allegedly subjected to torture and ill-treatment so that they would presumably "say where the weapons were and that [they had participated in the taking of the Palace of Justice]." According to the testimony of Mr. Rubiano Galvis, they remained in the stables until the morning of November 8, 1985, when they were taken to the No. 13 Military Police Battalion located in the Puente Aranda sector and from there to the model prison in Bogota, where they remained until November 23, 1985.[170] Since the facts relating to this victim are disputed, they will be examined in Chapter X of this Judgment.

D. The processing of the crime scene

145. During the retaking of the Palace of Justice orders were given to remove some of the corpses.[171] Subsequently, when the Palace of Justice had been retaken, the military authorities "ordered the seizure of weapons, and war materiel and provisions."[172] They also ordered that "corpses be assembled on the first floor, before all their clothes and all their belongings were removed."[173] The corpses that were moved there included "those that were in the bathroom located between the second and third floors, and also some of the corpses from the fourth floor."[174] In addition, some corpses were "carefully washed."[175] This

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168 Mr. Rubiano Galvis is married to Lucía Garzón Restrepo, with whom he has a son and a daughter.

169 *Cf.* Testimony of José Vicente Rubiano Galvis of May 15, 2007, before the Prosecution Service (evidence file, folio 1283); birth registration of José Vicente Rubiano Galvis (evidence file, folio 27737); affidavit made on November 5, 2013, by José Vicente Rubiano Galvis (evidence file, folio 35620); affidavit made on November 5, 2013, by Lucía Garzón Restrepo (evidence file, folio 35661); Testimony of Ángela María Buitrago during the public hearing on the merits in this case; Periodic Report on Operations of the National Army: October 20 to November 20, 1985 (evidence file, folio 20413), and Psychosocial expert appraisal of the victims of arbitrary detention and torture and their next of kin by Ana Deutsch of October 2013 (evidence file, folio 36054).

170 *Cf.* Testimony of José Vicente Rubiano Galvis of May 17, 2007, before the Prosecution Service (evidence file, folios 1286 and 1287); Testimony of José Vicente Rubiano Galvis of June 2, 2009, before the 51st Criminal Court of the Bogota Circuit (evidence file, folio 14665); affidavit made on November 5, 2013, by José Vicente Rubiano Galvis (evidence file, folio 35622), and certification issued by the Judge Advocate recording that José Vicente Rubiano Galvis "was retained from November 7 to 23, 1985, for presumed violation of Decree 1056 of 1984" (evidence file, folio 24151).

171 *Cf.* Judgment of the Superior Court of Bogota of January 30, 2012 (evidence file, folio 22993).

172 Report of the Special Investigative Court (evidence file, folio 30531), and Report of the Truth Commission (evidence file, folios 192 and 193). See also: Military Forces of Colombia, *Relación parcial del material de guerra incautado a los grupos subversivos M-19 en el Palacio de Justicia* (evidence file, folios 31620 to 31623).

173 Report of the Special Investigative Court (evidence file, folio 30531); Report of the Truth Commission (evidence file, folio 193); Judgment of the 51st Criminal Court of the Bogota Circuit of December 15, 2011 (evidence file, folio 21008), and Written notes by Carlos Bacigalupo Salinas (evidence file, folio 36315). According to the forensic pathologist of Institute of Forensic Medicine at the time of the events, "perhaps for safety reasons, the officials who removed the bodies placed many objects of value apart and most of the bodies arrived at the Institute without these elements, [fragments of clothing, shoes or jewelry,] which would have been of assistance." Testimony provided by Dr. Dimas Denis Contreras Villa on February 5, 1988 (evidence file, folio 30889).

174 Report of the Truth Commission (evidence file, folio 201), and Judgment of the Superior Court of Bogota of January 30, 2012 (evidence file, folio 23000).

"deprived the officials responsible for documenting the removal of the corpses of important details that, later, made it difficult to identify the corpses."[176]

146. The removal of the corpses was overseen by military criminal investigation judges. Officials of the Judicial Police, the Fire Department, the Red Cross, and Civil Defense worked under their orders. In this regard, the Truth Commission indicated that "[a]ccording to [one] testimony, the DIJIN experts […] were carrying out the legal procedures for the removal of the corpses from the fourth floor, preparing the respective records there, while the firefighters were collaborating collecting the mortal remains, covering them and then transferring them to the first floor or, in any case, to the vehicles that took them to the Institute of Forensic Medicine."[177] In addition, some of "the corpses were removed with no mention of the specific place where they had been found."[178]

147. The Report of the Truth Commission indicated that:

> The main irregularities committed in the processing of the crime scene and the removal of the corpses are revealed by the formal and substantial incompetence of the officials who took part in the procedures, as well as by the contamination of the scene, as regards both the custody of the war materiel and the transfer of the bodies from the place where death occurred, the cleansing of some bodies, the inappropriateness of undressing them, and the improper handling and packaging of the clothing and objects associated with the bodies.[179]

148. Similarly the Superior Court of the Judicial District of Bogota underlined that:

> The alteration of the scene of the events is a fact. In this regard, there is no clear explanation as to why, following the end of the combat, several corpses were moved from the site where they fell (in some records the position recorded is artificial and unnatural, without establishing the specific site of the record, because it only mentions that it was prepared in the Palace of Justice), and taken to the internal patio of the building. Furthermore, there is no explanation as to why some carbonized corpses were moved from where they were found to the internal patio of the Palace of Justice for inspection and removal.[180]

149. In this regard, the Truth Commission indicated that, of the 94 records of the removal of a corpse analyzed, "it is only possible to establish the exact place where the person died in 22 of the records, while in the others, the position of the corpse is unnatural, because the record was prepared at a place other than where the person died, specifically in the first floor patio." Also, although the bodies had been moved, "the official removal records provide a detailed description of both the position of the body and the clothes and other objects, explaining their situation in relation to the body." The Truth Commission also indicated that, in some records, "special care can be observed in the description of the clothing associated with the body and, in some cases, the removal record may have been prepared at the place where the person died."[181]

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175 Report of the Special Investigative Court (evidence file, folio 30531); Report of the Truth Commission (evidence file, folio 193), and Testimony of Enrique Parejo González of December 4, 2007 (evidence file, folios 14766 and 14767).

176 Report of the Special Investigative Court (evidence file, folio 30531); Report of the Truth Commission (evidence file, folio 193), and Testimony of Enrique Parejo González of December 4, 2007 (evidence file, folios 14763 and 14764).

177 Report of the Truth Commission (evidence file, folios 192, 208 and 209); Judgment of the Superior Court of Bogota of January 30, 2012 (evidence file, folios 22996, 22998 and 22999); Written notes by Carlos Bacigalupo (evidence file folios 36320 and 36321), and note SSF-542-2013 of the National Institute of Forensic Medicine and Science, Forensic Services Department, of October 25, 2013 (evidence file, folio 37971).

178 Report of the Special Investigative Court (evidence file, folio 30523).

179 Report of the Truth Commission (evidence file, folios 191 and 192).

180 Judgment of the Superior Court of Bogota of January 30, 2012 (evidence file, folio 23056).

181 Report of the Truth Commission (evidence file, folios 200, 201, 208 and 209).

150. Additionally, "the removal records of five corpses were drawn up in Bolivar Plaza, four of them members of the guerrilla and the fifth unidentified [and, according to the Truth Commission,] the records should have been prepared inside the Palace."[182] Also, on November 10, "during an inspection of the scene of the events, a carbonized corpse was found among the rubble on the first floor of the building."[183] Human remains or body parts were found "when cleaning up the debris several days later."[184] According to testimony received in the criminal proceedings against the Commander of the Cavalry School,[185] some of those human remains that were found were later disposed of.[186]

E. The autopsies and the identification of the bodies

151. When the 94 bodies had been transferred to the Institute of Forensic Medicine, the work of identifying them and performing the autopsies began (*supra* para. 104). The Institute of Forensic Medicine did not have the human or physical capacity to deal with an emergency situation of such magnitude. The forensic pathologists were obliged to "work excessively long shifts; they were constantly subjected to pressure" by the Government, the Army, and "the family members who wanted the return of the body of their loved ones"; moreover, "they did not have sufficient time to perform the autopsies thoroughly." These factors contributed to the fact that it was not possible "to establish with certainty the cause of death and the identity of the 94 bodies." In addition, it is possible that this had an impact on the fact that "numerous errors" were committed, as in "two particularly serious cases, [where] bodies of the other sex to that of the person supposedly identified were returned."[187]

152. The return of the bodies was carried out based on the identification made by the family and acquaintances. According to the Report of the Truth Commission, "the fact that

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182 Report of the Truth Commission (evidence file, folio 201).

183 Judgment of the Superior Court of Bogota of January 30, 2012 (evidence file, folio 23001), and Report of the Truth Commission (evidence file, folio 215).

184 Judgment of the Superior Court of Bogota of January 30, 2012 (evidence file, folio 23001), and Report of the Truth Commission (evidence file, folio 210).

185 The Court will not mention the names of those presumably responsible, because it is not for the Court to establish individual criminal responsibilities (*supra* para. 81) and, to date, no final judgment has been handed down against any of the accused. For the purposes of this Judgment, those indicted will be identified by the positions they occupied at the time of the events. Thus, the main defendant in case No. 2011-0300, derived from prosecution case file 2755-4, who was the Colonel, Head of the B-2 of the Army's 13th Brigade, will be identified as the "Colonel, Head of the B-2"; the defendant in case No. 03-2008-025, derived from prosecution case file 9755-4, will be identified as the "Commander of the Cavalry School"; the defendant in case No. 2009-0203, derived from prosecution case file 11858-4, will be identified as the "Commander of the 13th Brigade," and the main defendant in case 2009-0352, derived from prosecution case file 9755-4, will be identified as the "Commander of the COICI."

186 *Cf.* Judgment of the Superior Court of Bogota of January 30, 2012 (evidence file, folios 23001 and 23002). Similarly, see the Report of the Truth Commission (evidence file, folio 210).

187 Report of the Truth Commission (evidence file, folios 210, 211, 213 and 219). *Cf.* Judgment of the Superior Court of Bogota of January 30, 2012 (evidence file, folios 23000, 22993, 22994 and 23058); National Police, Bogota Police Department, *Informe: toma "Palacio de Justicia"* (evidence file, folio 31815), and note SSF-542-2013 of the National Institute of Forensic Medicine and Science, Forensic Services Department, of October 25, 2013 (evidence file, folio 37971). According to the testimony of the forensic pathologist of the Institute of Forensic Medicine at the time, "owing to the magnitude of the problem, a situation [… he] had never encountered before, there was considerable confusion, a great deal of improvisation, or actions taken in good faith, but that were not completely effective for identification purposes." Testimony provided by Dr. Dimas Denis Contreras Villa on February 5, 1988 (evidence file, folio 30889). See also the expert opinion of Máximo Duque Piedrahíta during the public hearing on the merits in this case and his written report (evidence file, folio 36423), and the statement for information purposes of Carlos Bacigalupo Salinas during the public hearing on the merits in this case and the notes written by this deponent (evidence file, folio 36326).

morphological identification of the body was used as a reliable identification method was one of the most serious errors committed by the Institute of Forensic Medicine."[188]

153. The Superior Court of Bogota emphasized that the identification of the corpses was the stage:

> during which the greatest number of errors were verified, because, the identification process disregarded the preceding errors – in the inspection and official removal of the corpses, as well as whether they corresponded to the autopsies, and the relationship to them of belongings and other elements.[189]

154. In addition, the Special Investigative Court (*infra* para. 156) indicated that:

> The fire lasted for several hours and was so intense that, owing to some indications (including windows melted down), the experts calculated the heat at between 800 and 1,100°C. The photographs of the remains show an advanced state of carbonization that the report on the nature and characteristics of the corpses appears to be based more on guesswork than on observation.[190]

155. Once the autopsies had been completed, military criminal investigation judges ordered that the corpses be sent to a mass grave in the South Cemetery.[191] This decision was justified on the basis that "the M-19 sought to recover the bodies of their dead companions from the morgue."[192] A total of 38 corpses were sent to the mass grave in the South Cemetery, some of which had been identified.[193]

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[188] Report of the Truth Commission (evidence file, folio 219). *Cf.* Judgment of the Superior Court of Bogota of January 30, 2012 (evidence file, folio 23011). Expert witness Máximo Duque Piedrahíta indicated that there is "objective information indicating that there were many possibilities for error in the identification and in the return of the corpses in 1985." Expert opinion of Máximo Duque Piedrahíta during the public hearing on the merits and written report of the same expert witness (evidence file, folios 36423, 36447, 36455 and 36456), and Written notes by Carlos Bacigalupo Salinas (evidence file, folio 36328, and 36329). According to the forensic pathologist of the Institute of Forensic Medicine at the time, "[i]n some cases, fragments of clothing, shoes, jewelry [and the] approximate age or sex helped with the identification, because in those cases where it was not possible to take fingerprints and when even the face or most of it was completely carbonized, these were the only elements that could help." However, he indicated that the visual identification "went quite well, because it is a usual practice of the Institute and because, on that occasion, [he recalled] the large number of people who came forward to try and help with this identification." Testimony provided by Dimas Denis Contreras Villa on February 5, 1988, before the 30th Itinerant Criminal Investigation Court (evidence file, folios 30889 and 30893).

[189] *Cf.* Judgment of the Superior Court of Bogota of January 30, 2012 (evidence file, folio 23011).

[190] Report of the Special Investigative Court (evidence file, folio 30523).

[191] *Cf.* Note No. 11354 of the Office of the Special Attorney's assigned to the National Police of November 3, 1987 (evidence file, folio 31604); Report of the Truth Commission (evidence file, folio 221); report of the Special Investigative Court (evidence file, folio 30534), and Note No. 0070/JUPEM-78 of the 78th Military Criminal Investigation Court, expansion of sworn attestation of the 78th Military Criminal Investigation Judge of January 16, 1986 (evidence file, folios 14815 and 14816).

[192] Report of the Truth Commission (evidence file, folio 221). Cf. Report of the Special Investigative Court (evidence file, folio 30534); response of the 78th Military Criminal Investigation Judge to the charges brought in a Note of November 3, 1987 (evidence file, folio 31609), and Note No. 0070/JUPEM-78 of the 78th Military Criminal Investigation Court, expansion of sworn attestation of the 78th Military Criminal Investigation Judge of January 16, 1986 (evidence file, folio 14816).

[193] *Cf.* Written report of Máximo Duque Piedrahíta (evidence file, folio 36426), and Written notes by Carlos Bacigalupo (evidence file, folios 36326 and 36327). The above is the opinion of most people. However, the Truth Commission underscored that "everything indicates that 38 [bodies] were sent to the mass grave, [but] it is only possible to verify the transfer of 36," while the Superior Court of Bogota considered that the number of corpses buried in the mass grave is uncertain, owing to inconsistencies in the records of the transfer and the presumed failure to record the transfer of four corpses to the mass grave. In addition, the Truth Commission indicated that "[d]ocuments exist certifying the transfer to the mass grave of a total of 36 bodies, including some that were complete and other carbonized, some identified and other unidentified, on four different dates: November 9, 14, 20 and 23, 1985. However, when comparing this documentation with the overall list of autopsies, it can be seen that the information provided is contradictory and incomplete." Report of the Truth Commission (evidence file, folio 216 and 221), and Judgment of the Superior Court of Bogota of January 30, 2012 (evidence file, folios 23022, 23023, 23028 to 23030 and 23032).

F. The investigation of the events

156. In response to the complaints filed following the events of the taking and retaking of the Palace of Justice,[194] several investigations have been conducted into what happened, including with regard to the persons disappeared, as well as to those presumably detained and tortured. On November 13, 1985, the National Government, by Decree 3300, ordered the creation of a Special Investigative Court "responsible for investigating the offenses committed on the occasion of the violent taking of the Palace of Justice of Bogota."[195] The Special Court was commissioned to prepare a report, a copy of which had to be forwarded "to the Ministry of Justice, the Supreme Court of Justice, and the Attorney General. In addition, it [was to] be sent to the competent judges for the pertinent effects."[196]

157. In parallel, on November 21, 1985, the Army Command "ordered the opening of a preliminary investigation" and, to this end, the Sixth Military Criminal Investigation Court gathered "abundant testimonial evidence" and "directed that the criminal investigation be formally opened, ordering that the necessary measures be taken to establish the truth."[197] The information collected was sent to the Special Court in December 1985 (*supra* para. 156).[198]

158. The report of the Special Investigative Court was presented on May 31, 1986, and it concluded that "the M-19 was solely and exclusively responsible for the attack on, and occupation of, the Palace of Justice." Nevertheless, it indicated that "[t]he investigation was able to determine irregular actions that need to be fully clarified, [which] reveal isolated individual actions executed in default of superior orders, unrelated to the military institution." Among these actions, the Special Court included the exit alive from the Palace of Justice and subsequent disappearance of Irma Franco Pineda, the detention of Orlando Quijano, Eduardo Matson Ospino and Yolanda Santodomingo Albericci, and also the "ill-treatment [to which the latter were subjected] by their interrogators." The Special

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[194] Starting in November 1985, the next of kin of "at least 11 of the disappeared approached different law offices in order to clarify what had happened to their relatives." *Cf.* Report of the Truth Commission (evidence file, folio 281); letter from Enrique Rodríguez Hernández to the Special Investigative Court of November 20, 1985 (evidence file, folios 35867 and 35868); letter from Enrique Rodríguez Hernández to the Special Attorney assigned to the Military Forces of November 19, 1985 (evidence file, folios 35869 and 35870); letter from Cecilia Cabrera de Rodríguez to the Supreme Court of Justice of November 19, 1985 (evidence file, folios 35871 and 35872); letter from Enrique Rodríguez Hernández to the Minister of Defense of November 18, 1985 (evidence file, folio 35873); letter from Cecilia Cabrera and others to the Minister of Justice of November 12, 1985 (evidence file, folios 35874 and 35875), and report of the Attorney General's office evaluating the proceedings opened owing to those presumed disappeared from the Palace of Justice of September 15, 1988 (evidence file, folio 31049).

[195] The decree established that the Special Court was composed of two justices selected by the Supreme Court of Justice. *Cf.* Decree 3300 of 1985, Official Gazette No. 37,228 of November 13, 1985, article 1 (evidence file, folio 1643); report of the Special Investigative Court (evidence file, folio 30481). See also, testimony of Jaime Castro Castro during the public hearing on the merits in this case. Prior to the creation of the Special Investigative Court, based on his competence the Second Special Judge had conducted the investigation into the events and had ordered a working group of ten – itinerant – criminal investigation judges to carry out different investigative tasks, diving the work by issues, all related to the central event that was the subject of the proceedings. The Special Investigative Court adopted this working method.

[196] Decree 3300 of 1985, Official Gazette No. 37,228 of November 13, 1985, article 9 (evidence file, folio 1644). On May 8, 1986, the Supreme Court of Justice analyzed the enforceability of Decree 3300 and clarified that the Special Investigative Court "is not empowered to hear and decide on the crimes investigated," so that it would not take decisions on the "merits or rule on the merits determining responsibilities," but rather would prepare a report to be sent to the competent judges. *Cf.* Report of the Truth Commission (evidence file, folios 275 and 276).

[197] Order of the Sixth Military Criminal Investigation Court of November 22, 1985 (evidence file, folios 22760 and 22761) and *Cf.* General Command of the Military Forces, Head of the Joint Chief of Staff, Special First Instance Court, judgment of June 27, 1994 (evidence file, folio 1317).

[198] *Cf.* General Command of the Military Forces, Head of the Joint Chief of Staff, Special First Instance Court, judgment of June 27, 1994 (evidence file, folio 1317), and order of the Army Command of December 9, 1985, deciding to forward the proceedings to the Special Investigative Court (evidence file, folio 22763).

Investigative Court indicated that the investigation of these elements should continue and ordered that the military criminal justice system conduct or continue this investigation.[199]

159. The Special Investigative Court also indicated that the persons considered "disappeared," Carlos Augusto Rodríguez Vera, Cristina del Pilar Guarín Cortés, David Suspes Celis, Luz Mary Portela León, Bernardo Beltrán Hernández, Héctor Jaime Beltrán Fuentes, Gloria Stella Lizarazo Figueroa, Norma Constanza Esguerra Forero, Gloria Anzola de Lanao, Lucy Amparo Oviedo Bonilla and Ana Rosa Castiblanco Torres, were in the Palace of Justice when it was taken,[200] and that "sufficient evidence existed in the preliminary proceedings to conclude that these persons died on the fourth floor where they were taken as hostages during the initial moments of the incident."[201]

160. Despite this, that court noted that "the preliminary investigation stage [had] not ended; that it [was] necessary to continue the proceedings in order to elucidate the facts, and that it le[ft] this to the consideration of the competent judges to whom, at the end of the day, it correspond[ed] to decide whether or not to close the investigation."[202]

161. Once the report of the Special Investigative Court had been presented, the investigations into the responsibility of the M-19 were taken up again in the ordinary criminal jurisdiction and, in this context, on January 31, 1989, the 30th Itinerant Criminal Investigation Court of Bogota issued an indictment against the members of the M-19 "who planned the attack on the Palace of Justice."[203]

162. The 30th Court also included a section entitled "Presumed responsibility of the Armed Forces," in which it "included various considerations with regard to the actions of the military and police personnel who intervened in the operation, making special reference to persons who had disappeared, to possible torture, and to the events that took place in the bathroom and on the fourth floor of the Palace of Justice."[204] Consequently, it established that the ordinary criminal jurisdiction should investigate what had happened and, in

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[199] *Cf.* Report of the Special Investigative Court, first and fourteenth conclusions (evidence file, folios 30481, 30537, 30538, 30540 and 30541), and Report of the Truth Commission (evidence file, folio 276).

[200] The Report of the Special Investigative Court mentions Ana Rosa Castiblanco Torres among the cafeteria employees who were disappeared, but does not include her in the conclusions regarding what happened to these persons. *Cf.* Report of the Special Investigative Court, seventeenth conclusion (evidence file, folios 30529 and 30541).

[201] The Special Investigative Court considered that: (a) the restaurant or cafeteria was completely taken over by the guerrilla during the first minute; (b) Norma Constanza Esguerra Forero's belongings, identified by her next of kin, had been found next to a carbonized body removed from the fourth floor; (c) in the south corridor of the third floor, the normal route between the cafeteria and the fourth floor, cakes or pastries had been found, and the Special Court considered that "undoubtedly they were some of Ms. Esguerra's supplies, which must have been carried by her or by the employees or by the guerrillas during the transfer (it should be recalled that the overall plan established gathering the hostages on the highest floor)"; (d) regarding the number and identification of the corpses found on the fourth floor, having examined the payrolls of the Supreme Court and the Council of State, the Special Court decided that "there was a group of corpses that would necessarily correspond to persons disappeared," and (e) that no other disappearance had been denounced due to or during these events, "which increases the conviction that the so-called disappeared perished in the holocaust." The Special Court found it evident that there was no connection between these persons and the guerrilla, so that it did not see why they would not have been treated as hostages like everyone else. During the investigation of the persons who had disappeared, the judge "heard all the next of kin, took their testimony, held lengthy and repeated sessions to watch the recordings made by the television programs of the release of hostages, all without any positive results as regards finding the disappeared." Report of the Special Investigative Court (evidence file, folios 30529, 30530 and 30541).

[202] Report of the Special Investigative Court (evidence file, folio 30540).

[203] *Cf.* Report of the Truth Commission (evidence file, folio 278), and decision of the 30th Itinerant Criminal Investigation Court of January 31, 1989 (evidence file, folios 24263 to 24266).

[204] Decision of the 30th Itinerant Criminal Investigation Court of January 31, 1989 (evidence file, folios 24263 to 24266), and *Cf.* Military Forces General Command, Head of the Joint Chief of Staff, Special Court of First Instance, Judgment of June 27, 1994 (evidence file, folio 1318).

particular, the possible responsibility of the Commander of the Army's 13th Brigade, "considering that he had been the officer in charge of the operation," of the Colonel, Head of the B-2, who was in charge of "the intelligence operation implemented in the [Casa del Florero]," and also the then Director of the National Police, for possibly contravening an order of the Council of Ministers to suspend actions against the fourth floor.[205]

F.1 Military criminal jurisdiction

163. In compliance with the decisions of the Special Investigative Court and despite the order of the 30th Itinerant Criminal Investigation Court (*supra* para. 162), the investigations to determine the lawfulness of the actions of the security forces were conducted by the military criminal jurisdiction.[206] Thus, on October 23, 1986, the Commander of the Army's 13th National Brigade assumed responsibility for the investigations into the disappearance of Irma Franco Pineda and Clara Helena Enciso, and the death of the Supreme Court of Justice driver, José Eduardo Medina Garavito, by direct referral of the 14th Superior Court of Bogota, in accordance with the decision of the Special Investigative Court[207] (*supra* paras. 158 and 161).

164. The next of kin of Irma Franco Pineda filed a request to bring a civil suit in May 1987, which was not admitted because, under "military criminal law […] civil suits can only be brought in proceedings for ordinary offenses and not in those related to activities conducted in compliance with mandates inherent to the Armed Forces."[208]

165. The Commander of the 13th Brigade and the Colonel, Head of the B-2, were implicated during the proceedings. On May 12, 1992, the Commander of the Colombian Air Force (COFAC), acting as a first instance judge, decided to end the proceedings against the Commander of the 13th Brigade in relation to what happened on the fourth floor of the Palace of Justice, and in the bathroom located between the second and third floors, and to the supposed disappearance of three members of the guerrilla (unnamed), which, he considered, had not occurred.[209]

166. In addition, regarding the Colonel, Head of the B-2, it was determined that the criminal action for the alleged torture to which Eduardo Matson Ospino and Yolanda Santodomingo Albericci had been subjected had prescribed and that the Colonel, Head of the B-2, was not the perpetrator of those acts. It was also affirmed that "it [was] certain

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[205] In relation to then Director of the National Police, the court ordered certified copies of the pertinent documents to be sent to the Supreme Court of Justice, "owing to the privileges due to his position at the time of the events." Decision of the 30th Itinerant Criminal Investigation Court of January 31, 1989 (evidence file, folios 24268 to 24273 and 24297). On February 7, 1991, the Criminal Cassation Chamber of the Supreme Court of Justice ordered "the closure of the proceedings" instituted against the Director of the Police, owing to the statute of limitations. *Cf.* Decision of the Criminal Cassation Chamber of the Supreme Court of Justice of February 7, 1991 (evidence file, folio 32076).

[206] *Cf.* Report of the Truth Commission (evidence file, folios 284 and 285).

[207] *Cf.* Order of the Command of the Army's 13th National Brigade of October 23, 1986 (evidence file, folio 24739).

[208] The next of kin appealed this decision but, according to the information received, the appeal was not granted. According to Federico Andreu Guzmán, the Code of Military Criminal Justice "established the possibility of the victims or their heirs filing a civil suit in the case of ordinary offenses and was prohibited in cases of strictly military offenses. However, the case law of the Military Superior Court and other organs of the military criminal jurisdiction excluded the possibility of filing a civil suit in the case of ordinary offenses committed during the course of duty." *Cf.* Decision of the Command of the 13th Brigade of the National Army of May 23, 1987 (evidence file, folios 20512 and 20513); substantiation of the appeal filed before the Commander of the 13th Brigade of the National Army (evidence file, folio 22302), and written summary of expert witness Federico Andreu Guzmán (evidence file, folio 36370).

[209] The Commander stated that the Commander of the 13th Brigade "did not commit or allow the perpetration of the wrongful acts of homicide that took place on the fourth floor of the Palace of Justice […]; nor did he commit or allow the perpetration of the homicides and personal injuries of the hostages and other captives who were found in the men's bathroom located on the mezzanine between the second and third floors." *Cf.* Judgment of the Commander of the Colombian Air Force of May 12, 1992 (evidence file, folios 1574, 1575, 1604 and 1605).

that the [said Colonel] had not contributed to the disappearance of the guerrilla, Irma Franco, as the determinant participant." Therefore, the Commander decided that no accusation of criminal responsibility was warranted. However, he acknowledged that, "to date, Irma Franco Pineda, has not appeared," and therefore ordered that certified copies of the case file be forwarded to the 41st Judge of Military Criminal Investigation to continue the investigation to identity those responsible for her disappearance.[210]

167. On May 18, 1992, the Attorney General's office filed an appeal against the decision of May 12, 1992.[211] On October 22, 1993, the Military Superior Court confirmed the closure of the proceedings in favor of the Colonel, Head of the B-2, owing to the inexistence of the disappearance of Clara Elena Enciso and to the statute of limitations with regard to the criminal action for the offense of the torture of Eduardo Matson Ospino and Yolanda Santodomingo Albericci. The other elements of the judgments were revoked so that the evidence that had been omitted could be collected, and it was ordered that the investigation be reopened against the Commander of the 13th Brigade and that the investigation continue into the fate of Irma Franco Pineda.[212]

168. On June 27, 1994, the Special First Instance Court of the General Command of the Military Forces decided that "there are no grounds for convening a court-martial to try the actions of the [Commander of the 13th Brigade], accused of the offenses of homicide and personal injuries," "and there are no grounds to convene a court-martial to try the actions of the Colonel, Head of the B-2, for the disappearance of […] Irma Franco Pineda." Consequently, it ordered the closure of the proceedings against both of the accused.[213] On October 3, 1994, the Military Superior Court confirmed that decision,[214] and this concluded the investigation of the events in the military criminal jurisdiction.

F.2 Investigations into the disappeared persons

169. In parallel to the investigations described above, in November 1985, the Attorney General's office opened an inquiry into the "those who presumably disappeared from the Palace of Justice."[215] On September 15, 1988, the Attorney General's office concluded that "of the persons rescued alive from the Palace of Justice and taken to the Casa del Florero Museum, only the guerrilla, Irma Franco, and an unidentified guerrilla can be considered

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210 *Cf.* Judgment of the Commander of the Colombian Air Force of May 12, 1992 (evidence file, folios 1588, 1596, 1597, 1603, 1604 and 1606).

211 *Cf.* Appeal filed by the Attorney General's Office before the Commander of the Colombian Air Force on May 18, 1992 (evidence file, folio 22145).

212 The court indicated that evidence "requested by the Public Prosecution Service [was missing] that could have an impact on the final decision taken." In also stated that, with regard to the Commander of the 13th Brigade, it was not possible to declare "either malicious intent or guilt, and therefore [it] revoked the decision of May 12, and ordered the continuation of the investigation." *Cf.* Decision of the Military Superior Court of October 22, 1993 (evidence file, folios 20506, 20508, 20507 and 20509).

213 In particular, the court indicated with regard to the disappearance of Irma Franco Pineda that "the investigation had made no progress and the different probative elements that have been collected over eight years have in no way proved that [the Colonel, Head of the B-2], ordered the retention of this woman and, later, her transfer to one of the military facilities of this Operational Unit." *Cf.* Military Forces General Command, Head of the Joint Chief of Staff, Special Court of First Instance, Judgment of June 27, 1994 (evidence file folios 1389, 1390 and 1391).

214 Regarding the disappearance of Irma Franco Pineda, the Military Superior Court stated that the Colonel, Head of the B-2, "denied any participation in the disappearance of the guerrilla, Irma Franco, and despite the time that has passed and the evidence collected, there is nothing that directly proves that he was responsible for her disappearance, death, unlawful detention or any other offense against her." *Cf.* Judgment of the Military Superior Court of October 3, 1994 (evidence file, folios 1640 and 1641).

215 To this end, the Attorney General created a commission coordinated by the Deputy Attorney General, to which, among other persons, the adviser to his office, Carlos Guana Aguirre, was appointed specially. *Cf.* Report of September 15, 1988, evaluating the progress made into those presumed disappeared from the Palace of Justice (evidence file folio 31048), and Note of the Deputy Attorney General of October 18, 1989 (evidence file, folio 30650).

disappeared."[216] It also established that, in the case of the "employees of the Palace of Justice cafeteria whose families consider them disappeared, there is insufficient evidence to establish that they were evacuated from the Palace of Justice and taken to the Casa del Florero, and this is the same situation for other persons who are listed as disappeared."[217] The Attorney General's office also indicated that there was "insufficient evidence, to date, to bring charges against any member of the Colombian Armed Forces, […] for those presumed disappeared from the Palace of Justice."[218]

170. Subsequently, in 2001, the Prosecutor General's Office opened an investigation into the forced disappearance of Carlos Augusto Rodríguez Vera, Cristina del Pilar Guarín Cortés, Bernardo Beltrán Hernández, Héctor Jaime Beltrán Fuentes, David Suspes Celis, Luz Mary Portela León and Ana Rosa Castiblanco Torres, at the request of their families.[219]

171. On November 5, 2004, the next of kin of the persons disappeared, as the civil party to the proceedings, asked that "the security forces and members of the security agencies who directed and participated in the so-called "retaking of the Palace of Justice be summoned for questioning.'"[220] However, the prosecution considered that the request was not "admissible, or pertinent," owing to lack of evidence regarding any specific person.[221]

172. On October 5, 2005, the proceedings were taken up again when the investigation was assigned to the National Human Rights and International Humanitarian Law Unit and orders were issued to undertake some measures.[222] However, in November that year, the Prosecutor General's Office decided "to appoint, specially," Ángela María Buitrago Ruiz, Fourth Prosecutor delegated to the Supreme Court of Justice (hereinafter "the Fourth Prosecutor"), to conduct the criminal investigation up until its conclusion.[223]

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[216] Report evaluating the progress made into those presumed disappeared from the Palace of Justice issued by the Attorney General's office on September 15, 1988 (evidence file, folio 31052).

[217] The Attorney General's office was investigating different complaints of disappearance, including the presumed disappearance of the cafeteria employees: Carlos Augusto Rodríguez Vera, Cristina del Pilar Guarín Cortés, David Suspes Celis, Héctor Jaime Beltrán Fuentes, Bernardo Beltrán Hernández, Gloria Stella Lizarazo Figueroa, Luz Mary Portela León, Ana Rosa Castiblanco Torres and Norma Constanza Esguerra Forero. *Cf.* Report evaluating the progress made into those presumed disappeared from the Palace of Justice issued by the Attorney General's office on September 15, 1988 (evidence file, folios 31048 and 31049).

[218] *Cf.* Report evaluating the progress made into those presumed disappeared from the Palace of Justice issued by the Attorney General's office on September 15, 1988 (evidence file, folio 31048).

[219] In particular, the complaint was filed by Enrique Rodríguez Hernandez, Elsa María Osorio, Bernardo Beltrán Monroy, Héctor Jaime Beltrán, Raúl Oswaldo Lozano Castiblanco, Carmen Celis de Suspes and María del Pilar Navarrete. *Cf.* Judgment of the 51st Criminal Court of the Bogota Circuit of December 15, 2011 (evidence file, folio 20690), and complaint of June 29, 2001, for the disappearance of the employees of the Palace of Justice cafeteria filed before the Prosecutor General (evidence file, folios 22747 to 22755). On August 22, 2001, orders were issued to "open the preliminary investigation and collect evidence." *Cf.* Decision of the Prosecution Unit delegated to the criminal judges of the Special National Circuit CTI of August 22, 2001 (evidence file, folio 22745), and Note of the Special Prosecution Unit delegated to the CTI of August 28, 2003 (evidence file, folio 1769).

[220] Decision of the Prosecution Unit delegated to the criminal judges of the Special National Circuit CTI of November 26, 2003 (evidence file, folio 8296), and brief of Héctor Jaime Beltrán, Sebastián Guarín Cortés, César Rodríguez Vera, Alejandra Rodríguez Cabrera, Sandra Beltrán Hernández and María del Carmen Celis de Suspes addressed to the Prosecutor General of November 5, 2004 (evidence file, folio 22255).

[221] *Cf.* Decision of the Prosecution Unit delegated to the criminal judges of the Special National Circuit CTI of December 17, 2004 (evidence file, folio 8418).

[222] *Cf.* Prosecutor General's office, Decision No. 0-3660 of October 5, 2005 (evidence file, folios 1772 and 1773); Testimony of Ángela María Buitrago Ruíz during the public hearing on the merits in this case, and Note of the Prosecutor General's Office of November 15, 2005 (evidence file, folios 1775 and 1776).

[223] *Cf.* Decision No. 0-3954 of the Prosecutor General's Office of November 25, 2005 (evidence file, folio 1778), and decision No. 0-4062 of the Prosecutor General's Office of November 30, 2005 (evidence file, folio 6972).

173. The Fourth Prosecutor: (i) ordered the reception of the testimony, among others, of Belisario Betancur Cuartas, President of the Republic at the time of the taking of the Palace of Justice; (ii) issued requests to "national and international radio and television stations" in order to receive the videos reporting the events of November 6 and 7, 1985; (iii) between 2006 and 2008, summoned the next of kin of the disappeared persons to make identifications in videos,[224] and (iv) on February 1 and 2, 2007, conducted inspections of the facilities of the Army's 13th Brigade[225] and of the Cavalry School.[226] During these inspections a note referring to Yolanda Santodomingo Albericci and Eduardo Matson Ospino was found as well as personal documents of Carlos Horacio Urán Rojas (*supra* para. 138 and *infra* para. 196).

174. On September 28, 2007, the Fourth Prosecutor issued an indictment against five members of the B-2 of the Army's 13th Brigade, for the aggravated abduction and the forced disappearance of the presumed victims in this case, with the exception of Ana Rosa Castiblanco Torres and Carlos Horacio Urán Rojas.[227] Also, between February 2008 and March 2009, the Fourth Prosecutor issued indictments against another five retired Army officers (the Commander of the Cavalry School at the time,[228] three members of the Intelligence and Counterintelligence Command (COICI),[229] and the Commander of the 13th Brigade at the time[230]), for the offenses of aggravated abduction and forced disappearance to the detriment of the presumed victims of forced disappearance in this case, with the exception of Ana Rosa Castiblanco Torres and Carlos Horacio Urán Rojas. These decisions were confirmed after they had been appealed, with the clarification that "they are only admissible for the offense of aggravated forced disappearance,"[231] except in the case of the Commander of the Cavalry School, regarding whom there is no record in the case file that there had been an appeal. This clarification led to a competence dispute and it was decided that the 51st Criminal Court of the Bogota Circuit would assume the proceedings for the offense of aggravated forced disappearance;[232] while the Third Criminal Court of the Special

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224 *Cf.* Fourth Prosecutor delegated to the Supreme Court of Justice, communication of December 6, 2005 (evidence file, folio 1781), and Testimony of Ángela María Buitrago Ruíz during the public hearing on the merits.

225 *Cf.* Fourth Prosecutor delegated to the Supreme Court of Justice, inspection measures in the facilities of the Army's 13th National Brigade on February 1, 2007 (evidence file, folios 18988, 18990 and 18997).

226 *Cf.* Fourth Prosecutor delegated to the Supreme Court of Justice, inspection measures in the facilities of the Cavalry School on February 2, 2007 (evidence file, folio 18985).

227 The Colonel, Head of the B-2, was not accused of the abduction and disappearance of Irma Franco Pineda, because the military criminal jurisdiction had already decided to close the proceedings for this act in his favor. *Cf.* Fourth Prosecutor delegated to the Supreme Court of Justice, Indictment decision of September 28, 2007 (evidence file, folios 14184, 14185 and 13957).

228 *Cf.* Fourth Prosecutor delegated to the Supreme Court of Justice, Indictment decision of February 11, 2008 (evidence file, folio 2084).

229 *Cf.* Fourth Prosecutor delegated to the Supreme Court of Justice, Indictment decision of January 20, 2009. (evidence file, folio 2324). In addition, this decision precluded the investigation into a general.

230 *Cf.* Fourth Prosecutor delegated to the Supreme Court of Justice, Indictment decision of March 9, 2009 (evidence file, folio 2535). In addition, in this decision it precluded the investigation of a general. Also, the Fourth Prosecutor "declare[d] the extinction of the criminal action due to the death" of a colonel. *Cf.* Fourth Prosecutor delegated to the Supreme Court of Justice, Decision of March 3, 2008 (evidence file, folio 22340); Judgment of the 51st Criminal Court of the Bogota Circuit of April 28, 2011 (evidence file, folio 24305), and Report of the Truth Commission (evidence file, folio 282).

231 *Cf.* Decision of the Deputy Prosecutor General of March 25, 2008 (evidence file, folios 2537 and 2576); Judgment of the 51st Criminal Court of the Bogota Circuit of December 15, 2011 (evidence file, folio 20692), and Judgment of the 51st Criminal Court of the Bogota Circuit of April 28, 2011 (evidence file, folio 24305).

232 *Cf.* Note of the Criminal Cassation Chamber to the 51st Criminal Court of the Bogota Circuit of October 9, 2008 (evidence file, folio 25035); Judgment of the 51st Criminal Court of the Bogota Circuit of December 15, 2011 (evidence file, folios 20693 and 20694), and Judgment of the 51st Criminal Court of the Bogota Circuit of April 28, 2011 (evidence file, folio 24307).

Circuit of Bogota would be responsible for the proceedings for abduction accompanied by forced disappearance.[233]

F.2.a) Proceedings against the Commander of the Cavalry School

175. On June 9, 2010, the Third Criminal Court of the Special Circuit of Bogota handed down a guilty verdict against the Commander of the Cavalry School, as indirect co-author of aggravated disappearance of eleven of the presumed victims in this case, sentencing him to 30 years' imprisonment.[234] The court established that:

> As soon as the security forces […] were able to enter the Palace of Justice, they began to perform intelligence work aimed, among other matters, at establishing the identity of the civilians who were there and who were being evacuated from the site. At that time, a group of survivors were categorized as "special" or "suspicious," and they would subsequently be treated differently.[235]

176. In the same judgment, in the part relating to "Other determinations," the court ordered that certified copies of the case file be made so that the following could be investigated: (i) the security forces' supposed prior knowledge of the intention of M-19 to take the Palace of Justice on November 6, 1985; (ii) the possible extrajudicial executions of which some of the hostages of the Palace of Justice and the M-19 subversives might have been victims, and (iii) the President at the time of the events, as well as the other members of the Armed Forces' chain of command at the time, who would have taken part operation at the Palace of Justice, and the members of the National Police and of the State's security agencies who intervened in the operation. It also ordered an investigation of the direct perpetrators, the indirect co-authors, and the participants in the disappearances established in the judgment.[236]

177. The defense of the Commander of the Cavalry School and the Public Prosecution Service both appealed the first instance decision. On January 30, 2012, the Superior Court of Bogota confirmed the sentence of 30 years' imprisonment for the forced disappearance of two of the presumed victims (Carlos Augusto Rodríguez Vera and Irma Franco Pineda). However, it partially annulled the first instance decision as regards the forced disappearance of the other presumed victims.[237] In this regard, it indicated that:

> The probative elements described establish that the survivors of the Palace of Justice were, indeed, taken to military garrisons, including the facilities of the Cavalry School, where the details of all of them were taken, and some of them were subjected to torture, and subsequently disappeared, […] which allows the court to conclude that the [Commander of the Cavalry School] was part of an illegal organized power structure that designed and executed the disappearance of Irma Franco Pineda and Carlos Augusto Rodríguez Vera.

178. Regarding the other disappeared persons, that court concluded that:

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[233] *Cf.* Ruling of March 14, 2008, on assignment to the courts of the Bogota Circuit owing to the separation of the proceedings (evidence file, folio 24749), and Report of the Truth Commission (evidence file, folio 282).

[234] The Commander of the Cavalry School was convicted in first instance of the forced disappearance of: (1) Carlos Augusto Rodríguez Vera, (2) Cristina del Pilar Guarín Cortés, (3) Bernardo Beltrán Hernández, (4) David Suspes Celis, (5) Gloria Stella Lizarazo Figueroa, (6) Gloria Anzola de Lanao, (7) Norma Constanza Esguerra Forero, (8) Luz Mary Portela León, (9) Irma Franco Pineda, (10) Héctor Jaime Beltrán Fuentes and (11) Lucy Amparo Oviedo Bonilla. *Cf.* Judgment of the Third Criminal Court of the Bogota Special Circuit of June 9, 2010 (evidence file, folios 24105 and 24120).

[235] *Cf.* Judgment of the Third Criminal Court of the Bogota Special Circuit of June 9, 2010 (evidence file, folios 23949, 23956 and 23957).

[236] *Cf.* Judgment of the Third Criminal Court of the Bogota Special Circuit of June 9, 2010 (evidence file, folios 24117 and 24118).

[237] The Superior Court of Bogota stated that the presumptions for nullity established in article 306 of the Code of Criminal Procedure are: "(1) lack of competence of the judicial official; (2) the proven existence of substantial irregularities that impair due process, and (3) the violation of the right of defense." Judgment of the Superior Court of Bogota of January 30, 2012 (evidence file, folios 23283, 23284, 23388, 23449 and 23450).

> It has not been proved that it was 11 individuals who left the judicial complex alive and who were subsequently forcibly disappeared; rather this evidence only relates to two of them – Irma Franco Pineda and Carlos Augusto Rodríguez Vera – thus the Chamber finds that it must decide the partial nullity of the proceedings.

179. The Superior Court indicated that the partial nullity "was required because the information on which it based its decision was not supported by all the necessary evidence that was available (principle of a serious and comprehensive investigation), and the content of that evidence was so decisive that it transcended the ruling, despite which it had not been obtained."[238]

180. That court also stated that:

> Cristina del Pilar Guarín Cortés, David Suspes Celis, Bernardo Beltrán Hernández, Héctor Jaime Beltrán Fuentes, Gloria Stella Lizarazo Figueroa, Luz Mary Portela León, Norma Constanza Esguerra Forero, Gloria Isabel Anzola de Lanao and Lucy Amparo Oviedo Bonilla are in an undefined situation, as indicated by the Council of State in different judgments against the State in which it has considered it to be a service-related failure that nothing is known about them, in the understanding that, as of the moment at which the guerrillas took the Palace of Justice, the Colombian State assumed, through its civil and military authorities, control of the judicial premises in order to retake them and that the individuals did not appear among the deceased; however, it has not been proved that they left the building alive.[239]

181. In addition to convicting the Commander of the Cavalry School, the Superior Court ordered some measures of reparation to honor the memory of the victims, and also that the investigation into the possible responsibility of other persons continue. In this judgment it established that: "[t]hus, the Colombian State [would] show the international community its interest in truly honoring its undertaking to avoid the impunity of crimes against humanity committed by State agents."[240]

182. The defense and the Pubic Prosecution Service filed remedies of cassation.[241] On February 5, 2013, the Third Attorney delegated to Criminal Cassation considered that the two appeals were sufficient to request the cassation of the contested judgment.[242] This cassation is pending a decision.

F.2.b) Proceedings against members of the COICI

183. On December 15, 2011, the 51st Criminal Court acquitted the accused, because "doubts arise […] from the evidence analyzed, since there is no direct, precise and specific indication" of their responsibility.[243] Nevertheless, in this decision, the 51st Criminal Court refuted the hypothesis that the eleven disappeared persons had died inside the Palace of Justice or that their corpses were in the mass grave, and concluded that these persons:

> On the day in question, were inside the building that was occupied and after this they abandoned the building alive, and were taken to the Florero Museum and, subsequently, unlawfully deprived of liberty, because, even though in some cases they were seen alive by some of the hostages who were released and, in other cases, the next of kin describe their exit from the building based on their own inquiries, the fact is that, to date, they have not appeared either alive or dead, which reveals that,

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238 The Superior Court of Bogota decreed the nullity "following the closure of the investigation, so that the investigating body may implement all the pertinent proceedings to determine the true situation of the nine persons […] whose whereabouts are unknown." Judgment of the Superior Court of Bogota of January 30, 2012 (evidence file, folios 23288 and 23289).

239 Judgment of the Superior Court of Bogota of January 30, 2012 (evidence file, folios 23287 and 23288).

240 Judgment of the Superior Court of Bogota of January 30, 2012 (evidence file, folios 23450, 23451 and 23454).

241 *Cf.* Intervention of the Third Attorney delegated to Criminal Cassation of February 5, 2013 (evidence file, folio 37521).

242 *Cf.* Intervention of the Third Attorney delegated to Criminal Cassation of February 5, 2013 (evidence file, folio 37624).

243 *Cf.* Judgment of the 51st Criminal Court of the Bogota Circuit of December 15, 2011 (evidence file, folio 21110).

> when the military operations to counter the subversive attack ended, these actions degenerated into an irregular situation that resulted in these people who were retained becoming disappeared, thus eliminating also any type of evidence that would contribute to discovering their whereabouts.
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> […]
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> Without doubt, […] CARLOS AUGUSTO RODRÍGUEZ VERA, CRISTINA DEL PILAR GUARÍN CORTÉS, BERNARDO BELTRÁN HERNÁNDEZ, HÉCTOR JAIME BELTRÁN FUENTES, DAVID SUSPES CELIS, GLORIA ESTELA LIZARAZO, LUZ MARY PORTELA LEÓN, NORMA CONSTANZA ESGUERRA FORERO, GLORIA ANZOLA DE LANAO, LUCY AMPARO OVIEDO BONILLA and IRMA FRANCO PINEDA [were] subjected to forced disappearance, after the taking of the Palace by the guerrilla had ended.[244]

184. The civil party to the proceedings filed an appeal, which is pending a decision.[245]

F.2.c) Proceedings against the Commander of the Army's 13th Brigade

185. On April 28, 2011, the 51st Criminal Court handed down a guilty verdict against the Commander of the 13th Brigade. The court indicated that it was irrefutable that the eleven disappeared persons "had not died inside the seat of justice and, especially, on the fourth floor of that building, the floor from which […] most of the carbonized corpses were taken to the internal patio of the building."[246] Similarly, it indicated that:

> The evidence collected reveal[ed]] that they left the building unharmed and, subsequently, were taken the 20 de Julio Museum and from there to the military facilities. This has been verified by several probative elements which indicate[d] that, for certain members of the B-2, the cafeteria employees were prime suspects of belonging to the M-19, leading to the inference, in light of sound logic, that if one or several of them were subjected to forced disappearance, all of them would have received the same treatment, owing to the need to conceal the actions of the perpetrators.[247]

186. It also indicated that it was scarcely reasonable to consider that "the cafeteria employees had chosen to go to the higher floors where the combat was clearly taking place; thus, if they had been forced to go upstairs by the guerrilla, they would undoubtedly have been seen at some moment by the other hostages." The court decided that the Army had considered the cafeteria employees to be members of the M-19, based on a statement by the Colonel, Head of the B-2 (*infra* paras. 239 and 242), and a document obtained by the prosecution listing several people, including Irma Franco Pineda's brothers and the brother of Cristina del Pilar Guarín Cortés, indicating that they belonged to the M-19.[248]

187. The court concluded "unequivocally, that the [Commander of the 13th Brigade was] responsible, as indirect perpetrator of the wrongful act of aggravated forced disappearance" of the eleven victims presumed disappeared, and therefore sentenced him to 35 years'

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[244] *Cf.* Judgment of the 51st Criminal Court of the Bogota Circuit of December 15, 2011 (evidence file, folios 21006, 21007, 21030 and 21040).

[245] *Cf.* Substantiation of the appeal file before the 51st Criminal Court of the Bogota Circuit of January 25, 2012 (evidence file, folio 22157); Testimony of Ángela María Buitrago Ruíz during the public hearing on the merits; Testimony of lack of competence of the Criminal Chamber of the Superior Court of Bogota of May 25, 2012 (evidence file, folio 38095), and decision of the Criminal Cassation Chamber of the Supreme Court of Justice of June 14, 2012 (evidence file, folio 38107).

[246] The Commander of the 13th Brigade was convicted in first instance of the forced disappearance of: (1) Carlos Augusto Rodríguez Vera, (2) Cristina del Pilar Guarín Cortés, (3) Bernardo Beltrán Hernández, (4) David Suspes Celis, (5) Gloria Stella Lizarazo Figueroa, (6) Gloria Anzola de Lanao, (7) Norma Constanza Esguerra Forero, (8) Luz Mary Portela León, (9) Irma Franco Pineda, (10) Héctor Jaime Beltrán Fuentes and (11) Lucy Amparo Oviedo Bonilla. *Cf.* Judgment of the 51st Criminal Court of the Bogota Circuit of April 28, 2011 (evidence file, folios 24647 and 24648).

[247] Judgment of the 51st Criminal Court of the Bogota Circuit of April 28, 2011 (evidence file, folios 24556 and 24570).

[248] *Cf.* Judgment of the 51st Criminal Court of the Bogota Circuit of April 28, 2011 (evidence file, folios 24558, 24562 and 24563).

imprisonment.[249] Both the defense and the Pubic Prosecution Service appealed the first instance decision.[250]

188. On October 24, 2014, the Superior Court of Bogota confirmed the 35-year prison sentence owing to the forced disappearance of five of the presumed victims (Carlos Augusto Rodríguez Vera, Bernardo Beltrán Hernández, Luz Mary Portela León, David Suspes Celis and Irma Franco Pineda), considering that "there is no doubt" that these persons "left the Palace alive in the custody of the Army, and were forcibly disappeared." However, the respective Chamber of the Superior Court annulled the conviction in relation to the forced disappearance of the other presumed victims, considering that "doubts subsist as to the way in which they lost their life or disappeared."[251] Nevertheless, it considered that:

> The fact that [the said] judgment did not declare forcibly disappeared all the victims categorized as such by the prosecution does not signify that it definitively rejects that they have been disappeared; it only means that, in some cases, there is insufficient evidence, legally provided to the proceedings, that they left the Palace alive in the custody of the Army. There are numerous indications, but none of them are conclusive, that there could have been eight or nine individuals who left the Palace alive and were forcibly disappeared, but only five of them have been reliably identified as indicated in this assessment of the evidence.[252]

F.2.d) Proceedings against the members of the B-2 of the 13th Brigade

189. The 51st Criminal Circuit Court assumed the hearing of the case on October 16, 2008[253] (*supra* para. 174). On December 9 and 10, 2008, the preparatory hearing was held, and in March 2009 the public hearing commenced.[254]

190. Between March 2009 and September 2012, various probative elements were gathered, including reports and the results of tests on the remains exhumed from the mass grave in the South Cemetery (*infra* para. 195), requests for information relating to the autopsies, and records of the removal of the corpses and human remains from the Palace of Justice, testimony for the defense, and requests to the Ministry of Defense for information

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[249] *Cf.* Judgment of the 51st Criminal Court of the Bogota Circuit of April 28, 2011 (evidence file, folios 24654 and 24571).

[250] *Cf.* Judgment of the Superior Court of Bogota of October 24, 2014 (evidence file, folios 38243 and 38259).

[251] The Superior Court of Bogota emphasized that it would "declare forcibly disappeared only those persons where the evidence [was] so completely clear that they left the building alive in the custody of the Army that it would overcome any reasonable doubt"; and therefore established as a criterion that "[i]f there was no credible identification of a person leaving the building alive, that c[ould] also be corroborated by the available evidence, it [would] not be possible affirm – beyond any reasonable doubt – that the person had not died during the events and that he or she was not among the remains that had not been properly identified." *Cf.* Judgment of the Superior Court of Bogota of October 24, 2014 (evidence file, folios 38272, 38278 and 38291).

[252] Judgment of the Superior Court of Bogota of October 24, 2014 (evidence file, folio 38378).

[253] *Cf.* Note of the Criminal Cassation Chamber to the 51st Criminal Court of the Bogota Circuit of October 9, 2008 (evidence file, folio 25035), and decision of the 51st Criminal Court of the Bogota Circuit of October 16, 2008 (evidence file, folio 25037). The accused were released in November 2008 owing to the time that passed without the public hearing being initiated. They were under pre-trial detention as of 2006 and 2007, respectively, and their release was granted in keeping with the applicable rules of criminal procedure. *Cf.* Decision of the 51st Criminal Court of the Bogota Circuit of October 28, 2008 (evidence file, folios 21568 to 21609).

[254] In July 2008, the defense of the accused filed several applications for declarations of nullity, and also requested some evidence. On December 9, 2008, the court decided not to admit the applications for declarations of nullity. The parties filed appeals for reconsideration of judgment and, second, an appeal against some of the decisions on the alleged nullities, as well as on the evidence admitted. On February 20, 2009, the court decided not to reconsider its decisions and to grant the appeals that had been filed. *Cf.* Decisions of the 51st Criminal Court of the Bogota Circuit of December 9 and 10, 2008 (evidence file, folios 21328 to 21337, 21434 to 21354 and 21360); decision of the 51st Criminal Court of the Bogota Circuit of February 20, 2009 (evidence file, folios 21256 and 21315 to 21319); and hearing of March 25, 2009 (evidence file, folio 15001).

on the rules applicable, the orders given, and the officers on active duty at the time of the events.[255]

191. On July 12, 2011, the proceedings were forwarded to the 55th Criminal Circuit Court.[256] According to information provided by the parties, the evidence and arguments stage concluded in February 2013, and the proceedings are awaiting the first instance decision.[257]

F.3 Exhumations

192. On August 20, 1996, the Second Criminal Court of the Bogota Special Circuit, in the context of the criminal proceedings instituted against the members of the M-19 (*infra* paras. 205 to 207), ordered the exhumation of the victims of the Palace of Justice buried in the mass grave in the South Cemetery, "in order to determine whether they included the bodies of the disappeared." The Technical Investigations Unit (CTI) of the Prosecutor General's Office was entrusted with the procedure and it was performed with the advisory assistance of the "Physical Anthropology Department of the Universidad Nacional de Colombia, under the international oversight of the United Nations High Commissioner for Colombia" and the Argentine Forensic Anthropology Team (EAAF). The preliminary investigation was conducted between August 1996 and January 1997, the exhumations between February and August 1998, and the laboratory phase in 1998 and 1999. However, according to a report of the Physical Anthropology Laboratory of the Universidad Nacional de Colombia (*infra* para. 194), the phase of "comparison was perhaps the most incomplete phase, because the coordinators of the preliminary stage of field and laboratory work were removed from the institution, and also the head of the Criminalistics Division, losing the memory of, and the interest in, this case."[258]

193. Five levels of the mass grave were excavated,[259] exhuming the remains of 90 adults on which different DNA tests were carried out in 2001, 2002, 2003, 2010 and 2012.[260] For

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[255] *Cf.* Notes of the 51st Criminal Court of the Bogota Circuit of March 26, 2009 (evidence file, folios 21321, 21323, 21326, 21611 and 21612); decision of the Superior Court of Bogota of August 11, 2009 (evidence file, folios 25095 and 25096), and Testimony of Mario Quintero Pastrana before the Second Criminal Judge of the Neiva Circuit on April 6, 2010 (evidence file, folios 21441 to 21522).

[256] The proceedings were transferred to the 55th Criminal Court after a declaration of impediment, following the decision against the Commander of the 13th Brigade, by the judge in charge of the proceedings before the 51st Criminal Court of the Bogota Circuit. *Cf.* Declaration of impediment of the 51st Criminal Court of the Bogota Circuit of May 27, 2011 (evidence file, folio 21524); Note of the 51st Criminal Court of the Bogota Circuit of May 27, 2011 (evidence file, folios 21246 to 21248); decision of the 55th Criminal Circuit Court of Bogota of June 7, 2011 (evidence file, folios 25105, 21506 and 25108), and Note of the Superior Court of Bogota of July 12, 2011 (evidence file, folio 21250).

[257] *Cf.* Brief of the representatives of March 17, 2013 (merits file, folio 2811), and table summarizing the current status of the criminal proceedings against members of the Military Forces for the events of November 6 and 7, 1985 (evidence file, folio 37325).

[258] *Cf.* Partial report of exhumation in order to identify the victims of the holocaust of the Palace of Justice, prepared by the National Directorate, Technical Investigation Unit, Criminalistics Division of May 5, 1997 (evidence file, folios 37878 to 37901); Report of the Truth Commission (evidence file, folio 246); Judgment of the Superior Court of Bogota of January 30, 2012 (evidence file, folio 23032); report on the results of the bio-anthropological analysis of the osseous remains of the holocaust of the Palace of Justice deposited in the Physical Anthropology Laboratory of the Universidad Nacional de Colombia (evidence file folio 37903); report on the forensic anthropology investigation of the case of the Palace of Justice, Physical Anthropology Laboratory of the Universidad Nacional de Colombia (evidence file, folio 21684); Testimony of Yolanda González, expert witness of the Genetics Laboratory of the Attorney General's office of March 15, 2012, before the 55th Criminal Circuit Court of Bogota (evidence file, folio 14822), and Testimony of Carlos Valdés Moreno, Director General of the National Institute of Forensic Medicine and Science, of March 15, 2012, before the 55th Criminal Circuit Court of Bogota (evidence file, folios 14844 to 14851).

[259] According to the information on file, these five levels corresponded to five different burial procedures delimited by the filling material usually placed on top of the corpses that were deposited and covered with sand and lime to avoid unpleasant odors. *Cf.* Testimony of Carlos Valdés Moreno, Director General of the National Institute of Forensic Medicine and Science, of March 15, 2012, before the 55th Criminal Circuit Court of Bogota (evidence file, folio 14851).

the first report prepared by the Genetics Laboratory of the Prosecutor General's Office and the DNA Laboratory of the National Institute of Forensic Medicine and Science, 28 sets of osseous remains were tested to determine whether they belonged to the persons who had disappeared from the Palace of Justice, based on samples taken from family members. On this occasion, it was excluded that these corpses belonged to nine of the disappeared victims and one of the bodies was identified as that of Ana Rosa Castiblanco Torres, and therefore returned to her son on November 2, 2001.[261] In 2001 and 2002, a second and third report were prepared, during which the other remains were analyzed and it was also excluded that they corresponded to the persons disappeared.[262]

194. Subsequently, at the request of the Prosecutor, the Physical Anthropology Laboratory of the Universidad Nacional de Colombia stored the remains following the conclusion of the analyses performed by the Technical Investigations Unit of the Prosecutor General's Office (CTI). This laboratory of the Universidad Nacional processed the information and analyzed the remains using "forensic science and criminalistics methods and techniques," including facial reconstruction to facilitate the circumstantial identification of the remains.[263] The report proposed the identification of thirteen persons (eleven members of the guerrilla, one civilian, and one possibly a justice) (*infra* para. 314). This identification was "for guidance, with a high level of probability, which could be confirmed by the respective genetic study." However, based on these identifications, the remains of four individuals were returned with court authorization.[264] According to the Truth Commission, these analyses focused on

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[260] *Cf.* Written report of Máximo Duque Piedrahíta (evidence file, folio 36427); Written notes by Carlos Bacigalupo Salinas (evidence file, folio 36331); report on the forensic anthropology investigation of the case of the Palace of Justice, Physical Anthropology Laboratory of the Universidad Nacional de Colombia (evidence file, folio 21687); Report of the Truth Commission (evidence file, folios 247 and 248), and Testimony of Yolanda González, expert witness of the Genetics Laboratory of the Attorney General's office, of March 15, 2012, before the 55th Criminal Circuit Court of the Bogota (evidence file, folios 14822 to 14824).

[261] Twenty-eight samples were selected to perform genetic testing owing to the signs of incineration, the level and which they were found, and because they were contained in plastic bags. This report analyzed whether the remains belonged to: Fabio Becerra Correa, Lucy Amparo Oviedo Bonilla, René Francisco Acuña Jiménez, Héctor Jaime Beltrán Fuentes, Carlos Augusto Rodríguez Vera, Ana Rosa Castiblanco Torres, Bernardo Beltrán Hernández, Gloria Stella Lizarazo Figueroa, Luz Mary Portela León, Cristina del Pilar Guarín Cortés, Gloria Anzola de Lanao and David Suspes Celis. The next of kin of Norma Constanza Esguerra Forero and Irma Franco Pineda were not included for the preparation of this report. *Cf.* Report of DNA molecular typing of the Genetics Laboratory of the Prosecutor General's Office and the DNA Laboratory of the National Institute of Forensic Medicine and Science of July 17, 2001 (evidence file, folios 37850 to 37862); Testimony of Carlos Valdés Moreno, Director General of the National Institute of Forensic Medicine and Science, of March 15, 2012, before the 55th Criminal Circuit Court of Bogota (evidence file, folio 14851 to 14853), and report on the forensic anthropology investigation of the case of the Palace of Justice, Physical Anthropology Laboratory of the Universidad Nacional de Colombia (evidence file, folio 21688).

[262] The second report analyzed whether the remains belonged to: Fabio Becerra Correa, Lucy Amparo Oviedo Bonilla, René Francisco Acuña Jiménez, Héctor Jaime Beltrán Fuentes, Carlos Augusto Rodríguez Vera, Ana Rosa Castiblanco Torres, Bernardo Beltrán Hernández, Gloria Stella Lizarazo Figueroa, Luz Mary Portela León, Cristina del Pilar Guarín Cortés, Gloria Anzola de Lanao and David Suspes Celis. This report also did not include Norma Constanza Esguerra Forero and Irma Franco Pineda. *Cf.* Report of DNA molecular typing prepared by Martha Roa Bohórquez, Judicial Investigator I and James Troy Valencia Vargas, Head of the Genetics Laboratory of the Prosecutor General's Office, dated August 9, 2001 (evidence file, folios 37831 to 37834). The third report focused only on performing a "genetic and comparative analysis" with three persons, including Héctor Jaime Beltrán Fuentes. *Cf.* Extract from the report of DNA molecular typing and comparison prepared by Yolanda González López dated May 6, 2002, included in the judgment of the Superior Court of Bogota of January 30, 2012 (evidence file, folio 23042).

[263] According to the communication of the Coordinator of the Physical Anthropology Laboratory of the Universidad Nacional de Colombia of April 1, 2009, this report was requested by the 51st Criminal Court of the Bogota Circuit on March 26, 2009 (evidence file, folios 21682 and 21689). According to the deponent, Carlos Bacigalupo Salinas, these tests were carried out at the request of "Senator Antonio Navarro Wolf and the Ministry of Justice, by authorization of the court, and owing to the Agreement to bring the conflict to an end for humanitarian reasons (*Acuerdo de Punto Final)* (the agreement between the Government of the time and the M-19) [… in order to] confirm the identity of the members of the M-19 who had been buried in the mass grave in the South Cemetery in November 1985, and whose remains were at the Universidad Nacional." Written notes by Carlos Bacigalupo Salinas (evidence file, folio 36332).

[264] *Cf.* Report on the forensic anthropology investigation of the case of the Palace of Justice, Physical Anthropology

establishing whether the remains belonged to members of the M-19,[265] while the Superior Court of Bogota considered that "there [was] information – fragmented, apparently – that these activities extended not only to the members of the M19, but also to the disappeared, visitors and employees of the cafeteria of the Palace of Justice."[266]

195. In the context of the proceedings against the members of the B-2, the Genetics Laboratory of the Prosecutor General's Office performed fresh DNA tests on the remains that had been exhumed (*supra* para. 190), in order to complete the reports prepared in 2001 and 2002. The tests performed in 2010 concluded with the identification of one presumed M-19 guerrilla and one civilian, previously identified by the tests performed by the Universidad Nacional.[267] In June, July and September 2012, tests were also performed, and these proved that other corpses did not belong to the disappeared. At this stage, for the first time, tests were performed with regard to Norma Constanza Esguerra Forero and Irma Franco Pineda. Also, a presumed member of the M-19 was identified.[268]

F.4 Investigation into what happened to Carlos Horacio Urán Rojas

196. An investigation into the death of Auxiliary Justice Carlos Horacio Urán Rojas was not undertaken immediately after the events of the taking and retaking of the Palace of Justice.[269] His family received information that he had died inside the Palace of Justice, as a result of crossfire in the building; hence they did not continue their initial inquiries or file a complaint in this regard at the time (*infra* para. 332). However, on February 1, 2007, during the investigation into forced disappearance, the Fourth Prosecutor found personal documents of Carlos Horacio Urán Rojas in the security vault of the B-2 of the Army's 13th National Brigade on conducting a judicial inspection of the premises. This finding caused the family to resume its inquiries.[270]

Laboratory of the Universidad Nacional de Colombia (evidence file, folio 21689), and report on the results of the bio-anthropological analysis of the osseous remains of the holocaust of the Palace of Justice deposited in the Physical Anthropology Laboratory of the Universidad Nacional de Colombia (evidence file, folios 37905 to 37918).

[265] *Cf.* Report of the Truth Commission (evidence file, folios 252 and 253), and report on the forensic anthropology investigation of the case of the Palace of Justice, Physical Anthropology Laboratory of the Universidad Nacional de Colombia (evidence file, folio 21703).

[266] Judgment of the Superior Court of Bogota of January 30, 2012 (evidence file, folio 23047).

[267] During this testing, no DNA comparison was made between the osseous remains and the samples from the next of kin of Norma Constanza Esguerra Forero and Irma Franco Pineda. *Cf.* Note of the 55th Criminal Circuit Court of Bogota of March 6, 2012 (evidence file, folio 37373). The file before this Court contains three 2010 reports on the examination of the remains of three corpses and, regarding two of them, it is concluded that they belonged to René Francisco Acuña (civilian) and Fabio Becerra Correa (presumed guerrilla). *Cf.* Report of DNA molecular typing and comparison prepared by the Genetics Laboratory of the Prosecutor General's Office on February 3, 2010 (evidence file, folios 20649, 20651 and 20654 and 20656), and Report of DNA molecular typing and comparison prepared by the Genetics Laboratory of the Prosecutor General's Office on March 12, 2010 (evidence file, folio 30942).

[268] At this stage, the remains were compared with samples from the next of kin of the disappeared based on the sex of the disappeared family members and the sex attributed to the corpse. *Cf.* Laboratory reports of the Genetic Group Identification Section of the Prosecutor General's Office of June 8, 15 and 25, July 5 and 16 and September 26, 2012 (evidence file, folios 37376 to 37378, 37380 to 37382, 3784 to 37390, 37392 to 37397, 37400 to 37405, 37408 to 37415, 37417, 37422, 37425 and 37441), and attestation of the 55th Criminal Circuit Court of Bogota of April 10, 2012 (evidence file, folio 21252).

[269] A 1986 report of the Attorney General's office indicated that, as regards the precise circumstances of the death of Carlos Horacio Urán Rojas, "it was only known with certainty that he was killed in the crossfire during the final moments of the skirmish, trying to avoid it." Report of the Attorney General's office. *El Palacio de Justicia y el Derecho de Gentes.* August 1986 (evidence file, folio 7924).

[270] *Cf.* Testimony of Ana María Bidegain provided during the public hearing on the merits; application for *amparo* filed against the Second Criminal Court of the Bogota Special Circuit on May 7, 2013 (evidence file, folio 35180), and inspection of the B-2 vaults carried out by the Prosecution Service (evidence file, folios 18780 to 18791).

197. In January 2010, an investigation was opened into the death of Carlos Horacio Urán Rojas.[271] An order was issued to exhume the body of Mr. Urán Rojas in order to perform a second autopsy (*infra* para. 345). In addition, several statements were received.[272] On August 27, 2010, the Prosecution Service implicated three of the country's generals.[273] According to testimony provided during the public hearing by Ángela María Buitrago, who was the Fourth Prosecutor, "that day, the Prosecutor General […] requested [her] resignation on the basis of that decision."[274] On August 31, 2010, the Prosecutor General appointed another prosecutor to take over the investigation."[275]

198. Subsequently, the case was assigned to the Sixth Prosecutor of the National Human Rights and International Humanitarian Law Unit, who summoned the three retired generals implicated in the investigation to appear in February 2011. That same month, the National Institute of Forensic Medicine and Science forwarded an autopsy report on Justice Urán Rojas[276] (*infra* para. 345).

199. Furthermore, on April 2, 2013, in a judgment against members of the M-19, the death of Carlos Horacio Urán Rojas was included among the deaths that occurred in the bathroom located between the second and third floors of the Palace of Justice[277] (*infra* para. 207). The Court held the members of the M-19 responsible for his murder by *dolus eventualis*, indicating that:

> Even though it could be believed that there is no certainty about the identity of the real perpetrators of the acts as a result of which the above-mentioned persons died, it is clear and irrefutable that the subversives took a group of hostages who they obliged to remain for more than 24 hours in a small space, subject to the anxiety of being struck by one or more of the projectiles resulting from the crossfire, to asphyxia from inhaling the smoke of the fire, to lack of food, medicines, and inadequate sanitation facilities, without those individuals demonstrating the most basic humanitarian gesture in

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271 On April 23, 2008, the Prosecutor General appointed the Fourth Prosecutor delegated to the Supreme Court of Justice to conduct the investigation into the "liberation and death" of Mr. Urán Rojas. *Cf.* Decision of the Prosecutor General of April 23, 2008 (evidence file, folio 2606), and Decision of the Fourth Prosecutor delegated to the Supreme Court of Justice of December 21, 2007 (evidence file, folios 2587 to 2602).

272 *Cf.* Newspaper article, El Espectador, *Tres generales (r) están enredados en asesinato de Magistrado de Palacio,* of August 31, 2010 (evidence file, folios 2609 and 26010), and Newspaper article, El Espectador, *En febrero será indagatoria de General (r) [Comandante de la Brigada XIII] por homicidio de magistrado Urán,* of January 14, 2011 (evidence file, folios 2624 and 2625).

273 *Cf.* Testimony of Ángela María Buitrago Ruíz during the public hearing on the merits in this case; Newspaper article, El Espectador, *Tres generales (r) están enredados en asesinato de Magistrado de Palacio,* of August 31, 2010 (evidence file, folios 2609 and 26010); Newspaper article, El Espectador, *En febrero será indagatoria de General (r) [Comandante de la Brigada XIII] por homicidio de magistrado Urán,* of January 14, 2011 (evidence file, folio 2624 and 2625), and Executive report of the National Human Rights and International Humanitarian Law Unit of the Prosecutor General's Office of December 11, 2012 (evidence file, folio 32482).

274 Testimony of Ángela María Buitrago Ruíz during the public hearing on the merits. However, in an interview published in the journal, *Semana,* Ms. Buitrago indicated that her resignation from the Prosecution Service's office was "due to a series of changes that [the Prosecutor General was] implementing and was not the result of the fact that she had summoned three generals to appear for questioning in the case of Justice Urán [Rojas]." Meanwhile, the Prosecutor General explained that "Buitrago was conducting 137 investigations, of which 54 had been ongoing since 2008 'without any proceedings of any type," and [he had] therefore decided to accept the formal resignation that he had asked the official to present." *Cf.* Journal, *Semana*, *¿Por qué relevaron a la 'Fiscal de Hierro'?* of September 2, 2010 (evidence file, folio 2612).

275 Decision of the Prosecutor General's Office of October 18, 2013 (merits file, folio 3501).

276 *Cf.* Decision of the Prosecutor General's Office of October 18, 2013 (merits file, folio 3501); newspaper article, El Espectador, *En febrero será indagatoria de General (r) [Comandante de la Brigada XIII] por homicidio de magistrado Urán*, of January 14, 2011 (evidence file, folio 2624), and forensic autopsy prepared by the National Institute of Forensic Medicine and Science on February 11, 2011 (evidence file, folio 15900).

277 *Cf.* Judgment of the Second Criminal Court of the Bogota Special Circuit of April 2, 2013 (evidence file, folios 35043 and 35044).

> several of their actions over the period during which the hostages were retained, controlling them and their freedom of movement.[278]

200. Owing to this judgment, the next of kin filed an application for *amparo* before the Criminal Chamber of the Superior Court of Bogota against the court that had excluded Carlos Horacio Urán Rojas from the operative paragraphs of the judgment.[279] On May 21, 2013, the Criminal Chamber denied the application for *amparo*.[280] The next of kin appealed this decision before the Criminal Chamber of the Supreme Court of Justice on May 29, 2013, and their appeal remains pending a decision.[281]

F.5 Investigation into the alleged arbitrary detentions and torture

201. The Special Investigative Court concluded that Eduardo Matson Ospino and Yolanda Santodomingo Albericci had been subjected to ill-treatment by State agents (*supra* para. 158). On the orders of that court, this fact was investigated by the military criminal jurisdiction under which proceedings were instituted that were ended by the statute of limitations in 1993 (*supra* para. 167).

202. In July 2007, in the context of the proceedings against the Commander of the Cavalry School, the prosecution ordered certified copies of the case file in order to investigate what happened to Yolanda Santodomingo Albericci and Eduardo Matson Ospino, and the events mentioned in the statement of José Vicente Rubiano Galvis.[282] According to the representatives and the State, the proceedings remain at the preliminary investigation stage, and this Court has not been provided with any information on measures aimed at identifying the possible perpetrators.[283]

203. Furthermore, on January 30, 2012, in the second instance judgment against the Commander of the Cavalry School, it was established that Yolanda Santodomingo Albericci, Orlando Quijano and Eduardo Matson Ospino were considered suspicious, and were therefore "subjected to cruel, inhuman and degrading treatment, torture."[284] It was also established that:

> The act defined as the offense of abduction was committed, aggravated because it was perpetrated by members of the State's security forces, in the understanding that the element of deprivation of

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278 Judgment of the Second Criminal Court of the Bogota Special Circuit of April 2, 2013 (evidence file, folio 3105).

279 The next of kin alleged that the judgment handed down on "April 2, 2013, […] disregarded the investigations conducted by the [Fourth] Prosecutor delegated to the Supreme Court of Justice and the [Sixth] Prosecutor for Human Rights of the Prosecutor General's Office, and the body of evidence that disproved the death of Justice Carlos Horacio Urán [Rojas] by the guerrilla group and placed him as a victim of extrajudicial execution by members of the Armed Forces who planned and implemented the actions to retake the Palace of Justice on November 6 and 7, 1985." They also indicated that "the [Second] Special Criminal Court of Bogota did not have competence to rule on these events." Application for *amparo* filed against the Second Criminal Court of the Bogota Special Circuit on May 7, 2013 (evidence file, folio 35174).

280 The Superior Court of Bogota considered that if Ana María Bidegain "disagree[d] with the way in which the proceedings were being implemented and with the decisions, she should [have] contested, expressed her disagreement, requested the re-establishment of rights that she allege[d were] violated during these proceedings, without the *amparo* judge being able to intervene in the implementation of the proceedings that were underway, […] or revoke or amend its decision, so that there [was] no reason for her to resort to the constitutional action." Judgment of the Superior Court of Bogota of May 21, 2013 (evidence file, folio 35215).

281 *Cf.* Brief with appeal filed by Ana María Bidegain before the Superior Court of Bogota on May 29, 2013 (evidence file, folio 35219).

282 *Cf.* Order of the Fourth Prosecutor delegated to the Supreme Court of Justice of July 12, 2007 (evidence file, folio 20408), and Note of the Unit delegated to the Supreme Court of Justice of July 24, 2007 (evidence file, folio 38134).

283 *Cf.* Motions and arguments brief (merits file, folio 946), and answering brief of the State (merits file, folio 1938).

284 Judgment of the Superior Court of Bogota of January 30, 2012 (evidence file, folios 23403, 23404 and 23354).

liberty without authorization took place, and that the transfers of these persons were not recorded as required, and also that the said officials denied that they had these persons in their custody.[285]

204. The Chamber of the Superior Court ordered that "[c]ertified copies of this judgment and of the statements of [Yolanda Santodomingo Albericci, Eduardo Matson Ospino and Orlando Arrechea Ocoro] be made so that the corresponding decision may be taken based on the possible occurrence of wrongful actions, which may constitute the offenses of abduction, forced disappearance and torture, that the said persons were victims of."[286] Beyond the measures described in paragraph 208 *infra,* the Court has no other information on the actions taken in this regard.

F.6 Proceedings against the members of the M-19

205. In January 1989, the 30th Itinerant Criminal Investigation Court of Bogota issued an indictment against presumed members of the M-19 for the offenses of homicide, attempted homicide, abduction, rebellion, and misrepresentation (*supra* para. 161).[287]

206. After members of the M-19 had been granted pardons in 1990, the Second Criminal Court of the Bogota Special Circuit decreed the prescription of the criminal charges in favor of several members of the M-19 in November 2009. However, this decision was partially revoked by the Criminal Chamber of the Superior Court of Bogota on September 8, 2010, considering that the offenses of homicide and attempted homicide had constituted crimes against humanity. Lastly, it decided to return the documentation to the original court to continue the proceedings relating to the offenses of homicide and attempted homicide.[288]

207. On April 2, 2013, the Second Criminal Court delivered a guilty verdict against eight members of the M-19, including Irma Franco Pineda, for the aggravated homicide of several persons in the events of November 6 and 7, 1985, in the Palace of Justice, including Carlos Horacio Urán Rojas as a victim (*supra* para. 199).

F.7 Current status of the investigations

208. On October 18, 2013, the Prosecutor General's Office decided to joinder in a single prosecution unit all the investigations "that are being conducted by different prosecution units into the events that occurred in the Palace of Justice on November 6 and 7, 1985."[289] In particular, this included the investigations ordered in the second instance judgment against the Commander of the Cavalry School, the investigations ordered by the Second Criminal Court of the Bogota Special Circuit on April 2, 2013,[290] and also the proceedings against the members of the B-2 of the 13th Brigade, against the members of the COICI,

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[285] The Chamber indicated that "[i]t is true that the purpose of these proceedings is not to make a judicial declaration of the occurrence of these abductions or the corresponding declaration of criminal responsibility for them. However, in order to conclude the analysis of the objectives that are the purpose of these proceedings and only for these effects, this does not prevent the majority of the Chamber from making the present declaration in order to establish one more indication of the objectives of the soldiers in charge of the operation to retake the Palace of Justice." Judgment of the Superior Court of Bogota of January 30, 2012 (evidence file, folios 23405 and 23406).

[286] Judgment of the Superior Court of Bogota of January 30, 2012 (evidence file, folio 23453).

[287] *Cf.* Decision of the 30th Itinerant Criminal Investigation Court, Decision of January 31, 1989 (evidence file, folio 24296), and Judgment of the Superior Court of Bogota of September 8, 2010 (evidence file, folio 1749).

[288] The Criminal Chamber of the Superior Court of Bogota considered that the criminal action had prescribed for the crimes of theft, rebellion, abduction and use of forged public documents. *Cf.* Judgment of the Superior Court of Bogota of September 8, 2010 (evidence file, folios 1749, 1758, 1760 and 1765).

[289] *Cf.* Decision of the Prosecutor General's Office of October 18, 2013 (merits file, folio 3501).

[290] The Second Criminal Court ordered "[t]hat certified copies of the case file be forwarded to the Prosecutor General's Office in relation to [four persons, including] Irma Franco Pineda, in order to investigate their presumed participation in the decease of the other victims of the events that were not included in the indictment." Judgment of the Second Criminal Court of the Bogota Special Circuit of April 2, 2013 (evidence file, folio 35171).

and against the Commander of the 13th Brigade (*supra* paras. 181, 183, 184, 185 to 188 and 189 to 191).[291] The designated prosecution unit had the support of "a working group of prosecutors and a group from the CTI Judicial Police."[292]

F.8 Disciplinary investigations

209. The events of the taking and retaking of the Palace of Justice were the object of several disciplinary investigations conducted by the Office of the Special Attorney assigned to the Military Forces and by the Office of the Special Attorney assigned to the National Police.

F.8.a) Office of the Special Attorney assigned to the Military Forces

210. On June 26, 1988, the Office of the Special Attorney assigned to the Military Forces ordered the opening of a disciplinary investigation against the Colonel, Head of the B-2, and the Commander of the 13th Brigade. On June 27, 1989, it was decided that the former was "presumably responsible for the disappearance" of Irma Franco Pineda and for "the detention, physical, verbal and mental ill-treatment" of Eduardo Matson Ospino and Yolanda Santodomingo Albericci, while the Commander of the 13th Brigade might have violated Decree 1776 of 1979 owing to his actions in relation to the protection of the life of the hostages.[293]

211. On September 28, 1990, the Special Attorney assigned to the Military Forces decided to order a disciplinary sanction requiring the removal of the Commander of the 13th Brigade because he had not taken the necessary steps to protect the life of the defenseless civilian hostages.[294] In addition, he decided to order a disciplinary sanction requiring the removal of the Colonel, Head of the B-2, because he was responsible for the disappearance of Irma Franco Pineda, "who, according to the evidence was alive when she left the Palace of Justice and was transferred to the Casa del Florero." However, the latter was acquitted "of the verbal and physical ill-treatment and confiscation of belongings of […] Eduardo Arturo Matson Ospin[o] and Yolanda Ernestina Santodomingo Albericci" because, although "the unlawful detention and torture" had been proved, this could not be attributed to the said colonel. In addition, the Attorney ordered "separate certified copies of the case file in order to conduct a disciplinary investigation of the conduct of the Second-in-Command of the Charry Solano Battalion for what happened to Eduardo Matson Ospino and Yolanda Santodomingo Albericci.[295]

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[291] The investigations ordered by the second instance judgment against the Commander of the Cavalry School included into "[t]he presumed false testimony of […] Maria Nelfi Díaz in [her] statement of November 25, 2008"; the acts against Yolanda Santodomingo Albericci, Eduardo Matson Ospino and Orlando Arrechea Ocoro; the testimony of a sergeant "in order to investigate his intervention, as well as that of the members of the 7th Brigade of Villavicencio who, on November 6 and 7, 1985, were in the Cavalry School and possibly participated in the perpetration of the offenses of forced disappearance, torture and homicide of which the individuals rescued from the Palace of Justice were victim"; "[p]ossible concurrence of crimes of forced disappearance in which the […] Director General of the National Police and other officials including those from intelligence units could be implicated," as well as "with regard to the Director of the Administrative Department of Security (DAS) and of the units that […] possibly took part in the interrogations and disappearances of hostages and members of the guerrilla who left the Palace of Justice alive." Decision of the Prosecutor General's Office of October 18, 2013 (merits file, folio 3502).

[292] Decision of the Prosecutor General's Office of October 18, 2013 (merits file, folios 3501 and 3502).

[293] *Cf.* Decision of the Office of the Special Attorney's assigned to the Military Forces of September 28, 1990 (evidence file, folio 2638), and notes of the Office of the Special Attorney's assigned to the Military Forces of June 27, 1989 (evidence file, folios 2632 and 2635).

[294] At the same time, the Commander of the 13th Brigade was acquitted as regards the "fire that occurred in the Palace of Justice," considering that there was no evidence that the Military Forces had caused it. *Cf.* Decision of the Office of the Special Attorney's assigned to the Military Forces of September 28, 1990 (evidence file, folio 2664).

[295] *Cf.* Decision of the Office of the Special Attorney's assigned to the Military Forces of September 28, 1990 (evidence file, folios 2664 and 2665). According to the Truth Commission, in the end, the Colonel, Head of the B-2,

212. On October 24, 1990, the Office of the Special Attorney assigned to the Military Forces decided to confirm all the elements of the decision of September 28, 1990. By Decree 731 of 1994, the removal of the Commander of the 13th Brigade was made effective. On June 30, 1994, this decision was confirmed, but the said Brigade Commander filed an action for annulment and re-establishment of rights. On August 8, 2001, the Second Section of the Administrative Court of Cundinamarca "declared the nullity of the decisions appealed" owing to the expiry of the disciplinary action and ordered that the annotation of the cancellation of the sanction of dismissal on his curriculum vitae. This decision was confirmed by the Second Section of the Council of State on February 11, 2005, and subsequently by the Plenary Contentious-Administrative Chamber of the Council of State on April 15, 2008.[296]

F.8.b) Office of the Special Attorney assigned to the National Police

213. The Office of the Special Attorney assigned to the National Police conducted at least three investigations into the events of the Palace of Justice.[297] These included the investigation of "[two] military criminal investigation" judges who took part in the removal of the corpses from the Palace of Justice.[298] Nevertheless, on May 15, 1989, the Office of the Special Attorney assigned to the National Police decided to acquit both officials.[299]

F.9 Impeachment Committee of the Chamber of Representatives

214. The Impeachment Committee of the Chamber of Representatives received various complaints based on the events of the Palace of Justice, one of which was presented by the Attorney General against the President of the Republic and the Minister for Defense at the time.[300] On November 20, 1985, the Impeachment Committee decided to joinder the complaints received and, on November 27, it decided to open an investigation.[301] On July 16, 1986, it declared "that there [were] no grounds for attempting to impeach [the two accused] before the Senate of the Republic."[302]

215. Subsequently, on December 3, 1986, a group of citizens "filed a [new] complaint [before the Chamber of Representatives] against the former President […] and his Ministers of the Interior, Justice, and Defense for the events that occurred on November 6 and 7, 1985." However, on July 18, 1989, the Impeachment Committee decided to archive the

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was not removed. *Cf.* Report of the Truth Commission (evidence file, folios 287 and 288).

296 *Cf.* Decision of the Office of the Special Attorney's assigned to the Military Forces of October 24, 1990 (evidence file, folios 2689 and 2690), and Report of the Truth Commission (evidence file, folio 288).

297 One of the investigations was into the "decision not to suspend the operation deployed on the terrace over the fourth floor" and another on "the withdrawal of the system of protection that the National Police had provided in the Palace of Justice." Two individuals were acquitted of responsibility and one was sanctioned with a request that he be dismissed. *Cf.* Ruling of the Office of the Special Attorney's assigned to the National Police of October 31, 1990 (evidence file, folios 32132 to 32155), and Report of the Truth Commission (evidence file, folios 290 and 291).

298 One of them was accused of "preparing a record of the joint removal […] of two human remains, as if it was a single corpse"; and the other of "ordering the burial in a mass grave of 25 corpses, 17 of them unidentified, despite the criminal investigation into the events that occurred in the Palace of Justice, […] with the consequent difficulties to identify the carbonized remains, in the two cases." Note No. 11354 of the Office of the Special Attorney's assigned to the National Police of November 3, 1987 (evidence file, folio 31604).

