INTER-AMERICAN COURT OF HUMAN RIGHTS

CASE OF VÉLEZ RESTREPO AND FAMILY *v.* COLOMBIA

JUDGMENT OF SEPTEMBER 3, 2012
(Preliminary objection, merits, reparations and costs)

In the case of *Vélez Restrepo and family,*

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

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

also present,

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

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, 65 and 67 of the Rules of Procedure of the Court[1] (hereinafter "the Rules of Procedure"), delivers this Judgment, structured as follows:

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[*] For reasons beyond her control, Judge Margarette May Macaulay was unable to take part in the deliberation and signature of this Judgment.

[1] The Court's Rules of Procedure approved by the Court at its eight-fifth regular session held from November 16 to 28, 2009.

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I
INTRODUCTION OF THE CASE AND PURPOSE OF THE DISPUTE

1. On March 2, 2011, in accordance with the provisions of Articles 51 and 61 of the Convention, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "Inter-American Commission") submitted to the jurisdiction of the Inter-American Court a brief (hereinafter "submission brief") in relation to case No. 12,658 against the Republic of Colombia (hereinafter "the State" or "Colombia"). The initial petition was lodged with the Commission on July 29, 2005, by Luis Gonzalo Vélez Restrepo, also known as "Richard" Vélez, and by Aracelly Román Amariles, also known as "Sara Román" (hereinafter "Mr. Vélez Restrepo" and "Mrs. Román Amariles"), on behalf of themselves and their children Mateo and Juliana, both with the surname Vélez Román (hereinafter "the children" and, considered as a whole, "the Vélez Román family"). On July 24, 2008, the Inter-American Commission approved Admissibility Report No. 47/08.[2] On October 23, 2010, the Commission approved Report on Merits No. 136/10[3] (hereinafter also "the Merits Report" or "Report No. 136/10"), in keeping with Article 50 of the Convention, in which it made a series of recommendations to the State. This report was notified to the State in a communication of December 2, 2010, and granted two-months to provide information on the measures taken to comply with the recommendations made therein. On January 13, 2011, the State requested a one-month extension to the deadline set by the Commission; a three week extension was granted until February 22, 2011. When the extension expired, Colombia presented the respective information and asked the Commission to issue a report in keeping with the provisions of Article 51 of the Convention. The Commission decided to submit "all the facts and human rights violations described in Merits Report No. 136/10," to the jurisdiction of the Inter-American Court, "because of the need to obtain justice for the [presumed] victims and owing to the State's [alleged] failure to comply with the recommendations." The Commission appointed María Silvia Guillén Cardona, Commissioner, Santiago A. Cantón, then Executive Secretary, and Catalina Botero, Special Rapporteur for Freedom of Expression, as delegates, and designated Elizabeth Abi-Mershed, Deputy Executive Secretary, Silvia Serrano Guzmán and Michael Camilleri, as legal advisers.

2. According to the Commission, this case relates to the supposed "attack against Luis Gonzalo 'Richard Vélez Restrepo by soldiers of the Colombian National Army on August 29, 1996, while he was filming a protest demonstration, in which that institution's soldiers beat several of the protesters – acts that were documented by the journalist," and to the alleged "death threats against Richard Vélez and his family, threats which intensified when Mr. Vélez tried to advance the judicial proceedings against his attackers, and which resulted in a [supposed] attempt to abduct him." According to the Commission, as a result of these events, Mr. Vélez Restrepo "left Colombia to go into exile" on October 9, 1997, and currently "is unable to work as a journalist." In addition, the Merits Report refers to the alleged "[failure to] conduct a thorough investigation, within a reasonable time and in the ordinary jurisdiction, into all the acts of violence and harassment against [Mr.] Vélez Restrepo and his family in order to identify, prosecute and punish those responsible for the said acts," and also to the supposed "shortcomings in the investigation and omissions in the protection of Mr. Vélez [Restrepo] and his family."

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[2] In this Report, the Inter-American Commission declared petition No. 864-05 admissible in relation to the alleged violation of Articles 5, 8, 13, 17(1), 19, 22(1) and 25 of the American Convention, in relation to Articles 1(1) and 2 of this treaty. *Cf.* Admissibility Report No. 47/08, Case 12,658, Luis Gonzalo "Richard" Vélez Restrepo and family *v.* Colombia, July 24, 2008 (file of annexes to the Merits Report, appendix 1, folios 261 to 277).

[3] Merits Report No 136/10, Case 12,658, Luis Gonzalo "Richard" Vélez Restrepo and family *v.* Colombia, October 23, 2010 (merits file, folios 5 to 42).

3. Based on the above, the Commission asked the Court to declare the international responsibility of Colombia for the alleged violation of Articles 5 (Right to Humane Treatment), 17 (Rights of the Family), 22(1) (Right to Freedom of Movement and Residence), 8(1) (Right to Judicial Guarantees) and 25 (Right to Judicial Protection) of the American Convention, in relation to Article 1(1) thereof, to the detriment of Luis Gonzalo "Richard" Vélez Restrepo, his wife Aracelly Román Amariles, and their children Mateo and Juliana Vélez Román. The Commission asked the Court to declare that the State had violated Article 13 (Right to Freedom of Thought and Expression) of the Convention, in relation to Article 1(1) thereof, to the detriment of Luis Gonzalo "Richard" Vélez Restrepo. In addition, it asked the Court to declare the State's responsibility for the violation of Article 19 (Rights of the Child) of the American Convention, in relation to Article 1(1) of this treaty, to the detriment of Mateo and Juliana Vélez Román. The Commission asked the Court to order the State to adopt specific measures of reparation.

II
PROCEEDINGS BEFORE THE COURT

4. The Inter-American Commission's submission of the case was notified to the State and to Arturo Carrillo, representative of the presumed victims[4] (hereinafter "the representative"), on April 6, 2011.

5. On June 8, 2011, the representative submitted to the Court his brief with pleadings, motions and evidence (hereinafter "the pleadings and motions brief"), under Article 40 of the Court's Rules of Procedure. Overall, the representative agreed with the facts described by the Commission and asked the Court to declare the State's international responsibility for the alleged violation of the same articles of the Convention indicated by the Inter-American Commission, adding that Colombia had also violated Articles 4(1) (Right to Life) and 11 (Right to Privacy), in relation to Article 1(1) thereof, to the detriment of Mr. Vélez Restrepo. Consequently, he requested the Court to order different measures of reparation.

6. On October 4, 2011, Colombia presented it brief with preliminary objections, answering the brief submitting the case, and with observations on the pleadings and motions brief (hereinafter "the answering brief"). In this brief, the State filed a preliminary objection (*infra* para. 27) and made a partial acknowledgment of international responsibility (*infra* paras. 13 and 17). Also, in this brief, the State asserted that it was not responsible for "the events [and alleged violations] relating to the presumed threats, harassment and attempted kidnapping against Mr. […] Vélez Restrepo." In addition, it referred to the reparations requested. The State appointed Luz Marina Gil Garcia and Juana Ines Acosta Lopez as its Agents.[5]

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[4] The presumed victims in this case appointed Arturo J. Carrillo, of the Legal Human Rights Clinic of the Law School of George Washington University as their representative. Mr. Carrillo informed the Court that professors Carlos J. Zelada and Eduardo Bertoni would act as "legal advisers" (file of appendices to the Merits Report, appendix 1, folio 1122).

[5] In communications of July 29 and December 8, 2011, the State appointed Luz Marina Gil Garcia and Juana Inés Acosta Lopez as agents for the instant case. In communications of June 8, September 30 and December 8, 2011, Colombia accredited Hernán Jaime Ulloa Venegas, Javier Echeverri Lara and Jorge Alberto Giraldo Rivera as agents, but subsequently indicated that they would not act in that capacity.

7. On November 25, 2011, the Inter-American Commission and the representative[6] presented their observations on the preliminary objection and the partial acknowledgment of responsibility made by the State.

8. Following the presentation of the main briefs (*supra* paras. 1, 5 and 6), as well as other briefs forwarded by the parties, the President of the Court (hereinafter "the President") issued an Order dated January 25, 2012,[7] in which he ruled on the State's objections to the expert evidence offered and the representatives' objection to one of the experts offered by the State, and required that the testimony of one witness and four expert witnesses be received by affidavit. These affidavits were presented by the parties and the Commission on February 20, 21 and 28, 2012. In addition, in the same Order, the President summoned the parties and the Commission to a public hearing (*infra* para. 9).

9. The public hearing was held at the seat of the Court on February 24, 2012, during its ninety-fourth regular session.[8] During the hearing, the testimony of two presumed victims and one expert witness were received, together with the final oral observations and arguments of the Inter-American Commission, the representative, and the State.

10. The Court received three amici curiae briefs from: the Public Action Group of the Faculty of Jurisprudence of the Universidad de Rosario;[9] the Legal Clinic for Social Justice and the Master's Program in "Human Rights, Democracy, and International Justice" of the Universidad de Valencia, Spain,[10] and the organization, Article 19.[11] The State asked the Court not to admit the latter because it was time-barred (*infra* paras. 67 and 68).

11. On March 26, 2012, the representative and the State forwarded their final written arguments, and the Inter-American Commission presented its final written observations,

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6 In this brief, the representative submitted additional observations on the State's answering brief. In this regard, the Secretariat of the Court, on the instructions of the President of the Court, informed him in a note of November 30, 2011, that the additional observations had not been requested by the Court, so that they were "inadmissible and w[ould] not be considered by the Court.

7 *Cf. Case of Vélez Restrepo and Family v. Colombia*. Order of the President of the Court of January 25, 2012.

8 The following appeared at the hearing: (a) for the Inter-American Commission: Catalina Botero, Special Rapporteur for Freedom of Expression; Michael Camilleri and Silvia Serrano Guzmán, legal advisers; (b) for the representative: Arturo Carrillo Suárez, legal representative of the presumed victims, Carlos Zelada Acuña and Raúl Hernández Hernández, advisers, and (c) for the State: Hernando Herrera Vergara, Ambassador of Colombia to Costa Rica; Assad José Jater Peña, Director of Human Rights and International Humanitarian Law of the Ministry of Foreign Affairs; Luz Marina Gil García, Agent; Juana Acosta López, Agent; Ivett Lorena Sanabria Gaitán, Head of the Internal Legal Affairs Office of the Ministry of Foreign Affairs; Brigadier General Emilio Enrique Torres Ariza, Head of Human Rights and International Humanitarian Law of the National Army; Elena Ambrosi Turbay, Director of Human Rights of the Ministry of National Defense; Luz Stella Bejarano, Coordinator of the Defense Group before the International Organizations of the Ministry of National Defense; Francisco Javier Echeverri Lara, Director of International Affairs of the Office of the Prosecutor General of the Nation; Jorge Alberto Giraldo Rivera, Coordinator of the Inter-institutional Operations Group; Claudia Niño López, Sectional Prosecutor attached to the National Section of Prosecution Offices, and Felipe Ferreira Rojas, Adviser to the Inter-institutional Operations Group.

9 The brief was presented by Juan Felipe Lozano Reyes and Juliana Castro Londoño, students of the GAP Public Interest Clinic of the Universidad de Rosario, under the direction of Beatriz Londoño Toro, Director of the Human Rights Group and the GAP Public Action Group of the Universidad de Rosario, and under the academic direction of María Teresa Palacios, Director of the Human Rights Area and Nayid Abú Fager Coordinator of the GAP and professor, both the latter from the Universidad de Rosario.

10 The brief was submitted by Gabriel Choi Choi, Mar Cosín Muñoz, José García Añón, Sandra Gómez López, Lorena Menes Corrales, Ruth Mestre Mestre, Diana Núñez Pérez, Ausias Ortí Moreno, Anastasia Tsyhanok and Sara Verdú Vila of the Legal Clinic for Social Justice of the Universitat de Valencia and the Master's Program in "Human Rights, Democracy and International Justice" of the university's Human Rights Institute.

11 The brief was submitted by David Banisar, Senior Legal Counsel, on behalf of the organization, Article 19.

together with their responses to the information requested by the Court at the public hearing. On April 13, 2012, these briefs were forwarded to the parties and the Inter-American Commission. The President granted a time frame for the representative and the Commission to submit any observations they considered pertinent on the documentation presented by the State together with their final written arguments, as well as on the documentation forwarded by expert witness Tulande on March 28, 2012. In its brief of May 2, 2012, the Commission indicated that "it ha[d] no observations to make on the information provided by expert witness Tulande or [by the] State." The representative did not submit any observations.

12. On July 6, 2012, the Secretariat of the Court, on the instructions of the President, asked the State and the representative to provide specific information, documentation, or explanations as useful evidence. On July 18, 2012, Colombia submitted a document in partial response to the requests for helpful evidence and, following an extension granted to it, forwarded the rest of the documents and information requested by the President on July 27, and August 1 and 13, 2012. On August 9, 2012, the Commission submitted a communication in which it indicated that it had no observations to make on the documents provided by Colombia. After having been granted an extension, on August 21, 2012, the representative indicated that he had no observations to make on the said documentation. Also, on July 26, 2012, the representative forwarded his response to the request for useful evidence, submitting documentation that was already in the case file.

III
PARTIAL ACKNOWLEDGMENT OF INTERNATIONAL RESPONSIBILITY

A) The State's partial acknowledgment of international responsibility and observations of the Commission and the representative

13. In its answering brief, the State made a partial acknowledgement of its international responsibility. In its final arguments brief, it "expanded" this acknowledgement concerning the violation of Article 5 of the Convention to Mr. Vélez Restrepo's wife and their children Juliana and Mateo Vélez Román (*infra* para. 14(a)).

14. Regarding the facts and legal claims, it partially acknowledged its responsibility as follows:

> a) It "acknowledges, by its acts, the violation of the right to personal integrity recognized in Article 5 of the Convention, in relation to Article 1(1) of this instrument, with regard to Luis Gonzalo "Richard" Vélez Restrepo, his wife Aracelly Roman Amariles, and their children Juliana Velez Roman and Mateo Velez Roman, for the attack suffered by Mr. Vélez as a result of acts by members of the National Army when he refused to give up his video camera on August 29, 1996**."** In addition, it affirmed that it "does not acknowledge the violation of the right to personal integrity of Mr. Vélez and his immediate family as regards the presumed harassment, threats and attempted kidnapping alleged by the [Commission] and the representatives."
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> b) "By its acts, the violation of the individual dimension of right to freedom of expression recognized in Article 13 of the American Convention of Luis Gonzalo "Richard" Vélez Restrepo, in relation to Article 1(1) of this instrument, taking into account that he was prevented from exercising his right to seek information as a result of the attack of August 29, 1996." The State asserted that "the attacks that occurred [that day] interrupted the victim's journalistic work, thereby violating his

right to seek information." Colombia also maintained that it "is not responsible for violating the social dimension of freedom of thought and expression," and "is not responsible for violating the right to freedom of thought and expression of Mr. Vélez and his immediate family as regards the presumed harassment, threats and attempted kidnapping" that supposedly occurred after August 29, 1996.

c) "Partially, for the violation of the rights to judicial guarantees and judicial protection (Articles 8 and 25 of the American Convention), in relation to Article 1(1) of this instrument, with regard to Richard Vélez Restrepo, Aracelly Román Amariles, Juliana Vélez Román and Mateo Vélez Román. Essentially, because:

- No serious investigation was undertaken that would have allowed the determination and [eventual] criminal punishment of the perpetrators of the attack suffered by Luis Gonzalo "Richard" Vélez Restrepo on August 29, 1996." Colombia explained that "[t]his acknowledgment involves two aspects: the loss of the criminal case file (owing to] circumstances inherent in an area of détente decreed in the context of the peace process that the State had embarked on at the time of the events […]," and because, since it was impossible to consult the case file, it has been unable to comply "with its obligation to prove that the conclusion reached by the 22nd Military Criminal Judge regarding the failure to identify those presumably responsible resulted from a serious decision undertaken with due diligence in the investigation conducted by the military justice system."
- "No serious investigation was undertaken that would have determined and eventually led to the criminal punishment of the presumed authors of the threats of which Mr. Vélez Restrepo was a victim, and
- There was a violation of reasonable time in the investigation conducted into the presumed attempted kidnapping that supposedly took place against Mr. Vélez Restrepo on October 6, 199[7]."

d) Colombia affirmed that it was not responsible for the alleged violation of the principle of the natural judge. In addition, it argued that it was not responsible for the alleged violations of the right to movement and residence, the rights of the family, and the rights of the child to the detriment of Mr. Vélez Restrepo and his family; the alleged violation of the right to life of Mr. Vélez Restrepo, and the alleged violation of the honor and dignity of Mr. Vélez Restrepo.

15. Colombia also stated that it recognize as victims both Mr. Vélez Restrepo, and also his wife Aracelly Román Amariles and their children Juliana and Mateo Vélez Román.

16. Regarding the reparations, the State indicated that it "deeply regretted the events that occurred and that its intention was, above all, to achieve comprehensive reparation for the victims in this case and that similar events are not repeated." The State indicated its "good faith to repair the damage caused by the absence of a serious investigation into the threats and personal injury, and the efforts it will take to advance the ongoing investigation into the presumed attempted kidnapping." However, it opposed "the reparation requested as regard reopening the criminal investigations into personal injury and threats, which have now prescribed, [on the grounds that] this would constitute a violation of the international obligations embodied in the American Convention." Regarding the measures to protect Mr. Vélez Restrepo's family, the special programs to protect journalists at risk and to investigate crimes against them, and the training for the military forces, the State indicated that "these three reparations are unwarranted, since the State has been complying with them [… and] will continue to comply with them." As for the measures of psychosocial and medical

rehabilitation, Colombia indicated that it "would delay its observations on this measure of reparation until its closing arguments in order to have a more informed opinion after hearing the relevant testimony that would be submitted to the Court." However, in its final arguments, the State did not give any opinion in this respect. Regarding the measure of "educational rehabilitation" and the measures of satisfaction and guarantees of non-repetition, Colombia stated that it "adheres to whatever the Court decides" based on criteria of reasonableness and proportionality, and respecting the causal nexus with the violations proved. The State also analyzed the requests for compensation for pecuniary and non-pecuniary damage and reimbursement of costs and expenses, being "aware of the obligation [to make pecuniary reparation] and in keeping with the terms of its partial acknowledgment of responsibility." The State asked the Court to "establish the amounts it considered appropriate," but argued that the total amount requested was excessive compared to the sums ordered in other cases, and maintained that some claims for compensation had no causal nexus or supporting evidence.

17. The Court underscores that, during the public hearing before this Court, the State addressed the victims to apologize, as follows:

> [The State] would also like to address [the victims] to apologize for the events that occurred and to reiterate its willingness to remedy these incidents that should never have taken place. Mr. Vélez, the State regrets having violated your right to personal integrity owing to the attack you suffered as a result of the acts of some members of the National Army when you refused to hand over your video camera to them on August 29, 1996. It regrets having violated the individual dimension of your right to freedom of expression by preventing you from exercising your right to seek information owing to the attack suffered on August 29, 1996. Mr. Vélez, Mrs. Román, and, through you, Juliana and Mateo, the State regrets having violated your rights to judicial guarantees and judicial protection. The State acknowledges as unjustifiable that a diligent investigation was not conducted that would have allowed the perpetrators of the attack suffered on August 29, 1996, to be determined and criminally punished; that a diligent investigation was not conducted that would have allowed the presumed authors of the threats that occurred to be determined and eventually criminally punished, and that there has been a violation of reasonable time in the investigation underway for the presumed attempted kidnapping of October 1997.

18. The Commission indicated that "it assessed positively the State of Colombia's partial acknowledgment of responsibility and considers that it makes a positive contribution to these Inter-American proceedings and, in general, to the exercise of human rights." The Commission considered that, regarding the facts, this acknowledgment "is ambiguous on several points," because the State affirms that some facts of the Merits Report are "partially true," without specifying which facts it accepts as true and which it does not. The Commission also indicated the alleged violations that it understood were acknowledged by the State and those that were not included in the said acknowledgment. The Commission asked that the Court to give legal effect to the said acknowledgment; "compile a detailed description of the facts […] and the violations that took place," and "make a comprehensive analysis of the violations that have been partially accepted and those that are contested."

19. In his brief with observations on the State's partial acknowledgment of responsibility in its answering brief, the representative referred to alleged violations that Colombia had not acknowledged.

B) Considerations of the Court

20. Pursuant to Articles 62 and 64 of the Court Rules of Procedure,[12] and in exercise of its authority for the judicial protection of international human rights, an issue of

[12] Articles 62 and 64 of the Court's Rules of Procedure establish:

Article 62. Acquiescence

international public order that transcends the will of the parties, it is incumbent upon the Court to ensure that the acts of acknowledgment are acceptable for the objectives that the inter-American system seeks to achieve. In this task, the Court is not limited merely to observing, recording, or taking note of the acknowledgment made by the State, or to verifying the formal conditions of the said acts, but rather it must relate them to the nature and gravity 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, so that, insofar as possible and in exercise of its competence, it is able to assess the truth about what happened.[13]

21. In the instant case, the Court finds that, as in other cases involving Colombia before the Court,[14] the State's partial acknowledgement of the facts, acquiescence with regard to some of the legal claims, and expression of willingness to "achieve comprehensive reparation for the victims," constitute a positive contribution to these proceedings, to the exercise of the underlying principles of the American Convention[15] and, in part, to satisfying the needs for reparation of the victims of human rights violations.[16] Furthermore, as in other cases,[17] the Court considers that the acknowledgement made by the State produces full legal effects according to Articles 57 and 58 of the Court's Rules of Procedure, and has considerable symbolic value to guarantee the non-repetition of similar acts.

22. Taking into account the terms of the State's acknowledgment and the corresponding observations of the Commission and the representative, the Court considers that the international responsibility of the State is no longer in dispute for the violation of Article 5 (Right to Humane Treatment) of the American Convention, to the detriment of Luis Gonzalo Vélez Restrepo, his wife Aracelly Román Amariles, and their children Juliana and Mateo Vélez Román, owing to the physical attack on Mr. Vélez Restrepo perpetrated by members of the National Army on August 29, 1996, when, in his capacity as a news cameraman, he was filming the riots that occurred during a protest demonstration organized by coca-growing peasants. In addition, the dispute has ceased regarding the violation of Article 13

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 presumed 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 a 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.

13 *Cf. Case of Kimel v. Argentina. Merits, reparations and costs.* Judgment of May 2, 2008. Series C No. 177, para. 24, and *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador. Merits and reparations.* Judgment of June 27, 2012. Series C No. 245, para. 26.

14 *Cf. Case of Manuel Cepeda Vargas v. Colombia. Preliminary objections, merits, reparations and costs.* Judgment of May 26, 2010, para. 18; *Case of Valle Jaramillo et al. v. Colombia*. *Merits, reparations and costs*. Judgment of November 27, 2008. Series C No. 192, para. 46; *Case of Escué Zapata v. Colombia*. *Merits, reparations and costs*. Judgment of July 4, 2007. Series C No. 165, para. 20; *Case of the La Rochela Massacre v. Colombia*. Merits, reparations and costs. Judgment of May 11, 2007. Series C No. 163, para. 29, and *Case of the Ituango Massacres v. Colombia. Preliminary objection, merits, reparations and costs*. Judgment of July 1, 2006. Series C No. 148, para. 79.

15 *Cf. Case of El Caracazo v. Venezuela. Merits*. Judgment of November 11, 1999. Series C No. 58, para. 43, and *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador. Merits and reparations*, para. 27.

16 *Cf. Case of Manuel Cepeda Vargas v. Colombia. Preliminary objections, merits, reparations and costs,* para. 18, and *Case of Contreras et al. v. El Salvador. Merits, reparations and costs.* Judgment of August 31, 2011 Series C No. 232.

17 *Cf. inter alia*, *Case of Kimel v. Argentina. Merits, reparations and costs.* Judgment of May 2, 2008. Series C No. 177, paras. 23 to 25, and *Case of Manuel Cepeda Vargas v. Colombia. Preliminary objections, merits, reparations and costs*, para. 18.

(Right to Freedom of Expression and Thought) of the Convention to the detriment of Luis Gonzalo Vélez Restrepo as a result of this attack. However, the Court notes that Colombia contested the facts relating to the injuries that the Commission and the representative alleged that Mr. Vélez Restrepo had suffered as a result of this attack on August 29, 1996. Colombia also contested the alleged violation of the social dimension of the right to freedom of thought and expression as a result of the said events of August 29, 1996.

23. The Court also understands that, since the State has acknowledged its responsibility for the violation of Articles 8(1) and 25 of the American Convention owing to the lack of a "serious investigation that would allow the determination and criminal punishment of the perpetrators" of the said attacks on August 29, 1996, and of the subsequent supposed threats and harassment, the dispute has ceased with regard to the violation of these articles based on the lack of due diligence in the said investigations. Nevertheless, the dispute subsists with regard to the alleged violation of the right to a natural judge, given that the State does not acknowledge its alleged violation because the investigation into the events of August 29, 1996, was conducted by the military criminal justice system. Regarding the investigation into the attempted arbitrary deprivation of liberty of October 6, 1997, the State acknowledged the violation of "reasonable time" in the investigation into the offense of attempted kidnapping, but did not expressly indicate that it acknowledged a violation owing to the "lack of due diligence" in the investigation alleged by the Inter-American Commission; therefore, the Court will rule in this regard (*infra* para. 251)

24. Furthermore, the dispute subsists regarding the State's alleged responsibility for the violation of Articles 5 and 13 of the American Convention as a result of the alleged threats, harassment, and attempted deprivation of liberty that took place after the events of August 29, 1996, since Colombia argues that there is insufficient evidence that such events took place, and also that the participation of State agents in such events and the causal nexus between the attack on August 29, 1996, and the presumed subsequent threats has not been proved. The State also argues that it has complied with its obligation to offer measures of protection to Mr. Vélez Restrepo and his family following the specific request made by Mr. Vélez Restrepo to "the competent authorities" on October 6, 1997. In addition, Colombia did not acknowledge the violations alleged by the Commission and the representative of Articles 22(1) (Freedom of Movement and Residence), 17(1) (Rights of the Family) and 19 (Rights of the Child) of the Convention to the detriment of Mr. Vélez Restrepo, his wife Mrs. Román Amariles, and their children Mateo and Juliana Vélez Román. The dispute also subsists with regard to the violation alleged by the representative of Article 4 (Right to Life) of the Convention to the detriment of Mr. Vélez Restrepo owing to the alleged "forced disappearance attempt" in relation to the events that occurred on October 6, 1997, described by the Inter-American Commission as an "attempted kidnapping." The State also did not acknowledge the violation alleged by the representative of Article 11(1) (Right to honor and dignity) of the Convention to the detriment of Mr. Vélez Restrepo "as a result" of the "persistent" alleged violation of Article 13 of the Convention.