299 *Cf.* Report of the Truth Commission *(*evidence file, folio 291).

300 *Cf.* Decision of the Impeachment Committee of the Chamber of Representatives of July 16, 1986 (evidence file, folio 2694); complaint filed by the Attorney General on June 20, 1986 (evidence file, folio 6735), and Report of the Truth Commission (evidence file, folio 291).

301 *Cf.* Decisions of the Impeachment Committee of the Chamber of Representatives of November 27, 1985, and July 16, 1986 (evidence file, folio 2693 and 2694).

302 Decision of the Impeachment Committee of the Chamber of Representatives of July 16, 1986 (evidence file, folio 2719).

complaint alleging that the "person who should respond before the courts [would be the Commander of the 13th Brigade]."[303] In addition, on November 6, 2004, the next of kin of the disappeared victims filed a third complaint against the President at that time, Belisario Betancur.[304] According to the representatives, "the authorities never responded to it."[305] The State did not submit any information in this regard.

F.10 Contentious-administrative jurisdiction

216. Family members of Carlos Augusto Rodríguez Vera, Norma Constanza Esguerra Forero, Héctor Jaime Beltrán Fuentes, Bernardo Beltrán Hernández, Luz Mary Portela León, David Suspes Celis, Gloria Stella Lizarazo Figueroa, Cristina del Pilar Guarín Cortés, Ana Rosa Castiblanco Torres, Gloria Anzola de Lanao, Lucy Amparo Oviedo Bonilla, Irma Franco Pineda and Carlos Horacio Urán Rojas (all presumed victims of forced disappearance) have filed actions for direct reparation in the contentious-administrative jurisdiction for the events of this case.

217. At the date this Judgment is delivered, the proceedings with regard to the next of kin of 11 of the 13 presumed victims in this case who resorted to the contentious-administrative jurisdiction have been decided with a final judgment;[306] one proceeding is pending a second instance decision, and three proceedings are pending a first instance decision.[307] In all these decisions, with the exception of the proceeding instituted by the next of kin of Irma Franco Pineda, the State has been convicted[308] of a service-related failure as regards its obligation to protect the Palace of Justice and its occupants, inasmuch as it was aware of the threats against the judicial officials and the intention to occupy the Palace of Justice, but did not take the necessary measures to protect it, as well as due to the way in which it conducted the operation to retake the Palace of Justice, considering that it made an "exaggerated and irresponsible use of official weapons"[309] (*supra* para. 105 and *infra* para. 521). Also, in the case of Irma Franco Pined, it was concluded that she was a victim of forced disappearance.[310]

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303 *Cf.* Decision of the Impeachment Committee of the Chamber of Representatives of December 11, 1989 (evidence file, folio 2721), and Report of the Truth Commission (evidence file, folios 292 and 293).

304 *Cf.* Assertion by César Rodríguez Vera in Video DVD No. 2 recorded in the offices of Caracol (merits file, folio 4666), and Article by René Guarín Cortés, *¿Dónde están?* Journal of the Supreme Court of Justice 1989 (evidence file, folio 26296).

305 Motions and arguments brief, folio 949.

306 This refers to the next of kin of Carlos Augusto Rodríguez Vera, Cristina del Pilar Guarín Cortés, Gloria Stella Lizarazo Figueroa, David Suspes Celis, Héctor Jaime Beltrán Fuentes, Bernardo Beltrán Hernández, Norma Constanza Esguerra Forero, Irma Franco Pineda, Ana Rosa Castiblanco Torres, Luz Mary Portela León and of Carlos Horacio Urán Rojas. In the case of the next of kin of Ana Rosa Castiblanco Torres two proceedings have been decided.

307 At the present time, the application for direct reparation filed by the parents and siblings of Héctor Jaime Beltrán Fuentes is pending a decision in second instance. And, the applications for direct reparation filed by the next of kin of Gloria Anzola de Lanao, by the sister of Norma Costanza Esguerra Forero, and by the next of kin of Lucy Amparo Oviedo Bonilla are being processed in first instance.

308 In the proceedings instituted by the next of kin of Carlos Augusto Rodríguez Vera, Norma Constanza Esguerra Forero, Héctor Jaime Beltrán Fuentes, David Suspes Celis, Gloria Stella Lizarazo Figueroa, Irma Franco Pineda and six of the next of kin of Ana Rosa Castiblanco Torres "[t]he Nation–Ministry of Defense" was convicted. In addition, in the judgments delivered in favor of the next of kin of Bernardo Beltrán Hernández, Cristina del Pilar Guarín Cortés and Luz Mary Portela León, "the Colombian Nation–Ministry of Defense–National Police" were found responsible.

309 *Cf.* Judgments of the Contentious-Administrative Chamber of the Council of State of July 24, 1996 (evidence file, folios 505 and 531); July 31, 1997 (evidence file, folio 2822); January 28, 1999 (evidence file, folio 2870); October 13, 1994 (evidence file, folios 2906 and 2907); December 12, 2007 (evidence file, folio 3000); September 6, 1995 (evidence file, folio 3050); September 25, 1997 (evidence file, folio 3096); August 14, 1997 (evidence file, folio 3150); October 13, 1994 (evidence file, folio 3190); December 2, 1994, and January 26, 1995 (evidence file, folios 3310, 3347, 3359 and 3387).

310 *Cf.* Judgment of the Contentious-Administrative Chamber of the Council of State of September 11, 1997

218. Several of these decisions also took into account the alteration of the scene of the crime when sentencing the State, referring to the irregularities in the "removal of the corpses, their identification and burial, the handling of those retained and the control of each of them, owing to an erratic and unlawful procedure, [which] went a long way towards preventing precise conclusions to be reached about the way in which many of the victims died, their location, and identification."[311] Regarding Ana Rosa Castiblanco Torres, the decision of the Contentious-Administrative Court stressed that, as a result of the errors committed by the State when carrying out the removal of the corpses, her identification and burial, "she was considered disappeared and it was only after an intense search, [16] years later, that her moral remains were found."[312]

219. The Court notes that the contentious-administrative jurisdiction awarded compensation for "loss of earnings" to 20 family members of seven presumed victims (*infra* para. 592). In addition, this jurisdiction awarded compensation for non-pecuniary damage to 36 family members of 11 presumed victims of forced disappearance.[313] Details of the next of kin who received compensation and the amounts received are provided in the chapter on reparations of this Judgment (*infra* paras. 592 and 601).

IX
FORCED DISAPPEARANCE OF PERSONS RIGHTS TO PERSONAL LIBERTY, PHYSICAL INTEGRITY, LIFE AND RECOGNITION OF JURIDICAL PERSONALITY, IN RELATION TO THE OBLIGATION TO RESPECT RIGHTS

220. The Court recalls that, in this case, it is alleged that State agents forcibly disappeared 11 persons, including cafeteria employees and occasional visitors who survived the events of the taking and retaking of the Palace of Justice, one member of the M-19 guerrilla (Irma Franco Pineda), and one Auxiliary Justice of the Council of State (Carlos Horacio Urán Rojas) who was also subjected to extrajudicial execution.

221. In this chapter the Court will examine: (a) the presumed forced disappearance of Carlos Augusto Rodríguez Vera, Irma Franco Pineda, Cristina del Pilar Guarín Cortés, Gloria Anzola de Lanao, Norma Constanza Esguerra Forero, Bernardo Beltrán Hernández, Héctor Jaime Beltrán Fuentes, Gloria Stella Lizarazo Figueroa, Luz Mary Portela León, David Suspes Celis, Lucy Amparo Oviedo Bonilla and Ana Rosa Castiblanco Torres, and (b) the presumed forced disappearance and alleged extrajudicial execution of Carlos Horacio Urán Rojas.

A. Regarding the presumed forced disappearance of Carlos Augusto Rodríguez Vera, Irma Franco Pineda, Cristina del Pilar Guarín Cortés, Gloria Anzola de Lanao, Norma Constanza Esguerra Forero, Bernardo Beltrán Hernández, Héctor Jaime Beltrán Fuentes, Gloria Stella Lizarazo Figueroa, Luz Mary Portela León, David Suspes Celis, Lucy Amparo Oviedo Bonilla and Ana Rosa Castiblanco Torres

A.1) General arguments of the Commission and of the parties

(evidence file, folio 3258).

311 Judgment of the Contentious-Administrative Chamber of the Council of State of December 6, 1995 (evidence file, folios 3085, 3086, 3088 and 3089). See also, judgments of the Contentious-Administrative Chamber of the Council of State of October 13, 1994 (evidence file, folio 2942), and October 13, 1994 (evidence file, folios 3235 and 3236).

312 *Cf.* Judgment of the Administrative Court of Cundinamarca of December 12, 2007 (evidence file, folios 3027, 3028 and 3046).

313 In the case submitted to the Court, 98 persons were identified as next of kin of the presumed victims of forced disappearance.

222. The Commission concluded that these twelve individuals were victims of forced disappearance, insofar as they left the Palace of Justice alive in the custody of State agents, and were taken as detainees to the Casa del Florero, following which, with the exception of Ana Rosa Castiblanco Torres, their whereabouts are unknown. The Commission took into account: (i) the identifications on videos; (ii) the telephone calls received by the next of kin regarding the detention of their loved ones; (iii) the separation of those considered suspicious, "who were treated differently according to the protocols used at the time," and (iv) the failure to register the persons considered suspicious. It emphasized that the next of kin "received no answers or they were answered evasively and, in some cases, were victims of threats so that they would not continue inquiring about the fate of their loved ones." The Commission also indicated that the State tried to apply standards of criminal law that "were not consistent with the assessment of evidence under international human rights law, especially in cases of forced disappearance."

223. The representatives argued that "twelve persons who were present in the Palace of Justice have not appeared either alive or dead," including eight cafeteria employees, three occasional visitors, and one of the guerrillas who took part in the assault. With the exception of Ana Rosa Castiblanco, the whereabouts of these persons are still unknown. They indicated that "the case file contains numerous probative elements confirming that they left the Palace alive; these include the identification of six […] of the disappeared by their next of kin in video evidence as they left the Palace, telephone calls to the next of kin and information gathered by the next of kin, statements of members of the Army, and other indicative evidence in the domestic case files." Furthermore, "the [forced] disappearances were the result of established orders and of selection and classification procedures for those liberated who were considered 'special,' implemented by transferring such persons to military garrisons, subjecting them to interrogation using torture techniques, and ensuring concealment by the absence of records and the disappearance of the evidence that existed in the initial judicial proceedings." In particular, they indicated that "if at least one of them was disappeared, all of them must have received the same treatment." Also, they rejected the hypotheses that the bodies of the disappeared were destroyed by the fire, or that they are in the mass grave.

224. The State acknowledged its responsibility for the forced disappearance of Irma Franco Pineda and Carlos Augusto Rodríguez Vera, but indicated that, except in these cases, "it has not been proved that the essential elements [of forced disappearance] have been constituted" in relation to the other presumed victims. In this regard, it emphasized that the Superior Court of Bogota had reached the same conclusion in its second instance judgment against the Commander of the Cavalry School. It also affirmed that, "in cases of presumed forced disappearances, it must at least be proved that the presumed victim was detained." It indicated that the Court should base itself "on the proven fact of the detention of the victim, and then use the different elements of evidentiary law, including indications, to establish the occurrence of the other acts that constitute this internationally wrongful act, as well as the possible responsibility of the State for its perpetration." It affirmed that "what should not happen, […] is that, in the absence of news about the whereabouts of an individual, the deprivation of liberty be presumed or supposed in order to construct the presumed perpetration [of] forced disappearance." The State acknowledged that, to date, the whereabouts of nine persons is unknown, and that this is closely related to the errors as regards: "(i) the processing and identification of the corpses; (ii) the absence of rigor in the inspection and preservation of the scene of the events; (iii) the improper handling of the evidence collected, and (iv) the methods used that were not appropriate to preserve the chain of custody." Regarding Ana Rosa Castiblanco, it indicated that, "in the international case file, not only has it not been proved […] that she was detained by State agents, but, based on the autopsy […] it was possible to conclude that […] she died on the fourth floor of

the Palace of Justice". It stressed that the fact that her remains were not returned until 2001 was due "to the unjustified delay in the investigations."

A.2) General considerations of the Court

225. Owing to the State's acknowledgement of responsibility in relation to Carlos Augusto Rodríguez Vera and Irma Franco Pineda, there is no dispute between the parties concerning the forced disappearance of these persons. In addition, the State acknowledged its responsibility by omission for failing to elucidate the events and to discover the whereabouts of the other presumed victims, which it attributed to the errors committed in the processing of the scene of the events and in the identification of the mortal remains, as well as to the unjustified delay in the investigations. Consequently, the State acknowledged that the whereabouts of the presumed disappeared victims remains unknown, with the exception of Ana Rosa Castiblanco Torres. However, it expressly clarified that this acknowledgement "does not imply accepting that the wrongful act of forced disappearance of persons occurred with regard to these nine victims" (*supra* para. 21.b.ii).

226. In this regard, the Court recalls that the disappearance of a person, because their whereabouts are unknown, is not the same as an enforced disappearance.[314] The enforced disappearance of persons is a violation of human rights composed of three concurring elements: (a) the deprivation of liberty; (b) the direct intervention of State agents or their acquiescence, and (c) the refusal to acknowledge the detention and to reveal the fate or the whereabouts of the person concerned.[315] In this case, there is no dispute that the presumed disappeared victims were in the Palace of Justice and, with the exception of Ana Rosa Castiblanco Torres, following the taking and retaking of the building, their whereabouts remain unknown so that they are disappeared according to the general meaning of the word. This Court must determine whether this physical disappearance of the presumed victims was also due to an enforced disappearance, because they left the Palace of Justice alive in the custody of State agents who continue to deny their detention, following which their fate is unknown.

227. Based on the foregoing, the Court will determine what happened to Cristina del Pilar Guarín Cortés, David Suspes Celis, Bernardo Beltrán Hernández, Héctor Jaime Beltrán Fuentes, Gloria Stella Lizarazo Figueroa, Luz Mary Portela León, Norma Constanza Esguerra Forero, Lucy Amparo Oviedo Bonilla, Gloria Anzola de Lanao and Ana Rosa Castiblanco Torres. Once it has established the facts in relation to each of them, it will analyze, as pertinent, the alleged violations of the rights to recognition of juridical personality,[316] life,[317]

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[314] The Superior Court of Bogota indicated that the fact that a person is disappeared "signifies that there is no news of them, even though there is evidence, and it is accepted, that he or she was alive in the Palace when the assault by the subversives began. They could have died there and their corpse was not identified, even if it was in a recognizable condition; perhaps they were not identified because this was not possible owing to the degradation caused by the fire, or by error or improper handling of the remains; they could even have left the building alive and their exit was not registered. Simply, nothing is known about them, except that they were alive in that place at the onset." *Cf.* Judgment of the Superior Court of Bogota of October 24, 2014 (evidence file, folio 38278). See also: Commission on Human Rights, Report submitted by Mr. Manfred Nowak, expert member of the Working Group on Enforced or Involuntary Disappearances, 4 March 1996, E/CN.4/1996/36, para. 83, and International Committee of the Red Cross (ICRC), *Guiding Principles, Model Law on the Missing*, article 2. Available at https://www.icrc.org/eng/resources/documents/misc/missing-model-law-010907.htm.

[315] *Cf. Case of Gómez Palomino v. Peru. Merits, reparations and costs*. Judgment of November 22, 2005. Series C No. 136, para. 97, and *Case of Osorio Rivera and family members v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of November 26, 2013. Series C No. 274, para. 113.

[316] Article 3 of the American Convention establishes that: "[e]very person has the right to recognition as a person before the law."

[317] Article 4(1) of the American Convention establishes that: "[e]very person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life."

physical integrity,[318] and personal liberty,[319] in relation to the obligation to respect rights established in Article 1(1)[320] of the American Convention, as well as of Articles I[321], III[322] and XI[323] of the Inter-American Convention on Forced Disappearance, to the detriment of each of them, and also of Carlos Augusto Rodríguez Vera and Irma Franco Pineda.

228. In its case law, this Court has developed the concept that the crime of forced disappearance violates multiple norms, and that it is of a permanent or continuing nature, which means that the forced disappearance subsists until the whereabouts of the disappeared person are discovered or their remains are reliably identified.[324] While the disappearance continues, States have the correlative obligation to investigate it and, eventually, to punish those responsible based on the obligations arising from the American Convention and, in particular, the Inter-American Convention on Forced Disappearance.

229. Hence, the analysis of forced disappearance must encompass the whole series of facts presented to the Court's consideration. It is only thus that the legal analysis of forced disappearance is consequent with the complex violation of human rights that it entails,[325] with its permanent nature, and with the need to consider the context in which the facts occurred, in order to analyze its effects over time and to examine its consequences

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[318] The relevant part of Article 5 of the American Convention establishes 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."

[319] Article 7(1) of the American Convention establishes that: "[e]very person has the right to personal liberty and security."

[320] Article 1(1) of the American Convention establishes that: "[t]he 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."

[321] Article I of the Inter-American Convention on Forced Disappearance of Persons establishes that: "[t]he States Parties to this Convention undertake: (a) Not to practice, permit, or tolerate the forced disappearance of persons, even in states of emergency or suspension of individual guarantees; (b To punish within their jurisdictions, those persons who commit or attempt to commit the crime of forced disappearance of persons and their accomplices and accessories; (c) To cooperate with one another in helping to prevent, punish, and eliminate the forced disappearance of persons; (d) To take legislative, administrative, judicial, and any other measures necessary to comply with the commitments undertaken in this Convention."

[322] Article III establishes that: "[t]he States Parties undertake to adopt, in accordance with their constitutional procedures, the legislative measures that may be needed to define the forced disappearance of persons as an offense and to impose an appropriate punishment commensurate with its extreme gravity. This offense shall be deemed continuous or permanent as long as the fate or whereabouts of the victim has not been determined. The States Parties may establish mitigating circumstances for persons who have participated in acts constituting forced disappearance when they help to cause the victim to reappear alive or provide information that sheds light on the forced disappearance of a person."

[323] Article XI of the Inter-American Convention on Forced Disappearance of Persons establishes that: "[e]very person deprived of liberty shall be held in an officially recognized place of detention and be brought before a competent judicial authority without delay, in accordance with applicable domestic law. The States Parties shall establish and maintain official up-to-date registries of their detainees and, in accordance with their domestic law, shall make them available to relatives, judges, attorneys, any other person having a legitimate interest, and other authorities."

[324] *Cf. inter alia*, *Case of Velásquez Rodríguez v. Honduras. Merits.* Judgment of July 29, 1988. Series C No. 4, paras. 155 to 157, and *Case of Osorio Rivera and family members v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of November 26, 2013. Series C No. 274, para. 31.

[325] *Cf. Case of Heliodoro Portugal v. Panama*. *Preliminary objections, merits, reparations and costs.* Judgment of August 12, 2008. Series C No. 186, para. 112, and *Case of Osorio Rivera and family members v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of November 26, 2013. Series C No. 274, para. 116.

comprehensively,[326] taking into account the *corpus juris* of both inter-American and international protection.

230. Given the nature of this case, the main dispute revolves around the different hypotheses regarding what happened to the presumed victims whose whereabouts are unknown to date or, in the case of Ana Rosa Castiblanco Torres, whose whereabouts were unknown for 16 years. On the one hand, there is the hypothesis that the disappeared persons died during the events of November 6 and 7, 1985, and the whereabouts of their remains are unknown while, on the other hand, it is indicated that these individuals left the Palace alive in the custody of State agents and were victims of forced disappearance (*supra* paras. 222 to 224 and *infra* 289). Owing to the absence of direct evidence in relation to either of the two hypotheses, the Court recalls that it is legitimate to use circumstantial evidence, indications and presumptions as grounds for a judgment, provided that conclusions consistent with the facts can be inferred from them.[327] In this regard, the Court has indicated that, in principle, the plaintiff has the burden of proving the facts on which his arguments are based. However, it has emphasized that, contrary to domestic criminal law, in proceedings on human rights violations, the State's defense cannot rest on the plaintiff's inability to provide evidence when it is the State that controls the means to clarify facts that occurred in its territory.[328] In addition, indicative or presumptive evidence is especially important in the case of allegations of forced disappearance, because this type of violation is characterized by the attempt to eliminate any element that allows the detention, whereabouts and fate of the victims to be proved.[329]

231. In addition, regarding the way in which the evidence in domestic proceedings is assessed, as indicated in other cases concerning Colombia, the Court reiterates that it is not a criminal court and that, as a general rule, it is not incumbent on it to decide on the authenticity of the evidence produced in a domestic investigation when this has been considered valid by the competent judicial jurisdiction, and if it has not been able directly to verify or to confirm violations to the guarantees of due process in obtaining, investigating, authenticating or assessing such evidence.[330]

232. The Court notes that, according to the State, when analyzing whether forced disappearances occurred in this case, "the deprivation of liberty cannot be presumed or supposed in the absence of news about the whereabouts of an individual in order to construct the presumed perpetration of the internationally wrongful act of forced disappearance" (*supra* para. 224). In this regard, it is important to stress that the way in which the deprivation of liberty was implemented is irrelevant when characterizing an

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[326] *Cf. Case of Goiburú et al. v. Paraguay. Merits, reparations and costs*. Judgment of September 22, 2006. Series C No. 153, para. 85, and *Case of Osorio Rivera and family members v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of November 26, 2013. Series C No. 274, para. 116.

[327] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits.* Judgment of July 29, 1988. Series C No. 4, para. 130, and *Case of J. v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of November 27, 2013. Series C No. 275, para. 306.

[328] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits.* Judgment of July 29, 1988. Series C No. 4, para. 135, and *Case of J. v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of November 27, 2013. Series C No. 275, para. 306.

[329] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits.* Judgment of July 29, 1988. Series C No. 4, para. 131, and *Case of Osorio Rivera and family members v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of November 26, 2013. Series C No. 274, para. 150.

[330] *Cf. Case of the Santo Domingo Massacre v. Colombia. Preliminary objections, merits and reparations*. Judgment of November 30, 2012. Series C No. 259, para. 201, and *Case of the Afrodescendant Communities displaced from the Cacarica River Basin (Operation Genesis) v. Colombia. Preliminary objections, merits, reparations and costs.* Judgment of November 20, 2013. Series C No. 270, para. 77.

enforced disappearance;[331] in other words, any form of deprivation of liberty meets this first requirement. On this point, the United Nations Working Group on Enforced or Involuntary Disappearances has clarified that "the enforced disappearance may be initiated by an illegal detention or by an initially legal arrest or detention. That is to say, the protection of the victim from enforced disappearance must be effective upon the act of deprivation of liberty, whatever form such deprivation of liberty takes, and not be limited to cases of illegitimate deprivations of liberty."[332] The Court finds that the fact that the victims exited the Palace of Justice alive, in the custody of State agents, satisfies this first element of the deprivation of liberty in an enforced disappearance.

233. The Court also notes that there is no impediment to the use of indicative evidence to prove the concurrence of any of the elements of forced disappearance, including the deprivation of liberty. In this regard, it is pertinent to refer to the case of *González Medina and family members v. Dominican Republic*, in which the Court, using indicative evidence, concluded that the victim had been detained and, subsequently, forcibly disappeared.[333] Also, in the case of *Osorio Rivera and family members v. Peru,* the Court decided that what happened to the victim constituted a forced disappearance and, to this end, it was necessary to infer that his detention had continued following an order to release him.[334] This opinion is shared by the European Court of Human Rights which has indicated that, in cases in which the detention of an individual by State authorities has not been proved, this detention may be presumed or inferred if it is established that the individual entered a place under the control of the State and has not been seen since.[335]

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[331] The 1992 Declaration on the Protection of All Persons from Enforced Disappearance establishes that enforced disappearances occur when: "persons are arrested, detained or abducted against their will or otherwise deprived of their liberty by officials of different branches or levels of Government, or by organized groups or private individuals acting on behalf of, or with the support, direct or indirect, consent or acquiescence of the Government, followed by a refusal to disclose the fate or whereabouts of the persons concerned or a refusal to acknowledge the deprivation of their liberty, which places such persons outside the protection of the law." In addition, Article 2 of the 2006 International Convention for the Protection of All Persons from Enforced Disappearance defines enforced disappearance as: "the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law." Meanwhile, Article II of the Inter-American Convention on Forced Disappearance defines forced disappearance as: "the act of depriving a person or persons of his or their freedom, in whatever way, perpetrated by agents of the State or by persons or groups of persons acting with the authorization, support, or acquiescence of the State, followed by an absence of information or a refusal to acknowledge that deprivation of freedom or to give information on the whereabouts of that person, thereby impeding his or her recourse to the applicable legal remedies and procedural guarantees."

[332] Working Group on Enforced or Involuntary Disappearances, Report of the Working Group on Enforced or Involuntary Disappearances, *General comment on the definition of enforced disappearances,* A/HRC/7/2, 10 January 2008, para. 7. See also, *Case of Blanco Romero et al. v. Venezuela. Merits, reparations and costs*. Judgment of November 28, 2005. Series C No. 138, para. 105, and *Case of Osorio Rivera and family members v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of November 26, 2013. Series C No. 274, para. 125.

[333] *Cf. Case of González Medina and family members v. Dominican Republic. Preliminary objections, merits, reparations and costs.* Judgment of February 27, 2012. Series C No. 240.

[334] *Cf. Case of Osorio Rivera and family members v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of November 26, 2013. Series C No. 274.

[335] The European Court indicated: "Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, such as in cases where persons are under their control in custody, strong presumptions of fact will arise in respect of injuries and death occurring during that detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation […].*These principles apply also to cases in which, although it has not been proved that a person has been taken into custody by the authorities, it is possible to establish that he or she entered a place under their control and has not been seen since*. In such circumstances, the onus is on the Government to provide a plausible explanation of what happened on the premises and to show that the person concerned was not detained by the authorities, but left the premises without subsequently being deprived of his or her liberty." European Court of Human Rights (ECHR), *Case of Khadzhialiyev*

234. Nevertheless, the Court must not only focus on analyzing the evidence relating to whether the ten presumed victims left the Palace of Justice alive in the custody of State agents. A forced disappearance consists of numerous actions that, combined towards a single objective, violate permanently, while they subsist, different rights protected by the Convention.[336] Therefore, the examination of an enforced disappearance must be consequent with the complex violation of human rights that it entails.[337] When examining a presumed forced disappearance it is necessary to bear in mind that the deprivation of liberty of the individual is only the start of the constitution of a complex violation that extends over time until the fate and the whereabouts of the victim are known. The analysis of a possible forced disappearance should not focus in an isolated, separate and fragmented way only on the detention, the possible torture, or the risk of loss of life.[338]

235. This Court also notes that the State's discrepancy is based, to a great extent, on the conclusions of the Superior Court of Bogota in criminal proceedings during which it considered that the forced disappearance of Carlos Augusto Rodríguez Vera and Irma Franco Pineda had been proved, but declared a partial nullity with regard to the forced disappearance of the other presumed disappeared victims considering that, in these proceedings, it had not received evidence that proved this beyond any reasonable doubt (*supra* paras. 177 to 180).[339] In this regard, the Court reiterates that it is not a criminal court, so that, in order to establish that a violation of the rights recognized in the Convention has occurred, it is not necessary that the State's responsibility has been proved beyond any reasonable doubt (*supra* para. 81).

236. Therefore, owing to the complex nature of forced disappearance, a crime that violates multiples norms, the Court will analyze the indicative elements that, when taken together, contribute to determining whether the presumed victims left the Palace of Justice alive and were subsequently forcibly disappeared, as follows: (a) the classification of the disappeared as suspicious; (b) the failure to register and the separation of the persons considered suspicious; (c) the transfer of the suspects to military facilities where the torture and disappearances occurred; (d) the information received by the next of kin that the disappeared had left the Palace alive; (e) The Armed Forces' denial of the detention of individuals from the Palace of Justice; (f) the alteration of the crime scene and the irregularities in the removal of corpses; (g) the threats to the family members and acquaintances; (h) the identification in videos by family members and acquaintances. The Court will also examine the State's hypothesis according to which: (i) the disappeared persons may have died inside the Palace of Justice, and will also take into account (j) the failure to elucidate the events, in order to determine what happened to the above-mentioned presumed victims.

A.2.a) The classification of the disappeared as suspicious

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and Others v. Russia, No. 3013/04, Judgment of November 6, 2008, paras. 79 and 80.

336 *Cf. Case of Radilla Pacheco v. Mexico. Preliminary objections, merits, reparations and costs.* Judgment of November 23, 2009. Series C No. 209, para. 138, and *Case of García and family members v. Guatemala. Merits, reparations and costs.* Judgment of November 29, 2012. Series C No. 209, para. 99.

337 *Cf. Case of Heliodoro Portugal v. Panama. Preliminary objections, merits, reparations and costs.* Judgment of August 12, 2008. Series C No. 186, para. 112, and *Case of García and family members v. Guatemala. Merits, reparations and costs.* Judgment of November 29, 2012. Series C No. 209, para. 99.

338 *Cf. Case of Heliodoro Portugal v. Panama. Preliminary objections, merits, reparations and costs.* Judgment of August 12, 2008. Series C No. 186, para. 112, and *Case of González Medina and family members v. Dominican Republic. Preliminary objections, merits, reparations and costs.* Judgment of February 27, 2012. Series C No. 240, para. 175.

339 Those proceedings did not examine the presumed forced disappearance of Ana Rosa Castiblanco Torres.

237. The Court notes that some individuals were categorized as suspected of belonging to, or collaborating with, the M-19 inside the Palace of Justice by "a basic selection process" during the transfer to the Casa del Florero or once in the Casa del Florero if, for example, other survivors said that they were members of the guerrilla.[340] Thus, two first instance courts concluded that the State agents considered the following to be suspicious: Carlos Augusto Rodríguez Vera, Cristina del Pilar Guarín Cortés, Bernardo Beltrán Hernández, David Suspes Celis, Gloria Stella Lisarazo Figueroa, Gloria Anzola de Lanao, Norma Constanza Esguerra Forero, Luz Mary Portela León, Irma Franco Pineda, Héctor Jaime Beltrán Fuentes and Lucy Amparo Oviedo Bonilla.[341] In particular, in the criminal proceedings against the Commander of the Cavalry School, the Third Criminal Court was "convinced that the special situation of some of the survivors, such as being a university student, being born in a specific area of the country, working in the Palace cafeteria, etc., constituted grounds for presuming that they had collaborated with or were part of the insurgent group."[342] Also, in its second instance judgment concerning the Commander of the 13th Brigade, the Superior Court of Bogota considered that, "from the outset, some soldiers considered that the cafeteria employees could be suspected of having supported the guerrilla."[343]

238. Regarding the persons who worked in the cafeteria,[344] the Court takes note of the statements of military agents according to which the cafeteria of the Palace of Justice had supposedly been use by the M-19 to bring in the weapons with which they carried out the assault. In this regard, the soldier, José Yesid Cardona Gómez, who took part in the operation to retake the Palace of Justice, stated that he "went to the cafeteria because [they] were given the order that that was the center of the operation."[345] Similarly, Ricardo Gámez Mazuera, who stated that he had taken part in intelligence work during the retaking of the Palace of Justice, testified that "[t]he Colonel […] based himself on the hypothesis that weapons had been hidden in the Palace cafeteria prior to the assault and, therefore, ordered that Mr. Rodríguez be tortured 'as an accomplice.'"[346]

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[340] *Cf.* Judgment of the Superior Court of Bogota of January 30, 2012 (evidence file, folios 23380, 23381 and 23383).

[341] In the proceedings against the Commander of the Cavalry School and the Commander of the Army's 13th Brigade. *Cf.* Judgment of the Third Criminal Court of the Bogota Special Circuit of June 9, 2010 (evidence file, folio 24030), and Judgment of the 51st Criminal Court of the Bogota Circuit of April 28, 2011 (evidence file, folio 24570).

[342] *Cf.* Judgment of the Third Criminal Court of the Bogota Special Circuit of June 9, 2010 (evidence file, folios 23956 and 23957). See also, Report of the Truth Commission (evidence file, folio 179).

[343] *Cf.* Judgment of the Superior Court of Bogota of October 24, 2014 (evidence file, folio 38311). In the proceedings against the Commander of the Cavalry School, the Superior Court of Bogota did not rule specifically on this matter. Nevertheless, that court did determine that "the individuals who gave rise to doubts about their identity, owing to contradictions in their explanation of why they were in the Palace of Justice, or because they were students or owing to where they came from, were subjected to cruel, inhuman or degrading treatment, torture (cases of Orlando Quijano, Orlando Arrechea Ocoro, Eduardo Arturo Matson Ospino and Yolanda Ernestina Santodomingo Albericci, among others) and, ultimately, to forced disappearance, as in the case of Irma Franco Pineda and Carlos Augusto Rodríguez Vera." *Cf.* Judgment of the Superior Court of Bogota of January 30, 2012 (evidence file, folio 23354).

[344] Carlos Augusto Rodríguez Vera, Cristina del Pilar Guarín Cortés, Bernardo Beltrán Hernández, David Suspes Celis, Gloria Stella Lizarazo Figueroa, Luz Mary Portela León, Héctor Jaime Beltrán Fuentes and Ana Rosa Castiblanco Torres.

[345] *Cf.* Testimony of José Yesid Cardona Gómez of November 29, 2006, before the Prosecution Service (evidence file, folios 998 and 1007).

[346] *Cf.* Communication of Ricardo Gámez Mazuera of August 1, 1989, notarized and addressed to the Attorney General (evidence file, folio 29087). In addition to the 1989 statement, the file also contains a statement of December 9, 2006, made before the European Parliament. The State indicated that the "judicial value [of his testimony] has frequently been questioned in the domestic judicial proceedings, to the point of considering it […] false," because "he was not present on the day of the events, and did not belong to any of the State's security agencies at that time." In

239. Thus, the Colonel**,** Head of the B-2, testified that "more than one person [who was released from the Palace of Justice] advised that the cafeteria was the supply point for this subversive group, because it cannot be believed that all the materiel and all the ammunition seized had been brought in that same day." According to this colonel, other hostages had stated that, some days before, they had observed the entry into the cafeteria of packages and that its employees "had been hired recently and were very young." In addition, he indicated that, in a pamphlet, the M-19 had "referred to the disappearance of these individuals and to the members of the organization who died in the Palace of Justice and, strangely, […] did not refer to other people who died or disappeared, [which] suggests by simple intuition that they had something to do with the guerrilla."[347]

240. Nevertheless, among the presumed disappeared victims, there were also three visitors who were not employees of the cafeteria, so that, in principle, they would not be implicated in the presumed collaboration with or membership in the M-19 described above.[348] However, the Court considers that Norma Constanza Esguerra Forero, as the person who provided the cafeteria with pastries, could easily be considered a cafeteria employee and, therefore, possibly suspected of collaborating with the M-19 by the State authorities.

241. Furthermore, regarding the other two visitors, different statements and evidence exist in the file of this case, according to which those persons who were unable to identify themselves definitively and to justify their presence in the Palace of Justice were detained and taken to military garrisons as possible suspects.[349] In this regard, the Court notes that the State explained that detention for purposes of identification was legal at the time of the events (*infra* para. 372). Indeed, this is what presumably happened in the case of Orlando Quijano, according to the State's arguments, so that it is possible that the same was true in the cases of Gloria Anzola de Lanao and Lucy Amparo Oviedo Bonilla, who were not Palace of Justice employees and who were inside the building at the time of the events by chance.

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addition, it indicated various formal errors in the 1989 statement, including the failure to authenticate the testimony before a judicial agent. The latter "is especially important, […] when the credibility of the witness is questioned owing to his interest in the result of the proceedings." The Court notes that, in October 1989, the Attorney General's office prepared a report on the credibility of the deponent and determined that it was "not warranted to accord credibility to the communication of the Mr. [Gámez Mazuera]." Regarding the credibility of Mr. Gámez Mazuera's statements, in the proceedings against the members of the COICI, it was concluded that "the statement of this deponent demands to be considered credible, because his account has the coherence and clarity characteristic of someone who has directly perceived an event, and even though it has not been proved that he was a member of the Army, it cannot be disregarded that, at the time of the events, the Army did not only function with uniformed personnel, but was supported by intelligence agencies which, in turn, acted through collaborators and infiltrators." The first instance court ruled similarly in the proceedings against the Commander of the Army's 13th Brigade. However, the second instance judgment considered that his statements lacked credibility, because they had not been crosschecked and other parts had been refuted. In the proceedings against the Commander of the Cavalry School, neither the first nor the second instance judgment made any reference in this regard. *Cf.* Report of a lawyer, adviser to the Attorney General's office of October 18, 1989 (evidence file, folio 30661); Judgment of the 51st Criminal Court of the Bogota Circuit of December 15, 2011 (evidence file, folios 20931 to 20933); Judgment of the 51st Criminal Court of the Bogota Circuit of April 28, 2011 (evidence file, folios 24484 to 24486), and Judgment of the Superior Court of Bogota of October 24, 2014 (evidence file, folios 38307 and 38308). This Court considers that the State has not proved that the witness has an interest in the litigation of this case before the Inter-American Court. Moreover, the alleged absence of a connection between him and the Army is also insufficient evidence to disprove the statements of the witness. Therefore, the Court consider his statements and assess them taking into account the whole body of evidence.

[347] *Cf.* Extract from the testimony of the Colonel, Head of the B-2, of December 6, 1985, in the judgment of the Third Criminal Court of the Bogota Special Circuit of June 9, 2010 (evidence file, folios 23983, 24030 and 24031).

[348] Norma Constanza Esguerra Forero, Lucy Amparo Oviedo Bonilla and Gloria Anzola de Lanao.

[349] *Cf.* Testimony of Orlando Arrechea Ocoro of November 28, 1985, before the Special Commission of the Attorney General's Office (evidence file, folio 1222); Testimony of Eduardo Matson Ospino before the Prosecution Service of April 10, 2006 (evidence file, folio 1214), and Judgment of the Superior Court of Bogota of January 30, 2012 (evidence file, folio 23354).

242. Added to the above, several family members agreed that, during the search activities, they heard comments regarding the presumed collaboration of the disappeared with the guerrillas.[350] On one occasion, the Colonel, Head of the B-2, allegedly questioned why professionals or students would be working in the Palace of Justice cafeteria.[351] In addition, on another occasion, the same colonel allegedly told the family of Lucy Amparo Oviedo that "the new employees of the cafeteria […] are from the M-19; they went to the hills and now it is said [that they are detained]," and indicated that it was these new employees who had introduced "uniforms, food, ammunition and some weapons" into the Palace of Justice.[352] Also, when César Sánchez Cuesta went to the North Canton to inquire about the whereabouts of Carlos Augusto Rodríguez Vera, he was told to "stop trying to find out about people who are not worth it because they were guerrillas and murderers."[353] Similarly, the next of kin of Héctor Jaime Beltrán Fuentes were advised that the son of the then Governor of Medellin, who was in the Palace of Justice cafeteria at the time of the assault, had declared that the persons who worked in the cafeteria "were all with the guerrilla."[354] In addition, the next of kin of Cristina del Pilar Guarín Cortés were told that General Delgado Mallarino had stated that "the disappeared from the Palace of Justice were members of the M-19 and they were being held in the North Canton."[355] In addition, during the investigations, the next of kin or acquaintances of Carlos Augusto Rodríguez Vera and of Gloria Anzola de Lanao were questioned about whether their relative "had ever expressed sympathy for extremist groups or the wish to collaborate with this type of movement" or whether he or she formed "part of any insurgent group."[356]

243. Consequently, the Court notes that there is evidence to suggest that, at the time of the events, Cristina del Pilar Guarín Cortés, Bernardo Beltrán Hernández, David Suspes Celis, Gloria Stella Lizarazo Figueroa, Gloria Anzola de Lanao, Norma Constanza Esguerra Forero, Luz Mary Portela León, Héctor Jaime Beltrán Fuentes, Lucy Amparo Oviedo Bonilla and Ana Rosa Castiblanco Torres were considered to be suspicious by the State authorities and treated as such. The Court underscores that this is an indication that must be assessed together with the other indicative evidence to be analyzed below with regard to what happened to the presumed victims. However, the Court notes that the classification of certain persons as "suspicious" within the framework of the events of this case does not violate the American Convention. In the context of these events, it was reasonable that the State authorities would establish a mechanism to distinguish and separate the hostages from those persons who presumably had taken part in the taking of the Palace of Justice, in keeping with the State's right to maintain public order and safety (*supra* para. 78).

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350 *Cf.* Judgment of the Third Criminal Court of the Bogota Special Circuit of June 9, 2010 (evidence file, folio 24032).

351 *Cf.* Extract from the testimony of Carlos Leopoldo Guarín Cortés in the judgment of the Third Criminal Court of the Bogota Special Circuit of June 9, 2010 (evidence file, folio 24031).

352 *Cf.* Extract from the testimony of Rafael María Oviedo Acevedo and Ana María Bonilla de Oviedo of December 2, 1985 and from the testimony of Jairo Arias Méndez of November 19, 1985, in the judgment of the Third Criminal Court of the Bogota Special Circuit of June 9, 2010 (evidence file, folios 24033 and 24034).

353 *Cf.* Extract from the testimony of César Sánchez Cuesta of September 19, 2007. Judgment of the Third Criminal Court of the Bogota Special Circuit of June 9, 2010 (evidence file, folio 24033).

354 *Cf.* Testimony of María del Pilar Navarrete de Beltrán of January 3, 1986, before the Ninth Itinerant Criminal Investigation Court (evidence file, folio 28931).

355 *Cf.* Testimony of Carlos Leopoldo Guarín Cortes of November 12, 1986, of Elsa María Osorio de Acosta of November 20, 1986, of José María Guarín Ortiz of November 20, 1986, and of René Guarín Cortés of November 13, 1986, all before the Inspectorate of the Office of the Special Attorney's assigned to the Military Forces (evidence file, folios 28019, 28027, 28063 and 28080).

356 *Cf.* Testimony of María de Jesús Triana Silva of February 19, 1986, before the Ninth Court of Criminal Investigation of Bogota (evidence file, folios 29994 and 29995), and Testimony of Enrique Alfonso Rodríguez Hernandez of December 6, 1985, before the Ninth Itinerant Criminal Investigation Court (evidence file, folio 27891).

Nevertheless, in order to establish what happened to the presumed disappeared victims, it constitutes an indication of their possible forced disappearance.

A.2.b) The failure to register and the separation of the persons considered suspicious

244. According to the evidence in the case file, the persons considered suspicious were "taken, under strict surveillance as if they were detained, to the Casa [del Florero]." Once there, "the preliminary information was assessed, and those who were still considered special or suspicious were taken to the second floor" (*supra* para. 103).[357] In this regard, the State admitted, and the Court has already established, that Irma Franco Pineda, Yolanda Santodomingo Albericci and Eduardo Matson Ospino were sent to the second floor of the Casa del Florero because they were considered suspicious (*supra* paras. 111 and 138). This was also the case of Orlando Arrechea, an employee of the Criminal Chamber of the Supreme Court of Justice, who was also considered suspicious.[358] On this point, the Superior Court of Bogota added that some individuals were tortured on the second floor.[359]

245. This Court finds it has been proved that the Casa del Florero was used in order to identify those able to leave the Palace of Justice (*supra* para. 103). It was there that the authorities registered the survivors.[360] However, the four lists of survivors in the case file contain different figures (*supra* para. 104) and the records were not comprehensive. In this regard, the domestic courts stressed the failure to register some individuals on certain official lists, including Eduardo Matson Ospino, Yolanda Santodomingo Albericci and Irma Franco Pineda, who it was proved had left the Palace of Justice alive and had been taken to the Casa del Florero.[361] Moreover, these persons were subsequently transferred and there is also no record of the places to which they were sent.[362] Thus, the Superior Court of Bogota stated that the "persons who left as hostages were retained unlawfully, they were not registered, and it was denied that they were being held."[363]

246. The State argued that "owing to the extreme nature of the situation, it cannot be claimed that no one was suspicious, nor can the word suspect be stigmatized. When people were considered to be suspicious, they were sent to the police stations or to the SIJIN to be crosschecked against the lists of persons for whom an arrest warrant had been issued, or arrangements were made with the judicial authorities." Thus, since the situation involved hostage-taking, the State had the obligation and the right to distinguish between the

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357 *Cf.* Judgment of the Superior Court of Bogota of January 30, 2012 (evidence file, folio 23383); Judgment of the 51st Criminal Court of the Bogota Circuit of April 28, 2011 (evidence file, folio 24569); Judgment of the Third Criminal Court of the Bogota Special Circuit of June 9, 2010 (evidence file, folio 23959); Report of the Truth Commission (evidence file, folio 176); Testimony of Pedro León Acosta Palacio of February 21, 1986, before the 30th Itinerant Criminal Investigation Court (evidence file, folio 15266), and Testimony of Magalis María Arévalo Mejía of November 29, 1985, before the Special Commission (evidence file, folio 29042).

358 *Cf.* Testimony of Orlando Arrechea Ocoro of July 18, 2007, before the Prosecution Service (evidence file, folio 15216), and Testimony of Orlando Arrechea Ocoro of November 28, 1985, before the Special Commission (evidence file, folio 1221).

359 *Cf.* Judgment of the Superior Court of Bogota of January 30, 2012 (evidence file, folio 23363).

360 *Cf.* Report of the Truth Commission (evidence file, folio 175), and extract of testimony of Oscar Vásquez in the judgment of the Superior Court of Bogota of January 30, 2012 (evidence file, folio 23361).

361 *Cf.* Judgment of the Superior Court of Bogota of January 30, 2012 (evidence file, folio 23404); Judgment of the Third Criminal Court of the Bogota Special Circuit of June 9, 2010 (evidence file, folios 23960 and 23961), and Judgment of the 51st Criminal Court of the Bogota Circuit of April 28, 2011 (evidence file, folio 24566). Orlando Arrechea Ocoro was also not included in the records. *Cf.* Testimony of Orlando Arrechea Ocoro before the Prosecution Service of July 18, 2007 (evidence file, folio 15216).

362 *Cf.* Judgment of the Third Criminal Court of the Bogota Special Circuit of June 9, 2010 (evidence file, folio 23959), and Judgment of the Superior Court of Bogota of January 30, 2012 (evidence file, folio 23405).

363 *Cf.* Judgment of the Superior Court of Bogota of January 30, 2012 (evidence file, folio 23378).

hostages and the presumed perpetrators of the taking of the Palace of Justice. However, this does not justify the failure to register the detention of those presumably responsible.

247. The Court has considered that any detention, regardless of the reason or the duration must be duly recorded in the pertinent document, indicating clearly, at least, the reasons for the detention, who made it, the time of detention and the time of release, as well as proof that the competent judge was informed, in order to protect against any unlawful or arbitrary interference with physical liberty.[364] Also, in a situation such as that of the instant case, it was essential that the State register all the survivors who left the Palace alive. This record would not only have served as a guarantee against forced disappearance, but could also have helped in the subsequent identification of those who did not survive.

248. The Court also notes that at least some of those who were not registered in the Casa del Florero are the same as the persons considered suspicious by the State agents. This was the case of the presumed victims Eduardo Matson Ospino, Yolanda Santodomingo Albericci and Irma Franco Pineda, and also of Orlando Arrechea, who the State agents considered suspicious (*supra* paras. 244 and 138). Regarding Mr. Matson Ospino and Ms. Santodomingo Albericci, there is even a note from the DIJIN to a captain of the B-2 of the 13th Brigade indicating that "it was presumed that they had participated in the taking of the Palace of Justice."[365] In this regard, the Third Criminal Court concluded that this failure to register some people "confirm[ed] the concealment of those considered 'special.'"[366]

249. Based on the above, the Court considers it has been proved that, among the persons who survived the events of the Palace of Justice, those considered suspicious were separated and retained or detained. However, the exit from the Palace alive and the retention or detention of at least some of these "suspects" was not recorded (as in the case of Irma Franco Pineda) or was only included on some lists, but not comprehensively in the official records (as in the cases of Yolanda Santodomingo Albericci, Eduardo Matson Ospino and Orlando Arrechea). Therefore, the Court finds that the absence of a record of the exit from the Palace alive of the presumed disappeared victims is not sufficient to discard this possibility. In addition, the failure to register the persons considered suspicious reveals that the authorities concealed information on them, which, when applicable, accords with the denial of information that forms part of a forced disappearance.

A.2.c) The transfer of suspects to military premises where torture and disappearances occurred

250. The Court finds it has been proved and the State has acknowledged that Carlos Augusto Rodríguez Vera, Irma Franco Pineda, Yolanda Santodomingo Albericci and Eduardo Matson Ospino were taken to a military base because they were considered suspicious (*supra* paras. 109, 111, 138 and 139). Furthermore, Orlando Arrechea was also taken to military garrisons, including the Cavalry School, and then to the Sixth Police Station.[367] In this regard, the Truth Commission asserted that the "hostages, referred to as 'special' by the security forces, were taken to the second floor of the Casa del Florero and, subsequently, several of them were transferred to military premises," while at least seven persons later disappeared.[368] In addition, during the criminal proceedings against the

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364 *Cf. Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador. Preliminary objections, merits, reparations and costs.* Judgment of November 21, 2007. Series C No. 170, para. 53, and *Case of J. v. Peru. Preliminary objection, merits, reparations and costs.* Judgment of November 27, 2013. Series C No. 275, para. 152.

365 *Cf.* Note of the DIJIN of November 14, 1985 (evidence file, folio 18793).

366 *Cf.* Judgment of the Third Criminal Court of the Bogota Special Circuit of June 9, 2010 (evidence file, folio 23959).

367 *Cf.* Testimony of Orlando Arrechea before the Prosecution Service of July 18, 2007 (evidence file, folio 15217).

368 *Cf.* Report of the Truth Commission (evidence file, folios 176 and 400).

Commander of the Cavalry School, the caretaker of the Casa del Florero testified that the persons who were being interrogated on the second floor:

> Left the premises during the afternoon of [November 7] in the custody of civilian personnel of the DAS or B-2; there were around eight people. On [November 6], during the evening, a young woman and a young man of around 26 years of age left the Casa [del Florero]; they were being transferred as confirmed suspects of belonging to the guerrilla.[369]

251. On this point, the Superior Court of Bogota indicated that:

> Survivors of the Palace of Justice were, indeed, taken to military garrisons, including the Cavalry School, where their personal details were taken, and some were subjected to torture and subsequently disappeared, as has been clearly and unequivocally indicated by sergeants [Tirso Armando Sáenz Acero and Edgar Villamizar Espinel].[370]

252. In this regard, Tirso Sáenz Acero, who in 1985 was a corporal second-class and was detained in the Cavalry School, testified that, because he was assigned to a tank, he took part in the retaking of the Palace of Justice,[371] and saw five or six persons, including a woman being taken from a tank and put in the stables. He also testified that a corporal first-class had told him that these persons had been held for around 15 days and that the authorities began to link them to the M-19 and the taking of the Palace of Justice. Specifically, his colleague stated that they were "interrogated and each of these individuals was held in one of the wings of the stables, isolated and blindfolded." The colleague also told him that "on the sixth or seventh day that they were there, […] one of their interrogators had gone too far with one of them and that […] for some reason the latter had died," and that they used this fact to threaten the other detainees. In addition, his colleague told him that "they took away [the dead man], they took him to bury him, [but] no one could know about this" and that, later, they took two more away in the trunk of a car, but they never returned to the Battalion, where two individuals remained, who also died."[372]

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[369] *Cf.* Extract from the testimony of Francisco Cesar de la Cruz Lara of December 18, 1985, in the judgment of the Superior Court of Bogota of January 30, 2012 (evidence file, folio 23076).

[370] Judgment of the Superior Court of Bogota of January 30, 2012 (evidence file, folio 23388). Furthermore, in the proceedings against the Commander of the Army's 13th Brigade, as well as in the proceedings against the members of the COICI, it was established that "the *'suspects'* were always taken to [Army] premises." *Cf.* Judgment of the 51st Criminal Court of the Bogota Circuit of April 28, 2011 (evidence file, folios 24466 and 24467), and Judgment of the 51st Criminal Court of the Bogota Circuit of December 15, 2011 (evidence file, folio 20903).

[371] Mr. Sáenz testified that he "was assigned to a Cascabel; at the time, courses were beginning and there were not enough drivers; [therefore,] a captain […] proposed to my colonel […] that, as a driver was needed to take part in what was happening, [he] authorize [me …] to participate in the operation [and] drive the tank." Testimony of Tirso Armando Sáenz before the Prosecution Service of September 11, 2008 (evidence file, folio 31273).

[372] *Cf.* Testimony of Tirso Armando Sáenz Acero before the Prosecution Service of September 11, 2008 (evidence file, folios 31269, 31271, 31273, 31276, 31277, 31279 and 31280). The State indicated that the "judicial value [of his testimony] has frequently been questioned in the domestic judicial proceedings, to the point of considering it […] false." The State also indicated that the testimony "is not valid, because it is based on suppositions and speculations and is unrelated to the reality; also the contradictions in it are clear, particularly since he states that he was assigned to a tank, even though he was detained." In this regard, in the proceedings against the Commander of the Cavalry School, the first instance court rejected the testimony of Mr. Sáenz indicating that "the contradictions and inconsistencies in his testimony [were] evident; [and also] in relation to what could be established based on the analysis of all the evidence with regard to the events of November [6 and 7,] 1985." Nevertheless, in the proceedings in second instance against the Commander of the Cavalry School, the Superior Court of Bogota indicated that, considering that, in cases in which it is sought to conceal the truth, the documents prepared by the Army cannot be taken into account, and that "when State agents are involved, hearsay witnesses are particularly significant in view of the clandestine and compartmentalized actions of those responsible." Therefore, "when this soldier states that he heard from a colleague what happened to some hostages of the Palace of Justice who were taken to the Cavalry School, these assertions should be accorded credibility because they agree with all the evidence that has been collected and give a clear account of the events and of the responsibility of the accused. In addition, in its decision in the proceedings against the Commander of the 13th Brigade, the Superior Court of Bogota considered that there was no reason to invalidate the direct perception of the deponent, even though information provided by third parties gave rise to certain doubts. The Court agrees with the reasoning of the Superior Court of Bogota and finds no reason to reject the credibility of this testimony in the context of the other evidence presented. *Cf.* Judgment of the Third

253. Similarly, Edgar Villamizar Espinel, who, in 1985, was a member of the Army, indicated that on November 7 "a woman with a checked skirt [and] a man with a white or […] beige tracksuit" were taken to the Cavalry School, and placed in the stables. Later, after 4.30 p.m., another three people were brought there, who he thought were "another woman and two men," and they were "placed in different stables." He stated that these individuals were tortured, "[t]hey were hung up by their hands, they were struck in the abdomen, electric cables were applied to different parts of their body." He also stated that, on about November 8, a man with a moustache and a woman died while they were being tortured, and the bodies were buried in a hole where a horse had been buried previously.[373] The Superior Court of Bogota determined that the man who died as a result of torture was Carlos Augusto Rodríguez Vera.[374]

254. The possibility of the forced disappearance of the suspects following their detention is also supported by a radio communication between two members of the Army during which they stated that "the instruction for these individuals are final" and one can be heard saying to the other "[l]et's hope that if the sleeve is found, the jacket doesn't appear. Over," which has been interpreted by experts as an order for forced disappearance.[375] The Court

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Criminal Court of the Bogota Special Circuit of June 9, 2010 (evidence file, folios 23925 and 23926); Judgment of the Superior Court of Bogota of January 30, 2012 (evidence file, folios 23275 and 23276), and Judgment of the Superior Court of Bogota of October 24, 2014 (evidence file, folios 38312 and 38313).

373 *Cf.* Undated statement signed by Edgar Villarreal, which is attributed to Edgar Villamizar (evidence file, folios 22769, 22770 and 22771). The State asserted that the "judicial value [of his testimony] has been questioned frequently in the domestic judicial proceedings, and even considered false." It indicated that Edgar Villamizar Espinel was not present at the site of the events because at that time he was attached to No. 21 Vargas Infantry Battalion in Granada (Meta). In two first instance judgment, the 51st Criminal Court decided not to grant probative value to his testimony, because it gave rise to doubts since the deponent has a different surname to the one on his identity card and the testimony is undated. However, in the proceedings against the Commander of the Cavalry School, in both the first and the second instance judgments, it was granted probative value. Nevertheless, the Court notes that, on May 23, 2011, Edgar Villamizar denounced before the Attorney General's Office that "there is a supposed statement […] which contains things that [he] never said"; and clarified that he "was never in any operation to retake the Palace of Justice," so that he denounced this irregularity and requested protection for his family. Subsequently, in the course of the proceedings against the members of the B2, on February 23, 2012, Edgar Villamizar Espinel gave testimony and confirmed what he had reported to the Attorney General's Office. Following this statement, orders were given that a handwriting appraisal be prepared comparing the signature of the deponent before the Prosecution Service, the denunciation before the Attorney General's Office, and the signature provided during the latest statements, which established that the signatures "all came from the same person." Subsequently, this appraisal was expanded, but reached the same conclusion. However, the Attorney General's delegate contested the initial opinion and asked the court to order another handwriting appraisal; this was performed by the National Institute of Forensic Medicine and Science, which concluded that it was not possible "to issue a technically substantiated opinion." The proceedings during which these appraisals were made is still pending a first instance decision (*supra* para. 191). This Court considers that, to the extent that the statement of the deponent conforms to the rest of the probative elements, it can be taken into account. *Cf.* Judgment of the 51st Criminal Court of the Bogota Circuit of December 15, 2011 (evidence file, folios 21004 and 21006); Judgment of the 51st Criminal Court of the Bogota Circuit of April 28, 2011 (evidence file, folio 24536); Judgment of the Third Criminal Court of the Bogota Special Circuit of June 9, 2010 (evidence file, folio 23925); Judgment of the Superior Court of Bogota of January 30, 2012 (evidence file, folios 23244 to 23271); request for protection and report of irregularities of May 23, 2011 (evidence file, folios 31077 and 31080); Testimony of Edgar Villamizar of February 23, 2012 (evidence file, folio 15015); handwriting appraisal of April 10, 2012, by the Criminalistics Division of the Technical Investigation Unit (evidence file, folios 32501 and 32515); expansion, clarification and complementing of, and addition to, handwriting appraisal of April 10, 2012, on July 21, 2012 (evidence file, folio 37511); request of the Attorney General's office of May 8, 2012 (evidence file, folios 32516 to 32528), and handwriting appraisal of November 17, 2012 (evidence file, folios 32529 and 32535).

374 *Cf.* Judgment of the Superior Court of Bogota of January 30, 2012 (evidence file, folios 23271 and 23272).

375 The State indicated that "the opinion of the expert witnesses […], [was] based on the supposition that this could be an order to make a person disappear, but did not prove this." It also indicated that expert witness Carlos Delgado Romero had indicated "the lack of authenticity of these […] recordings." The representatives affirmed that "the Criminal Investigation Directorate of the National Police [had indicated] that no evidence of alteration can be perceived in the original cassettes and tapes provided to the proceedings" and that the expert opinion of Carlos Delgado "was made on copies of the originals on CDs, but not on the original audios." The Court takes note of the conclusions of the expert opinion of Carlos Delgado Romero. However, it stresses that the authenticity of the original recordings has not been disproved and, to the contrary, domestic courts have considered the recordings authentic. The authenticity of the

underlines that based above all on these radio communications the Superior Court of Bogota attributed responsibility by omission to the Commander of the 13th Brigade, because he had not intervened to prevent the execution of those unlawful instructions; and it considered proved that they had become orders for enforced disappearance.[376] Consequently, the Court notes that there is evidence that individuals who were considered suspicious were separated from the other survivors of the Palace of Justice, taken to military premises, in some cases tortured and, in others, also disappeared.

A.2.d) The information received by the next of kin that the disappeared had left the Palace alive

255. During the events of the taking and retaking of the Palace of Justice, some family members of the disappeared persons received information that their loved ones had left the Palace alive. In particular, the sister of Bernardo Beltrán Hernández indicated that, on November 6, she heard on the radio that several people were being evacuated from the Palace of Justice and her brother was mentioned.[377] Also, the next of kin of David Suspes Celis,[378] Irma Franco Pineda[379] and Lucy Amparo Oviedo Bonilla[380] received telephone calls advising them that their loved ones were in the Casa del Florero.

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copies sent by the State to expert witness Carlos Delgado Romero is irrelevant for the purposes of the analysis of this case. Consequently, the Court considers that the State has not proved the lack of authenticity of the original recordings. *Cf.* Recording 5, Communication between different squadrons of the Army (evidence file, folio 34862); Judgment of the Superior Court of Bogota of January 30, 2012 (evidence file, folios 23408 and 23409); Judgment of the 51st Criminal Court of the Bogota Circuit of April 28, 2011 (evidence file, folios 24533, 24534 and 24609); Judgment of the Superior Court of Bogota of October 24, 2014 (evidence file, folio 38418), and affidavit made on November 7, 2013, by Carlos Delgado Romero (evidence file, folios 36283, 36300 and 36301). See also, Report of the Truth Commission (evidence file, folios 397 to 400).

376 *Cf.* Judgment of the Superior Court of Bogota of October 24, 2014 (evidence file, folios 38418 to 38425).

377 *Cf.* Testimony of Sandra Beltrán Hernández of August 25, 2006, before the Prosecution Service (evidence file, folio 29388).

378 *Cf.* Affidavit made on November 5, 2013, by Luz Dary Samper Bedoya (evidence file, folio 35594), and Affidavit made on November 5, 2013, by Ludy Esmeralda Suspes Samper (evidence file, folio 35644).

379 *Cf.* Testimony of Jorge Eliécer Franco Pineda of August 14, 2006, before the Prosecution Service (evidence file, folio 28982); Testimony of Elizabeth Franco Pineda of July 21, 2006, before the Prosecution Service (evidence file, folio 29006), and Testimony of María del Socorro Franco of August 14, 2006, before the Prosecution Service (evidence file, folio 29057).

380 On November 6, the family of Lucy Amparo Oviedo Bonilla telephoned the Casa del Florero to know if she was there; they heard the person shout out Ms. Oviedo Bonilla's name and another person responded that she was there. The following day, her sisters went to the Police and asked an Army driver who was going to the Casa del Florero to confirm that Lucy was there. According to the family, they later received a telephone call confirming that Lucy was at the Casa del Florero and that, in the afternoon, she would be brought home. However, regarding this information received by the next of kin, in the proceedings against the Commander of the Cavalry School, the Superior Court indicated that "it is evident that the information was insufficient to prove that Lucy was at the Casa del Florero during those two days. Furthermore, the telephone calls are not consistent with what happened on those premises." It also indicated that the 2006 statement of one of Lucy's sisters indicated that the telephone calls from the Casa del Florero had been made on November 7 and not 6, as she had indicated previously. This Court considers that this inconsistency is not sufficient for it to fail to take this information into account. *Cf.* Testimony of Ana María Bonilla de Oviedo of April 2, 1986, before the 30th Itinerant Criminal Investigation Court (evidence file, folio 30969); letter addressed to the judges of the Special Investigative Court Criminal by Rafael María Oviedo Acevedo and Ana María Bonilla de Oviedo of December 2, 1985 (evidence file, folio 29663); Testimony of Armida Eufemia Oviedo Bonilla of July 24, 2008, before the Prosecution Service (evidence file, folios 29574 and 29578); Testimony of Damaris Oviedo Bonilla of December 19, 1985, before the Ninth Itinerant Criminal Investigation Court (evidence file, folio 29592); Testimony of Damaris Oviedo of April 7, 1986, before the 30th Itinerant Criminal Investigation Court (evidence file, folio 30976); Testimony of Damaris Oviedo of June 14, 2012, before the 71st Notary of the Bogota Circuit (evidence file, folio 27525); Testimony of Rafael María Oviedo Acevedo of December 18, 1985, before the Ninth Itinerant Criminal Investigation Court (evidence file, folios 29324 and 29325); Judgment of the Superior Court of Bogota of January 30, 2012 (evidence file, folios 23161 and 23163), and Testimony of Damaris Oviedo Bonilla of July 25, 2006, before the Prosecution Service (evidence file, folios 29597 and 29598).

256. Some family members also received information on the whereabouts of the cafeteria employees in different ways. Thus, Héctor Jaime Beltrán's brother went to the Casa del Florero and, on asking, "[h]e was told that the [cafeteria] employees had been evacuated, that they were alive, and that they were in a truck."[381] The next of kin of Bernardo Beltrán Hernández went to Bolivar Plaza on November 7, where the Commander of the Cavalry School allegedly told them that "all those people have been taken to the Casa del Florero."[382]

257. In addition, the case file contains statements by people who affirm that all or some of the cafeteria personnel left the Palace of Justice alive.[383] Thus, Ricardo Gámez Mazuera, who stated that he had taken part in intelligence work during the retaking of the Palace of Justice, declared that "the cafeteria employees exited alive, […] they were taken away and tortured, […] murdered and concealed and their whereabouts continues to be unknown, unknown to people on the outside, known to Army personnel."[384]

258. Furthermore, the journalist Julia Navarrete, the Auxiliary Justice of the Council of State, Tulio Chirolla Escanio, Orlando Arrechea and Carlos Ariel Serrano testified similarly that they saw a young woman wearing the cafeteria uniform leave the Palace of Justice on November 6 with an injured hand and be taken to the second floor of the Casa del Florero.[385] The Superior Court of Bogota, in its judgment of October 24, 2014, concluded

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[381] *Cf.* Affidavit made on November 2, 2013, by Mario Beltrán Fuentes (evidence file, folios 35558 and 35559).

[382] *Cf.* Testimony of Bernardo Beltrán Monroy of August 25, 2006, before the Prosecution Service (evidence file, folio 29283).

[383] The Court notes that in two statements, of 2006 and 2007, José Yesid Cardona Gómez asserted that, on November 6, 1985, he took eight individuals from the cafeteria to the Casa del Florero, and also took two individuals to the main entrance who said that they were a cafeteria employee and its manager. The Court underlines that the statements are not very clear and that the deponent had not mentioned this fact on two previous occasions; also that the departure of eight cafeteria employees on November 6 is not consistent with the rest of the body of evidence, most of which indicates that these persons, with the exception of Luz Mary Portela León, left the Palace of Justice on November 7. Nevertheless, this Court takes notes of the considerations of the Superior Court of Bogota, in its judgment of October 24, 2014, when analyzing this testimony, when it indicated that "there are several testimonies that […] refer to at least one employee of the cafeteria, Luz Mary Portela, with an injury to her arm, joining the queue to the Museum [on November 6, 1985]" (*infra* para. 258). It also indicated that "[r]egarding the cafeteria employees who entered but did not leave the building, there is no information that they left later or that same day. On the contrary, on Thursday, at the conclusion of the operation, in identification videos, some employees can be observed leaving the Palace. It is inferred that they could have been retained in the storeroom and cleaning room within the cafeteria where, among other objects, the identity card of Carlos Rodríguez was later found and the keys of the cash register; keys that were only held by the cashier and the manager." The Court does not have any evidence to verify this version of the facts. Neither the representatives nor the Commission have explained the reasons for the differences with the other indications in the case file. However, the Court stresses what was established by the Superior Court in its judgment of October 24, 2014, to the effect that "the testimony of Sergeant Yesid Cardona reveals some information about what could have happened at certain moments, but does not corroborate or refute the proposed hypothesis." *Cf.* Testimony of José Yesid Cardona Gómez of November 29, 2006, before the Prosecution Service (evidence file, folios 999 and 1000); Extract from the testimony of September 30, 2007, included in the judgment of the Superior Court of Bogota of January 30, 2012 (evidence file, folio 23241); Testimony of José Yesid Cardona Gómez of December 5, 1985, before the Sixth Military Criminal Investigation Court (evidence file, folio 32493); Testimony of José Yesid Cardona Gómez of April 10, 1986, before the 30th Itinerant Criminal Investigation Court (evidence file, folio 32489), and Judgment of the Superior Court of Bogota of October 24, 2014 (evidence file, folios 38311 and 38312).

[384] *Cf.* Testimony of Ricardo Gámez Mazuera before the European Parliament on December 9, 2006 (evidence file, folio 32499).

[385] *Cf.* Testimony of Julia Alba Navarrete Mosquera of January 13, 1986, before the Special Commission (evidence file, folios 14617 and 14618); Testimony of Julia Alba Navarrete Mosquera of July 5, 2006, before the Prosecution Service (evidence file, folio 14771); affidavit made by Julia Alba Navarrete Mosquera on November 5, 2013 (evidence file, folio 35905); Extract from the testimony of Tulio Chirolla Escanio in the judgment of the Superior Court of Bogota of October 24, 2014 (evidence file, folio 38352); Testimony of Orlando Arrechea of November 28, 1985, before the Special Commission (evidence file, folio 1223) Extract from the testimony of Carlos Ariel Serrano of January 27, 1986, in the judgment of the Superior Court of Bogota of October 24, 2014 (evidence file, folio 38352). The Court notes that in a 2007 statement, Carlos Ariel Serrano declared that he did not recall seeing anyone going up to the second floor of

"with complete certainty" that these statements referred to Luz Mary Portela León, and therefore found that she had been a victim of forced disappearance.[386]

259. Based on the foregoing, the Court takes note that the next of kin of at least six disappeared victims (Héctor Jaime Beltrán Fuentes, Bernardo Beltrán Hernández, Irma Franco Pineda, David Suspes Celis, Lucy Amparo Oviedo Bonilla and Luz Mary Portela León) heard or received information during the events that suggested that their loved ones had survived the taking and retaking of the Palace of Justice.[387]

260. After November 7, several of the next of kin of the disappeared received information that the persons disappeared were at the North Canton (13th Brigade and Cavalry School) and at the Charry Solano Battalion.[388]

261. In addition, some of the information received refers specifically to several of the presumed disappeared victims. In this regard, according to their testimony, the next of kin of David Suspes Celis, Héctor Jaime Beltrán Fuentes, Carlos Augusto Rodríguez Vera, Gloria Anzola de Lanao, Lucy Amparo Oviedo Bonilla and Irma Franco Pineda received specific information that their loved ones were at the North Canton.[389] In particular, according to

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the Casa del Florero, except for one man, which is not consistent with his 1986 statement. However, the Court considers that what he said in 2007 does not invalidate what he indicated in 1986, when his memory of what happened was clearer. It also underlines that his 1986 statement is consistent with the other statements cited in this footnote. *Cf.* Testimony of Carlos Ariel Serrano Sánchez of March 1, 2007, before the Prosecution Service (evidence file, folio 27822).

386 The Superior Court verified that Luz Mary Portela León was not very tall and that, as she was replacing her mother in the kitchen, she used a "tan-colored apron tied at the waist with a cord" and also "a fairly old pair of close-fitting jeans." Cecilia Cabrera, "as head, co-manager and cashier of the cafeteria," was asked about the testimony of Justice Serrano and said "that, based on the description, […] he must have referred to Luz Mary." Also, the court considered that the young woman described in that case could not be any of the other disappeared women from the cafeteria because: Ana Rosa Castiblanco Torres "died in the fire"; Gloria Estella Lizarazo Figueroa "served at the self-service counter and had been identified by the journalist," and Cristina del Pilar Guarín Cortés "was well-known to Julia Navarrete as she worked as cashier." *Cf.* Judgment of the Superior Court of Bogota of October 24, 2014 (evidence file, folios 38353 and 38354).

387 In addition, the Court notes that, in the case of Ana Rosa Castiblanco Torres, the case file contains statements indicating that information about her had been heard on the radio. One of the statements (that of her sister) is incomplete and only indicates that she heard on the radio that a woman had given birth and was well. However, the statement is not sufficiently clear to infer that this was Ms. Castiblanco Torres. Also, the companion of David Suspes Celis testified that she had heard that a woman had given birth in a cafeteria; however, she indicated that she did not know if this was the cafeteria located in the Palace of Justice. In addition to being imprecise, this information is not consistent with the body identified as that of Ms. Castiblanco Torres, with which a fetus was found, so that she could not have given birth (*infra* para. 318). *Cf.* Testimony of María del Carmen Castiblanco of April 10, 1986, before the 27th Itinerant Criminal Court (evidence file, folio 28527); Extract from the testimony of Luz Dary Semper Bedoya of November 21, 1985, in the judgment of the Superior Court of Bogota of January 30, 2012 (evidence file, folio 23118), and testimony of Luz Dary Samper Bedoya of December 21, 1985 (evidence file, folio 28245).

388 This refers to the next of kin of Cristina del Pilar Guarín Cortés, Héctor Jaime Beltrán Fuentes, Lucy Amparo Oviedo Bonilla and Carlos Augusto Rodríguez Vera. *Cf.* Testimony of José María Guarín Ortiz of November 20, 1986, before the Inspectorate of the Office of the Special Attorney's assigned to the Military Forces (evidence file, folio 28063); Testimony of René Guarín Cortés of November 13, 1986, before the Inspectorate of the Office of the Special Attorney's assigned to the Military Forces (evidence file, folio 28080); Testimony of Elsa María Osorio de Acosta of July 26, 2006, before the Prosecution Service (evidence file, folio 28025); expansion of the criminal complaint of Héctor Jaime Beltrán on August 29, 2001 (evidence file, folio 1122); Testimony of Damaris Oviedo of June 14, 2012, before the 71st Notary of the Bogota Circuit (evidence file, folio 27523), and Testimony of Enrique Rodríguez Vera of October 28, 1986, before the Inspectorate of the Office of the Special Attorney's assigned to the Military Forces (evidence file, folios 27913 and 27914).

389 According to the next of kin of Mr. Suspes Celis, this information was heard on the radio. The next of kin of Messrs. Beltrán Fuentes and Rodríguez Vera stated that they had received information by telephone calls. Ms. Anzola de Lanao's family received information through a military investigation judge who had obtained the information from a friend, as well as by telephone calls. The next of kin of Ms. Oviedo Bonilla were advised by a neighbor who had been in contact with a Ministry of Defense employee, and through a soldier of the 13th Brigade and another acquaintance, while in the case of Irma Franco Pineda, her brother had spoken to an army officer. Regarding the information received by the next of kin of Ms. Oviedo Bonilla from the Ministry of Defense employee, the Court notes that this

the testimony of the next of kin of Ms. Oviedo Bonilla, at the 13th Brigade "one of the soldiers who was on guard approached and [told her sister] not to give up, to continue coming because she was there."[390] Also, the next of kin of Lucy Amparo Oviedo Bonilla and Irma Franco Pineda were advised, specifically, that the disappeared were dead and had been buried in a mass grave.[391] Thus, the next of kin of at least seven disappeared victims (Cristina del Pilar Guarín Cortés, Carlos Augusto Rodríguez Vera, David Suspes Celis, Irma Franco Pineda, Héctor Jaime Beltrán Fuentes, Gloria Anzola de Lanao and Lucy Amparo Oviedo Bonilla) received information following the events indicating that their family members were detained in military garrisons.[392]

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employee denied any knowledge of this and asserted that all her previous statements and the information given to Lucy Amparo Oviedo Bonilla's husband were based on her own suppositions and in order to give spiritual comfort to the victims' next of kin. In this regard, the Third Court assessed the information provided by the next of kin and concluded that, "there had to be a reason why the information [provided by the Ministry of Defense employee] changed completely from one moment to another." Meanwhile, the Superior Court considered that the information received by Ms. Oviedo Bonilla's family was "inconsistent," and it was not "logical that [a person with administrative functions] had obtained [that] information." *Cf.* Testimony of Luz Dary Semper Bedoya of December 21, 1985, before the Ninth Itinerant Criminal Investigation Court (evidence file, folio 28246); Testimony of Antonio Suspes Pérez of January 8, 1986, before the Ninth Itinerant Criminal Investigation Court (evidence file, folio 28230); expansion of the criminal complaint of Héctor Jaime Beltrán on August 29, 2001 (evidence file, folio 1122); expansion of the complaint of María del Pilar Navarrete Urrea on August 29, 2001 (evidence file, folio 28889); Extract from the testimony of Cecilia Cabrera of November 25, 1985, in the judgment of the Superior Court of Bogota of January 30, 2012 (evidence file, folio 23213); Testimony of Oscar Anzola Mora of February 3, 1986, before the Ninth Itinerant Criminal Investigation Court (evidence file, folio 30003); extracts from the testimony of the next of kin and of Gloria Anzola in the judgment of the Superior Court of Bogota of January 30, 2012 (evidence file, folio 23105); Testimony of Ana María Bonilla de Oviedo of April 2, 1986, before the 30th Itinerant Criminal Investigation Court (evidence file, folio 30970); Testimony of Jairo Arias Méndez of December 19, 1985, before the Ninth Itinerant Criminal Investigation Court (evidence file, folios 29625 and 29626); Testimony of Rafael María Oviedo of December 18, 1985, before the Ninth Itinerant Criminal Investigation Court (evidence file, folios 29651 and 29652); Testimony of Emiliano Sánchez Zuluaga of December 26, 1985, before the Ninth Itinerant Criminal Investigation Court (evidence file, folios 29605 to 29607); Testimony of Jorge Eliécer Franco Pineda of August 14, 2006, before the Prosecution Service (evidence file, 28983 and 28984); Judgment of the Third Criminal Court of the Bogota Special Circuit of June 9, 2010 (evidence file, folio 24051), and Judgment of the Superior Court of Bogota of January 30, 2012 (evidence file, folios 23163 and 23164).

[390] *Cf.* Testimony of Armida Eufemia Oviedo Bonilla of June 24, 2008, before the Prosecution Service (evidence file, folio 29575).

[391] In this regard, an Army officer, who was crying told Irma Franco Pineda's brother: "don't go on insisting"; "they kept them in the stables at Usaquén for eight days, then they killed them, and the corpses of almost all of them were taken to the mass grave in the South Cemetery, but that of Irma and that of a Ms. Anzola were separated and taken to the mass grave in the Chapinero Cemetery, considering that their families might go public and react in other ways." *Cf.* Testimony of Jorge Eliécer Franco Pineda of August 14, 2006, before the Prosecution Service (evidence file, folio 28983); letter addressed to the judges of the Special Investigative Court Criminal by Rafael María Oviedo Acevedo and Ana María Bonilla de Oviedo dated December 2, 1985 (evidence file, folio 29664), and Testimony of Rafael María Oviedo Acevedo of December 18, 1985 (evidence file, folio 30389).

[392] The Court also observes that the representatives provided as evidence the transcript of a cassette made by the Attorney General's office in which presumed "[agents] of the B-2 and of the State's intelligence services" who took part in the retaking of the Palace of Justice stated that 12 or 13 individuals had been "taken immediately to the premises of the Cavalry School in the North Canton, and the Military Institutes Brigade north of Bogota." In the cassette, mention is made of the names of "David Celis, Jaime Beltrán, […] Hernando Fernández […] and Carlos Rodríguez", as well as of Luz Marina or Luz María or Luz Mery Puerta, Luz Mery Puerta or Luz María A. Puerta, Nohora Esguera […] and Rosa or Margarita […] Castiblanco, who were "detained in another military facility." In this regard, the State alleged that "its content is not consistent with the other evidence gathered in relation to the events, and also the recording is not available for verification, because there is only a transcript of its content." The Court notes that two first instance criminal courts have accorded probative value to this cassette. However, in its judgment of January 30, 2012, the Superior Court of Bogota determined that "its content is not credible," among other reasons because, when Carlos Augusto Rodríguez Vera's father heard the cassette, he stated that he did "not accord much credibility to the fact that it originated from the B-2, because in some of the photocopies that [they] deposited in the hospitals, clinics and prisons requesting information on the disappeared, the name of the waiter, Bernardo Beltran Hernandez, appeared with two typing errors and the initial of the name and second surname were interchanged, and when [he] was given the name of this cafeteria employee […] no one associated it with his real name, but said Hernando Fernandez." In addition, the same photocopy included "the telephone number of a friend of my children," and this is the same number that was provided to Carlos Augusto's father when they called him to offer him the cassette. The

262. The Court underlines that the places where those suspected of participating in the taking of the Palace of Justice were detained correspond to the information received by the next of kin as to where their loved ones were detained, as well as to the testimony of Tirso Sáenz Acero and Edgar Villamizar Espinel, members of the Army at the time of the events (*supra* paras. 252, 253, 260 and 261). Even though it is not possible to verify the truth of the information received by the family members, this is one more indication that the disappeared persons left the Palace alive and were detained. In conclusion, the Court observes that the next of kin of Bernardo Beltrán Hernández, Lucy Amparo Oviedo Bonilla, Héctor Jaime Beltrán Fuentes, Cristina del Pilar Guarín Cortés, David Suspes Celis, Gloria Anzola de Lanao, Carlos Augusto Rodríguez Vera, Irma Franco Pineda and Luz Mary Portela León (9 of the 12 presumed disappeared victims) received information during or after the events according to which either their specific family members or, in general the cafeteria employees, survived the events of the Palace of Justice, and had been taken to military facilities and, in some cases, they were even told that they were being tortured. This is consistent with the practice at that time in relation to those suspected of belonging to a guerrilla group (*infra* para. 375) and is an additional indication of what happened to the presumed victims.

A.2.e) The Armed Forces' denial of the detention of individuals from the Palace of Justice

263. During the taking and retaking of the Palace of Justice, the next of kin of several of the disappeared tried to approach the Palace of Justice and the Casa del Florero to ask for their relatives, but were unable to get near or were informed that no one had been detained.[393] Nevertheless, Héctor Jaime Beltrán's brother was a DAS "official and was responsible for the personal security of the 80th Special Criminal Investigation Judge" and thus was able to enter the first floor of the Casa del Florero on both November 6 and 7. Having received information that the cafeteria employees were in a truck (*supra* para. 256), he "walked all around the perimeter of Bolivar Plaza [and inspected the army trucks that were there] accompanied by other colleagues, but did not find [his] brother or the other cafeteria employees."[394]

264. Regarding this information, the Superior Court indicated that, "it is evident that [the brother requested his DAS colleagues to help in his search]," and, despite this, he was unsuccessful. In this regard, that court concluded that:

Court considers that the coincidence mentioned by the father of one of the disappeared, as well as the fact that he does not have the audio of the cassette, but only its transcript, do not allow the Court to grant it the probative value sought by the representatives. Consequently, the Court will not take into account the November 15 telephone calls received by the next of kin of Héctor Jaime Beltrán Fuentes, David Suspes Celis and Carlos Augusto Rodríguez Vera, which relate to this cassette. *Cf.* Transcript of the cassette obtained by Carlos Arturo Guana Aguirre, Adviser to the Attorney General's office, on January 9, 1986 (evidence file, folios 29779 and 29781); Judgment of the 51st Criminal Court of the Bogota Circuit of December 15, 2011 (evidence file, folio 21058); Judgment of the Third Criminal Court of the Bogota Special Circuit of June 9, 2010 (evidence file, folios 24036 to 24038); Judgment of the Superior Court of Bogota of January 30, 2012 (evidence file, folio 23236 to 23239); Testimony of Enrique Rodríguez Hernández of October 28, 1986, before the Inspectorate of the Office of the Special Attorney's assigned to the Military Forces (evidence file, folios 27915 and 27916); Testimony of María del Pilar Navarrete Beltrán of January 3, 1986, before the Ninth Itinerant Criminal Investigation Court (evidence file, folio 28930), and Testimony of Luz Dary Semper Bedoya of December 21, 1985, before the Ninth Itinerant Criminal Investigation Court (evidence file, folio 28249).

393 See, for example, affidavit made by Deyamira Lizarazo on November 6, 2013 (evidence file, folio 35711), and Testimony of Rosalbina León of December 12, 1985, before the Ninth Itinerant Criminal Investigation Court of Bogota (evidence file, folio 29901).

394 *Cf.* Affidavit made on November 2, 2013, by Mario Beltrán Fuentes (evidence file, folios 35558 and 35559); Extract from the testimony of Mario Beltrán of January 20, 1986, in the judgment of the Superior Court of Bogota of January 30, 2012 (evidence file, folio 23093), and Testimony of Mario David Beltrán Fuentes of April 10, 2006, before the Prosecution Service (evidence file, folio 28934).

> Héctor Jaime Beltrán was not taken to [the Casa del Florero or to military premises], because his own brother, in his capacity as a DAS detective, remained near the Palace of Justice searching for the cafeteria employees, and especially his brother, before the hostages began to leave on November 6, and until the assault ended on November 7, as he affirmed in his statement […], and did not see him.[395]

265. In this regard, the Court recalls that one of the characteristic elements of forced disappearance is precisely "the refusal to acknowledge the detention and to reveal the fate or the whereabouts of the person concerned," so that it is questionable to reject the possible disappearance of a person based on the absence of information. It is not logical or reasonable to investigate a forced disappearance or deny that it occurred on the basis that those possibly responsible or the authorities involved failed to provide information on the whereabouts of the disappeared person. The Court recalls that, when investigating a presumed forced disappearance, the State authorities must take into account the characteristic elements of this kind of offense.[396]

266. Furthermore, according to the statements of the next of kin, when they went to the military facilities, the State agents in charge of them denied that their family members were detained there (*supra* paras. 110, 112, 115, 117, 119, 121, 123, 125, 127, 129, 131 and 133).

267. On this point, the Third Criminal Court noted that "[d]espite abundant evidence indicating the presence of some of the disappeared in military garrisons, the soldiers systematically and to date have denied this fact."[397] In this regard, it emphasized that different information was allegedly given to Gloria Stella Lizarazo Figueroa's mother and sister (to whom a "sergeant" in "the Brigade situated in Usaquén" said that only men had been detained and that they were the leaders), to Ms. Lizarazo Figueroa's husband (to whom they said that "they had people from the Palace of Justice retained" without giving him names) and to Gloria Anzola de Lanao's brother (to whom "they acknowledged" that "there were two detainees who were tortured due to the excesses of some middle-ranking officials," but no one else, without referring to the leaders who had been mentioned to Gloria Stella's mother and sister).[398] Similarly, the Court notes that, according to Lucy Amparo Oviedo Bonilla's mother, her son-in-law went to the 13th Brigade where they told him that "no one was detained there."[399] However, Ms. Oviedo Bonilla's sister indicated that, when asking for her, they looked for her name on a list of the "persons who were inside [the Brigade]."[400]

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395 *Cf.* Judgment of the Superior Court of Bogota of January 30, 2012 (evidence file, folios 23100 and 23238).

396 *Cf. Case of González Medina and family members v. Dominican Republic. Preliminary objections, merits, reparations and costs.* Judgment of February 27, 2012. Series C No. 240, para. 162.

397 This court emphasized that "owing to the insistence of those who went to [the 13th Brigade] seeking answers, surprisingly, the information provided [by the Brigade] changed, [indicating that] some people were retained there." *Cf.* Judgment of the Third Criminal Court of the Bogota Special Circuit of June 9, 2010 (evidence file, folios 24034 and 24057).

398 Oscar Anzola Mora indicated that "around the second week of December, [he] visited General Mejía Henao, Special Attorney assigned to the Military Forces,] who received [him] cordially and analyzed the facts, acknowledging that two detainees had been tortured owing to excesses committed by middle-ranking officers, who had already been sanctioned, [and that no one else was detained]." *Cf.* Testimony of Oscar Anzola Mora of February 3, 1986, before the Ninth Criminal Investigation Court (evidence file, folios 30003 and 30004); Judgment of the Third Criminal Court of the Bogota Special Circuit of June 9, 2010 (evidence file, folio 24058); Testimony of Lira Rosa Lizarazo of December 12, 1985, before the Ninth Criminal Investigation Court (evidence file, folio 29541); Testimony of Deyamira Lizarazo of January 25, 1986, before the Ninth Criminal Investigation Court (evidence file, folio 29561); Affidavit made on November 5, 2013, by Luis Carlos Ospina Arias (evidence file, folio 35639).

399 *Cf.* Testimony of Ana María Bonilla de Oviedo of April 2, 1986, before the 27th Itinerant Criminal Investigation Court (evidence file, folio 30970).

400 *Cf.* Testimony of Armida Eufemia Oviedo Bonilla of June 24, 2008, before the Prosecution Service (evidence file, folio 29575).

268. The Court considers it has been proved that those who were considered suspicious were detained in the military facilities where the family members of the disappeared went to look for their loved ones. The denial of this detention is evidence of the concealment of the fact that there were detainees, which is one of the elements of forced disappearance. Consequently, the Court notes that the relatives of the presumed disappeared victims went to the military facilities to look for their loved ones, where the presence of detainees from the Palace of Justice was denied, even though it is now known, as proved by the domestic courts and the Truth Commission, that several of the individuals who were considered suspicious were taken to such facilities (*supra* paras. 250 and 251).

A.2.f) The alterations of the crime scene and the irregularities in the removal of the corpses

269. The State acknowledged responsibility for errors in the handling of the corpses and the lack of rigor in the inspection and preservation of the scene of the events (*supra* para. 21.c.ii). In this regard, the Court considers that the significant alterations of the crime scene and irregularities in the removal of corpses following the events of the taking and retaking of the Palace of Justice has been proved (*supra* paras. 145 to 150). This Court has established standards for how a crime scene should be processed, and they were not complied with in this case (*infra* paras. 489 to 496).

270. In this regard, the Court underscores that the Superior Court of Bogota has affirmed that "the Military Forces processed the scene and handled the removal of the corpses in order to ensure that what happened remained unpunished, or at least to obstruct any subsequent investigation."[401] These irregularities not only prevented eliminating the hypothesis that the presumed victims died inside the Palace of Justice, but were also of such significance that they cannot be considered a mere error or the result of inexperience. They constituted egregious impropriety that has prevented the elucidation of the facts. Consequently, these irregularities are an indication that the soldiers concealed what happened during the retaking of the Palace of Justice, including what happened to the presumed victims.

A.2.g) The threats to the family members and acquaintances

271. The next of kin of Cristina del Pilar Guarín Cortés, Lucy Amparo Oviedo Bonilla, Gloria Anzola de Lanao, Irma Franco Pineda, Carlos Augusto Rodríguez Vera and Héctor Jaime Beltrán Fuentes testified that they had received threats so that they would not continue their search when progress was being made in the criminal investigation conducted by the prosecution.[402] Also, César Augusto Sánchez Cuestas, one of the people who declared that he had seen Carlos Augusto Rodríguez Vera leaving the Palace alive (*supra* para. 109), stated that, in the North Canton they gave him warnings that were "clear, categorical and

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[401] *Cf.* Judgment of the Superior Court of Bogota of January 30, 2012 (evidence file, folio 23057). This was also established in the first instance judgment. *Cf.* Judgment of the Third Criminal Court of the Bogota Special Circuit of June 9, 2010 (evidence file, folio 24017).

[402] *Cf.* Testimony of René Guarín Cortes of August 16, 2007, before the Prosecution Service (evidence file, folio 1091); Testimony of Héctor Jaime Beltrán of June 15, 2012, before the First Notary of the Soacha Circuit (evidence file, folio 27387); Testimony of Mario David Beltrán Fuentes of April 10, 2006, before the Prosecution Service (evidence file, folios 28935 and 28938); Testimony of Damaris Oviedo Bonilla of June 14, 2012, before the 71st Notary of the Bogota Circuit (evidence file, folio 27525); Testimony of Francisco José Lanao Ayarza of February 12, 2008, before the Prosecution Service (evidence file, folio 29954); Testimony of Oscar Anzola Mora of February 3, 1986, before the Ninth Itinerant Criminal Investigation Court (evidence file, folio 30004); Testimony of María del Socorro Franco of August 14, 2006, before the Prosecution Service (evidence file, folio 29058); Testimony of Jorge Eliécer Franco Pineda of August 14, 2006, before the Prosecution Service (evidence file, folio 28985); Testimony of Enrique Rodríguez before the Commission during the 208th session (evidence file, folios 6863 and 6864), and expansion of the complaint of Enrique Alfonso Rodríguez Hernández on August 29, 2001, before the Prosecution Service (evidence file, folio 1065).

precise, of what could happen to [him] if [he] continued searching for the manager [of the cafeteria] or for anyone else."[403]

272. This Court underscores that the case file shows that the State was aware of the alleged threats suffered by Yolanda Santodomingo Albericci, René Guarín Cortés and César Augusto Sánchez Cuestas.[404] The latter was included in the Protection and Assistance Program of the Prosecutor General's Office until he left the country.[405] Also, according to the State, it ordered preventive measures of protection for Yolanda Santodomingo Albericci and her family.[406] Regarding the other persons, the only evidence of the threats are the statements of the next of kin, without any record in the case file of whether the threats had been formally reported to the authorities. However, in this regard, the Third Court concluded that it was a "fact that did, indeed, take place; [… with] the intention of preventing the clarification of the facts at any cost – take note, at any cost; 'warning' or intimidating those who were taking steps to search for the eleven disappeared, or those who were prepared to provide information about the latter."[407] Furthermore, it is important to stress that the State has not denied the occurrence of these threats, other than indicating that they fall outside the factual framework (*supra* para. 45). Consequently, the said threats constitute an additional indication of what happened to the presumed disappeared victims.

A.2.h) The identification in videos by family members and acquaintances

273. The departure from the Palace of Justice by those who had presumably been taken hostage there was recorded and transmitted by different television channels. Thus, family members and friends of several of the disappeared stated that they had seen their loved ones leaving the Palace of Justice on the day of the events. In particular, family members of Bernardo Beltrán Hernández testified that, on November 6, they saw on television a man emerge who they recognized as Mr. Beltrán Hernández.[408] However, according to the

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403 *Cf.* Testimony of César Augusto Sánchez Cuestas of December 18, 2007, before the Prosecution Service (evidence file, folio 27849), and Testimony of César Augusto Sánchez Cuestas of September 19, 2007, before the Prosecution Service (evidence file, folios 1102 and 1103).

404 The State was informed of the three situations by a request for information made by the Inter-American Commission in response to a request for precautionary measures. *Cf.* Communications of the Inter-American Commission of May 8, 2007, and March 18, 2008, and September 29, 2010 (evidence file, folios 16105, 16249 and 16283). Furthermore, the case file records that Ms. Santodomingo reported some of the supposed threats to the Prosecution Service. *Cf.* Communications of Yolanda Santodomingo addressed to the Sectional Director of Prosecution Units, Magdalena Section, and to the prosecutor of April 12 and 13, 2007 (evidence file, folios 16263 and 16264).

405 *Cf.* Note of Human Rights and International Humanitarian Law Unit of the Ministry of Foreign Affairs of July 17, 2008 (evidence file, folio 16270).

406 *Cf.* Final written arguments of the State (merits file, folio 4300).

407 *Cf.* Judgment of the Third Criminal Court of the Bogota Special Circuit of June 9, 2010 (evidence file, folios 24063 and 24064).

408 *Cf.* Affidavit made on September 4, 2013, by Sandra Beltrán Hernández (evidence file, folio 35510); Testimony of Omaira Beltrán de Bohórquez of August 25, 2006, before the Prosecution Service (evidence file, folio 29378), and Testimony of Bernardo Beltrán Monroy of August 25, 2006, before the Prosecution Service (evidence file, folio 29284). Also, Eduardo Ignacio Meléndez advised the family that he worked near the Palace of Justice and had seen Bernardo leave the Palace of Justice on November 6. However, on being asked, Mr. Meléndez stated that he "had not approached the Palace of Justice at any time during the events; consequently, he could not see anything that was happening directly and, therefore, had not seen anyone leaving, except for those shown on television." Subsequently, he added that he had commented to Bernardo's mother that he "thought [he] had seen on a television news program some people emerging who appeared to be some cafeteria employees." In this regard, he indicated that he "was trying to lift their spirits," but that he had no information on "the persons who were inside the Palace of Justice." *Cf.* Testimony of Sandra Beltrán Hernández of August 25, 2006, before the Prosecution Service (evidence file, folio 29388); Testimony of Bernardo Beltrán Monroy of August 25, 2006, before the Prosecution Service (evidence file, folio 29284); Testimony of María de Jesús Hernández de Beltrán of December 18, 1985, before the Ninth Criminal Investigation Court (evidence file, folios 29322 and 29323); Testimony of María de Jesús Hernández de Beltrán of

testimony of Sandra Beltrán, "when trying to recover all these videos from the media, they c[ould] never be found."[409] Similarly, Gloria Anzola de Lanao's sister testified that the RCN journalist "Juan Gossain said 'Gloria Anzola came out [of the Palace]'; [she] then went to the news program to ask for the recording, but this was not possible."[410] In addition, Lucy Amparo Oviedo Bonilla's sister testified that some days after the events they were summoned to a news agency and recognized Ms. Oviedo Bonilla in a video.[411] However, there is no further information in the case file in this regard. The Superior Court of Bogota did not take these identifications into account in either of its two decisions. However, this Court underlines that the foregoing is consistent with the testimony given during the public hearing on the merits by the prosecutor who was in charge of the case, who indicated that "during the investigation by the 30th Court there were more than 75 videos that disappeared and when [she] assumed the investigation, these videos did not exist."[412]

274. Furthermore, during the criminal investigation numerous identification procedures were undertaken with the videos and photographs of people leaving the Palace of Justice. In the proceedings against the Commander of the Cavalry School, the Superior Court of Bogota repeatedly indicated that, in the course of these identification procedures, "the court's intention was not to verify whether the person in the image could be recognized by his or her physical or morphological characteristics," and that the videos and photographs should have "been subject to facial identification by experts."[413] In contrast, the judges of the Superior Court who heard the proceedings against the Commander of the 13th Brigade used their knowledge of morphology and psychology (relating to visual perception) directly, as well as parameters concerning the functioning of memory in the analysis of the videos and identification of the persons disappeared.[414] In this regard, the Court agrees that it is important that the identifications be verified by the corresponding experts when possible. However, it notes that this lack of verification can be attributed to the State and therefore cannot be used to disprove the identifications made by the next of kin completely.[415] The Court also takes into account the corroborations made by the Superior Court, using the said criteria, in the proceedings against the Commander of the 13th Brigade.

275. The Court also notes that several of the identifications were based on a video entitled "DVD No. 2 of Caracol Television." In the proceedings against the Commander of the

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November 20, 1986, before the Inspectorate of the Office of the Special Attorney's assigned to the Military Forces (evidence file, folios 29375); Testimony of Eduardo Ignacio Meléndez y Miranda of December 28, 1985, before the Ninth Itinerant Criminal Investigation Court (evidence file, folio 29302), and Testimony of Eduardo Ignacio Meléndez y Miranda of November 24, 1986, before the Inspectorate of the Office of the Special Attorney's assigned to the Military Forces (evidence file, folio 31044).

409 Affidavit made by Sandra Beltrán Hernández (evidence file, folio 35510)

410 *Cf.* Affidavit made on November 2, 2013, by Consuelo Anzola (evidence file, folio 35763).

411 *Cf.* Testimony of Amrida Eufemia Oviedo Bonilla of July 24, 2008, before the Prosecution Service (evidence file, folios 29571 and 29572).

412 *Cf.* Testimony of Ángela María Buitrago during the public hearing on the merits in this case.

413 However, the same decision indicated that a 2007 report of the Judicial Police had indicated that "it was not [possible to prepare] a morphological comparison with the material provided, because the material was very blurred and did not permit observing the specific traits as was required to make a detailed comparison." *Cf.* Judgment of the Superior Court of Bogota of January 30, 2012 (evidence file, folios 23112, 23191 and 23286 and 24341).

414 Judgment of the Superior Court of Bogota of October 24, 2014 (evidence file, folios 23281 to 28282).

415 In addition, according to the prosecutor in charge of the investigation, she tried to obtain "a morphological appraisal through a CTI official," but that expert concluded that it was "impossible to make a morphological identification, [because the position] of the persons leaving the Palace of Justice prevent[ed] an identification of the basic morphological elements characteristic of an identification of this nature." Therefore, she "resorted to identification by the next of kin." *Cf.* Testimony of Ángela María Buitrago during the public hearing on the merits in this case.

Cavalry School, the Superior Court of Bogota rejected the identifications made on the basis of this video, considering that they did not prove that the presumed victims left the Palace of Justice alive. The Court verified that this video does not contain images of the exit of the hostages from the Palace of Justice on November 6 and 7, 1985, but rather interviews with family members and images of drawings of the presumed victims. Therefore, the Court considers that any identification made on the basis of this video only proves that the person who made the identification knew the presumed victim and could recognize him or her in other videos which did record the exit of hostages from the Palace of Justice.[416] Consequently, the identifications made based on this video do not constitute evidence that any of the presumed victims in this case left the Palace of Justice alive and, thus, the Court will not take them into account to that end.

276. The Court will now describe the identifications made of each presumed victim, if applicable, and the corresponding considerations of the domestic courts.

277. Cristina del Pilar Guarín Cortés was identified in nine videos and two photographs showing the exit of hostages from the Palace of Justice by members of her family, specifically her parents and brother, as well as by relatives of other persons presumably disappeared, during the procedures carried out in 1987, 1988, 2006 and 2007.[417] In addition, in 1988, another person who was there on the day of the taking of the Palace of Justice, María Nelfi Díaz, testified that she is the person who had been indicated in the videos as Cristina del Pilar Guarín Cortés.[418] The first instance courts that have heard this case have accorded probative value to the identifications made by the next of kin of Cristina del Pilar Guarín Cortés and have used them to prove that she left the Palace of Justice alive.[419] To the contrary, the Superior Court of Bogota, in both the second instance

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[416] Similarly, the Superior Court of Bogota indicated that "DVD No. 2 collected from the Caracol Television Station does not have probative value, because [it was made] based on portraits prepared from photographs of these persons, not their exit from the Palace of Justice." *Cf.* Judgment of the Superior Court of Bogota of January 30, 2012 (evidence file, folios 23100, 23104, 23116, 23125 and 23176).

[417] Specifically, Cristina was identified in videos No. 761 and No. 2 by her parents and by Carlos Augusto Rodríguez Vera's father in 1987 and 1988, respectively; in videos No. 11 and No. 15 by her parents in 1988; by her brother, René Guarín, in the TVE video, and in the video DVD 01 of the Colombian Film Heritage Foundation in 2006, indicating that it appeared to be his sister. In 2007, in a video handed over by Ana María Bidegain, in Beta video No. 1 obtained during the inspection of the Attorney General's office, and in the video obtained during the judicial inspection of the residence of the Commander of the Cavalry School. In the latter, also by Cecilia Cabrera in 2007; and in two photographs by her brother in 2006. *Cf.* Extract from the procedures of December 22, 1987; of January 13, 14 and 15, 1988, in the judgment of the Superior Court of Bogota of January 30, 2012 (evidence file, folios 23173 and 23174); record of continuation of the procedure of presentation of videocassettes with images of the taking of the Palace of Justice on January 15, 1988, before the 30th Itinerant Criminal Investigation Court (evidence file, folios 30985 and 30986); testimony of René Guarín Cortés of July 26, 2006, before the Prosecution Service (evidence file, folios 28070 and 28072); Testimony of Sandra Beltrán Hernández and René Guarín Cortes of August 16, 2007 (evidence file, folios 1087, 1089 and 1090), and Testimony of Cecilia Cabrera of August 16, 2007 (evidence file, folio 1058).

[418] *Cf.* Extract from the testimony of María Nelfi Díaz of February 5 and 12, 1988, in the judgment of the Superior Court of Bogota of January 30, 2012 (evidence file, folios 23184 and 23185). In a previous statement, Ms. Díaz had described the way in which she had been evacuated carried on a soldier's back, which coincides with the images which have been identified as Cristina del Pilar Guarín Cortés and, subsequently, in 2007, she only recognized herself in a video obtained in the residence of the Commander of the Cavalry School, indicating that "it appear[ed] to be [her]," but she did not recognize herself in the TVE video. In 2008, she was again shown the TVE video and did not recognize herself. In addition, when her daughter saw the said video for the second time, she did identify her mother. *Cf.* Extracts from the testimony of María Nelfi Díaz of December 5, 1985 and of 2007, before the Prosecution Service in the judgment of the Superior Court of Bogota of January 30, 2012 (evidence file, folios 23183 and 23186); Testimony of María Nelfi Díaz of November 25, 2008 (evidence file, video, folio 15000), and Testimony of Julio César Valencia Díaz of November 24, 2008 (evidence file, video, folio 15000).

[419] Regarding the identifications made by María Nelfi Díaz, the Third Criminal Court indicated that her statement "is not credible because it is contradictory and imprecise," and also that "when her version is analyzed together with the testimony of her son, Julio Cesar Valencia Díaz, her account becomes even more implausible and, for this reason, this court [has decided to order certified] copies so that an investigation can be conducted

decisions that it has delivered to date concerning the events, rejected these identifications, mainly because the person in the images is not wearing the clothes that Ms. Guarín Cortés was wearing on the day of the assault, according to the first statements of the next of kin, and also because it was more probable that the images related to María Nelfi Díaz, regarding whom there is no doubt that she survived the events of the Palace of Justice.[420]

278. In 2006 and 2007, Bernardo Beltrán Hernández was identified in a photograph and in a video by his sister and, in the latter, also by relatives of other disappeared.[421] The first instance courts that have heard the case have accorded probative value to the said identifications and have used them to prove that Mr. Beltrán Hernández left the Palace of Justice alive.[422] To the contrary, the Superior Court of Bogota in the proceedings against the Commander of the Cavalry School noted that there were contradictions in the identifications and that, initially, his family identified him leaving the Palace of Justice on November 6 (*supra* para. 273), while in the subsequent identifications, they referred to images of November 7.[423] Nevertheless, another chamber of the same court, in the proceedings against the Commander of the 13th Brigade, considered it proved that the person

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into the offense of perjury that she possibly committed." In addition, the 51st Court concluded that the credibility of the testimony was undermined because the deponent only recalled "the shape of the shirt collar and cuffs," after seeing the videos, and that the said identification was not "spontaneous, because she was only shown the precise part with her presumed exit, without even allowing her to find the image in which hypothetically she recognized herself." *Cf.* Judgment of the Third Criminal Court of the Bogota Special Circuit of June 9, 2010 (evidence file, folios 23998 to 24000); Judgment of the 51st Criminal Court of the Bogota Circuit of April 28, 2011 (evidence file, folios 24500 to 24502 and 24568), and Judgment of the 51st Criminal Court of the Bogota Circuit of December 15, 2011 (evidence file, folio 20948).

[420] In addition, regarding the identifications made by Cecilia Cabrera in the proceedings against the Commander of the Cavalry School, the Superior Court noted that, during the procedure, "the information provided by the witness was not examined," and the defense indicated that it appeared that Ms. Cabrera was referring to three images from different angles when, in fact, there were only two. Furthermore, the deponent had already seen this video in 1988 and had not identified Cristina. In the proceedings against the Commander of the 13th Brigade, the Chamber of the Superior Court considered that the identification by her brother was "not convincing, firm or definitive"; while, in the Chamber's opinion, the identification by Cecilia Cabrera did not coincide with either the clothes or the place from which Cristina del Pilar Guarín Cortés would have exited. *Cf.* Judgment of the Superior Court of Bogota of January 30, 2012 (evidence file, folios 23112 23182, 23189 and 23191), and Judgment of the Superior Court of Bogota of October 24, 2014 (evidence file, folio 38330).

[421] Specifically, Bernardo Beltrán Hernández was identified in 2006 by his sister in a photograph (she indicated that she considered "that the profile in the photograph corresponding to No. 4 from left to right behind a soldier […] is [her] brother"), and in the video obtained in the judicial inspection in the residence of the Commander of the Cavalry School in 2007. In the latter also by René Guarín Cortés and Cecilia Cabrera in 2007. *Cf.* Testimony of Sandra Beltrán Hernández of August 25, 2006, before the Prosecution Service (evidence file, folio 29389); Testimony of Sandra Beltrán Hernández and René Guarín Cortes of August 16, 2007, before the Prosecution Service (evidence file, folio 1087), and Testimony of Cecilia Cabrera of August 16, 2007, before the Prosecution Service (evidence file, folio 28220). In addition, in 1988, the mother of Mr. Beltrán Hernández indicated that in video No. 11, one of the men who exited the Palace of Justice running appeared to be her son. The following day, his mother and other family members, including Bernardo's sister, Sandra Beltrán, saw the same video again and concluded that it was not Bernardo. Therefore, this Court will not take the said identification into account. *Cf.* Extracts from procedures conducted on January 13 and 14, 1988, in the judgment of the Superior Court of Bogota of January 30, 2012 (evidence file, folios 23123 and 23124).

[422] *Cf.* Judgment of the Third Criminal Court of the Bogota Special Circuit of June 9, 2010 (evidence file, folios 24001 to 24003); Judgment of the 51st Criminal Court of the Bogota Circuit of April 28, 2011 (evidence file, folios 24502 to 24504 and 24568), and Judgment of the 51st Criminal Court of the Bogota Circuit of December 15, 2011 (evidence file, folios 20952 to 20954).

[423] In addition, it indicated that the identification made by Sandra Beltrán "was unduly influenced by [René Guarín de Cortes]," because the deponent heard Mr. Guarín identify Bernardo in the video." Regarding the identification made by Carlos Augusto's wife, it emphasized that she did not know Bernardo Beltrán sufficiently to identify him 22 years later. Moreover, the image that she identified is the one that, in 1988, his family considered did not correspond to Bernardo. *Cf.* Judgment of the Superior Court of Bogota of January 30, 2012 (evidence file, folios 23112, 23128 to 23131)

recognized by his sister and other relatives of the disappeared victims, exiting on November 7, is Bernardo Beltrán Hernández.[424]

279. Gloria Stella Lizarazo Figueroa was identified in a photograph and in a video by her husband and in the latter also by Cecilia Cabrera, Carlos Augusto Rodríguez Vera's wife, who also identified her in two other videos during procedures carried out in 2007.[425] Furthermore, her sister and an acquaintance believed that they recognized her in a video in 1986 without being completely certain.[426] The first instance courts that have heard this case have accorded probative value to the said identifications and have used them to prove that Ms. Lizarazo Figueroa left the Palace of Justice alive.[427] To the contrary, in its two second instance decisions, the Superior Court doubted the credibility of the testimony of her husband and underlined the lack of certainty in the identifications.[428] Also, in the proceedings against the Commander of the Cavalry School, the court underlined the fact that the person in the image was not wearing the clothes "worn by [Gloria Estella] when working behind the self-service counter."[429]

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[424] Regarding the identifications made by Sandra Beltrán, René Guarín Cortés and Cecilia Cabrera, the Chamber of the Superior Court "acknowledge[d] that they were extremely persuasive, because they knew the person enough to see from the images that his features and the shape of his body as a whole appeared in the segments that were presented to them, even though they were unable to give a technical description of why they stated that it was him." The Chamber concluded, "based on the assessment of the testimony and the corroboration of the pictorial documentary evidence, that Bernardo Beltrán Hernández is the person that his next of kin identified leaving the Palace alive in the custody of the Army, and as there has been no news of him since then, [it] declared him forcibly disappeared." Judgment of the Superior Court of Bogota of October 24, 2014 (evidence file, folios 38335 and 38342).

[425] Gloria Stella Lizarazo was identified in a photograph by her husband; in the video obtained during the inspection of the residence of the Commander of the Cavalry School by her husband and by Cecilia Cabrera; in the video handed over by Ana María Bidegain and in the video obtained during the inspection of in the Attorney General's office both by Cecilia Cabrera. In addition, Ms. Lizarazo Figueroa's husband indicated that he had recognized her previously in a video of *Noticias Uno*. *Cf.* Testimony of Luis Carlos Ospina Arias of December 10, 2007, before the Prosecution Service (evidence file, folios 27936 to 27941), and Testimony of Cecilia Cabrera of August 16, 2007, before the Prosecution Service (evidence file, folios 1058 to 1060).

[426] The deponents were shown three TVE videos. They identified Gloria Stella Lizarazo Figueroa in one of the videos indicating that "they could not be sure [that it was her], but it looked very like her." The judge "record[ed that, in the image,] even though it is clear, it is not possible to distinguish well-defined features of the people and that the person to whom the witnesses referred appears in the [image] carried on the shoulders of a soldier, and thus her face cannot be seen." *Cf.* Procedure of identification on some video-cassettes of April 11, 1986 (evidence file, folio 30981). See also, affidavit made on November 6, 2013, by Deyamira Lizarazo (evidence file, folio 35711).

[427] *Cf.* Judgment of the Third Criminal Court of the Bogota Special Circuit of June 9, 2010 (evidence file, folios 24007 and 24008); Judgment of the 51st Criminal Court of the Bogota Circuit of April 28, 2011 (evidence file, folios 24507 and 24568), and Judgment of the 51st Criminal Court of the Bogota Circuit of December 15, 2011 (evidence file, folios 20961 to 20964).

[428] In this regard, in the proceedings against the Commander of the Cavalry School, it indicated that the deponent identified several of the cafeteria employees when years before he had indicated that he only knew "Rosa and Jimmy." In addition, it noted that the parents of Carlos Augusto Rodríguez Vera had shown the deponent the video previously. In addition, it indicated that when he identified Ms. Lizarazo Figueroa "no physical features that distinguished her from other individuals could be noted," and that he had not been questioned in this regard. *Cf.* Judgment of the Superior Court of Bogota of January 30, 2012 (evidence file, folios 23108 to 23110). In the proceedings against the Commander of the 13th Brigade, the Superior Court underlined the same conclusions as the Chamber in the other trial, as well as the contradictions in the identifications and their lack of certainty. *Cf.* Judgment of the Superior Court of Bogota of October 24, 2014 (evidence file, folios 38348 and 38349).

[429] On this point, in the proceedings against the Commander of the 13th Brigade, although recognizing that she might have changed her clothes, the Superior Court considered that, in this case, no reference had been made "to clothes that would be an indicator, nor is there a description of features that can be verified, or any other means of developing convincing indications." *Cf.* Judgment of the Superior Court of Bogota of October 24, 2014 (evidence file, folios 38348 and 38349). In addition, both chambers of the Superior Court rejected the identification made by Cecilia Cabrera, mainly because the person identified is the same one regarding whom her sister and a friend were unsure. *Cf.* Judgment of the Superior Court of Bogota of January 30, 2012 (evidence file, folios 23110 and 23111), and Judgment of the Superior Court of Bogota of October 24, 2014 (evidence file, folio 38348).

280. Lucy Amparo Oviedo Bonilla was identified in 1988 in two videos by her parents and son even though they stressed that some of the clothes were not the same as those she was wearing that day.[430] Previously, in 1986, her parents and two of her sisters had indicated that one of the persons seen leaving the Palace of Justice in another video looked very like Ms. Oviedo Bonilla, but that the video had been filmed from quite a distance and the clothing was different from what she was wearing that day.[431] However, the same image has been identified as corresponding to the departure of Nubia Stella Hurtado Torres, who worked in the Palace of Justice.[432] The first instance courts that have heard this case have accorded probative value to the identifications made by the next of kin of Lucy Amparo Oviedo Bonilla and have used them to prove that she left the Palace of Justice alive.[433] To the contrary, in the proceedings against the Commander of the Cavalry School, the Superior Court underlined the lack of certainty of the identifications and the fact that the clothes were different from those worn by Lucy that day.[434] Also, in the proceedings against the Commander of the 13th Brigade, the Superior Court considered that it was more probable that the video image corresponded to Nubia Stella Hurtado Torres, whose testimony should be granted full credibility.[435]

281. Carlos Augusto Rodríguez Vera was identified in at least five videos (*supra* para. 109). The first and second instance courts that have heard this case have accorded probative

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[430] The identifications made by the parents were in videos 11 and 15. Lucy Amparo Oviedo Bonilla's son recognized his mother in video 15. *Cf.* Procedure of presentation of video cassettes before the 30th Itinerant Criminal Investigation Court of January 15, 1988 (evidence file, folios 30985 to 30987).

[431] In the procedure of April 11, 1986, her parents and sisters, Damaris and Aura Edy Oviedo Bonilla, indicated that they had recognized her in the video "Palacio 2." *Cf.* Identification procedure in films or video-cassettes by some family members of the supposed disappeared of April 11, 1986 (evidence file, folios 30980 and 30981).

[432] The identifications were made, first, by María Cristina de Quintero and Consuelo Guzmán de Ospina, who worked with Ms. Hurtado Torres. On February 12, 1988, Ms. Hurtado Torres ratified this identification indicating that "the clothes correspond, [she] recognize[d] the shoes and the handbag and the way that she carrie[d] it," stating that she remembered that was how she had left. Subsequently, on August 23, 2007, Ms. Hurtado Torres testified before the Prosecution Service that she did not recognize herself in the video provided by Ana María Bidegain, or in the video obtained during the judicial inspection of the residence of the Commander of the Cavalry School, or in the one obtained from the Attorney General's office. However, in the TVE video she stated that she believed that it was her, but she was not sure. *Cf.* Extract from the testimony of María Cristina de Quintero and Consuelo Guzmán in the judgment of the Superior Court of Bogota of January 30, 2012 (evidence file, folios 23146 and 23147); Testimony of Nubia Stella Hurtado Torres of February 12, 1988, before the 30th Itinerant Criminal Investigation Court (evidence file, folio 30867), and Testimony of Nubia Stella Hurtado of August 23, 2007, before the Prosecution Service (evidence file, folios 9608 and 9609).

[433] *Cf.* Judgment of the Third Criminal Court of the Bogota Special Circuit of June 9, 2010 (evidence file, folios 24020 to 24022). In addition, the court that head the other two cases found the disappearance of Ms. Oviedo Bonilla had been proved, but without using the identifications made by the next of kin. *Cf.* Judgment of the 51st Criminal Court of the Bogota Circuit of December 15, 2011 (evidence file, folios 20975 to 20980), and Judgment of the 51st Criminal Court of the Bogota Circuit of April 28, 2011 (evidence file, folio 24513 to 2516).

[434] Regarding the identifications made by Nubia Stella Hurtado, the Superior Court indicated that "what is clear to date is that the person in the video has been identified as two different people: Lucy Amparo, by her family and not categorically, and the other person, Nubia Stella Hurtado, with slightly more certainty by third parties and herself, which represents a dilemma that this court cannot decide." Regarding the identifications by Carlos Augusto's wife, the Superior Court indicated that the deponent had already seen this video and had not recognized Lucy Amparo. *Cf.* Judgment of the Superior Court of Bogota of January 30, 2012 (evidence file, folios 23112, 21342 and 21349).

[435] Although the Chamber rejected the identifications in the video images, based on which Lucy Amparo Oviedo Bonilla had left the Palace alive on November 7, considering that it was more probable that this was Nubia Stella Hurtado Torres who had recognized herself, it determined that "the identification of this victim should be made with the technical means available from among the hostages who exited [on November 6], and this should be carried out during the continuation of the investigation by the Prosecution Service, because it has been stated that, on the afternoon of the 6th, in the Casa del Florero, they were already saying that she was there" (*supra* para. 255). *Cf.* Judgment of the Superior Court of Bogota of October 24, 2014 (evidence file, folios 38364 to 38366).

value to the said identifications and have used them to prove that Carlos Augusto Rodríguez Vera left the Palace of Justice alive.[436]

282. The next of kin of Luz Mary Portela León, David Suspes Celis, Gloria Anzola de Lanao, Norma Constanza Esguerra Forero, Héctor Jaime Beltrán Fuentes and Ana Rosa Castiblanco Torres did not identify them in any of the procedures described in the case file.[437] However, in 2007, Cecilia Cabrera, Carlos Augusto Rodríguez Vera's wife, stated that she believed that she had seen David Suspes Celis in two videos.[438] The Third Criminal Court and the 51st Court accorded probative value to identifications of David Suspes Celis.[439] However, the Superior Court, in the proceedings against the Commander of the Cavalry School, questioned the credibility of these identifications because they were not made by his family members and, in its opinion, they were not sufficiently clear.[440] However, the Chamber of the Superior Court, in the proceedings against the Commander of the 13th Brigade, considered that there was no doubt that the person identified by Cecilia Cabrera was David Suspes Celis.[441]

283. Although Héctor Jaime Beltrán Fuentes was not identified by any of his next of kin in the videos, the Superior Court of Bogota in the proceedings against the Commander of the Cavalry School, identified in a video "a young man who, because he was exiting with the cafeteria employees' group, […] following the same path towards the museum, with his hands on his head, also heavily guarded by two soldiers, [could be] Héctor Jaime Beltrán." Despite this consideration, the Superior Court considered that "the body of evidence is insufficient for this court to conclude that he has been officially identified."[442] In this regard,

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[436] *Cf.* Judgment of the Third Criminal Court of the Bogota Special Circuit of June 9, 2010 (evidence file, folios 23991 to 23992); Judgment of the 51st Criminal Court of the Bogota Circuit of April 28, 2011 (evidence file, folios 24488, 24489 and 24491); Judgment of the 51st Criminal Court of the Bogota Circuit of December 15, 2011 (evidence file, folios 20928 to 20930 and 20941); Judgment of the Superior Court of Bogota of January 30, 2012 (evidence file, folios 23220 to 23234), and Judgment of the Superior Court of Bogota of October 24, 2014 (evidence file, folios 38319 to 38328).

[437] Nevertheless, the Court notes that Gloria Stella Lizarazo Figueroa's husband indicated that he had recognized Ana Rosa Castiblanco Torres in the video obtained during the inspection of the residence of the Commander of the Cavalry School. However, one of the persons indicated by the deponent as Ana Rosa Castiblanco Torres had previously been identified as Cristina del Pilar Guarín Cortés. *Cf.* Testimony of Luis Carlos Ospina Arias of December 10, 2007, before the Prosecution Service (evidence file, folio 27940), and Judgment of the Superior Court of Bogota of January 30, 2012 (evidence file, folio 23108).

[438] The deponent identified David in the video obtained during the inspection of the residence of the Commander of the Cavalry School and a video of *Noticiero 24 Horas*, handed over by Ana María Bidegain and in the Beta video No. 1 obtained during the inspection of the Attorney General's office. *Cf.* Testimony of Cecilia Cabrera of August 16, 2007, before the Prosecution Service (evidence file, folio 28221).

[439] *Cf.* Judgment of the Third Criminal Court of the Bogota Special Circuit of June 9, 2010 (evidence file, folios 24005 and 24006); Judgment of the 51st Criminal Court of the Bogota Circuit of December 15, 2011 (evidence file, folios 20960 and 20961), and Judgment of the 51st Criminal Court of the Bogota Circuit of April 28, 2011 (evidence file, folios 24512 and 24513).

[440] In this regard, it affirmed that Cecilia Cabrera's "perception of who she is seeing in that video is unclear, because she herself says: that it appears to be." It also emphasized that the deponent had already seen the same video in 1988 and had not recognized him. *Cf.* Judgment of the Superior Court of Bogota of January 30, 2012 (evidence file, folios 23112, 23117 and 23122).

[441] In this decision, the Superior Court stated that Cecilia Cabrera, as manager of the cafeteria knew him well, so that her identification "is a reliable source." Following its own corroboration, it concluded that "[t]he similitude [between the person in the video and the photographs of David Suspes Celis] left no doubt […] that it was the same person." Judgment of the Superior Court of Bogota of October 24, 2014 (evidence file, folios 38357 and 38362).

[442] The respective Chamber of the Superior Court considered that "[a]s there has been no identification by any of his family members or acquaintances in videos of people leaving the Palace, and it does not appear that any procedure has been conducted in this regard, and as his brother, Mario, has adopted the attitude of distancing himself in order to avoid harassment or other misfortune for his family," doubt remains about whether he left the Palace alive. The Chamber also stressed that, at the time of the possible exit of Héctor Jaime Beltrán Fuentes together with other cafeteria employees, the brother of Mr. Beltrán Fuentes "was in the area of Carrera 8 with Calle 11, from where he

this Court notes that the father of Héctor Beltrán Fuentes testified that his wife had identified their son in a video "in the hands of the lawyer Eduardo Umaña […] but […] this disappeared."[443]

284. In view of the fact that the State's arguments are the same as the objections to the identifications described by the Superior Court in its judgment against the Commander of the Cavalry School, this Court will proceed to examine them. First, in the cases of Cristina del Pilar Guarín Cortés, Gloria Stella Lizarazo Figueroa and Lucy Amparo Oviedo Bonilla, the State questions the identifications that were made based on inconsistencies in the clothing that the disappeared person should have been wearing and the clothing in which they presumably appear in the video (*supra* paras. 277, 279 and 280).[444] The Court considers that these inconsistencies are not sufficient to disprove the identifications, because: (i) it is reasonable that the next of kin do not recall the clothes that their loved one was wearing on the day of the taking of the Palace of Justice, even a short time after the events, but more so with the passing of the years, and (ii) since it is not known what happened to the disappeared persons inside the Palace of Justice during the events, the possibility that they exited with different clothes cannot be eliminated.[445] In this regard, the Court stresses that the most important aspect of the identifications made by the next of kin is that they were able to detect in some way the features, physical characteristics and way of walking of their loved ones, over and above how they were dressed.

285. Second, in the cases of Cristina del Pilar Guarín Cortés and Lucy Amparo Oviedo Bonilla, the images in which their departure from the Palace is presumably seen, have also been identified as showing the exit of two other persons who were in the Palace of Justice and regarding whom there is no doubt that they survived (*supra* paras. 277 and 280). The Court does not have evidence to decide which of these identifications is true, but considers that this does not allow it to eliminate completely the identifications made by the next of kin of Ms. Guarín Cortés and Ms. Oviedo Bonilla in the said videos, which must be analyzed with the rest of the body of evidence and the other indications that arise as regards their possible exit from the Palace alive. Furthermore, the Court takes into account that, despite having offered them as witnesses, the State did not present the testimony of the two persons who supposedly have been confused in the videos with Cristina del Pilar Guarín Cortés and Lucy Amparo Oviedo Bonilla, even though they were summoned to testify by the President of the Court. While the next of kin ratified before the Court that they had identified these presumed victims in the videos, the other two individuals did not confirm that they were the persons in the videos.[446] The Court, as it has in other cases,[447] will take

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could not have seen those who left by the main door." *Cf.* Judgment of the Superior Court of Bogota of October 24, 2014 (evidence file, folios 38343, 38344 and 38346).

[443] *Cf.* Testimony of Héctor Jaime Beltrán of February 20, 2006, before the Prosecution Service (evidence file, folio 28898). In the proceedings against the Commander of the 13th Brigade, the Superior Court considered that the statement by the father of Mr. Beltrán Fuentes about what his wife had presumably seen "does not provide grounds for a valid conclusion." *Cf.* Judgment of the Superior Court of Bogota of October 24, 2014 (evidence file, folio 38343).

[444] *Cf.* Judgment of the Superior Court of Bogota of January 30, 2012 (evidence file, folios 23111, 23117, 23165, 23180, 23190 to 23192).

[445] The Court also underlines the decision of the Superior Court of Bogota in the proceedings against the Commander of the 13th Brigade in which, based on principles relating to the psychology of visual perception and color theory, it indicated that "[t]he perception of color is not the same for everyone," "[t]wo people may interpret the same color differently, and there can be as many interpretations of a color as there are people who see it." Judgment of the Superior Court of Bogota of October 24, 2014 (evidence file, folio 38293).

[446] *Cf.* Affidavit made on November 6, 2013, by René Guarín Cortés (evidence file, folio 35751), and affidavit made on November 7, 2013, by Dámaris Oviedo Bonilla (evidence file, folio 35833).

[447] *Cf. Case of González Medina and family members v. Dominican Republic. Preliminary objections, merits, reparations and costs.* Judgment of February 27, 2012. Series C No. 240, paras. 165 to 170.

this into account when examining the State's hypothesis in relation to these two presumed victims.

286. Third, the Court underlies that, during the identification procedures conducted in 2007, the technology available allowed the images to be seen more clearly.[448] Thus, for example, when observing the video obtained during the judicial inspection of the home of the Commander of the Cavalry School, René Guarín declared that, of all "the videos [he had] seen, [the video obtained during this inspection was] the sharpest, and [he had] never seen such a clear video."[449] Therefore, it is reasonable that identifications have been made recently that were not made a short time after the events.

287. Fourth, in the case of Bernardo Beltrán Hernández, the Superior Court of Bogota emphasized that he had been identified leaving the Palace of Justice on November 6 and on November 7 (*supra* paras. 273 and 277), and therefore rejected both identifications. This Court underlines that neither of these identifications, of itself, provides sufficient proof that Mr. Beltrán Hernández left the Palace alive. However, it considers that regardless of which one is true, they both constitute indications that Bernardo Beltrán Hernández left the Palace alive and, as such, they will be taken into account to the extent that they are consistent with the rest of the body of evidence and the other indications about his possible exit from the Palace alive.

288. All the foregoing reveals that numerous doubts exist about the identifications made based on video images. The Court does not have sufficient evidence to clear up these doubts and, as established by the Superior Court of Bogota in the proceedings against the Commander of the Cavalry School, the necessary evidence has not been produced to clarify many of them (*supra* para. 274). The lack of sharpness, the distance, and the speed of the takes, makes it difficult to discern with certainty the identity of the individuals that the videos focus on.[450] However, despite these doubts, the Court cannot disregard the fact that the family members or acquaintances of the presumed victims have identified, with different degrees of certainty, six of the twelve presumed disappeared victims leaving the Palace of Justice alive (Cristina del Pilar Guarín Cortés, Bernardo Beltrán Hernández, Gloria Stella Lizarazo Figueroa, Lucy Amparo Oviedo Bonilla, Carlos Augusto Rodríguez Vera and David Suspes Celis). Moreover, as established by a Chamber of the Superior Court, one of the individuals observed in the videos could be Héctor Jaime Beltrán Fuentes. In addition, during the events, the next of kin of another presumed victim heard on the television that their relative had been rescued alive from the incident (Gloria Anzola de Lanao). The Court underscores that, based on these identifications, as well as on the direct examination of the videos, two chambers of the Superior Court of Bogota have established that there is no doubt that Carlos Augusto Rodríguez Vera left the Palace alive, and one of them also established, based on this evidence, that there is no doubt that Bernardo Beltrán Hernández and David Suspes Celis also left the Palace alive. The Court considers that these identifications in video images alone are not sufficient to prove with absolute certainty that these persons left the Palace alive. However, they constitute an important indication that, to the extent that they are supported by other elements or indications in the body of evidence, could lead to this conclusion.

A.2.i) The possibility that the presumed victims died during the events in the Palace of Justice

[448] On this point, see, Judgment of the Superior Court of Bogota of January 30, 2012 (evidence file, folios 23229, 23233 and 23234).

[449] *Cf.* Statement of August 16, 2007, before the Prosecution Service of Sandra Beltrán Hernández and René Guarín Cortes (evidence file, folio 1087).

[450] On this point, see, Judgment of the Superior Court of Bogota of January 30, 2012 (evidence file, folios 23220 and 23221).

289. The Court notes that, based on the expert opinion of Máximo Duque and the considerations of the judgment of the Superior Court of Bogota in the proceedings against the Commander of the Cavalry School, the State argued that possibilities exist, other than the forced disappearance of the presumed victims, to explain why their remains have not yet appeared, such as: (i) that their remains are among the unidentified corpses found in the mass grave in the South Cemetery; (ii) that the presumed disappeared victims died in the Palace of Justice, where their remains were completely consumed by the fire "or that the condition of the corpses prevented their identification," and (iii) that, owing to errors in the identification of the bodies, the remains of the presumed disappeared victims could have been returned to other families erroneously.

290. Regarding the possibility that the presumed disappeared victims are among the bodies exhumed from the mass grave in the South Cemetery, the Court notes the following: after the events, 94 corpses from the Palace of Justice were sent to the Institute of Forensic Medicine (60 carbonized and 34 without any charring);[451] of these 38 corpses were buried in the mass grave in the South Cemetery (*supra* para. 155). In 1998, the exhumation of all the remains in the said grave was initiated, including those from the corpses of 90 adults, among whom were those from the Palace of Justice (*supra* paras. 192 and 193). According to genetic tests performed in 2001, 2002, 2003, 2010 and 2012 none of these remains of the exhumed corpses have been identified as belonging to the disappeared victims in this case, with the exception of Ana Rosa Castiblanco Torres, identified in 2001 (*supra* paras. 192 to 195).

291. The Court notes that, in January 2012, the Superior Court of Bogota indicated that, in the course of this procedure, it was unaware of whether "any tests" had been performed on 30 of the remains exhumed from the mass grave.[452] However, it should be noted that, following this, in March 2012, Dr. Yolanda González López, expert witness of the Genetics Laboratory of the Prosecutor's Office, testified during the criminal proceedings against the members of the B-2 of the 13th Brigade (*supra* para. 190) and stated that DNA tests had been performed on the 90 adult bodies exhumed, and no results had been obtained on five of them,[453] while the remainder were excluded as belonging to the presumed disappeared victims, with the exception of Norma Constanza Esquerra and Irma Franco Pineda regarding whom no tests had been carried out.[454]

292. This Court also has a certification that, in July 2012, testing was carried out on the remains of three of the five skeletons from which no results had been obtained (*supra* para.

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451 *Cf.* Note from the Institute of Forensic Medicine of December 17, 1985 (evidence file, folio 37920)

452 *Cf.* Judgment of the Superior Court of Bogota of January 30, 2012 (evidence file, folio 23046). Similarly, in October 2014, another chamber of the same court indicated that the tests on the exhumed remains had been carried out on a "sample of 28 corpses with signs of carbonization," so that "tests were pending and information needed to be verified in order to be able to affirm […] that the other victims […] were not among the existing human remains." However, this chamber clarified that this information was based on the available evidence when the first instance judgment was delivered in April 2011, and that although it was aware, through the newspapers, "that the Institute of Forensic Medicine [was] continuing to verify the remains to determine whether any of the eleven disappeared are among those found in the mass grave of the South Cemetery, […] that information [was] not available to [the] proceedings." *Cf.* Judgment of the Superior Court of Bogota of October 24, 2014 (evidence file, folios 38283 and 38376).

453 According to the testimony of Yolanda González López, the DNA of the remains sent to the Genetics Laboratory of corpses numbered 16, 18, 56, 58 and 85 was significantly tainted and the identification department forwarded them other parts of the said corpses in order to carry out the pertinent genetic tests. *Cf.* Testimony of Yolanda González, expert witness of the Genetics Laboratory of the Attorney General's office, of March 15, 2012, before the 55th Special Criminal Circuit Court of Bogota (evidence file, folio 14823).

454 Regarding Irma Franco Pineda, the expert witness explained that there were two reports in the files "which indicate that the samples from [two family members of Irma Franco Pineda] have been processed." However, "there is no result of the testing procedure." *Cf.* Testimony of Yolanda González López of March 15, 2012, before the 55th Criminal Court (evidence file, folios 14823, 14824, 14829 and 14830).

291), and this excluded that they belonged to the presumed disappeared victims, except Irma Franco Pineda, regarding whom no tests were carried out.[455] Also, between June and September 2012, tests were carried out involving the next of kin of Norma Constanza Esguerra Forero and Irma Franco Pineda; however, to date, the remains of these two women have not been identified among the corpses exhumed from the South Cemetery (*supra* para. 195). Consequently, according to the information provided to the case file, the possibility has been excluded that 88 of the 90 adult remains that were exhumed belonged to the disappeared victims, with the exception of Norma Constanza Esguerra Forero and Irma Franco Pineda.[456] In this regard, even though there is no record that the pertinent tests were carried out on all the relevant corpses to eliminate the presence of these two persons in the said grave, [457] the Court notes that there is no doubt that Irma Franco Pineda did not die inside the Palace of Justice, and her forced disappearance is not contested; while, with regard to Norma Constanza Esguerra Forero, the Court refers to the specific considerations on this victim below.

293. Despite the foregoing, the Court notes that if the remains of any of the presumed victims were to be found among the corpses exhumed from the mass grave in the South Cemetery, this would not eliminate automatically the possibility that they left the Palace of Justice alive. The Superior Court of Bogota reached a similar conclusion in the proceedings against the Commander of the 13th Brigade when it stated that "[t]he possibility that a corpse was sent to the morgue and then to the mass grave does not exclude the possibility of that person having left the Palace alive."[458] The evidence in the case file reveals that this grave was open until the end of December 1985 or the beginning of January 1986;[459] thus the corpses of the presumed victims could have been deposited in the said grave up until then. In this regard, the Court stresses that Irma Franco's brother received information that the corpses of the presumed victims had been deposited in this grave after they had been kept for "eight days in the Usaquén stables" (*supra* para. 261). In this regard, the Court notes that, even if the remains are identified among the corpses exhumed from the said mass grave, additional circumstances must be determined, such as the probable cause of

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[455] The corpses numbered 16 and 56 were tested against samples from the next of kin of the men who were disappeared and it was excluded that they belonged to Héctor Jaime Beltrán Fuentes, Bernardo Beltrán Hernández, Carlos Augusto Rodríguez Vera and David Suspes. Also, corpse No. 85 was tested against samples from the next of kin of the women who were disappeared, with the exception of Irma Franco Pineda, and it was excluded that they belonged to Lucy Amparo Oviedo Bonilla, Gloria Stella Lizarazo Figueroa, Luz Mary Portela León, Cristina del Pilar Guarín Cortés, Gloria Anzola de Lanao and Norma Constanza Esguerra Forero. *Cf.* Reports of the Laboratory Expert of the Genetic Identification Unit of the Prosecutor General's Office of June 8 and 15, 2012 (evidence file, folios 37389, 37397 and 37405), and Report of the Laboratory Expert of the Genetic Identification Unit of the Prosecutor General's Office of July 5, 2012 (evidence file, folios 37414 and 37415).

[456] It was concluded that no results were obtained from the osseous remains identified with the numbers 18 and 58 because of the degradation of the genetic material present in the samples, and they were therefore sent for analysis of mitochondrial DNA. *Cf.* Reports of the Laboratory Expert of the Genetic Identification Unit of the Prosecutor General's Office of June 25, 2012 (evidence file, folios 37376 to 37378 and 37380 to 37382).

[457] The information regarding the DNA testing has been provided to the Court in a fragmented, haphazard and confusing manner. Even though the representatives provided several analyses, which included tests of the next of kin of Norma Constanza Esguerra Forero and Irma Franco Pineda, with their brief of March 17, 2013, it is unclear from these analyses whether the information from these family members has been checked against all the corpses considered to be females or of undetermined sex. *Cf.* Reports of the Laboratory Expert of the Genetic Identification Unit of the Prosecutor General's Office of July 5 and 16 and of September 26, 2012 (evidence file, folios 37414, 37415, 37417, 37422, 37425, 37441 and 37442).

[458] Judgment of the Superior Court of Bogota of October 24, 2014 (evidence file, folio 38356).

[459] *Cf.* Testimony of March 15, 2012, of Carlos Eduardo Valdés Moreno, Director General of the National Institute of Forensic Medicine and Science who headed the exhumation procedure, before the 55th Criminal Court (evidence file, folio 14845); Written notes by Carlos Bacigalupo (evidence file, folio 36331), and Judgment of the Superior Court of Bogota of October 24, 2014 (evidence file, folio 38291).

death, in order to be able to conclude that the person died as a result of the events of the taking and retaking of the Palace of Justice.

294. Regarding the possibility that the remains of the presumed victims were eliminated as a result of the fire in the Palace of Justice, the Court notes that both expert witness Duque and deponent Bacigalupo agree that the decomposition of a body by the action of fire depends on the temperature, the length of time it is exposed to the fire, and the dimensions of the body.[460] However, the deponents (one, an anthropologist who was an expert witness before the Truth Commission and the other, a doctor and an expert witness before the Court) differ as to whether this could have occurred in the instant case. Carlos Bacigalupo stated that, based on the coloring of the carbonized bodies and the specialized literature on this matter, it can be established that the "temperatures must have been […] around 500 to 700 degrees."[461] In contrast, expert witness Duque indicated that "[a]ccording to the information available in this case [referring to the photographs of the events and reports of the firefighters], […] fire occurred in the Palace of Justice that burned out of control for several hours," and that "[t]hese conditions indicate that, in that building, the temperature of the fire was in excess of 1,200 degrees centigrade (and could have reached more than 1,500 degrees) for more than two hours."[462] The Court also notes that the Special Investigative Court indicated that the fire lasted for several hours and its intensity was such that "the experts calculated from 800 to 1,100°C" (*supra* para. 154).

295. In this regard, the Court points out the following: (i) there is no precise information on the temperature reached by the fire in the Palace of Justice and the temperatures reported cannot be taken as final or exact data one way or the other; (ii) on the fourth floor of the Palace of Justice, where the fire had the greatest impact, carbonized corpses were removed and, although they were incomplete in some cases, they had not completely disappeared, and (iii) even though it is scientifically possible that a body is completely consumed by fire, as stated by expert witness Duque,[463] it is very difficult for a body to be consumed to the point that only ashes remain, as stated by both Carlos Bacigalupo, and pathologists in the domestic sphere.[464] Regarding the latter, the Court underscores the

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460 *Cf.* Written report of Máximo Duque Piedrahíta (evidence file, folio 36440), and Testimony of Carlos Bacigalupo during the public hearing on the merits in this case.

461 Testimony of Carlos Bacigalupo during the public hearing on the merits in this case.

462 Written report of Máximo Duque Piedrahíta (evidence file, folios 36440 and 36441).

463 *Cf.* Testimony of Máximo Duque Piedrahíta during the public hearing on the merits in this case.

464 Mr. Bacigalupo indicated that "the abundant literature on the treatment of carbonized corpses indicates, basically, that it is extremely difficult that a human body disappears by the action of fire. […] There will always be some evidence and fragments of the remains, unless it has been subjected to the fire for so long that it disappears." "For this to occur, […] a series of special conditions must be created that did not occur during the fire in the Palace of Justice; [for example,] there must be constant extremely high temperatures, in excess of 1,000 degrees centigrade for more than two or three hours and this entails very special conditions. In the conditions that occurred in the Palace of Justice, it is known that it is not probable that the remains would have disappeared. Remains were always recovered and when the photographs of the removal of the corpses are examined, it can be seen, even in the case of the corpses from the fourth floor that are visible, that they can be recovered, that they are there, that they have not disappeared." Testimony of Carlos Bacigalupo during the public hearing on the merits in this case. Similarly, in the proceedings against the Commander of the 13th Brigade there is a note of January 1988, in which several pathologists advise that "worldwide forensic experience with human bodies subjected to very large fires that generated high temperatures has been that the bodies do not disappear totally, and it is highly improbable that they only leave traces that cannot be seen," clarifying that "[i]n the specific case of the Palace of Justice, in which high temperatures were generated, […] and as the Palace building is not an open space, it could have behaved like a cremation oven where combustion for more than one hour at 1,000 degrees centigrade leaves bone spicules." In this regard, the first instance court in the proceedings against the Commander of the 13th Brigade concluded that "[t]hus it is clear that subjecting a body to extreme temperatures may eventually reduce it to a degree that makes its identification by any method impossible; however, there is also very little probability that a human being disappears completely, to the point of not leaving any trace, residue or evidence that would allow his or her existence to be presumed." Extract from the note of January 8, 1988, signed by the pathologists, Rodrigo Restrepo Molina and others and addressed to the 30th

opinion of Carlos Bacigalupo that, even during cremations, which constitute scenarios when the temperature of the fire and the time that the corpse is exposed to this is absolutely controlled, "at the end of the cremation process, the body has not disintegrated completely, it is broken up, the soft tissue has disappeared, but the bones and the teeth remain," so that after a corpse has been burned "the remains are crushed and ground up so that the ashes […] can be delivered to the family."[465] Consequently, the Court considers it very unlikely that precisely the corpses of the presumed victims, most of them cafeteria employees, were destroyed completely by the action of the fire, and that no evidence (for example, bones or teeth) has remained of any of them. Furthermore, the Court underlines that, since the events took place, no evidence has arisen of this possibility, beyond the fact that the corpses of the presumed victims had not been recovered when the work of removing and identifying corpses concluded.

296. Likewise, this Court finds that there is scant possibility that the remains of the victims are among the corpses that were erroneously identified. The Court considers that it would be a rather unreasonable coincidence that the said errors affected precisely the eight cafeteria employees who continue disappeared. Moreover, this would signify ignoring the other evidence that has arisen about their departure from the Palace alive and their presumed forced disappearance.

297. The Court also observes that the State's expert witness indicated that other mass graves may exist where victims from the Palace of Justice may have been buried and affirmed that the grave in the South Cemetery was not adequately guarded, so that it could have been altered.[466] In this regard, the Court notes that, according to the testimony of Carlos Valdés who, at the time of the events, was Head of the Criminalistics Division of the CTI of the Prosecutor General's Office and directed the exhumation procedures, before the exhumation work began, inquiries and assessments were made based on which "they eliminated the possibility" that other mass graves existed and concluded that "that grave had not been disturbed or altered."[467]

298. Therefore, despite its conclusions with regard to Ana Rosa Castiblanco Torres and Norma Constanza Esguerra Forero (*infra* paras. 317 and 320), the Court finds that there is no evidence that the disappeared victims died in the Palace of Justice as a result of the crossfire or of the fire that occurred during the events.

A.2.j) The failure to clarify the facts

299. In this case, the State acknowledged its responsibility by omission for the failure to investigate these facts. The Court will make a comprehensive analysis of the shortcomings and delays in their investigation in Chapter XI *infra*. Nevertheless, in this section, it should be emphasized that, despite the different investigations and judicial proceedings that have been instituted, the State has been unable to provide a final and official version of what happened to the presumed victims, and has not provided adequate information to disprove the different indications that have emerged concerning the forced disappearance of most of the victims. The only point about which there is no dispute is that the disappeared victims were in the Palace of Justice and, following the operation to retake the building, they have not appeared either alive or dead, so that it is accepted that their whereabouts are unknown

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Itinerant Criminal Investigation Judge, and judgment of the 51st Criminal Court of the Bogota Circuit of April 28, 2011 (evidence file, folio 24552).

[465] Testimony of Carlos Bacigalupo during the public hearing on the merits in this case.

[466] *Cf.* Written report of Máximo Duque Piedrahíta (evidence file, folio 36427), and Testimony of Máximo Duque Piedrahíta during the public hearing on the merits in this case.

[467] Testimony of Carlos Valdés Moreno of March 15, 2012, before the 55th Criminal Court (evidence file, folios 14846, 14848 and 14856).

or, in the case of Ana Rosa Castiblanco Torres, that her whereabouts were unknown for 16 years.

300. In 1986, the Special Court concluded that the persons "considered disappeared," "died on the fourth floor" (*supra* para. 159). According to the testimony of César Rodríguez Vera, this "result provided the State with grounds for denying the existence of the disappeared for many years."[468] Added to what it has determined in the pertinent section (*supra* para. 298), the Court stresses that this theory has been rejected by the criminal courts that have heard the case in first instance in three separate judgments, where it has been concluded that the victims were forcibly disappeared (*supra* paras. 175, 183, 185 and 186). These decisions were partially confirmed in two of the cases, in which the enforced disappearance of some of the presumed victims has been considered proved and nullity has been declared with regard to the others finding that further investigations were required (*supra* paras. 177 to 180 and 188).[469] In one of the proceedings, the Superior Court affirmed that "the Colombian State has not complied with its obligation to take all necessary measures to clarify the true situation [of the presumed disappeared victims]."[470]

301. In this regard, it is possible to consider that a failure by the State to comply with the obligation of due diligence in a criminal investigation may lead to the lack of sufficient evidence to clarify the events that are being investigated, to identify the possible authors and participants, and to determine the eventual criminal responsibilities at the domestic level. Consequently, an acquittal could be considered a factor when evaluating the State's responsibility or the scope of this, but does not constitute *per se* a factor to affirm the State's lack of international responsibility, in view of the difference in the probative standards or requirements between criminal matters and international human rights law.[471] However, there are no acquittals in this case, but only two nullifications decided in the proceedings. The decisions made in the second instance judgments do not necessarily mean that this Court has insufficient evidence to consider that these persons were victims of forced disappearance, but rather that the investigation has not been conducted properly.

302. Consequently, the Court notes that, in three first instance judgments it was concluded, based on the existing evidence and indications, that what happened to eleven of the presumed victims in this case was a forced disappearance. Even the two second instance judgments delivered to date also considered, based on the existing evidence, that at least some of them had been victims of enforced disappearance and that the same could not be concluded for the others because insufficient evidence existed under the evidentiary standards of the criminal jurisdiction, and they therefore declared the nullification and ordered the continuation of the investigations (*supra* para. 300). However, they did not reject this possibility or consider that the disappeared persons had died in the Palace of Justice. Throughout the 29 years since the events, most of the evidence and indications that have emerged support the hypothesis of the forced disappearance of these persons. The State has substantiated the hypothesis of their death during the events on the grounds of its own negligence; negligence that has been found so severe that domestic courts and the Truth Commission have considered that it was aimed at concealing the facts. Consequently,

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468 Testimony of César Rodríguez Vera during the public hearing on the merits in this case.

469 In the proceedings against the Commander of the Cavalry School, the Court concluded that Carlos Augusto Rodríguez Vera and Irma Franco Pineda were forcibly disappeared (*supra* para. 177). And in the proceedings against the Commander of the 13th Brigade, the Superior Court concluded that Carlos Augusto Rodríguez Vera, Bernardo Beltrán Hernández, Luz Mary Portela León, David Suspes Celis and Irma Franco Pineda were forcibly disappeared (*supra* para. 188).

470 *Cf.* Judgment of the Superior Court of Bogota of January 30, 2012 (evidence file, folio 23283).

471 *Cf. Case of Osorio Rivera and family members v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of November 26, 2013. Series C No. 274, para. 144.

the failure to clarify the facts definitively is an additional indication of what happened to the presumed victims.

A.3) Determination that enforced disappearance occurred

303. Based on all the above considerations, the Court concludes that a *modus operandi* existed aimed at the enforced disappearance of persons suspected of having participated in the taking of the Palace of Justice or of collaborating with the M-19. The suspects were separated from the other hostages, taken to military facilities, tortured in some cases, and their subsequent whereabouts is unknown. Among the places where the suspects were taken are the Cavalry School and the Charry Solano Battalion.[472] In this regard, it is relevant to underscore that there is no dispute that Carlos Augusto Rodríguez Vera and Irma Franco Pineda were separated from the other survivors, taken to a military establishment, tortured and disappeared. Regarding the other presumed disappeared victims, the evidence in the case file reveals that the State authorities suspected them of collaborating in the taking of the Palace of Justice, and that, in addition to Carlos Augusto Rodríguez Vera and Irma Franco Pineda, several other individuals considered suspicious were victims of the same *modus operandi*, which provides an additional indication of what probably happened to the other presumed victims, because any of them could have been victims of this. Also, there is no dispute that, under the orders of military officers, the authorities significantly altered the crime scene and committed numerous irregularities in the removal of the corpses.

304. In addition, regarding the presumed victims in this case, the following indications have been established: (i) several of the next of kin of the disappeared victims heard or received information during or after the events indicating that their family members had survived the events of the Palace of Justice and were detained in military garrisons; (ii) despite this, the security forces denied the presence of the detainees in military garrisons to the next of kin; (iii) most of the disappeared victims have been identified, with different degrees of certainty, by family members or acquaintances in videos or photographs of the departure of hostages from the Palace of Justice; (iv) the next of kin of six of the presumed disappeared victims and at least one witness have testified that they have received threats to make them stop the search for their loved ones, and (v) to this day, the State has not elucidated the facts definitively or offered a satisfactory explanation in response to all the indications that have arisen pointing to the enforced disappearance of the victims. To the contrary, even though it has been the State's hypothesis since 1986, no evidence has emerged that the victims died in the Palace of Justice, except for Norma Constanza Esguerra Forero and Ana Rosa Castiblanco Torres, whose specific cases will be examined below. The Court emphasizes that some of these indications, such as the alteration of the scene of the crime, the initial refusal of the authorities to acknowledge the detention and their subsequent partial acknowledgement, the failure to register those detained, as well as the possible threats received by the next of kin, are evidence of the concealment of what happened and have prevented the elucidation of the truth, which accords with the refusal of information that constitutes a characteristic and essential element of an enforced disappearance.

305. Consequently, the Court considers that all the indications that have emerged since the time of the events are consistent and lead to the sole conclusion that Cristina del Pilar Guarín Cortés, David Suspes Celis, Bernardo Beltrán Hernández, Héctor Jaime Beltrán Fuentes, Gloria Stella Lizarazo Figueroa, Luz Mary Portela León, Lucy Amparo Oviedo Bonilla and Gloria Anzola de Lanao were forcibly disappeared. To conclude otherwise would mean allowing the State to shield itself behind the negligence and ineffectiveness of the criminal investigation to evade its international responsibility.[473]

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[472] *Cf.* Judgment of the Superior Court of Bogota of January 30, 2012 (evidence file, folio 23387 and 23404).

[473] *Cf. Case of Kawas Fernández v. Honduras. Merits, reparations and costs. Judgment of April 3, 2009. Series C No.*

306. Nevertheless, in the specific cases of Norma Constanza Esguerra Forero and Ana Rosa Castiblanco Torres there are indications that cause the Court to differ from this conclusion and that point to their death inside the Palace of Justice during the taking and retaking of the Palace. The Court will now describe and analyze these specific cases.

A.3.a) Norma Constanza Esguerra Forero

307. In 1986 the Special Court affirmed that "Norma Constanza Esguerra's belongings, which have been identified by her family, were found next to a charred body removed from the fourth floor."[474] Subsequently, on January 12, 1988, the 30th Criminal Investigation Court carried out a procedure to identify the objects found in the Palace of Justice, during which Norma Constanza Esguerra Forero's mother recognized her daughter's necklace and bracelet that were in a bag marked "Record No. 1171."[475] In this regard, that court verified that, according to the record of the removal of the body and the autopsy report corresponding to this body, it was "a charred corpse of an unidentified woman." However, the body was returned to the next of kin of Justice Pedro Elías Serrano.[476]

308. Record No. 1171/36 of the removal of a body indicates that the corpse was found "totally incinerated," with the head separated from the rest of the body and that "next to it was a metallic bracelet, part of the frame of a pair of glasses [and] several pieces of a necklace."[477] It also indicated that the corpse was found on the fourth floor of the Palace of Justice.[478] In addition, autopsy report No. 3805/85, corresponding to this corpse, concluded that it was the "charred body of a woman whose cause of death could not be determined in the autopsy," and that "all that was left was the pelvis and the upper part of the femurs" and "no pregnancy [was noted] in the uterus."[479]

309. It was Ciria Mercy Mendez de Trujillo, a friend of Justice Pedro Elías Serrano Abadía, who identified his corpse on November 8, 1985, in the Institute of Forensic Medicine. According to her statement, she recognized the Justice's Citizen watch as well as a "piece of red and black lacquered material," corresponding to a pen, so that "she had immediate moral certainty that it was the corpse of Pedro Elías Serrano and indicate[d] this." She explained that this corpse was marked with an "F" which meant that it was a female corpse; however, after examining the corpse it had been concluded that "the sex [of this corpse] could not be established; that the 'F' was not conclusive."[480] Thus, in the ledger recording the returns of the bodies, "it [was] clarified in the column with observations on this identification that the removal record indicated that the corpse was female, but it was male."[481]

196, para. 97, and Case of *J. v. Peru. Preliminary objection, merits, reparations and costs.* Judgment of November 27, 2013. Series C No. 275, para. 356.

474 *Cf. Report of the Special Investigative Court* (evidence file, folio 30541).

475 *Cf.* Procedure presenting photographs, clothes, objects and documents of corpse of those who died during the events [of the Palace of Justice] (evidence file, folio 30875), and expansion of the testimony of Elvira Forero de Esguerra of February 17, 1988, before the 30th Criminal Investigation Court (evidence file, folios 30286 and 30287).

476 *Cf.* Procedure to present photographs, clothes, objects and documents of corpse of those who died during the events [of the Palace of Justice] (evidence file, folio 30875). Also an album with the photographs taken when the corpse was removed indicating that it was an "unknown person, apparently a woman." *Cf.* Album 21 (evidence file, folio 17951).

477 *Cf.* Record of removal of corpse No. 1171/36 (evidence file, folio 17889).

478 *Cf.* Autopsy list (evidence file, folio 22839).

479 *Cf.* Autopsy report No. 3805/85 of November 8, 1985 (evidence file, folios 30963 and 30964).

480 *Cf.* Testimony of Ciria Mercy Mendez de Trujillo of May 11, 1988, before the 30th Itinerant Criminal Investigation Court (evidence file, folios 30854 and 30855).

481 *Cf.* Procedure presenting photographs, clothes, objects and documents of corpse of those who died during the

310. The State alleged that the authorities "refused to return the charred remains to [Ms. Mendez de Trujillo], because they did not correspond to Justice Serrano Abadía; [however, she resorted] to her friend, [the then] Vice Minister of Justice to obtain the charred remains." The evidence provided only shows that the remains were delivered to the Vice Minister, but not that, previously, the delivery of the corpse had been refused.[482] Also, according to the forensic fingerprint expert who analyzed the case:

> When the identifications were being made, it was chaotic, and owing to the importance of some of the bereaved, such as the families of the Justice, we merely believed this grieving person and made the respective annotations. It should be noted that in the case [of the corpse returned to the next of kin of Justice Pedro Elías Serrano] the Vice Minister of Justice intervened; all these situations were given priority.[483]

311. The Court notes that there are significant inconsistencies in the identification of the corpse returned to the next of kin of Justice Serrano Abadía. Thus, the forensic pathologist, Dimas Dennis Contreras Villas, who prepared autopsy report 3805-85 stated that, during the autopsy, "there [was] no error [in the determination of the sex], among other matters because [in the record of the removal of the corpse] the uterus is described as a uterus that is not pregnant." He stated that the subsequent identification was made "not for its morphology or osseous remains but by […] a watch," even though the corpse did not have extremities. He therefore affirmed that "if there was a watch on these remains, it probably belonged to another case," attributed this to errors that occurred during the removal of the corpses, and "consider[ed] that there was an error in this identification."[484]

312. The Court also underscores that the record of the removal of the corpse does not mentioned that there was a watch next to the corpse. To the contrary, it mentions that "a metallic bracelet, part of the frame of a pair of glasses [and] several pieces of a necklace" were found (*supra* para. 308). This is precisely consistent with the objects identified by Norma Constanza Esguerra Forero's mother as her daughter's belongings.[485] In this regard, Ms. Esguerra Forero's mother stated that she was "fully convinced that, having found those belongings of [her daughter, this means that she] is dead [and] since the bracelet and the pieces of the necklace were found beside that corpse, it was the corpse of [her] daughter."[486]

313. In 1989, the 78th Military Criminal Investigation Court requested the exhumation of the corpse delivered to the family of Justice Pedro Elías Serrano Abadía. However, the Institute of Forensic Medicine indicated that "it [was] not necessary to exhume the body because this [was] a case in which it was determined that it was the body of a woman and

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events of the Palace of Justice (evidence file, folio 30875), and record of identification of a corpse No. 20 of November 9, 1985 (evidence file, folio 30954).

[482] *Cf.* Testimony of Ciria Mercy Mendez de Trujillo of May 11, 1988, before the 30th Itinerant Criminal Investigation Court (evidence file, folio 30856), and Testimony of Gerardo Rafael Duque Montoya of February 5, 1988, before the 30th Itinerant Criminal Investigation Court (evidence file, folio 30861).

[483] *Cf.* Testimony of Gerardo Rafael Duque Montoya of February 5, 1988, before the 30th Itinerant Criminal Investigation Court (evidence file, folio 30862).

[484] Furthermore, he indicated that it is possible that the Identification Department official was unaware of the results of the autopsy when he handed over the corpse because, "owing to the large number of corpses, the transcription took several days." *Cf.* Testimony of Dimas Dennis Contreras Villa of February 5, 1988, before the 30th Itinerant Criminal Investigation Court (evidence file, folios 30891 and 30892).

[485] Regarding the frame of the glasses, Ms. Esguerra Forero's mother explained that these did not belong to her daughter "because she did not use glasses." *Cf.* Procedure presenting photographs, clothes, objects and documents of corpse of those who died during the events of the Palace of Justice (evidence file, folio 30875).

[486] *Cf.* Expansion of the testimony of Elvira Forero de Esguerra of February 17, 1988, before the 30th Itinerant Criminal Investigation Court (evidence file, folio 30286).

not of a man."[487] Subsequently, in March 2002, Ms. Esguerra Forero's mother requested the issue of a death certificate for her daughter or, alternatively, the exhumation of the remains delivered to the family of Justice Pedro Elías Serrano Abadia.[488] In April that year, the Second Criminal Court declared that it would order "the preparation of a forensic anthropological report," to clarify whether the remains delivered to the family of Pedro Elías Serrano Abadía are really those of a woman."[489] Nevertheless, this Court has no information on the steps taken or the results obtained in this regard.

314. Following the exhumations performed in the mass grave in the South Cemetery, the anthropological examinations carried out by the Universidad Nacional de Colombia (*supra* para. 194) determined that one of the corpses corresponded to an "adult male (40-60 years)," which "was found wearing an expensive custom-made suit, with fragments of safety glass on the knees." According to the report, the "corpse was found among the debris […] on November 10, [1985]," and "a biological sample was obtained for DNA testing, which eliminated the possibility that it belonged to the group of disappeared persons." The report concluded that "[j]udging by the osteo-biographical and taphonomic characteristics and the associated clothing, this body must belong to a civilian, possibly a high-ranking official from the fourth floor of the Palace of Justice (a justice?), whose body had been returned erroneously."[490]

315. The Court notes that in the section of the Report of the Truth Commission on the "Homage to the memory of the persons disappeared from the Palace of Justice, organized by their next of kin," the next of kin indicated that "[t]he corpse […] that it was said could be Norma […] had perfect teeth, [while Ms. Esguerra Forero] had several fillings and a root canal."[491] However, according to the autopsy report, the remains delivered to the next of kin of Justice Serrano Abadía did not include the teeth.[492]

316. The first instance courts that have heard the case have concluded that the foregoing is not sufficient to disprove the conclusion that Norma Constanza Esguerra Forero was forcibly disappeared.[493] To the contrary, the Superior Court in the proceedings against the Commander of the Cavalry School concluded that "it cannot be affirmed that [Norma Constanza Esguerra Forero] left the Palace of Justice alive, owing to the errors and the improper actions at the scene of the events." It stressed that "it is now necessary and essential that some authority with the required competence […] order the exhumation of the corpse that was returned, apparently erroneously, as that of Justice Pedro Elías Serrano Abadía."[494] Similarly, in the proceedings against the Commander of the 13th Brigade, the Superior Court stated that "it is not valid to affirm that [Norma Constanza Esguerra Forero] left the Palace alive and was subsequently disappeared; rather, the necessary comparison

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487 *Cf.* Note of the Institute of Forensic Medicine of May 19, 1989 (evidence file, folio 30898).

488 *Cf.* Petition of March 14, 2002 (evidence file, folio 30902).

489 *Cf.* Note of the Second Criminal Court of the Bogota Special Circuit of April 12, 2002 (evidence file, folio 30920).

490 *Cf.* Physical Anthropology Laboratory, *La Investigación Antropológico Forense del Caso del Palacio de Justicia* (evidence file, folio 21690).

491 *Cf.* Report of the Truth Commission (evidence file, folio 469).

492 *Cf.* Autopsy report No. 3805/85 of November 8, 1985 (evidence file, folio 30963).

493 *Cf.* Judgment of the Third Criminal Court of the Bogota Special Circuit of June 9, 2010 (evidence file, folios 24017 and 24018); Judgment of the 51st Criminal Court of the Bogota Circuit of April 28, 2011 (evidence file, folios 24511 and 24512), and Judgment of the 51st Criminal Court of the Bogota Circuit of December 15, 2011 (evidence file, folios 20970 and 20971).

494 *Cf.* Judgment of the Superior Court of Bogota of January 30, 2012 (evidence file, folios 23079 and 23081).

has not been made of human remains that were probably mistaken for those of Justice [Serrano Abadía]"[495].

317. First, the Court considers it reprehensible that the body delivered to the next of kin of Justice Serrano Abadía has not yet been exhumed. This is particularly relevant when the State's main argument regarding Norma Constanza Esguerra Forero is that her body was returned erroneously to the family of this justice. Nevertheless, this lack of due diligence of the State is not sufficient to disprove the specific indications according to which the said corpse could belong to Ms. Esguerra Forero. Thus, the Court underscores that: (i) it is highly probable that the said body was returned erroneously to the next of kin of the justice, because both the autopsy report (verifying the presence of a uterus) and the record of the removal of the body indicated that it was the body of a woman, and (ii) during the removal of this corpse, objects were found that Ms. Esguerra Forero's mother identified as belonging to her daughter. Consequently, the Court considers that, despite the general indications that would point towards a possible forced disappearance of Ms. Esguerra Forero, according to the information available at this time, there are direct and specific indications relating to this victim that would not lead to that conclusion, but rather to her possible death during the taking and retaking of the Palace of Justice. The failure to determine the whereabouts of Ms. Esguerra Forero does not, in itself, constitute forced disappearance. It represents a violation of the obligation to ensure rights that will be analyzed below (para. 327). Consequently, the Court concludes that, based on the existing evidence and for the effects of this Judgment, it is not possible to determine that Norma Constanza Esguerra Forero was forcibly disappeared.

A.3.b) Ana Rosa Castiblanco Torres

318. Following the exhumation of the corpses in the mass grave in the South Cemetery, DNA tests were conducted and one of the human remains was identified as belonging to Ana Rosa Castiblanco Torres (*supra* para. 133). In the corresponding record of the removal of the corpse, it was established that the place of death was the fourth floor of the Palace of Justice, and that the body was "totally carbonized."[496] The autopsy established that it was a "pregnant woman," indicating that the "uterus [was] pregnant and partially carbonized [and the] fetus [was] also carbonized," but could not establish the cause of death.[497]

319. There is no dispute that the corpse returned to the next of kin corresponded to Ms. Castiblanco Torres. Nevertheless, owing to the errors committed in the removal of corpses, it was not possible to determine where she died with total certainty, notwithstanding the indications on the removal record. Furthermore, the Court reiterates that the discovery of the body in the mass grave does not necessarily mean that she died during the taking or the retaking of the Palace of Justice (*supra* para. 293).

320. However, the carbonized condition of the body of Ms. Castiblanco Torres is an important indication that very possibly she died as a result of the fire in the Palace of Justice during the retaking of the building, and not as a result of forced disappearance. The Court also reiterates that the failure to establish the whereabouts of her remains does not constitute a forced disappearance (*supra* para. 317). Consequently, as in the case of Norma Constanza Esguerra Forero, the Court finds that there are concrete elements, specific to this victim, that do not allow it to be concluded that Ana Rosa Castiblanco was forcibly disappeared.

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[495] *Cf.* Judgment of the Superior Court of Bogota of October 24, 2014 (evidence file, folio 38364).

[496] *Cf.* Record of removal of corpse 1173/38 (evidence file, folios 30839 and 30840).

[497] *Cf.* Autopsy report No. 3800-85 (evidence file, folios 30831 and 30832).

A.4) Alleged violation of Articles 7, 5(1), 5(2), 4(1) and 3 of the American Convention due to the forced disappearance

321. The Court has found that Carlos Augusto Rodríguez Vera, Irma Franco Pineda, Cristina del Pilar Guarín Cortés, David Suspes Celis, Bernardo Beltrán Hernández, Héctor Jaime Beltrán Fuentes, Gloria Stella Lizarazo Figueroa, Luz Mary Portela León, Lucy Amparo Oviedo Bonilla and Gloria Anzola de Lanao were victims of forced disappearance (*supra* paras. 109, 111, 225 and 305). In this regard, the Court recalls that forced disappearance consists of multiple acts that, combined towards a sole objective, violate permanently and simultaneously several rights protected by the Convention; accordingly, the analysis of the violations committed must focus on the set of facts that constitute the disappearance and not on the detention, the possible torture, the danger to life, and the absence of recognition of juridical personality separately (*supra* para. 233).

322. The Court notes that the evacuation of the presumed victims alive, in the custody of State agents, without being registered or brought before the competent authorities, entailed a deprivation of liberty contrary to Article 7 of the American Convention that constituted the first element of their forced disappearance. Also, owing to the very nature of forced disappearance, the Court finds that the State placed these persons in a situation of severe vulnerability and risk of suffering irreparable harm to their personal integrity and life.[498] In this regard, forced disappearance violates the right to physical integrity because the mere fact of prolonged isolation and coercive solitary confinement represents cruel and inhuman treatment contrary to Articles 5(1) and 5(2) of the Convention.[499] The Court also finds it reasonable to presume, based on all the evidence, that the victims underwent treatment contrary to the inherent dignity of a human being while they were in the State's custody, which constituted a violation of Articles 5(1) and 5(2) of the American Convention, in relation to Article 1(1) of this instrument.

323. Moreover, the Court has recognized that subjecting detainees to official repressive units, State agents or individuals acting with their acquiescence or tolerance who practice torture and murder with immunity represents, in itself, a violation of the obligation to prevent violations of physical integrity and life, even if it is not possible to prove the violations in this specific case.[500] Furthermore, owing to the very nature of enforced disappearance, the victim is in a situation of increased vulnerability, which gives rise to the risk that several rights may be violated, including the right to life. In addition, enforced disappearance has frequently included the execution of the detainee in secret and without any type of trial, followed by the concealment of the corpse in order to erase any material trace of the crime and to ensure the impunity of those who committed it, and this signifies a violation of the right to life recognized in Article 4 of the Convention.[501] Moreover, this Court has considered that the execution of an enforced disappearance entails the specific violation of the right to recognition of juridical personality, because the result of the refusal to acknowledge the deprivation of liberty or the whereabouts of the person is, together with

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498 *Cf. Case of Radilla Pacheco v. Mexico. Preliminary objections, merits, reparations and costs.* Judgment of November 23, 2009. Series C No. 209, para. 152, and *Case of Osorio Rivera and family members. Preliminary objections, merits, reparations and costs.* Judgment of November 26, 2013. Series C No. 274, para. 168.

499 *Cf. Case of Velásquez Rodríguez v. Honduras. Merits.* Judgment of June 29, 1988. Series C No. 4, para. 187, and *Case of García and family members v. Guatemala. Merits, reparations and costs.* Judgment of November 29, 2012. Series C No. 258, para. 105.

500 *Cf. Case of Velásquez Rodríguez v. Honduras. Merits.* Judgment of June 29, 1988. Series C No. 4, para. 175, and *Case of García and family members v. Guatemala. Merits, reparations and costs.* Judgment of November 29, 2012. Series C No. 258, para. 106.

501 *Cf. Case of Velásquez Rodríguez v. Honduras. Merits.* Judgment of June 29, 1988. Series C No. 4, para. 157, and *Case of Osorio Rivera and family members. Preliminary objections, merits, reparations and costs.* Judgment of November 26, 2013. Series C No. 274, para. 169.

the other elements of the disappearance, the "removal of the protection of the law," or the violation of personal security and legal certainty and this directly impedes recognition of juridical personality.[502] In this case, the Court considers that the presumed forcibly disappeared victims were placed in a situation of legal limbo that prevented them from holding or exercising their rights in general, which therefore resulted in a violation of the right to recognition of juridical personality.

324. Based on the above considerations, the Court concludes that Colombia is internationally responsible for the forced disappearance of Carlos Augusto Rodríguez Vera, Irma Franco Pineda, Cristina del Pilar Guarín Cortés, David Suspes Celis, Bernardo Beltrán Hernández, Héctor Jaime Beltrán Fuentes, Gloria Stella Lizarazo Figueroa, Luz Mary Portela León, Lucy Amparo Oviedo Bonilla and Gloria Anzola de Lanao, whose whereabouts remain unknown. The State therefore violated the rights recognized in Articles 7, 5(1), 5(2), 4(1), and 3 of the American Convention, in relation to Article 1(1) of this instrument and Article I(a) of the Inter-American Convention on Forced Disappearance, to the detriment of these persons. The obligation to ensure the said rights by a diligent and effective investigation into what happened will be analyzed in Chapter XI of this Judgment.

325. The representatives also argued the violation of Articles III and XI of the Inter-American Convention on Forced Disappearance. However, the Court considers that the alleged violation of Article XI has already been examined in the considerations relating to Article 7 of the American Convention. The Court also observes that when the representatives included in their conclusions a possible violation of Article III, as a result of the forced disappearance of the victims, they failed to provide the grounds for this violation; hence the Court does not find it pertinent to make a ruling in this regard.

326. Meanwhile, with regard to Ana Rosa Castiblanco Torres and Norma Constanza Esguerra Forero, the Court emphasizes that the whereabouts of Ms. Castiblanco Torres were unknown for 16 years, and her body was found in the South Cemetery (*supra* para. 133), while, at the time of the delivery of this Judgment, the whereabouts of Ms. Esguerra Forero are undetermined, even though, since 1986, it is known that her remains may have been returned erroneously to the next of kin of one of the justices who died during the events (*supra* para. 307). The Court has established that the right of the next of kin of the victims to know the whereabouts of the remains of their loved ones is, in addition, to a requirement of the right to know the truth, a measure of reparation and, therefore, gives rise to the corresponding obligation of the State to satisfy these just expectations. It was extremely important for the families to receive the bodies of those who died during the events, as well as to be able to bury them in keeping with their beliefs, and to close the mourning process they underwent due to the events.[503]

327. This Court considers that the way in which the bodies of those who died were treated, the burial in mass graves without respecting the basic standards that would facilitate the subsequent identification of the bodies, as well as the failure to return the bodies to the next of kin may constitute demeaning treatment, to the detriment of the person who died, as well as to the members of his or her family.[504] Thus, the failure to establish the whereabouts of Ms. Castiblanco Torres for 16 years, and of Ms. Esguerra Forero to date,

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[502] *Cf. Case of Anzualdo Castro v. Peru. Preliminary objection, merits, reparations and costs.* Judgment of September 22, 2009. Series C No. 202, paras. 90 to 101, and *Case of Osorio Rivera and family members v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of November 26, 2013. Series C No. 274, para. 170.

[503] *Cf. Case of Las Dos Erres Massacre v. Guatemala. Preliminary objection, merits, reparations and costs.* Judgment of November 24, 2009. Series C No. 211, para. 245, and *Case of Nadege Dozerma et al. v. Dominican Republic. Merits, reparations and costs.* Judgment of October 24, 2012. Series C No. 251, para. 115.

[504] *Mutatis mutandi, Case of Nadege Dozerma et al. v. Dominican Republic. Merits, reparations and costs.* Judgment of October 24, 2012. Series C No. 251, para. 117.

entails a violation of the obligation to ensure their right to life recognized in Article 4 of the American Convention, in relation to Article 1(1) of this instrument. The obligation to ensure this right by an effective investigation is analyzed in Chapter XI of this Judgment, while the alleged violation of the right to personal integrity of the next of kin of these victims is examined in Chapter XIII *infra*.

B. Regarding the presumed disappearance and extrajudicial execution of Carlos Horacio Urán

B.1) Arguments of the Commission and of the parties

328. The Commission concluded that Carlos Horacio Urán Rojas was in the Palace of Justice and left it alive "in the custody of the Army, with non-lethal injuries, so that his death did not occur during the taking or the retaking" of the Palace. In this regard, it stated that, "after he had been disappeared, he was executed and his body was washed and stripped of some of his personal items before being sent to the Institute of Forensic Medicine where it was placed among the corpses of the guerrillas and returned to his family on November 8, 1985." It affirmed that even though "he was disappeared for a short time, this does not prevent the constitution of the crime of forced disappearance."

329. The representatives argued that Carlos Horacio Urán Rojas left the Palace of Justice alive "in the hands of members of the armed forces after it had been retaken on November 7, 1985," because he was considered a special hostage. They indicated that once the military operation ended, family members and friends "undertook a harrowing search to find him, which included the Casa del Florero, the morgue, the Military Hospital, and even the Palace of Justice itself," without success owing to the State's refusal to acknowledge the deprivation of his liberty. They therefore argued that between the time he left the Palace alive and the moment when his body was discovered in the Institute of Forensic Medicine he was a victim of forced disappearance. They also emphasized that the first autopsy report recorded that the body of Mr. Urán Rojas revealed that his death had been caused by a bullet wound to the head caused by a gun fired at close range.

330. The State indicated that "it has been established that the lifeless body of the Justice was found inside the Palace of Justice on November 7, 1985, and the investigations have not been able to establish the circumstances in which his death occurred, owing to the errors committed in the processing of the scene of the events and the unjustified delay in the investigations." Thus, it affirmed that "in this specific case, given its particularities and the consequences of the lack of results in the investigation, [its] acknowledgement of responsibility [is] by omission." Nevertheless, it denied that Mr. Urán Rojas had been a victim of forced disappearance or of extrajudicial execution, because "there is insufficient evidence to establish whether or not the Justice left the Palace of Justice alive."

B.2) Considerations of the Court

331. It is an uncontested fact that, in the final moments of the operation to retake the Palace of Justice, Carlos Horacio Urán Rojas was in the bathroom between the second and third floors[505] (*supra* paras. 101 and 102). However, there is contradictory information as to what occurred subsequently. In this section, first the Court will analyze the evidence according to which Mr. Urán Rojas died inside the Palace of Justice and, second, it will examine the evidence according to which, having survived the events of the Palace of Justice, he was then the victim of extrajudicial execution and subsequently his body was again placed in the Palace of Justice, as alleged by the Commission and the representatives (*supra* paras. 328 and 329). Third, the Court will examine the autopsies of the remains of

[505] *Cf.* Testimony of Samuel Buitrago Hurtado of November 20, 1985, before the Special Investigative Court (evidence file, folios 30621 and 30623), and video statement of Nicolás Pájaro of November 2, 2007 (evidence file, folio 15012).

Mr. Urán Rojas in order to establish what happened to this presumed victim. Lastly, it will analyze the alleged violations of the American Convention owing to these acts.