25. In the preceding paragraphs, the Court has indicated the facts and legal claims that the State has acknowledged with regard to the violation of Articles 5, 13, 8, and 25 of the American Convention. The State also acknowledged as victims both Mr. Vélez Restrepo, and also his wife, Aracelly Román Amariles, and their children Mateo and Juliana Vélez Román, as previously indicated. Regarding the claims for reparations, the State expressed its willingness to repair fully the harm caused by the violations that it had acknowledged, but contested "the requested reparation of reopening the criminal investigations into personal injuries and threats that had prescribed." Colombia also referred to the reparations it considers it has been complying with and with which it will continue to comply. As for the other reparations requested, the State indicated that it defers to the decision of the Court.

The State asked the Court to "establish the amounts it considers appropriate" with regard to the requests for compensation for pecuniary and non-pecuniary damage and reimbursement of costs and expenses, but it maintained that some of the claims for damages lacked a causal nexus or supporting evidence.

26. Taking into consideration that several issues remain in dispute with regard to some of the facts that constitute alleged violations of Articles 5, 13, 22, 19, 8(1), 25, 4 and 11 of the Convention, as well as the determination of appropriate measures of reparation, the Court finds it necessary to deliver a judgment in which it determines the facts that occurred, specifies the scope of the violations recognized, and rules on the issues still in dispute. In addition, the Court emphasizes that such a judgment contributes to making redress to the victims, to avoiding the repetition of similar events and, in sum, to achieving the purposes of the inter-American human rights jurisdiction.[18]

IV
PRELIMINARY OBJECTION
The Court's alleged lack of competence to examine facts or claims included in the Merits Report "that do not comply with the requirements of the Convention or the Rules of Procedure"

A) Arguments of the State and observations of the representative and the Inter-American Commission

27. In the answering brief, the State argued as a preliminary objection "the lack of competence of the […] Court to examine and admit facts or claims included within the factual framework of the Merits Report presented by the Commission when submitting the case that do not comply with the requirements established in the Convention." Colombia stated that it "respects the independence, autonomy, and broad powers of the […] Commission to assess the evidence," but that, in this case, the said organ declared that some of the facts were proved "owing to an incorrect assessment of documents provided as evidence of their existence and circumstances." In this regard, the State set out the reasons why it considered that the Commission "incorrectly assessed the evidence" regarding two aspects of the factual determinations of the Merits Report: (a) the determination that the presumed threats, harassment, and attempted kidnapping suffered by Mr. Vélez Restrepo involved State agents and had a causal nexus with what happened on August 29, 1996, and the subsequent actions aimed to obtain justice, and (b) the description of the injuries presumably suffered by Mr. Vélez Restrepo on August 29, 1996. The State asked the Court to effect "a control of legality" in order to ensure that the factual framework of the Merits Report does not constitute a factor of procedural inequality for the State and, consequently, to "declare itself incompetent to examine those facts incorrectly determined by the Commission." Colombia emphasized the importance of this issue, taking into account that this is "the factual framework on which the brief with pleadings, motions and evidence is based […] in order to determine the presumed violations and, thus, the claims for compensation."

28. The representative observed that "[t]he proven facts in a case and the violations derived from them are matters that relate to the proceedings on merits in the case, and are not a preliminary objection."

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[18] *Cf. Case of Tiu Tojín v. Guatemala. Merits, reparations and costs.* Judgment of November 26, 2008. Series C No. 190, para. 26, and *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador. Merits and reparations*, para. 28.

29. The Commission affirmed that the State's arguments on its assessment of the evidence "do not have the characteristics of a preliminary objection, but of a dispute on the merits of two groups of facts." In addition, it held that the State's disagreement with the said assessment of the evidence "cannot be understood as a situation of its defenselessness or a violation of its right to defense." The Commission indicated that "such arguments cannot be examined without analyzing the merits of the case" and that "[i]t corresponds to the Court, in the proceedings before it, to make the corresponding factual determinations."

B) Considerations of the Court

30. The Court has stated that preliminary objections are acts that seek to prevent the analysis of the merits of a disputed matter by contesting the admissibility of an application or the competence of the Court to hear a specific case or any aspect of the latter, owing either to the person, matter, time, or place, provided that these objections are of a preliminary nature.[19] If these objections cannot be examined without previously analyzing the merits of a case, they cannot be examined by means of a preliminary objection.[20]

31. The Court observes that the State has not alleged that there was a violation of the State's right of defense in the case before the Commission; but rather it indicates its disagreement with the assessment of the evidence made by the Commission with regard to two factual determinations from which it determines State responsibility.

32. Although the facts of the Merits Report submitted to the consideration of the Court constitute the factual framework of the proceedings before the Court,[21] the Court is not limited by the assessment of the evidence and characterization of the facts made by the Commission in the exercise of its authority.[22] The Court makes its own determination of the facts of the case, evaluating the evidence offered by the Commission and the parties, and the useful evidence requested, respecting the right of defense of the parties and the purpose of the *litis.*[23] During the proceedings before the Court, the State has procedural opportunities to exercise its right of defense and to contest and reject the facts submitted to the Court's consideration. Moreover, the arguments submitted by the State when filling the preliminary object will be taken into account when establishing the facts that this Court finds proved and determining whether the State is internationally responsible for the alleged violations of the treaty-based rights.

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[19] *Cf. Case of Las Palmeras v. Colombia. Preliminary objections.* Judgment of February 4, 2000. Series C No. 67, para. 34, 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. 39.

[20] *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 González Medina and family members v. Dominican Republic. Preliminary objections, merits, reparations and costs*, para. 39.

[21] *Cf. Case of Díaz Peña v. Venezuela. Preliminary objection, merits, reparations and costs*. Judgment of June 26, 2012. Series C No. 244, para. 34.

[22] *Cf. inter alia, Case of Fairén Garbi and Solís Corrales v. Honduras. Merits.* Judgment of March 155, 1989. Series C No. 6, paras. 153 to 161, and *Case of the Miguel Castro Castro Prison v. Peru. Merits, reparations and costs*. Judgment of November 25, 2006. Series C No. 160, paras. 210 to 228.

[23] *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 López Mendoza v. Venezuela. Merits, reparations and costs.* Judgment of September 1, 2011. Series C No. 233, para. 27.

33. Based on the above, the Court considers that is not appropriate to rule in a preliminary manner on the Commission's evaluation in relation to two aspects of the factual determination in the Merits Report (*supra* para. 27), because this analysis corresponds to the merits of the case. Consequently, the Court rejects the preliminary objection filed by the State.

V
PRIOR CONSIDERATIONS

34. In this chapter, the Court will rule on arguments put forward by the State in its answering brief affirming that there was a "failure by the Commission failed to comply with the basic requirements for submitting the case to the Court" and a "failure to comply with the regulatory requirements regarding the brief with pleadings, motions and evidence," because "it contains numerous facts and claims that bear no relationship to or cannot be included within the factual framework established by the Commission in its presentation of the case to the […] Court."

35. The Court will now analyze the State's arguments that were not decided during the processing of the case[24] and that require analysis prior to considerations of the merits of the case and the eventual reparations. The Court will make prior considerations on: (A) the alleged failure to comply with basic requirements for the Commission to submit the case to the Court, and B) the factual framework of this case.

A) *Alleged failure to comply with basic requirements for submission of the case to the Court by the Commission*

Arguments of the State and observations of the Inter-American Commission and the representative

36. The State argued that the Inter-American Commission had failed to comply with the provisions of subparagraphs (c) and (d) of Article 35(1) of the Court's Rules of Procedure. Colombia further affirmed that the Commission had failed to comply with the said Article 35(1)(c) because the reasons why it submitted the case to the Court were "improperly motivated," given that it did not take into consideration the State's continuing efforts to comply with recommendations 4,[25] 5[26] and 6[27] of Merits Report No. 136/10. The State asked

[24] The arguments of the State on the "failure to comply with the requirements indicated in Article 35(1)(f)" of the Rules of Procedure, objecting to the expert opinions proposed by the Commission were considered by the President of the Court in the Order he issued on January 25, 2012. *Cf. Case of Vélez Restrepo and Family v. Colombia*. Order of the President of January 25, 2012, Considering paragraphs 9 to 16. Also, Colombia's arguments about the failure to comply with Article 35(1)(d) of the Court's Rules of Procedure, because there were problems with the file of the proceedings before the Commission such as illegible and repeated documents, were answered in a note of the Secretariat (*infra* para. 65); the Court therefore reiterates that it will assess these documents at the appropriate procedural moment.

[25] Regarding the recommendation related to the "adopt[ion] of the measures necessary to protect and safeguard the security of the Vélez Román family if they decide to return to Colombia on a temporary or permanent basis," the State asserted that it had asked the Commission that compliance with this recommendation "be suspended until" the petitioners indicate their interest in returning to Colombia; but the Commission had not ruled on this request and had not indicated any grounds to assess that the State had failed to comply with this commitment.

[26] Regarding the recommendation to "continue adopting and strengthening special programs to protect journalists at risk and to investigate crimes against them," the State argued that it had provided the Commission with evidence of its "programs to protect journalists" and "the juridical and legal framework" supporting them, which confirmed its commitment to comply with this recommendation. The State indicated that this recommendation required "compliance over time," and provided information that "proved that […] it [had]

the Court "not to consider non-compliance with recommendations 4, 5, and 6 of […] Report No. 136/10 as grounds for submitting the case to its jurisdiction" and, consequently, "to reject and disallow the measures of reparation contained in subparagraphs (d), (e) and (f)" requested by the Commission, "because the said measures are currently being implemented by the State, invalidating a possible guilty verdict in this regard." The State also argued that the Commission had failed to comply with the provisions of Article 35(1)(d) of the Court's Rules of Procedure because it had not provided a copy of the report submitted by Colombia regarding to its compliance with the Commission's recommendations, which forms part of the case file before the Commission.

37. The Commission referred to the State's arguments regarding the requirements established in Article 35(1)(c) indicating, *inter alia*, that its recommendations "may have different characteristics"; thus, in the instant case, "the information available reveal[ed] progress in complying with some [of them] and lack of progress in complying with others." According to the Commission, this "does not mean that it is procedurally viable to divide up or separate the aspects of the case that it presents to the Court based on criteria of "recommendations complied with" and "recommendations not complied with." The Commission indicated that "[a]ccording to the American Convention, the Rules of Procedure of both organs of the system, and the practice of more than 20 years, when the Commission submits a case to the Inter-American Court, it submits it in its entirety, with the sole exception of the limitations that may arise from the Court's temporal competence." In addition, it indicated that when progress has been verified in compliance with some of the recommendations, "the Commission does not exclude any facts, legal consequences, or claims for reparations from a case it submits to the Court." The Commission also argued that, although it was true that some of the recommendations called for compliance over time, "given that it had not received a request for an extension in keeping with the applicable regulatory requirements, and in view of the failure to comply with a large group of the recommendations, the Commission was not in a procedural position that would allow it to monitor […] the overall progress of all the recommendations for a longer period without relinquishing the possibility of submitting the case to the Court." Moreover, regarding the failure to forward the State's report of February 22, 2010, to the Court, the Commission indicated that this was due to "an inadvertent error," but that the said report "[had been] referred to in the note transmitting the case and that, in any case, the Court now has the report ensuring that it, at this time, it has the entire case file."

Considerations of the Court

38. First, the Court considers that, even though Article 35(1)(c) of the Court's Rules of Procedure requires the Commission to indicate the reasons that led it to submit the case to the Court and its observations on the defendant State's response to the recommendations in the Merits Report, the Commission's assessment of whether or not to submit a case to the Court must be the result of a collective exercise of an independent and autonomous nature

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continued complying with it." The State mentioned that the fact that the Commission appreciated the information presented as "important steps in compliance" meant that it recognized that this recommendation could not be implemented immediately, and "invalidated the reasons" it had to present the case to the Court in relation to this recommendation.

[27] Regarding the recommendation "to train the armed forces on the role played by journalists in a democracy, and on the right of journalists to cover freely and safely situations of public order and armed conflict," the State referred to the nature of this recommendation that required compliance over time and reiterated that it had informed the Commission about the measures it had taken in this regard and provided updated information on progress in implementing this recommendation. It maintained that the Commission had not made any observations that would allow it to be understood how this recommendation had not been complied with.

that it carries out in its capacity as a supervisory organ of the American Convention.[28] Articles 45 and 46 of Commission's Rules of Procedure regulate the powers of this organ regarding the submission of a case to the Court.

39. It is incumbent on the President of the Court to corroborate that, when submitting the case, the Commission has indicated the said reasons and observations, but this does not entail making a preliminary analysis of the merits of the said reasons.[29] The Court also considers that, even when the State is implementing one or more of the recommendations made by the Commission, the latter may consider that there are still sufficient grounds to submit the case to the Court owing to the failure to comply with other recommendations that it considers fundamental in each case.

40. The Court observes that, when submitting this case, the Commission referred to the State's report regarding implementation of the recommendations made in the Merits Report. Among other observations, the Commission recognized and appreciated that the State had taken important steps in implementing two of the recommendations (relating to training for the armed forces, and special protection programs for journalists at risk and investigation of offenses against them). However, the Commission observed that there had been "no compliance" with the recommendations to provide "comprehensive reparation for the victims" and the obligation to investigate and to punish those responsible for the violations. In its brief submitting the case, the Commission indicated that "it submit[ted] to the jurisdiction of the Court all the facts and humans rights violations […] described in Merits Report No. 136/10" and asked the Court to order six measures of reparation, which concur precisely with the six recommendations made by the Commission in the said report.

41. The President of the Court considered that, when submitting the case, the Commission had fulfilled the requirements under Article 35 of the Court's Rules of Procedure and, consequently, requested the Secretariat to notify the submission of the case. The Court supports the President's action and, regarding the Commission's omission to provide a copy of the State's report on compliance with the recommendations made by the Commission on that occasion, the Court notes that the latter indicated that the failure was due to an inadvertent error and that the State forwarded this report to the Court as an attachment to its brief in answer to the submission of the case. The State also provided the Court with additional information related to progress in compliance with the said recommendations.

42. Based on the above findings, this Court reaffirms that the broad acknowledgment of responsibility made by Colombia, as well as the progress made in implementing recommendations made by the Commission in its Merits Report and the above-mentioned arguments of the State in this regard, will be assessed by the Court when it rules on the measures of reparation requested by the Commission and the representative of the victims (*infra* Chapter XII).

B) The factual framework of the case

Arguments of the State and observations of the representative

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[28] *Cf. Case of the 19 Tradesmen v. Colombia*. Preliminary objection. Judgment of June 12, 2002. Series C No. 93. para. 31.

[29] *Cf. Case of the 19 Tradesmen v. Colombia*. *Preliminary objection*, para. 31, and *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. 27.

43. The State asked the Court to declare inadmissible the facts and claims included in the pleadings and motions brief "that are unrelated or outside the factual framework established by the Commission in the presentation of the case." Colombia indicated in detail which of the alleged facts it considers outside the factual framework and pointed out that some are included in the section of the pleadings and arguments brief on the factual framework,[30] while others were "added by the representative outside the chapter on facts" of the said brief.[31]

44. Furthermore, in its final oral and written arguments, the State added that "it has not denied [the] responsibility it bears for the excessive use of force in the case of Mr. Vélez, but [it] does not accept that, around this fact, a series of events are constructed, tied in and added, in order to convert an isolated incident of excessive use of force, into a systematic State practice, pattern, or policy."

45. The representative observed that "the clarification of the context and other essential details in the instant case do not constitute an allegation of new facts that differ from those described in more general terms by the Inter-American Commission in its Merits Report." According to the representative, these are "complementary elements" that seek to "better characterize the violations and harm suffered by the victims." He affirmed that by calling the "factual information" presented in the pleadings and arguments brief "new facts," the State was disregarding explicit references made by the Commission in its report "to contextual or complementary information that [was] essential to substantiate some of the material facts proved." For instance, the representative pointed out the need to provide information on the harm to the lives of the Vélez Román family as a result of the threats and harassment so as to be able to "understand [… and] evaluate […] properly" this fact established by the Commission. In addition, the representative mentioned that, in its Merits Report, the Commission "referred to facts relating to the general situation in Colombia of repression exercised by the armed forces against those who denounced them during the years in which the Vélez Román family was threatened and harassed by State agents," which is why, in his pleadings and arguments brief, he had "present[ed] the contextual information on the impunity that reigned in Colombia and the persecution of journalists and other individuals who combatted this."

46. The Commission did not forward observations in this regard.

Considerations of the Court

47. In order to resolve this aspect, the Court will refer to its consistent case law. This Court has established that the factual framework of the proceedings before the Court is

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[30] Colombia indicated that it considers as new facts those described in paragraphs 16 to 43 of the pleadings and motions brief, with the exception of the fact described in paragraph 28, which states that the perpetrators of the attack against Mr. Vélez in El Caquetá were members of the Army. The State also asserted that the facts and assertions included in paragraphs 16 to 22 constitute "general affirmations" that "do not describe facts that are directly or indirectly related to the case," and that the affirmations on the alleged systematic practice of forced disappearances, extrajudicial executions, and torture, by State agents are based on "an assessment regarding which there is no certainty." In addition, Colombia referred to the lack or insufficiency of evidence to support the alleged facts included in paragraphs 23 to 34 of the pleadings and motions brief. Regarding the facts included in paragraphs 37 to 43 of the pleadings and motions brief, the State also argued that, as defined by the Inter-American Commission in its Merits Report, "the incident that occurred of October 6, 1997, consisted in an alleged attempted kidnapping; therefore, it is not admissible to examine the argument of the representatives insisting on defining this incident as an attempted forced disappearance."

[31] The facts described in the pleadings and motions brief outside the chapter "Factual analysis […]," which Colombia considers to be new, are those included in paragraphs 58, 59, 65, 66, 67, 71, 72, 76, 77, 78, 81, 83, 84 and 94 to 145.

constituted by the facts described in the Merits Report submitted to the Court's consideration.[32] Thus, it is inadmissible for the parties to allege new facts, distinct from those presented in the said report, without prejudice to describing those that may explain, clarify or reject the facts that have been mentioned in the report and submitted to the consideration of the Court.[33] The exceptions to this principle are facts that are considered supervening, provided they are related to the facts of the proceedings. In addition, the presumed victims and their representatives may invoke the violation of rights other than those included in the Merits Report, provided that they relate to facts already contained in the said document, because the presumed victims are the holders of all the rights recognized in the American Convention.[34] Ultimately, in each case, it is the Court that decides the admissibility of the allegations regarding the factual framework in order to ensure the procedural equality of the parties.[35]

48. The Court observes that the representative included numerous additional contextual facts and assertions to those described in the Commission's Merits Report. Therefore, the Court considers it appropriate to apply the said case law, bearing in mind the arguments of Colombia about supposed new contextual references and facts included in the pleadings and arguments brief. The Court will now proceed to verify which of these facts do not merely explain or clarify the facts presented by the Inter-American Commission in the said report and which are related to the factual framework of this case.

B.1) Regarding contextual references made in the pleadings and motions brief

49. In order to decide on the contextual references included in the pleadings and motions brief, the Court finds it relevant to note that the Commission's Merits Report in this case did not include a section on the context. The Commission began the account of the facts directly by referring to "[t]he attack suffered by Mr. Vélez on August 29, 1996." However, within the description of the events that Mr. Vélez Restrepo experienced, the Commission included some contextual references related to the protest demonstration that Mr. Vélez Restrepo was covering as a cameraman for a news program,[36] and also stated that, at the time of the events, "the Colombian armed forces strongly opposed investigations against their members and, in some cases, took measures, including threats and attacks, to obstruct these procedures."[37] In its legal arguments, the Commission referred to this context as "the above-mentioned practice of the Colombian armed forces at that time of resisting and, at times, obstructing investigations against them."[38]

50. For his part, when including in his chapter "Factual analysis," numerous additional contextual facts and assertions to those in the Commission's Merits Report, the representative explained that they provided a "conceptual framework" that would allow the

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[32] *Cf. Case of the Five Pensioners v. Peru. Merits, reparations and costs.* Judgment of February 28, 2003. Series C No. 98, para. 153, and *Case of Díaz Peña v. Venezuela. Preliminary objection, merits, reparations and costs*, para. 34.

[33] *Cf. Case of The Five Pensioners v. Peru. Merits, reparations and costs*, para. 153, and *Case of Díaz Peña v. Venezuela. Preliminary objection, merits, reparations and costs*, para. 34.

[34] *Case of The Five Pensioners v. Peru, Merits, reparations and costs*, para. 155, and *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador. Merits and reparations*, footnote 28.

[35] *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 Kichwa Indigenous People of Sarayaku v. Ecuador. Merits and reparations*, footnote 28.

[36] Paragraphs 80 and 81 of Merits Report 136/10.

[37] Paragraph 90 of Merits Report 136/10, and footnote 38.

[38] In Paragraph 118 of Merits Report 136/10.

facts to be placed in the "broader context of the human rights crisis in Colombia between 1995 and 1998," and would "permit reviewing the allegation presented during the proceedings before the [Commission] that, on October 6, 199[7], Richard Vélez Restrepo survived a real 'attempted forced disappearance' rather than a mere 'attempted kidnapping.'"

51. First, the Court has verified that in the sections entitled "The human rights crisis in Colombia"[39] and "Forced disappearances"[40] of the "Factual analysis" chapter of the pleadings and motions brief, the representative introduces general contextual facts and references that are not part of the factual framework described by the Commission. In addition, the Court considers that the facts included in the section "A situation of endemic impunity,"[41] are also outside the factual framework, with the exception of the alleged context of "threats and violence […] directed against those who tried to use the Colombian judicial system to file complaints of this nature and against those who formed part of the latter,"[42] because the this concurs with the above-mentioned contextual assertions made by the Commission in the Merits Report (*supra* para. 49). Regarding the facts included in the section entitled "The program to eradicate coca cultivation and peasant protests,"[43] the Court notes that they related, above all, to other alleged abuses and violations of human rights supposedly committed by security forces between July and December of 1996, thus they fall outside the facts of this case.

52. Furthermore, the Court has verified that the Commission did not insert the fact of the attack perpetrated against Mr. Vélez Restrepo on August 29, 1996, within a context of violence against journalists by State agents.[44] The Court will only take into account the references to a possible context of special risk for journalists in Colombia to the extent that they are useful to analyze the State's obligation to guarantee life and safety in relation to the supposed threats and harassment against Mr. Vélez Restrepo and his family that occurred after the attack of August 29, 1996. In this regard, the Court recalls that, during the public hearing in this case, it asked Colombia to provide useful information in relation to this alleged context,[45] which the State provided with its final written arguments

53. The Court places the facts of the present case in context in order to understand them adequately and in order to rule on the State's responsibility for the specific facts of this case, but, in doing so, it does not seek to rule on the diverse circumstances included in that context.[46]

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39 Paragraphs 16 to 18 of the pleadings and motions brief (merits file, tome I, folios 108 and 109).

40 Paragraphs 37 to 43 of the pleadings and motions brief (merits file, tome I, folios 116 to 119).

41 Paragraphs 19 to 23 of the pleadings and motions brief (merits file, tome I, folios 109 to 111). In addition, regarding the assertions included in paragraphs 19 to 22 (on the alleged impunity in Colombia), the State affirmed that they constitute "general assertions contained in the cited documents and do not explain facts that are related directly or indirectly to the case."

42 Paragraph 23 of the pleadings and motions brief (merits file, tome I, folio 111).

43 Paragraphs 24 to 31 of the pleadings and motions brief (merits file, tome I, folios 111 to 114).

44 *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. 59, and *Case of López Mendoza v. Venezuela. Merits, reparations and costs*, para. 29.

45 The Court requested information on the threats, harassment, executions, and disappearances of which journalists may have been victims in the period between 1995 and 1998, the complaints that had been filed in this regard, and the corresponding actions taken by the State.

46 *Cf. Case of the La Rochela Massacre v. Colombia. Merits, reparations and costs*, para. 32, and *Case of Manuel Cepeda Vargas v. Colombia. Preliminary objection, merits, reparations and costs,* para. 51.

B.2) Regarding other facts included in the pleadings and motions brief

54. As already indicated (*supra* para. 47), this Court cannot rule on events that do not form part of the factual framework contained in the Commission's Merits Report. Consequently, the Court will not analyze the facts included in the pleadings and motions brief relating to the presumed accusation by a certain Army General against Mr. Vélez Restrepo that he was "a FARC sympathizer,"[47] or the supposed conversation between Mr. Vélez and the President of the Republic at the time, during a working trip in late September 1996, during which Mr. Vélez told him about the persecution he was experiencing.[48] Consequently, the Court will not rule on the alleged violation of Article 11 of the American Convention in relation to the first of these facts, and will not take into account the second fact when ruling on the violations of Articles 5 and 13 of the Convention.

55. However, the Court considers that numerous facts explained by the representative in the pleadings and motions brief that the State objected to, are related to the facts presented by the Commission in the factual framework of the Merits Report. This is the case of the following presumed facts:

a) Those that describe the presumed meeting that Mr. Vélez Restrepo had with the director of the news program for which he worked, where "he was asked to abandon all legal actions regarding the attack in Caquetá," and the alleged consequences of Mr. Vélez Restrepo's refusal to do so,[49] because they seek to explain the fact asserted by the Commission regarding the supposed "strong pressure" exerted by the medium for which Mr. Vélez worked "to censor his work and make him withdraw his legal complaints against the Army," as well as his removal "from the group of reporters with access to military news sources";

b) Those related to the income that Mr. Vélez Restrepo supposedly earned at the time of the facts, and other information relating to the studies and activities of the members of the Vélez Román family in mid-1996[50] and the place where they lived, as well as the alleged facts regarding the Vélez Roman family moving house in early October 1996, and the change in schools for Mateo and Juliana.[51] These facts are related to claims made by the Commission in the Merits Report concerning the "profound effects" of the alleged threats that occurred after August 29, 1996, "on the lives of the petitioners, forcing them to move house, to hide, to abandon their daily routines, and to experience a difficult financial situation," which was described in detail by the representative;

c) Those relating to the alleged decrease in and subsequent reactivation of threats against Mr. Vélez Restrepo[52] and also the alleged facts included under the heading "Second stage of threats that culminated in a disappearance attempt: August - October 1997,"[53] because they are directly related to the factual framework of the Merits Report. In this information, the representative presents more details of the references made by the Commission in the said report on the "intensification" of

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47 Paragraphs 65 of the pleadings and motions brief (merits file, tome I, folio 123).