B.2.a) Indications of the possible death of Carlos Horacio Urán Rojas inside the Palace of Justice

332. The case file contains statements by individuals who were also in the bathroom between the second and third floors where Mr. Urán Rojas was, who asserted that Mr. Urán Rojas died during the taking and retaking of the building. Thus, Luis Camargo González, judicial assistant of the Second Section of the Council of State, Luz Lozano de Murillo, a State Councilor's aide, and Aydée Anzola Linares, State Councilor, testified that Mr. Urán Rojas died in the bathroom, although they did not describe how.[506] Also, in 1985, State Councilor Samuel Buitrago Hurtado testified that, following an explosion against one of the walls of the bathroom, "[s]omeone shouted that the hostages should come out," and Carlos Horacio Urán Rojas went out and fell down "killed by the bullets."[507] However, in 2007, Mr. Buitrago Hurtado testified before the Prosecution Service that, following the explosion, he saw Carlos Horacio Urán Rojas fall but that "he could not be sure whether he was alive or dead."[508]

333. In addition, the case file contains a documentary video in which Humberto Murcia Ballén states that he met Carlos Horacio Urán Rojas "on a stairway, trying to escape when suddenly […] a grenade exploded and [Mr. Urán Rojas] said to [him], Humberto, I've been hit, I've been hit. [Then he said that he was dying,] he put his head down and died while [he] was holding him in [his] arms."[509] Similarly, a first instance judgment against eight members of the M-19 convicted them of the aggravated murder of several persons, including Carlos Horacio Urán Rojas (*supra* paras. 199 and 207). This judgment concluded that the death of Mr. Urán Rojas "occurred outside the bathroom, because pieces of a fragmentation grenade were found in his body [and grenades …] were not used inside the bathroom, only outside it."[510] This decision did not consider or reject the hypothesis that Mr. Urán Rojas survived these events and was executed subsequently and, therefore, the wife of Carlos Horacio Urán Rojas filed an application for *amparo*, which was denied in first instance and, according to the information received, is still pending a decision on appeal (*supra* para. 200).

334. A judicial inspection made by the Institute of Forensic Medicine of the bathroom where Mr. Urán Rojas had been hiding determined that the "injuries from an explosive fragmentation device [found on his body] lead to the supposition that his death must have

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[506] *Cf.* Testimony of Luis Camargo Gonzalez of November 28, 1985, before the 30th Criminal Investigation Court (evidence file, folios 30627 and 30628); Testimony of Luz Lozano de Murillo of November 23, 1985, before the 30th Criminal Investigation Court (evidence file, folios 30635 to 30637), and Testimony of Aydée Anzola Linares of December 5, 1985, before the 27th Criminal Investigation Court (evidence file, folios 30642 and 30644).

[507] Testimony of Samuel Buitrago Hurtado of November 20, 1985, before the Special Investigative Court (evidence file, folio 30623).

[508] The Court notes that the representatives provided a document with the statement made that day by Mr. Buitrago Hurtado, but did not provide a copy of the video in which, according to their arguments, Mr. Buitrago Hurtado said what it indicated above. However, the State did not deny that the 2007 testimony of Mr. Buitrago Hurtado contained this clarification, and the Prosecution Service before whom this statement was given confirmed what the representatives had indicated during the public hearing on the merits in this case. *Cf.* Record of the hearing in which the testimony of Samuel Buitrago Hurtado was received by the Prosecution Service on October 11, 2007 (evidence file, folios 22309 and 22310); brief of the *Corporación Colectivo de Abogados José Alvear Restrepo* of November 20, 2007 (evidence file, folio 22313), and Testimony of Ángela María Buitrago Ruíz during the public hearing on the merits in this case.

[509] Testimony of Humberto Murcia Ballén in the documentary entitled *"La Toma,"* directed by Angus Gibson and Miguel Salazar, 2011 (evidence file, folio 3552).

[510] Judgment of the Second Criminal Court of the Bogota Special Circuit of April 2, 2013 (evidence file, folio 35044).

occurred outside the bathroom, because no evidence was found that fragmentation devices had been used inside the bathroom."[511] Thus, the Special Court concluded that "[n]o bomb or grenade exploded inside the bathroom, because there is not the slightest trace of such an explosion and because none of the hostages who died were killed by an explosion."[512]

335. The Court notes that there are contradictions between the indications regarding the death of Carlos Horacio Urán Rojas inside the Palace of Justice, because, on the one hand, the statements affirm that he died inside the bathroom and, on the other, the judgment, the judicial inspection, and the report of the Special Court indicate that his death occurred outside the bathroom.

B.2.b) Indications that Carlos Horacio Urán Rojas left the Palace alive and was detained

336. Different statements exist in which Justice Carlos Horacio Urán Rojas is identified leaving the Palace of Justice alive.[513] Thus, the journalist Julia Navarrete, who was near the entry to the Palace of Justice, asserted on several occasions that she had seen him leave on November 7 "limping and [accompanied by] two soldiers."[514] This information was given to the wife of Mr. Urán Rojas, Ana María Bidegain.[515]

337. Also, a friend of the family, the priest Fernán González, wrote a letter to Ana María Bidegain stating that an eyewitness to the events had indicated that "Carlos Horacio [Urán Rojas] did not die accidentally in the crossfire, by error, but was assassinated in a premeditated way by the army in the patio of the Palace of Justice." In this regard, he explained that Mr. Urán Rojas "was accused of being an accomplice of the M-19 in the assault and summarily executed," and "the Army has spread rumors that Carlos was firing against the Army."[516] To date this information has not been confirmed by Father González or by the said eyewitness.

338. In addition, Carlos Horacio Urán Rojas has been identified leaving the Palace by several people. First, according to the testimony of Ms. Bidegain, on November 7, family members and friends of Carlos Horacio Urán Rojas identified him among those exiting the Palace of Justice in images transmitted at 7.30 a.m. by *Noticiero 24 Horas*.[517] Friends of the

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511 Note of May 14, 1986, from the Institute of Forensic Medicine to the 77th Itinerant Criminal Investigation Judge (evidence file, folio 38158).

512 Report of the Special Investigative Court (evidence file, folio 30527).

513 The Court notes that, according to the representatives' arguments, the journalist Rodrigo Barrera also recognized Mr. Urán Rojas. This was supported by Julia Navarrete in her statements. However, a copy of the testimony of Mr. Barrera was not provided, so that it will not be taken into account. *Cf.* Testimony of Julia Alba Navarrete of October 15, 2010, before the Prosecution Service (evidence file, folio 14705).

514 Affidavit made on November 5, 2013, by Julia Navarrete Mosquera (evidence file, folio 35907); Testimony of Julia Navarrete Mosquera of October 15, 2010 before the Prosecution Service (evidence file, folio 14706); Testimony of Julia Navarrete Mosquera of January 13, 1986, before the Special Commission (evidence file, folio 14620); and Testimony of Ana María Bidegain during the public hearing on the merits in this case. In this regard, the State argued that Ms. Navarrete "is constantly indicating that her memory is not good while saying that she recognized Justice Urán, after she had been influenced by someone else, specifically by Rodrigo Barrera." However, the Court notes that the deponent has been consistent in all her statements since 1986 that she recognized Mr. Urán Rojas leaving the Palace alive. Also, the mere fact that another person was the first to point out Mr. Urán Rojas is not sufficient to disprove the identification made by Ms. Navarrete.

515 *Cf.* Affidavit made on November 5, 2013, by Julia Navarrete Mosquera (evidence file, folio 35907).

516 *Cf.* Letter of November 19, 1985, from Fernán González to Ana María Bidegain (evidence file, folio 24183).

517 *Cf.* Testimony of Germán Castro Caycedo of April 2, 2012, before the 35th notary of the Bogota Circuit (evidence file, folio 14683); Testimony of Ana María Bidegain of November 14, 1985 before the Second Special Court (evidence file, folio 30592); Testimony provided by Luz Helena Sánchez Gómez before the Prosecution Service on August 16, 2007 (evidence file, folio 30599), and Affidavit made by Teresa Morales de Gómez on May 11, 2012 (evidence file, folio 14692).

family obtained a copy of the video and gave it to Ms. Bidegain.[518] On the morning of November 8, Ana María Bidegain met with a general and showed him a copy of the video, but he denied that Carlos Horacio Urán could be seen in it and kept the copy.[519]

339. Second, during the criminal investigation, Mr. Urán Rojas was identified in at least four videos by his wife and Luz Helena Sánchez Gómez, one of his friends. Thus, Ms. Bidegain identified him in a *Noticias Uno* video that she provided and another obtained from the Attorney General's office recording the same image. In this regard, she stated that, in the image, her husband was "between two members of the Armed Forces, he is limping with his foot lifted up […]. He is standing on his right leg with his left leg bent back. He is wearing a dark gray suit." Regarding this image, the Prosecution Service observed that to the right of the person identified as Mr. Urán Rojas there is a person wearing army camouflage uniform with "a rifle with the sight facing up," and the one on the left "is wearing the army's khaki uniform." Also, on seeing the video obtained in the home of the Commander of the Cavalry School, Ms. Bidegain indicated that "[h]e is the one hopping on one foot."[520] She also identified him in a TVE video without giving further details.[521] Thus, Ms. Bidegain has identified him in four videos, specifying in two of them that he is "exiting [the Palace] limping,"[522] which is consistent with the testimony of Julia Navarrete, who presumably saw him in person at the time of the events (*supra* para. 336).

340. When Luz Helena Sánchez Gómez saw the video obtained during the inspection of the residence of the Commander of the Cavalry School, she stated that "it gives the impression that he is limping, his hair is disheveled, his white shirt is outside his trousers and the collar is open with the tie loose, both arms are held by soldiers, by the elbow, and this is noticeable because other hostages have exited without any physical contact. [He wears] a green or brown […] suit." In this regard, she stated that she "sw[ore] that what [she was] saying [was] true, but [she could] not say with absolute certainty that the said person [was Justice Urán Rojas, she could] only say that it looked very much like him, […] and ha[d] his facial features." Subsequently, on seeing a *Noticias Uno* video, she stated that Carlos Horacio Urán Rojas could be seen held by the "left arm [by] a police agent with a white helmet, his shirt is not tucked in and his tie is loose, and the suit appears to be brown or green. On his right is another individual in a green uniform, who has a rifle in his right hand with the sight facing upwards." The defense counsel of the Commander of the Cavalry School indicated that "[i]n the first video she says that the person that looks like Justice Carlos Urán is accompanied by two soldiers in army camouflage uniform, and in the second video she identifies the person who looks like [Justice Carlos Urán] as someone who is accompanied by two police agents, even one with a helmet and the other with the regular police uniform. In addition, if the two videos that have been presented are compared, the person who appears in the second video also appears in the first one, and, in that one, she did not identify him as looking like [Justice Carlos Urán]."[523]

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[518] *Cf.* Affidavit made by Teresa Morales de Gómez on May 11, 2012 (evidence file, folio 14692).

[519] *Cf.* Testimony of Ana María Bidegain during the public hearing on the merits in this case; Testimony of Ana María Bidegain of February 22, 2007, before the Prosecution Service (evidence file, folio 1295), and Affidavit made by Teresa Morales de Gómez on May 11, 2012 (evidence file, folio 14692).

[520] Testimony provided by Ana María Bidegain before the Prosecution Service on August 16, 2007 (evidence file, folios 1302 and 1303).

[521] *Cf.* Testimony of Ana María Bidegain of February 22, 2007, before the Prosecution Service (evidence file, folio 1298).

[522] This information was provided by Ms. Bidegain on seeing the *Noticias Uno* video and the video obtained in the residence of the Commander of the Cavalry School. *Cf.* Testimony provided by Ana María Bidegain before the Prosecution Service on August 16, 2007 (evidence file, folios 1302 and 1303).

[523] Continuation of the testimony provided by Luz Helena Sánchez Gómez before the Prosecution Service on August 16, 2007 (evidence file, folios 30599 and 30600).

341. Luz Helena Sánchez Gómez was also shown a video marked with the number "1" found during the judicial inspection of the Attorney General's office, and she stated that "this image is very poor," and identified as Carlos Horacio Urán a person with "straight dark hair who looks like a *mestizo*, perhaps around 1.70 to 1.80 meters tall." The "figure and bodily demeanor appear to be like those of Carlos Horacio Urán Rojas."[524]

342. The judge of the Civil Cassation Chamber, Nicolás Pájaro, also stated that he had recognized Justice Carlos Urán in some videos leaving the Palace at the same time as he did.[525] However, there is no information in the case file on which videos or when this identification was made. The court reporter Ignacio Gómez made the same observation; on the afternoon of November 7, 1985, he was on one side of the Palace of Justice and recognized Judge Pájaro when he was coming out, and a colleague told him that the person following him was Carlos Horacio Urán Rojas. Subsequently, he identified Justice Urán Rojas in the *Noticias Uno* video, that he handed over to Ana María Bidegain and she confirmed the identification[526] (*supra* para. 339).

343. Furthermore, on February 1, 2007, during a judicial inspection of the B-2 of the 13th Brigade various personal documents of Carlos Horacio Urán Rojas were found.[527] This Brigade is precisely one of the places where detainees from the Palace of Justice were taken (*supra* para. 196). Also, according to the testimony of Ms. Bidegain, her husband's body was returned without his personal items, but several days later, his wedding ring and a key ring from the University of Notre Dame were delivered to her, even though neither object had his name or any features that would identify it as belonging to Mr. Urán Rojas[528].

344. There are other indications that Carlos Horacio Urán Rojas did not die on November 7 inside the Palace of Justice, because his body did not appear until November 8. In this regard, friends of Mr. Urán Rojas went to the Palace of Justice on November 7 and searched for his body "very thoroughly" on the first floor, without finding it.[529] That same evening, Luz Helena Sánchez Gómez went to the Institute of Forensic Medicine where she was "allowed not only to look on the stretchers and on the tables, but also in the freezers that were full, and [she] did not find Carlos Horacio." It was the following day that she went to "a different place to the one where [she] had been looking the previous evening," the so-called guerrillas room, and there she found Mr. Urán Rojas.[530] According to the autopsy

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524 Continuation of the testimony provided by Luz Helena Sánchez Gómez before the Prosecution Service on August 16, 2007 (evidence file, folio 30600).

525 *Cf.* Video testimony provided by Nicolás Pájaro before the Prosecution Service on November 2, 2007 (evidence file, video 1, folio 15012).

526 *Cf.* Affidavit made on November 5, 2011, by Ignacio Gómez (evidence file, folios 35915 and 35916). However, previously he had stated that he had identified Mr. Urán Rojas when he showed the video to Ms. Bidegain and she told him that the said person was her husband. *Cf.* Testimony of Ignacio Gómez of January 20, 2011, before the Prosecution Service (evidence file, folio 16018).

527 During this inspection the following items, among others, were found: identity card issued by the Council of State, Coviajes card, Colombian driving license, membership card in the Lawyers' Professional Association, and identity card and driving license of Indiana, United States of America. *Cf.* Judicial inspection of February 1, 2007 (evidence file, folios 18780, 18782, and 18784 to 19791).

528 *Cf.* Testimony of Ana María Bidegain of February 22, 2007, before the Prosecution Service (evidence file, folios 1296 and 1297).

529 *Cf.* Testimony of Germán Castro Caycedo of April 2, 2012, before the 35th notary of the Bogota Circuit (evidence file, folio 14683), and Affidavit made by Teresa Morales de Gómez on May 11, 2012 (evidence file, folio 14692).

530 *Cf.* Testimony provided by Luz Helena Sánchez Gómez before the Prosecution Service on August 16, 2007 (evidence file, folios 14636 and 14637).

report, the corpse of Carlos Horacio Urán was brought to the Institute of Forensic Medicine on November 7 at 7 p.m.[531]

B.2.c) Autopsies performed on the body of Carlos Horacio Urán Rojas

345. The record corresponding to the removal of the corpse of Carlos Horacio Urán Rojas indicates the death of a male on November 7, 1985, at 3 p.m. The removal was carried out from the patio of the Palace of Justice, but it was noted that the position of the body was "unnatural."[532] The autopsy report was prepared on November 8.[533] Subsequently, in 2010, the body was exhumed, another autopsy was performed and, in February 2011, the National Institute of Forensic Medicine prepared an appraisal of the autopsies performed on this corpse.[534]

346. The reports on the autopsies of the body of Mr. Urán Rojas indicate that it revealed various injuries including: injuries from an explosive device, injuries to the face, injuries to the lower extremities, and an injury to the head from a gunshot.[535] The last of these injuries was identified as the cause of death of Carlos Horacio Urán Rojas in the 1985 autopsy report, and this was confirmed in the 2011 appraisal report.[536] Nevertheless, this last report explains that the injuries to the spinal cord should be added to this cause of death.[537] Also, even though, in general, the more recent analyses confirm the 1985 findings, there are differences between them; particularly, with regard to injuries that were not described in the 1985 autopsy report, as well as differences of interpretation as to the cause of some injuries and their precise location. In this regard, the 2011 appraisal notes that:

> There are discrepancies between the findings of the two procedures; there are injuries that are the same in the two reports, but […] there are other injuries that are not described in the first one, but that have left objective evidence in the osseous remains and there is no explanation for these discrepancies, unless it is accepted that, in the initial autopsy, a complete examination of all the structures was not made, which would indicate that some sets of injuries were overlooked that are still evident in the osseous remains.[538]

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531 *Cf.* Autopsy report No. 3783-85 (evidence file, folio 15974).

532 *Cf.* Record of removal of corpse No. 1128 (evidence file, folio 20175).

533 *Cf.* Autopsy report No. 3783-85 (evidence file, folios 15974 to 15980).

534 *Cf.* Forensic appraisal of autopsy of February 11, 2011 (evidence file, folio 15900).

535 *Cf.* Autopsy report No. 3783-85 (evidence file, folio 15976); Record of removal of corpse No. 1128 (evidence file, folio 20176), and report on autopsy appraisal of February 11, 2011 (evidence file, folios 15905 and 15906).

536 *Cf.* Autopsy report No. 3783-85 (evidence file, folio 15975), and report on autopsy appraisal of February 11, 2011 (evidence file, folios 15909 and 15910).

537 According to this report, even when "the cause of death must be confirmed, in the sense of affirming that it was due to the cerebral laceration caused by the bullet of a firearm, […] this should be added to the considerations on the neurological damage arising from the possible, but very probable, effects on the upper cervical spinal cord." "Death was due to the combination of the physio-pathological phenomena of central neuralgic origin, owing to both the evident structural damage to the brain, and to the functional damage that could be extrapolated to the spinal cord." Report on autopsy appraisal of February 11, 2011 (evidence file, folios 15909 and 15910).

538 Regarding the injuries that were not described in the initial autopsy report, the 2011 report indicates that: "there is no specific description of any injury to the right shoulder, or any effects on the thorax. The skeleton reveals a high-energy injury to that bone but it is not possible to establish with certainty whether it is an injury from a bullet or for some other high-energy mechanism." Also there is no "specific description of any injury to the left femur and the closest approximation to injuries in this place is described among the injuries caused by fragments of an explosive device. The skeleton reveals a comminuted fracture caused by a bullet." In addition, "[r]egarding the injuries to the right hand, the initial report considered them to be the secondary effect of the explosive device, while the actual anthropological report has considered them to be produced by a bullet." It also indicates that the differences in interpretation are due to the fact that some injuries were initially considered to be the secondary effects of fragments of an explosive device, while, in the skeleton they have been considered secondary effects of bullets. *Cf.* Report on autopsy appraisal of February 11, 2011 (evidence file, folios 15908 to 15911).

347. The Court notes that there are two main questions that arise from the findings of the autopsies performed on Carlos Horacio Urán Rojas: (i) whether he could walk with the injuries he had to the leg, so that he exited [the Palace] limping as was seen in the videos, and (ii) whether or not the injury to the head reveals that he was shot at close range, which would be characteristic of an extrajudicial execution.

348. Regarding the first question, the expert witness proposed by the State, Máximo Duque Piedrahíta, explained that the left femur was fractured in three places, "that is a significant fracture, [making it] impossible to put any weight on the leg, but also it causes profuse bleeding," so that the person cannot walk. He also underlined that Mr. Urán Rojas also had a fracture of the right acetabulum, so that "he could not put weight on the hip." In addition, "he had injuries to the spinal cord affecting the medulla, and injuries to the cervical spine, also affecting the medulla, which severely affects the neurological functions," as well as "significant muscular injuries in the gluteal region, in the lower extremities, and also in the upper extremities." Hence, he stated that "with those injuries, any of them extremely disabling, the person would be unable to move by himself; not even with help, unless [he had exited] on a stretcher."[539] Likewise, the 2011 appraisal concluded that "if [the injuries] were all caused within a short time, it is evident that this person could not have walked." However, this report concluded that "there is no objective evidence to establish the chronological sequence of the injuries."[540]

349. Meanwhile, the deponent Carlos Bacigalupo, who is a forensic anthropologist, proposed an order for the injuries found on the body of Mr. Urán Rojas, "in view of the evidence available." In this regard, he stated that the injuries to the legs of Mr. Urán Rojas are consistent with the images of the videos where he has been identified leaving the Palace of Justice with his weight on one leg. He explained that "the injury to the left leg and the scratches [on the cheeks] and bruising [around the right eye] can be considered to have occurred *ante mortem*." In this regard, he specified that:

> Based on the available evidence, the first injury is that of the leg; this would allow the person to still have certain mobility and strength; also explaining the occurrence of the injuries to the face (scratches and bruising) during a second moment when the person had been detained; the injury located in the neck occurred at a third moment, and lastly the injury to the skull that would correspond to the *coup de grâce*.[541]

350. The Court notes that, according to the examinations of the body of Carlos Horacio Urán Rojas, it is not possible to establish the order of the injuries (*supra* para. 348). Consequently, it cannot be concluded that all the injuries found on the corpse were present when he presumably left the Palace of Justice, as alleged by the expert witness proposed by the State; nor can it be concluded, without any doubt, that the injuries occurred in the order proposed by Dr. Bacigalupo. However, it should be emphasized that the order of the injuries found proposed by Dr. Bacigalupo would be consistent with the identifications made in person and by video of the exit alive from the Palace of Mr. Urán Rojas.

351. In relation to the discussion concerning the shot to the head received by Carlos Horacio Urán Rojas, in its 1986 report regarding what happened in the bathroom where Mr. Urán Rojas was, the Institute of Forensic Medicine concluded that the shot to the head "was

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[539] Testimony of Máximo Duque Piedrahíta during the public hearing on the merits in this case. Similarly, a report prepared by the CTI of the Prosecution General's Office indicates that the fracture in the femur of Mr. Urán Rojas would be "characterized by intense pain in the thigh, accompanied by functional incapacity, and […] generally the signs and symptoms are associated with changes in the overall condition […] due to significant bleeding." Report of analysis of osseous remains of April 23, 2010, prepared by the Special Identification Group of the CTI of the Prosecutor General's Office (evidence file folio 12157).

[540] Forensic autopsy report of February 11, 2011 (evidence file, folios 15910 and 15911).

[541] Written notes by Carlos Bacigalupo (evidence file, folios 36341 and 36343).

fired at a distance of less than a meter."[542] And, Dr. Bacigalupo underscored that, according to the Lunges reagent test carried out in 1985, "the injury revealed traces of gunpowder, which meant that the shot that ended the life of Carlos Horacio Urán Rojas, was fired in contact with his head."[543] In this regard, he explained that "the only way in which an injury has gunpowder in it is because the barrel of the weapon that fired the bullet has been placed against the skull."[544] Similarly, the 2011 appraisal made by the National Institute of Forensic Medicine concluded that "at least one set of injuries (to the left frontal area) was caused at close range."[545]

352. By contrast, Dr. Duque Piedrahíta stated that the Lunges reagent test that was carried out "is obsolete today. It can give many erroneous positive results." Thus, he stressed that "it is a test that gives positive results with contamination which could be smoke." In this regard, he emphasized that "there was a fire [in the Palace of Justice] and there could have been contamination." He also indicated that it is not possible to erase the gunpowder tattoo, but it is possible "to lose the smoke residue which is like a very fine ash that remains after shots that are not at close range, but rather from further away." He also affirmed that "[t]he case was analyzed by a forensic ballistics expert of the National Police who stated that the bullets that caused the injuries to the body were fired from a distance, that is from more than 1.5 meters."[546]

353. Dr. Bacigalupo also indicated that "the shot [to the head] was from below to above, from left to right and from front to back, so that the person who fired the shot was in front of his victim with his weapon held low." The reports on the examination of the body of Carlos Horacio Urán Rojas agree on this trajectory,[547] but while Dr. Bacigalupo considered that, "taking into account the other injuries present, [… this would mean that] the victim was helpless," in other words, "basically, in a situation of being executed,"[548] the State indicated that this would suggest that "the deceased was above the person who shot him," so that the shots "did not occur in circumstances traditionally associated with an extrajudicial execution."[549]

354. The Court notes that the versions and interpretations of the existing evidence offered by the expert witness and by the deponent for information purposes are contradictory. According to the information provided, the shot could have been fired in contact with the skull, at less than a meter, or at more than 1.5 meters. In addition, taking into account the

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[542] Note of May 14, 1986, from the Institute of Forensic Medicine to the 77th Itinerant Criminal Investigation Judge (evidence file, folio 38158).

[543] Written notes by Carlos Bacigalupo (evidence file, folio 36340).

[544] Testimony of Carlos Bacigalupo during the public hearing on the merits in this case. See also, report of the Ballistics Laboratory attached to autopsy report No. 3783-85 (evidence file, folios 15976 and 15980).

[545] *Cf.* Forensic appraisal of autopsy of February 11, 2011 (evidence file, folio 15910).

[546] Testimony of Máximo Duque Piedrahíta during the public hearing on the merits in this case, and written report of the same expert witness (evidence file, folio 36450). In this regard, the Court observes that, even though the State referred to this report, it did not provide evidence of it or identify where it was located among the information provided to the case file.

[547] The report prepared by the CTI in 2010 established that the orifices suggested that the trajectory of the shot was "from front to back, from below to above, and from left to right." The 2011 appraisal agrees with this description when indicating that the trajectory of this injury was "anterior-posterior, inferior-superior, and from left to right." *Cf.* Report on the analysis of osseous remains of April 23, 2010, made by the Special Identification Group of the CTI of the Prosecutor General's Office (evidence file, folio 12154), and report on autopsy appraisal of February 11, 2011 (evidence file, folio 15903).

[548] Written notes by Carlos Bacigalupo (evidence file, folio 36341), and Testimony of Carlos Bacigalupo during the public hearing on the merits in this case.

[549] In this regard, the Court notes that the State based this assertion on an expert appraisal that it did not provide as evidence, and did not identify where it was located among the information provided to the case file.

trajectory of the shot (from below to above), there are contradictory interpretations as regards whether it is characteristic of a situation of combat or whether it reveals a situation of extrajudicial execution. The investigations conducted to date do not provide clear answers to resolve these inconsistencies. Despite this, the Court finds that, for the effects of this Judgment, it is not necessary to clarify these disputes in order to determine what happened to Carlos Horacio Urán Rojas.

B.2.d) Determination of what happened to Carlos Horacio Urán Rojas

355. The Court recalls that the State has acknowledged its international responsibility, by the omission, for failing to elucidate what happened to Carlos Horacio Urán Rojas, as well as for "the errors committed in the processing of the scene of the events, and the unjustified delay in the investigations." However, it asserted that this acknowledgement "did not imply its acceptance that the wrongful act of forced disappearance of persons, or an extrajudicial execution had been committed against this person" (*supra* para. 21.c.iv).

356. In this regard, the Court notes that Carlos Horacio Urán Rojas was an Auxiliary Justice of the Council of State and, according to the testimony of his wife, he was a member of the liberation theology movement, and therefore met with people connected with this movement.[550] Ms. Bidegain also stated that, at that time, the DAS had summoned her several time.[551] The State considered that this was not relevant, because "the National Government at the time was characterized by a policy of ideological openness and, in general, of respect for human rights."

357. In this regard, the 51st Court concluded that the security forces considered suspicious "all those whose attitudes, academic condition, and relations or family connections could suggest that they sympathized with the guerrilla movement or the actions that the latter took while carrying out their subversive activities."[552]

358. It should also be borne in mind that the body of Carlos Horacio Urán was found in the room of the Institute of Forensic Medicine identified as the place where the guerrillas had been placed. Also, there is a note of the DIJIN listing the names of individuals who presumably belonged to the M-19 and the names of some justices, including Carlos Horacio Urán Rojas, have been added by hand. The note gave the order that "a spontaneous statement should be taken from the persons who [came] forward to claim them regarding the relationship between the deceased and the claimant, trying to obtain useful information."[553] Furthermore, fingerprints were taken from the corpse of Carlos Horacio Urán Rojas. According to the Truth Commission, "most of the corpses from whom fingerprints were taken correspond to the guerrillas and, curiously, the only bodies of the hostages on which this test was performed are those of Carlos Horacio Urán and Luz Stella Bernal." Also according to the Truth Commission, the type of bullet injury to the left front of the skull of Mr. Urán Rojas was also found on the bodies of seven members of the guerrilla.[554]

359. Based on the foregoing, the Court considers that Mr. Urán Rojas may have been considered suspicious by the State agents. Therefore, it is possible that he was treated as such and separated from the other hostages; that his exit from the Palace of Justice was

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[550] *Cf.* Testimony of Ana María Bidegain during the public hearing on the merits in this case, and Affidavit made by Pablo Dabezies Anía on May 18, 2012 (evidence file, folio 14699).

[551] *Cf.* Testimony of Ana María Bidegain of February 22, 2007, before the Prosecution Service (evidence file, folio 1292).

[552] Judgment of the 51st Criminal Court of the Bogota Circuit of April 28, 2011 (evidence file, folio 24569).

[553] *Cf.* Note of the DIJIN of November 7, 1985 (evidence file folios 6821 and 6822).

[554] *Cf.* Report of the Truth Commission (evidence file, folios 241 and 245).

not recorded or if he was transferred to another place. Thus, the Court underscores that, in 2007, items belonging to Carlos Horacio were found in a safety deposit box at the 13th Brigade, while the State has not provided any explanation in this regard (*supra* para. 343).

360. Moreover, several individuals have asserted that they saw him leave the Palace of Justice walking with difficulty, either because they were present or because they identified him in a video (*supra* paras. 336 to 343). Even though the chronological order of the injuries found on his corpse is not known, the autopsies performed on Mr. Urán Rojas revealed injuries consistent with these observations.

361. The Court also recalls that, during the removal of the corpses, the State committed significant errors that have made it difficult to clarify what happened (*supra* paras. 145 to 150). In the case of Carlos Horacio Urán Rojas this is even more evident, because his body was washed before the corresponding autopsy, and the record of the removal of the corpse was not prepared in the place where he died. Rather, his body was moved to the patio of the Palace of Justice, and in the record of its removal from the Palace, as well as in the first autopsy, several of the injuries found on the body were omitted. On this point, Dr. Bacigalupo indicated that the "traces of smoke and charring *post mortem* in the lumbar region" described in the autopsy report reveal that "an attempt was made to destroy the evidence of what happened; thus the body was burned." In this regard, he added that "the fire had not reached the area where the hostages were and the area they crossed in order to leave the Palace."[555] In addition, the Truth Commission indicated with regard to the body of Mr. Urán Rojas and the bodies of a group of guerrillas that "the fact that […] they were washed […] may indicate the intention to erase evidence of acts related to possible summary executions."[556] On these points, the Court emphasizes that the State has acknowledged its omissions in the clarification of what happened to Carlos Horacio Urán Rojas, as well as an inappropriate processing of the scene of the events (*supra* para. 355).

362. In relation to the evidence of the death of Carlos Horacio Urán Rojas inside the Palace of Justice, the Court emphasizes that this is contradictory (*supra* paras. 332 to 334). Consequently, the Court finds that it is insufficient to disprove all the other evidence indicating that Mr. Urán Rojas initially survived the taking and retaking of the Palace of Justice. In this regard, it is important to underline that, owing to the number of people who were in the bathroom at the time and the combat conditions in this place, it cannot be discounted that the deponents saw Carlos Horacio injured and assumed that he was dead, or that they confused him with another person.

363. When analyzing these indications, the Truth Commission determined that Mr. "Urán [Rojas] left the Palace of Justice alive in the custody of soldiers, with non-lethal injuries." Subsequently, he was a victim of a shot "at point-blank or at close range (less than a meter)." "Inexplicably his corpse appeared in the patio of the first floor [of the Palace of Justice]."[557]

364. Similarly, the Court considers that, based on all the said indications, it can be concluded that Carlos Horacio Urán Rojas was injured in the left leg inside the Palace of Justice, but left it alive in the custody of State agents and his exit alive was not recorded on the list of survivors drawn up by the State. Subsequently, when he was in a vulnerable situation owing to the other injuries, he was executed. His body was undressed, washed, and taken to the Institute of Forensic Medicine.[558]

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555 Autopsy report No. 3783-85 (evidence file, folio 15974), and Written notes by Carlos Bacigalupo (evidence file, folio 36342).

556 Report of the Truth Commission (evidence file, folios 245 and 246).

557 *Cf.* Report of the Truth Commission (evidence file, folio 230).

558 The Court notes that the record of the removal of the corpse states that it was removed from the patio of the

B.2.e) Alleged violations of Articles 7, 5(1), 5(2), 4(1) and 3 of the American Convention due to the forced disappearance and subsequent execution of Carlos Horacio Urán Rojas

365. The Court recalls that the concurring elements that constitute forced disappearance are: (a) the deprivation of liberty; (b) the direct intervention of State agents or their acquiescence, and (c) the refusal to acknowledge the detention and to reveal the fate or the whereabouts of the person concerned (*supra* para. 226). The Court has determined that Carlos Horacio Urán Rojas left the Palace of Justice alive in the custody of State agents, following which he was not released. Consequently, the Court considers that this constituted the first and second element of the forced disappearance, in the sense that he was deprived of his liberty by State agents.

366. According to this Court's case law, one of the characteristics of forced disappearance, contrary to extrajudicial execution, is the State's refusal to acknowledge that the victim is in its custody and to provide information in this regard in order to create uncertainty about his or her whereabouts, life or death, to instill fear, and to eliminate rights.[559]

367. In the specific case of Carlos Horacio Urán Rojas, the Court emphasizes that: (i) the State did not record that Mr. Urán Rojas had left the Palace alive and was subsequently detained, as in the case of those suspected of having collaborated with the M-19 (*supra* para. 248); (ii) the wife of Mr. Urán Rojas went to the Military Hospital on November 7 (following information that Carlos Horacio had left the Palace alive, but injured), and on asking about his whereabouts, "they left [her] alone in a room for about an hour and a half";[560] (iii) the Vice Minister of Health at the time "inquired in all the city's clinics and hospitals and could not find him";[561] (iv) subsequently, the wife of Mr. Urán Rojas went to the Palace of Justice, but "there [she] met up with friends who told [her] that they had found nothing";[562] (v) on November 8, 1985, she went to ask a general where he was, and showed the general a video where she had identified her husband; he did not return the video and there is no record in the case file that he made inquiries about the whereabouts of Carlos Horacio Urán Rojas (*supra* para. 338), and (vi) the corpse of Carlos Horacio Urán was undressed and washed, probably to hide what really happened. This Court finds that all the above reveals that what happened to Carlos Horacio Urán Rojas also complies with the element relating to the refusal to provide information, characteristic of forced disappearance.

368. Based on the foregoing, it is possible to conclude that Carlos Horacio Urán Rojas was forcibly disappeared. In this regard, the Court recalls that the permanent nature of forced disappearance signifies that it continues until the whereabouts of the disappeared person is determined and his identity is established with certainty.[563] Thus, on November 8, 1985, the remains of Carlos Horacio Urán Rojas were identified and were returned to his family. As of

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Palace of Justice. However, the Court has insufficient evidence to determine what happened to Carlos Horacio's body between his death and the delivery of his corpse to the Institute of Forensic Medicine.

559 *Cf. Case of Anzualdo Castro v. Peru. Preliminary objection, merits, reparations and costs.* Judgment of September 22, 2009. Series C No. 202, para. 91, and *Case of Osorio Rivera and family members v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of November 26, 2013. Series C No. 274, para. 156.

560 *Cf.* Testimony of Ana María Bidegain during the public hearing on the merits in this case.

561 *Cf.* Affidavit made by Teresa Morales de Gómez on May 11, 2012 (evidence file, folio 14691), and Testimony of Ana María Bidegain during the public hearing on the merits in this case.

562 *Cf.* Testimony of Ana María Bidegain during the public hearing on the merits in this case.

563 *Cf. Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia. Merits, reparations and costs.* Judgment of September 1, 2010. Series C No. 217, para. 59, and *Case of Gudiel Álvarez et al. (Diario Militar) v. Guatemala. Merits, reparations and costs.* Judgment of November 20, 2012. Series C No. 253, para. 195.

that time, his forced disappearance ceased. However, this does not affect the classification of the acts perpetrated against him during the time he was disappeared as forced disappearance,[564] regardless of its duration.

369. This Court has also established that Carlos Horacio Urán Rojas was executed while he was in the custody of State agents, which constitutes extrajudicial execution. Consequently, taking into account the considerations made in the previous chapter, the State violated the rights recognized in Articles 7, 5(1), 5(2), 4(1), and 3 of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of Carlos Horacio Urán Rojas. The obligation to ensure the said rights by a diligent and effective investigation will be analyzed in Chapter XI of this Judgment.

X
RIGHTS TO PERSONAL LIBERTY AND TO PHYSICAL INTEGRITY IN RELATION TO THE OBLIGATION TO RESPECT AND TO ENSURE RIGHTS

A. Arguments of the parties and of the Commission

370. The Commission argued that Yolanda Santodomingo Albericci, Eduardo Matson Ospino and Orlando Quijano were rescued from the Palace of Justice on November 6, 1985, and taken to the Casa del Florero where they were detained. Then, "[a]fter being classified as 'special' and accused of collaborating with the guerrilla, they were taken to different police and military garrisons." According to the Commission, "[t]here, they were interrogated and received death threats to make them "confess" to their participation in the events of the Palace, while being subjected to ill-treatment." The Commission also determined that José Vicente Rubiano Galvis was detained from November 7 to 23, 1985, by members of the Army and that "he was also subjected to ill-treatment and accused of being a 'subversive.'" According to the Commission, the detention of these victims "took place in the context of a pattern of abuse of power aimed at interrogating and torturing them in order to obtain information and incriminate them as members of the guerrilla," so that it was arbitrary in violation of Article 7(3) of the Convention. In the specific case of José Vicente Rubiano Galvis, the Commission underlined that the Military Forces should not have competence in matters that are the jurisdiction of the Judicial Police. It also considered that these detentions violated paragraphs 4, 5 and 6 of Article 7 of the Convention because they were carried out without a court order and without informing the victims of the reasons for their detention; because "they were not brought before a judge immediately, but remained throughout their detention in the custody of the Army," and because, "since the detentions took place in the context of a pattern of abuse of power, […] the detainees were unable to file a simple and effective remedy" to protect their rights to personal liberty, to physical integrity, and to life. In addition, the Commission concluded that "the circumstances in which the detention was carried out […] constitute *per se* a violation of their mental and moral integrity," because "the victims were detained illegally and arbitrarily by members of the Army." The Commission also found that "sufficient evidence exists to conclude that Yolanda Ernestina Santodomingo Albericci, Eduardo Matson Ospino, Orlando Quijano and José Vicente Rubiano Galvis were subjected to torture while in the State's custody"; hence the State is responsible for the violation of Article 5 of the Convention, in relation to Article 1(1) of this instrument.

371. The representatives argued that Yolanda Santodomingo Albericci, Eduardo Matson Ospino and Orlando Quijano were evacuated from the Palace of Justice and taken to the Casa del Florero, where they were classified as "special hostages." They affirmed that Yolanda Santodomingo Albericci and Eduardo Matson Ospino "were victims of physical and

[564] *Cf. Case of Gudiel Álvarez et al. (Diario Militar) v. Guatemala. Merits, reparations and costs.* Judgment of November 20, 2012. Series C No. 253, para. 195.

psychological abuse" and were subjected "to intense interrogations" in the Casa del Florero, and then at the DIPEC and at the Charry Solano Intelligence Battalion. They were released "without ever having been informed of the reasons for their detention or allowed to communicate with a lawyer or their families, and they were not brought before any judicial authority." The representatives indicated that Orlando Quijano was taken to the premises of the 13th Brigade, where "he was held in isolation in a dark room without food, and subjected to further interrogations," and finally to the SIJIN, where he remained detained until November 8, without a court order, without being informed of the reasons for his detention, and without being brought immediately before a judge, while he was subjected to interrogations due to his presumed connections with the M-19. Regarding José Vicente Rubiano, they argued that he was arbitrarily detained on November 7, 1985, at a military checkpoint when he was on a bus where some weapons were found. The representatives affirmed that José Vicente was taken to the Usaquén military garrison, and then to the 13th Brigade, and to the Usaquén stables. During his detention, he was interrogated due to his presumed connection to the M-19; he was beaten and "they applied electric current to his testicles, while they asked him to declare himself guilty of transporting weapons and being a subversive." The representatives indicated that, on the morning of November 8, he was transferred to the No. 13 Military Police Battalion and from there to the Model Prison where he remained for 22 days. According to the representatives, José Vicente was not advised of the charges against him, and he was not brought before the ordinary courts or allowed to communicate with his family. They underscored that, even though his detention was justified by a presumed violation of Decree 1056 of 1984, on November 23, 1985, he was exonerated of the charges. In this regard, the representatives argued that, "[in] all four cases, the victims were detained arbitrarily by members of the Colombian armed forces under the unfounded suspicion that they had collaborated in the taking of the Palace of Justice." The representatives also argued that they all underwent treatment that constituted torture during their detention, and stressed that "they were interrogated numerous times, […] and the intention was to obtain a confession and information from the detainees." Consequently, they asked the Court to declare that Colombia had violated Articles 5 and 7, in relation to Article 1(1) of the Convention, to the detriment of the four presumed victims.

372. The State acknowledged that Yolanda Santodomingo and Eduardo Matson had been detained and subjected to torture after being evacuated from the Palace of Justice. However, it argued that "to date" there is no evidence to conclude, irrefutably, the existence of the violation of the rights to personal liberty and to physical integrity of Orlando Quijano and José Vicente Rubiano indicated by the Commission and the representatives. It asserted that it cannot be concluded that all those who alleged that they had suffered abuse during the events were, in fact, victims of this, and that the acts committed against Yolanda Santodomingo and Eduardo Matson were serious, but isolated. According to the State, "there are circumstances that justify the restriction of personal liberty even when there is no early intervention by the courts." In this regard, it argued that the provisional detention of Orlando Quijano for identification purposes was authorized under the laws in force at the time. It explained that the facts of the case involved a serious disturbance of public order and security, so that the authorities had to use the powers available to them to verify the identity of the persons who were in and around the Palace, and to eliminate their participation in the perpetration of the events. It indicated that Mr. Quijano "only remained in the military facilities the time required to take his personal details (no more than about three hours) and afterwards he was taken to the police authorities to confirm his identity and whether he had a police record," so that "the time he spent in administrative detention was reasonable," "especially when considering the numerous measures that the authorities had to take at that time, responding to the magnitude of the events of the Palace of Justice." The State also indicated that "Mr. Quijano and the others who were retained knew that they were under administrative detention in order to verify their identity and to eliminate their participation in the events of the Palace

of Justice." It also argued that there is documentary evidence that "the right to physical integrity [of Mr. Quijano] was respected." In the case of José Vicente Rubiano, the State asserted that his detention "took place under the provisions […] of Decree 1056 of 1984." It indicated that "he was detained for his presumed participation in the illegal transportation of weapons and, subsequently, he was handed over to the competent authority," so that the restriction of his liberty "was based on reasons and procedures established by domestic law" and "was the result of being found *in flagrante delicto*." The State indicated that the presumed victim remained detained "in an establishment designed for this purpose (the Model Prison)" and "there is no evidence to consider that Mr. Rubiano's right to physical integrity was violated by State agents while he was in their custody." In this regard, it argued that "there is only one indication of [the supposed] abuse and this is his own statement, which contains obvious contradictions even though it relates to acts that he should remember distinctly owing to their severity."

B. Considerations of the Court

373. In this case there is no dispute as regards the detention of Yolanda Santodomingo Albericci, Eduardo Matson Ospino and Orlando Quijano on November 6, 1985, after they had survived the events of the taking and retaking of the Palace of Justice. Also, there is no dispute about the detention of José Vicente Rubiano Galvis in Zipaquirá on November 7, 1985, even though the parties disagree on the circumstances of his detention. Furthermore, the State has acknowledged the illegal and arbitrary nature of the detention of Yolanda Santodomingo Albericci and Eduardo Matson Ospino, and also that State agents tortured them because they were suspected of collaborating with the M-19. However, the dispute remains as regards what happened to Orlando Quijano and José Vicente Rubiano Galvis. The State argued, above all, that there is no evidence of the treatment that these two victims allege they received during their respective detentions, and that these detentions were carried out under legal provisions in force at the time of the events. In order to examine the violations that have been alleged in relation to these victims, the Court will proceed to determine what happened to Orlando Quijano and to José Vicente Rubiano Galvis. Once it has established the facts relating to these two victims, it will analyze, insofar as pertinent, the alleged violation of the rights to personal liberty and to physical integrity of Yolanda Santodomingo Albericci, Eduardo Matson Ospino, Orlando Quijano and José Vicente Rubiano Galvis.

374. The Court reiterates its criteria for the assessment of evidence and the importance of circumstantial evidence in cases such as this one (*supra* paras. 81, 82, 230 and 231). To determine what happened to José Vicente Rubiano Galvis and Orlando Quijano, the Court will examine: (1) the practice of detention and torture at the time of the events; (2) the statements of Orlando Quijano and José Vicente Rubiano Galvis; (3) the considerations and findings of the domestic judicial authorities and the Truth Commission; (4) the warnings or threats so that they would not reveal what had happened, and (5) the psychological appraisals of the victims and the reports.

B.1) Determination of what happened

B.1.1) The practice of detention and torture at the time of the events

375. The Court notes that, according to the Third Criminal Court, at the time of the events there was a practice of taking individuals suspected of belonging to guerrilla groups to military facilities where they were frequently ill-treated.[565] Similarly, the 51st Criminal Court indicated that "it can be inferred with total certainty that, during the 1970s and 1980s, surveillance and retention without an order from the competent authority, unlawful

[565] *Cf.* Judgment of the Third Criminal Court of the Bogota Circuit of June 9, 2010 (evidence file, folios 23966 to 23974), and Report of the Truth Commission (evidence file, folios 38 and 39).

interrogations and even physical and mental torture, were methods frequently used by some members of the Army to achieve certain results, all with the awareness and/or acquiescence of senior military commanders and even of Heads of State at the time."[566] In addition, specifically with regard to the events of the Palace of Justice, the 51st Criminal Court indicated that "some of those rescued from the Palace of Justice were taken to the premises of the Cavalry School […] and/or to other military facilities to be interrogated and subjected to significant abuse and ill-treatment in order to obtain information that could be useful to the Armed Forces; an activity that, this court insists, constituted common practice at that time."[567] Likewise, the Superior Court of Bogota stated that "[b]efore, during and after the events of the Palace of Justice, the Cavalry School was used as a center for the practice of unconstitutional acts by State agents, which included not only illegal deprivations of liberty, but also extended to crimes against humanity, by including torture and forced disappearances."[568]

B.1.2) The statements of Orlando Quijano and José Vicente Rubiano Galvis

376. Orlando Quijano has testified on the presumed ill-treatment he suffered twice before domestic criminal investigation bodies (in 1986, before an investigating court and, in 2006, before the Prosecution Service), as well as a third time, in 2013, before the Inter-American Court. In addition, in 1986, he wrote an article for the journal "*El Derecho del Derecho,*" in which he narrated what had happened to him, and he ratified the contents in his statement before the Prosecution Service in 2006.[569] Therefore, the Court has three statements made by Mr. Quijano, in 1986, 2006 and 2013, and an article he wrote that are all consistent as follows: (i) he left the Palace of Justice in the afternoon of November 6, 1985, together with other individuals who were in a first-floor office when the M-19 took over the Palace; (ii) he

[566] Judgment of the 51st Criminal Court of the Bogota Circuit of April 28, 2011 (evidence file, folio 24423). Similarly, in its first instance judgment in the proceedings against the Commander of the COICI, this court stated that "the capture, arrest and questioning of individuals suspected of belonging to illegal groups, as set out in 'Intelligence Operations Plan No. 002 against the group calling itself the M-19' were frequent methods used by the members of the State's intelligence agencies who, purporting to abide by the law, obtained the desired results by implementing practices that, in many cases, were contrary to human dignity." Judgment of the 51st Criminal Court of the Bogota Circuit of December 15, 2011 (evidence file, folio 20852).

[567] Judgment of the 51st Criminal Court of the Special Circuit of December 15, 2011 (evidence file, folios 21109 and 21110).

[568] To reach this conclusion, the Superior Court took into account, *inter alia,* that: "(i) at that time, in Latin America, the so-called 'doctrine of national security' was still in force, under which the Armed Forces directed their actions against internal, rather than external, enemies; in other words, nationals of the country who professed a communist ideology, a definition that was extended to other forms of left-wing political thought (which, in Colombia, included the insurgents of the M-19), who had to be eliminated. This doctrine was disseminated in the teachings of the […] Western Hemisphere Institute for Security Cooperation or the US Army School of the Americas, to which […] some members of the Colombian Armed Forces were sent and were trained in the application of extermination methods ranging from subtle forms of cruel, inhuman and degrading treatment to the forced disappearance of the 'internal enemy,' as can be observed in documents declassified by the Pentagon in 1996; (ii) the existence of criminal acts attributed to members of the State's security agencies (in their capacity as an organized power structure) has been proved; these included practices that disregarded the standards to be applied in internal armed conflicts and in war; […] (iii) members of the State's security agencies carried out illegal retentions […], without reporting the arrests or recording them in official logbooks or documents, a practice concurrent with the systematic denial of information on those retained or the denial of their arrest, and (iv) the acknowledgement by the courts, in decisions that are *res judicata*, of the Cavalry School and the North Canton as illegal retention centers in which individuals were tortured and then disappeared." Judgment of the Superior Court of Bogota of January 30, 2012 (evidence file, folios 23319 to 23321 and 23324). Similarly, regarding the implementation of the doctrine of national security in the actions of the Colombian Armed Forces, see, summary of the written version of the expert opinion of Federico Andreu Guzmán (evidence file, folio 36351 to 36354).

[569] Regarding his testimony before the Prosecution Service, this indicates: "Question: Did what you wrote in the journal correspond to what really happened? Answer: […] in one part I gave an account of what I experienced, that is true." Testimony of Orlando Quijano of June 2, 2006, before the Prosecution Service (evidence file, folio 1266).

was taken to the Casa del Florero where, as in the case of the other individuals who were brought there, he was questioned about his identity and his documentation; then a solider pointed at him, separated him and identified him as a presumed guerrilla and took him to the second floor; (iii) on the second floor of the Casa del Florero he was interrogated numerous times and obliged to remain standing for hours, facing the wall, with his hands on his neck, while he was warned that "if [he] turned round, they would punch [him] in the face"; (iv) the following day, after the retaking of the Palace of Justice had been completed, he was taken with other individuals, including Orlando Arrechea, to the North Canton, where their personal details were taken and they were kept in a dark room, and (v) they were then taken to a police station from where they were released on November 8, 1985.[570]

377. The case file also contains two statements made by Orlando Arrechea Ocoro; one, in 1985, before the Special Commission of the Attorney General's office appointed to investigate what happened during the taking of the Palace of Justice and the other, in 2007, before the Prosecution Service. Mr. Arrechea Ocoro left the Palace of Justice together with Mr. Quijano on November 6, 1985; they were taken to the second floor of the Casa del Florero, and formed part of the group of "retained" individuals who, on November 7, 1985, were transferred to the North Canton and later to a police station. The events described in the statements of Orlando Arrechea Ocoro are consistent with and corroborate the statements of Mr. Quijano; also, as regards the fact that they were considered "suspicious" and that, on the second floor of the Casa del Florero, they were kept standing with their hands on their head facing the wall; that they were interrogated and coerced to "confess" that they were members of the guerrilla.[571] Also, two more witnesses have testified that Orlando Quijano was taken to the second floor of the Casa del Florero as a "suspect."[572]

378. The State questioned the truth of Mr. Quijano's testimony based on what it considered were certain inconsistencies between the different statements, as well as the inconsistency with information provided by Mr. Arrechea, when they were supposed to be together. In this regard, the Court notes that the State's objections focus on two main aspects: the time that they were at the Cavalry School of the North Canton and the type or definition of the treatment received in the different places. The Court notes that, in 1986, Mr. Quijano indicated that, in the 13th Brigade,[573] they were "standing for about an hour," which is consistent with Orlando Arrechea's statement (he indicated that they were there "around two or three hours), while in his statement before the Prosecution Service in 2006, he

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[570] *Cf.* Testimony of Orlando Quijano of January 8, 1986, before the 41st Itinerant Criminal Investigation Court (evidence file, folios 24126 to 24128); Testimony of Orlando Quijano of June 2, 2006, before the Prosecution Service (evidence file, folios 1264 and 1267); affidavit made on November 7, 2013, by Orlando Quijano (evidence file, folios 35892 to 35895); Orlando Quijano, "*El Derecho del Derecho,*" 1986 (evidence file, folios 15989 to 15991 and 15993), and SIJIN, Release order of November 8, 1985 (evidence file, folio 20171).

[571] *Cf.* Testimony of Orlando Arrechea Ocoro of November 28, 1985, before the Special Commission (evidence file, folios 1221 to 1223), and Testimony of Orlando Arrechea Ocoro of July 18, 2007, before the Prosecution Service (evidence file, folios 1521 6 to 15218).

[572] *Cf.* Testimony of Pedro León Acosta Palacio, employee of the Casa del Florero, of February 21, 1986, before the 30th Itinerant Criminal Investigation Court (evidence file, folio 15266). Also, María del Carmen de Patiño, General Service Assistant in the Ministry of Justice, testified that she found out, without specifying how, that the lawyer Orlando Quijano had been taken to the North Canton; although she never spoke to him directly, she was aware that he had been ill-treated because she spoke to Orlando Arrechea. *Cf.* Testimony of María del Carmen de Patiño of March 25, 2009, before the 51st Criminal Court of the Bogota Circuit (evidence file, folio 15008).

[573] In his 1986 testimony, Orlando Quijano used the name "Military Institutes Brigade" to refer to the military facility where he was taken after the Casa del Florero. Following a request for useful information, both the representatives and the State provided information which revealed that the 13th Brigade replaced the Military Institutes Brigade in 1982. Consequently, the Court understands that Orlando Quijano was referring to the 13th Brigade. Also, the information provided reveals that the "North Canton" is a military area where several military units, including the 13th Brigade, "operate" or "are stationed" (*acontanada*). The Cavalry School is a tactical unit of the 13th Brigade, separated from the latter by a highway in Usaquén, in Bogota D.C.

stated that he was there "a day or a day and a half," and before the Court in 2013, he indicated "a day or two, I don't remember."[574] First, the Court considers that this difference does not invalidate all of Mr. Quijano's testimony, especially when the two statements are consistent on the substantial and more important aspect, which is that, after they were suspected of being members of the guerrilla, they were interrogated insistently on the second floor of the Casa del Florero and subsequently transferred to the North Canton. In addition, the Court considers that, when examining this type of testimony, it is necessary to take into account the special situation of tension, stress and other specific circumstances that could affect the deponent. In this regard, it underlines that the Istanbul Protocol expressly establishes that "disorientation of time and place during torture is a generally observed finding."[575]

379. The Court considers it has been proved that, following the retaking of the Palace of Justice, Mr. Quijano was taken to a military garrison in the North Canton at around 2 p.m. on November 7, 1985. In addition, it notes based on the evidence in the case file that Mr. Quijano was transferred by the B-2 of the 13th Brigade to the Sixth Police Station on November 7, 1985.[576] Therefore, for the effects of this Judgment, the Court will consider that Mr. Quijano remained in the North Canton for a few hours, instead of a day or a day and a half, which is also consistent with the fact that he was released on November 8, 1985, from the Sixth Police Station as recorded in the release order issued by the SIJIN on that date.[577]

380. The State also questioned the testimony of Mr. Quijano because Mr. Arrechea had indicated that the treatment was "good" or "normal."[578] However, this Court notes two aspects: in his 1985 testimony, where Mr. Arrechea indicated that the treatment was "good," he also indicated that he was retained for two days and that he had been interrogated on the second floor of the Casa del Florero where "they made the usual accusations; that they had seen [him] in the taking of Corinto, in the taking of Florencia, and that [he] was a guerrilla." In addition, in his 2007 statement, he expanded his description of the events and expressly added that, in the Casa del Florero, they were "kept with the hands on their head […] and against the wall," and when the prosecutor asked him about the treatment received, he stated that "[d]espite the psychological pressure to which

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[574] *Cf.* Testimony of Orlando Quijano of January 8, 1986, before the 41st Itinerant Criminal Investigation Court (evidence file, folio 24131); Testimony of Orlando Arrechea Ocoro of July 18, 2007, before the Prosecution Service (evidence file, folio 15217); Testimony of Orlando Quijano of June 2, 2006, before the Prosecution Service (evidence file, folio 1264), and affidavit made on November 7, 2013, by Orlando Quijano (evidence file, folio 35895).

[575] In this regard, the Istanbul Protocol specifically establishes that "[t]he examiner must remember that statements on the length of the torture session by the torture survivor are subjective and may not be correct, since disorientation of time and place during torture is a generally observed finding." United Nations, Istanbul Protocol, Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 2004, para. 141.

[576] In this regard, the case file contains a note from the B-2 stating that: "based on the pertinent instructions for identification and legal procedures, the following individuals who were found near the Palace of Justice in suspicious circumstances during the occupation of that building by the M-19 on [November 6, 1985,] are being sent to that command accompanied by this note: […] Quijano Orlando." *Cf.* Military Forces of Colombia, Note No. 06040-COBR13-B2-267 (evidence file, folio 20169).

[577] *Cf.* SIJIN, Release order of November 8, 1985 (evidence file, folio 20171).

[578] The State also referred to two other individuals, Patricio Torroledo and Saúl Antonio Arce, who had also been detained and had presumably declared that the treatment was "good" or "normal." The Court notes that Colombia did not provide these statements to the file; thus it is unable to verify this allegation. These individuals were cited in the judgment of the Superior Court of Bogota and in the respective dissenting opinion (from which the State took its allegation), and the dissenting opinion transcribes some extracts where it appears that Mr. Torroledo had indicated that the treatment was "good," even though he also stated that, in the Casa del Florero, he was kept with his hands up against the wall. Nevertheless, the Court considers that the assertions made regarding Orlando Arrechea's definition of the treatment would also apply to the supposed statements by these individuals.

[he] was subjected several times by some of the agents, [he] believe[d] that, considering what is usual in those circumstances, the treatment was good despite the psychological pressure. [He] believe[d] that the treatment was normal, if that can be called normal."[579] The Court also underlines that, in confidential testimony received by the Truth Commission, a Supreme Court employee who was with Orlando Quijano, stated that, in the Casa del Florero "the situation was critical, because they told him that they had detained his wife, his children and his whole family" while they threatened him in order to make him "tell the truth." The Truth Commission also underscored that "[w]hen referring to the type of treatment received during the time he was detained illegally, the confidential informant stated [that he] 'was beaten as was normal in these procedures. Kicking is normal for them; they kicked [him] in the shins. They used threatening language, especially against [his] family. [He] was afraid, [… he] though [he] was going to die.'"[580]

381. This Court recalls that the personal characteristics of a presumed victim of torture or cruel, inhuman or degrading treatment must be taken into account when determining whether their personal integrity was violated, because these characteristics may change the individual's perception of the reality and, consequently, increase the suffering and the feeling of humiliation when they are subjected to certain types of treatment.[581] In this regard, the Court emphasizes that several of Mr. Quijano's statements reveal that he was particularly frightened by what could happen to him, because he had recently reported in his journal on a judgment of the Council of State in which the State had been convicted of torture committed by military authorities.[582] Therefore, the Court finds that the fact that other individuals have classified the treatment received as "good" or "normal" does not disprove what Mr. Quijano has stated.

382. In addition, the Court notes that José Vicente Rubiano Galvis has testified before the domestic authorities on three occasions, twice in 2008 before the Prosecution Service[583] and once in 2009 before the 51st Criminal Court,[584] as well as in 2013 before this Court.[585] These statements consistently reveal the following: (i) he was detained at a military checkpoint in the municipality of Zipaquirá, in the outskirts of Bogota, supposedly *in flagrante delicto* owing to some weapons that were found in the bus by which he was travelling; (ii) from this military checkpoint he was taken, together with other individuals, to a station in Zipaquirá, where he was beaten and electric current was applied to his testicles and abdomen to make him confess that they were transporting weapons in the bus and that they were subversives; (iii) from the Zipaquirá station, they were taken to the Cavalry School in Usaquén in Bogota, where they were again beaten to make them "confess," and (iv) then they were taken to the "stables," where they were left until the following morning

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579 Testimony of Orlando Arrechea of July 18, 2007, before the Prosecution Service (evidence file, folio 15218), and Testimony of Orlando Arrechea of November 28, 1985, before the Special Commission (evidence file, folios 1221 and 1223).

580 Report of the Truth Commission (evidence file folios 180, 181 and 182)

581 *Cf. Case of Ximenes Lopes v. Brazil*. Judgment of July 4, 2006. Series C No. 149, para. 127, and *Case of J. v. Peru. Preliminary objection, merits, reparations and costs.* Judgment of November 27, 2013. Series C No. 275, para. 263.

582 *Cf.* Affidavit made by Orlando Quijano on November 7, 2013 (evidence file, folios 35893 and 35894); Testimony of Orlando Quijano of June 2, 2006, before the Prosecution Service (evidence file, folios 1264 to 1267), and Orlando Quijano, *"El Derecho del Derecho,"* 1986 (evidence file, folio 15990).

583 *Cf.* Testimony of José Vicente Rubiano Galvis of May 15, 2007, before the Prosecution Service (evidence file, folios 1283 and 1284), and Testimony of José Vicente Rubiano Galvis of August 22, 2007, before the Prosecution Service (evidence file, folios 6789 and 6790).

584 *Cf.* Testimony of José Vicente Rubiano Galvis of June 2, 2009, before the 51st Criminal Court of the Bogota Circuit (evidence file, folios 14656 and 14662).

585 *Cf.* Affidavit made by José Vicente Rubiano Galvis on November 5, 2013 (evidence file, folios 35620 to 35623).

when they were transferred to the No. 13 Military Police Battalion located in the sector of Puente Aranda in Bogota and from there to the Model Prison in Bogota, where he remained until November 23, 1985.[586]

383. The State challenged the credibility of the testimony of Mr. Rubiano Galvis pointing out that there were inconsistencies in his statements with regard to the place where the presumed torture took place. Above all, the State asserted that, in his statement of May 2007 before the Prosecution Service, first he said that the torture had taken place in the stables, and later he indicated that he had been in an office in front of the stables "beside the church." In this regard, the Court notes that this confusion was clarified in the statement of May 2007 and ratified in the 2009 statement. In the 2007 statement, Mr. Rubiano Galvis clarified that he had "made a mistake" in his initial statement, and indicated that the torture he had undergone in Bogota was in an "office beside the church" and "afterwards, [they] were taken to the stables [and] there [they] were not beaten any more"; and this is also consistent with what Mr. Rubiano Galvis testified before this Court.[587]

384. The Court finds it reasonable that the victims do not have a precise and meticulous recollection of such facts, which they could find traumatic. A certain degree of disorientation and imprecision are reasonable and do not disprove what the victims have indicated (*supra* para. 378). The relevant point is that the statements are consistent as regards the main facts that they narrate and include. Thus, this Court finds that the statements of Messrs. Quijano and Rubiano Galvis reveal the facts described consistently; hence they provide an additional indication of what happened to these presumed victims.

B.1.3) Considerations and determinations of the domestic judicial authorities and the Truth Commission

385. The Court notes that different judicial authorities, investigation bodies and the Truth Commission have accorded credibility to the events described by Yolanda Santodomingo Albericci, Eduardo Matson Ospino, Orlando Quijano and José Vicente Rubiano Galvis and have taken them into consideration when examining the practices to which those considered "suspicious" were subjected following the retaking of the Palace of Justice. In this regard, the Court recalls that it has found it proved that anyone regarding whom there were doubts about their identity or the reason why they were in the Palace of Justice was classified as "suspicious." Also, their names were omitted from some of the lists of those who were evacuated, they were taken to the second floor of the Casa del Florero to be interrogated, transferred to military facilities without any record of where they were sent, and some were subjected to ill-treatment, torture or forced disappearance (*supra* paras. 241, 244 to 249, and 250 to 254). The Court observes that a first instance court, in two different decisions, the Superior Court of Bogota in one decision, and the Truth Commission have all established that this was the situation of Yolanda Santodomingo Albericci, Eduardo Matson Ospino and Orlando Quijano.[588]

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[586] *Cf.* Testimony of José Vicente Rubiano Galvis of May 15, 2007, before the Prosecution Service (evidence file, folios 1283, 1284 and 1287); Testimony of José Vicente Rubiano Galvis of August 22, 2007, before the Prosecution Service (evidence file, folio 6790); Testimony of José Vicente Rubiano Galvis of June 2, 2009, before the 51st Criminal Court of the Bogota Circuit (evidence file, folios 14656, 14657, 14659, 14662, 14664 and 14666); Affidavit made by José Vicente Rubiano Galvis on November 5, 2013 (evidence file, folios 35620 and 35622), and certification issued by the Judge Advocate (evidence file, folio 24151).

[587] *Cf.* Testimony of José Vicente Rubiano Galvis of May 15, 2007, before the Prosecution Service (evidence file, folio 1287); Testimony of José Vicente Rubiano Galvis of June 2, 2009, before the 51st Criminal Court of the Bogota Circuit (evidence file, folios 14656, 14659 to 14660 and 14665), and Affidavit made by José Vicente Rubiano Galvis on November 5, 2013 (evidence file, folio 35622).

[588] *Cf.* Judgment of the Superior Court of Bogota of January 30, 2012 (evidence file, folios 23354 and 23363); Judgment of the 51st Criminal Court of the Bogota Circuit of December 15, 2011 (evidence file, folio 20899);

386. In particular, as regards Orlando Quijano, the Superior Court of Bogota indicated that he was taken to the second floor of the Casa del Florero, as was Orlando Arrechea, and transferred to the Cavalry School, without any official record in this regard. It also found that he was considered suspicious and that he was "subjected to cruel, inhuman or degrading treatment or torture."[589] In addition, the Council of State has emphasized the following when examining the situation of the persons disappeared:

> [The situation] is aggravated even further if we examine the way in which the situation was handled of those persons who, with or without reason, were retained by the Military and the Police Forces. Without any structure, without any order of any kind, these persons went different ways: either they were released immediately, or they were taken to the Military Institutes Brigade, or they were taken to the facilities of the National Police, or to the Municipality, creating an enormous confusion among those who were retained because they were impotent spectators. There is no record in this regard; no records were drawn up to be able to tell where they were taken, before which authority, and what the fate of each person was. It would appear that the simple whims of anonymous civil or military officials had priority to decide the situation of those who were retained. In these conditions, owing to the disorganization of the authorities who were aware of what was happening, later on it was impossible to establish the whereabouts of so many individuals who today are considered disappeared. In truth, the testimonies of Eduardo Matson Ospino and Yolanda E. Santodomingo, among others, reveal sufficiently the ignominious treatment meted out to them by the soldiers after they left the Palace cafeteria, on the pretext of investigating what had happened. These procedures, which were unlawful and questionable procedures in light not only of our own legal and constitutional system, but also in light of international norms, signify, without any doubt, a service-related failure on the part of the Military Forces.[590]

387. Lastly, the Truth Commission included in its report that Orlando Quijano had been taken to the Casa del Florero where "he had to remain with his hands on his head answering the questions of several soldiers, based on the supposition that they were guerrillas." He was then "taken to the facilities of the 13th Brigade in the North Canton, were his personal details were taken and he was interrogated again"; he indicated that he was kept in a dark room for several hours, following which he was transferred to near the Patria Theatre where "the National Police, […] on the pretext that he did not have his identity documents, transferred him to the Sixth Police Station of Bogota until midday on November 8.[591]

388. Regarding José Vicente Rubiano Galvis, the Superior Court of Bogota considered that "the existence of criminal acts attributed to members of the State security agencies (in their capacity as an organized power structure) [has been] proved, and these include practices that disregarded the standards that should apply in internal armed conflicts and in war, with the above-named resulting victims based on a first instance judgment," including José Vicente Rubiano, "who was captured by soldiers, taken to military facilities (including the

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Judgment of the 51st Criminal Court of the Bogota Circuit of April 28, 2011 (evidence file, folio 24467), and Report of the Truth Commission (evidence file, folios 172 to 182)

589 *Cf.* Judgment of the Superior Court of Bogota of January 30, 2012 (evidence file, folios 23322, 23323, 23354, 23363 and 23383). Similarly, Ángela María Buitrago stated that "there were two large groups; the evidence established two situations in particular: first, that some hostages left the Palace on the first day (November 6, 1985), starting at 2.30 p.m., and then a second group left on November 7, 1985. [Among those who exited] on November 6, are cases such as that of Orlando Quijano, […] who was inside the Palace of Justice […] and [was] taken to the Casa del Florero; [he was] subjected to unorthodox procedures." However, "the official report [indicates that they were] captured in a demonstration in front of the Palace of Justice." She also stressed that, based on the available information regarding when Orlando Quijano left the Palace, she concluded that "he was sent to the 13th Brigade at the Cavalry School and there was no record of his transfer." Testimony of Ángela María Buitrago during the public hearing on the merits in this case.

590 See, *inter alia*, Judgment of the Contentious-Administrative Chamber of the Council of State, in the proceedings instituted by Bernardo Beltrán Monroy, of October 13, 1994 (evidence file, folios 2943 and 2944), and Judgment of the Contentious-Administrative Chamber of the Council of State, in the proceedings instituted by José María Guarín Ortiz, of October 13, 1994 (evidence file, folios 3236 to 3237).

591 Report of the Truth Commission (evidence file, folios 180, 181 and 182).

North Canton) and tortured." It also took in account, when analyzing the contextual situation relating to the disappearance of Carlos Augusto Rodríguez Vera and Irma Franco Pineda, that "[o]ther individuals [such as José Vicente Rubiano Galvis], retained in different actions that took place at the same time as the taking of the Palace or following this, were taken to the Cavalry School."[592]

B.1.4) The warnings or threats so that the presumed victims would not testify about what happened

389. The Court notes that three of the presumed victims who were allegedly detained and tortured or ill-treated have stated that they were warned or threatened not to report what had happened to them. In particular, the Court underlines that both Yolanda Santodomingo Albericci and Eduardo Matson Ospino, regarding whom the State has acknowledged the acts perpetrated against them, have testified that when they were released, the soldiers insisted that "nothing had happened," that they had been "retained" not "detained" (*supra* para. 140). Yolanda Santodomingo Albericci also indicated that, during a meeting in the office of the Regional Attorney General, he had recommended to them that they "should not recount everything [they] knew, because [their] life and that of [their] families was in danger."[593] Subsequently, Ms. Santodomingo Albericci testified that she had received threats and, in 2007, she requested the Inter-American Commission to grant precautionary measures, and the Commission asked the State to provide information in this regard.[594] In addition, the person who was with Orlando Quijano, and who testified before the Truth Commission on condition that his identity was not revealed, indicated that, before leaving the 13th Brigade, "a soldier warned him that it was better 'that he knew nothing and had seen nothing.'"[595]

390. The Court also takes note that José Vicente Rubiano Galvis has testified on different occasions that he did not denounce what had happened or file a claim against the State previously because "they threatened [him], the Army personnel, that if [he] sued them for torturing him, they would kill [him] and [his] family."[596] In this regard, the Court notes that, in addition to the information concerning the request for precautionary measures by Yolanda Santodomingo Albericci, it only has the statements of the victims with regard to the presumed threats or warnings. However, it takes note that the statements of three of the four presumed victims of detention and torture are consistent in indicating that that they were threatened or warned not to say what had happened.

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592 Judgment of the Superior Court of Bogota of January 30, 2012 (evidence file, folios 23319 to 23320 and 23323).

593 Testimony provided by Yolanda Santodomingo before the Prosecution Service on August 1, 2006 (evidence file, folio 1025).

594 *Cf.* Communication of the Inter-American Commission of May 8, 2007 (evidence file, folio 16249). The State also advised in its final written arguments that, at the request of Yolanda Santodomingo Albericci following the public hearing in this case, the State had "ordered preventive measures of protection for her and her family; in particular, security patrols around her residence, and had given her the emergency telephone numbers of the National Police so that she could communicate with them in case of emergency." It also indicated that, in 2010, a risk assessment had been made of Ms. Santodomingo Albericci and the result had been that she was in a situation of ordinary risk. *Cf.* Final written arguments of the State (merits file, folio 4300).

595 Report of the Truth Commission (evidence file, folio 182).

596 *Cf.* Testimony of José Vicente Rubiano Galvis of May 15, 2007, before the Prosecution Service (evidence file, folio 1284). See also, Affidavit made by José Vicente Rubiano Galvis on November 5, 2013 (evidence file, folio 35621), and Testimony of José Vicente Rubiano Galvis of June 2, 2009, before the 51st Criminal Court of the Bogota Circuit (evidence file, folios 14657 and 14675). He also testified that a month after the events occurred, in the Primavera district of Bogota, where his mother lived, he had been intercepted by military intelligence agents in a vehicle, who told him not to denounce the facts because they would kill him. *Cf.* Testimony of José Vicente Rubiano Galvis of May 15, 2007, before the Prosecution Service (evidence file, folio 1286), and Testimony of José Vicente Rubiano Galvis of June 2, 2009, before the 51st Criminal Court of the Bogota Circuit (evidence file, folio 14657).

B.1.5) The psychological appraisals of the presumed victims and the reports

391. According to the expert opinion presented to this Court by the psychologist Ana Deutsch, both Orlando Quijano and José Vicente Rubiano Galvis revealed symptoms of post-traumatic stress. Specifically, in the case of Mr. Quijano, expert witness Deutsch indicated that "[t]he symptoms of post-traumatic stress appeared immediately [after] the events of [the Palace of Justice] and continue up until today," and he also revealed psychosocial symptoms such as the "breakdown of the social fabric" and the "loss of confidence in the State and its officials." According to this expert witness, Mr. Quijano was subjected to physical and mental torture, *inter alia*, due to the position in which he was obliged to remain in the Casa del Florero, the deprivation of water and food, the isolation in the dark room, and the systematic interrogations during which he was accused of being a guerrilla.[597]

392. In the case of José Vicente Rubiano Galvis, expert witness Deutsch specified that he reveals numerous symptoms of post-traumatic stress and that "[t]here is a significant relationship" between "the acts of violence that he suffered, as narrated by the patient, and the findings in the psychological appraisal."[598] According to this expert witness, Mr. Rubiano Galvis was subjected to physical and mental torture, *inter alia*, due to the kicks to his chest and shins, punches in the face, and also the sexual violence on his genitals owing to the application of electric shocks to the abdomen and genitals, the deprivation of water and food, the isolation in a dark room, and the systematic interrogations during which he was accused of being a member of the guerrilla.[599] Furthermore, the Court emphasizes that

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[597] According to expert witness Ana Deutsch, Orlando Quijano was subjected to the following types of physical torture: "[t]orture by position [because,] in the Casa del Florero, he was made to stand with his hands on his head facing the wall for hours, to prevent him from seeing his attackers." Meanwhile, she identified the following types of mental torture: "[e]xhaustion due to being deprived of water and food; impossibility of performing his physiological necessities; isolation by being confined in a dark damp basement; deprivation of normal sensorial stimulation; subjection to total darkness, affecting sensorial perception; application of psychological techniques to break the individual by: systematic interrogations during which he was repeatedly accused of being a guerrilla." According to the expert opinion, the symptoms of torture that he has shown since the events of the Palace of Justice are as follows: "[f]ear stemming from his perception, based on his experience as a lawyer, owing to which he knows about the torture of civilians by the Army as a mechanism of social control […]. Evasive conduct and withdrawal […]. Depression […]. Control of affections […]. Agoraphobia." She identified the following psychosomatic symptoms: "[f]requent pain at right hypochondrium; pain in the whole body that started a year after the events […; p]ermanent muscular pains in arms, feet, heels and big toe. These psychosomatic symptoms that appeared a short time after the events of the Palace of Justice can be related to the physical and mental torture to which he was subjected." *Cf.* Expert opinion provided by Ana Deutsch by affidavit on October 29, 2013 (evidence file, folios 35969 to 35971).

[598] In particular, she stated that "[a]t the psychological level: José Vicente Rubiano reveals post-traumatic stress symptoms including: hyperalertness; over-excitement; withdrawal; emotional restraint; increase in alcohol consumption (immediately after the events); irritability; separation anxiety. At the psychosocial level: social withdrawal and isolation; he suffers from rejection by the community because he was classified as a 'guerrilla.' Breakdown of his life project." Regarding the social effects, the expert witness identified the following: "[w]ithdrawal from, and scant interest in, social interactions […], stigmatization […], work inhibition […], breakdown of his life project." As to the relational dimension, the expert witness identified the following: "[b]reakdown of the social fabric […], separation anxiety […], withdrawal […], ailments of family members […], change in habits." Expert opinion provided by Ana Deutsch by affidavit dated October 29, 2013 (evidence file, folios 35973, 35978 to 35980).

[599] According to expert witness Ana Deutsch, José Vicente Rubiano Galvis was subjected to the following types of physical torture: "[k]icks to the chest and shins, punches in the face; sexual violence on the genitals: application of electric shock on abdomen and genitals; long waiting periods: he remained standing all the time in the stables […] surrounded by horse manure." Also, according to this expert opinion, he was subjected to the following types of psychological torture: "weakness from being deprived of water and food; impossibility of performing his physiological necessities; isolation in a dark empty room in which there was a power outlet with the cables used in torture by electric shock; deprivation of normal sensorial stimulation; subjection to total darkness, affecting sensorial perception; sleep deprivation: he was unable to sleep during the whole time that he was sequestered; systematic interrogations during which he was repeatedly accused of being a guerrilla […]; threats of torture and death […]; sexual torture […]; obligation to be present while others were being tortured […]; humiliation by verbal abuse and humiliating acts […]; situations of impunity during the time of forced disappearance and arbitrary detention […, and; i]nhuman conditions

some of the symptoms identified by the expert witness were also reported by Mr. Rubiano Galvis himself, who stated that his "temperament has changed since then, because [he felt helpless when they hit him], unable to defend [him]self; and this always makes [him] angry"; while his wife stated that "[h]e became very aggressive, he changed a great deal, he began to drink a lot; he didn't do that before."[600]

393. The State contested the findings of this expert opinion arguing that it was based on the description of the events in the representatives' motions and arguments brief. In this regard, the Court noted that, although the expert opinion used the events described in the motions and arguments brief, the reports, as such, are based on interviews with the victims themselves. The expert opinion established that "[t]he victims and their families have been interviewed individually and in group by our team of doctors and psychologists. […] the individual reports were prepared based on the information gathered during the interviews and the report on the Santodomingo family describes the psychosocial impacts on the families."[601]

B.1.6) Conclusion as regards what happened to Orlando Quijano and José Vicente Rubiano Galvis

394. Based on the foregoing considerations, the Court concludes that, owing to: (i) the practice that existed at the time of the events according to which those suspected or belonging to guerrilla groups were frequently subjected to unlawful procedures of detention and torture by military authorities; (ii) the consistency of the statements of Messrs. Quijano and Rubiano Galvis as regards the main aspects of what happened from November 6 to 8, 1985, in each case; (iii) the results and conclusions of the psychological appraisal made on each of them; (iv) the threats and warnings presumably received so that they would not denounce the facts, and (v) the considerations on these facts by the domestic judicial authorities and the Truth Commission find it sufficiently proved that Orlando Quijano and José Vicente Rubiano Galvis were detained without a court order under suspicion of belonging to or collaborating with the M-19, following which they were subjected to various types of physical and psychological ill-treatment by military authorities.

395. Specifically, in the case of Orlando Quijano, the Court finds it proved that he was taken to the second floor of the Casa del Florero where he was obliged to remain standing with his hands on his head, facing the wall, for several hours, while being subjected to numerous interrogations during which he was accused of being a guerrilla, and was coerced and insulted to make him "confess"; following this he was transferred to the North Canton where his personal details were taken, he was interrogated again, and he remained detained until he was transferred to a police station from where he was released on November 8, 1985. The Court also finds that it has been proved that José Vicente Rubiano Galvis was detained in Zipaquirá by military authorities, who accused him of transporting weapons and of belonging to, or having collaborated with, the M-19 to introduce the weapons into the Palace of Justice. On this basis, he was taken to a military facility in that area where he was beaten and electric shocks were applied to his abdomen and testicles while he was being interrogated, trying to make him confess that he was a guerrilla or collaborated with the M-19; following this, he was taken to the Cavalry School where, for several hours, he was again subjected to numerous acts of physical abuse to make him "confess" his collaboration with the M-19. After this, he was confined in the stables until the following day when he was taken to the Bogota Model Prison.

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during detention in place of confinement." Expert opinion provided by Ana Deutsch by affidavit dated October 29, 2013 (evidence file, folios 35978 to 35980).

600 *Cf.* Affidavit made on November 5, 2013, by José Vicente Rubiano Galvis (evidence file, folio 35621), and Affidavit made on November 5, 2013, by Lucía Garzón Restrepo (evidence file, folio 35662).

601 Affidavit made on October 29, 2013, by Ana Deutsch (evidence file, folio 35955).

396. The Court recalls that it is not a criminal court and, consequently, these facts do not have to be proved beyond any reasonable doubt in order to establish the international responsibility of the State for violations of the American Convention (*supra* para. 81). The indications and evidence that have emerged to date are consistent with the statements of the victims and support their truth. The Court finds that, in the context of the events of this case, this is sufficient to consider that they occurred, because reaching the contrary conclusion would signify allowing the State to shield itself behind its own negligence in the investigation of these events to evade its international responsibility (*supra* para. 305). The legal definition of these facts is made in the following sections of this chapter.

B.2) Right to personal liberty

397. As previously mentioned the State has accepted and acknowledged that Yolanda Santodomingo Albericci and Eduardo Matson Ospino were detained illegally and arbitrarily, after surviving the events of the taking and retaking of the Palace of Justice. The Court has found proved that Yolanda Santodomingo Albericci and Eduardo Matson Ospino were deprived of liberty "under the suspicion" of belonging to or collaborating with the M-19 (*supra* para. 138). Furthermore, although the State has contested the illegal and arbitrary nature of the detention of Orlando Quijano and José Vicente Rubiano Galvis, there is no dispute that they were both detained without a court order on November 6 and 7, 1985, respectively. The State has argued that Orlando Quijano was "retained" in keeping with the legal provisions in force at the time of the events for identification purposes; while José Vicente Rubiano was "detained" *in flagrante delicto*.

398. Regarding the distinction made by the State between "retention" and "detention," the Court notes that they both constitute deprivations of personal liberty and, as such, should strictly respect the relevant provisions of the American Convention and domestic law, provided that the latter is compatible with the Convention.

399. This Court recalls that Article 7 of the American Convention contains two distinct types of rule; one general and the other specific. The general rule is found in the first paragraph: "[e]very person has the right to personal liberty and security." While the specific rule consists of a series of guarantees that protect the right not to be deprived of liberty unlawfully (Article 7(2)) or arbitrarily (Article 7(3)), to know the reasons for the detention and the charges against him (Article 7(4)), to judicial control of the deprivation of liberty (Article 7(5)) and to contest the legality of the detention (Article 7(6)).[602] Any violation of paragraphs 2 to 7 of Article 7 of the Convention necessarily results in the violation of Article 7(1).[603]

400. Article 7(2) of the American Convention establishes that "[n]o 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." This Court has indicated that by referring to the Constitution and laws established "pursuant thereto," the examination of the observance of Article 7(2) of the Convention entails the examination of compliance with the requirements established as specifically as possible and "beforehand" in these laws as regards the "reasons" for and the "conditions" of the deprivation of physical liberty. If both the substantive and formal aspects of domestic law are not observed when depriving a person of his liberty, this deprivation will be unlawful and contrary to the American Convention,[604] in light of Article 7(2). Consequently, the Court

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602 *Cf. Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of November 21, 2007. Series C No. 170, para. 51, and *Case of J. v. Peru. Preliminary objection, merits, reparations and costs.* Judgment of November 27, 2013. Series C No. 275, para. 125.

603 *Cf. Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of November 21, 2007. Series C No. 170, para. 54, and *Case of J. v. Peru. Preliminary objection, merits, reparations and costs.* Judgment of November 27, 2013. Series C No. 275, para. 126.

604 *Cf. Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador. Preliminary objections, merits, reparations and costs*.

must verify whether the detention of Yolanda Santodomingo Albericci, Eduardo Matson Ospino, Orlando Quijano and José Vicente Rubiano Galvis was executed pursuant to the laws of Colombia.

401. As regard the arbitrariness referred to in Article 7(3) of the Convention, the Court has established that no one can be subjected to detention or imprisonment for reasons and by methods that – even though they are classified as lawful – may be considered incompatible with respect for the fundamental rights of the individual because, among other matters, they are unreasonable, unpredictable, or disproportionate.[605] Thus, the arbitrariness indicated in Article 7(3) of the Convention has its own legal content, which only requires analysis in the case of detentions that are considered lawful.[606] Nevertheless, domestic law, the applicable procedure, and the relevant express or tacit general principles must, in themselves, be compatible with the Convention.[607] Thus, the concept of "arbitrariness" should not be equated to "contrary to the law," but should be interpreted more broadly in order to include elements of irregularity, injustice and unpredictability.[608]

402. Furthermore, the Court emphasizes that the prohibition of arbitrary deprivation of liberty is a non-derogable right, which cannot be suspended and is applicable even in cases in which the detention is carried out to ensure public safety.[609] The International Committee of the Red Cross has established that the prohibition of arbitrary deprivation of liberty is a norm of customary international humanitarian law, applicable in both international and non-international armed conflicts.[610] Consequently, pursuant to the "obligations under international law,"[611] the prohibition of arbitrary detention or imprisonment cannot be suspended during an internal armed conflict.

403. The Court also reiterates that the failure to record a detention may constitute a violation of Articles 7(1) and 7(2) of the Convention (*supra* para. 247).

B.2.1) Deprivation of liberty of Yolanda Santodomingo Albericci, Eduardo Matson Ospino and Orlando Quijano

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Judgment of November 21, 2007. Series C No. 170, para. 96, and *Case of Torres Millacura et al. v. Argentina. Merits, reparations and costs.* Judgment of August 26, 2011. Series C No. 229, para. 74.

605 *Cf. Case of Gangaram Panday v. Suriname. Merits, reparations and costs.* Judgment of January 21, 1994. Series C No. 16, para. 47, and *Case of J. v. Peru. Preliminary objection, merits, reparations and costs.* Judgment of November 27, 2013. Series C No. 275, para. 127.

606 *Cf. Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of November 21, 2007. Series C No. 170, paras. 93 and 96, and *Case of J. v. Peru. Preliminary objection, merits, reparations and costs.* Judgment of November 27, 2013. Series C No. 275, para. 127.

607 *Cf. Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of November 21, 2007. Series C No. 170, para. 91, and *Case of J. v. Peru. Preliminary objection, merits, reparations and costs.* Judgment of November 27, 2013. Series C No. 275, para. 127.

608 *Cf. Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of November 21, 2007. Series C No. 170, para. 92, and *Case of J. v. Peru. Preliminary objection, merits, reparations and costs.* Judgment of November 27, 2013. Series C No. 275, para. 127.

609 *Cf. Osorio Rivera and family members v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of November 26, 2013. Series C No. 274, para. 120, citing Human Rights Committee, *General comment No. 29 States of Emergency,* CCPR/C/21/Rev.1/Add.11, 31 August 2001, paras. 11 and 16, and Working Group on Arbitrary Detention, Report of the Working Group on Arbitrary Detention, A/HRC/22/44, 24 December 2012, paras. 42 to 51. Also, see*,* Human Rights Committee, *General comment No. 8 of 1982*, HRI/GEN/1/Rev.9 (Vol.I), para. 4.

610 *Cf.* ICRC, Customary International Humanitarian Law, Vol. I, rule 99, edited by Jean-Marie Henckaerts and Louise Doswald-Beck, 2007.

611 Article 27(1) of the American Convention on Human Rights.

404. First, the Court finds it pertinent to recall that Article 7 of the American Convention protects against illegal or arbitrary interference with physical liberty.[612] Even when a detention is made for identification purposes or to ensure public safety and order, it must comply with all the guarantees of Article 7 of the Convention.[613]

405. Regarding the situation of Mr. Quijano, the Court notes that the State has argued that he was retained under articles 23 and 28 of the Constitution in force at that time, which permitted administrative retention by authorities of the Executive Branch without judicial control to ensure national security.[614] The State also referred to a series of norms of the National Police Code that allegedly permitted the retention of Mr. Quijano "for identification purposes."[615] The Court notes that the State provided information on the said legal norms for the first time in its brief with final arguments in which, however, it did not specify the norm that was applicable to the retention of Mr. Quijano or provide the Court with a copy.[616] Merely listing all the norms that might be applicable does not meet the requirements of Article 7 of the Convention.[617] For the Court to assess the lawfulness of a deprivation of liberty pursuant to the American Convention, the State must prove that this deprivation of liberty was carried out in accordance with the pertinent domestic law, as regards both the reasons and the procedure. Nevertheless, in addition to the fact that the State's argument was time-barred, the Court points out that none of the official documents relating to the retention of Mr. Quijano based this deprivation of liberty on the said norms of the Police Code (*infra* para. 406). The Court also notes that article 28 of the Constitution referred to by the State required an "order of the Government and prior opinion of the Ministers" and established that it was admissible in the case of "persons against whom

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612 *Cf. Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of November 21, 2007. Series C No. 170, para. 53, and *Case of Torres Millacura et al. v. Argentina. Merits, reparations and costs.* Judgment of August 26, 2011. Series C No. 229, para. para. 76.

613 Similarly, see, *Case of Torres Millacura et al. v. Argentina. Merits, reparations and costs.* Judgment of August 26, 2011. Series C No. 229, para. 76, and *Vélez Loor v. Panama. Preliminary objections, merits, reparations and costs*. Judgment of November 23, 2010. Series C No. 218, para. 116.

614 The said norms establish the following: "Article 23. No one may be subjected to interference with his person or his family, to arrest, detention or imprisonment, or to search of his home, unless it is by a written order issued by a competent authority, with the legal formalities and for a reason previously established by law. No one shall be detained, imprisoned or arrested for debts or merely civil obligations, without a court order." Article 28. Even in time of war, no one may be punished *ex-post facto,* but only in accordance with the law, order or decree in which the act has previously been prohibited and the corresponding penalty established. This provision does not prevent, even in time of peace but when there are significant reasons to fear a disturbance of public order, anyone against whom there are significant indications that he or she is jeopardizing public peace being apprehended and retained, by order of the Government and prior opinion of the Ministers." Neither of the parties nor the Commission provided a copy of these norms. However, the Court extracted the text of these norms from briefs of the Commission and the State and from the Report of the Truth Commission, which cite these norms consistently. *Cf.* Merits Report (merits file, folios 119 and 120); brief with final arguments of the State (merits file, folio 4341), and Report of the Truth Commission (evidence file, folio 38).

615 In particular, the State referred to articles 56, 66, 69, 71, 86, 87 and 95 of the National Police Code (Decree 1355 of 1970), as norms that allegedly authorized the administrative retention of Mr. Quijano, without specifying which of them had been applied in Mr. Quijano's retention.

616 The State's answering brief did not include specific arguments on the supposed lawfulness of the detention of Orlando Quijano, beyond its supposed reasonableness owing to the situation of public order at that time. In this regard, the State indicated that, in response to the violent action of an illegal armed group, some individuals could be suspected of belonging to the group that took part in the events, and that "with regard to them, and owing to the extreme nature of the situation, it cannot be claimed that no one was suspicious, nor can the word suspect be stigmatized. When people were considered to be suspicious, they were sent to the police stations or to the SIJIN to be crosschecked against the lists of persons for whom an arrest warrant had been issued, or arrangements were made with the judicial authorities" (merits file, folio 1743).

617 *Cf. Vélez Loor v. Panama. Preliminary objections, merits, reparations and costs*. Judgment of November 23, 2010. Series C No. 218, para. 116.

there are significant indications that they are jeopardizing public peace." The State has not proved any of these elements in the case of the retention of Mr. Quijano.

406. In addition, the only official documents that reveal the reasons for the detention of Mr. Quijano are a note of the 13th Brigade referring him to the Police Station, and indicating that he was retained due to a "suspicious attitude," and a release order issued by the SIJIN stating that he is released "because he has no pending matters with the civil or criminal authorities or with the police."[618] The Court underlines that the note of the 13th Brigade indicates that Mr. Quijano "was […] near the Palace of Justice in a suspicious attitude during the M-19 occupation of the building on 06-NOV-85."[619] However, it has been fully proved that Mr. Quijano was inside the Palace of Justice when the attack by the M-19 began and was evacuated on November 6, 1985[620] (*supra* paras. 142 and 373). In this regard, the 51st Criminal Court stressed in its first instance decisions on the events of this case that this note "reveals a *modus operandi* cloaked in deceptiveness, since Messrs. [ARRECHEA] OCORO and QUIJANO were rescued from within the Palace, where they were when it was occupied, so that there is no justification for said note recording that they were "*near*" the building "*in a suspicious attitude,*" [which] denotes the absence of a transparent procedure, in keeping with the reality, revealing how the members of the armed forces used unorthodox mechanisms to deal with the events."[621] The Report of the Truth Commission also concludes that this "reveals the unlawfulness of his detention, after having left the Palace."[622]

407. Furthermore, even though the State argues that Mr. Quijano was detained "for identification purposes," the Court underscores that, in his statements, Mr. Quijano indicated that when he arrived at the Casa del Florero he presented his identity documents, but the officials took them away and would not believe that they belonged to him even though Supreme Court officials had identified him and said they knew him.[623] Therefore, even in the hypothesis of a detention for identification purposes, the need for this has not been proved in this case. For all the foregoing reasons, the Court finds that Mr. Quijano's detention was unlawful.

408. The Court also recalls that Article 7(3) of the American Convention establishes that "[n]o one shall be subject to arbitrary arrest or imprisonment"; hence any restriction of liberty that is not based on a specific reason or motive may be arbitrary and, therefore, violate Article 7(3) of the Convention.[624] Although the Court has pointed out that the

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618 *Cf.* Note No. 06040-COBR13-B2-267 of the Colombian Military Forces (evidence file, folio 20169), and Release order of November 8, 1985 (evidence file, folio 20171).

619 *Cf.* Note No. 06040-COBR13-B2-267 of the Colombian Military Forces (evidence file, folio 20169).

620 In addition to the above, his name appears on official lists of persons rescued from the Palace of Justice. Report contained in the AZ found in the 13th Brigade during the judicial inspection made in June 2013 (evidence file, folios 35332 and 35373); "List of people rescued from the Palace of Justice on November 6 and 7, 1985," Annex 3 of the Report of the Special Investigative Court (evidence file, folio 30542), and lists of people rescued from the Palace of Justice found during the judicial inspection at the 13th Brigade (evidence file, folio 38122).

621 This decision also indicates that the said note "shows that they were not taken momentarily to the Brigade – as the defendant indicates […] when admitting that several individuals were taken there – but rather they remained there from one day to the next, without any type of contact with the exterior." Judgment of the 51st Criminal Court of the Bogota Circuit of April 28, 2011 (evidence file, folio 24466, 24467, 24589 and 24590). See also, Judgment of the 51st Criminal Court of the Bogota Circuit of December 15, 2011 (evidence file, folios 20903 and 20904).

622 Report of the Truth Commission (evidence file, folio 182).

623 *Cf.* Testimony of Orlando Quijano of January 8, 1986, before the 41st Itinerant Criminal Investigation Court (evidence file, folio 24126); Testimony of Orlando Quijano of June 2, 2006, before the Prosecution Service (evidence file, folio 1264); Orlando Quijano. Journal "*El derecho del Derecho.*" January to March 1986. No. 10 (evidence file, folio 15990), and Affidavit made by Orlando Quijano on November 7, 2013 (evidence file, folio 35893).

624 *Cf. Case of García Asto and Ramírez Rojas v. Peru. Preliminary objection, merits, reparations and costs.* Judgment of November 25, 2005. Series C No. 137, paras. 128 and 143, and *Case of Vélez Loor v. Panama.*

arbitrariness referred to in Article 7(3) of the Convention has its own legal content, the analysis of which is only necessary in the case of detentions that are considered lawful,[625] the Court observes that, in this case, in addition to the reasons why Mr. Quijano's detention has been declared unlawful, the circumstances of his deprivation of liberty reveal the absence of reasonable or predictable motives that would justify it. It has not been argued, and even less proved, that there was a specific and objective reason why it was suspected that Mr. Quijano had possibly taken part in the events. According to Mr. Quijano, he was classified as suspicious because "the sergeant who transferred him did not like the fact that he was not wearing a tie, although he was a lawyer" or because of an article he had written in his journal about a judgment in which the State had been convicted of human rights violations.[626]

409. Similarly, Yolanda Santodomingo Albericci and Eduardo Matson Ospino were deprived of their liberty because "it was presumed that they had participated in the taking of the Palace of Justice" (*supra* para. 138). However, the logbook of the Charry Solano Battalion,[627] where they were subsequently transferred, does not record their arrival (*supra* para. 139). According to the statements of Ms. Santodomingo Albericci, they were classified at "special" or suspects, when they exited the Palace of Justice, and they were separated from "all those who were well-dressed, […] who must work there."[628] The Court notes that the decision as to who were considered "suspicious" rested on the personal and subjective assessment of the military officers, without any specific and objective elements to justify this assessment.[629]

410. Based on the foregoing considerations, the Court concludes that the deprivation of liberty of Yolanda Santodomingo Albericci, Eduardo Matson Ospino and Orlando Quijano was not duly registered (*supra* para. 247), it was not executed in accordance with the established norms, and it was not motivated by objective and specific reasons that would have justified it; also, at the time of the events, it was denied by the State[630] (*supra* paras. 263 to 268). Consequently, the Court finds that the detention of Yolanda Santodomingo Albericci, Eduardo Matson Ospino and Orlando Quijano was unlawful and arbitrary, in violation of paragraphs 1, 2 and 3 of Article 7 of the American Convention, in relation to Article 1(1) of this instrument. Based on this conclusion, in this case the Court does not

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Preliminary objections, merits, reparations and costs. Judgment of November 23, 2010. Series C No. 218, para. 116.

625 *Cf. Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador*. *Preliminary objections, merits, reparations and costs.* Judgment of November 21, 2007. Series C No. 170, paras. 93 and 96, and *Case of J v. Peru. Preliminary objection, merits, reparations and costs.* Judgment of November 27, 2013. Series C No. 275, para. 127.

626 *Cf.* Testimony of Orlando Quijano of January 8, 1986, before the 41st Itinerant Criminal Investigation Court (evidence file, folio 24127), and Affidavit made by Orlando Quijano on November 7, 2013 (evidence file, folios 35893 to 35894).

627 *Cf.* Judgment of the 51st Criminal Circuit Court of December 15, 2011 (evidence file, folio 21092).

628 Testimony provided by Yolanda Santodomingo before the Prosecution Service on August 1, 2006 (evidence file, folios 1015 and 1016), and *Cf.* Testimony of Yolanda Santodomingo Albericci during the public hearing on the merits in this case.

629 The Court stresses that this conclusion is also supported by the statements of Orlando Arrechea who indicated that they accused him of being a guerrilla because he was from Cauca. *Cf.* Testimony of Orlando Arrechea Ocoro of July 18, 2007, before the Prosecution Service (evidence file, folio 15216).

630 In this regard, the Third Court underlined that "there was no explanation […] why, in addition to not including individuals who exited the Palace and were considered suspicious on the different official lists, their presence as detainees in the military garrisons was also concealed." *Cf.* Judgment of the Third Criminal Court of the Bogota Special Circuit of June 9, 2010 (evidence file, folio 24059). The Court also stressed the testimony of Orlando Arrechea, who indicated that he "never appeared on the list of those taken to the Casa del Florero […]; they were looking for [him] and [he] never appeared on [those] lists […]. They told [his] family members that [he] was not retained […], they always denied this; [they told them] that he was probably inside the Palace." Testimony of Orlando Arrechea Ocoro of July 18, 2007, before the Prosecution Service (evidence file, folio 15219).

consider it necessary to examine the alleged violations of the other paragraphs of Article 7 of the Convention that were alleged by the Commission and the representatives.

B.2.2) Deprivation of liberty of José Vicente Rubiano Galvis

411. The State argued that José Vicente Rubiano Galvis was deprived of his liberty by military authorities because he was found *in flagrante delicto*, infringing Decree 1056 of 1984.[631] According to the Commission, this decree was issued as a result of Decree 1038 of 1984, by which President Betancur decreed a state of emergency throughout national territory. The Court does not have precise information on the rights that were suspended under the said state of emergency or its specific conditions and scope in relation to Article 27 of the American Convention.[632]

412. Nevertheless, the Court underlines the opinion of expert witness Federico Andreu Guzmán who indicated that, at the time of the events, "under emergency legislation, the Military Forces were granted […] powers of the Judicial Police; [in other words,] the autonomous capacity to investigate offenses, conduct searches and retentions, collect evidence […] and, in most case, [these functions were carried out by] military intelligence officers, [which] led to a great deal of abuse" and "numerous human rights violations (such as arbitrary detentions, unlawful searches, and torture)."[633] In this regard, the Court finds it pertinent to recall that the possibility of granting the Armed Forces functions aimed at the restriction of the personal liberty of civilians must respond to strict criteria of due diligence and to its exceptional nature in order to safeguard the treaty-based guarantees, bearing in mind that the specific sphere of the Military Forces cannot be reconciled with the functions that pertain to the civil authorities.[634]

413. Moreover, the Court has indicated that, when arguing that a detention was made *in flagrante delicto*, the State has the burden of proof.[635] Thus, the Court observes that Mr. Rubiano Galvis was detained at a military checkpoint, during which they apparently found some weapons (a pistol and one or two revolvers) in the bus on which he was traveling[636]

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631 According to article 1 of this decree: "[a]nyone who, without the permission of the competent authority shall manufacture, store, distribute, sell, transport, provide, acquire, repair or bear personal defense weapons, ammunition or explosives, shall be detained for one to two years and these elements shall be seized." Article 2 of the decree established that the penalty for this offense would be "applied by the Brigade, Naval Force, or Airbase Commanders, in accordance with [a] procedure [established in the same norm]." The case file does not contain a copy of Decree 1056 of 1984; however, it was cited by both the Inter-American Commission in its Merits Report and the State in its final written arguments. *Cf.* Merits Report (merits file, folio 120) and brief with final arguments of the State (merits file, folios 4352 and 4353).

632 This Court has established that the suspension of guarantees is an exceptional situation, "in which it is lawful for a government to subject rights and freedoms to certain restrictive measures that, under normal circumstances, would be prohibited or more strictly controlled. This does not mean, however, that the suspension of guarantees implies a temporary suspension of the rule of law, nor does it authorize those in power to act in disregard of the principle of legality by which they are bound at all times. When guarantees are suspended, some legal restraints applicable to the acts of public authorities may differ from those in effect under normal conditions. These restraints may not be considered to be non-existent, however, nor can the government be deemed thereby to have acquired absolute powers that go beyond the circumstances justifying the granting of such exceptional legal measures." *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. 24, and *Case of J. v. Peru. Preliminary objection. Merits, reparations and costs.* Judgment of November 27, 2013. Series C No. 275, para. 137.

633 *Cf.* Testimony of Federico Andreu Guzmán during the public hearing on the merits in this case, and written summary of his expert opinion (evidence file, folio 36356).

634 *Cf. Case of Cabrera García and Montiel Flores v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of November 26, 2010. Series C No. 220, para. 89.

635 *Cf. Case of Gangaram Panday v. Suriname. Merits, reparations and costs.* Judgment of January 21, 1994. Series C No. 16, paras. 50 and 51, and *Case of Osorio Rivera and family members v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of November 26, 2013. Series C No. 274, para. 118.

636 Notwithstanding the foregoing, the file contains an operations report establishing that, during that month, the

(*supra* paras. 395). Mr. Rubiano Galvis has insisted that, if weapons were found, they did not belong to him, while the State argues the contrary. However, the Court notes that Colombia has not provided any proof of the seizure or any other document recording the offense of *in flagrante delicto* that it alleges. The only official document provided that reveals the reason for this detention is a certification issued by the Judge Advocate at the request of the victim, which indicates that "Jose Vicente Rubiano Galvis was retained from November 7 to 23, 1985, for presumed infringement of Decree 1056 of 1984, [at which time] this command […] exonerated him of any responsibility."[637] The Court emphasizes that, apart from this certification, there is no other evidence of Mr. Rubiano's detention in the case file, even though Decree 1056 of 1984 established a specific procedure that included the holding of a hearing,[638] and Mr. Rubiano Galvis has testified on numerous occasions that he was brought before a military criminal investigation judge.[639] This reveals that documents could exist that prove that the procedure established in the said norm were followed. The Court also underlines that, according to the evidence in the case file, in 2007, the Prosecution Service ordered certified copies of the case file in order to investigate what happened to José Vicente Rubiano (*supra* para. 202); however, this Court has not been provided with further supporting documentation or information regarding his detention. The Court stresses that this is evidence in the hands of the State, which should have provided it to the Court, especially since the State is arguing that this detention was lawful[640] (*supra* para. 372). Therefore, the Court considers that the State has not proved the lawfulness of the detention of José Vicente Rubiano Galvis.

Infantry School Battalion conducted several searches including the following: "Operations and their results […] A. Infantry School Battalion […] 12. On 071800-NOV-85, searches were conducted in the municipality of Zipaquirá, during which the following offenders were detained: José Ignacio Ramírez Reyes, Orlando Fonseca Operador, José Vicente Rubiano Galvis, José Abel Vega Díaz, Nicolás Buitrago." However, the 51st Criminal Court of the Bogota Judicial Circuit established that this report is false, insofar as the said persons were not detained during a search, but rather at a military checkpoint. *Cf.* Military Forces of Colombia, Periodic Operations Report No. 11-BRI13-85 of November 27, 1985 (evidence file, folio 20413); Judgment of the 51st Criminal Court of the Bogota Circuit of April 28, 2011 (evidence file, folio 24477), and Judgment of the 51st Criminal Court of the Bogota Circuit of December 15, 2011 (evidence file, folio 20919). See also, Testimony of Angela María Buitrago provided during the hearing on merits held in this case.

637 National Army, certification of February 19, 1986 (evidence file, folio 24151).

638 According to the said Decree 1056, the procedure was as follows: "the defense of the offender shall be heard within 24 hours of the facts becoming known, a procedure for which he shall be assisted by legal counsel. The day after this procedure, a five-day period shall commence during which any evidence requested by the offender or his legal counsel or ordered by the respective investigating official appointed for this purpose shall be obtained. If, in the 48 hours after the facts have become known, it has not been possible to hear the defense of the offender in the respective procedure, he shall be summoned by an order that shall be posted for two days in the office of the Adjunct of the Commander of the respective Brigade, Naval Force or Air Force Base as pertinent." "Article 3. When the said periods have expired, the corresponding reasoned decision shall be issued, which shall include: the identification of the offender, the act he is accused of, and the punishment to be imposed if he is declared responsible; if he is acquitted, he shall be released immediately." The file does not contain a copy of Decree 1056 of 1984. However, it was cited by both the Inter-American Commission in its Merits Report, and by the State in its final written arguments. *Cf.* Merits Report (merits file, folio 120), and brief with final written arguments of the State (merits file, folios 4352 and 4353).

639 According to his statements, when he was in the Model Prison he was brought before a military judge, to whom he "told […] everything that had been done to [them]; [the judge] did not say anything; [they] talked to the judge and the secretary wrote." *Cf.* Affidavit made on November 5, 2013, by José Vicente Rubiano Galvis (evidence file, folios 35621 and 35622). In his 2009 statement he also indicated that when he was detained in the Model Prison a hearing was held before a military judge. *Cf.* Testimony of José Vicente Rubiano Galvis of June 2, 2009, before the 51st Criminal Court of the Bogota Circuit (evidence file, folios 14657, 14674 and 14675).

640 In its final arguments with regard to what happed to José Vicente Rubiano Galvis, the State supported its position extensively on the dissenting opinion in relation to the judgment of the Superior Court of Bogota. In this regard, the Court notes that, in addition to the elements mentioned above, this dissenting opinion refers to an observation in the Logbook of the "Duty Officer" of the 13th Brigade indicating that "on November 7, 1985, at 6.30 p.m. five detainees [entered]," including José Vicente Rubiano Galvis, and that these persons were brought before the Brigade Commander on November 7, 1985. *Cf.* Dissenting opinion of Judge Hermens Darío Lara Acuña in the judgment of the Superior Court of Bogota of January 30, 2012 (evidence file, folio 23720).

414. The Court also notes that, even if the alleged situation of *in flagrante delicto* is accepted, the connection between this situation (which presumably consisted in the illegal transportation of weapons in a bus) and the accusation constantly made against Mr. Rubiano Galvis during the interrogations to which he was subjected (according to which he was a member of, or had collaborated with, the M-19 to introduce the weapons into the Palace of Justice) is unclear (*supra* paras. 382 and 395).

415. In addition, the Court underlines that Mr. Rubiano was not allowed to communicate with his family until eight days after his detention. His wife, Lucía Garzón Restrepo, testified that the day of his detention she went to the North Canton to ask for him; initially they denied that he was there, and the following day they told her that she could not see him.[641] According to Ms. Restrepo and Mr. Rubiano Galvis they were only able to see each other eight days after his detention, following his transfer to the Bogota Model Prison.[642]

416. The Court observes that, in this case, Mr. Rubiano Galvis was detained without a court order, presumably *in flagrante delicto*; however, the State has not provided any evidence in this regard. During his detention he was accused of acts that had no clear or logical connection with the offense he was supposed to have committed; he was kept incommunicado for several days; initially his family was denied information on his detention and whereabouts, and there is no proof that his detention was recorded in the different State facilities to which he was transferred (the Zipaquirá military checkpoint, the Zipaquirá station, and the Cavalry School).[643] Consequently, the Court concludes, based on all the foregoing, that the detention of Mr. Rubiano Galvis was unlawful, in violation of paragraphs 1 and 2 of Article 7 of the American Convention, in relation to Article 1(1) of this instrument. In view of this conclusion, the Court does not find it necessary, in this case, to examine the alleged violations of the other paragraphs of Article 7 of the Convention that were indicated by the Commission and the representatives.

B.3) Prohibition of torture and other forms of cruel, inhuman or degrading treatment

417. Article 5(1) of the Convention recognizes, in general terms, the right to physical, mental and moral integrity. Meanwhile, Article 5(2) establishes, specifically, the absolute prohibition to subject anyone to torture or to cruel, inhuman or degrading treatment or punishment, as well as the right of all persons deprived of liberty to be treated with respect for the inherent dignity of the human person.[644] The Court understands that any violation of Article 5(2) of the American Convention necessarily entails the violation of Article 5(1) of this instrument.[645]

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641 *Cf.* Affidavit made on November 5, 2013, by Lucía Garzón Restrepo (evidence file, folio 35661) and brief of Lucía Garzón Restrepo of November 22, 1985, addressed to the Head of Personnel of the Public Works Secretariat (file of evidence, folio 24144). See also, decision of the Prosecution Service of July 12, 2007 (evidence file, folios 20398 and 20399).

642 *Cf.* Affidavit made on November 5, 2013, by Lucía Garzón Restrepo (evidence file, folio 35661) and Affidavit made on November 5, 2013, by José Vicente Rubiano Galvis (evidence file, folio 35622).

643 Mr. Rubiano Galvis stated that they "were not included on any list in any battalion, and no one asked [their] names or anything; it was in Puente Aranda where [their] personal data was recorded." *Cf.* Affidavit made on November 5, 2013, by José Vicente Rubiano Galvis (evidence file, folio 35622).

644 *Cf. Case of Yvon Neptune v. Haiti. Merits, reparations and costs*. Judgment of May 6, 2008. Series C No. 180, para. 129, and *Case of J. v. Peru. Preliminary objection, merits, reparations and costs.* Judgment of November 27, 2013. Series C No. 275, para. 303.

645 *Cf. Case of Case of Yvon Neptune v. Haiti. Merits, reparations and costs*. Judgment of May 6, 2008. Series C No. 180, para. 129, and *Case of J. v. Peru. Preliminary objection, merits, reparations and costs.* Judgment of November 27, 2013. Series C No. 275, para. 304.

418. The Court has established that torture and cruel, inhuman or degrading treatment or punishment are strictly prohibited by international human rights law.[646] The prohibition of torture and cruel, inhuman or degrading treatment or punishment is absolute and non-derogable, even under the most difficult circumstances, such as war, threat of war, the fight against terrorism and any other crimes, states of emergency, civil unrest or internal conflict, suspension of constitutional guarantees, internal political instability, or other public emergencies or catastrophes.[647]

419. The Court has indicated that any use of force that is not strictly necessary owing to the conduct of the person detained constitutes an attack on human dignity that violates Article 5 of the American Convention.[648] In this case, the State has not proved that the force used by the State authorities during the detention of Yolanda Santodomingo Albericci, Eduardo Matson Ospino, Orlando Quijano and José Vicente Rubiano Galvis was necessary. The Court must therefore decide whether the facts constitute torture or cruel, inhuman or degrading treatment.

420. In order to define what should be understood as "torture" in light of Article 5(2) of the American Convention, the Court's case law has indicated that an act that constitutes torture is committed when the ill-treatment: (a) is intentional; (b) causes severe physical or mental suffering, and (c) is perpetrated for a purpose or objective.[649] It has also been recognized that the threat and real danger of a person being subjected to physical harm produces, in certain circumstances, a moral anguish of such intensity that it can be considered psychological torture.[650]

421. The Court has asserted that the individual's right to physical and mental integrity can be violated at different levels ranging from torture to other types of abuse or cruel, inhuman or degrading treatment the physical and mental aftereffects of which vary in intensity according to factors that are endogenous and exogenous to the person (such as duration of the treatment, age, sex, health, context, vulnerability) which must be analyzed in each specific situation.[651]

422. In this case, it has been proved that: (i) Yolanda Santodomingo Albericci and Eduardo Matson Ospino survived the events of the taking and retaking of the Palace of Justice, following which they were considered "suspicious"; (ii) they left the Palace of Justice in the custody of the security forces, who were "pointing a revolver or a pistol at them," they were told "run, you son of a bitch, run so that we can shoot you, there are snipers around who are going to kill you"; (iii) when they arrived at the Casa del Florero they were taken to the

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646 *Cf. Case of Cantoral Benavides v. Peru. Merits.* Judgment of August 18, 2000. Series C No. 69, para. 95, and *Case of J. v. Peru. Preliminary objection, merits, reparations and costs.* Judgment of November 27, 2013. Series C No. 275, para. 304.

647 *Cf. Case of Lori Berenson Mejía v. Peru. Merits, reparations and costs*. Judgment of November 25, 2004. Series C No. 119, para. 100, and *Case of J. v. Peru. Preliminary objection, merits, reparations and costs.* Judgment of November 27, 2013. Series C No. 275, para. 304.

648 *Cf. Case of Loayza Tamayo v. Peru. Merits.* Judgment of September 17, 1997. Series C No. 33, para. 57, and *Case of J. v. Peru. Preliminary objection, merits, reparations and costs.* Judgment of November 27, 2013. Series C No. 275, para. 363.

649 *Cf. Case of Bueno Alves v. Argentina. Merits, reparations and costs.* Judgment of May 11, 2007. Series C No. 164, para. 79, and *Case of J. v. Peru. Preliminary objection, merits, reparations and costs.* Judgment of November 27, 2013. Series C No. 275, para. 364.

650 *Cf. Case of Cantoral Benavides v. Peru. Merits.* Judgment of August 18, 2000. Series C No. 69, para. 102, and *Case of J. v. Peru. Preliminary objection, merits, reparations and costs.* Judgment of November 27, 2013. Series C No. 275, para. 364.

651 *Cf. Case of Loayza Tamayo v. Peru. Merits.* Judgment of September 17, 1997. Series C No. 33, paras. 57 and 58, and *Case of Norín Catrimán et al. ("Leaders, members and activist of the Mapuche Indigenous People") v. Chile. Merits, reparations and costs.* Judgment of May 29, 2014. Series C No. 279, para. 388.

second floor where they were subjected to long interrogations during which they were kicked while being pressured to "confess" their connections to the M-19, and they tried to explain that they were merely students;[652] (iv) then, from the Casa del Florero they were transferred to the DIJIN where they were subjected to the "gauntlet" test on their hands with very hot paraffin wax (*supra* para. 139); (v) they were then transferred to the Charry Solano Battalion and, on the way there, they were threatened and harassed;[653] (v) on arrival at the Charry Solano Battalion they were blindfolded, the agents introduced a gas or smoke "like eucalyptus" into the truck that made them feel that they were suffocating, and then they were made to turn round and round in circles to disorient them; (vi) on getting out of the truck they were separated, Eduardo Matson Ospino was made to carry "a very thick and heavy piece of wood," and they were made to cross over what they both heard as a stream or creek, into which the agents threatened "to throw" them, and (vii) lastly, at the Charry Solano Battalion they were placed in different rooms, where they were handcuffed to beds and again subjected to interrogations and physical and psychological abuse, such as death threats.[654]

423. The Court also recalls that it has considered proved that Orlando Quijano and José Vicente Rubiano were subjected to a series of acts of abuse by State authorities. Specifically, it has concluded that Orlando Quijano was taken to the second floor of the Casa del Florero, obliged to remain standing with this hands on his head for several hours,

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652 *Cf.* Testimony of Eduardo Matson Ospino of April 10, 2006, before the Prosecution Service (evidence file, folios 1214 and 1215); Testimony of Eduardo Matson Ospino of April 11, 1086, before the 77th Criminal Investigation Court of Bogota (evidence file, folios 30785 to 30787); Affidavit made on November 5, 2013, by Eduardo Matson Ospino (evidence file, folio 35717); Testimony provided by Yolanda Santodomingo before the Prosecution Service on August 1, 2006 (evidence file, folios 1016 to 1018); Testimony of Yolanda Santodomingo of December 2, 1985, before the Attorney General's office (evidence file, folios 14552 and 14553); Testimony of Yolanda Santodomingo of February 7, 1986, before the 41st Criminal Investigation Court of Bogota (evidence file, folios 14969 to 14973), and Testimony of Yolanda Santodomingo Albericci during the public hearing on the merits in this case.

653 Regarding the transfer to the Charry Solano Battalion, Yolanda Santodomingo Albericci stated that: "Eduardo was made to lie down on the seat and I was made to lie down on the floor of the truck, they put my hands behind me, they tied my hands, I don't know if they did the same to Eduardo, I know that Eduardo began to cry and I began to protest to stop someone who was sitting behind me from cutting my hair. I don't know how long this lasted [and] they took Eduardo away […] they told me that they had taken him away to kill him and then again returned to the same questions and the same interrogation as at the Casa del Florero." *Cf.* Testimony provided by Yolanda Santodomingo before the Prosecution Service on August 1, 2006 (evidence file, folio 1022).

654 Yolanda Santodomingo Albericci has testified that she got out of the truck blindfolded and handcuffed. She indicated that, on the way, they told her that they were going to kill her and throw her in the creek. Then, they put her in a room, they made her lie down and they handcuffed her to a bed with her arms outstretched. She indicated that, then, the interrogation started again and, during this, one of the individuals who was questioning her said "Eduardo has already confessed, there is nothing you can do, he has already told the truth," and then they said that they had already killed Eduardo. *Cf.* Testimony provided by Yolanda Santodomingo before the Prosecution Service on August 1, 2006 (evidence file, folio 1022). Similarly, during the hearing on the merits before this Court, Yolanda Santodomingo Albericci stated that: "after they had done whatever they wanted with me there, they took me out, they transferred me, and they put me in a room. On the way to the room, a stream could be heard, because water was flowing, they told me that when they had killed me that were going to throw my naked body there; I heard screams; they told me that if I did not collaborate that was what was going to happen to me, the person screaming was not collaborating, they put me in a room, they handcuffed me to a bed; […] they told me that Eduardo was dead, that we should give in, that I had participated in the taking of the Embassy […]; about an hour later someone came in and said, Yolanda, we are going to release you, remember that you were retained, you were not detained, tomorrow you will be transferred to the North Canton […]. They took us from there and they made us get into a four-wheel drive vehicle […] and they took us to the 10th." *Cf.* Testimony of Yolanda Santodomingo during the public hearing on the merits in this case. Eduardo Matson Ospino stated that when they made him get out of the truck he was blindfolded, they handcuffed him and they made him carry a meter-long log. He stated that he thought that they were going to push him off into space. Then he was taken to a room where they sat him on a bed and handcuffed him to it. *Cf.* Testimony of Eduardo Matson Ospino of April 10, 2006, before the Prosecution Service (evidence file, folio 1215), and Affidavit made on November 5, 2013, by Eduardo Matson Ospino (evidence file, folio 35717). See also, Judgment of the Third Criminal Court of the Bogota Special Circuit of June 9, 2010 (evidence file, folio 23955); Report of the Truth Commission (evidence file, folios 179 and 180), and documentary entitled "*La Toma,"* directed by Angus Gibson and Miguel Salazar, 2011 (evidence file, folio 3552).

subjected to numerous interrogations during which he was pressured to "confess" supposed links to the M-19; then transferred to a military garrison where he was kept for several hours and again interrogated (*supra* para. 395). Regarding José Vicente Rubiano Galvis, the Court concluded that he was detained by military authorities, taken to two different military facilities (in Zipaquirá and in Bogota) where he was beaten and electric shocks were applied to his abdomen and testicles, while he was interrogated seeking to make him "confess" to supposed links with the M-19, and then he was confined in the stables until the following day (*supra* para. 395).

424. Taking into account all the circumstances of this case, the Court considers that the ill-treatment inflicted on Yolanda Santodomingo Albericci, Eduardo Matson Ospino and José Vicente Rubiano Galvis constituted intentional ill-treatment that entailed severe suffering, the purpose of which, as revealed by their numerous statements, was that "they confess" supposed links to or collaboration with the M-19. Consequently, the Court concludes that the ill-treatment to which Yolanda Santodomingo Albericci, Eduardo Matson Ospino and José Vicente Rubiano Galvis were subjected constituted torture, in the terms of Article 5(1) and 5(2) of the American Convention, in relation to Article 1(1) of this instrument.

425. In addition, the Court underlines that it has considered it proved that José Vicente Rubiano Galvis was subjected to electric shocks on his genitals. The Court has considered that sexual violence is constituted by acts of a sexual nature committed on a person without their consent; in addition to the physical invasion of the human body, this may include acts that do not involve penetration or even any physical contact.[655] The Court considers that this act entailed an invasion of the privacy of Mr. Rubiano Galvis that, since it involved his genital area, meant that it was of a sexual nature, so that it constituted an act of sexual violence. The Court stresses that sexual violence by a State agent against a person deprived of liberty in the custody of the State is a grave and reprehensible act, taking into account the victim's vulnerability and the abuse of power by the agent.[656] This act is physically and emotionally denigrating and humiliating and can have severe psychological consequences for the victim. In this case, neither the Commission nor the representatives argued a violation of Article 11 of the Convention based on these acts. However, the Court recalls that it has competence – under the American Convention and based on the *iura novit curia* principle – to examine the possible violation of norms of the Convention that have not been alleged in the briefs it has received, in the understanding that the parties have had the opportunity to express their respective positions in relation to the facts that substantiate this.[657] The Court has stipulated that Article 11 of the American Convention includes the protection of privacy, and among other protected spheres, this includes a person's sexual life.[658] Therefore, the Court considers that the sexual violence suffered by José Vicente Rubiano Galvis also entailed a violation of Article 11(1) and 11(2) of the Convention, in relation to Article 1(1) of this instrument, to his detriment.

426. Furthermore, the Court notes that the psychological appraisal conducted on Ms. Santodomingo Albericci reveals that she could have been subjected to sexual violence,

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655 *Cf. Case of the Miguel Castro Castro Prison v. Peru. Merits, reparations and costs*. Judgment of November 25, 2006. Series C No. 160, para. 306, and *Case of J. v. Peru. Preliminary objection, merits, reparations and costs.* Judgment of November 27, 2013. Series C No. 275, para. 358.

656 *Cf. Case of J. v. Peru. Preliminary objection, merits, reparations and costs.* Judgment of November 27, 2013. Series C No. 275, para. 361.

657 *Cf. Case of Velásquez Rodríguez v. Honduras. Merits.* Judgment of July 29, 1988. Series C No. 4, para. 163, and *Case of Expelled Dominicans and Haitians v. Dominican Republic. Preliminary objections, merits, reparations and costs*. Judgment of August 28, 2014. Series C No. 282, para. 305.

658 *Cf. Case of Fernández Ortega et al. v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of August 30, 2010. Series C No. 215, para. 129, and *Case of J. v. Peru. Preliminary objection, merits, reparations and costs.* Judgment of November 27, 2013. Series C No. 275, para. 276.

while, in one statement, Eduardo Matson Ospino indicated that he had been struck on his testicles.[659] The Court does not have sufficient evidence to rule on this; however it deems it pertinent that the State investigate these presumed facts in the context of its obligation to investigate (*infra* para. 558).

427. The Court also considers that some of the acts to which Yolanda Santodomingo Albericci was subjected constituted forms of violence against women.[660] Thus it underscores that Ms. Santodomingo has testified consistently that, in the truck on the way to the Charry Solano Battalion, she "protested so that they would not cut her hair"; they separated her from Mr. Matson Ospino; blindfolded and disoriented "they told [her] that they were going to throw her into the waterfall naked," and several men put her in a room alone and still blindfolded, "they laid [her] down, they handcuffed her to a bed, with her arms outstretched," they sat beside her and continued to interrogate her, harassing and threatening her to make her incriminate herself, and at one moment one of the officials exclaimed "and, to cap it all, pregnant."[661] The Court stresses the special situation of vulnerability in which Ms. Santodomingo Albericci was placed, handcuffed to a bed and surrounded by men, presumably armed, without being able to see what was happening because she was blindfolded. Thus, Ms. Santodomingo stated: "[w]hen one is handcuffed in a room with five individuals, the outlook is not good at all," she "felt helpless, handcuffed to a bed and with five men next to her."[662] The Court also considers that the threat to cut her hair, as well as the expression of scorn about a possible pregnancy denote actions against Ms. Santodomingo Albericci because she is a woman. The coerced cutting of the hair, or its threat, signified a change in a person's appearance without their consent, so that, depending on the circumstances of the case, it may constitute treatment that is contrary to Article 5(2) of the Convention,[663] but also, in the specific case of women, it usually has connotations and implications relating to their femininity, as well as an impact on their self-

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659 Eduardo Matson Ospino described how he was struck on the testicles with the butt of a rifle in one of his statements; however, he did not mention this fact in his other statements. *Cf.* Testimony of Eduardo Matson Ospino of April 11, 1986, before the 77th Criminal Investigation Court Bogota (evidence file, folio 30785). Yolanda Santodomingo Albericci also testified on one occasion that Eduardo had been struck on the testicles. *Cf.* Testimony of Yolanda Santodomingo of December 2, 1985, before the Attorney General's office (evidence file, folio 14553).

660 The Committee for the Elimination of Discrimination against Women defines gender-based violence against women as "violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty." General recommendation No. 19, *Violence against women,* eleventh session, 1992, para. 6. In addition, article 1 of the Declaration on the Elimination of Discrimination against Women defines this as "any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life," General Assembly resolution 48/104 of 20 December 1993. Available at: http://www.un.org/documents/ga/res/48/a48r104.htm

661 *Cf.* Testimony provided by Yolanda Santodomingo before the Prosecution Service on August 1, 2006 (evidence file, folio 1022); Testimony of Yolanda Santodomingo of December 2, 1985, before the Attorney General's office (evidence file, folio 14554); Testimony of Yolanda Santodomingo of February 7, 1986, before the 41st Criminal Investigation Court of Bogota (evidence file, folio 14972), and Testimony of Yolanda Santodomingo during the public hearing on the merits in this case.

662 *Cf.* Testimony of Yolanda Santodomingo Albericci of August 1, 2006, before the Prosecution Service (evidence file, folio 1022), and Expert appraisal by Ana Deutsch of Yolanda Santodomingo (evidence file, folio 35988).

663 In this regard, the European Court has indicated that "[t]he forced shaving off of a prisoner's hair, […] consists in a forced change of the person's appearance by the removal of his hair. The person undergoing that treatment is very likely to experience a feeling of inferiority as his physical appearance is changed against his will. […] The Court thus considers that the forced shaving off of detainees' hair is in principle an act which may have the effect of diminishing their human dignity or may arouse in them feelings of inferiority capable of humiliating and debasing them. Whether or not the minimum threshold of severity is reached and, consequently, whether or not the treatment complained of constitutes degrading treatment contrary to Article 3 of the Convention will depend on the particular facts of the case, including the victim's personal circumstances, the context in which the impugned act was carried out and its aim." *Cf.* ECHR, *Case of Yankov v. Bulgaria,* No. 39084/97. Judgment of 11 December 2003, paras. 112 and 114.

esteem.[664] Therefore, the Court considers that some of the ill-treatment to which Yolanda Santodomingo Albericci was subjected was aggravated owing to her condition as a woman and was gender-based. Consequently, it finds that these acts constituted violence against women.

428. The Court considers that, although it had the same purpose of making him "confess" supposed links to the M-19, the ill-treatment inflicted on Orlando Quijano caused less intense suffering. To reach this conclusion, the Court has taken note of the testimony of Mr. Quijano himself according to which "there was no torture, but rather degrading treatment because any investigation should be based on respect and human dignity."[665] Accordingly, the Court concludes that the ill-treatment suffered by Mr. Quijano constituted cruel and degrading treatment, in violation of Article 5(1) and 5(2) of the Convention, in relation to Article 1(1) of this instrument.

XI
RIGHTS TO JUDICIAL GUARANTEES AND TO JUDICIAL PROTECTION IN RELATION TO THE OBLIGATION TO RESPECT AND TO ENSURE RIGHTS

429. In this chapter, the Court will summarize the arguments of the parties and of the Inter-American Commission, and will then rule on the alleged violations of Articles 8(1)[666] and 25(1)[667] of the American Convention, in relation to Article 1(1) of this instrument, Articles I(b) and XI of the Inter-American Convention on Forced Disappearance and Articles 1,[668] 6[669] and 8[670] of the Inter-American Convention against Torture.

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[664] Thus, Ms. Santodomingo Albericci has testified consistently that she "protested" so that they would not cut her hair because her "mother had not let [her] grow her hair," and she told the expert witness psychologist that she "found this very traumatic." *Cf.* Expert appraisal by Ana Deutsch of Yolanda Santodomingo (evidence file, folio 35988).

[665] *Cf.* Testimony of Orlando Quijano of June 2, 2006, before the Prosecution Service (evidence file, folio 1267). Similarly, in his 1986 statement, he indicated that, in his case "during the time [he] was at the Casa del Florero [he] was insulted, sworn at, pushed around, and made to stand with his hands on his head, but after that there was no type of coercion; the treatment was normal, [he] was not struck or insulted or threatened; in other words, the treatment was fairly decent." *Cf.* Testimony of Orlando Quijano of January 8, 1986, before the 41st Itinerant Criminal Investigation Court (evidence file, folio 24132).

[666] Article 8(1) of the Convention establishes that: "[e]very person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature."

[667] Article 25(1) of the Convention establishes that: "[e]veryone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties."

[668] Article 1 of the Inter-American Convention against Torture establishes that: "[t]he State Parties undertake to prevent and punish torture in accordance with the terms of this Convention."

[669] Article 6 of the Inter-American Convention against Torture establishes that: "[i]n 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."

[670] Article 8 of the Inter-American Convention against Torture establishes that: "[t]he 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 will proceed properly and immediately to conduct an investigation into the case and to initiate, whenever appropriate, the corresponding criminal proceedings. After all the domestic legal procedures of the respective State and the corresponding appeals have been exhausted, the case may be submitted to the international fora whose competence has been recognized by that State."

A. Arguments of the parties and of the Commission

430. The Commission considered it proved that, in this case, "irregularities occurred with regard to: (i) the movement of some corpses from the place where they were originally, and the imprecision of the death certificates as regards the time, place and manner of death; (ii) the lack of rigor in the inspection and preservation of the crime scene by the security forces; (iii) the inappropriate handling of the evidence collected, and (iv) the methods used were not appropriate to preserve the chain of custody." It also underscored that some corpses were carefully washed, contrary to the procedures used at that time to identify and remove corpses. According to the Commission, the inappropriate handling of the bodies by the security forces constituted a "deliberate obstruction aimed at concealing what had happened." Regarding the criminal proceedings, it argued that "the military criminal system was not the appropriate jurisdiction to investigate acts such as those committed in this case." It also considered that "there is proof which indicates that, at that stage, essential evidence about the individuals who left the Palace of Justice alive was destroyed." It also argued that "preclusion based on prescription is not applicable if the acts on which the case is based are among the acts that are not subject to the statute of limitations […] regulated in the corresponding international treaties." Furthermore, it stressed that, "despite the existence in the case file of evidence that would tend to prove the obstruction of justice by the military judge who ordered the burial of the unidentified corpses, the latter has not been tried." In addition, the Commission underscored that "the ordinary justice system failed to open investigations, *ex officio*, even though it was aware of the reports of forced disappearance and of torture." It argued that, "rather than an omission, in this case the lack of investigation constituted an additional concealment mechanism." According to the Commission, "more than 25 years have passed since the events of the Palace of Justice, without effective steps having been taken to reach a final decision in the pending proceedings and without measures having been taken to try the perpetrators, the other masterminds, and their possible accomplices in the perpetration of the facts."

431. The representatives argued that the State "has incurred in numerous violations of its obligation to investigate the events and punish all those who are guilty." They pointed out that those violations "had serious consequences that obstructed and impeded the appropriate investigation of the facts denounced." In particular, they underlined "the illegitimate intervention of the military authorities on the scene of the events," and also the fact that "jurisdiction was accorded to the military courts." Regarding the proceedings in the ordinary jurisdiction, the representatives argued that the State was responsible for: (i) "concealment of the facts and irregularities in the initial moments of the investigation"; (ii) "failure to conduct an investigation *ex officio* and unjustified delay"; (iii) threatening victims"; (iv) "failure to enforce the punishments effectively." Regarding Justice Urán Rojas, "no investigation of any kind was conducted in order to clarify the reasons for his death" at the time of the events, and "[i]t was only in 2007 that the investigation was re-opened." They also stressed that no investigations were even opened into the death of Ana Rosa Castiblanco Torres and the torture of Orlando Quijano. In addition, the representatives argued that the victims "suffered harassment and numerous attacks in their search for the truth and justice." They underlined that "at the present time, 11 of the 12 victims remain disappeared" and, apart from the judicial proceedings, the State is not taking steps to discover the whereabouts of the persons disappeared. Lastly, they argued that "the State has accorded special prison privileges to the accused because they are members of the Armed Forces, which would result in a situation of impunity." Based on the foregoing, they asked the Court to conclude that the State had violated Articles 8(1) and 25 of the Convention, in relation to Article 1(1) of this instrument,[671] as well as Articles I(b) and III of

[671] In their claims, and in the titles of the corresponding sections of their motions and arguments brief, the

the Inter-American Convention on Forced Disappearance and Articles 1, 6 and 8 of the Inter-American Convention against Torture.

432. The State made a partial acknowledgement of responsibility with regard to these violations. In particular, the State acknowledged: (i) the prolonged delay in the investigations, including those aimed at the identification of the mortal remains of Ana Rosa Castiblanco, the determination of the circumstances in which Carlos Horacio Urán's death occurred, and the fate of the other presumed victims; (ii) errors in the conduct of the investigations with regard to the handling of the corpses, the lack of rigor in the inspection and preservation of the scene of the events, the inappropriate handling of the evidence collected, and the errors in the chain of custody of the evidence. However, regarding the intervention of the military jurisdiction, the State argued that this is not prohibited by international law and "the examination of the facts was not entrusted exclusively to this type of judicial authority." Colombia argued that "the presumed partiality and absence of independence of the authorities of the military criminal justice system in some of the cases decided [has not been proved] or the presumed infringements of the standards in force at the time concerning the cases that should be heard by ordinary justice and those that should be heard by military justice." It emphasized that, at the present time, the Prosecutor General's Office is responsible for the investigations into possible human rights violations related to the events of the Palace of Justice, and the trial stage is being conducted in the ordinary jurisdiction. The State also argued that, even when the evidence reveals errors in the handling of the corpses and the evidence at the scene of the events, this is not sufficient "to assert that this corresponded to deliberate actions that can be attributed to State agents." According to the State, "in the conditions encountered in the Palace of Justice, and in the absence of clear standards at the time," certain actions or instructions of military personnel "do not appear completely unreasonable." It indicated that, "at the time of the events, there were no protocols for dealing with massive disasters, especially from the perspective of criminal investigation techniques." Furthermore, it stressed that the military criminal judges "were not the only authorities present in the Palace." Regarding the confinement in military facilities of some members of the security forces, the State argued that this "was chosen based on rational and objective considerations that relate to the protection of their life and personal integrity, and that, in any case, Colombian laws contain mechanisms to contest the decisions taken in this regard."

B. Considerations of the Court

433. In this case, proceedings have been instituted in the military criminal jurisdiction, four proceedings in the ordinary criminal jurisdiction, disciplinary proceedings before the offices of the Special Attorneys assigned to the Military Forces and to the National Police, and also several contentious-administrative proceedings. As a result of the proceedings in the ordinary criminal jurisdiction, two retired members of the Army have been convicted as presumed indirect authors. One of them was convicted of the forced disappearance of two presumed victims and the other for the forced disappearance of five presumed victims. Nevertheless, none of these judgments is final, because decisions are pending on the respective appeals for cassation. Furthermore, three members of the Army were acquitted of these disappearances in a first instance judgment that is pending an appeal, and criminal proceedings underway against several perpetrators are pending a first instance judgment.

434. In this regard, the Court recalls that, in this case, there is no dispute as regards the State's international responsibility for failure to comply with the guarantee of a reasonable

representatives related the alleged violations of Articles 8 and 25 of the Convention to Article 2 of this instrument, as well as to Articles I(a) and XI of the Inter-American Convention on Forced Disappearance. Insofar as there are no allegations of a possible violation of Article 2 (Domestic Legal Effects), or the relationship of the investigations to the said articles of the Inter-American Convention on Forced Disappearance, the Court will not refer to an alleged violation in this regard.

time and of the obligation of due diligence in relation to: (i) the handling of the corpses; (ii) the lack of rigor in the inspection and preservation of the scene of the events; (iii) the inappropriate handling of the evidence collected, and (iv) the inappropriate methods used to preserve the chain of custody (*supra* para. 21.c). However, the dispute persists concerning the other situations that the Commission and the representatives allege have violated Articles 8 and 25 of the American Convention.

435. The Court recalls that, based on the protection granted by Articles 8 and 25 of the Convention, States are obliged to provide effective judicial remedies to the victims of human rights violations, which must be made available in accordance with the rules of due process of law.[672] The Court has also indicated that the right of access to justice must ensure, within a reasonable time, the right of the presumed victims or their next of kin that everything necessary is done to discover the truth of what happened and to investigate, prosecute and duly punish those eventually found responsible.[673]

436. The obligation to investigate human rights violations is one of the positive measures that States must take to ensure the rights recognized in the Convention.[674] Thus, starting with its first judgment, this Court has stressed the importance of the State's duty to investigate and punish violations of human rights,[675] and this is particularly important in view of the severity of the offenses committed and the nature of the rights harmed.[676]

437. Furthermore, the obligation to investigate, prosecute, and punish, as appropriate, those responsible for acts that violate human rights is not derived solely from the American Convention; in certain circumstances and depending on the nature of the acts, it also arises from other inter-American instruments that establish the obligation of the States parties to investigate the conducts prohibited by those treaties. In relation to the events of this case, the obligation to investigate is reinforced by the Inter-American Convention on Forced Disappearance and the Inter-American Convention against Torture.[677] The provisions of these treaties stipulate and supplement the State's obligations as regards respecting and ensuring the rights recognized in the American Convention, and also "the international *corpus juris* concerning the protection of personal integrity."[678]

438. The Court notes that these specific State obligations derived from the said specialized conventions may be required of the State as of the date on which it deposited the

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672 *Cf. Case of Velásquez Rodríguez v. Honduras*. *Preliminary objections*. Judgment of June 26, 1987. Series C No. 1, para. 91, and *Case of the Human Rights Defender et al. v. Guatemala. Preliminary objections, merits, reparations and costs.* Judgment of August 28, 2014. Series C No. 283, para. 199.

673 *Cf. Case of Bulacio v. Argentina. Merits, reparations and costs*. Judgment of September 18, 2003. Series C No. 100, para. 114, and *Case of the Human Rights Defender et al. v. Guatemala. Preliminary objections, merits, reparations and costs.* Judgment of August 28, 2014. Series C No. 283, para. 199.

674 *Cf. Case of Velásquez Rodríguez v. Honduras. Merits.* Judgment of July 29, 1988. Series C No. 4, paras. 166 and 176, and *Case of the Landaeta Mejías Brothers et al. v. Venezuela. Preliminary objections, merits, reparations and costs.* Judgment of August 27, 2014. Series C No. 281, para. 214.

675 *Cf. Case of Velásquez Rodríguez v. Honduras. Merits.* Judgment of July 29, 1988. Series C No. 4, para. 166, and *Case of the Landaeta Mejías Brothers et al. v. Venezuela. Preliminary objections, merits, reparations and costs.* Judgment of August 27, 2014. Series C No. 281, para. 214.

676 *Cf. Case of Goiburú et al. v. Paraguay. Merits, reparations and costs.* Judgment of September 22, 2006. Series C No. 153, para. 128, and *Case of Osorio Rivera and family members v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of November 26, 2013. Series C No. 274, para. 177.

677 Colombia ratified the Inter-American Convention against Torture on December 2, 1998.

678 *Cf. Case of the Miguel Castro Castro Prison v. Peru. Merits, reparations and costs*. Judgment of November 25, 2006. Series C No. 160, paras. 276, 377, 378 and 379, and *Case of Gudiel Álvarez et al. (Diario Militar) v. Guatemala. Merits, reparations and costs.* Judgment of November 20, 2012. Series C No. 253, para. 233.

instrument ratifying each of them, even if they were not in force when the perpetration of the forced disappearances and the other violations alleged in this case began.[679]

439. In addition, in cases of enforced disappearance, the investigation will have certain specific connotations that arise from the very nature and complexity of the phenomenon investigated. This means that the investigation must also take all the necessary steps to determine the fate of the victim and his or her whereabouts.[680] The Court has already clarified that the obligation to investigate facts of this nature subsists while the uncertainty of the final fate of the disappeared person remains, because the right of the victim's next of kin to know his or her fate and, if applicable, the whereabouts of his or her remains, is a fair expectation that the State must satisfy by all available means.[681]

440. Based on the arguments of the parties and of the Commission, the Court will now analyze the alleged violations relating to the investigations into the events of this case, in the following order: (1) the investigations in the military criminal jurisdiction; (2) the detention of those presumably responsible in military facilities; (3) the failure to open an investigation *ex officio*; (4) the omission in the search for the disappeared victims; (5) due diligence in the investigations; (6) the reasonable time in the proceedings of the ordinary criminal jurisdiction, and (7) the right to know the truth.

B.1) Investigations in the military criminal jurisdiction

441. Proceedings were instituted in the military criminal jurisdiction against two members of the Army in relation to the events of this case; one of these was for the forced disappearance of Irma Franco Pineda and the torture and ill-treatment of Yolanda Santodomingo Albericci and Eduardo Matson Ospino. These proceedings culminated in the discontinuance of the proceeding for forced disappearance, and the declaration of the prescription of the criminal action for torture (*supra* paras. 163 to 168). The Court underscores that, it was the Special Investigative Court, created days after the events "to investigate the offenses committed on the occasion of the violent taking of the Palace of Justice" (*supra* para. 156), that referred the investigations into the forced disappearance of Irma Franco Pineda and the torture of Yolanda Santodomingo Albericci and Eduardo Matson Ospino to the military criminal jurisdiction; while the investigation into the conduct of the members of the guerrilla who took the Palace of Justice was referred to the ordinary justice system (*supra* paras. 158 and 161).

442. With regard to the intervention of the military jurisdiction to hear acts that constitute human rights violations, the Court recalls its abundant and consistent case law in this regard.[682] In the instant case, it finds it sufficient to reiterate that under the democratic rule

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679 *Cf. Case of Las Dos Erres Massacre v. Guatemala. Preliminary objection, merits, reparations and costs.* Judgment of November 24, 2009. Series C No. 211, para. 137, and *Case of Gudiel Álvarez et al. (Diario Militar) v. Guatemala. Merits, reparations and costs.* Judgment of November 20, 2012. Series C No. 253, para. 235.

680 *Cf. Case of Ticona Estrada et al. v. Bolivia. Merits, reparations and costs*. Judgment of November 27, 2008. Series C No. 191, para. 80, and *Case of Osorio Rivera and family members v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of November 26, 2013. Series C No. 274, para. 179.

681 *Cf. Case of Velásquez Rodríguez v. Honduras. Merits.* Judgment of July 29, 1988. Series C No. 4, para. 181, and *Case of Osorio Rivera and family members v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of November 26, 2013. Series C No. 274, para. 179.

682 *Cf. Case of Castillo Petruzzi et al. v. Peru. Merits, reparations and costs.* Judgment of May 30, 1999. Series C No. 52, paras. 128 to 130 and 132; *Case of Cesti Hurtado v. Peru. Merits.* Judgment of September 29, 1999. Series C No. 56, para. 151; *Case of Durand and Ugarte v. Peru. Merits.* Judgment of August 16, 2000. Series C No. 68, paras. 116, 117, 125 and 126; *Case of Cantoral Benavides v. Peru. Merits.* Judgment of August 18, 2000. Series C No. 69, paras. 112 to 114; *Case of Las Palmeras v. Colombia. Merits.* Judgment of December 6, 2001. Series C No. 90, paras. 51, 52 and 53; *Case of 19 Tradesmen v. Colombia*. *Merits, reparations and costs*. Judgment of July 5, 2004. Series C No. 109, paras. 165 to 167, 173 and 174; *Case of Lori Berenson Mejía v. Peru. Merits, reparations and costs*. Judgment of November 25, 2004. Series C No. 119, paras. 141 to 145; *Case of the Mapiripán Massacre v. Colombia. Merits, reparations and costs*. Judgment of September 15, 2005. Series C No. 134, para. 202; *Case of Palamara Iribarne v.*

of law, the military criminal jurisdiction must have a restrictive and exceptional scope and be aimed at the protection of special rights related to the internal functions of the Military Forces. Therefore, the Court has indicated previously that the military jurisdiction should only try soldiers on active duty for the perpetration of offenses or misdemeanors that, owing to their nature, prejudice rights related to the internal functions of the Military Forces.[683]

443. In addition, taking into account the nature of the crime and the right harmed, the military criminal jurisdiction is not the competent jurisdiction to investigate and, if appropriate, to prosecute and to punish the perpetrators of human rights violations; rather the prosecution of those responsible always corresponds to the ordinary justice system. In this regard, the Court has indicated that, when military justice assumes competence for a matter that should be heard by ordinary justice, the right to an ordinary judge and, *a fortiori*, to due process is harmed, and this, in turn, is closely related to the right of access to justice. The judge in charge of hearing a case must be competent, in addition to independent and impartial.[684] Thus, the victims of human rights violations and their families have the right that such violations be heard and decided by a competent court, in accordance with due process and access to justice.[685]

444. The State argued that the intervention of the military jurisdiction is not prohibited by international law and that "the presumed partiality and absence of independence of [the said] authorities" or "the presumed violations of the standards in forced at the time" had not been proved. In this regard, the Court reiterates its indications to Colombia in the case of *Vélez Restrepo*, to the effect that the obligation that the violation of human rights, such as the rights to life and to personal integrity, be investigated by a competent judge is

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Chile. Merits, reparations and costs. Judgment of November 22, 2005. Series C No. 135, paras. 139 and 143; *Case of the Pueblo Bello Massacre v. Colombia.* Judgment of January 31, 2006. Series C No. 140, paras. 189 and 193; *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. 53, 54 and 108; *Case of Almonacid Arellano et al. v. Chile. Preliminary objections, merits, reparations and costs*. Judgment of September 26, 2006. Series C No. 154, paras. 131 and 134; *Case of La Cantuta v. Peru. Merits, reparations and costs.* Judgment of November 29, 2006. Series C No. 162, para. 142 and 145; *Case of the La Rochela Massacre v. Colombia. Merits, reparations and costs.* Judgment of May 11, 2007. Series C No. 163, para. 200 and 204; *Case of Escué Zapata v. Colombia. Merits, reparations and costs.* Judgment of July 4, 2007. Series C No. 165, para. 105; *Case of Zambrano Vélez et al. v. Ecuador. Merits, reparations and costs.* Judgment of July 4, 2007. Series C No. 166, para. 66; *Case of Tiu Tojín v. Guatemala. Merits, reparations and costs.* Judgment of November 26, 2008. Series C No. 190, paras. 118 to 120; *Case of Usón Ramírez v. Venezuela. Preliminary objection, merits, reparations and costs.* Judgment of November 20, 2009. Series C No. 207, paras. 108 to 110; *Case of Radilla Pacheco v. Mexico. Preliminary objections, merits, reparations and costs.* Judgment of November 23, 2009. Series C No. 209, paras. 272 to 275 and 283; *Case of Fernández Ortega et al. v. Mexico. Preliminary objection, merits, reparations and costs.* Judgment of August 30, 2010. Series C No. 215, para. 176; *Case of Rosendo Cantú et al. v. Mexico. Preliminary objection, merits, reparations and costs.* Judgment of August 31, 2010. Series C No. 216, paras. 160 and 163; *Case of Cabrera García and Montiel Flores v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of November 26, 2010. Series C No. 220, paras. 197 to 201; *Case of Vélez Restrepo and family members v. Colombia. Preliminary objection, merits, reparations and costs.* Judgment of September 3, 2012. Series C No. 248, para. 240, 241, 243 and 244; *Case of the Santo Domingo Massacre v. Colombia. Preliminary objections, merits and reparations.* Judgment of November 30, 2012, para. 158, and *Case of Osorio Rivera and family members v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of November 26, 2013. Series C No. 274, paras. 187 to 191.

683 *Cf. Case of Castillo Petruzzi et al. v. Peru*. *Merits, reparations and costs.* Judgment of May 30, 1999. Series C No. 59, para. 128, and *Case of Osorio Rivera and family members v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of November 26, 2013. Series C No. 274, para. 187.

684 *Case of Castillo Petruzzi et al. v. Peru*. *Merits, reparations and costs.* Judgment of May 30, 1999. Series C No. 59, para. 130, and *Case of Osorio Rivera and family members v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of November 26, 2013. Series C No. 274, para. 188.

685 *Cf. Case of Radilla Pacheco v. Mexico. Preliminary objections, merits, reparations and costs.* Judgment of November 23, 2009. Series C No. 209, para. 275, and *Case of Osorio Rivera and family members v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of November 26, 2013. Series C No. 274, para. 188.

established in the American Convention; consequently, the obligation not to investigate and prosecute human rights violations in the military criminal jurisdiction is a guarantee of due process that must be respected by the States Parties from the time they ratify this treaty.[686]

445. The Court also points out that, at least since the judgment in the case of *Durand and Ugarte v. Peru*, it has been the Court's consistent case law that the military jurisdiction is not the competent jurisdiction to investigate and, when appropriate, prosecute and punish the alleged perpetrators of human rights violations; rather the prosecution of those responsible corresponds always to ordinary justice.[687] The facts of the case of *Durand and Ugarte* relate to events that occurred in 1986;[688] thus, this Court considers that this consideration is also applicable to the instant case in which the events occurred in November 1985 and were referred to the military criminal jurisdiction in 1986, where the investigations were continued until 1994. However, the Court repeats that, regardless of the year in which the violations occurred, the guarantee of an ordinary judge must be analyzed in relation to the object and purpose of the American Convention, which is the effective protection of the human being.[689]

446. Furthermore, the Court takes note of the assertion by expert witness Federico Andreu Guzmán[690] that, already in 1987, the Supreme Court of Justice of Colombia had disallowed "the prosecution by military courts of soldiers or police agents implicated in forced disappearances, because forced disappearance cannot be considered a service-related act." Even though it would not be until 1997 that the Constitutional Court "established unequivocally the limits of the military jurisdiction with regard to human rights, and the notion of service-related act,"[691] the Court observes that, since 1987, the need for human rights violations to be investigated and prosecuted by ordinary criminal justice had been noted in the domestic sphere. Nevertheless, the investigation into the forced disappearance of Irma Franco Pineda and the torture of Yolanda Santodomingo Albericci and Eduardo Matson Ospino continued in the military criminal jurisdiction until 1993 and 1994, respectively, when it was considered that the criminal action for torture had prescribed, and that there were no grounds to prosecute the forced disappearance (*supra* paras. 166 and 168). In addition, at the same time as the events of the case and during their investigation by the military criminal jurisdiction, other international bodies for the protection of human rights, such as the Inter-American Commission on Human Rights, the Human Rights Committee of the International Covenant on Civil and Political Rights, the former United Nations Commission on Human Rights, as well as political organs of international organizations, such as the General Assembly of the United Nations, had ruled that human

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686 *Cf. Case of Vélez Restrepo and family members v. Colombia. Preliminary objection, merits, reparations and costs.* Judgment of September 3, 2012. Series C No. 248, para. 241.

687 *Cf. Case of Durand and Ugarte v. Peru. Merits.* Judgment of August 16, 2000. Series C No. 68, paras. 117, 118, 125 and 126, and *Case of Osorio Rivera and family members v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of November 26, 2013. Series C No. 274, para. 189.

688 *Cf. Case of Durand and Ugarte v. Peru. Merits.* Judgment of August 16, 2000. Series C No. 68, para. 59.

689 *Cf. Case of Vélez Restrepo and family members v. Colombia. Preliminary objection, merits, reparations and costs.* Judgment of September 3, 2012. Series C No. 248, para. 244, and *Case of Osorio Rivera and family members v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of November 26, 2013. Series C No. 274, para. 189.

690 The State contested the considerations of Federico Andreu Guzmán arguing that they were "based on decisions that do not coincide with the temporal limits of the events that are being litigated." In this regard, the Court reiterates its previous consideration that the guarantee of an ordinary, independent and impartial judge is derived from the American Convention and does not depend on the rulings or decisions of this Court when interpreting the Convention, or those of other human rights bodies.

691 *Cf.* Written summary of the expert opinion of Federico Andreu Guzmán (evidence file, folios 36375 to 36378).

rights violations should not be heard by the military criminal jurisdiction, and on the exceptional and special nature of the military criminal justice system.[692]

447. Moreover, with regard to the State's argument that the partiality, or lack of independence, of the proceedings under the military jurisdiction has not been proved, the Court emphasizes the opinion of expert witness Federico Andreu Guzmán that, in 1985, "the military criminal jurisdiction was totally [incorporated …] into the hierarchical chain of command of the Armed Forces." In this regard, he explained that, owing to "the extremely hierarchical structure of the Armed Forces, an institution based on the principles of loyalty and subordination, active-duty officers lack the necessary independence and impartiality to try cases of members of the same institution implicated in human rights violations against civilians. Thus, it is considered that active-duty officers are neither independent nor able to deliver impartial judgments against members of the same Armed Forces."[693] In this regard, the Court recalls its consistent case law in which it has indicated that the military jurisdiction does not meet the requirements of independence and impartiality established in the Convention.[694]

448. In addition, as regards the State's argument that, at the present time, the investigations are being conducted by the ordinary system of justice, the Court notes that, in this case, the intervention of the military criminal jurisdiction in the investigation of the forced disappearance of Irma Franco Pineda and the torture of Yolanda Santodomingo Albericci and Eduardo Matson Ospino had specific consequences on the subsequent investigation by the ordinary justice system. In particular, the discontinuance of the proceedings for the forced disappearance of Irma Franco Pineda in the military criminal jurisdiction, where members of her family were not allowed to participate as a civil party (*supra* para. 164),[695] has prevented the prosecution of the Colonel, Head of the B-2, in the

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[692] Inter-American Commission, see*, inter alia*: *Annual Report of the Inter-American Commission on Human Rights: 1992-1993*, OEA/Ser.L/V/II.83, Doc. 14, Chapter V, of March 12, 1993; *Annual Report of the Inter-American Commission on Human Rights: 1993*, OEA/Ser.L/V/II.85, Doc. 8 rev., Chapter V, of February 11, 1994; *Second Report on the situation of human rights in Colombia*, OEA/Ser.L/V/II.84, Doc. 39 rev, of October 14, 1993; Human Rights Committee of the International Covenant on Civil and Political Rights, *Observations and recommendations of the Human Rights Committee: Egypt,* CCPR/C/79/Add.23, of 9 August 1993, para. 9; *Observations and recommendations of the Human Rights Committee: Morocco,* A/47/40, of 23 October 1991, para. 57; *Colombia*, CCPR/C/79/Add.2, of 25 September 1992, paras. 5 and 6, where it indicates that "[m]ilitary courts do not seem to be the most appropriate ones for the protection of citizens' rights in a context where the military itself has violated such rights," hence it recommended that the State "limit the competence of the military courts to internal issues of discipline and similar matters so that violations of citizens' rights will fall under the competence of ordinary courts of law"; *Venezuela*, CCPR/C/79/Add.13, of 28 December 1992, paras. 7 and 10; Croatia, CCPR/C/79/Add.15 - A/48/40 of December 28, 1992, para. 362; United Nations, General Assembly Resolution A/RES/39/121, *Situation of human rights and fundamental freedoms in Chile*, 14 December 1984, para. 3; Resolution A/RES/40/145, *Situation of human rights and fundamental freedoms in Chile*, 13 December 1985, para. 2; Resolution A/RES/41/161, *Situation of human rights and fundamental freedoms in Chile*, 4 December 1986, paras. 7 and 9 (h); Resolution A/RES/42/147, *Situation of human rights and fundamental freedoms in Chile*, 7 December 1987, para. 8; the former Commission on Human Rights: Resolution E/CN.4/RES/1989/32 on the *Independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers* of March 6, 1989, and also the *Draft declaration on the independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers,* E/CN.4/Sub.2/1988/20/Add.1 and Add.1/Corr.1*,* prepared by the Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, Mr. L.M Singhvi, establishes in paragraph 5(f) that "[t]he jurisdiction of military tribunals shall be confined to military offences."

[693] *Cf.* Written summary of the expert opinion of Federico Andreu Guzmán (evidence file, folios 36371 and 36411). This explanation was made citing the Report of the United Nations Special Rapporteur on the independence of judges and lawyers on his visit to Colombia in 1997. E/CN.4/1998/39/Add.2, 30 March 1998, paras. 173 and 174.

[694] *Cf. Case of Castillo Petruzzi et al. v. Peru. Merits, reparations and costs.* Judgment of May 30, 1999. Series C No. 52, para. 132, and *Case of Osorio Rivera and family members v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of November 26, 2013. Series C No. 274, para. 191.

[695] The Court underscores that when military courts examine acts that constitute the violation of the human rights of civilians, they exercise jurisdiction not only in relation to the accused, who of necessity must be a member of the military in active service, but also in relation to the civilian victim, who has a right to participate in the criminal

ordinary jurisdiction for this act.[696] Furthermore, although none of those presumably responsible has yet been identified or accused in the investigation opened by the ordinary justice system into the torture of Yolanda Santodomingo Albericci and Eduardo Matson Ospino, the Court takes note of the representatives' argument that the Military Superior Court's decision invoking the statute of limitations "has resulted in *res judicata*, so that the Colonel [Head of the B-2] cannot be investigated for these facts in the ordinary jurisdiction." The Court considers that this decision of the military criminal justice system had and still has concrete effects on the investigation of these facts that are not rectified or overcome by the mere fact that, at the present time, these facts are being investigated in the ordinary jurisdiction.

449. Facts that it is alleged could constitute forced disappearance and torture are acts or facts that can never relate to the military mission or military discipline. To the contrary, the alleged acts committed by military personnel against the victims in this case violated rights protected by domestic criminal law and the American Convention, such as the rights to life, and to personal liberty and integrity of the victims. Therefore, the Court reiterates that the criteria that require the investigation and prosecution of human rights violations in the ordinary jurisdiction are based not on the seriousness of the violations, but rather on their very nature and on the rights protected.[697] It is evident that forced disappearance and torture are acts that run counter to the obligations to respect and protect human rights; therefore, they are excluded from the competence of the military jurisdiction. Consequently, the military jurisdiction's intervention in the investigation of the forced disappearance of Irma Franco Pineda and the torture of Yolanda Santodomingo Albericci and Eduardo Matson Ospino between 1986 and 1994 was contrary to the criteria of exceptionality and restriction that characterize this and signified the application of a jurisdiction that operated without taking into account the nature of the acts involved.[698]

450. Based on the above considerations, the Court concludes that the State violated the guarantee of an ordinary judge as regards the investigation into the forced disappearance of Irma Franco Pineda conducted by the military jurisdiction, as well as with regard to the investigation into the detention and torture suffered by Yolanda Santodomingo Albericci and Eduardo Matson Ospino.

451. The representatives also argued that the jurisdictional conflict created in 2009 by a military criminal judge in the proceedings against the Commander of the Cavalry School represented another inappropriate interference of military criminal justice in the events of this case, and a violation of the guarantee of an ordinary, independent and impartial judge. In this regard, the Court observes that the State resolved this interference appropriately and promptly, because, in less than a month, the Superior Council of the Judicature reaffirmed the jurisdiction of the ordinary criminal justice system and, subsequently, even

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proceedings not only for the purpose of the respective reparation of the harm, but also to assert his rights to the truth and to justice. The importance of the passive subject transcends the military sphere, because rights are involved that belong to the ordinary sphere. *Cf. Case of Radilla Pacheco v. Mexico. Preliminary objections, merits, reparations and costs.* Judgment of November 23, 2009. Series C No. 209, para. 275, and *Case of Cabrera García and Montiel Flores v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of November 26, 2010. Series C No. 220, para. 197.

696 In this regard, see footnote 227 *supra*. *Cf.* Decision of the Fourth Prosecutor delegated to the Supreme Court of Justice of September 28, 2007 (evidence file, folio 13957).

697 *Cf. Case of Vélez Restrepo and family members v. Colombia. Preliminary objection, merits, reparations and costs.* Judgment of September 3, 2012. Series C No. 248, para. 244, and *Case of Osorio Rivera and family members v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of November 26, 2013. Series C No. 274, para. 190.

698 *Cf. Case of Fernández Ortega et al. v. Mexico. Preliminary objection, merits, reparations and costs.* Judgment of August 30, 2010. Series C No. 215, para. 177, and *Case of Osorio Rivera and family members v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of November 26, 2013. Series C No. 274, para. 190.

convicted the respective military criminal judge of malfeasance.[699] Consequently, the Court does not consider that this constitutes an additional violation.

B.2) Detention of those presumed responsible in military facilities

452. According to the representatives, the individuals convicted in relation to this case have enjoyed a series of privileges that would result in a situation of impunity. Meanwhile, the State has affirmed that the place of confinement of the members of the security forces who have been prosecuted for the facts of this case is supported by domestic provisions.[700] For the purposes of its analysis, the Court will first determine the relevant facts and will then examine the alleged violation of the rights of the victims' next of kin to judicial guarantees and to an effective remedy owing to the place of detention of those who have been convicted to date.

B.2.1) Relevant facts for the analysis of the obligation to investigate, prosecute and duly punish those presumed responsible, and their place of detention

453. The Court recalls that two individuals have been convicted in this case, a retired colonel who, at the time of the events, was the Commander of the Cavalry School, and a retired general who, at the time of the events, was the Commander of the Army's 13th Brigade (*supra* paras. 177 and 188).

454. According to the information in the case file, a court order for the pre-trial detention of the former Commander of the Cavalry School was issued on July 12, 2007, and, on July 17, he was confined in the Army's Infantry School located in the North Canton in Bogota. Following some problems with his custody and monitoring, as well as with his attendance at the hearings being held for the trial, on August 5, 2009, the first instance judge ordered his transfer to the Annex of the La Picota Prison in Bogota destined for the internment of public servants and members of the security forces. However, that same day, he was hospitalized in the Military Hospital,[701] so that he was transferred to La Picota some time between the

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[699] On January 19, 2009, following a request by the defense, a military first instance judge asked that the proceedings be referred to the military criminal jurisdiction. On January 23, the Third Court refused the request and referred "the proceedings to the Disciplinary Chamber of the Superior Council of the Judicature so that it would resolve the jurisdictional conflict." On February 12, 2009, the Superior Council of the Judicature decided the jurisdictional conflict in favor of the Third Special Court of Bogota. On April 25, 2013, the military first instance judge was convicted of malfeasance. *Cf.* Note No. 017 of January 19, 2009, with request of the Second Judge of the National Army's Divisions relating to jurisdictional conflict (merits file, folio 3372); order of the Third Criminal Court of the Bogota Special Circuit of January 23, 2009 (evidence file, folios 24845, 24847 and 24848 and 24853); decision of the Superior Council of the Judicature of February 12, 2009 (evidence file, folio 37827), and Judgment of the Superior Court of Bogota of April 25, 2013 (evidence file, folios 35293 and 35294).

[700] The State also indicated that "these aspects are outside this litigation, because the Commission's report does not present any objection in this regard." The Court notes that the confinement of those convicted of the facts in military facilities does form part of the factual framework and purpose of this case, because the Commission included the pertinent facts and considerations in paragraphs 331, 333 and 472 of the Merits Report.

[701] *Cf.* Judgment of the Sectional Council of the Judicature, Disciplinary Jurisdictional Chamber of August 2, 2007 (evidence file, folio 11259); decision of the Prosecution Service of July 12, 2007 (evidence file, folios 20407 and 20408); Judgment of the Sixth Chamber of the Constitutional Court for the review of *amparos* of June 18, 2013, cited in the final written arguments of the State and available at http://www.corteconstitucional.gov.co/relatoria/2013/T-347-13.htm; Note of the Third Criminal Judge of the Bogota Special Circuit of May 15, 2009, addressed to INPEC (evidence file, folios 21995 and 21996); documentary entitled *"La Toma,"* directed by Angus Gibson and Miguel Salazar, 2011 (evidence file, video, folio 3552); briefs of Pedro Capacho Pabón of May 4, 2009 (evidence file, folios 21961 to 21963); Note of the Infantry School of August 3, 2009, addressed to the Third Criminal Judge of the Bogota Special Circuit (evidence file, folio 22012); Note of the Infantry School of August 4, 2009, addressed to the Third Criminal Judge of the Bogota Special Circuit (evidence file, folio 22014); brief of the Commander of the Cavalry School of August 4, 2009, addressed to the Director of the Infantry School (evidence file, folio 22017), and Note of August 6, 2009, addressed to the Director General of INPEC, cited in the expert opinion of Mario Madrid Malo of October 30, 2013 (evidence file, folio 36130).

middle and the end of August 2009.[702]

455. On the same date, the Operations Officer of the Army's Military Intelligence Center informed the Director of the National Penitentiary and Prison Institution (hereinafter "INPEC") of presumed "plans underway aimed at attempts on the life of the [retired Commander of the Cavalry School]." The following day, the Attorney General asked the Director of INPEC to take the necessary safety measures to protect the life and personal integrity of the inmate because the latter had alleged that he was receiving death threats from drug-traffickers. In addition, on August 25, 2009, the Head of Human Development of the National Army asked the first instance judge to reconsider the request to relocate the accused in La Picota. Consequently, INPEC carried out a technical risk assessment and, on August 26, 2009, concluded that the former Commander of the Cavalry School was at a high level of risk.[703]

456. The Court does not have exact information on the dates, but has verified that, at least, as of the beginning of September 2009, the accused was once again in the Central Military Hospital.[704] Following the conviction in first instance on June 9, 2010, INPEC officials were ordered "to transfer the [person convicted] to a place of confinement so that he may serve his sentence." On June 25, 2010, INPEC established as the "site of special confinement," the Infantry School of the Army, and ordered his transfer. According to INPEC, the "legal grounds for the transfer […] was […] Law 65 of 1993,[705] […] which allows the confinement of public officials in special establishments," as well as for the safety of the prisoner.[706]

457. On January 24, 2011, some of the next of kin of the disappeared victims filed an

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[702] No specific evidence was provided about the date on which the accused was transferred to the La Picota Prison. However, he was at that prison on August 26, 2009, at least. *Cf.* Note of the Institute of Forensic Medicine of August 26, 2009 (evidence file, folio 21988).

[703] *Cf.* Note of the Operations Officer of the Army's Military Intelligence Center of August 20, 2009, addressed to the Director of INPEC (evidence file, folio 15573); Note of the Attorney General of August 21, 2009, addressed to the Director of INPEC (evidence file, folios 22139 and 22140); Note of the Head of Human Development of the Army of August 25, 2009, addressed to the Third Criminal Judge of the Bogota Special Circuit (evidence file, folios 22006 and 22007); Note of the Director General of INPEC of August 26, 2009, addressed to the Third Criminal Judge of the Bogota Special Circuit (evidence file, folio 15934); Note of the Coordinator for Prison-related Matters of INPEC of October 22, 2010 (evidence file, folios 15937 to 15939), and memorandum of the Adviser to the INPEC General Directorate of August 26, 2009, addressed to the Director General of INPEC (evidence file, folio 22141).

[704] *Cf.* Note of the National Institute of Forensic Medicine and Science of September 4, 2009 (evidence file, folio 21989)

[705] The said article 29 establishes that "[w]hen the wrongful act has been committed by personnel of the National Penitentiary and Prison Institute, officials and employees of the Criminal Justice System, the Judicial Police Corps, and the Pubic Prosecution Service, elected officials, officials who enjoy legal or constitutional privileges, the elderly or indigenous peoples, pre-trial detention shall be served in special establishments or in facilities provided by the State. This situation extends to the respective former public officials. The competent judicial authority or the Director General of the National Penitentiary and Prison Institute, as applicable, may order confinement in special places, both for pre-trial detention and for serving the sentence, based on the gravity of the accusation, the safety conditions, and the personality of the individual, his record and conduct." Decision of the Director General of INPEC of December 20, 2009 (evidence file, folio 15943).

[706] *Cf.* Note of the Director General of INPEC of August 26, 2009, addressed to the Third Criminal Judge of the Bogota Special Circuit (evidence file, folio 15934); Judgment of the Third Criminal Court of the Bogota Special Circuit of June 9, 2010 (evidence file, folio 24120); decision of INPEC of June 25, 2010 (evidence file, folios 15947 and 15948); Note of the Coordinator for Prison-related Matters of INPEC of October 22, 2010, addressed to Germán Romero Sánchez and Jorge Eliecer Molano Rodríguez (evidence file, folios 15936 to 15939). According to information provided by the representatives, obtained from the press, the same day the convicted man was transferred to the Infantry School. However, according to expert witness Mario Madrid Malo, he abandoned the Military Hospital on July 27, 2010. *Cf.* Brief of Germán Romero Sánchez and Jorge Eliecer Molano Rodríguez of July 2, 2010, addressed to the Director of INPEC (evidence file, folio 18462), and expert opinion of Mario Madrid Malo of October 30, 2013 (evidence file, folio 36131).

application for *amparo* to protect their right to obtain justice.[707] The application for *amparo* was declared inadmissible by both the first and the second instances, based on the argument that none of the fundamental rights of the next of kin were at risk, and in the understanding that the guilty verdict was not final, so that the accused could be confined in a military establishment on the legal grounds alleged by INPEC.[708] On June 18, 2013, following an appeal for review, the Constitutional Court confirmed the inadmissibility of the application for *amparo,* among other reasons because, at that time, the application for *amparo* was "not the appropriate mechanism to decide on the place of confinement of the [convicted man], as this should be decided during the criminal proceedings."[709]

458. According to INPEC, the confinement of the former Commander of the Cavalry School is governed by the Regulations of the La Picota Special Confinement Establishment. In addition, within the Infantry School, he was assigned a room "shared with the officers of that unit"; "he has not been requested to perform any occupational activity," "nor has any educational activity been authorized,"[710] but "the access of the inmates to educational activities within confinement establishments is feasible."[711] In April 2009, the Director of the Infantry School advised that the movement of the former Commander of the Cavalry School "within the North Canton" is unrestricted, but "movement […] outside the North Canton is only permitted under an Operations Order issued by the Head of the School, with an escort."[712] Nevertheless, according to expert witness Mario Madrid Malo "it is a well-known fact that, in the Infantry School," the said retired Colonel lives "like a regular officer" of that unit; his movements within the School are unrestricted and "he has been the beneficiary of exceptional privileges that are not in keeping with the penitentiary and prison laws in force."[713] Meanwhile, the former Commander of the 13th Brigade has also been detained in the Infantry School since October 10, 2008, and, according to this expert witness, he enjoys "the same privileged situation."[714] In the second instance decision in the criminal proceedings against him, the representatives requested his confinement in an ordinary prison. The Superior Court of Bogota established that "this decision corresponds to the

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[707] Previously, the representatives of some of the victims had exercised a right of petition on July 2, 2010, requesting information and copies of the administrative decisions concerning the place of confinement of the Commander of the Cavalry School. *Cf.* Brief of Germán Romero Sánchez and Jorge Eliecer Molano Rodríguez of July 2, 2010, addressed to the Director of INPEC (evidence file, folio 18461), and Note of the Coordinator for Prison-related Matters of INPEC of October 22, 2010, addressed to Germán Romero Sánchez and Jorge Eliécer Molano Rodríguez (evidence file, folios 15936 to 15939).

[708] *Cf.* Judgment of the Sixth Criminal Court of the Bogota Circuit of February 21, 2011 (evidence file, folios 25012 to 25017), and Judgment of the Superior Court of Bogota of April 7, 2011 (evidence file, folios 25002 to 25009).

[709] *Cf.* Judgment of the Sixth Chamber of the Constitutional Court for the review of *amparos* of June 18, 2013, cited in the final written arguments of the State and available at http://www.corteconstitucional.gov.co/ relatoria/2013/T-347-13.htm.

[710] Despite the above, during the review proceedings before the Constitutional Court, the representative of the Commander of the Cavalry School indicated that the latter had asked to be allowed to give classes, but INPEC had refused this. *Cf. Judgment* of the Sixth Chamber of the Constitutional Court for the review of *amparos* of June 18, 2013, cited in the final written arguments of the State and available at http://www.corteconstitucional.gov.co/relatoria/2013/T-347-13.htm.

[711] *Cf.* Communication of the Director General of INPEC of October 22, 2010, addressed to Jorge Eliecer Molano Rodríguez (evidence file, folio 15941).

[712] *Cf.* Order of the Infantry School of April 17, 2009 (evidence file, folios 16003 to 16005).

[713] In this regard, he stressed that the Commander of the Cavalry School himself had stated in October 2010: "I live [in the Infantry School] like a regular officer. […] No, I have no restrictions within the School." *Cf.* Affidavit made on October 30, 2013, by Mario Madrid Malo (evidence file, folios 36136 to 36137).

[714] *Cf.* Affidavit made on October 30, 2013, by Mario Madrid Malo (evidence file, folio 36137), and Judgment of the Superior Court of Bogota of October 24, 2014 (evidence file, folio 38202).

prison authorities."[715]

B.2.2) Considerations of the Court on the obligation to investigate, prosecute and duly punish those presumed responsible, and their place of detention

459. The Court emphasizes that, when exercising its punitive powers, the State's actions should be guided by rationality and proportionality, thus avoiding both the leniency characteristic of impunity, and also excesses and abuse in the determination of punishments.[716] In light of Articles 1(1) and 2 of the Convention, States have a general obligation to ensure respect for the human rights protected by the Convention, and the duty to prosecute wrongful acts that violate rights recognized in the Convention is derived from this obligation. However, this prosecution should be consequent with the obligation to guarantee the rights in question; hence, illusory measures that only appear to meet the formal requirements of justice should be avoided.[717]

460. The obligation to investigate includes the investigation, identification, processing, trial, and punishment, as appropriate, of those responsible. Although this is an obligation of means, this does not signify that the person convicted does not have to serve his sentence in the terms in which it is decreed.[718]

461. The Court notes that the United Nations High Commissioner for Human Rights has indicated, specifically with regard to Colombia, that the "[i]llegal granting of benefits to members of the Army detained in military facilities or convicted for extrajudicial executions can become a form of impunity."[719]

462. The Court considers that the arguments of the representatives on this point relate to two factors: (i) the alleged benefits received by the former Commander of the Cavalry School during his incarceration, and (ii) the confinement of those convicted in military establishments, which would encourage the concession of benefits or privileges. In this regard, the Court notes that the representatives requested the application of the precedent of the case of *Cepeda Vargas v. Colombia.* However, the Court underlines that, contrary to that case, in the instant case neither of the two judgments is final and the individuals convicted have not receive undue benefits relating to a reduction in their sentences, which, in principle, are not disproportionate.

463. On the first point, the representatives argued that the former Commander of the Cavalry School had received privileges or benefits that have prevented him serving his sentence in the terms in which it was imposed, because he has left his place of confinement; he has been allowed to received journalists without a court order; he has the same accommodation as an officer of the Infantry School on active duty, and he is allowed to give classes to soldiers and civilians who are students of the Military University. The Court recalls that the undue granting of benefits may eventually lead to a form of impunity, particularly in the case of the perpetration of egregious human rights violations, as in this

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715 Judgment of the Superior Court of Bogota of October 24, 2014 (evidence file, folio 38495).

716 *Cf. Case of Usón Ramírez v. Venezuela. Preliminary objection, merits, reparations and costs.* Judgment of November 20, 2009, para. 87.

717 *Cf. Case of Heliodoro Portugal v. Panama. Preliminary objections, merits, reparations and costs.* Judgment of August 12, 2008, para. 203, and *Case of Manuel Cepeda Vargas v. Colombia. Preliminary objections, merits, reparations and costs.* Judgment of May 26, 2010. Series C No. 213, footnote 225.

718 *Mutatis mutandi, Case of Valle Jaramillo et al. v. Colombia. Merits, reparations and costs*. Judgment of November 27, 2008. Series C No. 192, para. 165.