48 Paragraph 76 of the pleadings and motions brief (merits file, tome I, folio 126).

49 Paragraphs 66 and 67 of the pleadings and motions brief (merits file, tome I, folio 124).

50 Paragraphs 71 and 72 of the pleadings and motions brief (merits file, tome I, folio 125).

51 Paragraph 77 of the pleadings and motions brief (merits file, tome I, folio 126).

52 Paragraph 78 of the pleadings and motions brief (merits file, tome I, folios 126 and 127).

53 Paragraphs 81, 83 and 84 of the pleadings and motions brief (merits file, tome I, folios 127 and 128).

threats and harassment as of September 1996 and "in the second half of 1997," as well as the facts presented by the Commission about what happened on October 3, 5 and 6, 1997.

d) Those described by the representative in the sections entitled "Richard Velez," "First stage of family life in the United States (New York): September 1998-February 2007," "Second stage of life in the United States (Greenville, South Carolina and New York): March 2007 - June 2011" and "Individual Harm."[54] These alleged facts seek to clarify and provide details of the information provided by the Commission in the factual framework with regard to the events of October 9, 1997, when Mr. Vélez Restrepo was in the United States of America separated from his family that was in Medellin; the granting of asylum by the United States authorities, and the subsequent family reunion in 1998, as well as how these events have supposedly affected them psychologically; the repercussions on the professional careers of Mr. Vélez Roman and Mrs. Román Amariles; the financial difficulties they have had to face in order to survive in the United States, and the distance from their next of kin who live in Colombia.

56. Lastly, based on its case law (supra para. 47), the Court considers inadmissible Colombia's intention that the Court should not analyze the representative's classification of what happened to Mr. Vélez Restrepo on October 6, 1997, as an "attempted forced disappearance," because the representative is not introducing a new fact. In its Merits Report, the Commission considered it proved that Mr. Vélez had suffered an "attempted kidnapping" on October 6, 1997. The representative is referring to that fact, but he gives it a different legal definition to the one proposed by the Inter-American Commission. Accordingly, in its analysis of the merits, the Court will rule on the representative's allegation in relation to the legal definition of that fact and the alleged violation of Article 4 of the American Convention.

57. According to the above findings, the Court will not rule on the alleged contextual references and facts described by the representative that are not part of the factual framework of this case (supra paras. 51 to 54) and, consequently, it will not rule on the allegations regarding violations of the American Convention in relation to those facts. As indicated, the Court will rule on or take into consideration those facts that explain, clarify or reject the facts presented by the Inter-American Commission, as indicated above.[55] When determining the facts and ruling on their legal consequences, the Court will take into account the State's arguments concerning the absence or insufficiency of evidence on which the contextual references and facts are based.

VI
COMPETENCE

58. The Inter-American Court has competence to hear this case, pursuant to Article 62(3) of the Convention, because Colombia has been a State Party to the American Convention since July 31, 1973, and accepted the compulsory jurisdiction of the Court on June 21, 1985.

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[54] Paragraphs 94 to 145, which form part of the chapter of the pleadings and motions brief entitled "Forced separation of the Velez Roman family: October 1997 – September 1998" (merits file, tome I, folios 130 to 137).

[55] *Cf. Case of Barbani Duarte et al. v. Uruguay. Merits, reparations and costs.* Judgment of October 13, 2011. Series C No. 234, para. 41.

VII
EVIDENCE

59. Based on the provisions of Articles 50, 57, 58, and 59 of the Rules of Procedure, as well as its case law regarding evidence and its assessment,[56] the Court will examine and assess the documentary probative elements forwarded by the parties at the different procedural opportunities, the statements of the presumed victims, the testimony and the expert opinions provided by affidavit and during the public hearing before the Court, as well as the helpful evidence requested by the Court or its President. To this end, the Court will abide by the rules of sound judicial discretion, within the corresponding legal framework.[57]

A) Documentary, testimonial and expert evidence

60. The Court has received diverse documents submitted as evidence by the Inter-American Commission, the representatives, and the State, attached to their main briefs (*supra* paras. 1, 5 and 6). The Court has also received the affidavits prepared by witness Néstor Ramírez Mejía, and by expert witnesses Ana María Díaz, Daniel Coronell, Carol L. Kessler and Margarita Zuluaga. Regarding the evidence provided at the public hearing, the Court heard the testimony of the presumed victims Luis Gonzalo Vélez Restrepo and Aracelly Román Amariles, and also of expert witness José Francisco Tulande.[58]

B) Admission of the evidence

B.1) Admission of the documentary evidence

61. In this case, as in others, the Court admits those documents forwarded by the parties at the appropriate procedural opportunity that were not contested or opposed and the authenticity of which was not questioned.[59]

62. Regarding the newspaper articles, this Court has considered that they can be assessed when they contain well-known public facts or declarations by State officials, or when they corroborate certain aspects of the case.[60] The Court decides to admit those documents that are complete or that, at least, allow verification of their source and date of publication, and will assess them, taking into account the whole body of evidence, the observations of the parties, and the rules of sound judicial discretion.

63. Similarly, with regard to documents indicated by the representative and the Commission by means of electronic links, the Court has established that, if a party or the Inter-American Commission provides at least the direct electronic link to the document cited as evidence and it can be accessed, legal certainty and procedural equality are not affected,

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[56] *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 Díaz Peña v. Venezuela. Preliminary objection, merits, reparations and costs*, para. 13.

[57] *Cf. Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Merits*, para. 76, and *Case of Díaz Peña v. Venezuela. Preliminary objection, merits, reparations and costs*, para. 13.

[58] The purpose of all of these statements is established in the Order of the President of the Court of January 25, 2012, which can be consulted on the Court's web page at: http://www.corteidh.or.cr/docs/asuntos/Velez1.pdf.

[59] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits*. Judgment of July 29, 1988. Series C No. 4, para. 140, and *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador. Merits and reparations*, para. 35.

[60] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits*, para. 146, and *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador. Merits and reparations*, para. 36.

because both the Court and other parties can find it immediately.[61] In this case, neither the other parties nor the Commission contested or made observations on the content and authenticity of such documents.

64. Regarding the videos and recordings presented by the Commission and by expert witness Tulande that have not been contested and the authenticity of which has not been challenged, the Court will assess their content within the context of the body of evidence, applying the rules of sound judicial discretion.[62]

65. The Court also observes that, in a note of its Secretariat of October 7, 2011,[63] a response was provided to an allegation of the State in its answering brief that "most of the annexes presented by the […] Commission in relation to the case file being processed before it were unorganized, repeated or illegible, and did not comply with Article 35(d) of the […] Court's Rules of Procedure."

66. In addition, the Court recalls the provisions of Article 57 of its Rules of Procedure, according to which "[i]tems of evidence tendered before the Commission will be incorporated into the case file as long as they have been received in adversarial proceedings, unless the Court considers it essential to repeat them." In this case, the evidence in the case file of the proceedings before the Commission presented with the brief submitting the case had been received previously in adversarial proceedings before the Commission to which the State was a party. Nevertheless, the Court takes note of the State's observations, and will assess the said evidence applying the rules of sound judicial discretion.

67. In its final written arguments, Colombia asked the Court "not [to take] into account the *amicus curiae* sent by the organization 'Article 19' […] because it had been submitted outside the time frame established in the Court's Rules of Procedure," since the brief was received in the Spanish language 20 days after the public hearing

68. Under Article 44 of the Court's Rules of Procedure, the said *amicus curiae* brief should have been presented in the language of the case, which is Spanish, "at any time during contentious proceedings for up to 15 days following the public hearing." The Court considers that, since the organization Article 19 submitted the brief, in Spanish, four days after this time frame had expired, the brief is not admissible because it is time-barred.

69. The State submitted certain documentation together with its final written arguments and in communications of July 18 and 27, and August 1 and 13, 2012 (*supra* para. 12), in response to requests for useful information and evidence made by the Court during the public hearing, and subsequently by the President (*supra* paras. 1 and 12). The Court

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[61] *Cf. Case of Escué Zapata v. Colombia. Merits, reparations and costs*, para. 26, and *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador. Merits and reparations*, para. 37.

[62] *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 Perozo et al. v. Venezuela*. Preliminary objections, merits, reparations and costs. Judgment of January 28, 2009. Series C No. 195, para. 107.

[63] On the instructions of the President of the Court, the State was reminded that, in a note of the Secretariat of March 28, 2011, the Commission had been informed that, following a preliminary review, it was found that some documents were incomplete or illegible in the appendix and attachments to Merits Report 136/10 in this case. When the case was notified to the State, it was advised that, in a communication of April 4, 2011, the Inter-American Commission had confirmed the observations made by the Secretariat following the respective analysis of the annexes, and had indicated that the folios identified as illegible were "the best [copies] it had." The President of the Court also informed the State that the Court would assess those documents at the appropriate procedural opportunity.

considers it appropriate to admit the documents provided by Colombia, in accordance with Article 58(b) of the Rules of Procedure, and they will be assessed in the context of the body of evidence.

70. In addition, on March 28, 2012, expert witness José Francisco Tulande forwarded, through the State, "[t]he recordings and documents" offered to the Court during the public hearing held in this case. The Commission and the representative did not make observations on this documentation. The Court incorporates this documentation as evidence because it considers it useful for the instant case, taking into account that it was not contested. The pertinent parts of these documents will be assessed taking into consideration the purpose for the said expert opinion opportunely defined by the President, the body of evidence, and rules of sound judicial discretion.

B.2) Admission of the statements of the presumed victims and the testimonial and expert evidence

71. Regarding the statements of the presumed victims, the testimony, and the expert opinions provided during the public hearing and by affidavit, the Court finds them pertinent only to the extent that they conform to the purpose defined by the President in the Order requiring them (*supra* para. 8). They will be assessed in the corresponding chapter, together with the other elements of the body of evidence and taking into account the observations made by the parties.[64]

72. According to this Court's case law, the statements made by the presumed victims cannot be assessed in isolation, but rather together with all the evidence in the proceedings, since they are useful to the extent that they can provide more information on the presumed violations and their consequences.[65] Based on the foregoing, the Court admits these statements and will assess them in keeping with the criteria indicated.

73. In its final written arguments, the State asserted that the affidavits of expert witness Daniel Coronell, proposed by the representative, and expert witness Ana María Díaz proposed by the Commission were "irrelevant" because they did not comply with the purpose established by the President in his Order of January 25, 2012. Regarding the expert opinion of Daniel Coronel, Colombia observed that "he merely gave a brief description of the facts that he considers happened to Mr. Vélez and his family, and presented some personal observations on the violence in Colombia"; hence, it asked the Court to "reject the affirmations that are not directly related to the purpose." In addition, regarding the expert opinion of Ana María Díaz, it indicated, *inter alia*, that "it is a summary of declarations by international organizations and the statistics [were] taken from a single source: the database of the organization of which she is the Assistant Director for Research," so that "there is no way to validate the information she provides to ensure that it is credible and reliable." Colombia asked the Court to reject all "the assertions of the expert witness that are not related to the purpose [or] that are not substantiated by any source."

74. The Court considers it pertinent to indicate that, unlike witnesses, who must avoid giving personal opinions, expert witnesses may provide technical or personal opinions as long as they relate to their special knowledge or expertise. In addition, expert witnesses

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64 *Cf. Case of Loayza Tamayo v. Peru*. Merits. Judgment of September 17, 1997. Series C No. 33, para. 43, and *Case of Fornerón and daughter v. Argentina*. *Merits, reparations and costs.* Judgment of April 27, 2012. Series C No. 242, para. 13.

65 *Cf. Case of Loayza Tamayo v. Peru*. Merits, para. 43, and *Case of Fornerón and daughter v. Argentina*. Merits, reparations and costs, para. 13.

may refer both to specific points of the litigation and to any other relevant aspect of the litigation, provided they limit themselves to the purpose for which they were summoned, and their findings are sufficiently founded.[66] In this regard, in relation to the observations on the content of the expert opinions, the Court understands that the observations do not contest their admissibility, but rather are designed to question the probative value of the opinions, the pertinent parts of which will be considered in the corresponding chapters of this Judgment.

75. In particular, regarding the State's claim that the expert opinions of Daniel Coronell and Ana Maria Diaz do not correspond to the purpose determined by the President, the Court will consider the State's observations and reiterates that it only admits those statements that conform to the purpose that was defined.

76. Based on the above, the Court admits the expert opinions to the extent that they conform to purpose defined in the Order and will assess them together with the rest of the body of evidence, taking into account the State's observations and in accordance with the rules of sound judicial discretion.

VIII
PROVEN FACTS

A) Attack against Mr. Vélez Restrepo on August 29, 1996

77. Luis Gonzalo Vélez Restrepo, also known as "Richard," worked as a cameraman for the national news program, "*Colombia 12:30,"* with offices in Bogota. According to Mr. Vélez Restrepo, at that time he was a "reporter on law and order"; in other words, he mainly covered facts or news related to "public order."[67] Mr. Vélez Restrepo lived in Bogotá, with his wife Aracelly Román Amariles and their children Mateo and Juliana Vélez Román, who were approximately four and a half years old and eighteen months old, respectively.[68]

78. On August 29, 1996, Mr. Vélez Restrepo was in the municipality of Morelia, department of Caquetá, covering the incidents of one of the protest marches against the Government's policy of fumigating the coca crop, known as "coca marches."[69] During that month, marches took place with tens of thousands of people, including coca-growing

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[66] *Cf. Case of Reverón Trujillo v. Venezuela*. Preliminary objection, merits, reparations and costs. Judgment of June 30, 2009. Series C No. 197, para. 42, and *Case of the Barrios Family v. Venezuela*. Merits, reparations and costs. Judgment of November 24, 2011. Series C No. 237, para. 28.

[67] Cf. statement made by Luis Gonzalo Vélez Restrepo before the Inter-American Court during the public hearing held on February 24, 2012.

[68] *Cf.* Statement made by Luis Gonzalo Restrepo on June 25, 2005, before a notary public of the District of Columbia, United States of America (file of annexes to Merits Report 136/10, tome I, annex 15, folios 78 to 82, and file of attachments to the pleadings and motions brief, tome II, attachment 16, folios 655 to 660); statement made by Luis Gonzalo Vélez Restrepo before the Court during the public hearing held on February 24, 2012, and statement made by Aracelly Román Amariles on July 25, 2005, before a notary public of the District of Columbia, United States of America (file of annexes to Merits Report 136/10, tome I, annex 16, folios 74 to 88, and file of attachments to the pleadings and motions brief, tome II, attachment 17, folios 662 to 666).

[69] *Cf.* preliminary report dated September 5, 1996, of the Attorney Delegated to the Defense of Human Rights of the Attorney General's Office on the disturbances that occurred on August 29, 1996, in the municipality of Morelía, Caquetá (file of helpful evidence presented by the State, tome IV, folios 1666 to 1674); article published in the magazine "*Cambio*" of September 2, 1996, entitled "*Batalla sobre el puente*" [Battle on the bridge] (file of annexes to Merits Report 136/10, tome I, annex 1, folio 5), and newspaper article published in "*El Mundo*" on August 31, 1996, entitled "*Polémica por golpes a la libertad de prensa*" [Polemic owing to blows to press freedom] (file of annexes to Merits Report 136/10, tome I, annex 8, folio 55 to 58)

peasants. The marches took place in different parts of the department of Caquetá, and the intention was to take the demonstrations to Florencia, capital of the department of Caquetá.[70]

79. In order to "maintain public order" during these marches, the Commander of the Army's Twelfth Brigade based in Florencia, Caquetá, issued Operations Order No. 007 of August 1, 1996, which was supplemented by other orders. The soldiers were ordered to "maintain control over urban and rural areas, highways and waterways, and to neutralize the peasant and/or coca worker marches," and "to stop them from getting to Florencia," capital of Caquetá. It was also stipulated that the Brigade Commander should not allow the march to pass the checkpoints that had been set up or reach Florencia. In addition, it was established that the disturbances should be broken up with the use of tear gas by the Military Police and available Armed Forces, and that they should not use their weapons, not even to fire shots into the air.[71]

80. In the said march that Mr. Vélez Restrepo was covering on August 29, 1996, in the municipality of Morelia, 20 kilometers from Florencia, a confrontation took place between the "marchers" and the soldiers on and around the bridge over the Bodoquero river. The protesters were camping when, in the early morning hours, heavy rains flooded their camps causing them to move and leading to the first altercations with the soldiers. Later, some of the protesters tried to cross the said bridge, removing the barricades and obstacles placed by the Armed Forces, resulting in a confrontation with the soldiers.[72] Some protesters threw sticks and stones at the soldiers. The soldiers used tear gas in order to control the situation; however, some of the soldiers also used their weapons.[73] According to the statement made the following day by the Commander of the Army's Twelfth Brigade, when controlling the situation "members of the Military Police committed excesses" and "the commanders of the troops involved in the events allowed physical violence against those participating in the uprising who were defenseless." People were injured in these incidents "by firearms, weapons, knives, and blunt weapons,"[74] among them, about 11 civilians were treated at the María Auxiliadora Hospital in Florencia.[75]

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[70] *Cf.* Expert opinion provided by José Francisco Tulande during the public hearing held before the Inter-American Court on February 24, 2012; newspaper article published in the newspaper "*El País*" on August 31, 1996, entitled "*Preacuerdo en Caquetá*" (file of annexes to Merits Report 136/10, tome I, annex 9, folios 59 to 60), and statement made by Luis Gonzalo Vélez Restrepo on June 25, 2005, before a notary public of the District of Columbia, United States of America (file of annexes to Merits Report 136/10, tome I, annex 15, folio 78 to 82 and file of annexes to the pleadings and motions brief, tome II, annex 16, folios 655 to 660), and preliminary report, dated September 5, 1996, of the Attorney Delegated to the Defense of Human Rights of the Attorney General's Office, *supra* note 70, folios 1666 to 1674.

[71] Decision issued by the Attorney General's Office on May 27, 1998, in file No. 001-3422 (file of annexes to Merits Report 136/10, tome I, annex 33, folios 195 to 203), and affidavit made by Néstor Ramírez Mejía on February 18, 2012 (merits file, tome II, folio 1019 to 1023).

[72] *Cf.* Decision issued by the Attorney General's Office on May 27, 1998, in file No. 001-3422, *supra* note 71, folios 195 to 203); statement made by Luis Gonzalo Vélez Restrepo on June 25, 2005, before a notary public of the District of Columbia, United States of America (file of annexes to Merits Report 136/10, tome I, annex 15, folios 78 to 82, and file of annexes to the pleadings and motions brief, tome II, annex 16, folios 655 to 660); statement made by Luis Gonzalo Vélez Restrepo before the Inter-American Court during the public hearing held on February 24, 2012, and article published in the magazine "*Cambio*" on September 2, 1996, entitled "*Batalla sobre el puente,*" *supra* note 69, folio 5.

[73] Video recording of the events of August 29, 1996, in El Caquetá (file of annexes to Merits Report 136/10, tome I, annex 4, folio 14, minutes 0.23, 2.57-3.26, and 3.35-3.48).

[74] *Cf.* Decision No. 012 issued by the Commander of the Twelfth Brigade of the National Army on August 30, 1996 (file of annexes to Merits Report 136/10, tome I, annex 6, folios 21 to 24).

[75] Decision issued on October 3, 1997, by the Colombian Military Forces, 122nd Military Criminal Investigations Court, San Vicente del Cagúan (Caquetá) (file of annexes to Merits Report 136/10, tome I, annex 32, folios 188 to 193).

81. Mr. Vélez Restrepo was filming the events in an area near the bridge over the Bodoquero river when he "not[ed] that some of the soldiers began to beat the peasants with the butts of their rifles, so he began to film the incident." Mr. Vélez Restrepo was filming when members of the Army beat a defenseless protestor, hitting him with their rifle butts and kicking him.[76] "Three soldiers realized that [Mr. Vélez Restrepo] was filming the incident and rushed up to him."[77] In addition, a Commander of the Twelfth Battalion ordered that Mr. Vélez Restrepo's video camera be seized.[78] Mr. Vélez Restrepo was physically attacked by several members of the Twelfth Brigade of the National Army, who sought to stop him continuing to record the actions of the soldiers and to confiscate the videotape with the recorded material. Mr. Vélez Restrepo stated that the soldiers who were hitting stopped when another soldiers intervened to interrupt the attack, and helped him reach the place where a group of journalists were gathered.[79] The attack perpetrated by soldiers destroyed the camera but not the videotape; thus the incident remained recorded and was disseminated extensively in the media as of that day.[80] From the recording, it can be seen that several men with military clothing and boots physically attacked Mr. Vélez Restrepo, while repeatedly shouting phrases such as "Get that […] cassette."[81]

82. Because of the beating, Mr. Vélez Restrepo had to be taken to the María Auxiliadora Hospital of Florencia. According to the medical report prepared at this hospital on August 29, 1996, Mr. Vélez Restrepo "had recently suffered a closed abdominal trauma and inhalation of a great deal of gas"; he was admitted "because he had been beaten numerous times on the abdomen with a blunt instrument," and it was noted that he felt "sharp localized pain."[82] The same day he was transferred by air to a clinic in Bogota.[83] Mr. Vélez

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[76] Video recording of the events of August 29, 1996, in El Caquetá (file of annexes to Merits Report 136/10, tome I, annex 4, folio 14, seconds: 0.28,0.44; minutes: 3.27, 3.50 and 10.38); statement made by Luis Gonzalo Vélez Restrepo on June 25, 2005, before a notary public of the District of Columbia, United States of America (file of annexes to Merits Report 136/10, tome 1, annex 15, folios 79 to 82, and file of annexes to the pleadings and motions brief, tome II, annex 16, folios 655 to 660), and decision No. 012 issued by the Colombian Military Forces, Twelfth Brigade on August 30, 1996, *supra* note 74, folios 21 to 24.

[77] *Cf.* statement made by Luis Gonzalo Vélez Restrepo on June 25, 2005, before a notary public of the District of Columbia, United States of America (file of annexes to Merits Report 136/10, tome 1, annex 15, folios 78 to 82, and file of annexes to the pleadings and motions brief, tome II, annex 16, folio 655 to 660).

[78] *Cf.* Decision No. 011 issued by the Colombian Military Forces, Twelfth Brigade, on August 30, 1996 (file of annexes to Merits Report 136/10, tome I, annex 5, folios 16 to 19).

[79] *Cf.* statement made by Luis Gonzalo Vélez Restrepo on June 25, 2005, before a notary public of the District of Columbia, United States of America (file of annexes to Merits Report 136/10, tome 1, annex 15, folios 78 to 82, and file of annexes to the pleadings and motions brief, tome II, annex 16, folio 655 to 660). Also, in its answering brief, the State accepted the fact mentioned in paragraph 84 of Merits Report when stating that "[t]he attack against Mr. Vélez ended when another soldier intervened to interrupt the attack and helped the journalist reach his colleagues" (merits report, tome 1, folio 333, para. 74).

[80] Fact accepted by the State (answering brief, para. 73, merits file, tome I, folio 332). Also, *cf.* statement made by Luis Gonzalo Vélez Restrepo on June 25, 2005, before a notary public of the District of Columbia, United States of America (file of annexes to Merits Report 136/10, tome 1, annex 15, folios 78 to 82, and file of annexes to the pleadings and motions brief, tome II, annex 16, folio 655 to 660), and newspaper articles published in "*El Mundo*" on August 31, 1996 entitled "*Polémica por golpes a la libertad de prensa*" [Polemic for blows to freedom of the press], and in "*El Heraldo*" on August 31, 1996, entitled "*Investigan brutal ataque de soldados*" [Brutal attack by soldiers investigated] (file of annexes to Merits Report 136/10, annex 8, folios 54 and 57).

[81] Fact accepted by the State (answering brief, para. 73, and merits file, tome I, folio 332), and video recording of the events of August 29, 1996, in El Caquetá (file of annexes to Merits Report 136/10, tome I, annex 4, folio 14, minutes 0.56, 4.09)

[82] Cf. records of medical reports and treatment of the María Inmaculada Hospital in Florencia of August 29, 1996 (file of annexes to Merits Report 136/10, annex 7, folios 25 to 33), and video recording of news disseminated in the media in relation to the attack of August 29, 1996 (file of annexes to Merits Report 136/10, annex 4, folio 14, minutes 4.59-5.03 and 16.06).

indicated that he felt severe pain in the chest, abdomen, and testicles,[84] and had a persistent cough that was treated with "respiratory therapy."[85] The report of the examination made at the Bogotá clinic on the night of August 29, 1996, mentions that the patient had an "echo[gram] of the abdomen that show[ed] that the liver, biliary tract and pancreas were normal" and that there was no "signs of thoracic or abdominal injury."[86] He was interned in the clinic until August 30, 1996,[87] and then had a 15-day disability leave at home.[88] According to the medical examination carried out on Mr. Vélez, on September 4, 1996, at the said clinic, the "patient […] said that he felt very well except that he was suffering from insomnia."[89]

83. On August 29, 1996, the Commander of the Army's Twelfth Brigade, General Nestor Ramirez Mejia, publicly denied the occurrence of the attack by members of the Army against Mr. Vélez Restrepo.[90] The next day, the Commander of the National Army visited Mr. Vélez Restrepo at the Clinic in Bogota, where he expressed his regret for the attacks perpetrated against him, apologized for the incident, and stated that the corresponding investigations would be undertaken. In addition, the Minister of Defense and the Minister of the Interior stated that it was regrettable that this attack had been carried out against Mr. Vélez Restrepo, which constituted an "isolated incident," an "excess" that would not be tolerated by the Government, and should be punished.[91]

B) Facts subsequent to the attack of August 29, 1996

84. At the time of the facts of this case and in the following years, there was a context of special risk for journalists and social commentators to carry out their work in Colombia, owing to acts of violence, threats and harassment by those involved in the internal armed conflict, including armed dissident groups, paramilitary groups, and some members of the

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[83] Cf. medical report of the María Inmaculada Hospital in Florencia of August 29, 1996 (file of annexes to Merits Report 136/10, tome I, annex 7, folio 29), and statement made by Aracelly Román Amariles on July 25, 2005, before a notary public of the District of Colombia, United States of America (file of annexes to Merits Report 136/10, tome I, annex 16, folio 84, and file of annexes to the pleadings and motions brief, tome II, annex 17, folio 662).

[84] Statement made by Luis Gonzalo Vélez Restrepo before the Inter-American Court at the public hearing held on February 24, 2012.

[85] Cf. medical report issued by the *Sociedad Médica Assistir* of Bogotá on August 29, 1996 (file of annexes to Merits Report 136/10, annex 7, folios 49 and 50).