719 *Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia*, A/HRC/19/21/Add.3, of 31 January 2012, para. 36, Available at: http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-21-Add3_en.pdf.

case.[720] Nevertheless, regarding the outings of the said retired colonel from his place of confinement, the Court notes that, on March 4, 2009, he visited his father in the Military Hospital, after being authorized by the judge in charge of the proceedings,[721] and on June 11 and 12, 2011, he attended the marriage of his son in a Bogota social club, authorized by the Superior Court of Bogota.[722] Thus, the Court notes that both outings were authorized by the judicial authorities in charge of the proceedings and were permitted by law under the Prison Code, which establishes the possibility of "exceptional permissions" being granted for "serious illness […] of a close family member" or for "an event of particular importance in the life of the inmate."[723]

464. Regarding incarceration in military facilities, the Court has indicated that the restrictive and exceptional nature of the military criminal jurisdiction (*supra* para. 442), is also applicable at the stage of execution of the punishment.[724] However, the Court notes that this does not mean that incarceration in military facilities is *per se* a violation of the Convention, or that retired or active members of the military cannot serve their sentences in special places of confinement, including military facilities, due to exceptional circumstances that would justify this measure.

465. The State has a particular obligation to ensure the rights of any individual deprived of his liberty.[725] In this regard, the Court has indicated that the functions exercised by a detainee prior to his deprivation of liberty may require taking special measures to overcome any situation of risk to his life and physical, mental and moral integrity, in order to ensure his safety fully within the detention center in which he is confined or to which he may be transferred, or even by placing him in another detention center where his rights are better protected.[726]

466. According to the competent administrative authorities (INPEC), the Commander of the Cavalry School was placed in the Infantry School based on the legal powers of INPEC with regard to the transfer of inmates, and the health situation, security reports, and assessment of the level of risk of each inmate. The Court notes that the domestic norms in force allow special places of incarceration to be established for members of the security forces. The Prison Code expressly allows the creation of special incarceration centers, as well as the confinement of certain persons in special establishments or in facilities provided by the State, for both pre-trial detention and to serve their sentence, at the discretion of INPEC, "based on the gravity of the accusation, the safety conditions, the personality of the individual, his record and conduct."[727] In addition, the case file contains the documents

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[720] *Cf. Case of the Gómez Paquiyauri Brothers v. Peru. Merits, reparations and costs.* Judgment of July 8, 2004. Series C No. 110, para. 145, and *Case of Manuel Cepeda Vargas v. Colombia*. *Preliminary objections, merits, reparations and costs.* Judgment of May 26, 2010, para. 152.

[721] *Cf.* Record of the public hearing of the Third Criminal Court of the Bogota Special Circuit of April 14, 2009 (evidence file, folio 21958).

[722] *Cf.* Order of the Criminal Chamber of the Superior Court of Bogota of June 10, 2011 (evidence file, folio 25000).

[723] Article 139 of the Prison Code cited in the motions and arguments brief and available at http://www.secretariasenado.gov.co/senado/basedoc/ley_0065_1993_pr002.html.

[724] *Cf. Case of Manuel Cepeda Vargas v. Colombia*. *Preliminary objections, merits, reparations and costs.* Judgment of May 26, 2010, para. 152, citing *Case of Barreto Leiva v. Venezuela. Merits, reparations and costs.* Judgment of November 17, 2009. Series C No. 206, para. 29.

[725] *Cf. Matter of the Mendoza Prisons.* Provisional measures with regard to Argentina. Order of November 27, 2007, tenth *considerandum*, and *Matter of the Curado Prison Complex.* Provisional measures with regard to Brazil. Order of May 22, 2014, eighteenth *considerandum*.

[726] *Cf. Matter of María Lourdes Afiuni.* Request for provisional measures with regard to Venezuela. Order of the President of December 10, 2010, twelfth *considerandum*.

[727] The pertinent norms are articles 16, 29, 73 and 75 of the Prison Code. The Court notes that article 29 of the Prison Code authorizes the Director General of INPEC "to decide on confinement in special places, both for pre-trial

proving the situation of risk of the Commander of the Cavalry School because he had exercised public positions (*supra* paras. 454 to 456).

467. Expert witness Mario Madrid Malo emphasized that the decision of June 25, 2010, in which the Infantry School was established as a special place of incarceration is not based on the alleged situation of risk and that the first instance judge had ordered his confinement in the La Picota Prison.[728] This Court does not consider that establishing the Infantry School as a special place of incarceration constitutes non-compliance with the order of the competent judicial authorities. The order of incarceration in the La Picota Prison was prior to the first instance judgment ordering that the accused be taken "to a place of confinement," without stipulating a specific center. In addition, the Court notes that the reasoning of the said decision did not include the alleged situation of risk of the Commander of the Cavalry School or indicate that the transfer to the Infantry School responded to the need to offer him safer conditions.[729] The explanation of the safety reasons, owing to the situation of risk of the accused, was clarified by INPEC due to the appeals filed subsequently by the representatives of the next of kin of the disappeared victims (*supra* paras. 457 and 458).

468. Despite the foregoing, the Court cannot ignore that the alleged situation of risk of the Commander of the Cavalry School has been substantiated. Furthermore, his conviction is not final, contrary to the situation in other cases where this Court has ruled on the obligation to investigate, prosecute and duly punish those responsible.[730] According to the domestic judicial authorities, the place of confinement of the Commander of the Cavalry School should be decided in the criminal proceedings, so that, at this time "it is for the criminal jurisdiction, headed by the Supreme Court of Justice, to establish the Colonel's place of confinement" when deciding the pending remedy of cassation. Consequently, the Court finds that, at this time, the particular circumstances of this case do not reveal that the State has taken insufficient steps to investigate, prosecute, and duly punish gross human rights violations.

469. Regarding the detention of the Commander of the 13th Brigade, the Court notes that, apart from the fact that he is detained in the Infantry School, no information or arguments on his detention situation or the reasons for his confinement in this military facility have been provided to the case file to prove non-compliance with the sentence imposed on him. The Court recalls that incarceration in a military establishment does not *per se* constitute a violation of the obligations established in the Convention. There could be reasons why the detention of the Commander of the 13th Brigade in a military facility is necessary, notwithstanding the fact that his sentence is not final and a decision on cassation remains pending. For the Court to find that the sentence imposed violates the Convention, additional evidence is required to prove that, owing to the specific circumstances of the case, incarceration in a military establishment is contrary to the laws in force or to a court

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detention and to service the sentence." In addition, the decision establishing the Infantry School as a special incarceration center indicates that this would be "in order to comply with the measures of deprivation of liberty of the security forces ordered by the judicial authority"; however, it cannot be inferred that these deprivations of liberty are limited to pre-trial detention. *Cf.* INPEC decision of December 20, 2009 (evidence file, folio 15943).

728 *Cf.* Affidavit made on October 30, 2013, by Mario Madrid Malo (evidence file, folios 36132 and 36134).

729 This decision cited as grounds for the special place of incarceration, articles 14, 16 and 29 of the Prison Code which grant INPEC the authority to decide on the site of confinement, to create and establish special places of incarceration for certain persons who have exercised public functions. In addition, it emphasized the health of the Commander of the Cavalry School, the recommendations of his doctors that he serve his sentence in "a Unit," and it was indicated that the convicted man "was a public official and enjoys legal and constitutional privileges," so that "it is necessary to establish a special establishment of confinement in accordance with the provisions of article 29 of the Penitentiary and Prison Code in order to ensure his safety and personal integrity and the execution of the punishment." INPEC decision of June 25, 2010 (evidence file, folios 15947 and 15948).

730 *Cf. Case of Manuel Cepeda Vargas v. Colombia*. *Preliminary objections, merits, reparations and costs.* Judgment of May 26, 2010, paras. 152 to 154.

order; is not justified by valid reasons, such as the protection of the life and integrity of the person confined; constitutes an arbitrary privilege or benefit in favor of military authorities who have committed gross human rights violations, or has degenerated into a situation that does not permit the execution of the punishment in the terms in which this was imposed by the domestic authorities or nullifies it, among other reasons.

470. Based on the foregoing considerations and the evidence it possesses at this time, the Court does not find that the incarceration conditions of the two individuals who have been convicted constitute a violation of judicial guarantees and the right to an effective remedy of the victims. If the sentences are confirmed, the Court considers that the domestic authorities must take into account the considerations of the Superior Court of Bogota inasmuch as it "urge[d] the national Government that the execution of the punishment imposed [on the Commander of the Cavalry School] be implemented in a way that it is not an offense to the pain of the victims and their communities."[731]

B.3) Absence of an investigation *ex officio*

471. The Court notes that, in this case, the next of kin started to look and ask for their family members in different State institution during and immediately after the military operation to retake the Palace of Justice (*supra* para. 156). In addition, they denounced their possible disappearance straightaway; thus the Special Investigative Court, created days after the events, included in its investigations the possible forced disappearance of the victims (*supra* paras. 156 and 158). Also, Yolanda Santodomingo Albericci and Eduardo Matson Ospino stated that they had denounced the acts of which they were victims to two generals who received them at the Ministry of Defense a few days after they were released (*supra* para. 141). These facts were also included in the investigation conducted by the Special Investigative Court (*supra* para. 156 and 158). Consequently, the Court considers that the State was made aware of the possible disappearance of these persons and of the torture suffered by Yolanda Santodomingo Albericci and Eduardo Matson Ospino immediately after the events. Nevertheless, the Court notes that, following the initial investigations conducted by the Special Investigative Court, the investigations under the ordinary system of justice into the possible enforced disappearance of the victims did not commence until 2001, at the insistence of the next of kin (*supra* paras. 170), while the investigation into the torture suffered by Ms. Santodomingo Albericci and Mr. Matson Ospino was initiated under the ordinary system of justice only in 2007, when the Prosecution Service ordered certified copies of the case file in order to investigate what happened to them and to José Vicente Rubiano Galvis (*supra* para. 202).

472. The Court has also verified that Orlando Quijano testified about the ill-treatment he had suffered before a criminal investigation court in 1986 and before the Prosecution Service in 2006, so that the State has been aware of these facts since 1986 (*supra* para. 376). However, there is no record in the case file or from the information provided to the Court that an investigation has been opened into the alleged violations he suffered.[732]

473. Regarding the obligation to investigate the disappearances, the Court notes that, even though, in 1986, the Special Investigative Court concluded that the presumed victims had died on the fourth floor of the Palace of Justice, the same investigative court indicated that "the proceedings should continue in order to clarify the facts, [and it left this] to the consideration of the competent judges, to whom it corresponded to decide whether or not

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[731] *Cf.* Judgment of the Superior Court of Bogota of January 30, 2012 (evidence file, folio 23451).

[732] The decision of October 18, 2013, expressly indicates that the "investigations that are being conducted by different prosecutors to examine the events that occurred in the Palace of Justice on November 6 and 7, 1985," would be combined under one prosecution unit. *Cf.* Decision of the Prosecutor General's Office of October 18, 2013 (merits file, folio 3501). There is no record that any investigation was opened at that time into the detention and ill-treatment suffered by Orlando Quijano.

to close the investigation (*supra* para. 160). Even if the Special Court's conclusion is adopted as the main hypothesis concerning the events, the State had the obligation to investigate and to elucidate the facts relating to the supposed deaths of the disappeared victims, as well as to take all necessary measures to discover the whereabouts of these persons. As of 1986, when the Special Investigative Court's report was issued, and up until 2001, when the Prosecution Service opened an investigation, no judicial authority investigated the disappearance of these persons, or took any measures to discover their whereabouts. Indeed, in the complaint filed before the Prosecution Service in 2001, the next of kin stated that the investigation opened following the report of the Special Investigative Court, "never sought to establish or identify those responsible by act or omission for the disappearance of [their] family members, or their fate, but merely established the masterminds and perpetrators of the taking of the Palace of Justice."[733] Moreover, the next of kin of the disappeared victims have indicated that, after the report of the Special Investigative Court presumed the death of their loved ones, the State authorities did not open investigations, denying that anyone was disappeared.[734]

474. The absence of an investigation *ex officio* was particularly serious in the cases of the forced disappearance of Irma Franco Pineda and the torture suffered by Yolanda Santodomingo Albericci and Eduardo Matson Ospino. The Court underlines that, as of 1986, the Special Investigative Court concluded that Irma Franco Pineda had been the victim of forced disappearance; then, in 1988, the Attorney General's office also concluded that she had been forcibly disappeared and, in 1990, the Special Attorney assigned to the Military Forces established a disciplinary sanction against the Colonel, Head of the B-2, for this disappearance (*supra* paras. 158, 169 and 211). The investigations were referred to the military criminal jurisdiction, where it was concluded that there was insufficient evidence of the responsibility of the Colonel, Head of the B-2; therefore the proceedings were ended in 1994 and, from then until 2001, no investigation into this forced disappearance was opened under the ordinary justice system. Also, in the case of the detention and torture suffered by Yolanda Santodomingo and Eduardo Matson, the Court points out that, in 1986, the Special Court concluded that "they were subjected to ill-treatment by their interrogators" and, in 1990, disciplinary actions were instituted in this regard. However, after the military criminal justice system had closed the investigation in 1993, no further investigations were opened until 2007, when the victims testified before the Prosecution Service, during the investigation into those who were disappeared.

475. This Court has already indicated that, when a forced disappearance occurs, it must be considered and treated as a wrongful act that may result in the imposition of sanctions on anyone who commits, instigates, or conceals it, or in any way participates in its perpetration. Consequently, whenever there are reasonable grounds to suspect that a person has been subjected to enforced disappearance, a criminal investigation must be opened.[735] This obligation is independent of whether a complaint is filed because, in cases of enforced disappearance, international law and the general obligation to ensure rights impose the obligation to investigate the case *ex officio*, without delay, and in a serious, impartial and effective manner; thus, it does not depend on the procedural initiative of the victim or his next of kin or on the provision of evidence by private individuals.[736] In any

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733 Complaint of June 21, 2001, filed before the Prosecutor General (evidence file, folio 22748).

734 *Cf.* Testimony of César Rodríguez Vera during the public hearing on the merits in this case.

735 *Cf. Case of Anzualdo Castro v. Peru. Preliminary objection, merits, reparations and costs*. Judgment of September 22, 2009. Series C No. 202, para. 65, and *Case of Osorio Rivera and family members v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of November 26, 2013. Series C No. 274, para. 178.

736 *Cf. Case of Velásquez Rodríguez v. Honduras. Merits.* Judgment of July 29, 1988. Series C No. 4, para. 177, and *Case of Osorio Rivera and family members v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of November 26, 2013. Series C No. 274, para. 178.

case, any State authority, public official or individual who becomes aware of acts aimed at the enforced disappearance of persons, must report this immediately.[737]

476. Furthermore, the State's obligation to investigate possible acts of torture or other cruel, inhuman or degrading treatment is reinforced by the provisions of Articles 1, 6 and 8 of the Inter-American Convention against Torture which oblige the State to "take effective measures to prevent and punish torture within their jurisdiction," and also "to prevent and punish other cruel, inhuman, or degrading treatment or punishment." This obligation applies to Colombia since December 1998, when it ratified this Convention.

477. Based on the above considerations and bearing in mind that the investigations into the facts of this case under the ordinary jurisdiction were not started, seriously and effectively, until 16 and 22 years after the events (in the case of the disappearances and torture, respectively) or were never started (in the case of the detention and ill-treatment of Orlando Quijano), the Court concludes that the State failed to comply with its obligation to open an investigation *ex officio* into the events of this case immediately.

B.4) Failure to search for the disappeared victims

478. In this case, eleven victims are still disappeared, inasmuch as their fate or whereabouts remain unknown. As mentioned previously, even in the hypothesis of the death of these persons, the State had and has the obligation to take all pertinent measures to clarify and determine their whereabouts. The Court notes that this obligation is independent of whether the disappearance of the person is the result of the wrongful act of forced disappearance, or of other circumstances such as their death in the operation to retake the Palace of Justice, errors in the return of their remains, or other reasons.[738]

479. In cases of presumed enforced disappearance, it is essential that the judicial and prosecution authorities act promptly and immediately ordering the opportune and necessary measures to determine the whereabouts of the victim or the place where he or she could be deprived of liberty.[739]

480. In order to conduct an investigation into a presumed enforced disappearance effectively and with due diligence, the authorities in charge of the investigation must use all necessary means to take those measures and make those inquiries that are essential and opportune to clarify the fate of the victims.[740] On numerous occasions, this Court has ruled on the obligation of States to conduct a genuine search, using the appropriate administrative or judicial mechanism, during which every effort is made, systematically and rigorously, with the adequate and appropriate human, technical and scientific resources, to

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[737] *Cf. Case of Anzualdo Castro v. Peru. Preliminary objection, merits, reparations and costs*. Judgment of September 22, 2009. Series C No. 202, para. 65, and *Case of García and family members v. Guatemala. Merits, reparations and costs*. Judgment of November 29, 2012. Series C No. 258, para. 138.

[738] Similarly, under international humanitarian law applicable in situations of non-international armed conflicts such as this one, States must "take all feasible measures to account for persons reported missing as a result of armed conflict and must provide their family members with any information it has on their fate." *Cf.* ICRC, *Customary International Humanitarian Law*, Vol. I, Rule 117, edited by Jean-Marie Henckaerts and Louise Doswald-Beck, 2007.

[739] *Cf. Case of Anzualdo Castro v. Peru. Preliminary objection, merits, reparations and costs*. Judgment of September 22, 2009. Series C No. 202, para. 134, and *Case of García and family members v. Guatemala. Merits, reparations and costs.* Judgment of November 29, 2012. Series C No. 258, para. 138.

[740] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits.* Judgment of July 29, 1988. Series C No. 4, para. 174, and *Case of Osorio Rivera and family members v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of November 26, 2013. Series C No. 274, para. 182. See also Article X of the Inter-American Convention on the Forced Disappearance of Persons, and Article 12 of the International Convention for the Protection of All Persons from Enforced Disappearance.

establish the whereabouts of the persons disappeared.[741] The return of the body of a disappeared person is extremely important for their next of kin, because it allows them to bury him or her in keeping with their beliefs, and also to close the mourning process that they have been experiencing throughout these years. In addition, the remains are evidence of what happened and, together with the place where they are found, can provide valuable information on the perpetrators of the violations or the institution to which they belong.[742]

481. The Court has also considered that the next of kin of the victims of gross human rights violations and also society have the right to know the truth and, in particular in cases of forced disappearance or of presumed enforced disappearance, this entails the right of the next of kin of the victims to know their fate and, if possible, the whereabouts of their remains.[743]

482. In this regard, the Court emphasizes the observation of the Superior Court of Bogota that, "to date, the Colombian State has not complied with its obligation to take all necessary measures to clarify the true situation [of the disappeared victims, with the exception of Irma Franco Pineda and Carlos Augusto Rodríguez Vera], especially when bearing in mind that the limited measures taken to this end were carried out irregularly, thus violating both the fundamental guarantees of the accused and the rights of the victims."[744]

483. According to the representatives, since 1985, the actions to search for the persons disappeared from the Palace of Justice have been undertaken, above all, by the next of kin, and even though the State has taken some steps in this regard, its activities have been isolated and unsuccessful. Thus, the Court takes note of the testimony of Cesar Rodríguez Vera, brother of Carlos Augusto Rodríguez Vera, who stated that, during approximately the first two years after the events of the Palace of Justice, the next of kin of the disappeared, their lawyer, and the Attorney General's office had access to some military facilities, but these visits were announced previously and, therefore, did not achieve a satisfactory result.[745]

484. The Court notes that, in this case, some measures have been taken to search for the disappeared.[746] In addition to the searches by the Attorney General's office indicated *supra*, inspections have been conducted at some military facilities and, starting in 1998, a process

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[741] See, *inter alia, Case of Gudiel Álvarez et al. (Diario Militar) v. Guatemala. Merits, reparations and costs*. Judgment of November 20, 2012. Series C No. 253, para. 334; *Case of García and family members v. Guatemala. Merits, reparations and costs.* Judgment of November 29, 2012. Series C No. 258, para. 200, and *Case of Osorio Rivera and family members v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of November 26, 2013. Series C No. 274, para. 251.

[742] *Cf. Case of Las Dos Erres Massacre v. Guatemala. Preliminary objection, merits, reparations and costs*. Judgment of November 24, 2009. Series C No. 211, para. 245, and *Case of Osorio Rivera and family members v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of November 26, 2013. Series C No. 274, para. 250.

[743] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits.* Judgment of July 29, 1988. Series C No. 4, para. 174, and *Case of Gudiel Álvarez et al. (Diario Militar) v. Guatemala. Merits, reparations and costs*. Judgment of November 20, 2012. Series C No. 253, para. 301. The Working Group on Enforced or Involuntary Disappearances has ruled similarly when indicating that "the right of the relatives to know the truth of the fate and whereabouts of the disappeared persons is an absolute right, not subject to any limitation or derogation. No legitimate aim, or exceptional circumstances, may be invoked by the State to restrict this right. This absolute character also results from the fact that the enforced disappearance causes 'anguish and sorrow' […] to the family, a suffering that reaches the threshold of torture." Working Group on Enforced or Involuntary Disappearances, General comment on the Right to the Truth in Relation to Enforced Disappearance. http://www.ohchr.org/Documents/Issues/Disappearances/GC-right_to_the_truth.pdf

[744] Judgment of the Superior Court of Bogota of January 30, 2012 (evidence file, folio 23283).

[745] *Cf.* Testimony of César Rodríguez Vera during the public hearing on the merits in this case.

[746] According to the representatives, "in 1986, 1998 to 2000 and 2007, the Attorney General's office, the Prosecutor General's Office, and the National Institute of Forensic Medicine undertook some exploration work in order to find the disappeared persons, without success" (merits file, folio 4026).

of exhuming the corpses buried in the mass grave of the South General Cemetery has been undertaken. As a result of this process, different anthropological and genetic tests have been performed that, to date, have ruled out the presence of the disappeared victims among the remains buried in that place, with the exception of the identification of Ana Rosa Castiblanco in 2001 (*supra* para. 193). However, the Court takes note of the information provided by Carlos Bacigalupo who indicated that, "to date, the State has not developed a genuine search plan, either with regard to the unidentified bodies in the mass grave which have been ruled out as [belonging to] the disappeared […] or to investigate other places where, based on the lines of investigation, the disappeared could be."[747] Although the victims have been incorporated into the National Plan for the Search for Disappeared Persons,[748] the Court notes that the information provided by the representatives reveals that no additional actions have been taken to find them and that the information registered under this search plan has not been updated, so that Ana Rosa Castiblanco Torres, whose remains were found and identified in 2001, is still recorded as disappeared.

485. Furthermore, the Court notes that the examinations and tests on the exhumed corpses were performed in the context of the different criminal proceedings and at the request of the different judicial authorities. Consequently, the results obtained have been isolated, partial and incomplete. In this regard, the Court underlines the comment of the Physical Anthropology Laboratory of the Universidad Nacional de Colombia that "the cross-checking phase has perhaps been the most incomplete phase" of the exhumation process (*supra* para. 192). Also, the Superior Court of Bogota indicated that "the procedure to exhume the corpses in the mass grave in the South Cemetery has not been documented systematically, which means that the information is fairly fragmented, and prevents reaching objective conclusions."[749]

486. Consequently, the Court finds that the failure to make a serious, coordinated and systematic effort to search for the victims constitutes a violation of the access to justice of their family members.

B.5) Due diligence

487. The Court emphasizes that, to conduct an investigation into enforced disappearance effectively and with due diligence,[750] all necessary means should be used to carry out promptly the actions and inquiries that are essential and opportune to clarify the fate of the victims and to identify those responsible for their forced disappearance.[751] To this end, the State should provide the corresponding authorities with the necessary logistic and scientific resources to collect and process the evidence and, in particular, the power to access the pertinent documentation and information in order to investigate the facts denounced and to obtain indications or evidence of the whereabouts of the victims.[752]

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747 Written notes by Carlos Bacigalupo (evidence file, folio 36315).

748 *Cf.* National Plan for the Search for Disappeared Persons, records corresponding to: Ana Rosa Castiblanco Torres, Bernardo Beltrán Hernández, Carlos Augusto Rodríguez Vera, Cristina del Pilar Guarín Cortés, David Súspes Celis, Gloria Anzola de Lanao, Gloria Stella Lizarazo Figueroa, Héctor Jaime Beltrán Fuentes, Irma Franco Pineda, Luz Mary Portela León, Norma Constanza Esguerra Forero and Lucía Amparo Oviedo Bonilla (evidence file, folios 26130 to 26177).

749 *Cf.* Judgment of the Criminal Chamber of the Superior Court of Bogota of January 30, 2012 (evidence file, folio 23285).

750 *Cf.* Article I(b)) of the Inter-American Convention on Forced Disappearance of Persons. See, similarly, Article 12 of the International Convention for the Protection of All Persons from Enforced Disappearance.

751 *Cf. Case of Velásquez Rodríguez v. Honduras. Merits.* Judgment of July 29, 1988. Series C No. 4, para. 174, and *Case of Osorio Rivera and family members v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of November 26, 2013. Series C No. 274, para. 182.

752 *Cf. Case of Tiu Tojin v. Guatemala. Merits, reparations and costs*. Judgment of November 26, 2008. Series C No.

488. The Court has indicated that the authorities must conduct the investigation as an inherent legal obligation, and not leave this to the initiative of the next of kin.[753] This is a basic and determinant element for the protection of the rights affected by such situations.[754] Consequently, the investigation should be conducted using all available legal means with the purpose of discovering the truth and achieving the pursuit, capture, prosecution and eventual punishment of all the masterminds and perpetrators of the acts, especially when State agents are or could be implicated.[755] Likewise, impunity must be eliminated by the establishment of both the general (State) and individual responsibilities, of a criminal and any other nature, of its agents or of private individuals.[756] In compliance with this obligation, the State must remove all obstacles, *de facto and de jure*, that maintain impunity.[757]

B.5.1) Due diligence in the initial investigation measures

489. In this case, one of the main hypotheses regarding what happened to the presumed disappeared victims is that they died inside the Palace of Justice. Therefore, the obligation of due diligence in the investigation of these events included the correct processing of the crime scene and examination, identification, and removal of the corpses in order to clarify what happened. The Court has established that the effective establishment of the truth in the context of the obligation to investigate a possible death must be apparent in the meticulous nature of the initial measures taken.[758] The Court has also asserted that, during the processing of the crime scene and of the corpses of the victims, basic essential procedures should be performed in order to conserve the evidence and any indications that may contribute to the success of the investigation,[759] such as the removal of the corpse and

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253, para. 327, and *Case of Osorio Rivera and family members v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of November 26, 2013. Series C No. 274, para. 182.

753 *Cf. Case of Velásquez Rodríguez v. Honduras. Merits.* Judgment of July 29, 1988. Series C No. 4, para. 177, and *Case of Osorio Rivera and family members v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of November 26, 2013. Series C No. 274, para. 178.

754 *Cf. Case of the Pueblo Bello Massacre v. Colombia*. Judgment of January 31, 2006. Series C No. 140, para. 145, and *Case of Osorio Rivera and family members v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of November 26, 2013. Series C No. 274, para. 178.

755 *Cf. Case of Myrna Mack Chang v. Guatemala. Merits, reparations and costs*. Judgment of November 25, 2003. Series C No. 101, para. 156, and *Case of the Landaeta Mejías Brothers et al. v. Venezuela. Preliminary objections, merits, reparations and costs*. Judgment of August 27, 2014. Series C No. 281, para. 216.

756 *Cf. Case of Goiburú et al. v. Paraguay. Merits, reparations and costs.* Judgment of September 22, 2006. Series C No. 153, para. 131, and *Case of Osorio Rivera and family members v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of November 26, 2013. Series C No. 274, para. 178.

757 *Cf. Case of Myrna Mack Chang v. Guatemala. Merits, reparations and costs*. Judgment of November 25, 2003. Series C No. 101, para. 277, and *Case of Osorio Rivera and family members v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of November 26, 2013. Series C No. 274, para. 178.

758 *Cf. Case of Juan Humberto Sánchez v. Honduras. Preliminary objection, merits, reparations and costs*. Judgment of June 7, 2003. Series C No. 99, *supra*, para. 127, and *Case of the Human Rights Defender et al. v. Guatemala. Preliminary objections, merits, reparations and costs*. Judgment of August 28, 2014. Series C No. 283, para. 204. In this regard, the Court has stipulated the guiding principles that must be observed in an investigation when a possible violent death is involved. The State authorities who conduct an investigation of this type should try, at least, *inter alia*: (i) to identify the victim; (ii) to recover and preserve evidentiary material related to the death to aid in any potential prosecution of those responsible; (iii) to identify possible witnesses and obtain statements from them concerning the death; (iv) to determine the cause, manner, location and time of death, as well as any pattern or practice that may have brought about the death, and (v) to distinguish between natural death, accidental death, suicide and homicide. In addition, the scene of the crime must be investigated thoroughly; autopsies must be performed, and human remains examined rigorously by competent professional using the most appropriate procedures. *Cf.* United Nations Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (Minnesota Protocol), UN Doc. E/ST/CSDHA/.12 (1991).

759 *Cf. Case of González et al. ("Cotton Field") v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of November 16, 2009. Series C No.205, para. 301, and *Case of the Human Rights Defender et al. v.*

the autopsy. The Court has also pointed out that due diligence in the investigation of a death requires preserving the chain of custody of every element of forensic evidence.[760]

490. In this case, it has been proved, and the State has acknowledged, that the scene of the events was altered, and that serious errors were committed in the removal of the corpses, which was controlled by military criminal investigation judges,[761] and in which personnel who did not have the necessary training participated (*supra* para. 146). In addition, it has been proved that the initial procedures were not carried out in a methodical, technical or professional manner: measures were not taken to safeguard and preserve the scene appropriately; some corpses were moved from the place where death had occurred; the remains were not collected and stored individually so that, in some cases, the remains of more than one person were combined, thus contaminating the evidence;[762] some corpses were undressed; some were "carefully washed" prior to the respective autopsy; also, several days later, when the building was being cleaned, some remains were found that had not been registered or removed by the authorities, and even some of these remains were "disposed of" (*supra* paras. 145 to 150). Owing to these irregularities, in some case, the records of the removal of the corpses and the autopsies did not contain exact information or, as in the case of Mr. Urán Rojas, did not contain all the necessary information. Furthermore, "numerous errors" were committed in the autopsies;[763] identification methods were used that, although valid, had a greater margin of error, and that did not take into account the irregularities committed previously during the removal of the corpses (*supra* paras. 151 to 154). Lastly, in an extremely questionable decision, 38 corpses were buried in a mass grave, including some that had been identified, supposedly to avoid a new attack by the M-19 (*supra* para. 155). The Court finds it particularly egregious that, when carrying out this burial, the corpses were not separated, individualized or marked in some way so as

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Guatemala. Preliminary objections, merits, reparations and costs. Judgment of August 28, 2014. Series C No. 283, para. 204.

760 United Nations Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (Minnesota Protocol), UN Doc. E/ST/CSDHA/.12 (1991), and *Case of González et al. ("Cotton Field") v. Mexico*. *Preliminary objection, merits, reparations and costs.* Judgment of November 16, 2009. Series C No. 205, para. 305 and 310.

761 In this regard, the Superior Court of Bogota considered that "within the judicial structure nothing moved without the express order of the security forces"; the work was only assigned to three military criminal investigation [judges] attached to the Bogota Police Department, a situation that the Chamber considers indicates the intention of concealing evidence that could be used to clarify the facts fully, or of making such evidence disappear'; "a direct intervention by the National Army in the procedures to inspect or to remove the corpses [has not been proved], but rather the presence of soldiers transporting corpses, observed by members of the judicial police." Judgment of the Criminal Chamber of the Superior Court of Bogota of January 30, 2012 (evidence file, folios 22996 and 22998).

762 According to the testimony of the Forensic Pathologist of the Institute of Forensic Medicine at the time, he "was not present for the removal of the corpses because that task was not performed by the Institute of Forensic Medicine; however, [he] received corpses that were incorrectly labeled as regards the sex or the number as follows: the corpses arrived in plastic bags with a number that had been placed by the officials who carried out the removal of the corpse and sometimes, when undoing the bags in order to perform the autopsy, remains were found that corresponded to different corpses." Testimony provided by Dimas Denis Contreras Villa on February 5, 1988, before the 30th Itinerant Criminal Investigation Court of Bogota (evidence file, folios 30889 and 30890).

763 In this regard, Carlos Bacigalupo indicated that "[i]t has been established that the actions of the National Institute of Forensic Medicine in the identification of the corpses that arrived from the Palace were deficient." He added that "the identifications that were made […] did not comply with the basic international standards at the time […] and, consequently, neither did the return of the remains to the next of kin […], a responsibility that also fell to the military criminal investigation judge who ordered that the bodies be sent to the mass grave." Written notes by Carlos Bacigalupo (evidence file, folios 36315, 36328, 36329, 36446, and 36455). Similarly, Máximo Duque declared that "the circumstances of the facts that occurred in a context of a massive disaster, the forensic and criminalistics technology available at the time (1985), and the inconsistencies that can be detected nowadays in the identification of several cases, signify that there were technical limitations in the procedures and that it is very probable that errors occurred in the identifications, and confusion in the return of the corpses." Written report of Máximo Duque Piedrahíta (file of affidavits, folio 36446).

to facilitate their subsequent identification or crosschecking against the records of the removal of corpses and the autopsies that were performed.

491. These irregularities in the processing of the crime scene, the removal of the corpses, and their subsequent burial in a mass grave have been acknowledged by the Council of State on numerous occasions,[764] by the Superior Court of Bogota,[765] and by at least two first instance criminal courts,[766] as well as by the Special Investigative Court in its final report,[767] and the Truth Commission (*supra* para. 147).

492. In addition, regarding the State's argument according to which the actions of the authorities should be analyzed based on the standards that existed at the time, the Court underlines that this argument has been rejected by the domestic judicial authorities themselves who have a better knowledge and understanding of the domestic laws in force at the time of the events. Thus, the Superior Court of Bogota emphasized "the lack of professionalism of the authorities in charge" of the processing of the crime scene and the removal of the corpses, and also concluded that "the inconsistencies could have been avoided if they had acted in accordance with the procedural norms in force at the time."[768] Also, the Special Investigative Court, created at the time of the events, the Truth Commission, and the deponent Carlos Bacigalupo have stressed that, at the time of the events, "clear standards already existed that were applicable to the handling of evidence and the removal of corpses," as well as applicable provisions of the Code of Criminal Procedure that regulated the actions of criminal investigation judges and the judicial police,

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764 The Council of State has indicated that "[t]he procedure of removing the corpses, using a military rather than a jurisdictional approach, was conducted with absolute disregard for the most elementary rules of criminal investigation, such as preserving the corpses and objects at the scene of the events, collecting and organizing the evidence found, individually and duly categorized, fingerprints and other prints, specific indications, personal objects, etc., as well as the conservation of traces and prints that would subsequently allow the judge to establish how the events unfolded. […] Apart from the foregoing, [the burial in the mass grave] was arbitrary and unlawful, and also prevented the grieving families from receiving the bodies of the victims." Judgment of the Council of State of October 13, 1994 (evidence file, folios 2942 and 2943). See also, Judgment of the Council of State of October 13, 1994 (evidence file, folios 3234 and 3235).

765 In addition to the findings in the chapter on the facts (*supra* para. 146 to 150), the Court underscores that the Superior Court of Bogota decided that: "the scene of the events and the corpses were processed irregularly, which meant that, that there were serious inconsistencies when finalizing the identification process and the return of the corpses"; orders were given to transport the corpses "to the patio on the first floor […]; they were taken there […] and the respective removal record was prepared there"; "when clearing away the rubble several days later, human remains or body parts were found and the fate of these was left to those who were carrying out that clearance activity"; "[the] procedures were not carried out in a methodical and technical manner […]; some of the remains were not kept separate initially, which meant that when the records of the removal were prepared, gross errors were committed the effects of which signify that, even today, some human remains have still not been identified" and, it was during the identification of the corpses that "the greatest number of errors were verified, because, during the identification process, the previous errors in the inspection and removal of the corpses were disregarded, as well as who the corpses belonged to based on the autopsies and the list of belongings and other elements with them." Judgment of the Criminal Chamber of the Superior Court of Bogota of January 30, 2012 (evidence file, folios 22993, 22994, 23001, 23002 and 23011).

766 *Cf.* Judgment of the 51st Criminal Court of the Bogota Circuit of April 28, 2011 (evidence file, folios 24540 and 24541), and Judgment of the Third Criminal Court of the Bogota Special Circuit of June 9, 2010 (evidence file, folios 24016 and 24017).

767 In this regard, in what it called "prominent errors," the Special Investigative Court indicated that "[i]nexplicably, the military authorities did not wait for the competent investigation officials to perform the tasks for which they were legally responsible. First, they ordered the seizure of weapons, and war supplies and materiel; then the assembly of corpses on the first floor, after undressing them and removing all their belongings. Some of those corpses, without any reason, were carefully washed. This process deprived the officials responsible for the removal procedures of important details that, later, made it difficult to identify the corpses and created confusion and chaos. Evidently, the initial actions were unnecessarily counterproductive to the proper handling of the investigation." Report of the Special Investigative Court (evidence file, folio 30531).

768 *Cf.* Judgment of the Superior Court of Bogota of January 30, 2012 (evidence file, folios 23001 and 23002).

whose presence the military authorities did not wait for.[769] The Court has also noted that, in 1985, provisions of the Code of Criminal Procedure were in force that established the obligation to take measures to identify the deceased in cases of homicide, and also that the corpse should not be moved until permission had been given by the investigating official or the judicial police, and that the corpse should not be buried until the autopsy had been performed.[770] However, over and above the existence of norms, the Court cannot accept the argument that the conduct of the authorities during these initial procedures could be considered in keeping with the most basic standards of due diligence. The correct implementation of these initial procedures is of paramount importance for the investigations, and one of their main purposes is precisely to collect and preserve the evidence, avoiding its contamination, in order to facilitate and ensure the subsequent clarification of the facts. The actions of the State authorities do not reveal this care. Moreover, it was inappropriate and unreasonable that those who had intervened in the hostilities should be in charge of collecting and recording the evidence from which their responsibility could be derived.

493. In this regard, the Court recalls that omissions in these initial procedures condition or limit the investigations that follow, and this is especially serious when such procedures are carried out by the security forces that are presumably responsible.[771]

494. The representatives argued that the military authorities took the initial measures in order to obstruct the subsequent investigation, to conceal evidence, and to prevent the elucidation of the facts. The rulings of the domestic courts reached the same conclusion. Thus, in its first instance judgment on the responsibility of the Commander of the 13th Brigade, the 51st Criminal Court indicated that:

> The removal of corpses [by military authorities, added to the fact] that soldiers of the National Army and firefighters washed the bodies, undressed them, and piled them up on the first floor of the Palace of Justice, […] was part of a military ploy to mislead the investigation, to destroy the evidence, to appropriate it, and to avoid responsibilities; […] the manner in which the General overstepped his authority cannot be explained in any other way […], since his knowledge, experience and academic

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769 *Cf.* Report of the Special Investigative Court (evidence file, 30531); Report of the Truth Commission (evidence file, folios 191 to193), and Written notes of Carlos Bacigalupo (evidence file, folios 36318 and 36321).

770 *Cf.* Note of the Deputy Director of Forensic Services of October 25, 2013 addressed to the Director of the Presidential Program on Human Rights and International Humanitarian Law (evidence file, folio 37970), and Code of Criminal Procedure, article 289: "Powers: The powers of the judicial police and those who exercise functions of judicial police are as follows: (a) To execute the order to open or conduct investigation procedures issued to them by justices, judges and agents of the Pubic Prosecution Service […]; (c) On their own initiative in situations of *in flagrante delicto* or quasi-*flagrante delicto* and in any other case in which the investigating official does not act immediately: (1) to make a thorough inspection of the scene of the events; (2) to make an exhaustive examination of the indications of the crime and collect elements that may provide evidence of the crime and the responsibility of the perpetrators, taking care that these elements are not altered, eliminated or concealed; collect them, transfer them or record them graphically or topographically or allow them to be examined if necessary; (3) to carry out the official removal of the corpses, if possible with the assistance of a medical examiner or pathologist, as established in this Code; […] (13) to inform immediately the agent of the Pubic Prosecution Service and the corresponding investigating judge of the initiation of these procedures"; article 340: "Identity of the deceased. When a crime of murder or an act that is presumed to be murder is investigated, the corpse may not be moved until the investigating official or the agent of the judicial police permits this. Before according this permission, the official shall conduct a judicial inspection to make a thorough examination of the corpse, the place where it was found, and the injuries, bruising and other external signs of violence. He shall then proceed to identify the corpse and order that the autopsy be performed to determine the cause of death"; article 342: "Autopsy. The corpse shall not be buried until the autopsy referred to in the preceding article has been performed, and if the corpse has been buried without complying with this requirement, it shall be exhumed in order to comply with it, advising the person in charge of the place where the burial took place." Available at: ftp://ftp.camara.gov.co/camara/basedoc/_Decreto1971/Decreto_0409_1971.html (cited in the merits file, folio 3853).

771 *Cf. Case of González Medina and family members v. Dominican Republic. Preliminary objections, merits, reparations and costs*. Judgment of February 27, 2012. Series C No. 240 , para. 219, and *Case of García and family members v. Guatemala. Merits, reparations and costs*. Judgment of November 29, 2012. Series C No. 258, para. 139.

> training obliged him to protect, to isolate, and to preserve the scene of the events, in order to safeguard the evidence adequately so as to avoid its disappearance or contamination.[772]

495. Furthermore, the Superior Court of Bogota indicated that "the first instance ruling is correct when it indicates that the Military Forces handled the scene and the removal of the corpses in order to ensure the impunity of what had happened or, at least, to obstruct any subsequent investigation."[773] Carlos Bacigalupo, forensic anthropologist who worked for the Truth Commission, made a similar comment when he indicated that, owing to the irregularities committed during the processing of the scene of the events, it can be concluded that "the crime scene was altered in order to obstruct the establishment of subsequent criminal responsibilities."[774] Notwithstanding the determinations made in this sense in the domestic sphere, the Court recalls that, in order to establish that a violation of the rights recognized in the Convention has occurred, it is not always necessary to determine the intentionality of the perpetrators.[775] For the purposes of the analysis of this case, the Court considers it sufficient to establish that the serious irregularities committed in these initial investigation procedures engage *per se* the international responsibility of the State. These irregularities are aggravated by the fact that they have been used as a defense strategy by the State authorities to deny the occurrence of the events and to ensure the subsistence of doubt with regard to other evidence and indications that point to the fact that the victims were forcibly disappeared.

496. The Court does not ignore the particularly tense and chaotic situation that reigned among the State authorities when the operation to retake the Palace of Justice concluded. However, it notes that even in a situation of armed conflict, international humanitarian law includes obligations of due diligence concerning the correct and adequate removal of corpses and the efforts that should be made to identify and to bury them in order to facilitate their subsequent identification.[776] Similarly, expert witness Carlos Castresana indicated that:

> The existence of a conflict does not exonerate the State from its obligation to respect and to ensure respect for domestic law for the benefit of its citizens, or relieve it of its commitments to the international community, because the norms of international human rights law remain valid and their importance is accentuated even in a situation of conflict. Rather, to the contrary, the State should

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772 Judgment of the 51st Criminal Court of the Bogota Circuit of April 28, 2011 (evidence file, folio 24615).

773 Judgment of the Superior Court of Bogota of January 30, 2012 (evidence file, folios 23057, 23058 and 22996)

774 Written notes by Carlos Bacigalupo (evidence file, folio 36324).

775 *Cf. Case of Velásquez Rodríguez v. Honduras. Merits. Judgment of July 29, 1988*. Series C No. 4, para. 173, and *Case of Gutiérrez and family v. Argentina. Merits, reparations and costs*. Judgment of November 25, 2013. Series C No. 271, para. 78.

776 In this regard, the Court notes that this obligation is established for cases of international armed conflicts in the four 1949 Geneva Conventions (Articles 17, 20, 120 and 130, respectively). In the case of non-international conflicts, Article 8 of Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts establishes that "[w]henever circumstances permit, and particularly after an engagement, all possible measure shall be taken, without delay, to search for and collect the wounded, sick and shipwrecked, to protect them against pillage and ill-treatment, to ensure their adequate care, and to search for the dead, prevent their being despoiled, and decently dispose of them." This Protocol entered into force on December 7, 1978; however, it was ratified by Colombia on August 15, 1995. Nevertheless, the compilation of rules of customary international humanitarian law sponsored by the ICRC includes the following, applicable to non-international armed conflicts: "Rule 112. Whenever circumstances permit, and particularly after an engagement, each party to the conflict must, without delay, take all possible measures to search for, collect and evacuate the dead without adverse distinction"; "Rule 113. Each party to the conflict must take all possible measures to prevent the dead from being despoiled. Mutilation of dead bodies is prohibited"; "Rule 115. The dead must be disposed of in a respectful manner and their graves respected and properly maintained"; "Rule 116. With a view to the identification of the dead, each party to the conflict must record all available information prior to disposal and mark the location of the graves." Among other material, the compilation took pre-1985 war manuals into account. *Cf.* ICRC, *Customary International Humanitarian Law*, Vol. I, edited by Jean-Marie Henckaerts and Louise Doswald-Beck, 2007, Rules 112, 113, 115 and 116.

> increase its diligence in complying with its obligation to respect human rights, which, in case of a conflict, ensures the entry into application of norms that are not applicable in its absence. And, taking into account the special vulnerability in which a situation of conflict places non-combatants, the State must exercise extreme diligence in complying with its obligation to ensure rights, which requires and includes […] the obligation to prevent human rights violations and, if they should occur, whether committed by State or non-State agents, […], this entails the obligations to investigate, to prosecute and to punish those responsible, and to make reparation to the victims.[777]

B.5.2) Due diligence in the ordinary jurisdiction

497. The Court takes note that there were three stages in the investigations in this case as regards the activity of the authorities in charge of the investigations: a first stage (from 1985 to 2001) during which no investigations were conducted into the disappearances of the presumed victims or the torture of the survivors, except for the investigation carried out by the Special Investigative Court and the investigations and proceedings opened and ended in the military criminal jurisdiction into the forced disappearance of Irma Franco Pineda and the torture of Yolanda Santodomingo Albericci and Eduardo Matson Ospino. A second stage tookplace from 2001 to 2010, during which, based on a complaint filed by the next of kin, an investigation was opened for the first time in the ordinary jurisdiction into the possible forced disappearance of the disappeared victims and, at this stage, the investigation was most active following the appointment of the Fourth Prosecutor delegated to the Supreme Court of Justice, Ángela María Buitrago (from 2005 to 2010).[778] It was in this period that most of the investigative measures were taken and the only proceedings that have been conducted to date against those possibly responsible for the events were instituted. Following this, there is a last period (from 2010 to date), during which the proceedings previously initiated were continued and also the investigations ordered in the context of those proceedings or because the Prosecution Service ordered certified copies of the case file. However, apart from the activities that form part of the proceedings themselves, as well as some forensic or genetic examinations or tests, the Court has no information that further investigative activities were conducted, even as a result of orders, exhortations and suggestions of the judicial authorities who delivered judgments in this case, such as the Superior Court of Bogota in its judgment against the Commander of the Cavalry School. Despite the absence of information on progress in the investigations by the Prosecution Service, the Court underlines that it is in this latest stage that all the criminal judicial decisions have been delivered concerning the events of this case (three first instance and two second instance judgments).

498. Regarding due diligence in the investigations opened in the ordinary jurisdiction, the Court stresses that former prosecutor Ángela María Buitrago testified before this Court that, when she took charge of the investigation, she:

> had to search for [the recordings that existed regarding the Palace of Justice] because, unfortunately, […] no videos were reported in [the] investigations [by the military jurisdiction and the criminal investigation]. In the investigation by the 30th Court there were more than 75 videos […], and when [… she] took over the investigation, these videos did not exist; subsequently, the recordings of communications between the soldiers were disappeared, and also the recordings that

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[777] Expert opinion provided by affidavit on November 10, 2013, by Carlos Castresana Fernández (evidence file, folio 36269).

[778] In this regard, the Court stresses the testimony of the prosecutor who was in charge of the case that: "the investigation into the remaining disappeared of the Palace of Justice was admitted [owing to] a 2001 complaint, [following which] an investigation was opened during which only six expansions of the complaint were received; investigations related to the case were incorporated from the judgment of the 30th Criminal Investigation Court based on the indictment of the guerrilla group and, at that point, the investigation was halted until 2005, [with the exception of] one action […] which consisted in the return of the remains of Ana Rosa Castiblanco." *Cf.* Testimony of Ángela María Buitrago during the public hearing on the merits in this case.

> had been reported in one specific audio tape that […] mentioned those who disappeared from the Palace of Justice and [their] transfer to tactical units.[779]

499. In this regard, this Court stresses the opinion of expert witness Michael Reed that, in the presence of acts that reveal the obstruction of the administration of justice, such as the alteration and elimination of evidence, the diligence with which the State must act in the investigation is increased.[780]

500. In addition, both the Commission and the representatives alleged that no investigation had been conducted into other individuals who were possibly responsible. In this regard, it should be recalled that it is not for the Court to analyze the hypotheses concerning the perpetrators that arose during the investigation of the events and, consequently, to establish individual responsibilities; the definition of these is the purview of the domestic criminal courts.[781] However, it notes that, in complex cases such as this one, the obligation to investigate entails the duty to use the efforts of the State apparatus to clarify the structure that permitted these violations, the causes, the beneficiaries, and the consequences; hence an investigation can only be effective if it is conducted based on a comprehensive vision of the facts that takes into account the background and the context in which they occurred and that seeks to reveal the structures of participation.[782] In this regard, the Court notes that, following the initial accusations and charges brought by the Prosecution Service between 2007 and 2009 (*supra* paras. 174), no other person has been implicated in the investigations into these events, despite various judicial decisions issued at the domestic level establishing that other individuals who were possibly responsible should be investigated.

501. The Court underlines the opinion of expert witness Carlos Castresana in this regard:

> [The facts of the case were presumably] committed by authorities and agents who are sufficiently identified, belonging to known military and police units, who did not act on their own accord, but as part of a specific upward chain of command – the masterminds – and downward – perpetrators. It is unlikely that a mid-level military leader could have decided to retake the Palace of Justice, […] without the consent of his superiors. […] and, similarly, in all probability, the tasks of interrogating the detainees and their torture, the enforced disappearances, and the extrajudicial executions must have been perpetrated by subordinates.[783]

502. The Court also emphasizes that, in the investigation of complex crimes, the design and implementation of an investigation strategy is essential in order to concentrate efforts and resources as effectively as possible. The Court observes and assesses positively that, between 2005 and 2010, the investigation that was conducted abided by this principle, as explained during the public hearing on the merits held in this case by the person who was the prosecutor in charge of the investigation. However, the Court notes that, after that stage, the investigations appear to have come to a halt, even though new investigations had been requested during the criminal proceedings that were held, and the need to obtain further evidence to achieve a definitive clarification of the events has been proposed. The Court stresses, in particular, that no information has been provided on any progress made

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779 Testimony of Ángela María Buitrago during the public hearing on the merits in this case.

780 *Cf.* Expert opinion of Michael Reed provided by affidavit on November 6, 2013 (evidence file, folio 35641).

781 *Cf. Case of Cantoral Huamaní and García Santa Cruz v. Peru. Preliminary objection, merits, reparations and costs*. Judgment of July 10, 2007. Series C No. 167, para. 87, and *Case of the Human Rights Defender et al. v. Guatemala. Preliminary objections, merits, reparations and costs*. Judgment of August 28, 2014. Series C No. 283, para. 214.

782 *Cf. Case of Manuel Cepeda Vargas v. Colombia. Preliminary objections, merits, reparations and costs*. Judgment of May 26, 2010. Series C No. 213, para. 118, and *Case of García and family members v. Guatemala. Merits, reparations and costs*. Judgment of November 29, 2012. Series C No. 258, para. 148.

783 Expert opinion provided by affidavit by Carlos Castresana Fernández on November 6, 2013 (evidence file, folio 36274).

in the investigations into what happened to Yolanda Santodomingo Albericci, Eduardo Matson Ospino, Orlando Quijano and José Vicente Rubiano Galvis, or into the disappearance and execution of Auxiliary Justice Carlos Horacio Urán Rojas.

503. The Court also emphasizes that, in January 2012, the Superior Court of Bogota exhorted the Prosecutor General's Office to "create a special unit with exclusive responsibility for the proceedings that arise from these facts."[784] However, it was not until October 28, 2013, almost two years later (one year and 10 months) and on the occasion of the hearings held in the instant case, that the Prosecution Service advised that it had decided to combine in a single special unit all the investigations into the events that occurred in the Palace of Justice on November 6 and 7, 1985 (*supra* para. 208). The Court assesses positively the integration of the investigations into the events of this case into a single special unit of the Prosecution Service, which may make a positive contribution to their effectiveness. However, it notes that the obligation to investigate must be complied with by the State as an inherent legal duty and not with a view to the State's defense before this Court.

504. The Court also notes that, after 29 years, the State's main defense and the decisions of two chambers of the Superior Court of Bogota (in the two cases that to date have been decided in second instance) rests, above all, on the absence of sufficient proof or on doubts arising from the errors committed during the initial procedures. Many of these errors (in the processing of the crime scene and the removal of the corpses) cannot be completely rectified. However, the Court notes that no serious, planned, and coordinated effort has been made to overcome these irregularities insofar as possible. The Court finds it particularly relevant that, despite this lapse of time, no pertinent measures have been taken to verify definitively whether the remains returned to the family of Justice Pedro Elías Serrano really belong to Norma Constanza Esguerra, which has been suspected since at least 1986 (*supra* para. 326).

B.6) Reasonable time of the proceedings in the ordinary criminal jurisdiction

505. For the investigation to be conducted in a serious and impartial manner and as an inherent legal obligation, the right of access to justice requires that the facts investigated are determined within a reasonable time.[785] This Court has indicated that the "reasonable time" referred to by Article 8(1) of the Convention must be assessed in relation to the total duration of the proceedings until a final judgment is handed down.[786] The Court considers that, in principle, a prolonged delay, such as the one that has occurred in this case constitutes, of itself, a violation of judicial guarantees.[787]

506. The Court has generally considered the following elements to determine whether the time is reasonable: (a) the complexity of the matter; (b) the procedural activity of the interested party; (c) the actions of the judicial authorities, and (d) the effects on the legal situation of the person involved in the proceedings. The Court recognizes that there have been periods during which the investigations in this case have been conducted with due

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[784] Judgment of the Superior Court of Bogota of January 30, 2012 (evidence file, folio 23454).

[785] *Cf. Case of Baldeón García v. Peru. Merits, reparations and costs.* Judgment of April 6, 2006. Series C No. 147, para. 155, and *Case of the Landaeta Mejías Brothers et al. v. Venezuela. Preliminary objections, merits, reparations and costs*. Judgment of August 27, 2014. Series C No. 281, footnote 314.

[786] *Cf. Case of Genie Lacayo v. Nicaragua. Merits, reparations and costs*. Judgment of January 29, 1997. Series C No. 30, para. 77, and *Case of the Landaeta Mejías Brothers et al. v. Venezuela. Preliminary objections, merits, reparations and costs*. Judgment of August 27, 2014. Series C No. 281 , footnote 314.

[787] *Cf. Case of Suárez Rosero v. Ecuador. Merits.* Judgment of November 12, 1997. Series C No. 35, para. 71, and *Case of the Human Rights Defender et al. v. Guatemala. Preliminary objections, merits, reparations and costs*. Judgment of August 28, 2014. Series C No. 283, para. 226.

diligence and respecting the guarantee of a reasonable time. In particular, the Court has recognized that most of the procedures in the investigation were carried out between 2005 and 2010, while, since 2010, criminal proceedings have been held and several judgments have been handed down in relation to those investigations (*supra* para. 497). However, in the instant case, 29 years have passed since the events, and what occurred has still not been completely clarified or the whereabouts of those who disappeared located. Even though the Court recognizes that the events of this case are complex,[788] it emphasizes that, for 16 years, no investigation was conducted into the disappearance of the victims and the investigation of this case made no significant progress until 2005; in other words, 20 years after the disappearances in this case commenced, even though the authorities were aware that the victims could have been forcibly disappeared. The Court underscores that the delay in the proceedings was caused, initially, by the failure to comply with the obligation to open the corresponding investigations *ex officio* in the ordinary jurisdiction; while, at a second stage, the authorities in charge of the investigations have lacked due diligence when implementing them (*supra* paras. 471 to 477 and 497 to 504). The Court also notes that the investigations into the detention and torture of three survivors are still at a preliminary stage, while an investigation has not even been started into the violations committed against a fourth survivor. Consequently, the Court considers that it is not necessary to make a detailed analysis of the previously mentioned criteria concerning the reasonable time.

507. The Court finds it evident that the investigations that were opened and also the criminal proceedings, taken as a whole, have significantly exceeded the time that could be considered reasonable for conducting serious, diligent and exhaustive investigations into the facts of this case. And this is especially so, when taking into account that, to the time that has already elapsed, must be added the time required: to complete the proceedings that are currently being processed, to identify other individuals who were possibly responsible, and to process the respective criminal proceedings with their different stages until a final judgment is obtained. The lack of an investigation for such a long period constitutes a flagrant denial of justice and a violation of the victims' right of access to justice.

B.7) Right to know the truth

508. The representatives argued that, for more than 20 years, the State has "violated the right of the victims and of their families to know the truth about the facts" "by concealing information that is relevant to the case and by not having provided the necessary mechanisms and proceedings to clarify the truth of what happened." According to the representatives, "[t]hese acts and omissions of the State constitute a violation of the right to the truth, which is protected by Articles 1(1), 8, 13 and 25 of the Convention considered together." The State did not present specific arguments in this regard.

509. In different cases, the Court has considered that the right to the truth "is subsumed in the right of the victims or the members of their family to obtain the elucidation of the acts that violated the Convention and the corresponding responsibilities from the competent State organs, by means of the investigation and prosecution established in Articles 8 and 25(1) of the Convention."[789] In addition, in some cases, such as *Anzualdo*

[788] This is because it involves numerous victims of different acts, and that there are different degrees of responsibility at diverse levels, as well as because it has involved the State's constant denial that the facts occurred (due both to the refusal to provide information, which is typical of forced disappearance, and with regard to the other violations).

[789] In most cases, the Court has included this consideration when analyzing the violation of Articles 8 and 25. *Cf. Case of Baldeón García v. Peru. Merits, reparations and costs.* Judgment of April 6, 2006. Series C No. 147, para. 166; *Case of Radilla Pacheco v. Mexico. Preliminary objections, merits, reparations and costs.* Judgment of November 23, 2009. Series C No. 209, para. 180; *Case of Las Dos Erres Massacre v. Guatemala. Preliminary objection, merits, reparations and costs.* Judgment of November 24, 2009. Series C No. 211, para. 151; *Case of Chitay Nech et al. v.*

Castro et al. v. Peru and *Gelman v. Uruguay,* the Court has included additional and specific considerations applicable to the particular case concerning the violation of the right to the truth.[790] Furthermore, in the case of *Gudiel Álvarez et al. (Diario Militar) v. Guatemala,* the Court examined the violation of the right to know the truth in its analysis of the right to personal integrity of the next of kin, because it considered that, by concealing information that prevented the next of kin from knowing the truth, the respective State had violated Articles 5(1) and 5(2) of the American Convention.[791] Additionally, in the case of *Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil*, the Court declared an autonomous violation of the right to the truth that, owing to the specific circumstances of that case, also constituted a violation of the right of access to justice and an effective remedy, and a violation of the right to seek and receive information, recognized in Article 13 of the Convention.[792]

510. In this case, 29 years after the events, the truth about what happened to the victims in this case and their whereabouts are still unknown. Moreover, the Court underlines that, since the events occurred, a series of actions have been revealed that have facilitated the concealment of what happened and prevented or delayed their clarification by the judicial authorities and the Prosecution Service. In addition, despite the creation of a Truth Commission in 2005 as part of the efforts made by the Judiciary to establish the truth about what happened, its conclusions have not been accepted by the different State organs responsible for the implementation of its recommendations. In this regard, the Court recalls that the State argued before this Court that the said commission was unofficial and that its report did not represent the truth of what happened[793] (*supra* para. 84). Thus, the State's position has prevented the victims and their families from achieving their right to the

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Guatemala. Preliminary objections, merits, reparations and costs. Judgment of May 25, 2010. Series C No. 212, para. 206; *Case of Gelman v. Uruguay. Merits and reparations.* Judgment of February 24, 2011 Series C No.221, paras. 243 and 244; *Case of Uzcátegui et al. v. Venezuela. Merits and reparations.* Judgment of September 3, 2012. Series C No. 249, para. 240, and *Case of Osorio Rivera and family members v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of November 26, 2013. Series C No. 274, para. 220; *Case of the La Rochela Massacre v. Colombia. Merits, reparations and costs*. Judgment of May 11, 2007. Series C No. 163, para. 147; *Case of Anzualdo Castro v. Peru. Preliminary objection, merits, reparations and costs.* Judgment of September 22, 2009. Series C No. 202, paras. 119 and 120; *Case of the Massacres of El Mozote and nearby places v. El Salvador. Merits, reparations and costs.* Judgment of October 25, 2012. Series C No. 252, para. 298. In one case this consideration was included under the obligation to investigate ordered as a measure of reparation. *Cf. Case of Almonacid Arellano et al. v. Chile. Preliminary objections, merits, reparations and costs.* Judgment of September 26, 2006. Series C No. 154, para. 148. Also, in other cases, it has been established that it is subsumed in Articles 8(1), 25 and 1(1) of the Convention, but this consideration has not been included in the reasoning of the respective operative paragraph. *Cf. Case of the Barrios Family v. Venezuela. Merits, reparations and costs.* Judgment of November 24, 2011. Series C No. 237, para. 291; *Case of González Medina and family members v. Dominican Republic. Preliminary objections, merits, reparations and costs.* Judgment of February 27, 2012. Series C No. 240, para. 263, and *Case of Contreras et al. v. El Salvador. Merits, reparations and costs.* Judgment of August 31, 2011. Series C No. 232, para. 173.

790 *Cf. Case of Anzualdo Castro v. Peru. Preliminary objection, merits, reparations and costs*. Judgment of September 22, 2009. Series C No. 202, paras. 168 and 169, and *Case of Gelman v. Uruguay. Merits and reparations.* Judgment of February 24, 2011 Series C No.221, paras. 192, 226 and 243 to 246.

791 *Cf. Case of Gudiel Álvarez et al. (Diario Militar) v. Guatemala. Merits, reparations and costs.* Judgment of November 20, 2012. Series C No. 253, para. 202.

792 In this regard, in the case of *Gomes Lund et al.*, the Court observed that, based on the events of the case, the right to know the truth was related to an action filed by the next of kin to access certain information in relation to access to justice and the right to seek and receive information recognized in Article 13 of the American Convention, so that it analyzed that right under this provision. *Cf. Case of Gomes Lund et al. ("Guerrilha do Araguaia") v. Brazil. Preliminary objections, merits, reparations and costs*. Judgment of November 24, 2010. Series C No. 219, para. 201.

793 Indeed, the Truth Commission itself stated that, owing to its nature, it "did not receive logistic, material or human support from any State body," so that this report "is the result of the direct and personal commitment of the commissioners, with their own resources and, in the last year and a half of their work, with the efficient technical and methodological assistance of the International Center for Transitional Justice […], with the support of the Ford Foundation and the European Commission." Report of the Truth Commission (evidence file, folios 27 and 28).

establishment of the truth by means of this extrajudicial commission. In the Court's opinion a report such as that of the Truth Commission is important, although complementary, and does not substitute the State's obligation to establish the truth by means of judicial proceedings.[794] Thus, the Court stresses that there is still no official version of what happened to most of the victims in this case.

511. In this regard, the Court reiterates that anyone, including the next of kin of the victims of gross human rights violations, has the right to know the truth, according to Articles 1(1), 8(1), 25, as well as in certain circumstances Article 13, of the Convention[795] (*supra* para. 481). However, it considers that, in this case, the right to know the truth is subsumed basically in the right of the victims or their family members to obtain from the competent organs of the State the clarification of the acts that violated human right and the corresponding responsibilities, by the investigation and prosecution established by Articles 8 and 25 of the Convention,[796] which also constitutes a form of reparation. Consequently, in this case, the Court will not make an additional ruling with regard to the violation of the right to the truth alleged by the representatives.

B.8) General conclusion

512. The Court assesses positively the efforts made to date in the individualization and prosecution of those presumably responsible in this case. It also underscores the partial acknowledgement of responsibility made by the State in relation to its obligation to investigate the facts (*supra* para. 21.c). However, based on the above considerations, the Court finds that the State violated the guarantee of an ordinary, independent and impartial judge as regards the investigations into the forced disappearance of Irma Franco Pineda and the torture suffered by Yolanda Santodomingo Albericci and Eduardo Matson Ospino. The Court also finds that Colombia failed to comply with its obligation to open an immediate and effective investigation *ex officio*, and omitted to carry out the necessary search activities to discover the whereabouts of the disappeared and to clarify what happened, and did not act with due diligence during the initial investigation procedures and, to a lesser extent, in the investigations that are underway in the ordinary jurisdiction. Lastly, the Court has noted that the investigation into these facts has not respected the guarantee of a reasonable time.

513. Consequently, the Court concludes that the State violated the right to judicial guarantees and to judicial protection recognized in Articles 8(1) and 25(1) of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of the next of kin of the forcibly disappeared victims, including the next of kin of Carlos Horacio Urán Rojas, and of the next of kin of Ana Rosa Castiblanco Torres and Norma Constanza Esguerra Forero, identified in paragraph 539 of this Judgment, as well as in relation to Article I(b) of the Inter-American Convention on Forced Disappearance, to the detriment of the next of kin of the forcibly disappeared victims, including the next of kin of Carlos Horacio Urán Rojas, and in relation to Articles 1, 6 and 8 of the Inter-American Convention against Torture, to

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[794] *Cf. Case of Zambrano Vélez et al. v. Ecuador. Merits, reparations and costs.* Judgment of July 4, 2007. Series C No. 166, para. 128, and *Case of the Massacres of El Mozote and nearby places v. El Salvador. Merits, reparations and costs.* Judgment of October 25, 2012. Series C No. 252, para. 298.

[795] *Cf. Case of Gelman v. Uruguay. Merits and reparations.* Judgment of February 24, 2011 Series C No.221, para. 243, and *Case of Osorio Rivera and family members v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of November 26, 2013. Series C No. 274, para. 220.

[796] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits.* Judgment of July 29, 1988. Series C No. 4, para. 181, and *Case of Uzcátegui et al. v. Venezuela. Merits and reparations.* Judgment of September 3, 2012. Series C No. 249, para. 240.

the detriment of Yolanda Santodomingo Albericci, Eduardo Matson Ospino, Orlando Quijano and José Vicente Rubiano Galvis.

XII
OBLIGATION TO PREVENT VIOLATIONS OF THE RIGHTS TO LIFE AND TO PERSONAL INTEGRITY

514. The Court recalls that the facts of this case occurred as a result of the violent taking of the Palace of Justice by the M-19. According to the Truth Commission, this guerrilla group "carried out an armed attack on a civilian target, using a first group of combatants who entered the Palace disguised as visitors to the seat of the court. Another group entered by the underground parking lot and murdered two private guards […] and the Palace administrator […]. Then, they took those present in the Palace of Justice hostage, and some of them used the hostages as human shields. [Also,] members of the M-19 fired against some hostages injuring them severely and even killing some of them."[797] In this chapter, the Court will determine whether the State incurred international responsibility because it failed to adopt sufficient and effective measures to prevent this incursion by the guerrilla, even though the possible taking of the Palace of Justice by the M-19 "was well-known" among the State's security agencies, as well as the situation of risk of the justices, councilors and, consequently, all those who were in the Palace of Justice (*supra* paras. 90 and 91). For the purposes of this Judgment, the presumed victims of the obligation of prevention will be considered those persons who were in the Palace of Justice on the day it was taken; that is, the eight cafeteria employees (Carlos Augusto Rodríguez Vera, Cristina del Pilar Guarín Cortés, David Suspes Celis, Bernardo Beltrán Hernández, Héctor Jaime Beltrán Fuentes, Gloria Stella Lizarazo Figueroa, Luz Mary Portela León, Ana Rosa Castiblanco Torres), the six visitors (Norma Constanza Esguerra Forero, Lucy Amparo Oviedo Bonilla, Gloria Anzola de Lanao, Yolanda Santodomingo Albericci, Eduardo Matson Ospino and Orlando Quijano) and Auxiliary Justice Carlos Horacio Urán Rojas.

A. Arguments of the parties and of the Commission

515. The representatives argued that "a real and imminent danger existed for the justices of the Supreme Court and the Council of State," as well as for the persons who worked in the Palace of Justice, despite which "the State did not take the necessary measures to prevent the violation of the rights of these persons." They emphasized that Colombia had not only withdrawn the existing security without any justification, but had failed to take the necessary measures to prevent the violations, so that "it incurred in a violation of the obligation of prevention with regard to the [cafeteria employees, the visitors, and Carlos Horacio Urán Rojas] who were inside the Palace of Justice when it was taken by the M-19." They also indicated that "it is fully proved that the State […] had exact and precise information of the date and the time at which the M-19 would take the Palace of Justice," so that "the withdrawal of the special protection was a deliberate act of the military leadership to allow the entry of the guerrilla group."

516. The State did not refer expressly to the alleged violation of the obligation of prevention, but contested the facts on which it was based. Thus, Colombia emphasized that "the security was not withdrawn intentionally" in order to facilitate the attack by the M-19 and that the information regarding the attack on the Palace of Justice coincided with the visit of the French President on October 17, 1985, the main reason why security was increased. It indicated that an assessment had been made of the security of the Palace of Justice, and that the police security had been withdrawn at the request of the President of the Supreme Court. It also indicated that "it is evident that the State was unaware of the scale of the planned armed attack, which could not be predicted."

[797] Report of the Truth Commission (evidence file, folios 322 and 323)

517. The Commission did not include a possible violation of the obligation of prevention in its Merits Report. However, it underlined that the situation of risk and the threats against the justices, as well as the withdrawal of the security from the Palace of Justice before it was taken by the M-19 form part of the factual framework. In addition, in its final written observations, it stressed that "[d]uring the processing of the case before the […] Court, an additional piece of evidence was provided […] suggesting that the possibility of the M-19 guerrilla group taking the Palace of Justice was widely known by the State's security agencies, as well as the approximate date."

B. Considerations of the Court[798]

518. Compliance with the obligations arising from Articles 4 and 5 of the American Convention supposes not only that no one shall be deprived of their life arbitrarily, or subjected to cruel, inhuman or degrading treatment or torture (negative obligation), but also requires States to take all the appropriate measures to protect and preserve the rights to life and to personal integrity (positive obligation),[799] pursuant to the obligation to ensure the free and full exercise of the rights to all persons subject to their jurisdiction.[800]

519. The obligation to ensure the rights to life and to personal integrity supposes the State's duty to prevent violations of these rights. This obligation of prevention encompasses all those measures of a legal, political, administrative or cultural nature that promote the safeguard of human rights and ensure that eventual violations of these rights are truly considered and dealt with as wrongful acts that, as such, may result in punishment for those who commit them, as well as the obligation to compensate the victims for the harmful consequences. It is also evident that the obligation of prevention is an obligation of means or action and non-compliance is not proved merely by the fact that a right has been violated.[801]

520. The obligation to ensure rights encompasses more than the relationship between the State agents and the persons subject to their jurisdiction, and also includes the duty to prevent, in the private sphere, third parties from violating the protected rights.[802] According to the Court's case law, it is evident that a State cannot be responsible for every violation of human rights committed between private individuals within its jurisdiction. Indeed, the State's treaty-based obligations of guarantee do not signify that States have an unlimited responsibility in the presence of any fact or act between private individuals, because its duty to adopt measures of prevention and protection for private individuals in their relationships with each other are conditional on its awareness of a situation of real and imminent danger for a specific individual or group of individuals, and on the reasonable possibility of preventing or avoiding that danger. In other words, even though the legal consequence of an act or omission of a private individual is the violation of certain human

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798 The Court recalls that the presumed victims or their representatives may cite the violation of rights other than those included in the Commission's Merits Report (*supra* para. 47).

799 *Cf. Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits.* Judgment of November 19, 1999. Series C No. 63, para. 144, and *Case of Luna López v. Honduras. Merits, reparations and costs.* Judgment of October 10, 2013. Series C No. 269, para. 117.

800 *Cf. Case of the Pueblo Bello Massacre v. Colombia. Merits, reparations and costs.* Judgment of January 31, 2006. Series C No. 140, para. 120, and *Luna López v. Honduras. Merits, reparations and costs.* Judgment of October 10, 2013. Series C No. 269, para. 117.

801 *Cf. Case of Velásquez Rodríguez v. Honduras. Merits.* Judgment of July 29, 1988. Series C No. 4, para. 166, and *Case of Luna López v. Honduras. Merits, reparations and costs.* Judgment of October 10, 2013. Series C No. 269, para. 118.

802 *Cf. Case of the Mapiripán Massacre v. Colombia.* Judgment of September 15, 2005. Series C No. 134, para. 111, and *Case of Luna López v. Honduras. Merits, reparations and costs.* Judgment of October 10, 2013. Series C No. 269, para. 120.

rights of another private individual, this cannot automatically be attributed to the State, because the particular circumstances of the case and the implementation of the said obligations of guarantee must be considered.[803]

521. The Court notes that, with regard to the taking of the Palace of Justice by the M-19,[804] the Council of State has ruled frequently that the State incurred in a service-related failure in relation to its duty to prevent the guerrilla attack, considering that "it left the Judiciary, represented by its highest-ranking members, to their own devices, thus disregarding not only the obligation to protect the life and physical integrity of the justices, officials and judicial employees, but also that of safeguarding the institutional framework of one of the traditional branches of the State: the Judiciary." Similar rulings have been issued by the Superior Court of Bogota, the Special Investigative Court,[805] and the Truth Commission.[806] In particular, the Council of State has found the State responsible:

> for having eliminated the necessary surveillance at a time when there was no doubt about the severity of the threats that had been made against the Justices of the Supreme Court of Justice and the Councilors of State, as individuals and as officials, the heads of the corresponding branch of the Judiciary, and the Palace of Justice that housed the two highest jurisdictional bodies. An adequate protection of the physical facilities that were the seat of the judicial organs was a normal obligation of the State; based on what has been proved in these proceedings, that obligation was not met. The extraordinarily violent circumstances that the country was experiencing, the difficult situation of the peace process outlined by the Government, the actions undertaken immediately before by the guerrilla, the particularly delicate matters that had to be decided at that time by the Supreme Court of Justice, the serious threats that the justices and councilors had received, the severity of which had been verified by the security forces, required that the Palace of Justice, and also the justices and councilors, be provided with special custody and protection, and that this custody and protection remain while the situation of risk subsisted. […]
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> The negligent and omissive conduct of [the State] authorities led to, or at least facilitated, the occupation of the Palace of Justice because, knowing beforehand that there had been threats not only

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[803] *Cf. Case of the Pueblo Bello Massacre v. Colombia. Merits, reparations and costs.* Judgment of January 31, 2006. Series C No. 140, para. 123; *Case of González et al. ("Cotton Field") v. Mexico. Preliminary objection, merits, reparations and costs.* Judgment of November 16, 2009. Series C No.205, para. 280, and *Case of Luna López v. Honduras. Merits, reparations and costs.* Judgment of October 10, 2013. Series C No. 269, para. 120.

[804] See, *inter alia*, the judgments of the Contentious-Administrative Chamber of the Council of State, in the proceedings filed by: Cecilia Cabrera and another of July 24, 1997; Elvira Forero de Esguerra and another of July 31, 1997; María del Pilar Navarrete and others of January 28, 1999; Bernardo Beltrán Monroy of October 13, 1994; Rosalbina León of September 6, 1995; Luz Dary Samper Bedoya and another of September 25, 1997; José María Guarín Ortiz of October 13, 1994, and Haydee Cruz de Velásquez and another of January 26, 1995 (evidence file, folios 532, 2856, 2887, 2937, 2938, 3082, 3135, 3231 and 3359).

[805] The Special Investigative Court concluded that, on "November 6, 1985, the Palace of Justice and its usual occupants were guarded and protected by private guards, inadequately armed and, thus, materially incapable of providing the service that they were supposed to provide, despite which they acted bravely in compliance with their duty. […] The primary obligation of the authorities to protect the life, honor and property of the population is increased when there is a public threat and, especially, when this jeopardizes the function of the administration of justice. Thus, having established the pre-existence of the threats issued simultaneously by subversive groups and by the drug-trafficking mafia, the Government had the duty to maintain, or better still, to increase the measures of protection and security of the institutions threatened, with or without their consent, putting in place similar programs to those established for the Nation's leaders, and those adopted during the permanence in the country of Heads of State, or when there are serious alterations of public order." Report of the Special Investigative Court (evidence file, folio 30538).

[806] The Truth Commission also concluded that: "it is unquestionable that the Military Forces and the State's security agencies should have established mechanisms to avoid or contain the activities of the M-19 subversive group, because, since 1984 and, in particular, since April 1985, large-scale operations were expected due to the resurgence of the activities of this movement. Moreover, the possible taking of the Palace of Justice and the approximate date of this, in order to abduct the 24 justices of the Supreme Court, was widely known among these institutions." Report of the Truth Commission (evidence file, folio 103). In this regard, a report of the National Army established that "[t]he relevant background information and the communications sent by the High Command, allowed the troops of the 13th Brigade to be on the alert, and rapid reaction forces to be created." Report of the National Army entitled *Análisis: Operación Palacio de Justicia* (evidence file, folios 35334 and 35335).

> against the life and integrity of the justices, but also of occupation of the building by the M-19, and despite having the ability to avoid the announced attack, they took no ordinary, and much less extraordinary, preventive measures as required by the situation. It is this State inaction, which resulted in the service-related failure that allowed the M-19 to take the Palace of Justice, that makes the responsibility fall exclusively on the Nation.[807]

522. Despite these judicial and extrajudicial decisions, the State has contested the facts on which the alleged violation of the obligation of prevention is founded, indicating that: (i) the increase in security in the center of Bogota at the end of October 1985 was due mainly to the visit of the President of France on October 17, 1985; (ii) the surveillance was withdrawn at the request of the President of the Supreme Court of Justice at the time; (iii) the security was not withdrawn deliberately to allow the M-19 guerrilla group to enter the Palace of Justice, and (iv) the presence or absence of this surveillance made no difference to the taking of the Palace, because the scale of the armed attack planned by the M-19 could never have been anticipated. Owing to this dispute, the Court will now examine the violation of the obligation of prevention alleged by the representatives.

523. In this regard, the Court recalls that to prove that the State has failed to comply with its positive obligation to prevent human rights violations, it is necessary to verify that: (i) at the time of the facts there was a situation of real and imminent danger for the life of a specific individual or group of individuals; (ii) the authorities knew or should have known, and (iii) they failed to adopt the reasonable and necessary measures to prevent or avoid this danger (*supra* para. 520). Regarding the risk to the Palace of Justice and its occupants, the following has been proved in this case:

- Starting in mid-1985, justices of the Supreme Court and of the Council of State had been receiving death threats (*supra* paras. 90 and 91). Several justices of the Supreme Court received "death threats, that extended to their families" in order "to coerce [or] intimidate the justices to make them change their opinions and their votes" in relation to the non-enforceability of the extradition treaty between Colombia and the United States.[808] Meanwhile, the threats against the councilors of state were related to rulings declaring human rights violations.[809]
- The pertinent authorities were aware of these threats, as well as the related risk factors; consequently, "the National Police increased personal security plans and, in general, […] organized the protection of the Court premises."[810]
- Starting in August 1985, radiograms were addressed to the Brigade's Tactical Units, to the National Police, and to the DAS indicating that "a terrorist act with national resonance" or "actions with national and international impact" would take place in Bogota, or a "terrorist act against the Palace of Justice" and that "the intention was to take the building of the Supreme Court of Justice."[811]

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[807] Judgment of the Contentious-Administrative Chamber of the Council of State in the proceedings filed by Cecilia Cabrera and another of July 24, 1997 (evidence file, folios 535, 536 and 539).

[808] The Special Investigative Court placed on record that the competent authorities (DIJIN and DAS) had been advised of the threats. *Cf.* Report of the Special Investigative Court (evidence file, folios 30483 and 30484), and Report of the Truth Commission (evidence file, folios 95 to 98).

[809] *Cf.* Report of the Truth Commission (evidence file, folios 98 and 99), and Report of the Special Investigative Court (evidence file, folio 30484). See also: Note of the DAS of September 30, 1985, regarding the threats made against judiciary officials (evidence file, folios 31784 to 31792).

[810] Affidavit made on November 8, 2013, by Oscar Naranjo Trujillo (evidence file, folio 35931); Report of the Special Investigative Court (evidence file, folio 30484), and Report of the Truth Commission (evidence file, folio 100).

[811] Report of the AZ (merits file, folios 3471 to 3477).

- On September 30, 1985, the National Security Council held a meeting[812] at which the DAS presented a report in which it analyzed the background information, the most significant facts, and the credibility of the threats, and also submitted conclusions and recommendations. Also, as a result of this meeting, the Ministry of Justice sent a letter to the President of the Supreme Court informing him of the willingness of the Security Council to provide the Supreme Court and the whole jurisdictional branch with "the necessary support and protection for fulfilling their delicate functions."[813]
- In September 1985, the National Police prepared and implemented the Tactical Plan for the defense of the Bolivar Plaza Complex, National Capitol, and Palace of Justice, "to establish the security measures that would adequately defend the buildings of the Bolivar Plaza Complex in order to deal with and repel a possible attack by subversive cells, ensuring the personal safety of the parliamentarians and other authorities."[814]
- As a result of these threats, the Judicial and Investigative Police (DIJIN) prepared a security assessment of the Palace of Justice, in which it indicated that "the National Directorate of the National Police [is] aware of the actual and potential risks to the personal integrity of the justices of the Supreme Court of Justice owing to the nature of their functions and, especially, as a result of the criminal intentions expressed by organized drug-trafficking bands."[815] On October 17, this assessment was presented to the Supreme Court of Justice and the Council of State, and it was recommended that the measures of security be heightened by means of a Security Plan to be implemented by the Bogota Police Department.[816]
- In an intervention before the Congress of the Republic on October 16, 1985, the Minister of Defense at the time stated that the General Command of the Military Forces had received an anonymous message advising that the M-19 planned to take the Palace of Justice the following day and that the Army's Intelligence Directorate had advised that information and indications existed that the M-19 "intended to take over the building of the Supreme Court of Justice [and, therefore,] the Bogota Police Department had increased the surveillance of the building and the protection of the persons who already had safety measures."[817]

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[812] This meeting was attended, among others, by several ministers, the Director General of the Police, the Head of the Administrative Department of Security (DAS), the Head of Colombian Civil Defense, the Special Attorney assigned to the Military Forces, the Director of the Investigation and Judicial Police, and a representative of the Head of Department 2 of the Joint Chiefs of Staff. *Cf.* Report of the Special Investigative Court (evidence file, folio 30484).

[813] *Cf.* Judgment of the Contentious-Administrative Chamber of the Council of State, in the proceedings instituted by Cecilia Cabrera and another, of July 24, 1997 (evidence file, folio 526), and Report of the Truth Commission (evidence file, folio 100).

[814] Tactical Plan of September 1985 (evidence file, folio 31667). According to the Director General of the National Police at the time of the events, this plan was implemented. *Cf.* Testimony of the Director General of the National Police of February 1986 before the Special Investigative Court (evidence file, folio 32212).

[815] The assessment was prepared by the then DIJIN Counterintelligence official, Oscar Naranjo Trujillo. *Cf.* Affidavit made on November 8, 2013, by Oscar Naranjo Trujillo (evidence file, folios 35931 and 35932), and DIJIN, Security assessment: Palace of Justice, October 1985 (evidence file, folio 31731).

[816] Testimony of the Director General of the National Police of February 1986 before the Special Investigative Court (evidence file, folio 32212), and DIJIN, Security assessment: Palace of Justice, October 1985 (evidence file, folios 31727 to 31799).

[817] *Cf.* Judgment of the Contentious-Administrative Chamber of the Council of State, in the proceedings instituted by Cecilia Cabrera and another, of July 24, 1997 (evidence file, folio 527). In addition, Brigadier General José Luis Vargas Villegas has testified that "on October 16, 1985, a message was received from the Army's Intelligence Director […] of the same date indicating that information from the General Command of the Military Forces, which had not been evaluated, indicated that the M-19 intended to take the building of the Supreme Court of Justice on October 17,

- That same day, the Head of the Army's Intelligence Directorate sent out a circular letter in which he reported information provided by the General Command of the Military Forces "relating to the possible attack by M-19 on October 17, 1985." This circular letter was sent out the following day by the Commander (E) of the Army's 13th Brigade to the Bogota Police and to the DAS. Also, the Operations Commander of the Bogota Police Department alerted all operational units so that they would the necessary measures in view of the possible attack on the Palace of Justice.[818]
- "[F]rom October 17, and up until the beginning of November 1985, emergency protection was in place at the Palace of Justice; namely, an officer, a sergeant and 20 police agents."[819]
- On October 23, 1985, using a radio station, the M-19 announced that it would carry out "something of such significance that the whole world would be surprised" (*supra* para. 90).
- On October 18 and 25, 1985, the media were informed about an M-19 plan to occupy the Palace of Justice.[820]
- Nevertheless, on November 4, 1985 the National Police withdrew the reinforced surveillance provided to the Palace of Justice, and the building was only protected by a few private guards (*supra* para. 91).

524. Regarding the information presented by the State concerning the withdrawal of the surveillance, the Court notes that the supposed request by the President of the Supreme Court that the surveillance be withdrawn is based on reports prepared after the taking of the Palace of Justice[821] that have never been proved. To the contrary, this information has been denied by the Plenary Chamber of the Supreme Court of Justice[822] and by the

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1985." Testimony of José Luis Vargas Villegas of December 5, 1985, before the Attorney General's office (evidence file, folio 554).

818 *Cf.* Report of the Truth Commission (evidence file, folio 104).

819 Report of the Truth Commission (evidence file, folio 104). According to the Director of the Police at the time, security was reinforced around this date, "owing to anonymous information about a possible attack on the Palace of Justice on October 17, 1985," with the organization of "bodyguards for the […] justices [and] periodic inspections of the premises […]; thus, in addition to the uniformed police agents, security services in the Palace of Justice were provided by eight (8) bodyguards from the institution, ten (10) bodyguards from the Administrative Department of Security, and six (6) private guards from the company Colbasec Ltda." Testimony of the Director General of the National Police of February 1986 before the Special Investigative Court (evidence file, folios 32212 and 32213). Similarly, Extract from the testimony of Carlos Betancur Jaramillo, President of the Council of State at the time, in the Report of the Special Investigative Court (evidence file, folio 30491).

820 *Cf.* Compilation of newspaper articles published on October 18, 1985, in *El Siglo, El Tiempo, El Bogotano* and *Diario 5pm*, informing that a M-19 plan to take the Palace of Justice had been discovered, and of the adoption of increased security measures (evidence file, folio 551), and Judgment of the Contentious-Administrative Chamber of the Council of State, in the proceedings instituted by Cecilia Cabrera and another, of July 24, 1997 (evidence file, folio 527).

821 *Cf.* Notes of November 12, 1985, signed by the Lieutenant Colonels mentioned below addressed to the Commander of the Bogota Police Department (evidence file, folios 31802 and 31805), and Report of the Special Investigative Court (evidence file, folio 30490). In addition, the then Director of the Police testified that "the reinforcement of the service was reduced at the request of Alfonso Reyes Echandía, President of the Court, to [two] Lieutenant Colonels, [… to the] Operations Commander, and [to the] Commander of the First District of the Bogota Police Department, continuing the normal surveillance service." Testimony of the Director General of the National Police of February 1986 before the Special Investigative Court (evidence file, folio 32213).