[86] Cf. medical report issued by the *Sociedad Médica Assistir* of Bogotá on August 29, 1996, *supra* note 85, folio 50.

[87] Cf. medical report issued by the *Sociedad Médica Assistir* of Bogotá on August 30, 1996 (file of annexes to Merits Report 136/10, annex 7, folio 39).

[88] Cf. Opinion issued by the National Institute of Legal Medicine and Forensic Sciences on November 1, 1996 (final arguments of the State, annex 1, merits file, tome III, folio 1840).

[89] Cf. control of evolution by the *Sociedad Médica Assistir* of Bogotá on September 4, 1996 (file of annexes to Merits Report 136/10, annex 7, folio 40).

[90] Cf. Video recording of news item disseminated by the media in relation to the attack of August 29, 1996 (file of annexes to Merits Report 136/10, tome I, annex 4, folio 14, minute 9.26-10.48 and minute 11.06-11.56); article published in the newspaper "*El Heraldo*" on August 31, 1996, entitled "*Investigan brutal ataque de soldados*" [Investigation of brutal attack by soldiers] (file of annexes to Merits Report 136/10, annex 8, folio 57).

[91] Cf. video recording of news disseminated by the media in relation to the attack of August 29, 1996 (file of annexes to Merits Report 136/10, annex 4, folio 14, minutes 6:42, 12:12 and 12:36), and article published in the newspaper "*El Siglo*" on August 31, 1996, entitled "*Gobierno se disculpa públicamente por agresiones en Caquetá*" [Government issues public apology for acts of violence in Caquetá] (merits file, tome II, folio 1146); article published in the newspaper "*El Heraldo*" on August 31, 1996, entitled "In*vestigan brutal ataque de soldados", supra* note 90, folio 57, and article published in the newspaper "*El País*" on August 31, 1996, entitled "*Preacuerdo en Caquetá*" [Preliminary agreement in Caquetá] (file of annexes to Merits Report 136/10, annex 9, folio 60).

Armed Forces, as well as groups involved in ordinary crime.[92] According to the statistics of the Prosecutor General's Office, between 1995 and 1998 a total of 32 "investigations [had been opened] where the victims were journalists": 25 for homicide, 3 for kidnapping for ransom, 1 for threats, 1 for robbery, and 1 for attempted kidnapping.[93] Expert witness Tulande, proposed by the State, indicated that, in addition to the official statistics, it should be noted that "many journalists who were threatened did not file complaints for two reasons: the strongest or most influential was the danger signified by a threat of this nature, because they threatened the family, [… and] also because, owing to the number of judicial actions and acts of violence that occurred, there was a risk of impunity."[94] This expert witness also affirmed that the threats against journalists were particularly serious taking into account that many of them were murdered, kidnapped or had to leave the country[95] and, in this regard, citing a well-known Colombian journalist, he stated that in Colombia "threats are carried out."[96]

85. In mid-September 1996, Mr. Vélez Restrepo began receiving threatening telephone calls at his office and at his home, in which he was called a "hypocrite" and received death threats. The threats and harassment extended to his son.[97] Among the threats, Mr. Vélez Restrepo also received a note.[98]

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[92] Expert opinion provided to the Inter-American Court by José Francisco Tulande during the public hearing held on February 24, 2012; Jorge Orlando Melo, "*La libertad de Prensa in Colombia: Pasado and perspectivas actuales*," published in *Fernando Cepeda Ulloa*, ed., Fortalezas de Colombia, May 2004 (article presented by expert witness José Francisco Tulande on March 12, 2012, merits file, tome III, folio 1633); Reports of the Office in Colombia of the United Nations High Commissioner for Human Rights of March 9, 1998, E/CN.4/1998/16, and of March 9, 2000, E/CN.4/1998/16 11 (file of annexes to the pleadings and motions brief, tome I, annex 6, folios 217 and 223, paras. 87, 119 and 121, and tome II, annex 14, folio 621); Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression. Doc. E/CN.4/2000/63, 18 January 2000 (file of annexes to the pleadings and motions brief, tome I, annex 9, folios 326 and 327); Inter-American Commission on Human Rights, Third report on the Human Rights Situation in Colombia OEA/Ser.L/V/II.102 Doc. 9 rev. 1 of February 26, 1999 (file of annexes to Merits Report 136/10, tome II, annex 24, folios 67 and 68, chapter VIII section C., paras. 8 to 26); document entitled: "*Avances en casos relevantes por delitos cometidos contra periodistas*" [Progress in relevant cases based on crimes committed against journalists] and newspaper article available at: http://www.eltiempo.com/, general information section, on February 9, 2011, entitled "*Alfredo Abad, crimen sin castigo"* [Alfredo Abad, crime without punishment] (documents presented by expert witness José Francisco Tulande on March 12, 2012, merits file, tome III, folios 1641 to 1643 and 1652 to 1654).

[93] *Cf.* response of the State to the Court's request for useful evidence and information at the public hearing (final written arguments of the State, merits file, tome III, folio 1829).

[94] The expert witness also stated that, at the time of the evens of this case, "law and order" journalists in Colombia were considered to be "courting danger." *Cf.* expert opinion provided by José Francisco Tulande during the public hearing before the Inter-American Court on February 24, 2012.

[95] Expert opinion provided by José Francisco Tulande during the public hearing before the Inter-American Court on February 24, 2012. Also, *cf.* reports of the Office in Colombia of the United Nations High Commissioner for Human Rights of March 9, 1998 E/CN.4/1998/16 and of March 9, 2000, E/CN.4/2000/11 (file of annexes to the pleadings and motions brief, tome I, annex 6, folios 217 and 223, paras. 87, 119 and 121, and tome II, annex 14, folio 621, para. 55), and Inter-American Commission on Human Rights, *Third Report on the Situation of Human Rights in Colombia*. OEA/Ser.L/V/II.102 Doc. 9 rev. 1 of February 26, 1999, *supra* note 93, folios 67 and 68, Chapter VIII, section C., paras. 8 to 26).

[96] *Cf.* expert opinion provided by José Francisco Tulande during the public hearing before the Inter-American Court on February 24, 2012, and e-mail sent by Juan Gossaín Abdala to José Francisco Tulande on January 4, 2012 (presented by expert witness José Francisco Tulande on March 12, 2012, merits file, tome III, folio 1640).

[97] *Cf.* statement made by Luis Gonzalo Vélez Restrepo before the Inter-American Court during the public hearing held on February 24, 2012; statement made by Aracelly Román Amariles before the Inter-American Court during the public hearing held on February 24, 2012; statement made by Luis Gonzalo Vélez Restrepo before the 243rd Bogota Sectional Prosecutor's Office on August 27, 1997 (file of annexes to Merits Report 136/10, tome I, annex 11, folios 64 to 65); statement made by Eduin Yesid Cristancho Merchan before the Human Rights United of the National Special Investigations Directorate of the Attorney General's Office on October 17, 1997 (file of annexes to Merits Report 136/10, tome I, annex 17, folio 91); statement made by Luis Gonzalo Vélez Restrepo on July 25, 2005, before a notary public of the District of Colombia, United States of America (file of annexes to Merits Report 136/10, tome I, annex 15, folio 80, and file of annexes to the pleadings and motions brief, tome II, annex

86. On September 11, 1996, four men arrived at Mr. Vélez Restrepo's home claiming to be officials of the Attorney General's Office, but failed to show any identification. They asked Mr. Vélez Restrepo's wife about his schedule and activities. That same day, the Editor-in-Chief of *Noticiero Colombia 12:30* sent a note to the National Special Investigations Directorate of the Attorney General's Office informing it of this incident. The Directorate was conducting an inquiry into the attack against Mr. Vélez Restrepo on August 29, 1996 (infra para. 104). The note requested clarification of the situation, "given the distress of the family of cameraman Luis Gonzalo Vélez."[99]

87. In mid-September 1996, Mr. Vélez Restrepo and his wife decided to move, and rented a house in another neighborhood. They stopped receiving threats at home, but Mr. Vélez Restrepo still received calls at work.[100] The threats decreased, and between February and August 1997, they received no threats; consequently they returned to the house where they had lived previously.[101]

88. On August 27, 1997, Mr. Vélez Restrepo testified before the Prosecutor in charge of the investigation into the threats (*infra* para. 117).

16, folios 656 and 657); statement made by Aracelly Román Amariles on July 25, 2005, before a notary public of the District of Colombia, United States of America (file of annexes to Merits Report 136/10, tome I, annex 16, folio 85, and file of annexes to the pleadings and motions brief, tome II, annex 17, folio 663).

98 *Cf.* statement made by Luis Gonzalo Vélez Restrepo before the Inter-American Court during the public hearing held on February 24, 2012; statement made by Luis Gonzalo Vélez Restrepo on July 25, 2005, before a notary public of the District of Colombia, United States of America (file of annexes to Merits Report 136/10, tome I, annex 15, folio 80, and file of annexes to the pleadings and motions brief, tome II, annex 16, folio 657).

99 *Cf.* statements made by Luis Gonzalo Vélez Restrepo and Aracelly Román Amariles before the Inter-American Court during the public hearing held on February 24, 2012; statement made by Aracelly Román Amariles before the Antioquia Branch Office of the National Special Investigations Directorate of the Attorney General's Office, on February 2, 1998 (file of annexes to Merits Report 136/10, tome I, annex 18, folio 95); decision issued by the Oversight Office of the Attorney General's Office, case file 030-54410/2001, on May 3, 2002 (file of annexes to Merits Report 136/10, tome I, annex 22, folio 107); statements made by Luis Gonzalo Vélez Restrepo and Aracelly Román Amariles on July 25, 2005, before a notary public of the District of Colombia, United States of America (file of annexes to Merits Report 136/10, tome I, annexes 15 and 16, folios 80 and 85, and file of annexes to the pleadings and motions brief, tome II, annexes 16 and 17, folios 657 and 663), and brief of September 11, 1996 signed by Hans Sarmiento, Editor-in-Chief of *Noticiero Colombia 12:30*, addressed to the National Director of Special Investigations of the Attorney General's Office (file of annexes to Merits Report 136/10, tome I, annex 10, folio 62).

100 *Cf.* Statement made by Luis Gonzalo Vélez Restrepo on August 27, 1997, before the 243rd Prosecutor of Bogota (file of annexes to Merits Report 136/10, tome I, annex 11, folios 64 and 65); statements made by Luis Gonzalo Vélez Restrepo and Aracelly Román Amariles before the Court during the public hearing held on February 24, 2012; request for pre-trial administrative conciliation filed by Raúl Hernández Rodríguez on behalf of Luis Gonzalo Vélez Restrepo and some of his next of kin before the Contentious Administrative Law Court of Cundinamarca (file of annexes to Merits Report 136/10, annex 36, folio 218), and statement made by Aracelly Román Amariles on July 25, 2005, before a notary public of the District of Colombia, United States of America (file of annexes to Merits Report 136/10, tome I, annex 16, folio 85; file of annexes to the pleadings and motions brief, tome II, annex 17, folio 663).

101 Statement made by Luis Gonzalo Vélez Restrepo before the 243rd Bogota Sectional Prosecutor's Office on August 27, 1997 (file of annexes to Merits Report 136/10, tome I, annex 11, folio 64); statements made by Luis Gonzalo Vélez Restrepo and Aracelly Román Amariles before the Inter-American Court during the public hearing held on February 24, 2012; and statements made by Luis Gonzalo Vélez Restrepo and Aracelly Román Amariles on June 25, 2005, before a notary public of the District of Columbia, United States of America (file of annexes to Merits Report 136/10, annexes 15 and 16, folios 80 and 85, and file of annexes to the pleadings and motions brief, tome II, annexes 16 and 17, folios 657, 658 and 663).

89. In September 1997, Mr. Vélez and his family once again began receiving telephone calls with death threats.[102] On September 24, 1997, several men arrived at Mr. Vélez Restrepo's home claiming to be officials of the Attorney General's Office, but failed to show any identification, and asked Mr. Vélez Restrepo's wife about his schedule and activities.[103]

90. In a letter dated September 29, 1997, the Colombian Commission of Jurists informed the Human Rights Council of the Presidency of the Republic about the harassment and threats against Mr. Vélez Restrepo.[104]

91. Furthermore, on October 6, 1997, the Attorney General's Office received a brief dated September 29, 1997, in which the Colombian Commission of Jurists also denounced before this entity that Mr. Vélez and his family had been the target of harassment and threats, which it claimed were related to the video filmed by Mr. Vélez Restrepo during the peasant marches of August 1996. It reported that the threats were made by telephone and also denounced the above-mentioned incidents of September 24, 1997 (supra para. 89).[105] Based on this complaint, on October 10, 1997, the Attorney General's Office began a "preliminary inquiry" (infra paras. 110 and 111).[106]

92. On October 3, 1997, Mr. Vélez Restrepo himself filed a brief before the Human Rights Council of the Presidency of the Republic regarding his safety owing to the threats.[107]

93. On October 5, 1997, Mr. Vélez received a written death threat consisting in an announcement of his death or letter of condolence, stating: "Mr. Velez, hypocrites are crushed to death. Rest in Peace."[108]

94. On October 6, 1997, Mr. Vélez Restrepo left home at approximately 6 a.m. to go to work. Near his house, two men emerged from a parked taxi and tried to pull him into the

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[102] *Cf.* statements made by Luis Gonzalo Vélez Restrepo and Aracelly Román Amariles before the Inter-American Court during the public hearing held on February 24, 2012; statement made by Luis Gonzalo Vélez Restrepo on July 25, 2005, before a notary public of the District of Colombia, United States of America (file of annexes to Merits Report 136/10, tome I, annex 15, folio 80, and file of annexes to the pleadings and motions brief, tome II, annex 16, folios 657 and 658), and letter addressed by the Colombian Commission of Jurists to the Attorney General's Office on September 29, 1997 (file of the processing of the case before the Commission, tome II, folio 912).

[103] *Cf.* Statement made by Aracelly Román Amariles on February 2, 1998, before the Antioquía Office of the National Special Investigations Directorate of the Attorney General's Office (file of annexes to Merits Report 136/10, tome I, annex 18, folios 94 and 95); note issued by the Human Rights Unit of the National Special Investigations Directorate of the Attorney General's Office on October 10, 1997 (file of annexes to Merits Report 136/10, tome I, annex 12, folio 67); decision issued by the Oversight Office of the Attorney General's Office on May 3, 2002, case file 030-54410/2001 (file of annexes to Merits Report 136/10, tome I, annex 22, folio 107), and statements made by Luis Gonzalo Vélez Restrepo and Aracelly Román Amariles before the Inter-American Court during the public hearing held on February 24, 2012.

[104] *Cf.* Note DH 2860 of October 14, 1997, signed by an adviser to the Human Rights Council of the Presidency of the Republic, addressed to Gustavo Gallón of the Colombian Commission of Jurists (file of annexes to Merits Report 136/10, annex 13, folios 71 and 72).

[105] *Cf.* letter of September 29, 1997, addressed to the Attorney General's Office by the Colombian Commission of Jurists (file of the processing of the case before the Commission, tome II, folios 912 and 913).)

[106] *Cf.* note issued on October 10, 1997, by the Human Rights Unit of the National Special Investigations Directorate of the Attorney General's Office (file of annexes to Merits Report 136/10, tome I, annex 12, folio 67).

[107] *Cf.* note DH 2190 of July 6, 1998, signed by the Coordinator of the Cases Unit of the Human Rights Council of the Presidency of the Republic addressed to Raúl Hernández (file of annexes to Merits Report 136/10, tome I, annex 20, folio 100).

[108] *Cf.* written threat received by Mr. Vélez Restrepo on October 5, 1997 (file of annexes to Merits Report 136/10, tome I, annex 19, folio 98), and statement made by Luis Gonzalo Vélez Restrepo before the Inter-American Court during the public hearing held on February 24, 2012.

back seat of the vehicle. One of them hit him with a gun butt. In the struggle, Mr. Vélez managed to escape and run to his house. Mr. Vélez Restrepo and his wife called the State authorities to denounce what had happened. Security personnel subsequently arrived at the Vélez Román family's home.[109]

95. A few hours later on the same October 6, 1997, a meeting was held with State authorities with regard to the safety of Mr. Vélez Restrepo and his family. The meeting was held at the Special Administrative Unit for Human Rights of the Ministry of the Interior, and a delegate from the Presidential Human Rights Council was also present. Mr. Vélez Restrepo was offered various safety measures, including: "the possibility of relocating to another area of the country to lessen the reported risk," a bulletproof vest, and a permanent police escort when he left the house. In addition he was offered two hundred and fifty thousand Colombian pesos (COL$ 250,000.00) as monthly financial assistance for three months.[110]

96. On the same October 6, Mr. Vélez "indicated his intention of leaving the country [and said] that nowhere in Colombia would he feel protected."[111] It is recorded that, as measures of protection until he left the country, the State provided him with a bulletproof vest and he had a permanent police escort.[112] Three days later, on October 9, 1997, Mr. Vélez Restrepo left Colombia for the United States of America, with the collaboration of the Office of the

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[109] Statements made by Luis Gonzalo Vélez Restrepo and Aracelly Román Amariles before the Inter-American Court during the public hearing held on February 24, 2012; statements made by Luis Gonzalo Vélez Restrepo and Aracelly Román Amariles on June 25, 2005, before a notary public of the District of Columbia, United States of America (file of annexes to Merits Report 136/10, tome I, annexes 15 and 16, folios 81 and 86, and file of annexes to the pleadings and motions brief, tome II, annexes 16 and 17, folios 658 and 664), and note DH 2860 of October 14, 1997, signed by an adviser to the Human Rights Council of the Presidency of the Republic, *supra* note 104, folio 72.

[110] *Cf.* answer to note No. DDH.GOI No. 38367/1644 sent on June 30, 2009, by the Human Rights Directorate of the Ministry of the Interior and Justice to the Human Rights and International Humanitarian Law Directorate of the Ministry of Foreign Affairs (annex to the answering brief, annex 3, merits file, tome I, folios 670 and 671); note No. 4468 of March 26, 2007, of the Protection Program of the Ministry of the Interior and Justice addressed to the Human Rights and International Humanitarian Law Directorate of the Ministry of Foreign Affairs (annex to the answering brief, annex 3, merits file, tome I, folio 673); note No. 3410 of November 29, 1997, of the General Directorate of the Special Administrative Unit for Human Rights of the Ministry of the Interior addressed to the Ministry of Foreign Affairs (file of annexes to Merits Report 136/10, tome I, annex 14, folio 75); record of delivery of the bulletproof vest, Ministry of the Interior, Office of the Director General of the Special Administrative Unit for Human Rights (file of annexes to Merits Report 136/10, tome I, annex 21, folio 103); note DH 2190 of July 6, 1998, signed by the Coordinator of the Cases Unit of the Human Rights Council of the Presidency of the Republic addressed to Raúl Hernández, *supra* note 107, folio 101, and note of October 7, 1997 "Humanitarian assistance for Luis Gonzalo Vélez Restrepo CC: 70,049,928 [of] Medellín" of the General Directorate of the Special Administrative Unit for Human Rights of the Ministry of the Interior (annex to the answering brief, annex 3, merits file, tome I, folio 677).

[111] *Cf.* note No. 3410 of November 29, 1997, of the General Directorate of the Special Administrative Unit for Human Rights of the Ministry of the Interior addressed to the Ministry of Foreign Affairs, *supra* note 110, folio 75, and note DH 2190 of July 6, 1998, signed by the Coordinator of the Cases Unit of the Human Rights Council of the Presidency of the Republic addressed to Raúl Hernández, *supra* note 107, folio 101.

[112] *Cf.* record of delivery of the bulletproof vest, General Directorate of the Special Administrative Unit for Human Rights of the Ministry of the Interior, *supra* note 110, folio 103; note No. 3410 of November 29, 1997, of the General Directorate of the Special Administrative Unit for Human Rights of the Ministry of the Interior addressed to the Ministry of Foreign Affairs, *supra* note 110, folio 75; answer to note No. DDH.GOI No. 38367/1644 sent on June 30, 2009, by the Human Rights Directorate of the Ministry of the Interior and Justice to the Human Rights and International Humanitarian Law Directorate of the Ministry of Foreign Affairs, *supra* note 110, folio 671, and note No. 4468 of March 26, 2007, addressed by the Protection Program of the Ministry of the Interior and Justice to the Human Rights and International Humanitarian Law Directorate of the Ministry of Foreign Affairs (annexes to the answering brief, annex 3, merits file, tome I, folio 673).

High Commissioner for Peace and the International Committee of the Red Cross.[113] His departure from the country was covered by the media.[114]

97. Mr. Vélez Restrepo filed requests for asylum with the competent authorities in the United States of America for himself and his wife and children. On July 30, 1998, he was notified of his "Asylum Approval" by the U.S. Citizenship and Immigration Services, and on August 14 that year, he received notification that asylum had been granted to his wife, Aracelly Roman Amariles, and their children Mateo and Juliana Vélez Román.[115] While awaiting approval of the asylum request, Mr. Vélez Restrepo lived alone in the United States, and Mrs. Román Amariles and their son Mateo (5 years) and their daughter Juliana (2 years) lived in Medellin with the financial support of their families. Mrs. Román Amariles and her daughter Juliana lived with her relatives, and Mateo lived with his paternal grandmother, and they would meet on weekends.[116] The Vélez Román family was separated for almost a year, and was reunited on September 12, 1998, in the United States of America, the country in which they have resided up until the present.[117]

C) Facts relating to the domestic investigations and the pre-trial administrative conciliation procedure

98. Regarding the facts that occurred on August 29, 1996, in which Mr. Vélez Restrepo was attacked by members of the National Army (*supra* paras. 80 to 83), disciplinary proceedings were conducted within the Armed Forces and before the Attorney General's Office (*infra* paras. 102 to 105), as well as an investigation under the military criminal jurisdiction (*infra* paras. 106 and 107).

99. Regarding the threats and harassments against Mr. Vélez and his family after the events that occurred on August 29, 1996 (*supra* paras. 85 to 93), disciplinary investigations were conducted by the Attorney General's Office (*infra* paras. 108 to 115) and two criminal investigations were conducted (*infra* paras. 116 to 119).

100. Mr. Vélez and his family filed a request for administrative conciliation with regard to the attack of August 29, 1996, and the subsequent threats and harassments (*infra* para. 120).

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113 *Cf.* answer to note No. DDH.GOI No. 38367/1644 sent on June 30, 2009, by the Human Rights Directorate of the Ministry of the Interior and Justice to the Human Rights and International Humanitarian Law Directorate of the Ministry of Foreign Affairs, *supra* nota 110, folio 671; note DH 2190 of July 6, 1998, signed by the Coordinator of the Cases Unit of the Human Rights Council of the Presidency of the Republic addressed to Raúl Hernández, *supra* nota 107, folio 101, and letter of July 30, 1998, from the Director of the Asylum Division of the U.S. Citizenship and Immigration Service, addressed to Luis Gonzalo Vélez Restrepo (file of annexes to Merits Report 136/10, Tome I, Annex 27, folio 159).

114 *Cf.* note No. 3410 of November 29, 1997, of the General Directorate of the Special Administrative Unit for Human Rights of the Ministry of the Interior addressed to the Ministry of Foreign Affairs, *supra* nota 110, folio 75.

115 *Cf.* letter of the Director of the Asylum Division, U.S. Citizenship and Immigration Services, to Luis Gonzalo Vélez Restrepo dated July 30, 1998, *supra* note 113, folio 159, and notifications of decision of the U.S. Citizenship and Immigration Services of August 14, 1998 (file of annexes to Merits Report 136/10, tome I, annex 28, folios 163 to 165).

116 *Cf.* answer to note No. DDH.GOI No. 38367/1644 sent on June 30, 2009 by the Human Rights Directorate of the Ministry of the Interior and Justice to the Human Rights and International Humanitarian Law Directorate of the Ministry of Foreign Affairs, *supra* note 110, folios 670 and 671; statement made by Aracelly Román Amariles before the Inter-American Court during the public hearing held on February 24, 2012, and statement made by Aracelly Román Amariles on July 25, 2005, before a notary public of the District of Colombia, United States of America (file of annexes to Merits Report 136/10, tome I, annex 16, folio 86, and file of annexes to the pleadings and motions brief, tome II, annex 17, folio 664).

117 Fact accepted by the State.

101. With regard to the facts of October 6, 1997, an investigation was conducted under the ordinary criminal jurisdiction for the offense of attempted simple kidnapping (*infra* paras. 121 and 122).

C.1) Investigations into the facts that occurred on August 29, 1996

C.1.a) Disciplinary proceedings

i) By the Armed Forces

102. On August 30, 1996 the Commander of the Twelfth Brigade of the Colombian National Army, Néstor Ramírez Mejía, issued Decisions Nos. 011 and 012, sanctioning a "commander of the Fourth Squad of the First Detachment of the Military Police Company of No. 12 A.S.P.C Battalion," and a "detachment commander of the Military Police Company of No. 4 P.M. Battalion, with a "severe reprimand." Both were punished for, *inter alia*, "abuse of authority" and "negligence in their command duties." Regarding the former, it was indicated that "he ordered a soldier under his command to seize the video camera from cameraman LUIS GONZALO VELEZ of the television news program *12:30*, an act that violates the provisions on freedom of the press," and "that, in compliance with the said order, it appears that LUIS GONZALO VELEZ was subjected to arbitrary treatment." Furthermore, the said decision indicated that "owing to lack of control, the troops aimed their official weapons at all the participants in the protest placing their life and personal integrity in imminent danger."[118] The decision sanctioning the other commander does not include any explicit reference to Mr. Vélez Restrepo, but does mention the acts perpetrated against him as follows: "that the images broadcast by the television news programs reveal[ed] that an attempt was made to seize a videotape from a cameraman accredited by the media, and this constituted an act that endangered freedom of expression." In addition, the decision concludes that the said commander "physically assaulted a defenseless participant in the protest against the Police Force [which took place on the bridge over the Bodoquero river of the municipality of Morelia on August 29, 1996]."[119]

103. The soldiers who were sanctioned requested a review of the sanctions established in decisions Nos. 011 and 012.[120] However, the State advised this Court that the rulings on the appeals "could not be found."[121]

ii) By the Attorney General's Office

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[118] *Cf.* decision No. 011 issued by the Commander of the Twelfth Brigade of the Colombian National Army on August 30, 1996, *supra* note 79, folio 18.

[119] *Cf.* decision No. 012 issued by the Commander of the Twelfth Brigade of the Colombian National Army on August 30, 1996, *supra* note 74, folio 23.