822 On December 4, 1985, the Plenary Chamber of the Court issued an official communication in which it indicated: "the Supreme Court of Justice […] states categorically that neither its President, Justice Alfonso Reyes Echandía, nor any of the justice, members of the court, requested the suspension of the surveillance services that, ephemerally, were provided in the Palace of Justice. […] To the contrary, Justice Reyes Echandía was always very emphatic, both privately and in public, about the need for both the Supreme Court of Justice and the Council of State to be provided with adequate protection. In addition, since both these courts functioned in the Palace of Justice, no decision on this

President of the Council of State at the time,[823] and also rejected in judicial decisions of the Council of State and the Special Investigative Court and by the Truth Commission.[824]

525. The Court also notes that, in response to the situation of real and imminent danger faced by the justices of the Supreme Court, the councilors of state and the other employees of, and visitors to, the Palace of Justice, the State should have adopted the pertinent measures for their protection, which could never have depended merely on the wishes of the President of the Supreme Court, even if that "order" had been given, which, the Court reiterates, has not been proved. The State's argument that the surveillance was withdrawn because it had merely been provided for the visit of the French President, which occurred on October 17, warrant similar considerations. The situation of danger for the Palace of Justice and its occupants was not related to that visit, but to the functions of the high courts, and the decisions they were examining. The State was aware of the threats that several justices and councilors had received, as well as the plans of the M-19 to take the Palace of Justice (*supra* para. 523). Thus, the Court emphasizes the considerations of the Council of State in numerous decisions related to the instant case, in which it has asserted that "[t]o affirm that 'the danger of the attack was on the 17th' and that, nevertheless, 'the Service was provided until the 21st' as an example of efficiency in compliance with the State's obligation […], is an explanation that combines ingenuity and cynicism."[825]

526. The Court recalls that State authorities who become aware of a special situation of risk must find out or assess whether the person or persons threatened or harassed require measures of protection, or else refer the matter to the competent authority in that regard, as well as offering the person at risk prompt information on the measures available. The assessment of whether a person requires measures of protection and the most appropriate measures is an obligation that corresponds to the State.[826] The Court also notes that the assessment that the risk has ceased, so that it is no longer necessary to continue the measures adopted, requires a careful analysis of the reasons that led to and justified their adoption, as well as the circumstances at the time their conclusion and lifting are evaluated. Given the significance of the threats against the justices and occupants of the Palace of Justice, the presumed decision that the risk had ceased required greater care and diligence before the enhanced security arrangements were withdrawn.

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matter could be taken unilaterally." Justice Reyes Echandía's secretary and other justices testified similarly before the Special Investigative Court. *Cf.* Report of the Special Investigative Court (evidence file folios 30490 and 30491).

[823] In this regard, he testified that "any measure relating to the security of the Palace, to the security of the officials who worked there, had evidently to be taken by mutual agreement between the two courts," and the State's security forces had been advised of this, which "contradict[ed] the assertion […] that the surveillance was withdrawn because one person requested this. [He did not do] this, orally or in writing, and [he] venture[d] to say that neither had Justice Alfonso Reyes Echandía given this order. No other justice or councilor had the authority to do this." Extract from the testimony of Carlos Betancur Jaramillo in the Report of the Special Investigative Court (evidence file, folio 30491)

[824] *Cf.* Judgment of the Contentious-Administrative Chamber of the Council of State of July 24, 1997, in the proceedings instituted by Cecilia Cabrera and another (evidence file, folios 527 and 528); Judgment of the Contentious-Administrative Chamber of the Council of State of July 31, 1997, in the proceedings instituted by Elvira Forero de Esguerra and another (evidence file, folios 2847 and 2848); Report of the Special Investigative Court (evidence file, folio 30493), and Report of the Truth Commission (evidence file, folio 105).

[825] *Cf.* Judgment of the Contentious-Administrative Chamber of the Council of State, in the proceedings instituted by Cecilia Cabrera and another, of July 24, 1997 (evidence file, folios 53 6 to 537); Judgment of the Contentious-Administrative Chamber of the Council of State, in the proceedings instituted by Luz Dary Samper Bedoya, of September 25, 1997 (evidence file, folios 3134 and 3135). See also, the judgment of the Administrative Court of Cundinamarca, in the proceedings instituted by María Terse and another, of December 12, 2007 (evidence file, folio 1173).

[826] *Cf. Case of Vélez Restrepo and family members v. Colombia. Preliminary objection, merits, reparations and costs.* Judgment of September 3, 2012. Series C No. 248, para. 201, and *Luna López v. Honduras. Merits, reparations and costs.* Judgment of October 10, 2013. Series C No. 269, para. 127.

527. In addition, with regard to the State's argument that the taking of the Palace of Justice would have occurred even if the surveillance had not been withdrawn, the Court recalls that the obligation to prevent human rights obligations is an obligation of means and not of results (*supra* para. 519). Consequently, regardless of whether the attack would have occurred, even with the surveillance that was withdrawn, the State's failure to adopt the measures that should reasonably have been taken in view of the danger that had been verified constituted non-compliance with its obligation of prevention. The Court recalls that the State has the obligation to adopt all reasonable and appropriate measures to ensure the right to life of those persons who are in a situation of special vulnerability,[827] especially as a result of their work,[828] provided that the State is aware of a situation of real and imminent danger for a specific individual or group of individuals (*supra* paras. 520 and 523).

528. Based on all the circumstances described above, the Court considers that: (i) a situation of real and imminent danger existed for the justices of the Supreme Court, the councilors of state, the other employees, and the visitors to the Palace of Justice; (ii) the State was aware of this danger; but (iii) it failed to take the appropriate, sufficient and opportune measures to counter the danger, because (iv) even though it had made an assessment of the security and designed a security plan, this plan was not in operation at the time of the events, when the danger subsisted. Consequently, the Court considers that the State did not comply with its obligation of prevention, and to provide adequate protection to the 15 victims of this case who worked in or were visiting the Palace of Justice at the time of the attack by the M-19 by providing opportune and appropriate measures of protection. The Court reiterates that the events of this case had an impact on more individuals than those that are represented before the Court at this time. Nevertheless, the Court only has competence to rule with regard to the presumed victims in the instant case, without prejudice to the remedies that other possible victims may file under domestic law.

529. The Court also reiterates that, in order to establish that a violation of the rights recognized in the Convention has occurred, as in this case, it does not have to determine the intentionality of those responsible; rather it is sufficient to show that acts or omissions have been verified that have allowed the perpetration of this violation or that the State had an obligation with which it failed to comply.[829] Consequently, the Court does not find it necessary to determine whether the withdrawal of the enhanced surveillance was a deliberate action taken by the State to facilitate the entry of the M-19.

530. Based on the foregoing, the Court concludes that Colombia failed to comply with its obligation to ensure the rights to life and to personal integrity, recognized in Articles 4(1) and 5(1) of the Convention, in relation to Article 1(1) of this instrument, by the adoption of the appropriate and effective measures to prevent their violation, to the detriment of Carlos Augusto Rodríguez Vera, Cristina del Pilar Guarín Cortés, David Suspes Celis, Bernardo Beltrán Hernández, Héctor Jaime Beltrán Fuentes, Gloria Stella Lizarazo Figueroa, Luz Mary

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827 *Cf. Case of the Pueblo Bello Massacre v. Colombia. Merits, reparations and costs*. Judgment of January 31, 2006. Series C No. 140, paras. 120 and 123, and *Luna López v. Honduras. Merits, reparations and costs.* Judgment of October 10, 2013. Series C No. 269, para. 123. Similarly, *Cf.* ECHR, *Case of Kiliç v. Turkey*, No. 22492/93. Judgment of 28 March 2000, paras. 62 and 63, and *Case of Osman v. The United Kingdom,* No. 87/1997/871/1038. Judgment of 28 October 1998, paras. 115 and 116; United Nations, Human Rights Committee, *Delgado Páez v. Colombia*, Communication No. 195/1985, UN Doc. CCPR/C/39/D/195/1985(1990), 12 July 1990, paras. 5.5 and 5.6.

828 *Cf.* United Nations, Human Rights Committee, *Mr. Orly Marcellana and Mr. Daniel Gumanoy, on behalf of Ms. Eden Marcellana and Mr. Eddie Gumanoy v. The Philippines.* Communication No. 1560/2007, UN Doc. CCPR/C/94/D/1560/2007, 30 October 2008, paras. 7.6 and 7.7. See also, *Case of Nogueira de Carvalho et al. v. Brazil. Preliminary objections and merits.* Judgment of November 28, 2006. Series C No. 161, para. 77, and *Luna López v. Honduras. Merits, reparations and costs.* Judgment of October 10, 2013. Series C No. 269, para. 123.

829 *Cf. Case of Velásquez Rodríguez v. Honduras. Merits.* Judgment of July 29, 1988. Series C No. 4, paras. 73, 134, 172 and 173, and *Luna López v. Honduras. Merits, reparations and costs.* Judgment of October 10, 2013. Series C No. 269, para. 119.

Portela León, Norma Constanza Esguerra Forero, Lucy Amparo Oviedo Bonilla, Gloria Anzola de Lanao, Ana Rosa Castiblanco Torres, Carlos Horacio Urán Rojas, Yolanda Santodomingo Albericci, Eduardo Matson Ospino and Orlando Quijano.

XIII
RIGHT TO PERSONAL INTEGRITY OF THE NEXT OF KIN OF THE PERSONS DISAPPEARED, DETAINED AND TORTURED

A. Arguments of the Commission and of the parties

531. The Commission considered that "the disappearance, loss, detention, or torture of a loved one" and the absence of a complete and effective investigation has harmed the integrity of the victims' next of kin. It also emphasized that some of the family members were threatened to make them cease their inquiries. The representatives agreed with the Commission's allegations. Regarding Esmeralda Cubillos Bedoya, they indicated that "Ana Rosa Castiblanco gave her up for adoption owing to her inadequate economic conditions" and "[i]t was only some time later […] that [Esmeraldo] was informed of the disappearance of her biological mother." In the case of Paola Fernanda Guarín Muñoz, niece of Cristina del Pilar Guarín Cortés, they asked that she be "compensated for the non-pecuniary damage she suffered," and as the heir of Carlos Leopoldo Guarín Cortés. Meanwhile, the State acknowledged the violation of the right to personal integrity of the next of kin of all the victims (except for the next of kin of Orlando Quijano and José Vicente Rubiano), "owing to the feelings of anguish, sorrow and uncertainty that they experienced" due to the failure to identify the remains of Ana Rosa Castiblanco between 1985 and 2001 or, in the case of Auxiliary Justice Urán Rojas, because "the State has been unable to establish the circumstances [of] his death." Regarding Esmeralda Cubillos Bedoya, it indicated that "her status as Ana Rosa Castiblanco's daughter has not been proved" and, regarding Paola Fernanda Guarín Muñoz, it indicated that "the violation of her mental and moral integrity [had] not [been] proved." In addition, Colombia noted that "not all the deponents assert that they have been victims of threats," and that "these are situations based on a supposition that has not been proved," which is that their loved ones "left the Palace of Justice alive in the custody of State agents, who sought to conceal their whereabouts."

B. Considerations of the Court

532. The Court has stated frequently that the next of kin of the victims of human rights violations may, in turn, be victims.[830] In this case the State has acknowledged its international responsibility for the violation of the right to personal integrity of all the next of kin of the disappeared victims, with the exception of Paola Fernanda Guarín Muñoz, niece of Cristina del Pilar Guarín Cortés, and Esmeralda Cubillos Bedoya, biological daughter of Ana Rosa Castiblanco Torres. It has also acknowledged the violation of the right to personal integrity of the next of kin of Yolanda Santodomingo Albericci and Eduardo Matson Ospino, while it contested this violation with regard to the next of kin of Orlando Quijano and José Vicente Rubiano Galvis.

533. The Court has considered that, in cases involving the forced disappearance of persons, it is possible to understand that the violation of the right to mental and moral integrity of the members of the victim's family is a direct consequence of this phenomenon, which causes them severe suffering due to the fact itself, and this is intensified, among other factors, owing to the constant refusal of the State authorities to provide information on the whereabouts of the victim or to conduct an effective investigation to clarify what

[830] *Cf. Case of Castillo Páez v. Peru*. *Merits.* Judgment of November 3, 1997. Series C No. 34, fourth operative paragraph, and *Case of the Landaeta Mejías Brothers et al. v. Venezuela. Preliminary objections, merits, reparations and costs.* Judgment of August 27, 2014. Series C No. 281, para. 279.

happened.[831] These effects allow it to be presumed that the mental and moral integrity of the next of kin has been violated in cases of forced disappearance,[832] as well as in the case of other human rights violations, such as extrajudicial executions.[833] In previous cases, this Court has established that this presumption is established *juris tantum* with regard to mothers and fathers, daughters and sons, and spouses and permanent companions, provided that this accords with the particular circumstances of the case.[834] Also, in its most recent case law, the Court has considered that, in the context of forced disappearance, this presumption is also applicable to the siblings of the disappeared victims, unless the contrary is revealed by the specific circumstances of the case.[835] In this regard, and bearing in mind the acknowledgement of responsibility made by the State, the Court considers that it is possible to presume the violation of the right to personal integrity of the next of kin of the ten victims of forced disappearance indicated in paragraph 324 of this Judgment, as well as of the next of kin of Auxiliary Justice Urán Rojas, victim of forced disappearance and extrajudicial execution.[836]

534. Moreover, the Court observes that testimonial statements, and also the reports on the psychosocial impact on the next of kin of the disappeared victims, reveal that the personal integrity of all of them was affected by one or several of the following circumstances:[837] (i) "the uncertainty caused […] by not knowing the whereabouts of their loved ones and […] the unsatisfactory response of the State"; (ii) personal, physical and emotional consequences; (iii) "the stigmatization […] that isolated them from friends and neighbors"; (iv) the changes in their family and personal life projects; (v) the threats they reported having received as a result of their search activities; (vi) the alteration of their social relations, the breakdown of the family dynamics, as well as changes in role assignment within the family; (vii) the impunity of the facts, as well as (viii) the hope to find their family members, or (ix) the impossibility of burying them decently in accordance with their

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831 *Cf. Case of Blake v. Guatemala. Merits.* Judgment of January 24, 1998. Series C No. 36, para. 114, and *Case of Osorio Rivera and family members v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of November 26, 2013. Series C No. 274, para. 227.

832 *Cf. Case of Valle Jaramillo et al. v. Colombia. Merits, reparations and costs*. Judgment of November 27, 2008. Series C No. 192, para. 119 and *Case of Osorio Rivera and family members v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of November 26, 2013. Series C No. 274, para. 227.

833 *Cf. Case of La Cantuta v. Peru. Merits, reparations and costs*. Judgment of November 29, 2006. Series C No. 162, para. 218, and *Case of Gutiérrez and family v. Argentina. Merits, reparations and costs.* Judgment of November 25, 2013. Series C No. 271, para. 139.

834 *Cf. Case of Blake v. Guatemala. Merits*, para. 114 and *Case of Osorio Rivera and family members v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of November 26, 2013. Series C No. 274, para. 227.

835 *Cf. Case of Gudiel Álvarez et al. (Diario Militar) v. Guatemala. Merits, reparations and costs*. Judgment of November 20, 2012. Series C No. 253, para. 286, and *Case of Osorio Rivera and family members v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of November 26, 2013. Series C No. 274, para. 227.

836 In this regard, the Court notes that the said presumption is applicable to all the next of kin, with the exception of Paola Guarín Muñoz, niece of Cristina del Pilar Guarín Cortés.

837 *Cf.* Psychosocial appraisal by Clemencia Correa González of November 5, 2013, of the next of kin of the victims of forced disappearance (evidence file folios 36195 to 23236), and psychosocial appraisal by Clemencia Correa González of November 5, 2013, of the next of kin of Auxiliary Justice Carlos Horacio Urán Rojas (evidence file, folios 36166, 36173, 36185 to 36189). See also, *inter alia*: Testimony of César Enrique Rodríguez Vera during the public hearing on the merits in this case; affidavit made on November 6, 2013, by René Guarín Cortes (evidence file, folios 35757 and 35758); affidavit made on September 4, 2013, by Sandra Beltrán Herández (evidence file, folios 35514 to 35516); affidavit made on November 1, 2013, by Héctor Jaime Beltrán (evidence file, folios 35521 and 35522); affidavit made on August 26, 2013, by Juan Francisco Lanao Anzola (evidence file, folios 35530 to 35532); affidavit made on November 5, 2013, by Myriam Súspes Celis (evidence file, folios 35573 to 35575); affidavit made on November 6, 2013, by Jorge Eliécer Franco Pïneda (evidence file, folios 35681 to 35685); affidavit made on November 5, 2013, by Luis Carlos Ospina Arias (evidence file, folio 35640); affidavit made on November 6, 2013, by Edison Esteban Cárdenas León (evidence file, folios 35698 to 35700), and Testimony of Ana María Bidegain during the public hearing on the merits in this case.

beliefs, altering their mourning process and perpetuating the suffering and uncertainty. Furthermore, the case file reveals that the wife and daughters of Carlos Horacio Urán Rojas were affected by "the particular circumstances of [the case] and by the accusations and stigmatization of the State that, officially, denied what the victims' next of kin affirmed and, thus, encouraged social stigmatization and isolation."[838] Consequently, the Court finds it proved that, as a direct result of the forced disappearance of the eleven victims in this case, as well as the subsequent extrajudicial execution of one of them, the members of their families have undergone profound suffering and anguish, which has violated their mental and moral integrity.

535. To the contrary, in the case of Paola Guarín Muñoz, niece of Cristina del Pilar Guarín Cortés, the Court notes that there is no evidence in the case file of the alleged suffering resulting from the forced disappearance of her aunt. Since she is not a direct relative of the disappeared victim, the suffering caused by the latter's forced disappearance must be proved (*supra* para. 533). Therefore, the Court does not find that the violation of her right to personal integrity has been proved.

536. However, with regard to the next of kin of Norma Constanza Esguerra Forero and Ana Rosa Castiblanco Torres, the Court reiterates the right of the next of kin of the victims to know the whereabouts of the remains of their loved ones and that these be returned to their family as soon as possible. The contrary constitutes a denigrating treatment that violates Article 5(1) (*supra* paras. 326 and 327). In addition, the Court has considered that the right to mental and moral integrity of some family members has been violated owing to their suffering due to the acts or omissions of the State authorities,[839] taking into account, among other matters, the steps taken to obtain justice and the existence of close family ties.[840] It has also declared the violation of this right owing to the suffering resulting from acts perpetrated against their loved ones.[841] In this regard, expert witness Clemencia Correa concluded in the case of Ana Rosa Castiblanco that "the way in which the return of the remains was made and the absence of an official response to what happened to her and the baby she was expecting have created doubts and concerns among the family, both in their mourning process and with regard to the credibility of the State."[842] Taking into account the State's acknowledgement of these violations, as well as the evidence in the case file,[843] the Court considers that the right to mental and moral integrity of the next of

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838 *Cf.* Psychosocial expert appraisal by Clemencia Correa González of November 5, 2013, of the next of kin of Auxiliary Justice Carlos Horacio Urán Rojas (evidence file, folio 36185).

839 *Cf. Case of Blake v. Guatemala. Merits.* Judgment of January 24, 1998. Series C No. 36, para. 114, and *Case of the Landaeta Mejías Brothers et al. v. Venezuela. Preliminary objections, merits, reparations and costs.* Judgment of August 27, 2014. Series C No. 281, para. 279.

840 *Cf. Case of Bámaca Velásquez v. Guatemala. Merits.* Judgment of November 25, 2000. Series C No. 70, para. 163, and *Case of Gutiérrez and family v. Argentina. Merits, reparations and costs.* Judgment of November 25, 2013. Series C No. 271, para. 138.

841 *Cf. Case of Blake v. Guatemala. Merits.* Judgment of January 24, 1998. Series C No. 36, para. 114, and *Case of Osorio Rivera and family members v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of November 26, 2013. Series C No. 274, para. 227.

842 *Cf.* Psychosocial expert appraisal by Clemencia Correa González of the next of kin of the victims of forced disappearance on November 5, 2013 (evidence file, folio 36200).

843 Regarding the next of kin of Ana Rosa Castiblanco Torres, see, *inter alia,* Psychosocial expert appraisal of the next of kin of the victims of forced disappearance by Clemencia Correa González (evidence file, folios 36200, 36212, 36214, 36222 and 36223); affidavit made on November 6, 2013, by Flor María Castiblanco Torres (evidence file, folio 35770), and unsworn statement of Raúl Oswaldo Lozano Castiblanco of November 5, 2013 (evidence file, folios 35822 to 35825). Regarding the next of kin of Norma Constanza Esguerra Forero, see*, inter alia,* affidavit made on November 2, 2013, by Déborah Anaya Esguerra (evidence file, folios 35536 to 35538), and affidavit made on November 2, 2013, by Martha Amparo Peña Forero (evidence file, folios 35552 to 35555).

kin of Ana Rosa Castiblanco and Norma Constanza Esguerra was violated owing to the suffering caused by the State's negligence in determining their whereabouts.

537. In the case of Esmeralda Cubillos Bedoya, the Court finds it sufficiently proved that she is the biological daughter of Ana Rosa Castiblanco Torres, who was given up for adoption by Ms. Castiblanco Torres before her disappearance.[844] However, since the Court has concluded that Ana Rosa Castiblanco Torres was not a victim of forced disappearance, the alleged violation of the personal integrity of Ms. Cubillos Bedoya cannot be presumed (*supra* para. 533). This violation must be proved as a result of the uncertainty with regard to the whereabouts of Ms. Castiblanco Torres, and has not been proved in this case.[845]

538. Regarding the next of kin of the victims who were detained and tortured, or subjected to cruel and degrading treatment, the Court reiterates that the suffering caused by the acts or omissions of the State authorities during the investigation of the events, as well as by what happened to a loved one, may constitute a violation of the right to integrity of their closest family members (*supra* para. 536). In this regard, the Court notes that according to the expert psychosocial appraisal and other evidence in the case file, the personal integrity of the next of kin of Yolanda Santodomingo Albericci, Eduardo Matson Ospino, Orlando Quijano and José Vicente Rubiano Galvis was affected by one or several of the following circumstances:[846] (i) general anxiety immediately after the events; (ii) suffering and tension owing to the stigmatization experienced following the events; (iii) psychosomatic problems; (iv) loss of confidence in the State and its officials; (v) feelings of anger and helplessness with regard to the events that occurred; (vi) rupture of their life projects, as well as (vii) break up of the family unit. The Court also underscores that the State has acknowledged this violation to the detriment of the next of kin of Eduardo Matson Ospino and Yolanda Santodomingo Albericci (*supra* para. 21.a.ii).

539. Consequently, the Court concludes that the State violated the right to personal integrity established in Article 5(1) and 5(2) of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of the following family members:

Next of kin of Gloria Isabel Anzola Mora	1.	Rómulo Anzola Linarez (father)
	2.	María Bibiana Mora de Anzola (mother)
	3.	María Consuelo Anzola Mora (sister)
	4.	Rosalía Esperanza Anzola Mora (sister)
	5.	Oscar Enrique Anzola Mora (brother)
	6.	Francisco José Lanao Ayarza (husband)
	7.	Juan Francisco Lanao Anzola (son)
Next of kin of	8.	Héctor Jaime Beltrán Parra (father)

844 *Cf.* Affidavit made by Esmeralda Cubillos Bedoya on November 5, 2013 (evidence file, folio 35624); unsworn statement of Raúl Oswaldo Lozano Castiblanco of November 5, 2013 (evidence file, folio 35824), and Testimony of Maria Inés Castiblanco Torres of June 12, 2012, before the 71st Notary of the Bogota Circuit (evidence file, folio 27663).

845 *Cf.* Affidavit made by Esmeralda Cubillos Bedoya on November 5, 2013 (evidence file, folios 35628 and 35629).

846 *Cf.* Psychosocial appraisals made by Ana Deutsch of the victims of arbitrary detention and torture, and their next of kin, of October 2013 (evidence file, folios 35999, 36004, 36007, 36011, 36017, 36022, 36026, 36029, 36033, 36036, 36038, 36041, 36045, 36049, 36053, 36056, 36059, 36062, 36065, 36068, 36072, 36075, 36081, 36084, 36089, 36095, 36101 to 36106). See also, affidavit made on November 6, 2013, by Adalberto Santodomingo (evidence file, folios 35810 to 35812); statement made on November 5, 2013, by Ángela María Ramos Santodomingo (evidence file, folios 35815 and 35816); affidavit made on November 6, 2013, by Sonia Esther Ospino de Matson (evidence file, folios 35830 and 35831); unsworn statement of María de los Ángeles Sánchez of November 7, 2013 (evidence file, folio 35900), and Affidavit made by Lucía Garzón Restrepo on November 5, 2013 (file of affidavits, folios 35662 and 35663).

Héctor Jaime Beltrán Fuentes	9.	Clara Isabel Fuentes de Beltrán (mother)
	10.	José Antonio Beltrán Fuentes (brother)
	11.	Mario David Beltrán Fuentes (brother)
	12.	Clara Patricia Beltrán Fuentes (sister)
	13.	Nidia Amanda Beltrán Fuentes (sister)
	14.	María del Pilar Navarrete Urrea (wife)
	15.	Bibiana Karina Beltrán Navarrete (daughter)
	16.	Stephanny Beltrán Navarrete (daughter)
	17.	Dayana Beltrán Navarrete (daughter)
	18.	Evelyn Beltrán Navarrete (daughter)
Next of kin of Bernardo Beltrán Hernández	19.	Bernardo Beltrán Monroy (father)
	20.	María de Jesús Hernández de Beltrán (mother)
	21.	Luis Fernando Beltrán Hernández (brother)
	22.	Fanny Beltrán Hernández (sister)
	23.	Fabio Beltrán Hernández (brother)
	24.	Sandra Beltrán Hernández (sister)
	25.	Diego Beltrán Hernández (brother)
Next of kin of Ana Rosa Castiblanco Torres	26.	María Teresa Torres Sierra (mother)
	27.	Marcelino Castiblanco Cano (father)
	28.	Ana Lucía Castiblanco Torres (sister)
	29.	María del Carmen Castiblanco Torres (sister)
	30.	Clara Francisca Castiblanco Torres (sister)
	31.	Flor María Castiblanco Torres (sister)
	32.	María Inés Castiblanco Torres (sister)
	33.	Manuel Vicente Castiblanco Torres (brother)
	34.	Raúl Oswaldo Lozano Castiblanco (son)
Next of kin of Norma Constanza Esguerra Forero	35.	Elvira Forero de Esguerra (mother)
	36.	Ricardo Esguerra Reaga (father)
	37.	Martha Amparo Peña Forero (sister)
	38.	Deborah Anaya Esguerra (daughter)
Next of kin of Irma Franco Pineda	39.	Jorge Eliécer Franco Pineda (brother)
	40.	Pedro Hermizul Franco Pineda (brother)
	41.	Lucrecia Franco Pineda (sister)
	42.	Fideligna Franco Pineda (sister)
	43.	Mercedes Franco de Solano (sister)
	44.	Elizabeth Franco Pineda (sister)
	45.	María Eufemia Franco Pineda (sister)
	46.	María del Socorro Franco Pineda (sister)
Next of kin of Cristina del Pilar Guarín Cortés	47.	Elsa María Osorio de Guarín (mother)
	48.	José María Guarín Ortíz (father)
	49.	René Guarín Cortés (brother)
	50.	José Sebastián Guarín Cortés (brother)
	51.	Carlos Leopoldo Guarín Cortés (brother)
Next of kin of Gloria Estella Lizarazo Figueroa	52.	Luis Carlos Ospina Arias (permanent companion)
	53.	Gloria Marcela Ospina Lizarazo (daughter)
	54.	Carlos Andrés Ospina Lizarazo (son)
	55.	Diana Soraya Ospina Lizarazo (daughter)
	56.	Marixa Casallas Lizarazo (daughter)
	57.	Julia Figueroa Lizarazo (sister)

	58.	Dayanira Lizarazo (sister)
	59.	Milciades Lizarazo (sister)
	60.	Lira Rosa Lizarazo (mother)
Next of kin of Eduardo Matson Ospino	61.	Eduardo Matson Figueroa (father)
	62.	Sonia Esther Ospino de Matson (mother)
	63.	Sonia María Josefina Matson Ospino (sister)
	64.	William de Jesús Matson Ospino (brother)
	65.	Juan Carlos Matson Ospino (brother)
	66.	Marta del Carmen Matson Ospino (sister)
	67.	Camilo Eduardo Matson Hernández (brother)
	68.	Gloria Stella Hernández Burbano (permanent companion at the time of the events)
	69.	William Enrique Matson Sepúlveda (son)
	70.	Yusetis Barrios Yepes (wife)
	71.	Valentina Matson Barrios (daughter)
	72.	Eduardo Arturo Matson Barrios (son)
Next of kin of Lucy Amparo Oviedo Bonilla	73.	Rafael María Oviedo Acevedo (father)
	74.	Ana María Bonilla de Oviedo (mother)
	75.	Gloria Ruth Oviedo Bonilla (sister)
	76.	Aura Edy Oviedo Bonilla (sister)
	77.	Damaris Oviedo Bonilla (sister)
	78.	Armida Eufemia Oviedo Bonilla (sister)
	79.	Rafael Augusto Oviedo Bonilla (brother)
	80.	Jairo Arias Méndez (husband)
	81.	Jairo Alberto Arias Oviedo (son)
	82.	Rafael Armando Arias Oviedo (son)
Next of kin of Luz Mary Portela León	83.	Rosalbina León (mother)
	84.	Eriberto Portela Casalimas (father)
	85.	Rosa Milena Cárdenas León (sister)
	86.	Edinson Esteban Cárdenas León (brother)
	87.	Carlos Alberto León (brother)
	88.	Jair Hernando Montealegre León (brother)
	89.	Nelly Esmeralda Montealegre León (sister)
Next of kin of Orlando Quijano	90.	María de los Ángeles Sánchez (mother)
	91.	María Luzney Quijano (sister)
	92.	Cecilia Quijano (sister)
	93.	José Gabriel Quijano (brother)
	94.	Héctor Quijano (brother)
	95.	Gloria M. Guevara (permanent companion at the time of the events)
	96.	Navil Eduardo Quijano (son)
	97.	Luz Marina Cifuentes (permanent companion)
	98.	Tania María Quijano Cifuentes (daughter)
	99.	Andrés Mauricio Quijano Cifuentes (son)
Next of kin of Carlos Augusto Rodríguez Vera	100.	Enrique Alfonso Rodríguez Hernández (father)
	101.	María Helena Vera de Rodríguez (mother)
	102.	Gustavo Adolfo Rodríguez Vera (brother)
	103.	César Enrique Rodríguez Vera (brother)
	104.	Cecilia Saturia Cabrera Guerra (wife)

	105. Alejandra Rodríguez Cabrera (daughter)
Next of kin of José Vicente Rubiano Galvis	106. Lucía Garzón Restrepo (wife)
	107. José Ferney Rubiano Garzón (son)
	108. Adriana Yiceth Rubiano Garzón (daughter)
	109. José Ignacio Rubiano (father)
	110. Astrid Galvis viuda de Rubiano (mother)
	111. Mercedes Rubiano Galvis (sister)
	112. Claudia Rubiano Galvis (sister)
	113. Blanca Beatriz Rubiano Galvis (sister)
	114. Rosa María Rubiano Galvis (sister)
Next of kin of Yolanda Santodomingo Albericci	115. Adalberto Santodomingo Ibarra (father)
	116. Carmen Elvira Albericci Santodomingo (mother)
	117. Mario Federico Ramos Santodomingo (son)
	118. Ángela María Ramos Santodomingo (daughter)
	119. Rafael Alberto Santodomingo Albericci (brother)
	120. Marta Cecilia Santodomingo Albericci (sister)
	121. Ángela María Santodomingo Albericci (sister)
	122. Carmen Alicia Santodomingo Albericci (sister)
	123. Adalberto Mario Santodomingo Albericci (brother)
Next of kin of David Suspes Celis	124. María del Carmen Celis de Suspes (mother)
	125. Carmen Suspes Celis (sister)
	126. Trinidad Suspes Celis (sister)
	127. Claudia Suspes Celis (sister)
	128. Marcela Suspes Celis (sister)
	129. Myriam Suspes Celis (sister)
	130. Marco Antonio Suspes Celis (brother)
	131. Orlando Suspes Celis (brother)
	132. Luz Dary Samper Bedoya (wife)
	133. Ludy Esmeralda Suspes Samper (daughter)
Next of kin of Carlos Horacio Urán Rojas	134. Ana María Bidegain de Urán (wife)
	135. Mairee Clarisa Urán Bidegain (daughter)
	136. Anahí Urán Bidegain (daughter)
	137. Helena María Janaína Urán Bidegain (daughter)
	138. Xiomara Urán Bidegain (daughter)

540. Nevertheless, the Court considers that the State did not violate the right to personal integrity of Paola Guarín Muñoz and Esmeralda Cubillos Bedoya, without prejudice to any compensation that corresponds to them as beneficiaries or heirs of the deceased victims.

541. The Court notes that the representatives argued that the State had violated Article 11 (Right to Privacy) to the detriment of the victims' families.[847] In addition, the State acknowledged the violation of Article 12 (Freedom of Conscience and Religion) to the detriment of the next of kin of Ana Rosa Castiblanco Torres, Norma Constanza Esguerra Forero and the disappeared victims, excluding Carlos Horacio Urán Rojas,[848] even though

[847] The representatives argued that "[t]he series of events and the effects caused to the next of kin of the victims, […] apart from the psychological or pecuniary harm, have adversely affected the private life of the next of kin." They indicated that this violation "is intrinsically related to the life project of the victims," which was impaired by what happened to their loved ones.

[848] The State indicated that "the deprivation of the right of the next of kin to bury the mortal remains of their loved

this had not been alleged by either the Commission or the representatives. In this regard, the Court considers that these arguments are basically subsumed in its considerations on the violation of the right to personal integrity of the next of kin, without prejudice to the respective decisions made by the domestic judicial authorities.

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

542. Based on the provisions of Article 63(1) of the American Convention,[849] the Court has indicated that any violation of an international obligation that has resulted in harm entails the obligation to make adequate reparation,[850] and that this provision reflects a customary norm that constitutes one of the basic principles of contemporary international law on State responsibility.[851]

543. The reparation of the harm caused by the violation of an international obligation requires, whenever possible, full restitution (*restitutio in integrum*), which consists in the re-establishment of the previous situation. If this is not possible, as in most cases of human rights violations, the Court will decide measures to ensure the rights that have been violated and to redress the consequences of the violations.[852] Therefore, the Court has considered the need to award different measures of reparation in order to redress the harm integrally, so that in addition to pecuniary compensation, measures of restitution, rehabilitation and satisfaction, as well as guarantees of non-repetition, are particularly relevant to the harm caused.[853]

544. The Court has established that the reparations must have a causal nexus to the case, the violations declared, the harm proved, and the measures requested to redress the respective harm. Consequently, the Court must observe the concurrence of these elements in order to rule appropriately and pursuant to law.[854]

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ones violates the right to freedom of conscience and […] religion of the next of kin of the person whose remains they are unable to bury." In this regard, it stressed that the Constitutional Court of Colombia had recognized that "the relationship that the next of kin establish with the remains is based on the right to freedom of conscience, of religion and of worship of the individual in his capacity as a family member, owing to his right […] to bury his next of kin, build a tomb, maintain it, and visit it, and on the deep and tangible meaning of the concept of transcendence beyond death."

849 Article 63(1) of the American Convention establishes 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."

850 *Cf. Case of Velásquez Rodríguez v. Hondur*as. *Reparations and costs.* Judgment of July 21, 1989. Series C No. 7, para. 25, and *Case of Tarazona Arrieta et al. v. Peru. Preliminary objection, merits, reparations and costs.* Judgment of October 15, 2014. Series C No. 286, para. 170.

851 *Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and costs*. Judgment of July 21, 1989. Series C No. 7, para. 25, and *Case of Rochac Hernández et al. v. El Salvador. Merits, reparations and costs.* Judgment of October 14, 2014. Series C No. 285, para. 174.

852 *Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and costs.* Judgment of July 21, 1989. Series C No. 7, para. 26, and *Case of Tarazona Arrieta et al. v. Peru. Preliminary objection, merits, reparations and costs.* Judgment of October 15, 2014. Series C No. 286, para. 171.

853 *Cf. Case of Las Dos Erres Massacre v. Guatemala. Preliminary objection, merits, reparations and costs.* Judgment of November 24, 2009. Series C No. 211, para. 226, and *Case of Osorio Rivera and family members v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of November 26, 2013. Series C No. 274, para. 236.

854 *Cf. Case of Ticona Estrada et al. v. Bolivia*. *Merits, reparations and costs*. Judgment of November 27, 2008. Series C No. 191, para. 110, and *Case of Tarazona Arrieta et al. v. Peru. Preliminary objection, merits, reparations and costs.* Judgment of October 15, 2014. Series C No. 286, para. 170.

545. Bearing in mind the violations declared in the preceding chapters, the Court will proceed to examine the claims presented by the Commission and the representatives, as well as the arguments of the State, in light of the criteria established in the Court's case law concerning the nature and scope of the obligation to make reparation,[855] in order to establish measures designed to redress the harm caused to the victims.

A. Injured party

546. This Court reiterates that, under Article 63(1) of the Convention, the injured party is considered to be anyone who has declared a victim of the violation of a right recognized in the Convention. Therefore, the Court finds that the following are the "injured party": Carlos Augusto Rodríguez Vera, Irma Franco Pineda, Cristina del Pilar Guarín Cortés, David Suspes Celis, Bernardo Beltrán Hernández, Héctor Jaime Beltrán Fuentes, Gloria Stella Lizarazo Figueroa, Luz Mary Portela León, Lucy Amparo Oviedo Bonilla, Gloria Anzola de Lanao, Carlos Horacio Urán Rojas, Ana Rosa Castiblanco Torres, Norma Constanza Esguerra Forero, Yolanda Santodomingo Albericci, Eduardo Matson Ospino, José Vicente Rubiano Galvis, Orlando Quijano and the 138 persons identified in paragraph 539 of this Judgment, who, in their capacity as victims of the violations declared in Chapters IX to XIII shall be beneficiaries of the measures ordered by the Court below.

B. Preliminary considerations on reparations

B.1) Remedies available in the contentious-administrative jurisdiction

547. The State argued that the remedies available in the contentious-administrative jurisdiction had not been exhausted.[856] It therefore asked that, "in the case of the victims' next of kin who had not filed this remedy, the Court abstain from ordering pecuniary reparations and urge them to have recourse to the domestic remedies available to obtain pecuniary compensation." It also asked that, as in the case of the *Santo Domingo Massacre,* the remaining compensation be "established, awarded and implemented by the State itself, using an expedite domestic remedy, based on the objective, reasonable and effective criteria of the Colombia contentious-administrative jurisdiction."

548. The Court has already decided that this argument by the State did not constitute a preliminary objection (*supra* para. 36). However, the Court reiterates that the decisions of the contentious-administrative jurisdiction may be taken into account in relation to the obligation to make integral reparation for a violation of rights.[857] Thus, it agrees with the State that, in this case, the contentious-administrative proceedings may be relevant to classify and define certain aspects or implications of the State's responsibility, as well as to respond to certain claims in the context of integral reparation. In this regard, the Court

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[855] *Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and costs*. Judgment of July 21, 1989. Series C No. 7, paras. 25 to 27, and *Case of Tarazona Arrieta et al. v. Peru. Preliminary objection, merits, reparations and costs.* Judgment of October 15, 2014. Series C No. 286, para. 172.

[856] The State indicated in its answering brief that Lucy Amparo Oviedo Bonilla, Yolanda Santodomingo Albericci, Orlando Quijano, José Vicente Rubiano Galvis and Eduardo Matson Ospino "have not had recourse to the contentious-administrative jurisdiction to obtain reparations for the presumed violations of which they have been victims," and that "it should be recognized that the contentious-administrative jurisdiction is one of the domestic remedies that [must be] exhausted before resorting to the organs of the inter-American system." Therefore, in that brief it asked the Court to "declare inadmissible the claims for reparation and compensation made in relation to […] Lucy Amparo Oviedo Bonilla, Yolanda Ernestina Santodomingo, Orlando Quijano, José Vicente Rubi[ano] Galvis [and] Eduardo Matson Ospino, because [… it] considers that they have not exhausted the available domestic remedies in order to obtain adequate, effective and opportune satisfaction."

[857] *Cf. Case of the Mapiripán Massacre v. Colombia. Merits, reparations and costs.* Judgment of September 15, 2005. Series C No. 134, para. 214; *Case of the La Rochela Massacre v. Colombia. Merits, reparations and costs.* Judgment of May 11, 2007. Series C No. 163, para. 219; *Case of the Ituango Massacres v. Colombia*. Judgment of July 1, 2006. Series C No. 148, para. 339, and *Case of the Pueblo Bello Massacre v. Colombia. Merits, reparations and costs.* Judgment of January 31, 2006. Series C No. 140, para. 206.

underlines that the contentious-administrative jurisdiction permits a more expedite access to reparation for the harm caused. Consequently, the decisions taken at the domestic level in that jurisdiction may be taken into account when assessing the requests for reparation in a case before the inter-American system, because the victims or their family members must have ample opportunity to seek just compensation.[858]

549. However, the contentious-administrative jurisdiction will be relevant in cases in which it has been used effectively by those harmed by violations to their rights or by their family members. In other words, it is not a remedy that must, of necessity, always be exhausted, so that it does not inhibit the Court's competence to establish the reparations that it finds pertinent as a result of the violations that it has identified.[859] Nevertheless, the Court will take into account, as pertinent, the scope and results of this judicial remedy when establishing integral reparation for the victims.[860] The Court recalls that adequate and integral reparation cannot be reduced to the payment of compensation to the victims or their family members.[861]

B.2) Other measures of reparation available in the domestic sphere

550. In its final arguments, the State indicated that it "was willing to make available to the victims the different mechanisms offered by its laws under its policy of providing integral reparation and attention to victims." In this regard, it affirmed that, in addition to the contentious-administrative proceedings, the programs provided by the Victims and Land Restitution Law were available, as well as the measures of reparation ordered by the judgment of the Superior Court of Bogota of January 30, 2012, in the case against the Commander of the Cavalry School.[862]

551. The Court recognized the progress that the Victims and Land Restitution Law had represented in relation to reparations at the domestic level in the case of the *Afrodescendant Communities displaced from the Cacarica River Basin (Operation Genesis)*.[863] However, in this case the Court points out that the State referred for the first time to that law and to the reparation program it established in its brief with final arguments, so that these arguments were time-barred. In addition, the said law is not included in the case file. Nevertheless, the Court notes that some aspects of this program

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858 *Cf. Case of the Ituango Massacres v. Colombia.* Judgment of July 1, 2006. Series C No. 148, paras. 91 and 340, and *Case of the Santo Domingo Massacre v. Colombia. Preliminary objections, merits and reparations*. Judgment of November 30, 2012. Series C No. 259, para. 37.

859 *Cf. Case of the Santo Domingo Massacre v. Colombia. Preliminary objections, merits and reparations*. Judgment of November 30, 2012. Series C No. 259, para. 37.

860 *Cf. Case of the Ituango Massacres v. Colombia.* Judgment of July 1, 2006. Series C No. 148, paras. 91 and 340, and *Case of the Santo Domingo Massacre v. Colombia. Preliminary objections, merits and reparations*. Judgment of November 30, 2012. Series C No. 259, para. 37.

861 *Cf. Case of the Mapiripán Massacre v. Colombia. Merits, reparations and costs.* Judgment of September 15, 2005. Series C No. 134, para. 214, and *Case of the Santo Domingo Massacre v. Colombia. Preliminary objections, merits and reparations*. Judgment of November 30, 2012. Series C No. 259, para. 38.

862 In this judgment the Superior Court of Bogota ordered, *inter alia*: "the publication of the judgment for one year on the websites of the Ministry of Defense and the National Army […]"; that "the Ministry of Defense, the Commander of the Military Forces, the Commander of the National Army, the Commander the 13th Brigade, and the Commander of the Cavalry School, within three months of the execution of the judgment, hold a public ceremony in Bolivar Plaza in Bogota apologizing to the community for the crimes committed on November 6 and 7, 1985, that resulted in the disappearance of [Carlos Augusto Rodríguez Vera and Irma Franco Pineda]"; that "no military unit, command, detachment, patrol or company [ever] bear the name of the soldier convicted of these acts." *Cf.* Judgment of the Superior Court of Bogota of January 30, 2012 (evidence file, folio 23450).

863 *Cf. Case of the Afrodescendant Communities displaced from the Cacarica River Basin (Operation Genesis) v. Colombia. Preliminary objections, merits, reparations and costs.* Judgment of November 20, 2013. Series C No. 270, para. 472.

may respond to the claims of the victims. Therefore, the Court will examine the claims that have been submitted and will order the measures of reparation that it deems pertinent. The State may implement these reparations through reparation programs established at the domestic level, provided that they conform to the measures ordered in this Judgment.

552. The Court acknowledges and appreciates that the criminal conviction handed down against the Commander of the Cavalry School included measures aimed at making integral reparation to the victims. However, it emphasizes that the scope, purpose and beneficiaries of that domestic decision and of this Judgment are distinct. Consequently, the Court will examine the claims of the victims and will determine those that it finds pertinent based on the facts of this case, its purpose, and the violations found.

C. Obligation to investigate the facts and to identify, prosecute and punish, as appropriate, those responsible

C.1) Investigation, identification, trial and punishment, as appropriate, of all those responsible

553. The Commission asked the Court to order the State "to conduct in the ordinary jurisdiction and to bring to an effective conclusion, within a reasonable time, the investigation of the events of this case, in order to prosecute and punish all the masterminds and perpetrators."

554. The representatives endorsed the Commission's request and indicated that "the other members of the General Staff of the 13th Brigade who were in command during the operations should be investigated; also the degrees of participation and responsibility of, among others, the members of the Army's Intelligence Directorate […] as the entity that ordered the actions of the Intelligence and Counterintelligence Command […]; and the members of the National Police and the Administrative Department of Security." Also, "[i]n the cases of Yolanda Santodomingo, Eduardo Matson, José Vicente Rubiano, Orlando Quijano and Carlos Horacio Urán, in which no one has been convicted of the violations committed against them, the criminal proceedings should be aimed at ensuring that they obtain justice promptly and effectively." In addition, they asked that an investigation be opened in the ordinary jurisdiction for presumed "fraudulent *res judicata*" in relation to the ending of the proceedings against the Colonel, Head of the B-2, in the military jurisdiction. In general, they indicated that the investigations should observe the due guarantees and have the necessary resources, ensure the participation and access of the victims, and "effective measures of protection for "procedural agents and those who intervene in the proceedings, as well as disciplinary and criminal actions against those agents who threaten or obstruct the correct and impartial exercise of justice." Lastly, they asked that all the public authorities should abide by the judicial decisions and ensure the publicity of progress in the judicial proceedings in order to transmit a message of support for the administration of justice.

555. The State indicated that "[a]t the present time, numerous judicial proceedings are at the stage of investigation and prosecution […] to clarify the facts and to identify those responsible for the presumed forced disappearances and torture related to the events" in order to punish those responsible and satisfy the right to truth. It also indicated that the Prosecutor General had decided "to create a special group of investigators and prosecutors with the highest qualifications to conduct the investigations arising from the possible crimes committed during the taking and retaking of the Palace of Justice."

556. This Court appreciates the progress made to date by the State towards clarifying the facts. However, taking into account the conclusions of Chapter XI of this Judgment, the Court establishes that the State must remove all the obstacles *de facto* and *de jure*, that

maintain impunity in this case,[864] and conduct the extensive, systematic and thorough investigations required to identify, try, and punish, as appropriate, all those responsible for: the forced disappearance of Cristina del Pilar Guarín Cortés, Gloria Estella Lizarazo Figueroa, Carlos Augusto Rodríguez Vera, David Suspes Celis, Héctor Jaime Beltrán Fuentes, Bernardo Beltrán Hernández, Gloria Anzola de Lanao, Irma Franco Pineda, Lucy Amparo Oviedo Bonilla and Luz Mary Portela; the forced disappearance and subsequent extrajudicial execution of Carlos Horacio Urán Rojas, and the detention and torture or cruel and degrading treatment suffered, respectively, by Yolanda Santodomingo Albericci, Eduardo Matson Ospino, José Vicente Rubiano Galvis and Orlando Quijano. This obligation must be complied within a reasonable time in order to establish the truth of the facts of this case, taking into account that 29 years have passed since they happened. In particular, the State must ensure that the following criteria are observed:[865]

a) The pertinent investigation or investigations into the facts of this case must take into account that the investigations and the proceedings must be conducted bearing in mind the complexity of the facts, with due diligence, avoiding omissions in the consideration and assessment of the evidence, and following up on logical lines of investigation;

b) Since this case involves egregious human rights violations, including enforced disappearance, extrajudicial execution, and torture, the State must abstain from resorting to the application of amnesty laws, or argue the statute of limitations, the non-retroactivity of the criminal law, *res judicata*, or the principle of *non bis in idem* or any similar mechanism that excludes responsibility in order to avoid the obligation to investigate and prosecute those responsible;[866]

c) The competent authorities must conduct the corresponding investigations *ex officio,* and, to this end, they must have available and use all the necessary logistic and scientific resources to collect and process the evidence and, in particular, they must have the authority to obtain full access to the pertinent documentation and information to investigate the facts that have been denounced, and promptly to conduct those inquiries and to take those measures that are essential to clarify what happened to the disappeared persons, the victims of torture and other forms of cruel and degrading treatment, and the victim of disappearance and subsequent extrajudicial execution in this case;

d) The perpetrators of the violations described in this Judgment must be identified and individualized, and

e) The State must guarantee that the investigations into the facts that constitute the human rights violations declared in this case remain, at all time, in the ordinary jurisdiction.

557. The Court also finds that the State must conduct, within a reasonable time, the necessary investigations to determine and clarify the facts relating to Norma Constanza Esguerra Forero and Ana Rosa Castiblanco Torres, taking into account the considerations in

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[864] *Cf. Case of Myrna Mack Chang v. Guatemala. Merits, reparations and costs.* Judgment of November 25, 2003. Series C No. 101, para. 277, and *Case of Rochac Hernández et al. v. El Salvador. Merits, reparations and costs.* Judgment of October 14, 2014. Series C No. 285, para. 188.

[865] *Cf. Case of Anzualdo Castro v. Peru, Preliminary objection, merits, reparations and costs.* Judgment of September 22, 2009. Series C No. 202, para. 181 and *Case of Osorio Rivera and family members v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of November 26, 2013. Series C No. 274, para. 244.

[866] *Cf. Case of Barrios Altos v. Peru. Merits,* Judgment of March 14, 2001. Series C No. 75, para. 41, and *Case of Osorio Rivera and family members v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of November 26, 2013. Series C No. 274, para. 244.e.

Chapters IX and XI of this Judgment.

558. Furthermore, regarding the presumed sexual violence suffered by Yolanda Santodomingo Albericci and Eduardo Matson Ospino (*supra* para. 426), the Court finds it pertinent that the State take into account the observations of Mr. Matson Ospino in one of his statements and the conclusions of expert witness Deutsch, in order to conduct investigations that are relevant to clarify what happened and to take appropriate steps in relation to the measure of rehabilitation ordered in favor of Ms. Santodomingo Albericci and Mr. Matson Ospino (*infra* paras. 567 to 569).

559. Pursuant to its consistent case law,[867] the Court considers that the State should ensure full access and capacity to act to the victims or their next of kin at all stages of the investigation and prosecution of those responsible, in accordance with domestic law and the provisions of the American Convention. In addition, the results of the corresponding proceedings must be publicized so that Colombian society can know the facts that are the purpose of this case, as well as those responsible.

C.2) Determination of the whereabouts of the disappeared victims

560. The Commission asked the Court to order the State "[t]o initiate an immediate search to locate Carlos Augusto Rodríguez Vera, Cristina del Pilar Guarín Cortés, David Suspes Celis, Bernardo Beltrán Hernández, Héctor Jaime Beltrán Fuentes, Gloria Stella Lizarazo, Luz Mary Portela León, Norma Constanza Esguerra, Lucy Amparo Oviedo [Bonilla], Gloria Anzola de Lanao and Irma Franco Pineda or their mortal remains and, when applicable, return these to their family members, following scientific identification."

561. Regarding this request, the representatives asked the Court to order the State "to facilitate the creation of the 'Special Commission to search for persons disappeared in the events of the Palace of Justice,' which […] can design strategies aimed at discovering [their] whereabouts." In addition, they asked that the State "guarantee the participation of the victims and their representatives, and also the cooperation of other States and international organizations with experience in searching for disappeared persons," and that the said commission "also have the mandate to establish what happened to Ana Rosa [Castiblanco], […] whose remains were found in 2001." If mortal remains are found, they asked that, once these have been identified, they be returned to the next of kin as soon as possible, and the costs be "assumed by the State." Lastly, they indicated that "it is desirable that the victims are permitted to appoint an external oversight body, to participate, as an observer, in the activities undertaken by the State's team of experts."

562. The State argued that it had made "numerous efforts to identify the corpses of the presumed victims, [which] included procedures to exhume mortal remains and genetic testing, as well as [those] that permitted the identification of the mortal remains of Ana Rosa Castiblanco." It also indicated that under the Victims and Land Restitution Law, "the Victims Unit provides support to the National Unit of Justice and Peace Prosecutors, with a psychosocial strategy, during the return of remains to the next of kin, and gives priority to cases in which it is necessary to perform exhumations, transfer bodies or conduct burials in decent conditions in the course of reparation processes." In addition, it indicated that, at the present time, the National Commission to Search for Disappeared Persons is increasing its efforts and has implemented an "important National Search Plan."

563. In this case, it has been established that the whereabouts of eleven of the disappeared victims remain unknown, including ten forcibly disappeared victims and Norma Constanza Esguerra. The Court stresses that 29 years have passed since the disappearances that are

[867] *Cf. Case of El Caracazo v. Venezuela. Reparations and costs.* Judgment of August 29, 2002. Series C No. 95, para. 118, and *Case of Osorio Rivera and family members v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of November 26, 2013. Series C No. 274, para. 245.

the purpose of this case, so that it is a just expectation of their family members that their whereabouts are found. Moreover, this constitutes a measure of reparation and, therefore, gives rise to a corresponding obligation for the State to satisfy it.[868] The return of the bodies of their loved ones is extremely important for their families, because it allows them to bury them in accordance with their beliefs, and to close the mourning process endured throughout these years.[869] In addition, the Court underscores that the remains of a person who is deceased and the place where they are found can provide valuable information on what happened and on the perpetrators of the violations or the institution to which they belonged,[870] particularly in the case of State agents.[871]

564. The Court assesses positively the willingness shown by Colombia as regards the search for the disappeared victims and considers that this represents an important step towards reparation in this case. In this regard, the State must conduct a thorough search using the pertinent administrative and judicial mechanism during which every effort is made to determine, as soon as possible, the whereabouts of the eleven victims whose fate is still unknown. The search should be carried out systematically and have adequate and appropriate human, technical and scientific resources; furthermore, if necessary, the cooperation of other States should be requested. A strategy for communicating with the next of kin should be established in relation to these procedures, under a coordinated action plan, in order to ensure their participation, awareness and presence in keeping with the relevant protocols and guidelines.[872] If the victims or any of them are found deceased, the mortal remains must be returned to their families, following the reliable verification of their identity, as soon as possible and without any cost to the families. In addition, the State must cover the funeral costs, when applicable, in agreement with the next of kin.[873]

565. The Court also notes the representatives' request to create a special commission to search for the disappeared victims in this specific case. The Court does not find it necessary to order the creation of a special commission, but considers it pertinent that the State determine a mechanism to use for the search and identification of the disappeared victims in this case that allows the family members to participate and that takes into account the considerations included in this Judgment.

D. Measures of rehabilitation and satisfaction

D.1) Rehabilitation

566. The Commission asked the Court to order the State to implement an appropriate

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868 *Cf. Case of Neira Alegría et al. v. Peru. Reparations and costs.* Judgment of September 19, 1996. Series C No. 29, para. 69, and *Case of Rochac Hernández et al. v. El Salvador. Merits, reparations and costs.* Judgment of October 14, 2014. Series C No. 285, para. 196.

869 *Cf. Case of Las Dos Erres Massacre v. Guatemala. Preliminary objection, merits, reparations and costs*. Judgment of November 24, 2009. Series C No. 211, para. 245, and *Case of Osorio Rivera and family members v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of November 26, 2013. Series C No. 274, para. 250.

870 *Cf. Case of Las Dos Erres Massacre v. Guatemala. Preliminary objection, merits, reparations and costs*. Judgment of November 24, 2009. Series C No. 211, para. 245, and *Case of Osorio Rivera and family members v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of November 26, 2013. Series C No. 274, para. 250.

871 *Cf. Case of the Río Negro Massacres v. Guatemala. Preliminary objection, merits, reparations and costs*. Judgment of September 4, 2012. Series C No. 250, para. 266, and *Case of Gudiel Álvarez et al. ("Diario Militar") v. Guatemala. Merits, reparations and costs*. Judgment of November 20, 2012. Series C No. 253, para. 333.

872 *Cf. Case of Contreras et al. v. El Salvador. Merits, reparations and costs*. Judgment of August 31, 2011. Series C No. 232, para. 191, and *Case of Osorio Rivera and family members v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of November 26, 2013. Series C No. 274, para. 251.

873 *Cf. Case of Anzualdo Castro v. Peru. Preliminary objection, merits, reparations and costs.* Judgment of September 22, 2009. Series C No. 202, para. 185, and *Case of Rochac Hernández et al. v. El Salvador. Merits, reparations and costs.* Judgment of October 14, 2014. Series C No. 285, para. 199.

program of psychosocial care for Yolanda Ernestina Santodomingo, Eduardo Matson, Orlando Quijano and José Vicente Rubiano and their next of kin and, in the case of the next of kin of the victims of enforced disappearance, a program of psychosocial care in keeping with the Basic Standards for Psychosocial Support in processes of the search for disappeared persons. The representatives added that the "victims, their families and their representatives […] will advise the State of the entity […] in which they have confidence to provide their treatment, [and] the State should provide, free of charge and immediately through these entities, adequate and effective medical and psychological or psychiatric treatment to the victims who request this," including the medicines required, based on the particular circumstances and needs of each victim, of their family group, and of their milieu. According to the representatives, the entities "must be State institutions specialized in the treatment of victims of acts of violence." They asked that the treatment be provided as of notification of the Judgment and, if the treatment was provided by a private institution, that the State advise, within six months, which health care establishments or specialized institutions will be designated for the victims to receive the treatment. Meanwhile, the State indicated that the Victims and Land Restitution Law "grants powers to the Ministry of Health […] and […] the creation of the Program of Integral Health Care and Psychosocial Treatment for victims, provides comprehensive health care with a psychosocial approach."

567. The Court considers, as it has in other cases,[874] that a measure of reparation must be established that provides adequate care for the physical and psychological problems suffered by the victims of the violations determined in this Judgment. In order to help redress this harm, the Court establishes the obligation of the State to provide, free of charge and immediately, through specialized public health care institutions or specialized health care personnel, appropriate and effective medical and psychological or psychiatric treatment to the victims who request this, following their informed consent, including the free supply of any medicines that they may eventually require, taking into account the ailments of each of them related to the facts of this case. In the specific case of the victims of torture and other forms of cruel and degrading treatment, the psychological or psychiatric treatment should be provided by public institutions or personnel specialized in providing attention to victims of violent acts such as those that occurred in this case. If the State does not have specialized health care institutions, it must have recourse to specialized private or civil society institutions.

568. Furthermore, the respective treatment must be provided for as long as necessary. When providing the medical, psychological or psychiatric treatment, the specific circumstances and needs of each victim must also be considered, so that they are provided with collective, family or individual treatment, as agreed with each of them and following an individual evaluation.[875] The victims who request this measure of reparation, or their representatives, have six months as of notification of this Judgment to advise the State of their intention of receiving medical, psychological or psychiatric treatment.[876] The Court underlines the need for the State and the representatives to make every effort to collaborate and provide the victims with all the information they require to receive the medical, psychological or psychiatric treatment, in order to advance in the implementation of this

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874 *Cf. Case of Barrios Altos v. Peru. Reparations and costs*. Judgment of November 30, 2001. Series C No. 87, paras. 42 and 45, and *Case of Rochac Hernández et al. v. El Salvador. Merits, reparations and costs.* Judgment of October 14, 2014. Series C No. 285, para. 219.

875 *Cf. Case of Las Dos Erres Massacre v. Guatemala. Preliminary objection, merits, reparations and costs*. Judgment of November 24, 2009. Series C No. 211, para. 270, and *Case of Rochac Hernández et al. v. El Salvador. Merits, reparations and costs.* Judgment of October 14, 2014. Series C No. 285, para. 220.

876 *Cf. Case of Rosendo Cantú et al. v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of August 31, 2010. Series C No. 216, para. 253, and *Case of Rochac Hernández et al. v. El Salvador. Merits, reparations and costs.* Judgment of October 14, 2014. Series C No. 285, para. 220.

measure by mutual agreement.

569. The Court also observes that some of the victims do not live in Colombia. However, the Court does not have up-to-date and exact information in this regard. It therefore grants the representatives six month as of notification of this Judgment to specify which of the victims is in this situation. In addition, the Court finds it pertinent to establish that, if these persons request the treatment ordered in the preceding paragraphs, the State must award them, once, the sum of US$7,500.00 (seven thousand five hundred United States dollars) for the expenses of medical, psychological or psychiatric treatment, as well as for the medicines and other related costs, so that they may receive this treatment wherever they reside.[877]

D.2) Satisfaction

570. The State asked that the partial acknowledgement of responsibility made before the Court be considered a measure of satisfaction, "addressed at honoring the victims and their family members." It also indicated that "[t]he purpose of the actions taken under the component of the historical memory and truth [under the Victims and Land Restitution Law], is to restore the dignity of the victims and their family members by different initiatives relating to the historical memory and symbolic reparation in order […] to disseminate their testimony; [and also] to involve society in the implementation of civic acts concerning this memory that raise the awareness of the Colombian people so as to avoid a recurrence of these human rights violations." It also emphasized that the President of the Republic had given an address to commemorate the victims of the case, 25 years after the events on November 4, 2010, in which he had stated that he paid "homage to the victims of this tragedy and [had come forward] with a sense of patriotism and humanity, not only as the Head of Government, but also in [his] condition as a mere citizen who, like everyone else, fe[lt] and suffer[ed] this affront to justice and to life." Apart from these general considerations, the State did not refer specifically to the measures of reparation requested by the Commission and the representatives.

D.2.a) Publication and dissemination of the Judgment

571. The representatives requested that "the conclusions of the […] Court's judgment be published and disseminated." They also asked that the Court order the State to publish the judgment: in the Official Gazette; in the Sunday edition of a national newspaper with widespread circulation; on the official websites of the Presidency of the Republic, the Ministry of Foreign Affairs, the Ministry of Defense and the Ministry of Justice, and on radio and television stations with national coverage twice over a six-month period. In addition, they asked for the publication of "a summary of the judgment, mutually agreed between the representatives […] and the State, [which] should also be broadcast by radio and television stations with national coverage twice over a six-month period following the Court's decision." Lastly, they asked that the announcement of the publication of the judgment be made on the days leading up to it and that, on the day it was published, its appearance be announced "on the first page as a headline of the newspaper and emphasized in its virtual edition."

572. The Court establishes, as it has in other cases,[878] that the State must publish, within six months of notification of this Judgment: (a) the official summary of this Judgment prepared by the Court, once, in the Official Gazette, and (b) in a national newspaper with widespread circulation, and (c) this Judgment, in its entirety, available for one year on an

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[877] *Cf. Case of Las Dos Erres Massacre v. Guatemala, Preliminary objection, merits, reparations and costs*. Judgment of November 24, 2009. Series C No. 211, para. 270, and *Case of Gudiel Álvarez et al. ("Diario Militar") v. Guatemala. Merits, reparations and costs*. Judgment of November 20, 2012. Series C No. 253, para. 340.

[878] *Cf. Case of Cantoral Benavides v. Peru. Reparations and costs.* Judgment of December 3, 2001. Series C No. 88, para. 79, and *Case of Tarazona Arrieta et al. v. Peru. Preliminary objection, merits, reparations and costs.* Judgment of October 15, 2014. Series C No. 286, para. 179.

official website.

573. The Court also finds it appropriate, as it has in other cases,[879] that the State broadcast the official summary of the Judgment on a radio station and a television channel with national coverage, at peak time, once, within six months of notification of this Judgment. The State must inform the representatives, with at least two weeks' notice, of the date, time, radio station and television channel on which these broadcasts will be made. The Court does not find it necessary to order the other element requested by the representatives.

D.2.b) Public act to acknowledge international responsibility

574. The Commission asked the Court to order the State to make an international acknowledgement of responsibility and to issue a public apology for the human rights violations committed in this case.

575. The representatives asked that a public act be held for the State to acknowledge international responsibility in a "solemn public ceremony in Bolivar Plaza in front of the Palace of Justice, headed by the President of the Republic and with the presence of the most senior members of the Colombian Armed Forces, the Pubic Prosecution Service, and the Prosecutor General's Office, and the Presidents of the High Courts of Justice, among others." The ceremony should be organized with the collaboration of the victims, their next of kin and representatives, and their presence should be ensured, and "to this end, [the State must assume] all the transportation expenses for those who are not in […] Bogota." During this acknowledgement, they asked that reference be made "to the human rights violations declared in the Judgment […] and [that] the State explicitly [affirm] that [the violations declared in this case] are gross human rights violations, inadmissible from any point of view and in any circumstance, including the specific case of Irma Franco, in application of Article 3 common to the Geneva Conventions." They also asked that the State issue an apology to the next of kin of the direct victims of this case and that this be disseminated "by all the radio, television, and press media […] by television channels, radio stations, and private and public publications, broadcast at peak time and [on the] front page of the written press; as well as in the official media, such as the congressional Gazette and the websites and other forms of dissemination used by the State," within six months of notification of the Judgment.

576. The Court assesses positively the apologies offered by the State during the public hearing held on November 12, 2013, as well as the partial acknowledgement of responsibility, which could represent partial satisfaction for the victims in relation to the violations declared in this Judgment (*supra* paras. 20, 21 and 26). Nevertheless, as it has in other cases,[880] the Court finds it necessary, in order to redress the harm caused to the victims and to prevent the repetition of events such as those of this case, to establish that the State organize a public act to acknowledge international responsibility in Colombia, in relation to the facts of this case. During this act, reference must be made to the human rights violations declared in this Judgment. Also, it must be carried out by means of a public ceremony in the presence of senior State officials and the victims in this case. The State must reach agreement with the victims or their representatives on the organization of the public act of acknowledgement, as well as on its characteristics, such as the date and place. The State has one year as of notification of this Judgment to comply with this measure of reparation.

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879 *Cf. Case of the Yakye Axa Indigenous Community v. Paraguay*. *Merits, reparations and costs*. Judgment of June 17, 2005. Series C No. 125, para. 227, and *Case of Norín Catrimán et al. (Leaders, members and activist of the Mapuche Indigenous People) v. Chile. Merits, reparations and costs*. Judgment of May 29, 2014. Series C No. 279, para. 308.

880 *Cf. Case of Cantoral Benavides v. Peru. Reparations and costs.* Judgment of December 3, 2001. Series C No. 88, para. 81, and *Case of Osorio Rivera and family members v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of November 26, 2013. Series C No. 274, para. 264.

D.2.c) Preparation of an audiovisual documentary

577. The Commission asked, in general, that "adequate [redress be provided for] the human rights violations that are declared […] including the establishment and dissemination of the truth of the events, and the recovery of the memory of the disappeared victims and the executed victims."

578. The representatives asked that the State be ordered "to make, distribute and transmit an audiovisual documentary" on the facts of the case in which "the memory of the persons disappeared and executed is vindicated, as well as the efforts made by their families to discover their whereabouts and demand justice, and in which the importance of the rule of law, the separation of powers, and the roles of the different State authorities is emphasized." The preparation of the documentary would require the creation of a committee formed by the next of kin and representatives of the victims, the High Courts, and the Ministries of Education and Culture and also human rights academics. The representatives also included specific requests concerning the timetable and frequency of transmission of the documentary.

579. The Court finds it pertinent to order the preparation of a documentary on the facts of this case, because initiatives of this kind are significant both for the preservation of the memory and the satisfaction of the victims, and also for the recovery and restitution of the historical memory in a democratic society.[881] Accordingly, the Court considers it opportune that the State make an audiovisual documentary on the facts and victims of this case and the search for justice of their family members, based on the facts established in this Judgment, and taking into account the opinion of the victims and of their representatives. The State must assume all the expenses arising from the production, exhibition and distribution of this video. The documentary must be shown on a national television channel, once, and the next of kin and representatives must be advised of the details with at least two weeks' notice. Furthermore, the State must provide the representatives with 155 copies of the video of the documentary, so that they can be distributed among the victims, their representatives, other civil society organizations, and the country's main universities for promotional purposes. The State has two years as of notification of this Judgment to make the said documentary, and to exhibit and distribute it.

D.3) Other measures requested

580. The representatives also asked that the Court order Colombia to: (i) award grants for university, technical or high school studies to the next of kin of the victims; (ii) prepare a book that recovers the life stories of the victims; (iii) establish a museum or exhibition in honor of the victims' memory; (iv) create a doctoral or post-doctoral grant named after "Carlos Horacio Urán"; (v) guarantee that commemorative acts will be held every November 6 and 7; (vi) erect a monument in the Casa del Florero that evokes the memory of the victims; (vii) place a separate plaque with the name of Auxiliary Justice Carlos Horacio Urán in the Palace of Justice, distinct from the actual plaque listing the names of the justices who lost their life in the events of the taking and retaking of the Palace of Justice; (viii) establish a program of psychosocial assistance for next of kin of disappeared persons; (ix) remove any references that exalt the action of the Security Forces in the operation to retake the Palace of Justice; (x) publicize widely the conclusions of the Final Report of the Truth Commission and the rulings handed down by the Colombian courts; (xi) provide support to some of the victims' family members so that they can undertake entrepreneurial projects; (xii) ensure that no laws or regulations can result in the impunity of those responsible for the facts of this

[881] *Cf. Case of Radilla Pacheco v. Mexico. Preliminary objections, merits, reparations and costs.* Judgment of November 23, 2009. Series C No. 209, para. 356, and *Case of Gudiel Álvarez et al. (Diario Militar) v. Guatemala. Merits, reparations and costs*. Judgment of November 20, 2012. Series C No. 253, para. 345.

case; (xiii) implement a archiving plan to safeguard the documentary, testimonial and judicial material related to the facts of this case; (xiv) acknowledge the efforts made by some family members of the victims to search for truth and justice, and (xv) arrange that a room in the National Museum be devoted to a permanent exhibition that allows Colombian society to know what happened. In relation to these measures, the Court considers that the delivery of this Judgment and the reparations ordered in this chapter are sufficient and adequate to remedy the violations suffered by the victims and does not find it necessary to order these additional measures.[882]

581. Meanwhile, the Commission asked that the State be ordered to use ways and means that respect human rights when dealing with situations involving disturbances of public order, and to provide training to the members of the Armed Forces and security agencies on human rights and the limits to the use of weapons. The Court notes that this request by the Commission exceeds the purpose of the case and is not related to the violations declared in the Judgment. Hence, the Court does not find it admissible to order this measure.

582. The representatives also asked that the Court order "the State […] to adopt the necessary provisions and measures to prohibit members of the Military Forces convicted of gross human rights violations from serving their sentences in military establishments, and to adopt the necessary measures to ensure that the two former members of the Army convicted in this case […] serve […] their sentences [in an ordinary prison establishment]." The Court takes note of this request, but does not find it pertinent to order this measure owing to its conclusions in the corresponding section of this Judgment.

E. Compensation

E.1) General arguments of the parties and of the Commission

583. In addition to the arguments described above (*supra* para. 547), the State indicated that several family members of the victims had "resorted to the contentious-administrative jurisdiction," which had already delivered judgment against the Colombian State in their favor,[883] and that the State "had been complying with the reparations [ordered]." It also emphasized that this remedy is still available to all the next of kin of the disappeared victims who have not filed it. Therefore, and "respecting the principle of subsidiarity, [it argued that] additional compensation should not be ordered."

584. The representatives indicated that "it is not in keeping with the text of the [Convention] or the standards of international human rights law that […] the Court […] establish violations or recognize victims without awarding them adequate reparation, [and] merely refer the victims to the contentious-administrative system, or that it consider, without analyzing them thoroughly, that the reparations under the contentious-administrative jurisdiction automatically comply with the right to full reparation, especially in a case such as this one, in which the victims have waited [29 years] for a satisfactory decision by an international court." Thus, they asked that the Court depart from the

[882] They also asked that Orlando Quijano's journal "*El derecho del Derecho*" be re-edited and that financial support be provided to the project "*Human Rights Memory Warehouse*" of Juan Francisco Lanao Anzola. The Court notes that these requests for measures of reparation were presented for the first time in the final written arguments of the representatives and are therefore time-barred.

[883] In this regard, the State referred in particular to the cases of the victims: (1) Héctor Jaime Beltrán Fuentes, (2) Norma Constanza Esguerra Forero, (3) Carlos Augusto Rodríguez Vera, (4) Ana Rosa Castiblanco Torres, (5) Luz Mary Portela León, (6) David Suspes Celis, (7) Gloria Stella Lizarazo Figueroa, (8) Cristina del Pilar Guarín Cortés, (9) Bernardo Beltrán Hernández, (10) Irma Franco Pineda, and (11) Carlos Horacio Urán Rojas. The State also indicated that, in the domestic sphere, the proceedings filed by (1) the siblings, husband and son of Gloria Anzola de Lanao; (2) the siblings, husband and children of Lucy Amparo Oviedo Bonilla, and (3) the sister of Norma Constanza Esguerra Forero are underway, and (4) the proceedings filed by the father and siblings of Héctor Jaime Beltrán Fuentes are being processed in second instance.

precedent in the case of the *Santo Domingo Massacre*. Also, in relation to the compensation decided at the domestic level, they asked the Court to take into consideration the nature of the payment or measure, the specific situation of the victim and his or her family members, the items compensated, the date on which the compensation was delivered in relation to that of the facts that gave rise to the violation, the existence of subsequent or continuing acts or additional expenses, and the results and effectiveness of the actions of the State organs involved in the reparation. In addition, they argued that "the nature of the contentious-administrative remedy […] is distinct from the responsibility incurred by a State when violating any of its [international] obligations."

585. The Commission asked the Court to order the State "[t]o make adequate reparation for the human rights violations, [including compensation,] in relation to both the pecuniary […] and the non-pecuniary aspects, and to pay the expenses arising from the efforts to obtain justice." It also stressed that it was "important that [the Court] not make a general appraisal of the sufficiency of the reparations awarded in the contentious-administrative jurisdiction." In addition, it insisted that, under the contentious-administrative system, the evaluation of the harm was significantly different from the integral assessment made by the Court, and therefore indicated that it should be the Court that determines the harm and establishes the reparations, based on an individualized evaluation of each victim and the reparations awarded in the domestic sphere.

E.2) Specific arguments concerning pecuniary damage

586. Regarding the loss of earnings, the representatives calculated the respective amount by updating the monthly income received by the victims. They also indicated that "with the disappearance of the victims, their personal, professional and family life projects were irreversibly curtailed." In the case of the victims of torture and cruel treatment, the representatives asked that the loss of earnings be determined, in equity, taking into account that the problems and aftereffects suffered by the victims have prevented them from greater professional advancement and obtaining a higher income. Regarding the consequential harm, they asked that the corresponding amount should be determined in equity, taking into consideration the expenses that the search for justice caused to the next of kin.

587. In the specific case of Irma Franco Pineda, the State asked the Court that, "should it consider additional financial reparations admissible, […] it take into account the reparations awarded in the domestic sphere, and also the specific particularities of the victim; namely, the illegal task that she was performing at the time of the events […] and, thus, not consider compensation for loss of earnings admissible." It also indicated that, since Carlos Horacio Urán Rojas had been an official of the Council of State, "his death resulted in his wife and daughters receiving the pension decreed by the Congress of the Republic. Under this norm, the surviving spouse has the right to a lifetime pension and it has been paid based on the same salary as that of those who retire from the Judiciary, and his daughters have this right until they reach their majority."

E.3) Specific arguments concerning non-pecuniary damage

588. The representatives asked the Court that, "in the case of those who were disappeared, tortured, detained, and extrajudicial executed," it take into account the request made concerning the non-pecuniary harm to each of them, "bearing in mind that the Colombian State deducts the amount already awarded to the next of kin." They also indicated that the harm caused to the members of the victims' families is revealed by the effects on their personal integrity, the stigmatization to which they had been subjected, the impossibility of ending their mourning process, and the legal and social impunity. In addition, they argued that the family members "have felt intense sadness, caused by the violent loss of their loved ones, [as well as a] profound feeling of fear and helplessness

[and] guilt." They indicated that "[t]he forced disappearance left an irreparable emotional vacuum […] that has remained over time and that persists after 2[9] years." They also indicated that the facts had an impact on the life project of the families. They therefore requested the sum of US$100,000 for each of the direct victims; US$80,000 for their parents, children and spouses or permanent companions, and US$50,000 for their siblings.

589. The State asserted that compensation for non-pecuniary damage had been awarded to several family members of the victims in the domestic sphere, and that those who had not had recourse to the contentious-administrative jurisdiction could still request compensation in that jurisdiction.

E.4) Considerations of the Court

590. The State has asked the Court to apply the precedent in the case of the *Santo Domingo Massacre*. The Court underscores that there are significant differences between the circumstances of the two cases. In this case, the compensation awarded by the contentious-administrative jurisdiction is not the result of conciliation between the State and the victims, it does not cover most of the victims, and it does not redress the main violations found in this Judgment. The decisions handed down by the Council of State in relation to the victims of this case based the payment of the compensation granted on the "service-related failure" resulting from the elimination of the necessary surveillance of the Palace of Justice and on the "hasty, unconsidered and irresponsible way in which the Armed Forces quashed the taking" of the Palace.[884] However, with the exception of the case of Irma Franco Pineda, none of the decisions issued acknowledged or condemned the State for its responsibility in the forced disappearance of the victims, or in the other violations determined in this Judgment. Moreover, the victims have not obtained reparation for the time that has elapsed and for the absence of an effective investigation of the events. Based on this series of differentiated circumstances, the Court finds that it is not in order to apply the precedent of the case of the *Santo Domingo Massacre*. Nevertheless, the Court reiterates that the international jurisdiction is of a complementary and contributive nature;[885] consequently, the decisions of the contentious-administrative proceedings must be taken into account when establishing just compensation (*supra* para. 548).

E.4.1) Pecuniary damage

591. In its case law, the Court has developed the concept of pecuniary damage and the situations in which this should be compensated.[886] The Court has established that pecuniary damage encompasses "the loss of, or detriment to, the income of the victims, the expenses incurred as a result of the facts, and the consequences of a pecuniary nature that have a causal nexus to the facts of the case."[887]

592. In this case, the Court notes that family members of all the victims of forced disappearance (including Carlos Horacio Urán Rojas), and also of Norma Constanza Esguerra Forero and of Ana Rosa Castiblanco Torres, have had recourse to the contentious-

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884 See, for example, Judgment of the Contentious-Administrative Chamber of the Council of State of September 25, 1997, in the proceedings instituted by the next of kin of David Suspes Celis (evidence file, folio 3182).

885 *Cf. Case of Manuel Cepeda Vargas v. Colombia. Preliminary objections, merits, reparations and costs.* Judgment of May 26, 2010. Series C No. 213, para. 246, and *Case of Tarazona Arrieta et al. v. Peru. Preliminary objection, merits, reparations and costs.* Judgment of October 15, 2014. Series C No. 286, para. 137.

886 *Cf. Case of Bámaca Velásquez v. Guatemala. Reparations and costs*. Judgment of February 22, 2002. Series C No. 91, para. 43, and *Case of Rochac Hernández et al. v. El Salvador. Merits, reparations and costs.* Judgment of October 14, 2014. Series C No. 285, para. 252.

887 *Cf. Case of Bámaca Velásquez v. Guatemala. Reparations and costs.* Judgment of February 22, 2002. Series C No. 91, *supra*, para. 43, and *Case of Rochac Hernández et al. v. El Salvador. Merits, reparations and costs.* Judgment of October 14, 2014. Series C No. 285, para. 252.

administrative jurisdiction, which has issued the respective decisions,[888] except in four proceedings in which a decision is pending.[889] As a result of these proceedings, in some cases the State has granted compensation for "loss of earnings" based on the criteria established in the domestic jurisdiction. From information provided to the case file, the Court notes that the State has awarded the following compensation for loss of earnings to twenty family members of seven victims (five forcibly disappeared victims, Norma Constanza Esguerra Forero and Ana Rosa Castiblanco):

Victim	Year of the final domestic decision	Amount awarded at the domestic level for pecuniary damage[890]
Gloria Stella Lizarazo and her family group	1997	18,792,899 Colombian pesos (US$16,695.58) shared between her four children.
Carlos Augusto Rodríguez Vera and his family group	1997	40,327,223.94 Colombian pesos (US$36,439.15) shared between his wife and daughter
David Suspes Celis and his family group	1997	48,955,478 Colombian pesos (US$39,105.56) shared between his wife and daughter
Héctor Jaime Beltrán and his family group	1999	59,832,647.6 Colombian pesos (US$37,622.75) shared between his wife and his four daughters
Norma Constanza Esguerra and her family group	1997	30,857,078.89 Colombian pesos (US$27,807.93) delivered to her daughter[891]

[888] In particular, the contentious-administrative jurisdiction has issued decision with regard to: (1) the wife and daughter of Carlos Augusto Rodríguez Vera, Judgment of the Council of State of July 24, 1997 (evidence file, folio 505); (2) the father of Cristina del Pilar Guarín Cortés, Judgment of the Council of State of October 13, 1994 (evidence file, folio 3190); (3) the sister and children of Gloria Stella Lizarazo Figueroa, Judgment of the Council of State of August 14, 1997 (evidence file, folio 3151); (4) the wife and daughter of David Suspes Celis, Judgment of the Council of State of September 25, 1997 (evidence file, 3096); (5) the wife and daughters of Héctor Jaime Beltrán Fuentes, Judgment of the Council of State of January 28, 1999 (evidence file, folio 2870); (6) the parents of Bernardo Beltrán Hernández, Judgment of the Council of State of October 13, 1994 (evidence file, folio 2906); (7) the mother and daughter of Norma Constanza Esguerra Forero, Judgment of the Council of State of July 31, 1997 (evidence file, folio 2823); (8) the siblings of Irma Franco Pineda, Judgment of the Council of State of September 11, 1997 (evidence file, folio 3247); (9) family members of Ana Rosa Castiblanco Torres, Judgment of the Council of State of December 2, 1996 (evidence file, folio 3266) and Judgment of the Administrative Court of Cundinamarca of December 12, 2007 (evidence file, folio 3000); (10) the mother of Luz Mary Portela León, Judgment of the Council of State of September 6, 1995 (evidence file, folio 3049), and (11) the wife and daughters of Carlos Horacio Urán Rojas, Judgment of the Council of State of January 26, 1995 (evidence file, folio 3310).

[889] The proceedings in which decisions are pending correspond to: (1) next of kin of Lucy Amparo Oviedo (merits file, folio 4379); (2) next of kin of Gloria Anzola de Lanao (merits file, folio 4379); (3) parents and siblings of Héctor Jaime Beltrán Fuentes (merits file, folios 4143 and 4378), and (4) sister of Norma Constanza Esguerra Forero (merits file, folio 4379).

[890] The equivalence in United States dollars of the amounts awarded at the domestic level was calculated based on data from the historical series of representative exchange rates of the market of the Central Bank of Colombia. The calculation was made based on the date of issue of the decision awarding the compensation when this was provided to the case file, or else on the date of the final domestic decision. Data available at: http://www.banrep.org/es/trm.

[891] The amount awarded to the daughter of Norma Constanza Esguerra Forero corresponds to the sum established by the Council of State in the judgment of July 30, 1997. The Court notes that, in the payment order of August 15, 1997, Deborah Anaya Esguerra was awarded for pecuniary and non-pecuniary damage the sum of 48,495,654.03 Colombian pesos (US$37,189.34). However, it has no means of determining what percentage of this amount corresponds to a pecuniary damage.

Gloria Isabel Anzola Mora and her family group		A decision remains pending in the proceedings
Ana Rosa Castiblanco and her family group	2007	5,717,868.97 Colombian pesos (US$5,704.86) delivered to her son
Lucy Amparo Oviedo Bonilla and her family group		A decision remains pending in the proceedings
Carlos Horacio Urán and his family group	1995	200,886,977.64 Colombian pesos (US$187,901.13) shared between his wife and his four daughters. In addition, the State indicated that, since he was a member of the Council of State, his family received a lifetime pension of 75% of his salary (equal to 91,179.83 Colombian pesos a month)[892]

593. This Court recognizes and assesses positively the efforts made by Colombia in relation to its obligation to make reparation in this case. The Court recalls that, if domestic mechanisms exist to determine forms of reparation, these procedures and results must be taken into account (*supra* para. 548). Thus, this Court finds it necessary to analyze whether the contentious-administrative courts ruled on the full scope of the State responsibility included in this case,[893] and also to determine whether the compensation awarded meets the criteria of being objective, reasonable and effective to make adequate reparation for the violations of the rights recognized in the Convention that have been declared by this Court.[894]

594. In this regard, the Court notes that there are some differences of opinion in relation to the compensation awarded at the domestic level and the compensation that this Court usually awards in cases such as this one. The Colombian contentious-administrative jurisdiction does not grant compensation to persons who are disappeared or deceased, and compensation for "loss of earnings" is only awarded if the family members who depended on the disappeared or deceased victim apply for it.[895] Under this criterion, compensation was not awarded for the loss of earnings of the disappeared victim to any of the next of kin of Cristina del Pilar Guarín Cortés, Bernardo Beltrán Hernández, Irma Franco Pineda and Luz Mary Portela León.[896] Also, in the case of Irma Franco Pineda, the Council of State indicated that it was not in order to grant compensation for loss of earnings to her family members because "the loss of earnings or assistance resulting from unlawful activities such as those to which the person disappeared was dedicated does not constitute a source of compensation."[897]

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[892] The amount indicated corresponds to the sum awarded to the wife and daughters of Carlos Horacio Urán Rojas in 1986, 50% of which corresponded to the wife and the other 50% was to be shared among the daughters while they were minors. Decision No. 06399 of May 27, 1986, of the National Social Security Fund (evidence file, folio 37364).

[893] *Cf. Case of Cepeda Vargas v. Colombia. Preliminary objections, merits, reparations and costs.* Judgment of May 26, 2010, Para. 246, and *Case of the Santo Domingo Massacre v. Colombia. Preliminary objections, merits and reparations.* Judgment of November 30, 2012. Series C No. 259, para. 37.

[894] *Cf. Case of Cepeda Vargas v. Colombia. Preliminary objections, merits, reparations and costs.* Judgment of May 26, 2010, paras. 139 and 140, and *Case of the Santo Domingo Massacre v. Colombia. Preliminary objections, merits and reparations.* Judgment of November 30, 2012. Series C No. 259, para. 37.

[895] The Court also observes that, when determining the pecuniary compensation at the domestic level, the calculation of the compensation corresponding to the children was made based on the time that had elapsed between their age at the time of the events and the time until they achieved their majority.

[896] See, with regard to: (1) Cristina del Pilar Guarín Cortés, the judgment of the Council of State of October 13, 1994 (evidence file, folios 3190 to 3245); (2) Bernardo Beltrán Hernández, the judgment of the Council of State of October 13, 1994 (evidence file, folios 2906 to 2952); (3) Irma Franco Pineda, the judgment of the Council of State of September 11, 1997 (evidence file, folios 3247 to 3262), and (4) Luz Mary Portela León, the judgment of the Council of State of September 6, 1995 (evidence file, folios 3049 to 3094).

[897] Judgment of the Council of State of September 11, 1997, in the proceedings instituted by the next of kin of Irma

595. The Court emphasizes that the award of compensation for pecuniary damage in the contentious-administrative jurisdiction was made based on criteria that, although distinct, are objective and reasonable, so that the Court finds that, in keeping with the principle of complementarity on which the inter-American jurisdiction is based,[898] it is not in order for the Court to order additional compensation for pecuniary damage in the cases in which this compensation has already been awarded by the contentious-administrative jurisdiction.[899]

596. However, regarding the four victims none of whose family members has received reparation for pecuniary damage (*supra* para. 594), the Court finds it pertinent to establish, in equity, the amounts of US$45,000.00 (forty-five thousand United States dollars) for Cristina del Pilar Guarín Cortés; US$38,000.00 (thirty-eight thousand United States dollars) for Bernardo Beltrán Hernández; US$35,000.00 (thirty-five thousand United States dollars) for Luz Mary Portela León, and US$5,000.00 (five thousand United States dollars) for Irma Franco Pineda, as compensation for pecuniary damage.

597. The amounts established in favor of the persons indicated in the preceding paragraph must be paid to their family members within the time frame established in paragraph 609 of the Judgment, based on the following criteria:

> a) Fifty per cent (50%) of the compensation corresponding to each victim shall be shared, in equal parts, between his or her children. If one or several of the children are deceased, the part that would have corresponded to them shall be added to that of the other children of this victim;
>
> b) The other fifty per cent (50%) of the compensation shall be delivered to the spouse, or permanent companion of the victim at the onset of the disappearance or at the time of death, as applicable;
>
> c) If the victim did not have children, or a spouse or permanent companion, the amount that would have corresponded to the next of kin in that category shall increase the part that corresponds to the other category;
>
> d) If the victim had neither children nor a spouse or permanent companion, the compensation for pecuniary damage shall be delivered to his parents or, if they are deceased, to his siblings in equal parts, and
>
> e) If the victim did not have children, spouse or companion, or siblings and his or her parents are deceased, the compensation must be paid to the heirs in keeping with domestic inheritance laws.

598. Regarding Gloria Anzola de Lanao and Lucy Amparo Oviedo Bonilla, the Court notes that the proceedings for direct reparation filed by some of the families in the contentious-administrative jurisdiction are pending a decision (*supra* para. 592). In accordance with its preceding decision (*supra* para. 596), the Court considers that it is not appropriate to order compensation for pecuniary damage in favor of the next of kin of these two victims. It therefore urges the State to expedite the respective domestic proceedings of the contentious-administrative jurisdiction insofar as possible, in order to award the corresponding compensation, taking into account that this Judgment does not order any reparation in their favor for pecuniary damage.

599. In the case of the victims of torture and cruel and degrading treatment, the Court observes that the representatives have not presented documentation or other evidence to prove the pecuniary damage suffered by each of these victims owing to the violations declared in this Judgment. However, the Court finds it probable that the effects of the violations of which they were victims, and the search for justice resulted in their temporary

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Franco Pineda (evidence file, folio 3260).

898 *Cf. Case of Manuel Cepeda Vargas v. Colombia. Preliminary objections, merits, reparations and costs.* Judgment of May 26, 2010. Series C No. 213, para. 246, and *Case of Tarazona Arrieta et al. v. Peru. Preliminary objection, merits, reparations and costs.* Judgment of October 15, 2014. Series C No. 286, para. 137.

899 This refers to the cases of: (1) Gloria Stella Lizarazo Figueroa, (2) Carlos Augusto Rodríguez Vera, (3) David Suspes Celis, (4) Héctor Jaime Beltrán Fuentes, (5) Norma Constanza Esguerra, (6) Ana Rosa Castiblanco Torres and (7) Carlos Horacio Urán Rojas.

inactivity.[900] Based on the foregoing, the Court establishes, in equity, the sum of US$10,000.00 (ten thousand United States dollars), as compensation for pecuniary damage in favor of Yolanda Santodomingo Albericci, Orlando Quijano, Eduardo Matson Ospino and José Vicente Rubiano Galvis. This sum shall be paid to each of them within the time frame established in paragraph 609 of this Judgment.

E.4.2) Non-pecuniary damage

600. International case law has established that the judgment constitutes *per se* a form of reparation.[901] Nevertheless, in its case law, the Court has developed the concept of non-pecuniary damage and has established that this may include the suffering and affliction caused to the direct victim and to his next of kin, the impairment of values that are of great significance to the individual, as well as the alterations of a non-pecuniary nature in the living conditions of the victims or their families.[902]

601. The Court notes that certain members of the victims' families have received compensation for this concept under the Colombian contentious-administrative jurisdiction. In particular, thirty-seven next of kin of eleven of the victims[903] have received compensation for "moral harm" in this jurisdiction. The evidence provided reveals that these next of kin, in most cases the fathers, mothers, spouses, permanent companions or children, were awarded compensation for non-pecuniary damage of 1000 grams of gold,[904] equivalent to between US$9,129.28 and US$14,000.00 depending on the date on which the payment was ordered and made effective; and in the case of the siblings, compensation of 500 grams of gold was awarded, equivalent to between US$4,951.46 and US$4,047.85. The Court also observes that proceedings involving 19 family members of four of the victims are underway,[905] and that in the case of María Eufemia Franco Pineda, Irma Franco's

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[900] *Cf. Case of Rosendo Cantú et al. v. Mexico. Preliminary objection, merits, reparations and costs.* Judgment of August 31, 2010. Series C No. 216, para. 274, and *Case of Fernández Ortega et al. v. Mexico. Preliminary objection, merits, reparations and costs.* Judgment of August 30, 2010. Series C No. 215, para. 281.

[901] *Cf. Case of El Amparo v. Venezuela. Reparations and costs.* Judgment of September 14, 1996. Series C No. 28, para. 35, and *Case of Tarazona Arrieta et al. v. Peru. Preliminary objection, merits, reparations and costs.* Judgment of October 15, 2014. Series C No. 286, para. 177.

[902] *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. 84, and *Case of Rochac Hernández et al. v. El Salvador. Merits, reparations and costs.* Judgment of October 14, 2014. Series C No. 285, para. 257.

[903] The next of kin who have received compensation for moral harm at the domestic level are: (1) José María Guarín Ortíz, father of Cristina del Pilar Guarín Cortés; (2) Rosalbina León, mother of Luz Mary Portela León; (3) Gloria Marcela, (4) Carlos Andrés, (5) Diana Soraya Ospina Lizarazo, (6) Marixa Casallas Lizarazo, children of Gloria Stella Lizarazo, and (7) Dayanira Lizarazo, sister; (8) Cecilia Saturia Cabrera and (9) Alejandra Rodríguez Cabrera, wife and daughter of Carlos Augusto Rodríguez Vera; (10) Luz Dary Samper Bedoya and (11) Ludy Esmeralda Suspes Samper, wife and daughter of David Suspes Celis; (12) María del Pilar Navarrete Urrea, (13) Bibiana Karina, (14) Stephanny, (15) Dayana and (16) Evelyn Beltrán Navarrete, wife and daughters of Héctor Jaime Beltrán; (17) Bernardo Beltrán Monroy and (18) María Jesús Hernández, parents of Bernardo Beltrán Hernández; (19) Elvira Forero de Esguerra and (20) Deborah Anaya Esguerra, mother and daughter of Norma Constanza Esguerra; (21) Jorge Eliécer, (22) Lucrecia, (23) Mercedes, (24) María del Socorro and (25) Elizabeth Franco Pineda, siblings of Irma Franco Pineda; (26) María Teresa Torres Sierra, (27) Ana Lucía, (28) María del Carmen, (29) Clara Francisca, (30) Flor María and (31) Manuel Vicente Castiblanco Torres, and (32) Raúl Oswaldo Lozano Castiblanco, mother, siblings and son, respectively, of Ana Rosa Castiblanco Torres, and (33) Ana María Bidegain, (34) Mairee Clarisa, (35) Anahí, (36) Helena María Janaina and (37) Xiomara Urán Bidegain, wife and daughters of Carlos Horacio Urán.

[904] In the case of Luz Dary Samper Bedoya, wife of David Suspes Celis, the Court observes that the payment of 800 grams of gold was ordered, equivalent to US$7,974.15 at the time the decision of the contentious-administrative jurisdiction was issued.

[905] The next of kin who have not yet received compensation because the decisions are pending in their respective proceedings in the domestic sphere are: (1) Gloria Ruth Oviedo Bonilla, (2) Aura Edy Oviedo Bonilla, (3) Damaris Oviedo Bonilla, (4) Armida Eufemia Oviedo Bonilla, (5) Rafael Augusto Oviedo Bonilla, (6) Jairo Arias Méndez, (7) Jairo Alberto Arias Oviedo and (8) Rafael Armando Arias Oviedo, next of kin of Lucy Amparo Oviedo Bonilla (merits file, folio 4379); (9) María Consuelo Anzola Mora, (10) Rosalía Anzola Mora, (11) Oscar Anzola Mora, (12) Francisco José Lanao

sister, no compensation was awarded, even though she resorted to this jurisdiction, because she had failed to grant a power of attorney.

602. Nevertheless, the Court notes that the victims in this case have not been compensated at the domestic level for the main violations found in this Judgment (*supra* para. 590). Consequently, the Court finds that even though certain family members of the victims have received compensation for "moral harm" under the Colombian contentious-administrative jurisdiction (equivalent to compensation for non-pecuniary damage in the inter-American jurisdiction), this compensation does not respond for all the violations declared in this Judgment. Based on these differences and taking into account that 29 years have passed since the initiation of the facts of this case, the Court finds it appropriate to order the payment of additional compensation for non-pecuniary damage. The Court places on record that this compensation is complementary to that which has already been awarded at the domestic level for moral harm. Thus, the State may subtract from the compensation corresponding to each family member the amount that they have already received at the domestic level for this concept. The total amount appears in this Judgment, from which the State may subtract the amount already paid at the domestic level, because the Court does not have the exact amounts (updated and converted to dollars) that should be deducted. If the compensation awarded at the domestic level is greater than the sum ordered by this Court, the State may not request the victims to return the difference.

603. Based on the compensation ordered by the Inter-American Court in other cases of forced disappearance of persons, as well as on the circumstances of this case, the significance, nature and gravity of the violations committed, the suffering caused to the victims and their families, the time that has passed since the events occurred, and their actual impunity, the Court finds it pertinent to establish, in equity, the sum of US$100,000.00 (one hundred thousand United States dollars) for the eleven victims of forced disappearance, including Carlos Horacio Urán Rojas; US$80,000.00 (eighty thousand United States dollars) for the mothers, fathers, daughters and sons, spouses, and permanent companions of the said victims of forced disappearance and Carlos Horacio Urán Rojas, and US$40,000.00 (forty thousand United States dollars) for the brothers and sisters of the said victims, because it has been proved that their personal integrity was harmed as a result of the events of this case, as well as of their efforts to discover the whereabouts of their loved ones and to obtain justice.

604. The Court also establishes, in equity, compensation of US$80,000.00 (eighty thousand United States dollars) for Norma Constanza Esguerra Forero and US$70,000.00 (seventy thousand United States dollars) for Ana Rosa Castiblanco Torres, as well as US$20,000.00 (twenty thousand United States dollars) for each of the family members of these two victims identified in paragraph 539 of this Judgment, owing to the harm suffered as a result of the failure to investigate the events.

605. In the case of the victims of torture and cruel and degrading treatment, the Court, considering the circumstances of the case, the violations suffered, the alteration in the living conditions, and the other consequences of a non-pecuniary nature that they suffered, finds it pertinent to establish, in equity, for Yolanda Santodomingo Albericci, Eduardo Matson Ospino and José Vicente Rubiano Galvis the sum of US$40,000.00 (forty thousand United States dollars) each; as well as US$30,000.00 (thirty thousand United States dollars) for Orlando Quijano. In addition, for the same concept, the Court establishes, in equity, the

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Ayarsa and (13) Juan Francisco Lanao Anzola, next of kin of Gloria Anzola de Lanao (merits file, folio 4379); (14) Héctor Jaime Beltrán Parra, (15) José Antonio Beltrán Fuentes, (16) Mario David Beltrán Fuentes, (17) Clara Patricia Beltrán Fuentes and (18) Nidia Amanda Beltrán Fuentes, next of kin of Héctor Jaime Beltrán Fuentes (merits file, folio 4378), and (19) Martha Amparo Peña Forero, Norma Constanza Esguerra Forero's sister (merits file, folio 4379).

sum of US$15,000.00 (fifteen thousand United States dollars) for each of their next of kin identified in paragraph 539 of this Judgment.

606. The compensation established for non-pecuniary damage shall be paid within the time frame established in paragraph 609 of this Judgment. The amounts established in favor of the eleven victims of forced disappearance, including Carlos Horacio Urán Rojas, Norma Constanza Esguerra Forero and Ana Rosa Castiblanco Torres, shall be paid in keeping with the criteria indicated in paragraph 597 of the Judgment.

F. Costs and expenses

607. The Court reiterates that, pursuant to its case law,[906] costs and expenses form part of the concept of reparation, because the actions taken by the victims in order to obtain justice, at both the domestic and the international level, entail disbursements that must be compensated when the international responsibility of the State has been declared in a judgment against it. The Court also reiterates that it is not sufficient to forward probative documents; rather, the parties are required to include arguments that relate the evidence to the fact that it is considered to represent and, in the case of alleged financial disbursements, the items and their justification must be clearly established.[907] Consequently, the mere forwarding of vouchers is not sufficient, and the receipts for expenses issued by the representative organizations themselves are not satisfactory proof of the expenses incurred. Bearing in mind the foregoing, the Court notes that the expenses of CCAJAR for which it has provided adequate evidence amount to approximately US$14,465.00; those of the Justice and Peace Commission to US$1,055.00; those of CEJIL to US$25,800.00, and those of the lawyers Jorge Eliecer Molano Rodríguez and Germán Romero Sánchez to US$3,349.00.

608. Consequently, the Court finds it fair to order the payment of a total of US$61,000.00 (sixty-one thousand United States dollars) for the costs and expenses incurred by the representatives of the victims in the domestic proceedings and in the international proceedings before the inter-American system for the protection of human rights. The corresponding payment shall be distributed as follows: for CCAJAR, the sum of US$20,000.00 (twenty thousand United States dollars); for the Justice and Peace Commission, the sum of US$10,000.00 (ten thousand United States dollars), for CEJIL, the sum of US$27,000.00 (twenty-seven thousand United States dollars) and for the lawyers Jorge Eliecer Molano Rodríguez and Germán Romero Sánchez, the sum of US$4,000.00 (four thousand United States dollars). In addition, the evidence provided shows that Ana María Bidegain, summoned to testify at the public hearing on the merits in this case, assumed personally the expenses corresponding to her travel and accommodation during the hearing; the Court therefore considers that the State must pay her directly the sum of US$2,357.00[908] (two thousand three hundred and fifty-seven United States dollars). These amounts shall be delivered directly to each representative organization or individual person. The Court considers that, in the proceedings to monitor compliance with this Judgment, it may decide that the State should reimburse the victims or their representatives for the reasonable expenses they incur at that procedural stage.

G. Method of complying with the payments ordered

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906 *Cf. Case of Garrido and Baigorria v. Argentina. Reparations and costs.* Judgment of August 27, 1998. Series C No. 39, para. 79, *and Case of Tarazona Arrieta et al. v. Peru. Preliminary objection, merits, reparations and costs.* Judgment of October 15, 2014. Series C No. 286, para. 197.

907 *Cf. Case of Chaparro Álvarez and Lapo Íñiguez. Preliminary objections, merits, reparations and costs.* Judgment of November 21, 2007. Series C No. 170, *and Case of Tarazona Arrieta et al. v. Peru. Preliminary objection, merits, reparations and costs.* Judgment of October 15, 2014. Series C No. 286, para. 198.

908 *Cf.* Credit card vouchers (evidence file, folios 36833 to 36837).

609. The State shall pay the compensation for pecuniary and non-pecuniary damage and to reimburse costs and expenses established in this Judgment directly to the persons and organizations indicated herein, within two years of notification of this Judgment, without prejudice to making the complete payment at an earlier date.

610. If the beneficiaries (other than the victims of forced disappearance, Carlos Horacio Urán Rojas, Norma Constanza Esguerra Forero and Ana Rosa Castiblanco Torres), are deceased or die before they receive the respective compensation, this shall be delivered directly to their heirs in keeping with the applicable domestic law. The distribution of the compensation awarded in favor of the victims of forced disappearance, Carlos Horacio Urán Rojas, Norma Constanza Esguerra Forero and Ana Rosa Castiblanco Torres shall be made pursuant to the provisions of paragraph 597 of this Judgment.

611. The State shall comply with its pecuniary obligations by payment in United States dollars or the equivalent in national currency, using the exchange rate in force on the New York Stock Exchange, United States of America, the day before the payment to make the respective calculation.

612. If, for reasons that can be attributed to the beneficiaries of the compensation or their heirs, it is not possible to pay the amounts established within the indicated time frame, the State shall deposit the said sums in favor of the beneficiaries in an account or a certificate of deposit in a solvent Colombian financial institution, in United States dollars, and under the most favorable financial conditions allowed by banking law and practice. If the respective compensation is not claimed, after ten years the amounts shall be returned to the State with the interest accrued.

613. The amounts allocated in this Judgment as compensation for pecuniary damage and to reimburse costs and expenses shall be delivered to the persons and organizations indicated in full, as established in this Judgment, without any deductions derived from possible taxes or charges.

614. If the State should incur in arrears, it shall pay interest on the amount owed corresponding to banking interest on arrears in Colombia.

XV
OPERATIVE PARAGRAPHS

615. Therefore,

THE COURT

DECIDES,

unanimously,

1. To accept the partial acknowledgement of international responsibility made by the State, in the terms of paragraphs 26 to 34 of this Judgment.

2. To reject the preliminary objections filed by the State regarding the need to apply international humanitarian law, and the material competence of the Court to rule on the alleged violation of the Inter-American Convention on Forced Disappearance, in relation to Ana Rosa Castiblanco, in the terms of paragraphs 39 and 41 to 44 of this Judgment.

DECLARES,

unanimously, that:

3. The State is responsible for the forced disappearance of Carlos Augusto Rodríguez Vera, Irma Franco Pineda, Cristina del Pilar Guarín Cortés, David Suspes Celis, Bernardo Beltrán Hernández, Héctor Jaime Beltrán Fuentes, Gloria Stella Lizarazo Figueroa, Luz Mary Portela León, Lucy Amparo Oviedo Bonilla and Gloria Anzola de Lanao and, consequently, for the violation of the rights to personal liberty, physical integrity, life and recognition of juridical personality established in Articles 7, 5(1), 5(2), 4(1) and 3 of the American Convention, in relation to Article 1(1) thereof, and to Article I(a) of the Inter-American Convention on Forced Disappearance, to the detriment of these persons, as established in paragraphs 225 to 324.

4. The State is responsible for the violation of the obligation to ensure the right to life established in Article 4 of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of Ana Rosa Castiblanco Torres and Norma Constanza Esguerra Forero, owing to the failure to establish the whereabouts of Ms. Castiblanco Torres for sixteen years and of Ms. Esguerra Forero to date, in accordance with paragraphs 307 to 320, 326 and 327.

5. The State is responsible for the forced disappearance and the extrajudicial execution of Carlos Horacio Urán Rojas and, therefore, for the violation of the rights established in Articles 7, 5(1), 5(2), 4(1), and 3 of the American Convention, in relation to Article 1(1) of this instrument, to his detriment, in accordance with paragraphs 331 to 369.

6. The State is responsible for the violation of the right to personal liberty established in paragraphs 1, 2 and 3 of Article 7 of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of Yolanda Santodomingo Albericci, Eduardo Matson Ospino and Orlando Quijano, in the terms of paragraphs 404 to 410.

7. The State is responsible for the violation of the right to personal liberty established in paragraphs 1 and 2 of Article 7 of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of José Vicente Rubiano Galvis, in the terms of paragraphs 411 to 416.

8. The State is responsible for the violation of the right to physical integrity and to privacy established respectively, in Articles 5(1), 5(2), 11(1) and 11(2) of the American Convention, in relation to Article 1(1) of this instrument, owing to the torture and violation of the honor and dignity of José Vicente Rubiano Galvis, in the terms of paragraphs 417 to 421 and 423 to 425.

9. The State is responsible for the violation of the right to physical integrity established in Article 5(1) and 5(2) of the American Convention, in relation to Article 1(1) of this instrument, owing to the torture of Yolanda Santodomingo Albericci and Eduardo Matson Ospino, in the terms of paragraphs 417 to 422, 424, 426, 427.

10. The State is responsible for the violation of the right to physical integrity established in Article 5(1) and 5(2) of the American Convention, in relation to Article 1(1) of this instrument, owing to the cruel and degrading treatment of Orlando Quijano, in the terms of paragraphs 417 to 421, 423 and 428.

11. The State is responsible for the violation of judicial guarantees and judicial protection, established in Articles 8(1) and 25(1) of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of the next of kin of the victims who were forcibly disappeared, including the next of kin of Carlos Horacio Urán Rojas, and the next of kin of Ana Rosa Castiblanco Torres and Norma Constanza Esguerra Forero, identified in paragraph 539 of this Judgment, as well as in relation to Article I(b) of the Inter-American Convention on Forced Disappearance, to the detriment of the next of kin of the victims who were forcibly disappeared, including the next of kin of Carlos Horacio Urán Rojas, and in relation

to Articles 1, 6 and 8 of the Inter-American Convention against Torture to the detriment of Yolanda Santodomingo Albericci, Eduardo Matson Ospino, Orlando Quijano and José Vicente Rubiano Galvis, owing to the failure to investigate the facts denounced, as established in paragraphs 433 to 513.

12. The State is responsible for failing to comply with its obligation to ensure the rights to life and to physical integrity, established in Articles 4(1) and 5(1) of the Convention, in relation to Article 1(1) of this instrument, by taking the necessary and effective measures to prevent their violation to the detriment of Carlos Augusto Rodríguez Vera, Cristina del Pilar Guarín Cortés, David Suspes Celis, Bernardo Beltrán Hernández, Héctor Jaime Beltrán Fuentes, Gloria Stella Lizarazo Figueroa, Luz Mary Portela León, Norma Constanza Esguerra Forero, Lucy Amparo Oviedo Bonilla, Gloria Anzola de Lanao, Ana Rosa Castiblanco Torres, Carlos Horacio Urán Rojas, Yolanda Santodomingo Albericci, Eduardo Matson Ospino and Orlando Quijano, in the terms of paragraphs 518 to 530.

13. The State is responsible for the violation of the right to personal integrity, established in Article 5(1) and 5(2) of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of the next of kin of the victims identified in paragraph 539 of this Judgment, as established in paragraphs 532 to 539.

14. The State is not responsible for the forced disappearance of Ana Rosa Castiblanco Torres and Norma Constanza Esguerra Forero, as established in paragraphs 317 and 320.

15. It is not incumbent on the Court to rule on the alleged violations of Articles III and XI of the Inter-American Convention on Forced Disappearance, in the terms of paragraph 325.

16. It is not incumbent on the Court to rule on the alleged violation of other paragraphs of Article 7 of the Convention, to the detriment of Yolanda Santodomingo Albericci, Eduardo Matson Ospino, Orlando Quijano and José Vicente Rubiano Galvis, in the terms of paragraphs 410 and 416.

17. It is not incumbent on the Court to rule on the alleged violations of Articles 11 and 12 of the American Convention on Human Rights, based on the suffering of the next of kin, in the terms of paragraph 541.

AND ESTABLISHES

unanimously, that:

18. This Judgment constitutes *per se* a form of reparation.

19. The State must conduct, within a reasonable time, the extensive, systematic and thorough investigations required to establish the truth of the events, and also to identify, prosecute and duly punish all those responsible for the forced disappearance of the victims indicated in the third operative paragraph, for the forced disappearance and subsequent extrajudicial execution of Carlos Horacio Urán Rojas, as well as for the detention and torture or cruel and degrading treatment suffered respectively, by Yolanda Santodomingo Albericci, Eduardo Matson Ospino, José Vicente Rubiano Galvis and Orlando Quijano, as established in paragraphs 556, 558 and 559.

20. The State must conduct, within a reasonable time, the investigations required to determine and elucidate the facts relating to Norma Constanza Esguerra Forero and Ana Rosa Castiblanco Torres, as established in paragraph 557.

21. The State must conduct, as soon as possible, a rigorous search, during which it makes every effort to establish the whereabouts of the eleven victims who are still disappeared, and this must be implemented as established in paragraphs 563 to 565.

22. The State must provide, immediately, medical, psychological or psychiatric treatment to the victims who request this and, if applicable, pay the amount established for the expense of this treatment to those victims who live outside Colombia, in the terms of paragraphs 567 to 569.

23. The State must make the publications and the radio and television broadcasts indicated in paragraphs 572 and 573 of this Judgment, within six months of its notification.

24. The State must organize a public act to acknowledge its international responsibility for the facts of this case, as established in paragraph 576.

25. The State must make an audiovisual documentary on the facts of this case and its victims, and the search for justice of their family members, as established in paragraph 579.

26. The State must pay the amounts established in paragraphs 596, 599, 603 to 606 and 608 of this Judgment, as compensation for pecuniary and non-pecuniary damage and to reimburse costs and expenses, in the terms of the said paragraphs and of paragraphs 609 to 614.

27. The State must, within one year of notification of this Judgment, provide the Court with a report on the measures taken to comply with it.

28. The Court will monitor full compliance with this Judgment, in exercise of its authority and pursuant to its obligations under the American Convention on Human Rights, and will consider this case closed when the State has complied fully with its provisions.

Judge Eduardo Ferrer Mac-Gregor Poisot informed the Court of his concurring opinion, which is attached to this Judgment. Judges Eduardo Vio Grossi and Manuel E. Ventura Robles endorsed this concurring opinion.

DONE, at San José, Costa Rica, on November 14, 2014, in the Spanish language.

Roberto F. Caldas
Acting President

Manuel E. Ventura Robles | Diego García-Sayán

Eduardo Vio Grossi | Eduardo Ferrer Mac-Gregor Poisot

Pablo Saavedra Alessandri
Secretary

So ordered,

Roberto F. Caldas
Acting President

Pablo Saavedra Alessandri
Secretary

CONCURRING OPINION OF

JUDGE EDUARDO FERRER MAC-GREGOR POISOT

CASE OF RODRÍGUEZ VERA *ET AL. (THE DISAPPEARED FROM THE PALACE OF JUSTICE) v.* COLOMBIA

JUDGMENT OF NOVEMBER 14, 2014

(Preliminary objections, merits, reparations and costs)

Introduction: The need to recognize the *right to the truth* as an autonomous right under the inter-American human rights system

1. Unfortunately, the forced disappearance of persons is one of the egregious violations of human rights examined in the case law of the Inter-American Court of Human Rights (hereinafter "the Court" or "the Inter-American Court"). Its first contentious case, in 1988, dealt with the forced disappearance of Manfredo Velásquez Rodríguez in Honduras. Since then, of the 182 contentious cases that it has decided to date, the Court has heard 42 cases concerning forced disappearances.[1] Following this

[1] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits*. Judgment of July 29, 1988. Series C No. 4; *Case of Godínez Cruz v. Honduras. Merits*. Judgment of January 20, 1989. Series C No. 5; *Case of Neira Alegría et al. v. Peru. Merits*. Judgment of January 19, 1995. Series C No. 20; *Case of Caballero Delgado and Santana v. Colombia. Merits*. Judgment of December 8, 1995. Series C No. 22; *Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Merits*. Judgment of March 8, 1998. Series C No. 37; *Case of Castillo Páez v. Peru. Merits.* Judgment of November 3, 1997. Series C No. 34; *Case of Garrido and Baigorria v. Argentina. Merits.* Judgment of February 2, 1996. Series C No. 26; *Case of Blake v. Guatemala. Merits.* Judgment of January 24, 1998. Series C No. 36; *Case of Benavides Cevallos v. Ecuador. Merits, reparations and costs.* Judgment of June 19, 1998. Series C No. 38; *Case of Durand and Ugarte v. Peru. Merits.* Judgment of August 16, 2000. Series C No. 68; *Case of El Caracazo v. Venezuela. Merits.* Judgment of November 11, 1999. Series C No. 58; *Case of Trujillo Oroza v. Bolivia. Merits.* Judgment of January 26, 2000. Series C No. 64; *Case of Bámaca Velásquez v. Guatemala. Merits.* Judgment of November 25, 2000. Series C No. 70; *Case of 19 Tradesmen v. Colombia. Merits, reparations and costs.* Judgment of July 5, 2004. Series C No. 109; *Case of Molina Theissen v. Guatemala. Merits.* Judgment of May 4, 2004. Series C No. 106; *Case of the Serrano Cruz Sisters v. El Salvador. Merits, reparations and costs.* Judgment of March 1, 2005. Series C No. 120; *Case of the "Mapiripán Massacre" v. Colombia.* Judgment of September 15, 2005. Series C No. 134; *Case of Gómez Palomino v. Peru. Merits, reparations and costs.* Judgment of November 22, 2005. Series C No. 136; *Case of Blanco Romero et al. v. Venezuela.* Judgment of November 28, 2005. Series C No. 138; *Case of the Pueblo Bello Massacre v. Colombia.* Judgment of January 31, 2006. Series C No. 140; *Case of Goiburú et al. v. Paraguay. Merits, reparations and costs.* Judgment of September 22, 2006. Series C No. 153; *Case of La Cantuta v. Peru. Merits, reparations and costs.* Judgment of November 29, 2006. Series C No. 162; *Case of Heliodoro Portugal v. Panama. Preliminary objections, merits, reparations and costs.* Judgment of August 12, 2008. Series C No. 186; *Case of Tiu Tojín v. Guatemala. Merits, reparations and costs.* Judgment of November 26, 2008. Series C No. 190; *Case of Ticona Estrada et al. v. Bolivia. Merits, reparations and costs.* Judgment of November 27, 2008. Series C No. 191; *Case*

first case, the Inter-American Court has emphasized that the practice of forced disappearance violates numerous provisions of the Convention and "signifies a radical departure from this treaty, because it entails gross neglect of the values emanating from human dignity and of the most important principles on which the inter-American system and, in particular, the Convention are based. Furthermore, the existence of this practice supposes disregard for the duty to organize the State apparatus in a way that ensures the rights recognized in the Convention."[2]

2. It is within the context of this line of case law on forced disappearance that, since its first contentious case, the Court has affirmed the existence of a "right of the victim's family to know his fate and, if appropriate, where his remains are located, [which] represents a fair expectation that the State must satisfy with the means available to it."[3] The Court has also indicated that withholding the truth about the fate of a victim of forced disappearance entails a form of cruel and inhuman treatment for the nearest relatives,[4] and that this violation of personal integrity may be linked to a violation of their right to know the truth.[5] The members of the disappeared person's family have a right that the facts be investigated and that those responsible be prosecuted and punished, as appropriate.[6]

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of Anzualdo Castro v. Peru. Preliminary objections, merits, reparations and costs. Judgment of September 22, 2009. Series C No. 202; *Case of Radilla Pacheco v. Mexico. Preliminary objections, merits, reparations and costs.* Judgment of November 23, 2009. Series C No. 209; *Case of Chitay Nech et al. v. Guatemala. Preliminary objections, merits, reparations and costs*. Judgment of May 25, 2010. Series C No. 212; *Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia. Merits, reparations and costs.* Judgment of September 1, 2010 Series C No. 217; ***Case of Gomes Lund et al. ("Guerrilha do Araguaia") v. Brazil. Preliminary objections, merits, reparations and costs.* Judgment of November 24, 2010. Series C No. 219;** *Case of Gelman v. Uruguay. Merits and reparations.* Judgment of February 24, 2011. Series C No.221; *Case of Torres Millacura et al. v. Argentina. Merits, reparations and costs.* Judgment of August 26, 2011. Series C No. 229; *Case of Contreras et al. v. El Salvador. Merits, reparations and costs.* Judgment of August 31, 2011. Series C No. 232; *Case of González Medina and family members v. Dominican Republic.* Preliminary objections, merits, reparations and costs. Judgment of February 27, 2012. Series C No. 240; *Case of the Río Negro Massacres v. Guatemala. Preliminary objections, merits, reparations and costs.* Judgment of September 4, 2012. Series C No. 250; *Case of the Massacres of El Mozote and nearby places v. El Salvador. Merits, reparations and costs.* Judgment of October 25, 2012. Series C No. 252; *Case of Gudiel Álvarez et al. (Diario Militar) v. Guatemala. Merits reparations and costs.* Judgment of November 20, 2012. Series C No. 253; *Case of García and family members v. Guatemala. Merits reparations and costs.* Judgment of November 29, 2012. Series C No. 258; *Case of Osorio Rivera and family members v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of November 26, 2013. Series C No. 274; *Case of Rochac Hernández et al. v. El Salvador. Merits, reparations and costs*. Judgment of October 14, 2014. Series C No. 285, and *Case of Rodriguez Vera et al. (the Disappeared from the Palace of Justice) v. Colombia. Preliminary objections, merits, reparations and costs.* Judgment of November 14, 2014. Series C No. 287.

[2] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits.* Judgment of July 29, 1988. Series C No. 4, para. 158, and *Case of Osorio Rivera and family members v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of November 26, 2013. Series C No. 274, para. 114.

[3] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits.* Judgment of July 29, 1988. Series C No. 4, para. 181, and *Case of Rochac Hernández et al. v. El Salvador. Merits, reparations and costs*. Judgment of October 14, 2014. Series C No. 285, para. 140.

[4] *Cf. Case of Trujillo Oroza v. Bolivia. Reparations and costs.* Judgment of February 27, 2002. Series C No. 92, para. 114, and *Case of Rochac Hernández et al. v. El Salvador. Merits, reparations and costs*. Judgment of October 14, 2014. Series C No. 285, para. 122.

[5] *Cf. Case of Anzualdo Castro v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of September 22, 2009. Series C No. 202, para. 113, and *Case of Gudiel Álvarez et al. ("Diario Militar") v. Guatemala. Merits reparations and costs.* Judgment of November 20, 2012. Series C No. 253, paras. 301 and 302.

[6] *Cf. Case of Blake v. Guatemala. Merits*. Judgment of January 24, 1998. Series C No. 36, para. 97, and *Case*

3. That first ruling formed the basis for what is known today as "*the right to the truth" or "the right to know the truth"* and, since then, the Inter-American Court has been gradually recognizing its existence, as well as its content and its two dimensions (individual and collective).

4. Thus, the Inter-American Court has considered that the relatives of victims of gross human rights violations and society as a whole have the right to know the truth, and they must therefore be informed of what happened.[7] In the Inter-American Court's case law the right to know the truth has been considered both a right that States must respect and ensure, and also a measure of reparation that they have the obligation to satisfy. This right has also been recognized in several United Nations instrument and by the General Assembly of the Organization of American States.[8] In 2006, pursuant to a resolution of the Commission on Human Rights, the United Nations High Commissioner for Human Rights preparaed a study on the right to the truth. In this study, the High Commissioner concluded that the right to the truth is "an inalienable and autonomous right," "closely linked to the State's duty to protect and guarantee human rights and to the State's obligation to conduct effective investigations into gross human rights violations and serious violations of humanitarian law and to guarantee effective remedies and reparation"; but, also, "closely linked with other rights, such as the right to an effective remedy, the right to legal and judicial protection, the right to family life, the right to an effective investigation, the right to a hearing by a competent, independent, and impartial tribunal, the right to obtain reparation, the right to be free from torture and ill-treatment, and the right to seek and impart information."[9]

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of Rochac Hernández et al. v. El Salvador. Merits, reparations and costs. Judgment of October 14, 2014. Series C No. 285, para. 140.

[7] *Cf. Case of Bámaca Velásquez v. Guatemala. Reparations and costs*. Judgment of February 22, 2002. Series C No. 91, paras. 76 and 77, and *Case of García and family members v. Guatemala. Merits, reparations and costs*. Judgment of November 29, 2012. Series C No. 258, para. 176.

[8] *Cf. inter alia,* Report of the Office of the United Nations High Commissioner for Human Rights. *Study on the right to the truth*, U.N. Doc. E/CN.4/2006/91 of 9 January 2006; OAS General Assembly, Resolutions: AG/RES. 2175 (XXXVI-O/06) of June 6, 2006, AG/RES. 2267 (XXXVII-O/07) of June 5, 2007; AG/RES. 2406 (XXXVIII-O/08) of June 3, 2008; AG/RES. 2509 (XXXIX-O/09) of June 4, 2009, and AG/RES. 2595 (XL-O/10) of June 8, 2010, AG/RES. 2662 (XLI-O/11) of June 7, 2011, AG/RES. 2725 (XLII-O/12) of June 4, 2012, AG/RES. 2800 (XLIII-O/13) of June 5, 2013, AG/RES. 2822 (XLIV-O/14) of June 4, 2014 in the Report of the independent expert to update the Set of Principles to combat impunity, Diane Orentlicher, (E/CN.4/2005/102) of 18 February 2005. Similarly, the former Commission on Human Rights of the United Nations, in the 2005 Updated Set of principles for the protection and promotion of human rights through action to combat impunity, established, *inter alia*, that: (i) every people has the inalienable right to know the truth about past events concerning the perpetration of heinous crimes (principle 2); (ii) the State must preserve archives and other evidence concerning violations of human rights and humanitarian law and facilitate knowledge of those violations in order to preserving the collective memory from extinction and, in particular, to guard against the development of revisionist and negationist arguments (principle 3); (iii) Irrespective of any legal proceedings, victims and their families have the imprescriptible right to know the truth about the circumstances in which violations took place and, in the event of death or disappearance, the victims' fate (principle 4), and (iv) States must take appropriate action, including measures necessary to ensure the independent and effective operation of the judiciary, to give effect to the right to know. Appropriate measures to ensure this right may include non-judicial processes that complement the role of the judiciary In any case, State must ensure the preservation of, and access to archives concerning violations of human rights and humanitarian law (principle 5). In this regard, *cf. Updated Set of principles for the protection and promotion of human rights through action to combat impunity* (E/CN.4/2005/102/Add.1) of 8 February 2005.

[9] Report of the Office of the United Nations High Commissioner for Human Rights. *Study on the right to the truth*, U.N. Doc. E/CN.4/2006/91 of 9 January 2006, paras. 55 to 57.

5. Nevertheless, as indicated in paragraph 510 of the Judgment, in most cases, "the Court has considered that the right to the truth 'is subsumed in the right of the victim or the members of his family to obtain the elucidation of the events that violated the victim's rights and the corresponding responsibilities from the competent State organs through the investigation and prosecution established in Articles 8 and 25(1) of the Convention.'" On only one occasion (in the case of *Gomes Lund et al. (Guerrilla de Araguaia) v. Brazil),* has the Court expressly declared a violation of the right to the truth as an autonomous right, which signified the violation of Article 13 of the American Convention in relation to Articles 1(1), 8(1) and 25 of this international treaty.[10]

6. I present this concurring opinion because I consider that, in the instant case, the Court – in light of the actual stage of the Inter-American Court's case law, and the advances made in international human rights law and in the laws and case law of various States Parties to the Convention concerning the right to know the truth – could have declared an autonomous violation of this right (as it did previously in the *case of Gomes Lund et al. v. Brazil*), rather than subsuming it in Articles 8 and 25, as in this Judgment. In particular, bearing in mind that 29 years have passed since the facts of this case without the relatives of most of those who disappeared having any certainty about the truth of what happened, because, in the words of the Inter-American Court in this Judgment, "*the State has been unable to provide a definitive and official version of what happened to the presumed victims,"* despite the investigations conducted and the measures undertaken.[11] Hence, I consider that, in future, the Court can evolve its case law so as to strengthen full recognition of the right to know the truth*,* acknowledging the autonomy of this right, and establishing its content, meaning and scope with increased precision. For greater clarity, this opinion is divided into the following sections: (i) evolution of the *right to the truth* in the case law of the Inter-American Court (paras. 7-15); (ii) evolution by other international organs and instruments and domestic legal systems (paras. 16-22), and (iii) conclusion (paras. 23-29).

I. Evolution of the *right to the truth* in the case law of the Inter-American Court

7. In 1997, in the case of *Castillo Páez v. Peru,* the Inter-American Commission alleged the presumed violation of the right to the truth before the Court for the first time. The Court indicated that this "refer[red] to the formulation of a right that does not exist in the American Convention, although it may correspond to a concept that is being developed in legal doctrine and case law, which has already been resolved in this case by the Court's decision to establish Peru's obligation to investigate the events that produced the violations of the American Convention."[12] Subsequently, in 2000, in the case of *Bámaca Vélasquez v. Guatemala,* the Court recognized that the State's actions prevented the victims' next of kin from knowing "the truth about the fate [of the victim]." However, it clarified that "the right to the truth [was] subsumed in the right of the victim or his next

[10] *Cf. Case of Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil. Preliminary objections, merits, reparations and costs.* Judgment of November 24, 2010. Series C No. 219, para. 201 and sixth operative paragraph, which establishes that: "The State is responsible for the violation of the right to freedom of thought and expression recognized in Article 13 of the American Convention on Human Rights, in relation to Articles 1(1), 8(1) and 25 of this instrument, owing to the violation of the right to seek and receive information, and also of the right to know the truth about what happened" (underlining added).

[11] Paras. 299 and 511 of the Judgment.

[12] *Cf. Case of Castillo Páez v. Peru. Merits.* Judgment of November 3, 1997. Series C No. 34, para. 86.

of kin to obtain the elucidation of the wrongful acts and the corresponding responsibilities from the State's competent organs, through the investigation and prosecution established in Articles 8 and 25 of the Convention."[13]

8. The following year, in the case of *Barrios Altos v. Peru,* the State acknowledged the violation of the right to the truth.[14] Meanwhile, the Commission related the right to the truth not only to Articles 8 and 25 of the American Convention, but also to Article 13, as regards the right to seek and receive information.[15] The Court considered that the surviving victims, their families and the families of the victims who died, were prevented from knowing the truth about the events that took place in Barrios Altos, but recalled that this right is subsumed in the right of the victim or his relatives to obtain the elucidation of the illegal acts and the corresponding responsibilities from the State's competent organs, through the investigation and prosecution established in Articles 8 and 25 of the Convention.[16]

9. Inter-American case law reveals that, the same year, the Court began to relate the right to know the truth (referring to it as "*right to know what happened*") to the State's obligation to investigate human rights violations, to punish those responsible, and to combat impunity.[17] This idea was reinforced in the judgment on reparations and costs in the case of *Bámaca Vélasquez v. Guatemala,* which cited the work done by the United Nations on the right of everyone to the truth, and recognized that this is a right of the members of the victim's family and of society as a whole.[18] In addition, the judgment indicated that this right results an expectation of the victims for reparation that the State must meet.[19]

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[13] *Cf. Case of Bámaca Vélasquez v. Guatemala. Merits*. Judgment of November 25, 2000. Series C No. 70, paras. 200 and 201.

[14] *Cf. Case of Barrios Altos v. Peru. Merits*. Judgment of March 14, 2001. Series C No. 75, para. 46.

[15] *Cf. Case of Barrios Altos v. Peru. Merits*. Judgment of March 14, 2001. Series C No. 75, para. 45.

[16] *Cf. Case of Barrios Altos v. Peru. Merits*. Judgment of March 14, 2001. Series C No. 75, paras. 47 to 49.

[17] *Cf. Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. reparations and costs.* Judgment of May 25, 2001. Series C No. 76, para. 200; *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. reparations and costs.* Judgment of May 26, 2001. Series C No. 77, para. 100; *Case of Cantoral Benavides v. Peru. reparations and costs.* Judgment of December 3, 2001. Series C No. 88, para. 69, and *Case of Bámaca Velásquez v. Guatemala. reparations and costs.* Judgment of February 22, 2002. Series C No. 91, para. 74.

[18] *Cf. Bámaca Velásquez v. Guatemala. reparations and costs.* Judgment of February 22, 2002. Series C No. 91, para. 76. The Court has ruled similarly in subsequent cases such as: *Case of Bulacio v. Argentina. Merits, reparations and costs.* Judgment of September 18, 2003. Series C No. 100, paras. 114 and 115; *Case of Molina Theissen v. Guatemala. reparations and costs.* Judgment of July 3, 2004. Series C No. 108; paras. 81 and 82; *Case of 19 Tradesmen v. Colombia. Merits, reparations and costs.* Judgment of July 5, 2004. Series C No. 109, paras. 188 and 261; *Case of the Miguel Castro Castro Prison v. Peru. Merits, reparations and costs.* Judgment of November 25, 2006. Series C No. 160, paras. 347 and 440; *Case of Escué Zapata v. Colombia. Merits, reparations and costs.* Judgment of July 4, 2007. Series C No. 165, para. 165; *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. 388; *Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia. Merits, reparations and costs.* Judgment of September 1, 2010. Series C No. 217, para. 225; *Case of Gelman v. Uruguay. Merits and reparations.* Judgment of February 24, 2011. Series C No.221, para. 192; *Case of Luna López v. Honduras. Merits, reparations and costs.* Judgment of October 10, 2013. Series C No. 269, para. 156; *Case of Veliz Franco et al. v. Guatemala. Preliminary objections, merits, reparations and costs*. Judgment of May 19, 2014. Series C No. 277, para. 250, and *Case of Rochac Hernández et al. v. El Salvador. Merits, reparations and costs.* Judgment of October 14, 2014. Series C No. 285, para. 234.

[19] *Cf. Bámaca Velásquez v. Guatemala. Reparations and costs.* Judgment of February 22, 2002. Series C No. 91, para. 76.

10. Subsequently, in 2005 and 2006, in the cases of *Blanco Romero et al. v. Venezuela, Servellón García et al. v. Honduras, the Pueblo Bello Massacre v. Colombia* and *Montero Aranguren et al. (Retén de Catia) v. Venezuela,* the Court considered that the right to the truth was not "an autonomous right recognized in Articles 8, 13, 25 and 1(1) of the American Convention," but rather that it "was subsumed in the right of the victim or his relatives to obtain the elucidation of the wrongful acts and the corresponding responsibilities from the State's competent organs, through investigation and prosecution."[20] Nevertheless, the Court repeated that the next of kin of victims of gross human rights violations have the right to know the truth.[21]

11. In the other cases in which possible violations of the right to the truth have been alleged and examined, the Court has not indicated expressly that it does not consider this right to be autonomous. However, it has stated that it considers that this right is subsumed in the right of the victim or his relatives to obtain the elucidation of the wrongful acts and the corresponding responsibilities from the State's competent organs, through investigation and prosecution when analyzing the violation of Articles 8 and 25,[22] or under the obligation to investigate ordered as a form of reparation.[23]

12. In 2007, in the case of *Zambrano Vélez et al. v. Ecuador* the Court recognized the principle of complementarity between the extrajudicial truth that results from a truth commission, and the judicial truth arising from a judicial ruling or judgment. In this decision, the Court established that "a truth commission […] may contribute to the

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[20] *Cf. Case of Blanco Romero et al. v. Venezuela. Merits, reparations and costs.* Judgment of November 28, 2005. Series C No. 138, para. 62; *Case of Servellón García et al. v. Honduras.* Judgment of September 21, 2006. Series C No. 152, para. 76; *Case of the Pueblo Bello Massacre v. Colombia.* Judgment of January 31, 2006. Series C No. 140, para. 220, and *Case of Montero Aranguren et al. (Retén de Catia) v. Venezuela. Preliminary objections, merits, reparations and costs.* Judgment of July 5, 2006. Series C No. 150, para. 55.

[21] *Cf. Case of Blanco Romero et al. v. Venezuela. Merits, reparations and costs.* Judgment of November 28, 2005. Series C No. 138, para. 95. *See also, Case of Servellón García et al. v. Honduras.* Judgment of September 21, 2006. Series C No. 152, para. 195; *Case of the Pueblo Bello Massacre v. Colombia.* Judgment of January 31, 2006. Series C No. 140, para. 220.

[22] See, for example, *Case of Baldeón García v. Peru. Merits, reparations and costs.* Judgment of April 6, 2006. Series C No. 147, para. 166; *Case of Radilla Pacheco v. Mexico. Preliminary objections, merits, reparations and costs.* Judgment of November 23, 2009. Series C No. 209, para. 180; *Case of Chitay Nech et al. v. Guatemala. Preliminary objections, merits, reparations and costs.* Judgment of May 25, 2010. Series C No. 212, para. 206, and *Case of Osorio Rivera and family members v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of November 26, 2013. Series C No. 274, para. 220. In another series of cases the Court also indicated that it was not in order to rule on the alleged violation of Article 13 in relation to the right to the truth. *Cf. Case of the La Rochela Massacre v. Colombia. Merits, reparations and costs*. Judgment of May 11, 2007. Series C No. 163, para. 147; *Case of Anzualdo Castro v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of September 22, 2009. Series C No. 202, paras. 119 and 120; *Case of Contreras et al. v. El Salvador. Merits, reparations and costs.* Judgment of August 31, 2011 Series C No. 232, para. 173, and *Case of the Massacres of El Mozote and nearby places v. El Salvador. Merits, reparations and costs.* Judgment of October 25, 2012 Series C No. 252, para. 298. Moreover in some case, the Court has established that the right to the truth is subsumed in Articles 8(1), 25 and 1(1) of the Convention, but this consideration has not been included in the specific reasoning set out in the operative paragraph. *Cf. Case of the Barrios Family v. Venezuela. Merits, reparations and costs.* Judgment of November 24, 2011. Series C No. 237, para. 291, and *Case of González Medina and family members v. Dominican Republic. Preliminary objections, merits, reparations and costs.* Judgment of February 27, 2012 Series C No. 240, para. 263.

[23] *Cf. Case of Almonacid Arellano et al. v. Chile. Preliminary objections, merits, reparations and costs.* Judgment of September 26, 2006. Series C No. 154, para. 148, and *Case of Rochac Hernández et al. v. El Salvador. Merits, reparations and costs.* Judgment of October 14, 2014. Series C No. 285, para. 234

construction and preservation of the historical memory, the elucidation of the facts, and the determination of institutional, social and political responsibilities during certain historical periods of a society," but these "historical truths […] should not be understood as a substitute for the State's obligation to ensure the judicial determination of individual or State responsibilities by the corresponding jurisdictional means, or to the determination of international responsibility that corresponds to this Court." The Inter-American Court explicitly established that "these are complementary determinations of the truth, because they each have their own meaning and scope, as well as specific limits and potential, which depend on the context in which they arise and on the particular cases and circumstances that they examine,[24] and has repeated this in later cases.[25]

13. Subsequently, in 2009, in the case of *Anzualdo Castro v. Peru,* the Court had to decide a specific request of the representatives and of the Commission that it declare an autonomous violation of the right to the truth, which, according to the representatives was related to the rights contained in Articles 1(1), 8, 13 and 25 of the American Convention.[26] In this regard, the Inter-American Court reiterated that, in cases of forced disappearance, the relatives of the disappeared person have the "right that the events are investigated and that those responsible are prosecuted and punished, as appropriate. The Court has recognized that the right of the next of kin of victims of gross human rights violations to know the truth is inserted in the right of access to justice. Furthermore, the Court has substantiated the obligation to investigate as a form of reparation by the need to redress the violation of the right to know the truth in the specific case." In addition, the Court has established that "the necessary effect of the right to know the truth is that, in a democratic society, the truth about gross human rights violations must be known," "by the obligation to investigate the human rights violations," "the publication of the results of the investigation and the criminal proceedings," and by the establishment of "truth commissions, […] which contribute to the construction and preservation of the historical memory, the clarification of the facts, and the determination of institutional, social and political responsibilities during certain historical periods of a society." Based on the foregoing, the Court concluded that, owing to the passage of time "without any knowledge of the truth about the facts and the whereabouts [of the victim]," and that "from the moment of his disappearance, State agents have taken steps to hide the truth of what happened," "the domestic criminal proceedings ha[d] not represented effective remedies to determine the victim's fate or discover his whereabouts, or to ensure the rights of access to justice and to know the truth, by the investigation and eventual punishment of those responsible, and full reparation for the consequences of the violations," and this constituted a violation of the rights recognized in Articles 8(1) and 25(1) of the American Convention.[27] The Court also considered that the case did not reveal specific facts that could result in a violation of Article 13 of the Convention,[28] thus establishing the criterion

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[24] *Case of Zambrano Vélez et al. v. Ecuador. Merits, reparations and costs.* Judgment of July 4, 2007. Series C No. 166, para. 128.

[25] See, *inter alia*, *Case of Gudiel Álvarez et al. (Diario Militar) v. Guatemala. Merits, reparations and costs.* Judgment of November 20, 2012. Series C No. 253, para. 298, and *Case of García and family members v. Guatemala. Merits, reparations and costs.* Judgment of November 29, 2012. Series C No. 258, para. 176.

[26] Previously, in the *Case of the La Rochela Massacre,* the representatives had presented the same arguments in relation to Article 13. However, the Court rejected this, indicating that "the right to the truth was subsumed in [the violation of] Articles 8 and 25 of the Convention." *Case of the La Rochela Massacre v. Colombia. Merits, reparations and costs*. Judgment of May 11, 2007. Series C No. 163, para. 147.

[27] *Case of Anzualdo Castro v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of September 22, 2009. Series C No. 202, paras. 118, 119, 168 and 169.

[28] *Case of Anzualdo Castro v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of September 22, 2009. Series C No. 202, para. 120.

according to which a violation of this article, based on the right to the truth, requires specific circumstances and facts that violate the right to seek and receive information, and not only the right to an effective investigation.[29]

14. Following the above, in 2010, in the case of *Gomes Lund et al. (Guerrilla de Araguaia) v. Brazil,* the Inter-American Court established that "everyone, including the next of kin of victims of gross human rights violations, has the right to know the truth."[30] However, contrary to its case law up until that time, the Court declared a violation of the right to the truth autonomously.[31] The Court considered that the right to the truth was related to access to justice and, in that case, also to the right to seek and receive information recognized in Article 13 of the American Convention, owing to the impossibility of the relatives of victims of forced disappearance obtaining information on the military operations during which their loved ones disappeared by means of a judicial action on access to information.

15. Furthermore, in 2012, in the case of *Gudiel Álvarez et al. ("Diario Militar") v. Guatemala*, the Court examined the right to the truth in the context of the right to personal integrity of the next of kin. In that case, the violation of the right to know the truth and the right of access to information was alleged, owing to the discovery of a Guatemalan military intelligence document known as the "*Diario Militar,"* which contained information on the disappearance of the victims, and also of the Historical Archive of the National Police, both of which had been concealed from the Historical Clarification Commission (CEH) despite the Commission's numerous requests to the military and police authorities for information.[32] In that case, the Court emphasized that several of the family members were not allowed to know the historical truth about what happened to their loved ones through the CEH owing to the State authorities' refusal to hand over information.[33]

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[29] *Case of Anzualdo Castro v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of September 22, 2009. Series C No. 202, para. 120.

[30] *Cf. Case of Gomes Lund et al. ("Guerrilha do Araguaia") v. Brazil. Preliminary objections, merits, reparations and costs.* Judgment of November 24, 2010. Series C No. 219, paras. 200 and 201. See footnote 11 of this opinion *supra*.

[31] The operative paragraphs of the Judgment indicate that the "State is responsible for the violation of the right to freedom of thought and expression recognized in Article 13 of the American Convention on Human Rights, in relation to Articles 1(1), 8(1) and 25 of this instrument, owing to the violation of the right to seek and receive information, and also of the right to know the truth about what happened." *Cf. Case of Gomes Lund et al. ("Guerrilha do Araguaia") v. Brazil. Preliminary objections, merits, reparations and costs.* Judgment of November 24, 2010. Series C No. 219, sixth operative paragraph

[32] The Court did not admit that the right of access to information (Article 13 of the Convention) had been violated, because the denials of information were not related to the specific request addressed by the presumed victims to the State authorities to obtain this information, but rather constituted ways to obstruct the investigations (insofar as they related to requests for information made to the Ministry of Defense by the State authorities in charge of the investigation). And the Court analyzed this when ruling on the investigations into the forced disappearances as a violation of Articles 8(1) and 25(1) of the American Convention. *Cf. Case of Gudiel Álvarez et al. ("Diario Militar") v. Guatemala. Merits, reparations and costs.* Judgment of November 20, 2012. Series C No. 253, para. 269.

[33] The Court "stresse[d] that, the appearance of the *Diario Militar* in 1999 and the Historical Archive of the National Police in 2005, both through unofficial channels […], revealed that the State had withheld information from the CEH with regard to the facts of the case. This, together with the impunity that persist[ed] in this case […], allow[ed] the Court to conclude that the next of kin ha[d] been prevented from knowing the truth through either judicial or extrajudicial channels." The Court considered that these facts constituted a violation of Articles 5(1) and 5(2) to the detriment of the members of the victims' families. *Cf. Case of Gudiel Álvarez et al. ("Diario Militar") v. Guatemala. Merits, reparations and costs.* Judgment of November 20, 2012. Series C No. 253, paras.

II. Evolution by other international organs and instruments and domestic legal systems

16. As mentioned previously (*supra* para. 4), various resolutions of the United Nations and the Organization of American States haves recognized the right to the truth.

17. In particular, the United Nations has recognized the existence of the right to the truth by declarations of the General Assembly,[34] the Secretary-General[35] and the Security Council,[36] as well as by numerous resolutions and reports prepared and published by agencies with competence in the area of human rights attached to that organization.[37]

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300 and 302. However, the Court made a distinction between this case and the *Case of García and family members v. Guatemala,* which was based on similar facts. In the latter, the Court considered that the CEH had possessed sufficient evidence to make a specific determination about Mr. García, and also, that total impunity did not exist, because two of the perpetrators had been convicted by the courts and two of the masterminds were being prosecuted. Therefore, the Court did not find it necessary to make an additional ruling on the alleged violation of the right to the truth alleged by the representatives. *Cf. Case of García and family members v. Guatemala. Merits, reparations and costs.* Judgment of November 29, 2012. Series C No. 258, para. 177.

[34] In some of its resolutions, the General Assembly of the United Nations has expressed profound concern for the anguish and sorrow of the families affected by forced disappearances. *Cf.* General Assembly of the United Nations. Resolutions No. 3220 (XXIX) of 6 November 1974, No. 33/173 of 20 December 1978, No. 45/165 of 18 December 1990, and No. 47/132 of 22 February 1993. It has also spoken out with regard to the importance of determining the truth with regard to cases of genocide, war crimes, crime against humanity, and gross violations of human rights. *Cf.* General Assembly of the United Nations. Resolutions No. 55/118 of 1 March 2001, No. 57/105 of 13 February 2003, No. 57/161 of 28 January 2003 and No. 60/147 of 21 March 2006.

[35] The Secretary-General of the United Nations has recognized the existence of the right to the truth in his bulletin entitled "*Observance by United Nations forces of international humanitarian law*," establishing the rule that the United Nations will respect the right of the families to know about the fate of their sick, wounded and deceased relatives, and emphasizing the importance of the truth in transitional justice. *Cf.* United Nations, Secretary-General's Bulletin. *Observance by United Nations forces of international humanitarian law.* ST/SGB/1999/13. 6 August 1999, Section 9.8, and Report of the Secretary-General of the United Nations. *The rule of law and transitional justice in conflict and post-conflict societies.* S/2011/634. 12 October 2011.

[36] The Security Council of the United Nations has issued resolutions stressing the importance of determining the truth with regard to crimes against humanity, genocide, war crimes and gross violations of human rights. *Cf.* Security Council resolutions No. 1468 (2003) of 20 March 2003, No. 1470 (2003) of 28 March 2003, and No. 1606 (2005) of 20 June 2005.

[37] See, for example, that, in 1981, the Working Group on Enforced Disappearances recognized the right of families to know the whereabouts of the victim as an autonomous right. First report of the Working Group on Enforced Disappearances. *Cf.* Report of the Working Group on Enforced Disappearances. E/CN.4/1435. 22 January 1981, para. 187. In 1995, in his eighth annual report to the Commission on Human Rights of the United Nations Economic and Social Council, the Special Rapporteur on states of emergency concluded that the right to the truth had achieved the status of a customary norm. *Cf.* Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities. *The Administration of Justice and the Human Rights of Detainees: Question of Human Rights and States of Emergency*. E/CN.4/Sub.2/1995/20. 20 June 1995, paras. 39 and 40. In 2005, the United Nations High Commissioner on Human Rights reaffirmed the right to the truth of the victims and their family members. *Cf.* Commission on Human Rights of the United Nations. *Report of the United Nations High Commissioner on Human Rights on the situation of human rights in Colombia.* E/CN.4/2005/10. 28 February 2005, para. 5. The former Commission on Human Rights of the United Nations ruled on the right to the truth, emphasizing the importance of respecting and ensuring the right to the truth in relation to the enactment of amnesty laws and the right of the next of kin of disappeared persons to know the whereabouts of their loved ones. *Cf.* Commission on Human Rights of the United Nations. Resolutions No. 1989/62 of 8 March 1989, No. 2002/60 of 25 April 2002, No. 2005/35 of 19 April 2005, and No. 2005/66 of 20 April 2005. The Human Rights Council of the United Nations has recognized the importance of respecting and ensuring the right to the truth in order to combat impunity and protect human rights, and has also emphasized the importance that the international community recognize the right of victims, their families, and society as a

Thus, the United Nations High Commissioner on Human Rights indicated that the right to the truth was an autonomous, inalienable and independent right, because "[t]he truth is fundamental to the inherent dignity of the human person." He also asserted that:

> The right to the truth implies knowing the full and complete truth as to the events that transpired, their specific circumstances, and who participated in them, including knowing the circumstances in which the violations took place, as well as the reasons for them. In cases of enforced disappearance, missing persons, children abducted or born during the captivity of a mother subjected to enforced disappearance, secret execution and secret burial place, the right to the truth also has a special dimension: to know the fate and whereabouts of the victim.[38]

18. The International Committee of the Red Cross (ICRC) has asserted that the right to the truth is a rule of international customary law applicable in both international and internal armed conflicts, so that each party to the conflict must take all feasible measures to account for persons reported missing as a result of armed conflict and must provide their family members with any information it has on their fate.[39]

19. Declarations have also been issued on the right to the truth at the regional level. At the XXVIII Summit of Heads of State held in Asunción on June 20, 2005, the States members and associated States of the Common Market of the South (MERCOSUR) adopted a declaration in which they reaffirmed the right to the truth of the victims of human rights violations and their families.[40] In the European sphere, the European Union has ruled on the right to the truth in its resolutions on missing persons,[41] disarmament and demobilization of paramilitary groups, and in the context of peace negotiations.[42]

20. Lastly, the General Assembly of the Organization of American States (OAS) has "recognize[d] the importance of respecting and ensuring the right to the truth to help end impunity and to promote and protect human rights," in numerous resolutions adopted from 2006 to date, specifically on the right to the truth.[43]

21. In addition, in particular in relation to enforced disappearances, the International Convention for the Protection of All Persons from Enforced Disappearance explicitly recognizes "the right to know the truth regarding the circumstances of the enforced

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whole to know the truth about gross violations of international humanitarian law and human rights. *Cf.* Human Rights Council of the United Nations. Resolutions No. 9/11 of 24 September 2008 and No. 12/12 1 October 2009.

[38] *Cf.* Report of the Office of the United Nations High Commissioner for Human Rights. *Study on the right to the truth*, U.N. Doc. E/CN.4/2006/91 of 9 January 2006, paras. 57 and 59.

[39] *Cf.* Resolution II of the XXIV International Conference of the Red Cross and Red Crescent (Manila, 1981). See also: Rule 117 in Henckaerts, Jean Marie and Doswald-Beck, Louise. *Customary International Humanitarian Law, Volume I, Rules*, Cambridge Press University, 2005, p. 421.

[40] *Cf.* Joint communiqué of the Presidents of the States members and associated States of MERCOSUR of June 20, 2005, at the XXVIII Summit of Heads of State held in Asunción, Paraguay.

[41] *Cf.* European Parliament. Resolution on missing persons in Cyprus, of 11 January 1983.

[42] Conclusions of the Council of the European Union on Colombia, 3 October 2005, Luxemburg, para. 4.

[43] *Cf.* General Assembly of the Organization of American States, Resolutions: AG/RES. 2175 (XXXVI-O/06) of June 6, 2006, AG/RES. 2267 (XXXVII-O/07) of June 5, 2007, AG/RES. 2406 (XXXVIII-O/08) of June 3, 2008, AG/RES. 2509 (XXXIX-O/09) of June 4, 2009, AG/RES. 2595 (XL-O/10) of June 8, 2010, AG/RES. 2662 (XLI-O/11) of June 7, 2011, AG/RES. 2725 (XLII-O/12) of June 4, 2012, AG/RES. 2800 (XLIII-O/13) of June 5, 2013, AG/RES. 2822 (XLIV-O/14) of June 4, 2014.

disappearance, the progress and results of the investigation and the fate of the disappeared person."[44] In addition, the updated Set of principles for the protection and promotion of human rights through action to combat impunity recognizes and develops "the inalienable right to know the truth," as regards both the victims and their families, and society. The principles expressly establish that "[i]rrespective of any legal proceedings, victims and their families have the imprescriptible right to know the truth about the circumstances in which violations took place and, in the event of death or disappearance, the victims' fate."[45].

22. Furthermore, the right to the truth has been recognized by the domestic law and the constitutional courts and jurisdictional organs of various States Parties to the Convention.[46] Of particular relevance for this case is the fact that the Colombian

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[44] *Cf.* International Convention for the Protection of All Persons from Enforced Disappearance, article 24. Similarly, article 32 of the Protocol Additional to the 1949 Geneva Conventions and relating to the Protection of Victims of International Armed Conflicts (Protocol I) recognizes the right of families to know the fate of their relatives; while the Geneva Conventions of 12 August 1949 include several provisions that impose on the parties in conflict the obligation to resolve the problem of disappeared combatants and establish a central identification mechanism. *Cf.* Protocol Additional to the 1949 Geneva Conventions and relating to the Protection of Victims of International Armed Conflicts (Protocol I), of 12 August 1977, and articles 16 and 17 of the Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War of 12 August 1949; articles 18, 19 and *ff*. of the Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of 12 August 1949, and article 15, 16 and *ff*. of the Geneva Convention (I) for the Amelioration of the Condition of the Wounded in Armies in the Field of 12 August 1949.

[45] Updated Set of principles for the protection and promotion of human rights through action to combat impunity, UN Doc. E/CN.4/2005/102/Add.1, of 8 February 2005, Principles 1 to 5.

[46] See, for example, *ARGENTINA*: Decision of the Federal Criminal and Correctional Chamber of the Federal Capital of September 1, 2003, in Case No. 761 "E.S.M.A., Facts reported that allegedly took place in the Naval Engineering School"; Supreme Court of Justice of the Nation. *Case of Suárez Mason, Carlos Guillermo.* Judgments 321:2031 of August 13, 1998, and Supreme Court of Justice of the Nation. *Case of the Naval Engineering School.* Judgment 311:401 of March 29, 1988; *COLOMBIA*: Constitutional Court. Cases T-249/03 of January 20, 2003, and C-228 of April 3, 2002; on the intrinsic relationship between the right to reparation and the right to the truth and justice (Judgment C-715 of 2012); the disregard of the right to the truth in norms that do not establish the loss of benefits due failure to confess all the offenses in the justice and peace proceedings (Judgment C-370 of 2006); the right to the truth and the provision of information to the relatives of a victim, as well as public access to the records in cases of final judgments in the justice and peace proceedings (Judgment C-575 of 2006); the scope, purpose, dimensions and dual connotation of the right to the truth (Judgments C-370 of 2006, C-454 of 2006, C-1033 of 2006, T-299 de 2009, C-753 of 2013, C-872 of 2003, C-579 of 2013, C-180 de 2014 and C-936 of 2010); its subjective and objective nature (Judgment C-872 of 2003) and its basic contents (Judgment C-936 of 2010). In addition, its collective dimensions has been referred to (Judgments C-370/06 and C-454 of 2006); its relationship to the clarification of the circumstances of displacement (Judgments T-327 of 2001, T-882 of 2005, T-1076 of 2005, T-367 of 2010). Reference has also been made to guarantees that ensure its exercise (Judgment C-872 of 2003); its relationship to the participation of the victim in criminal proceedings based on enforced displacement (Judgment T-367 of 2010), and the way in which the victims of disciplinary offenses that constitute violations of international human rights law and international humanitarian law have the right to the truth and to the execution of disciplinary justice (Judgment C-666 de 2008); *MEXICO*: First Chamber/Jurisprudence 40/2013. Heading: *Direct* amparo *in criminal matters. The victim of the offense is legitimated to apply for this when paragraphs on the reparation of the harm in the final judgment are contested.* 10th session, First Chamber, S.J.F. and its Gazette, Section XII, July 2013, Volume 1, p. 123. Isolated ruling. T.C.C. I.90.P.61, Heading: *Forced disappearance of persons. The fact that the district judge does not admit the application for* amparo *does not prevent the relatives of disappeared persons from exercising their right to know the truth and the progress of the investigations, by obtaining copies of the corresponding preliminary investigation.* 10th session, T.C.C., Gazette S.J.F., Section 10, September 2014, Volume III, p. 2312; and Isolated Judgment, T.C.C. XXVII.1. (VIII Region), Heading: *Reparation of the harm to the victim of the offense. Content of this fundamental right (Legislation of the state of Chiapas),* 10th session, T.C.C., S.J.F. and its Gazette, Section XXIV, September 2013, Volume 3, p. 2660; and *PERU:* Constitutional Court. *Case of Genaro Villegas Namuche.* Judgment of March 18, 2004. Case file No. 2488-2002-HC/TC.

Constitutional Court has indicated, at least as of 2002, that in cases of forced disappearance "interest exists in knowing the truth and establishing individual responsibilities,"[47] and that the right to the truth surrounding the offense of forced disappearance signifies the right to know the final fate of the disappeared person.[48]

III. Conclusion

23. The evolution of the Inter-American Court's case law and the advances made by international bodies and instruments, and by domestic legislation reveal clearly that, nowadays, the right to the truth is recognized as an autonomous and independent right. Although this right is not expressly included in the American Convention, this does not prevent the Inter-American Court from being able to examine its alleged violation, and declaring that it has been violated. According to Article 29(c) of the Pact of San José, no provision of the Convention shall be interpeted as "excluding other rights and guarantees that are inherent in the human person, or that are derived from the democratic form of representative government."[49] In this regard, it should be underscored that, as indicated in the preceding paragraph, the right to the truth has been recognized in Colombian law and is considered part of the *right to reparation, to the truth and to justice,* as a necessary corollary in order to achieve peace (*supra* para. 22).

24. Nevertheless, the author of this opinion considers that although the right to the truth is mainly related to the right of access to justice – derived from Articles 8 and 25 of the Convention — it should not necessarily remain subsumed in the examination of the

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[47] The Constitutional Court of Colombia (judgment T-249/03, paras. 15 to18), indicated that:

"The eradication of impunity for the offense of forced disappearance is in the interests of society as a whole. To satisfy this interest, it is necessary to know the whole truth about the events, and that the corresponding individual and institutional responsibilities be recognized. To this end, both the interest in knowing the truth and the attribution of individual and institutional responsibilities for the facts exceeds the sphere of the individual interest of the victims. To the contrary, they constitute real general and prevailing interests under article 1 of the Constitution.

Indeed, public awareness of the facts, the identification of individual and institutional responsibilities, and the obligation to redress the harm caused are useful mechanisms to create awareness among the public about the magnitude of the harm caused by the offense. […]

The right to the truth and to justice are rights that have a significant individual value (for the victim and his family), but under certain circumstances, they acquire a collective character. This collective character has different dimensions, reaching the level of society as a whole when the foundations of civilized society and the basic elements of the legal order – peace, human rights, and restriction and rational use of military force – are threatened and compliance with the State's basic functions is jeopardized. Peace is built on the basis of respect for human rights, control of the excessive use of force, and achievement of collective security. The fact that peace is a right and a binding obligation supposes a collective interest in knowing and preventing anything that endangers it. The proposed interpretation – the one that excludes the interest of society, because it is represented by the State – signifies an inadmissible restriction of the right to the truth and to justice, which reducing the possibilities of achieving peace in Colombia. Furthermore, it results in a disproportionate restriction of the right of the residents of the country to achieve peace, and know that their constitutional rights are protected and that the obligations established by law are met. Lastly, it entails denying the possibility of effective participation in controlling the exercise of the State's powers."

[48] Constitutional Court of Colombia. Judgment C-370 of 2006.

[49] On the basis of this provision, violations of the right to identity – which is not recognized explicitly in the Convention either – have been recognized and declared. *Cf.* ***Case of Gelman v. Uruguay. Merits and reparations.*** **Judgment of February 24, 2011. Series C No. 221,** para. 112; *Case of Contreras et al. v. El Salvador. Merits, reparations and costs.* Judgment of August 31, 2011. Series C No. 232**, para. 117, and *Case of Rochac Hernández et al. v. El Salvador. Merits, reparations and costs.* Judgment of October 14, 2014. Series C No. 285, para. 117.**

other violations of the rights to judicial guarantees and judicial protection that were declared in the instant case,[50] because this understanding encourages the distortion of the essence and intrinsic content of each right.[51] In addition, even though the right to the truth is fundamentally inserted in the right of access to justice,[52] depending on the particular context and circumstances of the case, the right to the truth may affect different rights recognized in the American Convention,[53] as the Court acknowledged in the case of *Gomes Lund et al. (Guerrilla de Araguaia) v. Brazil* in relation to the right of access to information (Article 13 of the Convention), and in the case of *Gudiel Álvarez et al. ("Diario Militar") v. Guatemala* in relation to the right to personal integrity (Article 5 of the Convention).

25. Based on the above, in view of the evolutive nature of inter-American case law on this issue and the advances made by international bodies and instruments (including the OAS General Assembly[54]) and domestic legal systems (as in the case of Colombia),[55] I consider that the Court should reconsider its criteria understanding that the right to the truth is necessarily "subsumed" in the right of the victims and their families to obtain the elucidation of the violations and the corresponding responsibilities from the competent State bodies, in order to proceed, when appropriate, to declare its violation as an autonomous and independent right. This would clarify the content, dimensions and true scope of the right to know the truth.

26. In the instant case, the victims are still, after 29 years, waiting for the events to be clarified. The State still questions the forced disappearance of most of the victims. Despite the creation of a truth commission to investigate the events, and several judicial decisions, as indicated in paragraph 510 of the Judgment,[56] there is still no official

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[50] Paras. 509 to 511 of the Judgment.

[51] Something similar occurs, for example, by subsuming Article 25 (Right to judicial protection) to the consequences of the violation of Article 8(2)(h) (Right to a Fair Trial): the right to appeal the judgment before a higher court) of the American Convention. In this regard, see the "second part" of my concurring opinion the *Case of Liakat Ali Alibux v. Suriname*. *Cf. Case of Liakat Ali Alibux v. Suriname. Preliminary objections, merits, reparations and costs.* Concurring opinion of Judge Eduardo Ferrer Mac-Gregor Poisot, second part.

[52] *Cf.* See, *inter alia*, *Case of Velásquez Rodríguez v. Honduras. Merits*. Judgment of July 29, 1988. Series C No. 4, para. 181; *Case of Bámaca Velásquez v. Guatemala. Merits.* Judgment of November 25, 2000. Series C No. 70, para. 201; *Case of Barrios Altos v. Peru. Merits.* Judgment of March 14, 2001. Series C No. 75, para. 48; *Case of Almonacid Arellano et al. v. Chile. Preliminary objections, merits, reparations and costs.* Judgment of September 26, 2006. Series C No. 154, para. 148; *Case of La Cantuta v. Peru. Merits, Reparations and costs.* Judgment of November 29, 2006. Series C No. 162, para. 222; *Case of Heliodoro Portugal v. Panama*. *Preliminary objections, merits, reparations and costs.* Judgment of August 12, 2008. Series C No. 186, paras. 243 and 244, and *Case of Kawas Fernández v. Honduras. Merits, reparations and costs.* Judgment of April 3, 2009. Series C No. 196, para. 117.

[53] In this regard, in his *Study on the right to the truth,* the United Nations High Commissioner for Human Rights indicated that different international resolutions and instruments have recognized the right to the truth linked to the right to seek and receive information, the right to justice, the obligation to combat impunity for human rights violations, the right to an effective judicial remedy, and the right to privacy and family life. In addition, in relation to the relatives of the victims, it has been linked to the right to integrity of the members of the victim's family (mental health), the right to obtain reparation in cases of gross human rights violations, the right not to be subjected to torture or ill-treatment and, in some circumstances, the right of children to receive special protection. *Cf.* Report of the Office of the United Nations High Commissioner for Human Rights. *Study on the right to the truth*, U.N. Doc. E/CN.4/2006/91 of 9 January 2006.

[54] See *supra* para. 20, and footnote 43 of this opinion.

[55] See *supra* para. 22, and footnotes 46 and 47 of this opinion.

[56] Specifically, when analyzing the argument concerning the violation of the right to the truth, the Court indicated: "511. In this case, even though 29 years have passed since the events, the truth about what happened to the victims in this case and their fate is still unknown. The Court also underlines that, since the

version of what happened, and both the families of the disappeared victims, and the victims who survived the events, have been constantly faced with the denial that they occurred. In addition, in the judgment, "the Court also underline[d] that, since the events occurred, a series of actions have been revealed that have facilitated the concealment of what happened and prevented or delayed its clarification by the judicial authorities and the prosecutors."[57]

27. In addition, it should be stressed that, in the context of forced disappearances, the right to know the fate of the disappeared victim is an essential component of the right to the truth. The uncertainty about what happened to their loved ones is one of the main sources of mental and moral suffering of the relatives of the disappeared victims (*supra* para. 2). In the instant case, 29 years after the events, this uncertainty has been partially resolved only for the families of Ana Rosa Castiblanco Torres and Carlos Horacio Urán Rojas. Although some search activities have been conducted recently, the Court concluded in its judgment that, for many years, the State had failed to carry out a genuine, coordinated and systematic search to discover the whereabouts of those who disappeared and clarify what happened.[58]

28. It should not be forgotten that the Judgment expressly establishes that "the State acknowledges its responsibility by omission for the failure to investigate these facts"[59] and that "despite the different investigations and judicial proceedings that have been opened, the State has been unable to provide a final and official version of what happened to the presumed victims 29 years ago, and has not provided adequate information to disprove the different indications that have emerged concerning the forced disappearance of most of the victims."[60]

29. Consequently, the author of this opinion considers that, in this judgment, the Court could have declared the autonomous violation of the right to know the truth — as it did previously in the case of *Gomes Lund et al. (Guerilla de Araguaia) v. Brazil.* [61] I believe that this right can validly be violated autonomously and does not need to be subsumed in

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events occurred a series of actions have been revealed that have facilitated the concealment of what happened and prevented or delayed its clarification by the judicial authorities and the prosecutors. In addition, despite the creation of an extrajudicial commission and the efforts made by the courts to establish the truth of what occurred, the Court stresses that the conclusions of the Truth Commission's report have not been accepted by the different State organs supposedly responsible for the execution of its recommendations. In this regard, the Court recalls that the State argued before the Court that this commission was unofficial and that its report did not represent the truth of what happened[56] (*supra* para. 80). Thus, the State's position has prevented the victims and their families from the realization of their right to the establishment of the truth by this extrajudicial commission. In the Court's opinion, a report such as that of the Truth Commission is important, but complementary, and does not substitute the State's obligation to establish the truth by means of judicial proceedings.[56] The Court stresses that, 29 years after the events occurred, there is no official version of what happened to most of the victims in this case (underlining added).

57 Para. 510 of the Judgment.

58 Paras. 478 to 485 and 513 of the Judgment.

59 Para. 299 of the Judgment.

60 Para. 299 of the Judgment.

61 As recognized in para. 511 of the judgment in the *Case of Gomes Lund et al.,* "the Court declared an autonomous violation of the right to the truth that, owing to the specific circumstances of that case, also constituted a violation of the right of access to justice and an effective remedy, and a violation of the right to seek and receive information, recognized in Article 13 of the Convention." See also footnotes 10 and 31 of this opinion *supra*.

the other violations of Articles 8 and 25 of the American Convention declared in the judgment. Nowadays, the right to know the truth is an autonomous right recognized by different international bodies and instruments and by domestic legal systems and, in future, this may lead the Inter-American Court to consider its violation independently, which would contribute to clarifying its content and scope.

Eduardo Ferrer Mac-Gregor Poisot

Judge

Pablo Saavedra Alessandri
Secretary

Judges Eduardo Vio Grossi and Manuel E. Ventura Robles joined this Opinion of Judge Eduardo Ferrer Mac-Gregor Poisot and made the following specific observations.

ENDORSEMENT BY JUDGE EDUARDO VIO GROSSI

OF THE CONCURRING OPINION OF

JUDGE EDUARDO FERRER MAC-GREGOR POISOT

CASE OF RODRÍGUEZ VERA *ET AL. (THE DISAPPEARED FROM THE PALACE OF JUSTICE) v.* COLOMBIA

JUDGMENT OF NOVEMBR 14, 2014

(Preliminary objections, merits, reparations and costs)

I join the Concurring Opinion indicated above because, as is evident, I agree with it. Nevertheless, I believe it desirable to emphasize the following:

1. The second paragraph of the Preamble to the American Convention on Human Rights indicates "*the essential rights of man … are based upon attributes of the human personality*." The Convention includes the same idea in its Article 29(c), when establishing that "*[n]o provision of this Convention shall be interpreted as … precluding other rights or guarantees that are inherent in the human personality*." It should also be recalled that the Convention itself indicates, in Article 1, that the rights referred to are "recognized" therein and not established or embodied therein. Thus, fortunately, it expressly contemplates the possible existence of other human rights inherent in the human persona – such as the right to the truth – that are not explicitly "recognized" in the Convention.

2. In addition, paragraph (b) of Article 29 cited above, establishes that *"[n]o provision of this Convention shall be interpreted as … restricting the enjoyment or exercise of any right or freedom recognized … by virtue of another convention to which one of the said States is a party."* And, in this case, Article 24(2) of the International Convention for the Protection of All Persons from Enforced Disappearance, ratified by Colombia and in force in that country as of August 10, 2012, expressly recognizes the right to the truth by establishing that *"[e]ach victim has the right to know the truth regarding the circumstances of the enforced disappearance, the progress and results of the investigation and the fate of the disappeared person."* Thus, even if that Convention was not in force in Colombia at the time of the facts of this case, the right to the truth recognized therein cannot be limited by an interpretation of the American Convention on Human Rights, which would occur if it was considered that the said right is not established, even tacitly, in the latter.

3. Furthermore, paragraph (c) of the same Article 29 of the American Convention on Human Rights establishes that *"[n]o provision of this Convention shall be interpreted as … precluding other rights or guarantees … that are […] derived from representative democracy as a form of government."* And these must include the right to require from the State, as a basic component of the exercise of democracy, *"transparency in government activities,"* as stipulated in Article 4 de the Inter-American Democratic Charter. Evidently, this does not occur in the case of the forced disappearance of persons, in which, according to Article 2 of the said International Convention for the Protection of All Persons from Enforced Disappearance, one of the elements of this legal concept is precisely the "*refusal to acknowledge the deprivation of liberty or […] concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law*." Article II of the Inter-American Convention on Forced Disappearance of Persons, for which Colombia deposited the instrument of ratification on April 12, 2005, expresses this same idea when indicating as part of the concept of the forced disappearance of persons, the *"absence of information or a refusal to acknowledge th[e] deprivation of freedom or to give information on the whereabouts of th[e] person, thereby impeding his or her recourse to the applicable legal remedies and procedural guarantees."* Hence, conceptually, the forced disappearance of persons ultimately signifies a violation of the right to the truth about their fate.

4. In this regard, the contents of paragraph 20 of the Concurring Opinion that I am endorsing should be emphasized as regards the fact that it has been the States Parties to the American Convention on Human Rights that, participating in the General Assemblies of the Organization of American States, have recognized the right to the truth, linked, among other instruments to both the International Convention for the Protection of All Persons from Enforced Disappearance and the Inter-American Convention on Forced Disappearance of Persons. In other words, as established in Article 31.3.a) of the Vienna Convention on the Law of Treaties, they have made an authentic interpretation of these two instruments; that is, by means of a "*subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions*." And, as indicated above, both instruments must be considered when interpreting the American Convention on Human Rights.

5. Based on all the above, it is necessary to insist that the right to the truth, rather than being subsumed in other rights, that is to say, rather than being considered as part of a more extensive series of rights, is the presumption or grounds for these other rights and, consequently, is not expressed only and exclusively through them. Thus, it cannot be conceived that the right to the truth can only be exercised by means of a judicial action before "*a competent, independent and impartial tribunal, previously established by law,"* as indicated in Article 8 of the American Convention on Human Rights or by a *"simple and prompt recourse, or any other effective recourse, to a competent court or tribunal,"* as established in Article 25 of this instrument. Rather it can also be asserted by means of other mechanisms, before another competent State authority, which, if it responds, avoids the State incurring international responsibility and makes the intervention of the Court

unnecessary, in keeping with the second paragraph of the Preamble to the American Convention on Human Rights, regarding the *"international protection in the form of a convention reinforcing or complementing the protection provided by the domestic law of the American states."*

6. In brief, the right to the truth is a basis for other rights that would not be understood or explained without it, and the ultimate purpose of such rights, because without truth there is no justice or reparation. As affirmed by the International Convention for the Protection of All Persons from Enforced Disappearance, the absence of truth removes the disappeared person from the *"protection of the law"* or, as stated by the Inter-American Convention on Forced Disappearance of Persons, this absence of truth impedes *"recourse to the applicable legal remedies and procedural guarantees."*

7. Based on the foregoing, it should be understood that the right to the truth is implicitly included in the American Convention on Human Rights and, consequently, in its interpretation. Especially, because, if this is not so, it would not be possible to understand the provisions of Articles 8 and 25, which, ultimately, only seek the truth of what happened in cases in which they are cited and applied or, in other words, are merely instruments to achieve the truth.

Eduardo Vio Grossi

Judge

Pablo Saavedra Alessandri

Secretary

ENDORSEMENT BY JUDGE MANUEL E. VENTURA ROBLES

OF THE CONCURRING OPINION OF

JUDGE EDUARDO FERRER MAC-GREGOR POISOT

CASE OF RODRÍGUEZ VERA *ET AL. (THE DISAPPEARED FROM THE PALACE OF JUSTICE) v.* COLOMBIA

JUDGMENT OF NOVEMBR 14, 2014

(Preliminary objections, merits, reparations and costs)

1. My endorsement of the concurring opinion of Judge Eduardo Ferrer Mac-Gregor Poisot in this case allows me to express a long-held concern about the autonomy of the right to the truth and the fact that the Court has subsumed this right in Articles 8 and 25 of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention"); a view that, for many years and on many occasions, I shared as a judge.

2. The concurring opinion of Judge Ferrer Mac-Gregor Poisot allows me to put in writing, for the first time, that it has not been possible to close most of the 180 cases that the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court") has decided since 1987 when it commenced the exercise of its jurisdictional function, and to consider that the State's responsibilities have been complied with, mainly because the Court did not indicate to the States that they had violated the right to the truth and that, naturally, this is related to the obligation to investigate the facts of the case.

3. If the Court had stressed this from the start, and not merely in 2010 in the case of *Gomes Lund et al. ("Guerrilha do Araguaia") v. Brazil,* [62] it would have allowed the Court to be more emphatic with the States as regards their obligation to investigate, and impunity would not have the alarming dimensions that it has today under the inter-American system for the protection of human rights.

[62] *Cf. Case of Gomes Lund et al. ("Guerrilha do Araguaia") v. Brazil. Preliminary objections, merits, reparations and costs*. Judgment of November 24, 2010. Series C No. 219, para. 201.

4. Naturally, I share fully the views that Judge Ferrer Mac-Gregor Poisot has set forth in the concurring opinion and Judge Vio Grossi in his endorsement, and this gives me the occasion to indicate the above-mentioned problem in the case of *Rodriguez Vera et al. (the Disappeared of the Palace of Justice) v. Colombia.*

5. For many years, the Inter-American Court has indicated that the State's international responsibility may derive from acts and omissions of any of its organs: the Executive, the Legislature or the Judiciary.[63] The fact that the representatives excluded from the purpose of the case the possible responsibility of the State for the excessive use of force when retaking the Palace of Justice[64] placed enormous limits on the dimension of the case and focused it on a single aspect: primarily, the forced disappearances of thirteen persons, and the subsequent extrajudicial execution of one of them.

6. However, it should be underscored that the major and most significant limitation that the Court faced when analyzing the case related to the fact that, when submitting the case to the Court by means of the report under Article 50 of the Convention, the Inter-American Commission on Human Rights (hereinafter "the Commission") included very little information on the role played by the politico-civil element of the Executive in the operation. This was not the case with regard to the military element, regarding which there is abundant information. The Judiciary's participation may also be subject to the pertinent investigations when the respective cases have been decided.

7. Regarding the State's responsibility based the participation of the Executive's politico-civil apparatus in the operation, the Court had to restrict itself to indicating, in paragraph 98 of the Judgment, that the last intervention of the President of the Republic, the Commander-in-Chief of the Armed Forces, occurred at 9 a.m. on November 7, 1985, when he announced by radio that "the Army is now in full control of the Palace and only one guerrilla redoubt remains; consequently, Operation *Rastrillo* would commence." The Court was unable to examine this aspect more thoroughly; also because the three attempts made by the Legislature to investigate the facts have been unsuccessful.[65]

8. The foregoing reveals the need to have declared the violation of the right to know the truth autonomously, in order to determine whether civil officials of the Executive or members of the Legislature engaged the State's international responsibility owing to the tragedy of the Palace of Justice. Thus, the Court had to restrict itself to ordering the State, in the considering and operative paragraphs of the Judgment, to "remove all the obstacles *de facto* and *de jure* that maintain impunity in this case, and to conduct the

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63 *Cf. Case of Velásquez Rodríguez v. Honduras. Merits.* Judgment of July 29, 1988. Series C No. 4, para. 164, and *Case of J. v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of November 27, 2013. Series C No. 275, para. 257.

64 The representatives requested that this be excluded during the processing of the case before the Commission. *Cf.* footnote 53 of the Judgment.

65 Paragraphs 214 and 215 of the Judgment.

extensive, systematic and thorough investigations required to determine, prosecute and punish, as appropriate, those responsible" for the facts of the case *sub judice*.

9. If, when submitting the case to the Court, the Commission had focused on the importance of the right to know the truth in order to avoid impunity, and the Court had considered this and decided on it, very possibly the investigation of this case could have been extensive and, in the history of Colombia, everything relating to this tragedy that shocked Colombian society would be clearer.

10. It also bears repeating for those unaware of international human rights law that it was not incumbent on the Inter-American Court to rule on the cruel and inhuman role played by the M-19 guerrilla. That is the responsibility of the courts of justice of Colombia's domestic jurisdiction. The task of the Inter-American Court was merely to indicate, if appropriate, the international responsibility of the State for violations of the American Convention. Moreover, it was not for the Court to establish individual criminal responsibilities.

11. The foregoing may lead to a better understanding of the Court's judgment and, above all, of the need for the Court to begin to declare autonomous violations of the right to know the truth, on the legal grounds indicated by Judges Ferrer Mac-Gregor Poisot and Vio Grossi. Without doubt, let me re-emphasize, this would help combat impunity on our continent.

Manuel E. Ventura Robles

Judge

Pablo Saavedra Alessandri

Secretary