[120] *Cf.* request for reconsideration of sanction filed by Sergeant first class Fernando Echavarría Calle before the Brigadier General Commander of the Twelfth Brigade of the Colombian National Army dated September 4, 1996, and request for revocation of decision No. 11 of August 30, 1996, and supplementary appeal filed by Second Sergeant second class William Moreno Pérez before the Brigadier General Commander of the Twelfth Brigade of the Twelfth Brigade of the Colombian National Army (file of useful evidence presented by the State, tome III, folios 1200 and 1205).

[121] *Cf.* Communication No. 68983 of July 25, 2012, from the Director for Human Rights and International Humanitarian Law of the Ministry of National Defense of Colombia to the Director for Human Rights and International Humanitarian Law of the Ministry of Foreign Affairs (file of useful evidence presented by the State, tome I, folio 5).

104. The Attorney Delegated to the Defense of Human Rights and the Special Investigations Directorate of the Attorney General's Office opened preliminary inquiries into the events that took place on August 29, 1996, relating to "violent confrontations between peasants who were trying to get to Florencia (Caquetá) […] and members of the National Army attached to the Twelfth Brigade," during which some people lost their life, others were injured, and Mr. Vélez Restrepo "was beaten when he refused to turn over a videotape on which he had just recorded an attack on one of the peasants by a uniformed member of the Army." In addition, preliminary inquiries were also opened into "the events that took place between August 19 and 23, 1996 [in Santuario and in Belén de los Andaquíes], during which three of the marchers lost their life […] and several more were injured." For reasons of jurisdiction, the said inquiries were filed in the Attorney General's Office under Case File No. 001-3422.[122]

105. On May 27, 1998 the Attorney General issued a decision in which he ordered the closure of the preliminary inquiries, considering that the Commander of the Twelfth Brigade of the National Army "did not incur in any irregular behavior," because "he gave precise orders to the military personnel under his command, […] expressly prohibiting them from […] implementing certain actions that could signify a threat or a violation of fundamental human rights." Additionally, the Attorney General indicated that he would "order that copies be certified" so that an investigation could be conducted within the National Army on "the presumed disciplinary responsibility that could be borne by the soldiers […] for the alleged improper use of their weapons during those events."[123]

C.1.b) Investigation by the military criminal jurisdiction

106. On August 31, 1996, a preliminary investigation was opened for the offense of personal injuries in relation to the events that took place on August 29, 1996 during the peasant march in the municipality of Morelia (Caquetá) during which several persons were injured, including Mr. Vélez Restrepo. The 122nd Military Criminal Investigations Court was in charge of the investigation.[124] Around mid-September 1996, Mr. Vélez testified in this proceeding.[125] The case file of the military criminal investigation was lost when it was in "the archive" of a military battalion in the "zone of détente" decreed by the State in the context of the peace process with the Revolutionary Armed Forces of Colombia (FARC). An attempt was made to "reconstruct the file, but it was unsuccessful."[126]

107. This Court was only provided with the final decision of the said investigation, which was issued on October 3, 1997, by the 122nd Military Criminal Investigations Court. In this

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122 *Cf.* decision issued on May 27, 1998 por the Attorney General's Office, File No. 001-3422 (file of annexes to Merits Report 136/10, tome I, annex 33, folios 195 to 197).

123 *Cf.* decision issued on May 27, 1998 por the Attorney General's Office, File No. 001-3422, *supra* note 122, folio 202.

124 *Cf.* decision issued on October 3, 1997, by the 122nd Military Criminal Court of First Instance, San Vicente del Caguán (Caquetá) (file of annexes to Merits Report 136/10, tome I, annex 32, folio 188), and Note No. 193 of October 31, 1996, of the 122nd Military Criminal Court of First Instance, San Vicente del Caguán (Caquetá) (file of annexes to Merits Report 136/10, tome I, annex 37, folio 229).

125 *Cf.* statement made by Luis Gonzalo Vélez Restrepo before the Inter-American Court during the public hearing held on February 24, 2012, and statement made by Luis Gonzalo Vélez Restrepo on July 25, 2005, before a notary public of the District of Colombia, United States of America (file of annexes to Merits Report 136/10, tome I, annex 15, folio 79, and file of annexes to the pleadings and motions brief, tome II, annex 16, folio 656).

126 *Cf.* note No. 0605/MDN-DEJUM-J67lPM-BICAZ-742 of June 22, 2006, of the 67th Military Criminal Court of First Instance (file of annexes to Merits Report 136/10, tome I, annex 31, folio 186).

decision, it was decided "to abstain from opening […] a formal criminal investigation [against two sergeants and a soldier] for the acts attributed to them."[127]

C.2) Regarding the threats and harassments after August 29, 1996

C.2.a) Disciplinary investigation by the Attorney General's Office

108. On September 11, 1996 the Editor-in-Chief of *Noticiero Colombia 12:30* forwarded a brief to the National Director of Special Investigations of the Attorney General's Office asking him "to clarify" what had happened the previous day when "four men in a red Toyota" "arrived at the home of [Luis Gonzalo Vélez Restrepo,] cameraman of the [said] news program" and "said that they worked for the Attorney General's Office, but failed to present any identification, and questioned his wife, inquiring about Luis Gonzalo's schedule and activities."[128]

109. In a report of September 17, 1996, two "commissioned officers" informed the Coordinator of the Human Rights Unit of the National Special Investigations Directorate of the Attorney General's Office of the results of the interview with Mr. Vélez Restrepo and his wife. During this interview, the latter had expressed their concern about "incidents that [had been] occur[ring] at their place of residence, such as the presence of individuals asking about their daily activities," and Mrs. Román Amariles also referred to "the presence of […] unknown individuals in their home, who arrived in a red vehicle," and who asked about Mr. Vélez Restrepo's routine and "said that they were from the Attorney General's Office." In this report, the said officials recommended to the Coordinator of the Human Rights Unit that "he forward to the Prosecutor General's Office or else to the Administrative Department of Security (DAS)" this information on the situation of the Vélez Román family so that one of these institutions could provide them with protection. On September 24, 1996, the Director of the Human Rights Unit of the Attorney General's Office signed a note addressed to the Director of the DAS, informing him of Mr. Vélez Restrepo's situation "for the effects that your Department may consider pertinent."[129]

110. On October 6, 1997, the Attorney General's Office received a brief dated September 29, 1997, in which the Colombian Commission of Jurists denounced "the situation of anxiety that the cameraman of *Noticiero Colombia 12:30* [Luis Gonzalo Vélez Restrepo] and his family are experiencing, specifically because he is the object of harassment and threats, which he contends are related to video recordings he made just this last year [*sic*] while performing his professional activities and during the peasant marches in the department of Caquetá, material that was widely broadcast by the media and that reveals the ill-treatment of the marchers and the cameraman himself by units of the National Army."[130] Among the

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[127] Decision issued October 3, 1997, by the 122nd Military Criminal Court of First Instance, San Vicente del Caguán (Caquetá), *supra* note 124, folio 193.

[128] *Cf.* letter of September 11, 1996, signed by Hans Sarmiento, Editor-in-Chief of *Noticiero Colombia 12:30*, addressed to the National Director of Special Investigations of the Attorney General's Office, *supra* note 99, folio 62.

[129] *Cf.* case file 286969, report dated September 17, 1996, addressed by two officials of the Human Rights Unit of the National Special Investigations Directorate of the Attorney General's Office to the Coordinator of the Human Rights Unit with regard to mandate No. 0171, and note of September 24, 1996, signed by the Director of the Human Rights Unit of the Attorney General's Office addressed to the Director of the DAS (file of useful evidence presented by the State on August 13, 2012, tome IV, folios 1719 and 1720).

[130] *Cf.* note issued on October 10, 1997 by the Human Rights Unit of the National Special Investigations Directorate of the Attorney General's Office (file of annexes to Merits Report 136/10, tome I, annex 12, folios 67 and 68), and letter addressed by the Colombian Commission of Jurists to the Attorney General's Office on September 29, 1997 (file of the processing of the case before the Commission, tome II, folios 912 and 913).

facts denounced were the alleged visits to the home of Mr. Vélez Restrepo by men who said they were officials of the Attorney General's Office and who asked his wife for information about Mr. Vélez.[131]

111. On October 10, 1997, the Human Rights Unit of the National Special Investigations Directorate of the Attorney General's Office opened the preliminary inquiry. An order was given for various measures to be taken, including receiving the testimony of Mr. Vélez Restrepo's wife, and also that a morphologist intervene in this procedure; also "to hear the testimony of the persons who have witnessed the visit of unknown individuals to the home of [the Vélez Román family]." On October 17, 1997, the testimony of one of Mr. Vélez Restrepo's colleagues was received.[132]

112. On February 2, 1998, Aracelly Román Amariles testified before the Antioquia Branch Office of the National Special Investigations Directorate of the Attorney General's Office. Mrs. Román Amariles referred to two visits made to her home in September 1996 and September 1997 by men who said they were members of the Attorney General's Office but who failed to present any identification to prove this. The deponent also described one of the men who made the said visit, so that the morphology expert of the Technical Investigation Unit of the Prosecutor's Office could prepare his spoken portrait.[133]

113. On July 10, 1998, the Human Rights Unit of the National Special Investigations Directorate of the Attorney General's Office prepared an "evaluative report on [the] preliminary inquiry," in which it recommended "[f]orwarding the […] disciplinary investigation to the District Attorney's Santafé de Bogotá Office" and that "a formal investigation be opened against [a certain] sergeant […] attached to No. 4 Battalion of the Military Police at the time of the facts," because "there was an apparent similarity between the spoken portrait made based on the testimony of Aracelly Román Amariles […] and a photograph taken of the [said] sergeant."[134]

114. On May 3, 2002, the Oversight Bureau of the Attorney General's Office ordered the final closure of the investigation into the presumed harassment and threats, and the visits made to the home of the Vélez Restrepo family, because "it [was] inappropriate to order the opening of a disciplinary investigation against officials of the Attorney General's Office since it had not been possible to establish their participation in the events denounced."[135]

115. On August 27, 2006, the Bogota Second District Attorney's Office "order[ed] the final closure of the […] procedures taken against the [said] sergeant […]." The District Attorney's Office indicated that "the statements of witness [Román Amariles] do not reveal verbal or physical harassment or threats," and that the witness "only observed the person who asked

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131 *Cf.* letter dated September 29, 1997, addressed by the Colombian Commission of Jurists to the Attorney General's Office, *supra* note 105, folios 912 and 913.

132 *Cf.* note issued on October 10, 1997, by the Human Rights Unit of the National Special Investigations Directorate of the Attorney General's Office, *supra* note 130, folios 67 and 68, and statement made by Eduin Yesid Cristancho Merchan before the Human Rights United of the National Special Investigations Directorate of the Attorney General's Office on October 17, 1997 (file of annexes to Merits Report 136/10, tome I, annex 17, folio 91).

133 *Cf.* statement made on February 2, 1998, by Aracelly Román Amariles before the Antioquia Branch Office of the National Special Investigations Directorate of the Attorney General's Office, *supra* note 103, folios 94 and 95.

134 *Cf.* report of July 10, 1998, assessing the preliminary inquiry D.N.I.E. 125/98 of the Human Rights Unit of the National Special Investigations Directorate of the Attorney General's Office (file of annexes to Merits Report 136/10, tome I, annex 23, folios 110 to 113).

135 Decision issued on May 3, 2002, by the Oversight Office of the Attorney General's Office, case file 030-54410/2001 (file of annexes to Merits Report 136/10, tome I, annex 22, folios 105 to 108).

for her husband through a small opening, which reduce[d] the veracity of the description of the person concerned and, consequently, invalidated the report prepared by the Special Investigations Directorate based on the testimony of the witness Román Amariles."[136]

C.2.b) Criminal investigations in the ordinary jurisdiction

i) Opened in 1996, by the 243rd Bogota Sectional Prosecutor's Office, File No. 286969

116. In early October 1996, an investigation was opened by the 243rd Bogota Sectional Prosecutor's Office for the offense of threats. Towards the end of November 1996, the Office began to conduct investigative procedures.[137]

117. On August 27, 1997, Mr. Vélez gave testimony before the 243rd Bogota Sectional Prosecutor's Office in which he referred to the threats he had received by telephone and indicated that the last threats had occurred in February that year and that, since then, he had not received any more. He indicated that he believed that the threats were "related to the incidents that took place in Caquetá on August 29, [1996]," regarding which he had filed a complaint. In addition, he explained the consequences of these threats on his life and that of his family, indicating that he "had to leave the city for almost six months" and receive psychological treatment "to help him overcome the trauma."[138]

118. On September 1, 1999, the Prosecutors' Office issued a decision concluding the inquiry, on the basis that "the threats against Mr. Luis Gonzalo Vélez, as he himself indicated in his testimony, [are] facts [that] have already been the subject of both civil and criminal complaints before the military criminal justice." This decision was made final on September 23, 1999.[139]

ii) Opened in 2007 by the 253rd Bogota Sectional Prosecutors' Office, File 840718

119. On August 23, 2007, the Human Rights and International Humanitarian Law Directorate of the Ministry of Foreign Affairs sent a note to the National Directorate of Prosecutors' Offices asking it to consider whether it would be pertinent to "merge competences" in relation to the ongoing investigations under the military criminal justice system in relation to the case of Mr. Vélez Restrepo, "that is also being processed at this time before the inter-American human rights system." On December 13, 2007, the Legal Group of the National Directorate of Prosecutors' Offices asked the Sectional Directorate of Prosecutors' Offices of Florencia to "appoint a prosecutor." The investigation for the offense of threats was assigned to three different prosecutors' offices, until on September 15, 2009, the 253rd Bogota Sectional Prosecutor's Office assumed the investigation and, in the

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136 *Cf.* decision issued on August 27, 2006, by the Second District Attorney's Office of Bogotá, Attorney General's Office, File No. 143-17639/98 (file of annexes to Merits Report 136/10, tome I, annex 34, folios 205-208).

137 *Cf.* case file No. 286969, Prosecutor General's Office and note of November 20, 1996, issued by the 243rd Prosecutor Delegate (file of useful evidence presented by the State, tome IV, folios 1713 and 1724).

138 *Cf.* statement made on August 27, 1997, by Luis Gonzalo Vélez Restrepo before the 243rd Bogotá Sectional Prosecutor's Office, *supra* nota 101, folio 64.

139 *Cf.* writ of prohibition issued on September 1, 1999, by the 243rd Prosecutor Delegate (file of useful evidence presented by the State, tome IV, folios 1743 to 1745).

following months, ordered several measures.[140] On January 25, 2010, the 253rd Bogota Sectional Prosecutors' Office decided "[t]o abstain from opening preliminary proceedings" for the offense of threats because 13 years and six months had elapsed since the time of the facts investigated and, consequently, "the statute of limitations had taken effect."[141]

C.3) Pre-trial administrative conciliation procedure

120. In 1998, Raúl Hernández Rodríguez, on behalf of Mr. Vélez Restrepo and some of his next of kin, filed a request for administrative conciliation "for the personal injuries and harassment of Luis Gonzalo Vélez and others."[142] On November 9, 1998, a pre-trial conciliation hearing was held in Florencia, Caquetá, during which the Ministry of Defense presented an offer of "200 grams of gold for the injury suffered" on August 29, 1996, which was rejected by the petitioners' lawyer.[143] Neither Mr. Vélez Restrepo, nor his next of kin, nor his lawyer filed any complaint before the contentious-administrative jurisdiction.

C.4) Criminal investigation for the crime of attempted simple kidnapping, File 840725

121. There is nothing in the body of evidence to show that progress was made in any investigation from 1997 to 2009. According to investigation file 840725, on August 25, 2009, some "procedural elements" were forwarded to the Assignments Office of the Prosecutor General's Office so that a prosecutor would be assigned to the investigation of the crime of attempted kidnapping with regard to the facts that occurred on October 6, 1997 (*supra* para. 94). It is not clear if the said investigation was opened *ex officio* or as the result of a complaint filed by Mr. Vélez Restrepo's lawyer, Raúl Hernández Rodríguez.[144]

122. On September 15, 2009, the 253rd Bogotá Sectional Prosecutor's Office assumed the investigation of the case and ordered the implementation of several measures. On April 26, 2012, the 253rd Prosecutors' Office issued a decision, in which it decided to abstain from opening the preliminary investigation, based on the fact that it did "not see the need to maintain open the preliminary investigations indefinitely merely because, in 15 years, the presumed victim has not want to provide a single piece of information on the events, which become simply a possibility." This decision became final on May 3, 2012.[145]

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[140] *Cf.* case file No. 840718, 253rd Bogotá Sectional Prosecutor's Office (file of useful evidence presented by the State, tome II, folios 537 to 538, 636, 680, 683, 684, 686, 699 and 700).

[141] Decision issued on January 25, 2010, by the 253rd Bogota Sectional Prosecutors' Office with regard to case file 840718 (file of useful evidence presented by the State, tome III, folios 1159 and 1160).

[142] *Cf.* brief requesting pre-trial administrative conciliation filed by Raúl Hernández Rodríguez on behalf of Luis Gonzalo Vélez Restrepo and some of his next of kin before the Contentious Administrative Law Court of Cundinamarca (file of annexes to Merits Report 136/10, annex 36, folios 214-227); record of conciliation hearing of November 9, 1998, between Luis Gonzalo Vélez Restrepo and the Ministry of Defense, National Army (file of useful evidence presented by the State, tome I, folio 10), and the State's answering brief (merits file, tome I, folio 345, para. 91).

[143] Record of conciliation hearing of November 9, 1998, between Raúl Hernández Rodríguez and the Ministry of Defense, National Army (file of useful evidence presented by the State, tome I, folio 9).

[144] In an Executive Report of February 13, 2012, the 253rd Prosecutor's Office stated that the complainant was Raúl Hernández Rodríguez. However, on April 26, 2012, the same Prosecutor's Office indicated that "[t]he examination of those facts was the result of an article in the magazine *Semana* of August 21, 2008" (file of useful evidence presented by the State, tome I, folios 15, 162 and 173).

[145] *Cf.* case file No. 840725, 253rd Bogotá Sectional Prosecutor's Office (file of useful evidence presented by the State, tome I, folios 21 to 23, 173 to 176 and 177).

RIGHTS TO PERSONAL INTEGRITY AND TO FREEDOM OF THOUGHT AND EXPRESSION, IN RELATION TO THE OBLIGATION TO RESPECT AND GUARANTEE RIGHTS

A) General considerations of the Court

123. In this chapter, the Court considers it necessary to identify the reasons that establish international responsibility in this case and to rule on the matters in dispute, taking into account that the State's acceptance of the facts and acknowledgment of international responsibility is partial. Chapter III described the terms in which the State accepted some of the facts submitted to the Court's jurisdiction by the Inter-American Commission and partially acknowledged its international responsibility for the violations of Articles 5[146] and 13[147] of the American Convention to the detriment of Mr. Vélez Restrepo, his wife Aracelly Román Amariles, and their children Mateo and Juliana Vélez Román (*supra* paras. 13 to 17). Colombia disagrees with the Commission and the representative regarding the severity of the violation of the right to personal integrity against Mr. Vélez Restrepo for the attack of August 29, 1996, and did not acknowledge the alleged violation of the social dimension of the right to freedom of thought and expression. Furthermore, the State did not acknowledge responsibility for the events subsequent to August 29, 1996, relating to threats and harassment, or for the attempted arbitrary deprivation of liberty of Mr. Vélez Restrepo that took place on October 6, 1997, or for the departure from the country of the members of the Vélez Román family.

124. The Court will divide the legal analysis into two sections, and will first address the legal consequences of the attack of August 29, 1996, and then the incidents that occurred after that date.

125. The analysis of the acknowledged violations as well as those that are disputed requires the Court to determine whether the State failed to comply with its obligation to respect and guarantee the human rights referred to in the preceding paragraph.[148] The Court has established that, in accordance with Article 1(1) of the Convention, States are obliged to respect and guarantee the human rights recognized therein.[149] It has also indicated that the State's international responsibility is based on acts or omissions of any power or organ of the State, irrespective of its rank, that violate the American Convention.[150]

126. The Court has held that, under this article, the first obligation assumed by the States Parties is "to respect the rights and freedoms" recognized in the Convention. Thus, the

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[146] 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 […]."

[147] The first subparagraph of Article 13 of the American Convention establishes that "[e]veryone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice."

[148] Article 1(1) of the American Convention establishes: "[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."

[149] *Cf. Case of Velásquez Rodríguez v. Honduras*. *Merits*, paras. 165 and 166, and *Case of González Medina and family members v. Dominican Republic*. *Preliminary objections, merits, reparations and costs*, para. 126.

[150] *Cf. Case of Godínez Cruz v. Honduras*. *Merits*. Judgment of January 20, 1989. Series C No. 5, para. 173, and *Case of the Barrios Family v. Venezuela. Merits, reparations and costs*, para. 45.

notion of restricting the exercise of the State's power is necessarily included in the protection of human rights.[151] The obligation to guarantee is derived from the general obligation of guarantee indicated in Article 1(1) of the Convention together with the substantive right protected in this treaty that must be safeguarded, protected or guaranteed, and entails the positive obligation of the State to adopt a series of conducts, depending on the specific substantive right that must be guaranteed and the specific situation in question.[152] This obligation entails the duty of the States to organize the entire government apparatus and, in general, all the structures through which public power is exercised, so that they are capable of legally ensuring the free and full enjoyment of human rights.[153]

B) The facts concerning the attack of August 29, 1996

B.1) Violation of the right to personal integrity

127. According to its acknowledgment of responsibility, the State is responsible for the attack against Mr. Vélez Restrepo by members of the Army on August 29, 1996, while he was recording the events of one of the "coca marches" in Caquetá, in the exercise of his functions as a cameraman of a national news program (*supra* paras. 14, 78 to 83). Colombia acknowledged that these actions of the State agents violated the obligation to respect Mr. Vélez Restrepo's right to personal integrity.

128. Regarding the violation of the right to personal integrity of Aracelly Román Amariles and Mateo and Juliana Vélez Román, argued only by the representative, in its final written arguments the State extended its acknowledgment of responsibility to consider them also as victims of the violation of this right, owing to the facts of the attack of August 29, 1996 (*supra* paras. 13 and 14(a)). In this regard, the representative stated that this attack "also caused deep distress to [Mr. Vélez Restrepo's] family (his wife and children), who feared for the life and well-being of their husband and father." In this regard, in her testimony before this Court, Mr. Vélez Restrepo's wife recounted the anguish she suffered when she learned through the media of the attack on her husband and that he had been taken to a hospital. Her son, Mateo Vélez Román, was with her and saw the images transmitted by the media. The opinion of expert witness Kessler relates how these events affected Mateo, who recalls the images broadcast on television and the anguish of his mother, who was holding his younger sister Juliana.

129. Despite this acknowledgment, the State disputed the conclusions of the Commission regarding the gravity or severity of the injuries sustained by Mr. Vélez Restrepo as a result of the attack of August 29, 1996, his recovery time, and the Commission's assessment of the evidence to reach such conclusions.

130. In the Merits Report, the Commission alleged that Mr. Vélez Román was "indiscriminately beat[en] causing him serious injuries," and that this attack constituted a violation "of Article 5(1) and 5(2) of the Convention, in relation to Article 1(1)" of this

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[151] *Cf. The Word "Laws" in Article 30 of the American Convention on Human Rights.* Advisory Opinion OC-6/86 of May 9, 1986. Series A No. 6, para. 21, and *Case of the Barrios Family v. Venezuela. Merits, reparations and costs*, para. 46.

[152] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits*, paras. 165, 166 and 176, and *Case of González Medina and family members v. Dominican Republic. Preliminary objections, merits, reparations and costs,* para. 127.

[153] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits*, paras. 166, and *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador. Merits and reparations*, para. 16(6).

treaty, to the detriment of Mr. Vélez Restrepo. In this report, the Commission found it proved that "owing to the attack, [Mr. Vélez Restrepo] suffered a ruptured liver, the loss of one testicle, and several broken ribs and was hospitalized for several days and then on disability leave at home for an additional two weeks." In its final written observations, when referring to these injuries, it indicated that "Mr. Vélez suffered significant injuries, was hospitalized, and on disability leave for two weeks."

131. For his part, in the pleadings and motions brief, the victims' representative argued that "[t]he attack caused serious harm to the physical integrity of Richard Velez: he was hospitalized immediately and declared unfit to perform any activity for two weeks." Also, in his observations on the preliminary objection, he stated that "[i]t is true that the [medical] reports […] do not reflect the description of the injuries […] included in the Merits Report," but that "there is no doubt that Mr. Vélez [Restrepo] was severely injured as a result of the beating he suffered."

132. Based on the reports and medical records provided as evidence by the Commission, the Court found it proved that Mr. Vélez Restrepo was admitted to the emergency department of a certain hospital in Florencia, Caquetá, and that, the same night, he was transferred to a clinic in Bogota, where he was interned for one day and where medical diagnoses and tests were performed, which showed that his liver and pancreas were normal, and that there were no thoracic or abdominal injuries. The Court also found it proved that he given a two-week disability leave at his residence and that, when he went to the said clinic in Bogota for a control visit, Mr. Vélez Restrepo reported having insomnia, but had no physical injuries (*supra* para. 82). Consequently, the Court finds no evidence to substantiate the supposed injuries mentioned by the Commission in the Merits Report, indicating that Mr. Vélez Restrepo had suffered from a "perforated liver, the loss of one testicle, and several broken ribs"; moreover, it has not been proved that he remained hospitalized for more than one day.

133. When, testifying before this Court during the public hearing, Mr. Velez Restrepo told the Court that, when the said attack occurred, he felt intense pain in his chest, abdomen and testicles. The Court understands that, in saying this, Mr. Velez Restrepo did not intend to contradict the said documentary evidence, but rather, as the victim of the attack, he described the pain he felt, which is consistent with the diagnosis on his admission to the hospital in Florencia, Caquetá, from which, where legible, it is possible to see that it was noted that Mr. Vélez Restrepo was admitted "with multiple blows to the abdomen with a blunt instrument" and that he had "acute localized pain."

134. The Court considers that the new allegations introduced by the victims' representatives in his observations on the acknowledgment of responsibility and in his final arguments classifying what happened to Mr. Vélez Restrepo on August 29, 1996, "as an act of torture" are inadmissible, because they are time-barred.

135. Based on the State's acknowledgment of responsibility and the preceding findings, the Court concludes that the State failed to comply with its obligation to respect the right to personal integrity of Mr. Velez Restrepo, Aracelly Román Amariles, and their children Mateo and Juliana Vélez Román, which constitutes a violation of Article 5(1) of the American Convention, in relation to Article 1(1) thereof.

B) Violation of the right to freedom of thought and expression

136. The Commission stated in its Merits Report that the State violated Article 13 of the Convention when its agents attacked Mr. Vélez Restrepo "with the intention and the result of obstructing his journalistic work" "of video recording and subsequently reporting the abuses of power by the National Army." The representative indicated that he "agree[d] fully with the Inter-American Commission" regarding the alleged violation of Article 13 of the Convention. In this regard, the State acknowledged its responsibility "for the violation of the individual dimension of the right to freedom of thought and expression" to the detriment of Mr. Vélez Restrepo "because the attacks that occurred on August 29, 1996, interrupted the victim's work as a journalist, thus violating his right to seek information."

137. The Court's case law has provided the right to freedom of thought and expression established in Article 13 of the Convention with wide-ranging content. The Court has indicated that this article protects the right to seek, to receive and to impart ideas and information of all kinds, as well as to receive and to obtain the information and ideas disseminated by others.[154] The Court has indicated that freedom of expression has an individual dimension and a social dimension, from which it has derived a series of rights that are protected by this article.[155] This Court has stated that both dimensions are equally important and must be fully guaranteed simultaneously to give total effects to the right to freedom of expression as established in Article 13 of the Convention.[156]

138. The first dimension of the right to freedom of expression encompasses the right to use any appropriate medium to disseminate opinions, ideas and information and allow them to reach the greatest number of persons. In this regard, expression and dissemination are inseparable, so that a restriction of the possibilities of dissemination represents directly, and to the same extent, a limitation of the right to free expression.[157] Regarding the second dimension of freedom of expression, the social aspect, the Court has indicated that freedom of expression also entails the right of everyone to know the opinions, reports and news expressed by third parties. For the ordinary citizen, the right to know other opinions and the information that others have is as important as the right to impart their own.[158] Hence, it is based on both dimensions that freedom of expression requires that no one may be arbitrarily impaired or impeded from expressing his own thoughts and, therefore, represents a right of each individual, but also entails a collective right to receive any information and to know the expression of the thought of others.[159]

139. The Court has established that violations of Article 13 of the Convention may take different forms, according to how they produce a denial of freedom of expression or involve

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[154] *Cf. Compulsory Membership in an Association prescribed by Law for the Practice of Journalism (Arts. 13 and 29 of the American Convention on Human Rights).* Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, para. 30, and *Case of Fontevecchia and D'Amico v. Argentina. Merits, reparations and costs.* Judgment of November 29, 2011. Series C No. 238, para. 42.

[155] *Cf. Case of "the Last Temptation of Christ" (Olmedo Bustos et al.) v. Chile. Merits, reparations and costs.* Judgment of February 5, 2001. Series C No. 73, para. 74, and *Case of Herrera Ulloa v. Costa Rica. Preliminary objections, merits, reparations and costs*. Judgment of July 2, 2004. Series C No. 107, para. 108.

[156] *Cf. Case of Ivcher Bronstein v. Peru. Merits, reparations and costs.* Judgment of February 6, 2001. Series C No. 74, para. 149, and *Case of Herrera Ulloa v. Costa Rica. Preliminary objections, merits, reparations and costs*, para. 111.

[157] *Cf. Case of Ivcher Bronstein v. Peru. Merits, reparations and costs*, para. 147, and *Case of Herrera Ulloa v. Costa Rica. Preliminary objections, merits, reparations and costs*, para. 109.

[158] *Cf. Case of Ivcher Bronstein v. Peru. Merits, reparations and costs*, para. 148, and *Case of Herrera Ulloa v. Costa Rica. Preliminary objections, merits, reparations and costs*, para. 110.

[159] *Cf. Case of Ivcher Bronstein v. Peru. Merits, reparations and costs*, para. 146, and *Case of Herrera Ulloa v. Costa Rica. Preliminary objections, merits, reparations and costs*, para. 108.

restrictions that go beyond what is allowed by law.[160] The Court has held that when the public authorities establish mechanisms or tale measures to prevent the free flow of information, ideas, opinions or news, a "radical violation [occurs] of both the individual's right to express him or herself and of society's right to be informed, so that one of the basic conditions of a democratic society is affected."[161] This scenario includes "prior censorship, the seizure or banning of publications and, in general, all those procedures that subject the expression or dissemination of information to State control."[162]

140. The Inter-American Court has emphasized that "the profession of journalism […] specifically involves seeking, receiving and imparting information. Thus, the exercise of journalism requires a person to engage in activities that are defined or embraced in the freedom of expression guaranteed in the Convention." The professional exercise of journalism "cannot be differentiated from freedom of expression, but rather, to the contrary, both are evidently interrelated, since the professional journalist is not, and cannot be, anyone other than a person who has decided to exercise freedom of expression in a continuous, regular and paid manner."[163]

141. The Court has emphasized that freedom of expression, particularly in matters of public interest, "is a cornerstone in the very existence of a democratic society." Without an effective guarantee of freedom of expression, the democratic system is weakened and pluralism and tolerance are shattered; the mechanisms of citizen control and complaint may become ineffective and, ultimately, a fertile ground is created for authoritarian systems to become entrenched.[164]

142. Regarding the events in this case, the Court finds it necessary to recall that Mr. Vélez Restrepo was attacked while he was performing his journalistic tasks as a cameraman for a national news program and that the attack by the soldiers was intended to harm his right to freedom of thought and expression by preventing him from continuing to record the incidents that were taking place (*supra* para. 78 to 81) and to disseminate the images he had recorded. The Court underscores that, although the images that Mr. Velez Restrepo was able to film were disseminated, this was due to the fact that, despite the beating he received from the soldiers, he did not relinquish the camera and, even when this was destroyed, the tape that contained the recording was not damaged and it was possible to disseminate the images he had captured when soldiers participating in the actions to control the protest demonstration attacked defenseless individuals. The Court also takes into account that, from the words that the attackers shouted while they were hitting Mr. Vélez Restrepo, it can be heard that they sought to take video "cassette" out of the camera, which they were unable to do. However, this shows that their purpose was to stop the dissemination of the images recorded by Mr. Velez Restrepo (*supra* para. 81). In addition, the disciplinary decision issued next day against an Army sergeant, stated that "he ordered a soldier under his command to seize the video camera of the cameraman [Luis Gonzalo

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[160] *Cf.* Advisory Opinion OC-5/85, paras. 53 and 54, and *Case of Palamara Iribarne v. Chile. Merits, reparations and costs*. Judgment of November 22, 2005. Series C No. 135, para. 68.

[161] *Cf.* Advisory Opinion OC-5/85, para. 54, and *Case of Palamara Iribarne v. Chile. Merits, reparations and costs*, para. 68.

[162] *Cf.* Advisory Opinion OC-5/85, para. 54, and *Case of Palamara Iribarne v. Chile. Merits, reparations and costs*, para. 68.

[163] *Cf.* Advisory Opinion OC-5/85, paras. 72 to 74, and *Case of Fontevecchia and D'Amico v. Argentina. Merits, reparations and costs*, para. 46.

[164] *Cf.* Advisory Opinion OC-5/85, para. 70, and *Case of Ríos et al. v. Venezuela. Preliminary objections, merits, reparations and costs*, para. 105.

Vélez Restrepo] of the television news program *Noticiero 12:30*, an action that violates the provisions of freedom of the press" (*supra* para. 102).

143. This Court has also noted that, when making its partial acknowledgment of the facts relating to the attack of August 29, 1996, the State argued that "the incident in which Mr. Velez was injured was not a deliberate attack, but the result of a chaotic situation that led to acts of violence involving the marchers that caused the State's security forces to react, where one of the consequences was the injury to Mr. Velez." In addition, the Court has verified that, similarly, when testifying before this Court by affidavit in 2012, the person who was Commander of the Twelfth Brigade of the National Army in 1996, General Nestor Ramirez Mejia, even stated that Mr. Vélez Restrepo received "a blow […] from a soldier as the result […] of a situation involving the cameraman's imprudence and a soldier's lack of self-control."

144. In this regard, the Court emphasizes that, even though the attack on Mr. Velez took place in a context in which agents of the security forces were trying to control a protest demonstration with thousands of people, where confrontations arose with some of the protestors (*supra* paras. 78 to 81), Mr. Vélez Restrepo was attacked under the following conditions: he was defenseless and had not acted in any way to justify such an attack; he could be identified as a member of the press by the video camera he was carrying and, moreover, the attack was directed against him with the specific purpose of preventing him from continuing to record what was taking place and to prevent the dissemination of the recording. The Court finds that it is inacceptable to affirm that the attack on a journalist, under these conditions, "was not a deliberate attack" and that it was a "consequence" of the actions taken by the security forces to control the acts of violence that took place at the time.

145. Furthermore, the Court emphasizes that the content of the information that Mr. Vélez Restrepo was recording was of public interest. Mr. Vélez Restrepo captured images of soldiers involved in actions to control the demonstration that was taking place on August 29, 1996 in Caquetá, attacking defenseless individuals (supra paras. 80 and 81). The dissemination of that information enabled those who saw it to observe and verify whether, during the demonstration, the members of the armed forces were performing their duties correctly, with an appropriate use of force. This Court has stressed that "[d]emocratic control by society, through public opinion, encourages transparency in the State's actions and promotes the accountability of public officials in relation to their public functions."[165]

146. Lastly, the Commission affirmed that "[a]ttacks such as those suffered by Mr. Vélez result in fear to capture and disseminate certain information and opinions," so that they limit the freedom of expression "of all citizens, because they have an intimidating effect on the free flow of information."

147. In this regard, Colombia stated that it is not responsible for the violation of the social dimension of the right to freedom of thought and expression, and emphasized that "[t]here is no evidence in these international proceedings that society or other journalists were intimidated by Richard's situation."

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[165] *Cf. Case of Palamara Iribarne v. Chile. Merits, reparations and costs*, para. 83, and *Case of Herrera Ulloa v. Costa Rica. Preliminary objections, merits, reparations and costs*, para. 127. Similarly, *Cf.* ECHR. *Surek and Ozdemir v. Turkey,* No. 23927/94, July 8, 1999, para. 60, and *Feldek v. Slovakia,* No. 29032/95), July 12, 2001, para. 83.

148. The Court finds it reasonable to conclude that the attack perpetrated against Mr. Vélez Restrepo by soldiers while he was covering a public demonstration, and its widespread dissemination in the Colombian media, had a negative impact on other journalists who had to cover events of this type, who could fear suffering similar acts of violence. In addition, the Court has verified that this attack prevented Mr. Vélez Restrepo from continuing to record the events of August 29, 1996, when the armed forces were controlling a demonstration, and this had the correlative effect of preventing this information from reaching possible recipients.[166]

149. Based on the acknowledgment of international responsibility and on the above findings, the Court concludes that, by the acts of violence of August 29, 1996, Colombia violated the obligation to respect the right to freedom of thought and expression of Mr. Vélez Restrepo's, recognized in Article 13 of the American Convention, in relation to Article 1(1) of this treaty

C) Regarding events after the attack of August 29, 1996

150. In this section, the Court must rule on the State's alleged responsibility in relation to the threats and harassment that took place after August 29, 1996 (*supra* paras. 85 to 93), and in relation to the attempted arbitrary deprivation of liberty that occurred on October 6, 1997 (*supra* para. 94), and the subsequent departure from the country of Mr. Vélez Restrepo (supra para. 96) and his wife and children (*supra* para. 97). Colombia contested both that these events took place and that they had a causal nexus with the attack perpetrated by the soldiers against Mr. Vélez Restrepo on August 29, 1996.

151. The Court will decide the aspects in dispute as follows: (1) the alleged violation of the obligation to respect the right to personal integrity of Mr. Vélez Restrepo, his wife and children owing to the threats, harassment and attempted arbitrary deprivation of liberty; (2) the alleged violation of the obligation to guarantee the right to personal integrity of Mr. Vélez Restrepo, his wife, and children owing to the alleged absence of an investigation and the adoption of measures of protection prior to the attempted arbitrary deprivation of liberty that occurred on October 6, 1997, and (3) the additional alleged violation of freedom of thought and expression owing to the events after August 29, 1996.

C.1) Obligation to respect the right to personal integrity in relation to the threats, harassment and attempted arbitrary deprivation of liberty

Observations of the Commission and arguments of the parties

152. The Commission referred in the Merits Report to the evidence that allowed it to establish "that, following the events of August 29, 1996, Mr. Vélez Restrepo and his family experienced a series of threats and harassment that culminated with the attempted kidnapping on October 6, 1997." It also affirmed that "there is sufficient evidence to conclude that […] they originated from State agents," who were being investigated for the attack of August 29, 1996, as well as the fact that the State has not offered any other hypothesis that might explain the threats and harassment. According to the Commission, "the repeated threats in the present case violated the right of the members of the Velez Roman family to their mental and moral integrity, also taking into account that the threats were aimed at preventing Mr. Velez from seeking justice." The Commission concluded that,

[166] *Cf. Case of Ivcher Bronstein v. Peru. Merits, reparations and costs*, para. 146, and *Case of Palamara Iribarne v. Chile. Merits, reparations and costs*, para. 73.

with regard to these threats and harassment, culminating in the attempted kidnapping of October 6, 1997, "the State violated Article 5(1) of the Convention to the detriment of Mr. Vélez and his family."

153. The victims' representative stated that he "agree[d] fully with the Inter-American Commission" regarding the alleged violations of Articles 5 and 13 of the Convention. In addition, he emphasized that the threats and harassments were reactivated based on the complaints and procedural actions that sought to obtain justice for the events of August 29, 1996. He also argued that the numerous threats caused Mr. Vélez Restrepo "profound anguish and stress that even forced him to seek psychological therapy," and meant that the family had to move on numerous occasions.

154. The State indicated that it was not responsible for the alleged violations of the right to personal integrity and the right to freedom of thought and expression in relation to the supposed threats, harassment and attempted kidnapping that supposedly took place after the attack of August 29, 1996. Colombia disputed that these acts had occurred[167] and expressed its disagreement with the Commission's assessment of documents that form part of the disciplinary case files to conclude that they originated from State agents, as well as to affirm that there was a causal nexus between the attacks of August 29, 1996, and the alleged threats, harassment, and attempted kidnapping. Colombia underlined that "there is no evidence, either at the domestic level or within the framework of the international proceedings that can prove the State's responsibility in relation to [those] presumed facts" and that, to the contrary, the disciplinary proceedings confirmed that State agents had not been involved in them. It affirmed that, owing to the absence of a serious investigation into the alleged threats, "the direct existence of a causal nexus between the attack suffered and the threats cannot be inferred and, in particular, the participation of State agents." The State also argued that "neither the personal injuries sustained by Mr. Vélez Restrepo, nor the alleged threats against the victims constitute acts or conducts that the Inter-American Court or the international community as a whole have indicated to be serious human rights violations."

Considerations of the Court

155. In order to determine whether the State is responsible for the obligation to respect the right to personal integrity, the Court must determine whether the threats, harassment and attempted deprivation of liberty that occurred after August 29, 1996, could have been perpetrated by State agents, owing to a possible connection with the complaints and procedural actions filed by Mr. Vélez Restrepo for the investigation and punishment of the soldiers who attacked him on August 29, 1996. In addition, since Colombia disagreed that such events could even have occurred, the Court considers it relevant to make some additional considerations that explain the assessments made in Chapter VIII to establish as proved that, after August 29, 1996, Mr. Vélez Restrepo and his family were subjected to threats and intimidation (supra paras. 84 to 93), and that Mr. Vélez Restrepo underwent an attempted arbitrary deprivation of liberty on October 6, 1997 (supra paras. 94).

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[167] In its answering brief, Colombia indicated that it reiterated the position it had taken in the proceedings before the Commission. The Court observes that, before the Commission, Colombia affirmed that the probative elements "are not determinant or sufficient to prove the existence of these threats and intimidations and, in particular, to prove the alleged participation of State agents in these acts." In addition, before the Commission, Colombia affirmed that "the mere statement of Mr. Velez Restrepo is insufficient proof to determine with certainty the existence of the alleged attempted kidnapping and that, if it did happen, the reason was the complaints filed by Mr. Velez or the fact that he was a journalist." However, in this answering brief, Colombia also affirmed before the Court that it "is aware that the absence of a serious investigation into the alleged threats does not permit the State to affirm with certainty that these threats did not exist."

156. The Court has established previously that it is legitimate to use circumstantial evidence, indications and presumptions to found a judgment, "provided that, from them, it is possible to infer conclusions that are consistent with the facts."[168] In addition, the Court recalls the criteria applicable to the assessment of evidence. Ever since its first contentious case, it has indicated that, for an international court, these criteria are less rigid than under domestic legal systems and has maintained that it is able to assess the evidence freely. The Court must apply an assessment of the evidence that takes into account the gravity of the attribution of international responsibility to a State and that, despite this, is able to create the conviction about the truth of the facts alleged.[169] The Court has also established criteria for the burden of proof and has emphasized that, in proceedings concerning human rights violations, the State's defense cannot be based on the impossibility of the complainant to provide evidence, when it is the State that controls the means to clarify facts that have taken place on its territory.[170]

C.1.a) Regarding the evidence to consider proved the threats and harassment

157. With regard to the evidence that this Court assessed in order to find the threats and harassment proved, in addition to the testimony that the direct victims of these events gave at the domestic level before the 243rd Prosecutor's Office in 1997, and before the Attorney General's Office in 1998, and the statements provided before notary public in 2005, Mr. Vélez and Mrs. Román testified before this Court at the public hearing. Both the statements assessed previously by the Commission and those they gave before this Court, are consistent and coincide with the facts that the Court has considered proved (supra paras. 84 to 94).

158. The Court has other probative elements that support the content of these statements, consisting of statements or briefs from individuals or institutions that knew or had contact with Mr. Vélez at the time of the facts and to whom he commented on or informed of the threats and harassments that he and his family were experiencing. In this regard, there is a letter sent to the Attorney General's Office on September 11, 1996, by the Editor-in-Chief of *Noticiero Colombia 12:30* (*supra* para. 86). Also, the body of evidence includes the testimony given on October 17, 1997, by a colleague of Mr. Vélez, who stated, before the Attorney General's Office, that "when [Mr. Velez] arrived at the news office, he recounted that he was receiving threatening telephone calls" and that "they told him that hypocrites are crushed to death (*supra* para. 93). In addition, it has been verified that, at the time of the facts, Mr. Velez went to the Colombian Commission of Jurists in order to seek legal counsel in view of the situation.[171] That organization, in turn, sent letters dated September 29, 1997, to the Attorney General's Office and to the Human Rights Council of the Presidency of the Republic, informing the said entities of the Vélez Roman family's situation (*supra* paras. 90 and 91).

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168 *Cf. Case of Velásquez Rodríguez v. Honduras. Merits*, para. 130, and *Case of González Medina and family members v. Dominican Republic. Preliminary objections, merits, reparations and costs*, para. 134.

169 *Cf. Case of Velásquez Rodríguez v. Honduras. Merits*, paras. 127 to 129, and *Case of González Medina and family members v. Dominican Republic. Preliminary objections, merits, reparations and costs*, para. 132.

170 *Cf. Case of Velásquez Rodríguez v. Honduras. Merits*, paras. 135 and 136, and *Case of González Medina and family members v. Dominican Republic. Preliminary objections, merits, reparations and costs*, para. 132. Similarly, see the decisions of the United Nations Human Rights Committee of the International Covenant on Civil and Political Rights, such as, *Eduardo Bleier v. Uruguay*, CCPR/C/15/D/30/1978, Communication No. 30/1978, 29 March 1982, para. 13.3, and *Héctor Alfredo Romero v. Uruguay*, U.N. Doc. Supp. No. 40 (A/39/40) in 159 (1984), Communication No. 85/1981, 22 July 1983, para. 12.3.

171 *Cf.* statement made on November 26, 2009, by Raúl Hernández Rodríguez before the Judicial Police, Prosecutor General's Office (file of the processing of the case before the Commission, tome II, folios 912-913).

159. The Court observes that, in its answering brief, the State affirmed that there was no evidence that Mr. Vélez and Mrs. Román had personally filed complaints regarding the threats before the Prosecutor's Office, the National Police, or the DAS. Nevertheless, at the same time, it accepted that "[i]t is true that the petitioners denounced the facts relating to the threats[s]" and indicated that, "regarding the presumed threats," *inter alia*, a criminal investigation was opened in the ordinary jurisdiction in 1996. For the Court, the relevant point is that, in October 1996, an investigation was opened before the 243rd Bogota Sectional Prosecutor's Office for the offense of threats. The Court infers that State authorities were informed of the facts, either by organizations or other persons, or by Mr. Vélez and his wife (*supra* paras. 86, 88, 90, 91, 92 and 95).

160. The Court notes that, both to contest that the threats had occurred, and also its responsibility for them, in addition to affirming that the evidence was insufficient (supra para. 154), Colombia maintained that "the disciplinary investigations opened against the State agents for the supposed threats were closed for lack of merit." In this regard, this Court has found it pertinent to recall that, in order to establish that there has been a violation of the rights recognized in the Convention, it is not necessary to prove the State's responsibility beyond all reasonable doubt or to identify, individually, the agents to which the violations are attributed.[172] In addition, the Court reiterates that it is the State's responsibility to investigate the facts diligently by judicial proceedings,[173] which Colombia acknowledged that it had not done (*supra* para. 14). Moreover, the Court underscores that, in the criminal jurisdiction, the investigations concluded for reasons that differed greatly from "lack of merit." The criminal investigation opened in 1996 ended on the basis that the "facts had already been denounced in the civil and criminal jurisdiction before the military criminal justice system" (*supra* para. 118). Nevertheless, in response to a request for useful evidence, the State informed the Court that "investigations were not conducted in the military jurisdiction" for the threats.[174] Furthermore, the criminal investigation initiated in 2007 concluded in 2010 on the basis that the offense had prescribed (*supra* para. 119).

C.1.b) Regarding the evidence to consider proved the attempted arbitrary deprivation of liberty

161. Regarding the probative elements that this Court assessed to find that the attempted arbitrary deprivation of liberty of which Mr. Vélez Restrepo was a victim on October 6, 1996, had been proved (supra para. 94), the Court underlines that, in addition to having assessed the statements made by Mr. Vélez Restrepo and his wife by affidavit in 2005 and before this Court, other probative elements were provided in this regard. The Court emphasizes that the day before that incident, Mr. Vélez Restrepo received a serious written threat consisting in an obituary notice or condolence card regarding his own death, of which he provided a copy (*supra* para. 93). In his statement before this Court, Mr. Vélez Restrepo referred to the danger that a threat as serious as this signified in Colombia. Even expert witness Tulande indicated, citing a "well-known [Colombian] journalist," that, in Colombia, "threats are carried out" (*supra* para. 84). In addition, the Court takes into account the reaction and intervention of national and international authorities when Mr. Vélez Restrepo reported that

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172 *Cf. Case of the "White Van" (Paniagua Morales et al.) v. Guatemala*. *Merits*, para. 71, and *Case of González Medina and family members v. Dominican Republic*. *Preliminary objections, merits, reparations and costs*, para. 133.

173 *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 Contreras et al. v. El Salvador. Merits, reparations and costs*, para. 135.

174 *Cf.* note DIDH/GOI No. 48794/1892 of July 18, 2012, of the Colombian Ministry of Foreign Affairs (file of useful evidence presented by the State, tome I, folio 2).

he had been the victim of an attempted arbitrary deprivation of liberty (*supra* paras. 95 to 97), and that Mr. Vélez Restrepo, and his wife and children, were granted asylum by the United States of America. This shows that the said authorities were not only aware of the risk to the life of Mr. Vélez Restrepo and of the situation that he and his family faced, but also allows the high degree of credibility the authorities gave to their complaints to be measured. In addition to these probative elements, it is worth noting that the State did not conduct a diligent investigation of the incident and, in this regard, acknowledged the violation of the reasonable time in the investigation into the offense of attempted kidnapping (*supra* para 14(c)).

162. The Court considers it opportune to clarify that, when establishing the facts relating to the said attempted deprivation of liberty, it did not consider it proved that State agents were assigned to provide protection to Mr. Vélez Restrepo before Monday, October 6, 1997,[175] because the only evidence of this is the testimony of Mr. Vélez Restrepo.[176] The Court assessed this evidence, taking into account that, in the pleadings and motions brief, the representative stated that Mr. Vélez Restrepo "was unsure whether the supposed DAS agents who visited him [on Friday, October 3, 1997, to prepare a safety and protection plan for his family] were from the DAS or whether they were involved in the attempt" of October 6. Consequently, it is unclear to this Court whether the persons who Mr. Velez thought were DAS agents who, according to him, were supposed to arrive on Monday, October 6, 1997, really were DAS agents.

163. In this regard, the Court asked the State to provide useful information as to whether agents from the Administrative Department of Security (DAS) or from any other State institution had been assigned to provide protection to Mr. Vélez Restrepo prior to October 6, 1997, and were supposed to arrive that day, early in the morning, and to accompany him to work, and also, if appropriate, whether the reason why they did not turn up that day was investigated. The State responded that protection was provided to Mr. Vélez Restrepo from October 6 to 9, 1997, and that "[t]he State has no […] official information regarding the supposed protection by DAS agents before that date; the only element that the State and the Court have is what the representative and the presumed victim have indicated." Nevertheless, the case file for the offense of threats contains a note dated September 24, 1996, signed by the Director of the Human Rights Unit of the Attorney General's Office addressed to the Director of the DAS, advising him of Mr. Vélez Restrepo's situation "for the effects that your Department may consider pertinent" (*supra* para. 109). This document will be assessed by the Court when ruling on the State's alleged responsibility for not adopting the opportune measures of protection (*infra* paras. 186 to 204).

C.1.c) Determination of the State's responsibility for the threats, harassment and attempted deprivation of liberty

164. The Court will now refer to the probative elements to which it grants fundamental value in order to consider proved the connection between the threats, harassment and

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[175] When establishing the incident of the attempted deprivation of liberty, the Commission, in the Merits Report, stated that "Mr. Velez also alleges […] that [the] day [of the attempted deprivation of liberty] the escort assigned by the State, did not arrive at his house."

[176] When testifying at the public hearing before this Court, Mr. Velez stated that, on October 3, 1997, "three DAS agents again [arrived] at the news office and made another assessment of [his] routine" movements and "they undertook to escort him from his home to his work on Monday," but did not appear that Monday, October 6, in the morning, so that he "had to opt to use public transportation to get to work." In his statement made by affidavit in 1995, he indicated, similarly, that, on October 6, 1997, he left his home at around 6 a.m. to go to work, and that as soon as he left the house, he noticed that "the two DAS agents had not arrived to escort [him] as was their custom."

attempted deprivation of liberty and the measures taken by Mr. Vélez Restrepo to ensure that the soldiers responsible for the attack he suffered on August 29, 1996, were investigated and punished.

165. The first piece of evidence that the Court takes into account is the impunity that prevails in this case, which is particularly relevant because it implied the failure to investigate the possible connection between the threats and the attempted deprivation of liberty, and the above-mentioned attack by soldiers on August 29, 1996, and the measures taken by Mr. Vélez Restrepo to obtain the punishment of those responsible for that attack. The State acknowledged that no serious investigations were conducted that would have allowed the determination and criminal punishment "of the perpetrators of the August 29, 1996, attack suffered by Mr. […] Vélez Restrepo" or of the "presumed authors of the threats," and it also acknowledged that the reasonable time for investigating the presumed attempted kidnapping of Mr. Vélez Restrepo was violated.

166. The Court has also found that, in the statement made by Mr. Vélez Restrepo in August 1997 before the Prosecutor's Office in charge of that investigation, he indicated that he believed that the threats "[were] related to the events that took place in Caquetá on August 29, [1996]" (*supra* para. 117), for which a complaint had been filed. Mr. Vélez Restrepo explained the consequences that the threats had had on his life and that of his family. When asked if "the threats had persisted," Mr. Vélez Restrepo explained that, in the last six months, he had not received threats and referred to those that he had received previously.

167. The Court finds that the State's affirmation that there is no evidence of the said connection is unsubstantiated, considering that it is the State that has the obligation to investigate the possible connection, and it did not do so. The Court underscores the seriousness of this omission, as the threats began less than a month after the attack on Mr. Vélez Restrepo, acknowledged by the State, to prevent him from recording and disseminating the actions of soldiers who were attacking defenseless individuals. The State itself stressed that the recording of the said attacks that was disseminated by the media, "mobilized all the media to speak out," and even resulted in senior State officials publicly rejecting such actions and asserting that they should be punished. It was logical and consistent to assume that the threats, harassment and attempted deprivation of liberty could originate from the people who were interested in not being punished for these acts of violence.

168. A second piece of evidence is constituted by the indications arising from the temporal correlation between the frequency and intensification of the threats and the measures taken by Mr. Velez to obtain the investigation and punishment of the soldiers who attacked him on August 29, 1996. In around mid-September 1996, Mr. Vélez Restrepo testified in the criminal investigation conducted in the military jurisdiction for the attack of August 29, 1996 (supra para. 106) and, that same month, he began to receive death threats and harassment; also men came to his home claiming to be officials of the Attorney General's Office, without showing any identification, and asked about his schedules and activities (*supra* paras. 85 and 86). This situation led Mr. Vélez and his wife to decide to move house, following which they stopped receiving threats at home, although the calls to Mr. Vélez Restrepo's place of work continued. Between March and August 1997, he received no threats. Mr. Vélez indicated this when he testified that August before the Prosecutor's Office in charge of the criminal investigation into the threats. In that statement, Mr. Vélez explained that he considered that the previous threats were related to the fact that he had denounced the attack of August 29, 1996. After making this statement, in September, Mr. Vélez and his family again received death threats and another visit to his home by men

claiming to be officials of the Attorney General's Office (supra para. 89). This new series of threats and harassment was reported by both the Colombian Commission of Jurists (supra paras. 90) and by Mr. Vélez Restrepo, who even appeared personally before the Human Rights Council of the Presidency of the Republic on October 3, 1997. Two days later he received a written death threat, which caused him "great fear that something would happen," and the following day he suffered an attempted deprivation of liberty (supra para. 94).

169. The Court notes that, according to the evidence provided to the Court, the period of approximately six months when Mr. Vélez Restrepo and his family did not receive threats coincides with the time during which Mr. Vélez Restrepo did not testify or take any other measure in the ongoing investigations, and when he and his family moved house. This reveals the said temporal correlation between the frequency and intensification of the threats and the measures taken by Mr. Vélez to obtain the investigation and punishment of the soldiers who attacked him on August 29, 1996.

170. For this Court, a third important piece of evidence is that neither the State in its arguments, nor the authorities in charge of the investigations have offered or identified any alternative hypothesis that could explain the origin of the threats, harassment, and attempted deprivation of liberty. In this regard, to assist in its deliberations, the Court asked the State to explain which individuals, other than the soldiers who attacked Mr. Velez in Caquetá on August 1996, could have had an interest in threatening him to the point that he had to leave the country.[177] Moreover, it should be emphasized that, to the contrary, in all the statements that Mr. Vélez Restrepo has made that form part of the body of evidence in this case, he has been consistent in stating that the threats, harassment and attempted deprivation of liberty originated "from the soldiers, and were related to the Caquetá incident." Before this Court, Mr. Vélez Restrepo stated that there was no other reason that could explain the origin of those acts.

171. The Court finds that these indications are also confirmed by the information provided in the testimony of Mr. Tulande, expert witness proposed by the State, who indicated that a certain journalist also received threats in connection with the "decisive role" she played in obtaining and disseminating the video recording made by Mr. Vélez Restrepo on August 29, 1996. The expert witness even provided the recording of the interview he had conducted with that journalist,[178] in which she stated that, on the day after she disseminated the video, she received a threatening telephone call at the hotel where she was staying in Caquetá, and that she "assumes that it was made by those who attacked Richard […], who were the soldiers who beat him," an incident she said that she had witnessed personally. Also, the journalist explained that, as a preventive measure, the news station for which she worked decided to "take [her] out of the region," following which she received no further threats or intimidation in this regard.

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[177] The response to the request for helpful evidence, submitted by the State on June 22, 2012, as regards the question "about other possible hypothesis that may have been included in the criminal investigations," was that both the investigation into the threats and the one into the alleged attempted kidnapping "were at the preliminary inquiry stage […];" that, in "the investigation into the alleged threats […] a writ of prohibition had been issued that had resulted in the statute of limitations coming into effect," and that "the inquiry into the presumed conduct of attempted kidnapping was at a preliminary stage, without it having been possible to determine, to date, who is or are responsible for this act, or its motive."

[178] Recording containing the interview with the journalist Maribel Osorio (presented by expert witness José Francisco Tulande and forwarded by the State with the brief of March 28, 2012, merits file, tome III, folio 1860).

172. A fourth probative element that provides indications about the possible involvement of the military are two decisions adopted in the disciplinary inquiries. The Court notes the State's opposition to statements being assessed for these purposes that were made in decisions issued in the context of disciplinary investigations; investigation that, moreover had been closed for lack of merit (*supra* para. 154). The Court does not agree with this position, because neither the Commission nor the Court used these documents to establish individual disciplinary or criminal responsibilities, but rather to emphasize that those authorities identified indications of the possible connection between the threats and harassment, and the attack committed by soldiers against Mr. Restrepo in August 1996. In this regard, the Court notes that the "evaluation report" issued by the Human Rights Unit of the National Special Investigations Directorate of the Attorney General's Office in July 1998 stated that "the source of the threat can be found in the performance of his professional work as a cameraman, [because one of the events he filmed] was the peasants' coca march in the municipality of Morelia in the department of Caquetá where he was attacked by uniformed personnel attached to the Battalion of the Twelfth Brigade based in Florencia" (*supra* para. 113). The decision of the Oversight Office of the Attorney General's Office of May 2002 (*supra* para. 114) is also worth noting in which, when it decided to close the investigation, it noted that "those who may have had an interest in harassing and threatening Mr. Vélez […] would be those who attacked him during the violent events that took place in the municipality of Morelia, Caquetá, on August 29, 1996." There is no evidence that these indications noted by the said administrative bodies have been investigated in the criminal jurisdiction.

173. Finally, in relation to the affirmations concerning an alleged context of threats and violence by Colombian military forces to prevent investigations against their members[179] (*supra* para. 51), the Court considers that the evidence provided is insufficient to establish the contextual situations mentioned by the Commission and the representative as a fact in this case.

174. Based on all the foregoing, the Court observes that, in this case, the evidence is sufficient, reliable, and pertinent to prove the facts that are the subject of the analysis.[180] The Court has different concurring probative elements from which it is possible to find proved the connection between the threats, harassment and attempted deprivation of liberty, and the measures taken by Mr. Vélez Restrepo to obtain the investigation and punishment of the soldiers responsible for the attack he suffered on August 29, 1996. In addition, the State failed to comply with its obligation to conduct a criminal investigation into these events.

175. Consequently, the Court concludes that State can be attributed with international responsibility owing to the participation of State agents in the threats, harassment and attempted arbitrary deprivation of liberty perpetrated against Mr. Vélez and his family.

C.1.d) Alleged violation of Article 5(1) of the American Convention

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[179] The Commission argued that this case is circumscribed to the alleged context according to which the Colombian Armed Forces opposed investigations against their members, sometimes using threats and attacks. The representative alleged the existence of a context of "threats and violence […] against those who tried to use the Colombian judicial system to file complaints of this nature and against those that formed part of that system."

[180] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits*, para. 127 and *Case of Perozo et al. v. Venezuela. Preliminary objections, merits, reparations and costs*, para. 113.

176. Article 5(1) of the Convention recognizes the right to personal, physical, mental and moral integrity. The Court has established that "[t]he violation of the right to physical and mental integrity of the individual is a type of violation that has different levels that range from torture to other types of abuse or cruel, inhuman or degrading treatment, the physical and psychological effects off which vary in intensity according to endogenous and exogenous factors that must be proved in each specific situation."[181] In other words, the personal characteristics of a presumed victim of torture or cruel, inhuman or degrading treatment must be taken into account when determining whether personal integrity was violated and, consequently, whether the degree of suffering and feeling of humiliation was increased, when they were subjected to certain treatments.[182] In addition, the Court has held that the mere threat that a conduct prohibited by Article 5 of the Convention may occur, when this is sufficiently real and imminent, may in itself be in conflict with the right to personal integrity. In that regard, creating a threatening situation or threatening an individual with taking his or her life may, at least in some circumstances, be considered inhuman treatment.[183] The Court has also referred to the elements that must be present to consider that an act is torture.[184]

177. The Court considers that the new facts introduced by the representative in his observations on the acknowledgment of responsibility and in his final arguments, to the effect that the said acts of threat and intimidation should be characterized as torture, are not admissible as they are time-barred.[185]

178. According to the testimony of Mr. Vélez Restrepo and Mrs. Román Amariles, and the expert opinion of the psychiatrist Kessler given before this Court, it has been proved that the said threats and harassment that occurred between September 1996 and February 1997 and that were repeated in September and early October 1997, as well as the attempted deprivation of liberty on October 6, 1997, caused the members of the Vélez Román family constant fear and tension and "overwhelming anxiety" that was detrimental to their mental integrity. It should be emphasized that, although most of the threats were directed at Mr. Vélez Restrepo, it was Mrs. Roman Amariles who had to face the difficult situation of dealing with numerous threatening telephone calls to her husband, some of which also mentioned

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181 *Cf. Case of Loayza Tamayo v. Peru*. *Merits*, para. 57, and *Case of the Barrios Family v. Venezuela. Merits, reparations and costs*, para. 52.

182 *Cf. Case of Ximenes Lopes v. Brazil. Merits, reparations and costs*. Judgment of July 4, 2006. Series C No. 149, para. 127, and *Case of the Barrios Family v. Venezuela. Merits, reparations and costs*, para. 52.

183 *Cf. Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits.* Judgment of November 19, 1999. Series C No. 63, para. 165, and *Case of the Barrios Family v. Venezuela. Merits, reparations and costs*, para. 82.

184 The Court understands that the elements that constitute torture are as follows: (a) an intentional act; (b) that causes severe physical or mental suffering, and (c) that is committed with a specific objective or purpose. Furthermore, it has indicated that "when assessing the severity of the suffering experienced, the Court must take into account the specific circumstances of each case, bearing in mind endogenous and exogenous factors. The former refer to the characteristics of the treatment, such as the duration, the method used, or the way in which the suffering was inflicted, as well as the physical and mental effects that it tends to cause. The latter refers to the conditions of the person who undergoes the said ordeal, such as age, sex, health, and any other personal circumstance." *Cf. Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits*, para. 74; *Case of Bueno Alves v. Argentina. Merits, reparations and costs.* Judgment of May 11, 2007. Series C No. 164, paras. 79 and 83, and *Case of Rosendo Cantú et al. v. Mexico. Preliminary objection, merits, reparations and costs.* Judgment of August 31, 2010. Series C No. 216, para. 110.

185 The representative indicated that the events that took place in Caquetá on August 29, 1996, and "the subsequent campaign of threats and harassment against Richard Vélez and his family, [should be] seen as a plan made with a single objective, [and] constitute a very clear case of torture." According to the representative, in view of the purpose of the threats and harassment and the "severe psychological harm" that they produced, "the said acts of violence should be assessed as part of a single sequence that cannot be separated or disassociated from the initial torture against Richard in Caquetá."

their son Mateo or the whole family. According to the testimony of Mr. Vélez Restrepo and Mrs. Roman Amariles, as well as the expert opinion of the psychiatrist Kessler, during periods of constant threats, the latter and the children Mateo and Juliana had to live "confined to the house" and Mateo felt the constant fear experienced by his mother. In addition, Mr. Vélez Restrepo and Mrs. Roman Amariles had to take measures to protect themselves, such as moving house and changing Mateo's school, with all the emotional consequences that this implied. Added to this, Mr. Vélez Restrepo had trouble sleeping and had nightmares, which consequently affected his wife. Mrs. Roman Amariles stated before the Court that this situation also affected their "life as a couple" and that the family had to seek psychological help. Mr. Vélez Restrepo, Mrs. Roman Amariles, and their son Mateo received psychological treatment for eight months starting on September 10, 1996.[186]

179. Also, in their testimony before this Court, Mr. Vélez Restrepo and Mrs. Roman Amariles expressed the great fear, anguish and distress that the events of October 6, 1997, caused to them and their children Mateo and Juliana, when Mr. Vélez Restrepo was able to escape from the individuals who tried to deprive him of his liberty and arrived home shouting that they wanted to kill him. They explained that, owing to the seriousness of the situation, they had to leave the house in which they lived and their belongings and, for the three following days, had to stay in different places.

180. In order to rule on the violation of personal integrity, the Court takes into consideration that the expert appraisal of the psychiatrist Kessler, carried out between November 2011 and January 2012, diagnosed that Mr. Vélez Restrepo, Mrs. Román Amariles and their son Mateo Vélez Román suffered from a chronic disorder due to post-traumatic stress and major depression, and that Juliana suffers from chronic mild depression, which is due to the attack on Mr. Vélez on August 29, 1996, the threats, intimidation and attempted deprivation of liberty, but also, to a great extent, is related to the consequences of having had to leave Colombia to live in the United States of America as asylees.[187]

181. Based on the foregoing considerations, the Court concludes that the State violated 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 Luis Gonzalo Vélez Restrepo, Aracelly Roman Amariles, Mateo Vélez Román and Juliana Vélez Román.

C.1.e) Alleged violation of Article 4(1) (Right to Life)[188] of the Convention

182. Regarding the representative's allegation, disputed by the State,[189] that the said attempted deprivation of liberty of Mr. Vélez Restrepo was a violation of the right to life as it involved an "attempted forced disappearance," the Court recalls that the assertions concerning the alleged context of forced disappearances in Colombia (*supra* para. 51) are

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[186] Certification issued on July 4, 1997, by Dr. Constanza Velásquez, in which she "[…] certifies that, from September 10, 1996, to May 16, 1997, she provided psychological treatment to the VELEZ ROMAN FAMILY […]. During which, [referring to the sessions] an assessment, tests, and management of anxiety, depression and stress, and relaxation were carried out" (file of annexes to the Merits Report, annex 29, folio 167).

[187] *Cf.* expert opinion provided by affidavit by Carol L. Kessler on February 18, 2012 (merits file, tome II, folios 947 to 961).

[188] 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."

[189] Colombia argued the lack of evidence to affirm that "there was an attempted forced disappearance," and that "the supposed generalized context of violence against journalists cannot *per se* give rise to a violation of the right to life."

beyond the factual framework. In addition, the Court finds that the evidence in this case does not prove that there were exceptional circumstances such having survived an attack in which the deprivation of life was attempted or a situation that posed a serious risk to life, taking into account the force used, the intention and purpose for using it, as well as the victims' situation.[190] Consequently, the Court concludes that there was no violation of Article 4(1) of the American Convention, in relation to Article 1(1) thereof. The attempted deprivation of liberty of Mr. Vélez has already been analyzed by the Court as part of the violations to the personal integrity of Mr. Vélez and his family.

C.2) Obligation to guarantee the right to personal integrity of Mr. Vélez Restrepo, his wife and children, by the investigation and the adoption of measures of protection

Observations of the Commission and arguments of the parties

183. The Commission concluded that the State had failed to comply with its obligation to guarantee the personal integrity of the Roman Vélez family by the prevention and investigation of the threats, harassment and attempted kidnapping. It argued that the State had violated the mental and moral integrity of Mr. Vélez and his family because it failed to adopt, in a "diligent and timely manner, the necessary measures to protect Mr. Vélez and his family owing to the threats and harassment reported to the authorities [repeatedly] as of September 11, 1996." In addition, it affirmed that, "in addition, the State did not conduct an investigation to clarify and deactivate the source of the harassment against the Roman Vélez family." The Commission emphasized that "the investigations are the most important measure of protection for journalists who are threatened for carrying out their work" and that "the State itself acknowledges that there was no effective investigation."

184. The representative stated that "he agree[d] fully with the Inter-American Commission" regarding the alleged violations of Articles 5 and 13 of the Convention.

185. Colombia maintained that "once the alleged threats and intimidation were brought to the attention of the competent authorities on October 6, 1997, the State, through the Protection Program of the Ministry of the Interior, immediately provided various means of protection [… and,] three days later, […] Mr. Vélez […] decided to leave the country of his own volition." In addition**,** it argued that "[p]rior to the supposed attempted kidnapping on October 6, 1997, Mr. Vélez had never requested protection or a safety assessment from the State."

Considerations of the Court

186. The Court has established that the obligation of guarantee covers the legal obligation to "take reasonable steps to prevent human rights violations, to use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction in order to identify those responsible, to impose the appropriate punishments, and to ensure adequate reparation for the victim." The decisive factor is to determine whether "a specific violation […] has occurred with the support or tolerance of the public authorities, or whether the latter have acted in such a way that the violation has been committed without any

[190] *Cf. Case of the La Rochela Massacre v. Colombia. Merits, reparations and costs*, paras. 127 and 128. Similarly, *cf.* ECHR. *Makaratzis v. Greece* [Grand Chamber], No. 50385/99, December 20, 2004, paras. 51 and 55, and *Ismail Altun v. Turkey,* No. 22932/02, September 21, 2004, para. 64.

measures being taken to prevent it or to punish those responsible."[191] In order to comply with this obligation, it is not sufficient that States merely abstain from violating rights; rather it is essential that States take all appropriate measures to protect and preserve the rights of all those under their jurisdiction (positive obligation), in keeping with their obligation to ensure the free and full exercise of those rights.[192]

187. In addition, the Court has held that, in certain circumstances, the prompt and resolute investigation of alleged threats may contribute, in turn, to prevent the violation of the rights that were being threatened.[193]

188. The Court has noted that this obligation to investigate remains in effect "whatsoever the agent to whom the violation may eventually be attributed, even private individuals, because, if their acts are not investigated seriously, they would, to a certain extent, be supported by the public authorities, which would involve the international responsibility of the State."[194] Regarding the State's obligation to adopt measures of prevention and protection, the Court has recognized that this does not imply its unlimited responsibility for any act or deed of private individuals, because its obligation to adopt measures of prevention and protection for private individuals in their relations with each other is conditional on its awareness of a situation of real and imminent danger for a specific individual or group of individuals and the reasonable possibility of preventing or avoiding that danger.[195]

189. In addition, the Court has stated that the effective exercise of freedom of expression entails the existence of social conditions and practices that favor it. It is possible that this freedom may be illegally restricted by regulatory or administrative acts of the State or due to *de facto* conditions that place those who exercise or try to exercise it in a direct or indirect situation of risk or greater vulnerability due to acts or omissions of State agents or private individuals. Within the framework of its obligations to guarantee the rights acknowledged in the Convention, the State must abstain from acting in a way that encourages, promotes, favors, or intensifies that vulnerability,[196] and it must adopt, when pertinent, the necessary and reasonable measures to prevent or protect the rights of those who are in that situation, as well as, when appropriate, to investigate acts that harm them.[197]

190. Consequently, failure to comply with the obligation to guarantee the rights protected in Articles 5 and 13 of the Convention by adopting measures of protection and conducting a

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[191] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits*, para. 173, and *Case of the Barrios Family v. Venezuela. Merits, reparations and costs*, para. 47.

[192] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits*, paras. 166 and 167, and *Case of the Barrios Family v. Venezuela. Merits, reparations and costs*, para. 116.

[193] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits*, paras. 174 and 175, and *Case of Manuel Cepeda Vargas v. Colombia. Preliminary objections, merits, reparations and costs*, para. 101.

[194] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits*, para. 177, and *Case of González Medina and family members v. Dominican Republic. Preliminary objections, merits, reparations and costs*, para. 206.

[195] *Cf. Case of the Pueblo Bello Massacre v. Colombia. Merits, reparations and costs*. Judgment of January 31, 2006. Series C No. 140, para. 123, and *Case of the Barrios Family v. Venezuela. Merits, reparations and costs*, para. 123.

[196] *Cf. Juridical Status and Rights of Undocumented Migrants.* Advisory Opinion OC-18/03 of September 17, 2003. Series A No. 18, paras. 112 to 172, and *Case of Vélez Loor v. Panamá. Preliminary objections, merits, reparations and costs.* Judgment of November 23, 2010. Series C No. 218, para. 207.

[197] *Cf. Case of Ríos et al. v. Venezuela. Preliminary objections, merits, reparations and costs*, para. 107, and *Case of Vélez Loor v. Panamá. Preliminary objections, merits, reparations and costs*, para. 207.

diligent and effective investigation also gives rise to the State's international responsibility.[198]

191. With regard to compliance with the obligation to investigate, the Court emphasizes the importance of effectively and diligently investigating human rights violations perpetrated against journalists in relation to the exercise of their freedom of expression, whether these acts were committed by State agents or private individuals, as this will help prevent their repetition (infra para. 247).

192. In the instant case, the State accepted that "no serious investigation was conducted" into the threats and harassment; however, in this regard, it only acknowledged having violated the right to judicial guarantees and judicial protection (supra para. 14(c)). The Court considers that the lack of a diligent investigation into the threats and harassment also involved a violation of the obligation to guarantee the right to personal integrity of Mr. Vélez Restrepo, his wife and children and, in turn, constituted a violation of the obligation to prevent since in this case the investigation could have been a means to prevent the continuation and escalation of the threats that went so far as an attempted deprivation of liberty of Mr. Vélez, which caused him to have to leave the country to protect his life and integrity.

193. Furthermore, with regard to the State's obligation to adopt special measures of prevention and protection, the Court considers that the context of risk for journalists in Colombia (*supra* para. 84) should have been taken into account by the State authorities to make a diligent evaluation of the need for opportune measures of protection for Mr. Vélez Restrepo and his family. In this regard, the Court also takes into account the opinion of expert witness Tulande, proposed by the State, who explained the factors that have an impact on the level of danger faced by the journalists at the time of the facts of this case.[199] In addition, according to expert witness Tulande, the situation of the journalists was such that it warranted the adoption, in 1995, of a law to create a special protection unit for members of professions who experienced permanent risk, including journalists, which "could be fully implemented in 2002."

194. In this regard, the Court considers it important to indicate that States have the obligation to adopt special measures of prevention and protection for journalists subject to special risk owing to the exercise of their profession. Regarding the measures of protection, the Court underlines that States have the obligation to provide measures to protect the life and integrity of the journalists who face this special risk owing to factors such as the type of events they cover, the public interest of the information they disseminate, or the area they must go to in order to do their work, as well as to those who are the target of threats in relation to the dissemination of that information or for denouncing or promoting the investigation of violations that they suffered or of those they became aware of in the course of their work. The States must adopt the necessary measures of protection to avoid threats to the life and integrity of journalists under those conditions.[200]

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198 *Cf. Case of Velásquez Rodríguez v. Honduras. Merits, supra* note 18, paras. 162, 166 and 176, and *Case of the Barrios Family v. Venezuela, supra* note 77, paras. 173 and 174.

199 Expert opinion provided by José Francisco Tulande during the public hearing before the Inter-American Court on February 24, 2012.

200 Regarding the obligation to implement measures of protection for journalists who are working in a context of armed conflict or serious disruption of public order, *Cf.* Inter-American Commission on Human Rights, Office of the Special Rapporteur for Freedom of Expression, *The Inter-American Legal Framework regarding the Right to Freedom of Expression,* CIDH/RELE/INF.2/09, December 30, 2009, paras. 195 and 196. Similarly, with regard to human rights defenders, *cf. Case of Nogueira de Carvalho et al. v. Brazil. Preliminary objections and*

195. Taking into account the context described and the specific situation of Mr. Vélez Restrepo, the Court considers that, prior to October 6, 1997, he clearly faced real and immediate risk to his personal integrity, as did the members of his family. The Court considers, above all, that this was a journalist who sought and disseminated information of public interest (supra paras. 77 to 81), who was attacked by soldiers when he was obtaining such information and who, following this, was the target of threats and harassment. The Court has indicated that there were reasonable motives to presume that these last events could have been related to the measures he took to obtain the investigation and punishment of those responsible for the attack. In addition, the public declarations of two ministers stating that the attack on Mr. Vélez Restrepo was an act that would not be tolerated by the Government and that should be punished (*supra* para. 83) could have had an impact on the perpetrators of the threats fearing that they would be investigated and punished.

196. A dispute exists as to whether the State knew of Mr. Vélez Restrepo's particular situation of risk prior to October 6, 1997, when the attempted deprivation of liberty took place, (*supra* para. 94), and whether it should have adopted measures of protection previously. Colombia bases its position on the fact that "the alleged threats and intimidation were reported to the competent authorities on October 6, 1997," and, as of that date, the State "immediately provided different means of protection." Colombia affirmed that, three days later, "Mr. Vélez […] decided to leave the country of his own volition." The Inter-American Commission stated that "the Colombian State was aware of the harassment and threats to Mr. Vélez and his family since September 11, 1996," and that, prior to October 6, 1997, Mr. Vélez Restrepo had recourse "to the State, at difference times and in different ways, in view of the threats against him, his wife, and even his son."

197. From an analysis of the body of evidence in this case, the Court can conclude that, as of mid-September 1996, State authorities were aware of the threats and harassment against Mr. Vélez and his family, and also that a State official had signed a note advising an agency responsible for providing security of the situation of Mr. Vélez Restrepo and his family (*supra* para. 86 and 109).

198. On September 11, 1996, the Editor-in-Chief of *Noticiero Colombia 12:30* sent a letter to the Special Investigations Unit of the Attorney General's Office reporting an act of harassment and asking that the situation be clarified, "in view of the anguish of the family of the cameraman Luis Gonzalo Vélez Restrepo." In this regard, it is on record that Mr. Vélez Restrepo and his wife were interviewed that month by officials of the Human Rights Unit of the Attorney General's Office with regard to those facts (*supra* para. 109). Furthermore, in the statement made by Mr. Vélez Restrepo on August 27, 1997, before the Prosecutor in charge of the investigation for the offense of threats, it is recorded that he was asked about the threats received the previous year (supra para. 117). In addition, at the end of September and on October 3, 1997, (*supra* paras. 90 and 92), the Colombian Commission of Jurists and Mr. Vélez Restrepo, personally, sent communications to State authorities informing them of the situation that he and his family faced.

199. It is also highly relevant that, in September 1996, the Head of the Human Rights Unit of the Attorney General's Office had informed the Administrative Department of Security (DAS) of the situation of Mr. Vélez Restrepo and his family. The case file of the criminal investigations into the threats contains a note dated September 24, 1996, that the Director of this Unit sent to the Director of the DAS, indicating that Mr. Vélez Restrepo "was

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Merits. Judgment of November 28, 2006. Series C No. 161, para. 77, and *Case of Escher et al. v. Brazil. Preliminary objections, merits, reparations and costs.* Judgment of July 6, 2009. Series C No. 200, para. 172.

[…] attacked in the recent public order incidents in the department of Caquetá," and forwarding him a copy of the above-mentioned letter of the Editor-in-Chief of *Noticiero Colombia 12:30* (supra para. 198) and of the measures taken by the Head of the Human Rights Unit, "for the effects that your Department may consider pertinent." In addition, it is also recorded that, on September 17, 1996, two officials of the Attorney General's Office, responsible for the disciplinary investigation of the threats and harassment, addressed a note to the Coordinator of the said Human Rights Unit informing him of the results of the interviews with Mr. Vélez Restrepo and his wife, and recommending him to "forward this to the Prosecutor General's Office, or else the Administrative Department of Security (DAS), so that these entities may provide them with adequate protection" (*supra* para. 109).

200. Despite the foregoing, the State has not affirmed before the Court that, prior to October 6, 1997, it had evaluated the specific situation of Mr. Vélez Restrepo and his family and the level of risk, and determined the corresponding measures of protection. To the contrary, Colombia has maintained the position that, prior to October 6, 1997, it had no obligation to adopt measures of protection because Mr. Vélez Restrepo had "never requested protection or a safety assessment from the State" prior to that date.

201. Regarding Colombia's position, the Court considers it necessary to establish that it corresponds to the State authorities to get to know the situation of special risk in order to determine or assess whether the person who is the target of threats and harassment requires measures of protection or to refer the case to the competent authority to do this, and also to offer the person at risk timely information on the measures available. The assessment of whether a person requires measures of protection and which measures are appropriate is an obligation of the State and cannot be restricted to the victim himself requesting this from "the competent authorities," or knowing exactly which authority is best suited to deal with his situation, because it corresponds to the State to establish the corresponding measures of coordination between its agencies and officials. The Court underscores that, at the time of the events of this case, the Protection Program for Journalists and Social Communicators created in 2000 did not exist, and that the threats and harassment were reported to the Special Investigations Unit of the Attorney General's Office that was conducting an inquiry into the attack against Mr. Vélez Restrepo on August 29, 1996, and to a prosecutor in charge of the criminal investigation into the threats.

202. Even though there was a period in 1997 when the threats decreased and no longer occurred (*supra* para. 87), the Court notes that this coincided with Mr. Vélez and his wife taking measure to protect themselves such as moving house and that, according to the body of evidence provided, at that time, Mr. Vélez Restrepo did not take part in measures to obtain the investigation of the attack of August 29, 1996.

203. In the instant case, the State had the obligation to act with diligence in view of the special risk faced by Mr. Vélez Restrepo and his family, taking into account the contextual elements described, as well as the fact that, in this specific case, there were realistic indications to suppose that the reason for the threats and harassment against him were related to the measures he took to obtain the investigation of the attack he suffered by soldiers to prevent him from exercising his freedom of expression. The State did not comply with its obligation to prevent the violation of the rights of Mr. Vélez Restrepo and his family, by the adoption of timely and necessary measures of protection, until shortly after Mr. Vélez Restrepo had suffered an attempted deprivation of liberty, at which time the State offered him various measures of protection that included the possibility of relocating to another part of the country to lessen the reported risk (*supra* para. 95).

204. Regarding Colombia's allegation that Mr. Vélez Restrepo decided to leave Colombia "of his own volition," the Court underlines that, when Mr. Vélez Restrepo made this decision, over the previous year he had faced a situation that included: the attack against him by soldiers, two periods in which he had received threats and harassment against him and his family, and a serious death threat followed by an attempted deprivation of liberty. This makes it reasonable to assume that the measures of protection offered by the State were not opportune, and also that the risk continued because the events had not been investigated and punished. Added to this, the Court notes that, even though the attack against Mr. Vélez Restrepo perpetrated by soldiers was in Caquetá, the threats occurred in Bogota, which also explains Mr. Vélez Restrepo's founded fear that he would not be protected anywhere in the country.

205. Therefore, the Court concludes that the State failed to comply with its obligation to guarantee the right to personal integrity of Mr. Vélez Restrepo, Aracelly Román Amariles and their children Mateo and Juliana Vélez Román, by an investigation into the threats and harassment and by the adoption of opportune measures of protection, which constitutes a violation of Article 5(1) of the American Convention, in relation to Article 1(1) thereof.

C.3) Violation of the right to freedom of thought and expression of Mr. Vélez Restrepo

Observations of the Commission and arguments of the parties

206. The Commission considered that the threats, harassment and attempted kidnapping suffered by Mr. Vélez constituted an additional violation of Article 13 of the Convention since "they were carried out with the clear intention of silencing [him] and making him withdraw his complaints, producing self-censorship and fear," for both Mr. Vélez and for "the community of journalists who covered the activities of the military forces," and this had an intimidating effect on the free flow of information, which affects the general population. It also indicated that when the attack, threats and forced exile of a person exercising journalistic functions remains in impunity, the social dimension of the right to freedom of expression is violated. The Commission considered that "the lack of protection and investigation of the threats and harassment suffered by Mr. Vélez, which led to his definitive separation from journalism owing to his exile, constituted an additional violation of his freedom of thought and expression."

207. The representative stated that he "agreed] fully with the Inter-American Commission" as regards the alleged violations of Article 13 of the Convention. In addition, he argued that "what occurred from August 29, 1996, until September 12, 1998, constituted a campaign orchestrated by State agents […] with a single objective: to silence Richard Vélez for having made public the content of the videotape that he recorded in Caquetá and for having blamed members of the military forces [for] the attacks, threats, and harassment against himself and his family."

208. The State considered that "the participation of [its] agents [in the threats and harassment] has not been proved"; hence it maintained that it was not necessary to determine whether they had resulted in a violation to the right to freedom of expression. It added that "the representatives were never able to prove that the reason for the supposed intimidation was to limit and restrict [the] journalistic activities [of Mr. Vélez]." The State reiterated that the international responsibility it had acknowledged is "a matter of justice" for the "presumed threats, presumed harassment, and presumed attempted kidnapping." It affirmed that there are no elements in this case to find that an alleged violation of the collective right of other journalists has been proved." In addition, it argued that certain facts

and claims alleged by the Commission and the representative relating to the relationship between Mr. Vélez Restrepo and his employer "are of a private dimension," and if his labor rights had been affected, he should have sought out the mechanisms that existed in this regard.

Considerations of the Court

209. The Court considers that the journalism can only be exercised freely when those who carry out this work are not victims of threats or physical, mental or moral attacks or other acts of harassment.[201] Those acts constitute serious obstacles to the full exercise of freedom of expression.[202] In this regard, the Court has already referred to the special obligation to protect journalists at risk (*supra* para. 194), which was not complied with in this case. In view of the attack of August 29, 1996, perpetrated to prevent Mr. Vélez Restrepo from exercising his freedom of expression, and the subsequent threats so that he cease pursuing his search to obtain justice owing to this attack, the State had the obligations to investigate, prosecute and, as appropriate, punish, as well as to adopt measures of protection, which were not complied with (*supra* paras. 186 to 205).

210. The Court finds that compliance with the said obligations is particularly relevant in cases such as this, in which the violations against the victim were related to the exercise of his right to freedom of expression when he was working as a cameraman covering a new item of public interest.

211. The State should have undertaken the compliance with its obligations of investigation and protection taking into account the reasonable connection between the attack motivated by the exercise of freedom of expression (*supra* paras. 78 to 81) and the subsequent threats and harassment that escalated into an attempted deprivation of liberty. The failure to comply with these obligations meant, first, that the attack motivated by the prevention of the exercise of freedom of expression of the journalist Vélez Restrepo went unpunished, and then that the subsequent threats aimed at ensuring that the attack was not investigated went unpunished. In addition, it meant that the State did not create the conditions or the due guarantees to protect the integrity of Mr. Vélez Restrepo, which signified that, as a result of the attempted deprivation of liberty of which he was a victim, he was obliged to leave Colombia and to seek asylum in the United States of America, where his journalistic activities that entailed seeking, receiving and imparting information[203] were restricted and could not be exercised, at least as he had exercised them when working in Colombia for a national news program.

212. In this case, the Court considers that the impunity for the attack of August 29, 1996, and for the subsequent threats, harassment and attempted deprivation of liberty that resulted in the exile of journalist Vélez Restrepo were especially serious given the intimidating effect they could have on other journalists who cover news of public interest, which affects the information that is ultimately received by the members of society. The body of evidence contains evidence showing the broad coverage given by the media to the attack by soldiers on August 29, 1996, and also to Mr. Vélez Restrepo's subsequent departure from the country on October 9, 1997 (*supra* paras. 81 and 96). The Court

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[201] Similarly, this Court, referring to the exercise of activities in defense of human rights, *cf. Case of Fleury et al. v. Haiti. Merits and reparations.* Judgment of November 23, 2011. Series C No. 236, 81.

[202] Inter-American Commission on Human Rights, Office of the Special Rapporteur for Freedom of Expression, *Impunity, self-censorship and armed internal conflict: an analysis of the state of freedom of expression in Colombia.* OEA/Ser.L/V/II Doc. 51 of August 31, 2005, para. 102.

[203] *Cf.* Advisory Opinion OC-5/85, para. 72.

considers that, given the impunity of these facts, both Mr. Vélez Restrepo and other journalists could reasonably fear that this type of human rights violation might be repeated, and this could lead to self-censorship of their work;[204] for example, as regards the type of news covered, the way the information is obtained, and the decision to disseminate it.

213. Regarding the alleged violation of Article 11 of the Convention, the arguments submitted by the representative[205] concerning the fact that Mr. Vélez Restrepo had to abstain from journalism due to his asylum in the United States of America, were taken into account by Court when ruling on the alleged additional violation of the right to freedom of expression in this section.

214. Lastly, the Court notes that it did not consider proved the facts argued by the Commission and explained by the representative regarding the supposed "strong pressure" exerted by the medium for which Mr. Vélez worked "to censor his work and to withdraw his legal complaints against the Army" (*supra* para. 55(a)). From the statement made by Mr. Vélez Restrepo before this Court, it even appears that he was removed from covering news on law and order as a measure taken by the news program to help him recover from the impact that the attack by the soldiers on August 9, 1996, had had on him. Accordingly, the Court finds that these alleged facts are not matters that should be taken into account when ruling on the alleged violation of the right to freedom of thought and expression.

215. Based on all the above, the Court considers that the failure to comply with the obligation to investigate the acts of violence of August 29, 1996, and the subsequent threats and harassment, and with the obligation to adopt measures of protection in view of the threats and harassment entailed failure to comply with the obligations to respect and guarantee the right to freedom of thought and expression of Mr. Vélez Restrepo, and consequently, the State is responsible for violating Article 13 of the American Convention, in relation to Article 1(1) of this treaty.

X
RIGHT TO FREEDOM OF MOVEMENT AND RESIDENCE, RIGHTS OF THE FAMILY AND RIGHTS OF THE CHILD, IN RELATION TO THE OBLIGATION TO RESPECT AND GUARANTEE THE RIGHTS

A) Observations of the Commission and arguments of the parties

216. The Commission indicated that, since the State had incurred direct responsibility for the threats and harassment against Mr. Vélez and his family and had failed to comply with its obligations of protection and investigation in this regard, "both the harassment itself and also its foreseeable consequences, including the exile, can be attributed to the State"; hence, the State had violated Article 22(1) of the Convention to the detriment of Mr. Vélez Restrepo, his wife Aracelly Román Amariles, and their children, Mateo and Juliana Vélez Román. The Commission argued that Colombia had violated Article 17(1) of the Convention to the detriment of Mr. Vélez Restrepo, his wife, and Mateo and Juliana Vélez Román, and Article 19 of the Convention to the detriment of the last two, based on the fact that "the acts and omissions of the Colombian State had profound and undeniable consequences on

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[204] *Cf.* Inter-American Commission on Human Rights, Office of the Special Rapporteur for Freedom of Expression, *Impunity, self-censorship and armed internal conflict: an analysis of the state of freedom of expression in Colombia*, OEA/Ser.L/V/II Doc. 51 of August 31, 2005, para. 99.

[205] The presumed victims and their representatives may invoke violations of rights other than those established in the Merits Report, based on the same facts (supra para. 47).

the family life of the Vélez Román," and referred to these consequences. The Commission indicated that "the actions of a State that have the effect, even indirectly, of separating an individual from his or her family and children may constitute violations of the rights of the family and the rights of the child."

217. The representative stated that he "agree[d] fully with the Inter-American Commission" as regards the alleged violations of Articles 17(1), 22(1), and 19 of the Convention. In addition, he referred in detail to the alleged consequences of the facts of this case on the members of the Vélez Román family. He emphasized that "the impact of what happened to Richard Vélez at Caquetá had very serious consequences on the family life and mental integrity of the children, Mateo and Juliana Vélez Román."

218. The State affirmed that there was no violation of Article 22 of the Convention because it considered that "it has not been duly proved […] that the alleged threats were made by State agents," and "it is not possible to establish a causal nexus between the presumed threats and attempted kidnapping that allegedly occurred, and the need for Mr. Vélez to leave the country on October 9, 1997." It asserted that, "prior to the supposed attempted kidnapping on October 6, 1997, Mr. Vélez had never requested any protection or safety assessment from the State." The State argued that "on the day on which the attempted kidnapping presumably occurred, the Protection Program of the Ministry of the Interior offered Mr. Vélez and his family the possibility of relocating to any part of the country in order to lessen the risk he had denounced, guaranteeing them financial assistance for three months." In addition, it indicated that, "[d]espite this, Mr. Vélez indicated that he wished to leave the country because he considered he would not feel safe in any part of [its] territory. The State asked, subsidiarily, that, if the Court found that there had been a violation to Article 22 of the Convention, "it declare that the presumed violations to the rights of the family and the rights of the children are subsumed in the violations to the right to freedom of movement and residence." Regarding the alleged violation of Article 19 of the Convention, Colombia indicated that, in the instant case, there was no specific context of social risk as regards the children.

B) Considerations of the Court

219. In this chapter, the Court will rule on the State's alleged responsibility for the violations of freedom of movement and residence,[206] the rights of the family,[207] and the rights of the child.[208]

B.1) Freedom of movement and residence

220. The Court has established that freedom of movement and residence, protected in Article 22(1) of the American Convention, is an essential condition for the free development of an individual,[209] and includes, *inter alia*, the right of those who are legally in a State to

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[206] Article 22(1) of the American Convention establishes that: "[e]very person lawfully in the territory of a State Party has the right to move about in it, and to reside in it subject to the provisions of the law."

[207] Article 17(1) of the American Convention establishes that "[t]he family is the natural and fundamental group unit of society and is entitled to protection by society and the State."

[208] Article 19 of the American Convention establishes that "[e]very minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the State."

[209] *Cf. Case of Ricardo Canese v. Paraguay. Merits, reparations and costs*. Judgment of August 31, 2004. Series C No. 111, para. 115, and *Case of Manuel Cepeda Vargas v. Colombia. Preliminary objections, merits, reparations and costs*, para. 197.

move within it freely, as well as to choose their place of residence.[210] This right may be violated formally or by *de facto* restrictions, when the State has not established the conditions or provided the means that allow it to be exercised.[211] The said *de facto* violations may occur when an individual is the victim of threats or harassment and the State fails to provide the necessary guarantees to ensure they may move and reside freely within the territory in question.[212] In addition, the Court has indicated that the lack of an effective investigation of violent acts can encourage or perpetuate exile or forced displacement.[213]

221. The Court considers that, in the instant case, *de facto* restrictions existed to the freedom of movement and residence of Mr. Vélez Restrepo, Mrs. Román Amariles, and their children Mateo and Juliana, because the State's omission to guarantee the right to personal integrity of Mr. Vélez Restrepo and his family, by the investigation together with opportune measures of protection or prevention (*supra* paras. 186 to 205), gave rise to great insecurity and their well-founded fear that their life and personal integrity were at risk of being violated if they remained in Colombia, which led to their exile.[214]

222. In the preceding chapter, the Court determined the State's responsibility, *inter alia*, for the omission to adopt opportune measures of protection before the threats and harassment they suffered as of September 1996 that culminated in a grave death threat followed by an attempted kidnapping of Mr. Vélez Restrepo in August 1997 in Bogotá. In addition, the State acknowledged its responsibility for the absence of serious investigations into these facts (*supra* para. 14).

223. The Court appreciated the fact that, after the said attempted deprivation of liberty of Mr. Vélez Restrepo, the State offered protection measures, but considered that they were not opportune and that a risk continued to exist and that Mr. Vélez Restrepo had a well-founded fear that he would not be protected in any part of the country. Mr. Vélez Restrepo was able to leave Colombia on October 9, 1997, three days after the attempted deprivation of his freedom, and his wife and children had to displace internally from Bogotá to Medellín, while they waited almost a year for the approval of the asylum request by the United States authorities, after which they also left the country.

224. Therefore, the Court concludes that the State is responsible for the violation of freedom of movement and residence, protected by Article 22(1) of the Convention, in relation to Article 1(1) thereof, to the detriment of Luis Gonzalo Vélez Restrepo, Aracelly Román Amariles, Mateo Vélez Román and Juliana Vélez Román.

B.2) Protection of the family and rights of the child

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[210] *Cf. Case of Ricardo Canese v. Paraguay. Merits, reparations and costs*, para. 115, and *Case of Valle Jaramillo et al. v. Colombia. Merits, reparations and costs*, para. 138.

[211] *Cf. Case of the Moiwana Community v. Suriname. Preliminary objections, merits, reparations and costs*. Judgment of June 15, 2005. Series C No. 124, paras. 119 and 120, and *Case of Manuel Cepeda Vargas v. Colombia. Preliminary objections, merits, reparations and costs*, para. 197.

[212] *Cf. Case of Valle Jaramillo et al. v. Colombia. Merits, reparations and costs*, para. 139, and *Case of Manuel Cepeda Vargas v. Colombia. Preliminary objections, merits, reparations and costs*, para. 197.

[213] *Cf. Case of the Moiwana Community v. Suriname. Preliminary objections, merits, reparations and costs*, paras. 119 and 120, and *Case of Manuel Cepeda Vargas v. Colombia. Preliminary objections, merits, reparations and costs*, para. 201.

[214] *Cf. Manuel Cepeda Vargas v. Colombia. Preliminary objections, merits, reparations and costs*, para. 201, and *Case of Fleury et al. v. Haiti. Merits and reparations*, para. 94 and 95.

225. Article 17 of the American Convention recognizes that the family is the natural and fundamental group unit of society and is entitled to protection by society and the State. Given the importance of the right to protection of the family, the Court has established that the State is obliged to promote the development and strengthening of the family unit.[215] It has also affirmed that it implies the right of every person to receive protection against arbitrary or illegal interferences in their family,[216] and that States have positive obligations to ensure effective respect for family life.[217] The Court has also recognized that the mutual enjoyment of coexistence between parents and children constitutes a fundamental element of family life.[218] It has also established that, in certain circumstances, separating children from their families constitutes a violation of their right to a family recognized in Article 17 of the American Convention.[219]

226. In addition, the Court emphasizes that, in September 1996, Mateo Vélez Román was four years and eight months old and Juliana Vélez Román was 18 months old. This Court has understood that, pursuant to Article 19 of the American Convention, the State is obliged to promote special measures of protection in keeping with the principle of the best interests of the child,[220] assuming its position of guarantor with increased care and responsibility,[221] based on their special condition of vulnerability.[222] The Court has established that children have special rights that correspond to specific duties for the family, society, and the State. Furthermore, their condition demands special protection from the latter that must be understood as an additional right, complementary to the other rights that the Convention recognizes to every individual.[223] The State also has the obligation to adopt all positive measures to ensure the full exercise of the rights of the child.[224]

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[215] *Cf. Juridical Status and Human Rights of the Child*. Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, para. 66, and *Case of Fornerón and daughter v. Argentina. Merits, reparations and costs*, para. 116.

[216] *Cf.* Advisory Opinion OC-17/02, para. 71, and *Case of the Dos Erres Massacre v. Guatemala. Preliminary objection, merits, reparations and costs.* Judgment of November 24, 2009. Series C No. 211, para. 189.

[217] *Cf. Case of the Dos Erres Massacre v. Guatemala. Preliminary objection, merits, reparations and costs*, para. 189. Also, *cf.* ECHR. *Case of Olsson v. Sweden (No. 1),* March 24, 1988, para. 81, Series A no. 130.

[218] *Cf.* Advisory Opinion OC-17/02, para. 72, and *Case of Fornerón and daughter v. Argentina. Merits, reparations and costs*, para. 47. Also *cf.* ECHR. *Case of Johansen v. Norway*, August 7, 1996, para. 52, 1996-III, and ECHR. *Case of K and T v. Finland* [Grand Chamber], No. 25702/94, para. 151, 2001-VII.

[219] *Cf.* Advisory Opinion OC-17/02, para. 71, and *Case of Fornerón and daughter v. Argentina. Merits, reparations and costs*, para. 116.

[220] *Cf.* Advisory Opinion OC-17/02, para. 60; *Case of Servellón García et al. v. Honduras. Merits, reparations and costs*. Judgment of September 21, 2006. Series C No. 152, para. 116, and *Case of the Barrios Family v. Venezuela. Merits, reparations and costs*, para. 55.

[221] *Cf. Case of the "Children's Rehabilitation Institute" v. Paraguay. Preliminary objections, merits, reparations and costs.* Judgment of September 2, 2004. Series C No. 112, para. 160, and *Case of the Barrios Family v. Venezuela. Merits, reparations and costs*, para. 55.

[222] *Cf.* Advisory Opinion OC-17/02, paras. 60, 86, and 93; *Case of the Dos Erres Massacre v. Guatemala. Preliminary objection, merits, reparations and costs*, para. 184, and *Case of the Barrios Family v. Venezuela. Merits, reparations and costs*, para. 55.

[223] *Cf.* Advisory Opinion OC-17/02, paras. 53, 54, and 60; *Case of Servellón García et al. v. Honduras. Merits, reparations and costs*, para. 113, and *Case of Fornerón and daughter v. Argentina. Merits, reparations and costs*, para. 45.

[224] *Cf.* Advisory Opinion OC-17/02, para. 91; *Case of Servellón García et al. v. Honduras. Merits, reparations and costs*, para. 114, and *Case of the Barrios Family v. Venezuela. Merits, reparations and costs*, para. 55.

227. It is especially important for this case to recall that the Court has established that "[t]he child has the right to live with his family, which is called upon to satisfy his material, affective, and psychological needs."[225]

228. The Court considers that the threats and harassment against Mr. Vélez Restrepo and his family as of September 1996 and the failure to adopt opportune protection measures entailed the State's failure to comply with its obligation to provide protection against arbitrary or illegal interferences in the family. In addition, the Court finds that since Mr. Vélez Restrepo had to leave the country first and the Vélez Román family was separated for almost a year, the enjoyment of coexistence between the members of this family was severely affected. Mr. Vélez Restrepo had to leave the country first, and the family was able to reunite once they obtained the approval of the asylum request from the United States authorities.

229. During that entire time, Mr. Vélez Restrepo had to remain alone in the United States of America, while he waited for this approval. This meant that Mrs. Román Amariles had to take care of their children Mateo and Juliana under particularly difficult emotional and financial circumstances, as well as insecurity. They had to leave their home in Bogotá without their belongings and move to Medellín to live in the homes of family members. According to the testimony of Mrs. Román Amariles, she was very afraid for the safety of herself and her children in view of the possibility that the threats could be carried out. Even though Colombia stated that it had offered financial assistance to the Vélez Roman family for three months, this Court did not receive sufficient evidence to prove that it had in fact provided this assistance to the family; to the contrary, in her testimony, Mrs. Román Amariles explained that, since she did not have the necessary financial resources to maintain her two children, she had to leave Mateo with his paternal grandmother and only visit him on weekends.

230. The Court considers that those facts specifically violate the right of the boy, Mateo, and the girl, Juliana, to live with their family and, consequently to have their material, affective, and psychological needs satisfied. Also, the evidence proves the severity of the consequences on the life and stability of the boy, Mateo, who not only had to experience the threats against his family, and the move to a different home and city, but also the separation from his father, and from his mother and sister. Psychiatrist Kessler's expert opinion reveals that this separation had special repercussion on Mateo, who did not understand why they had to be apart and, even when he tried to be strong to avoid causing his mother more concerns, "he was very distressed each Sunday when he had to say goodbye to her after their weekend meeting to go back to his grandmother's house and to school." The expert witness indicated that events such as the threats, the flight from his home in Bogotá, and the separation from his father and mother caused "traumas" in Mateo's life that made him feel powerless and under the threat that he or his family could be injured or murdered; she added that "[s]tudies show that traumas of this nature have an impact on a child's neurophysiology, his behavior, and the way he perceives his surroundings."

231. In addition, the testimony given by Mr. Vélez Restrepo and Mrs. Román Amariles and the expert assessment of psychiatrist Kessler reveal, *inter alia*, the effect that the absence of opportune measures of protection and the subsequent separation of the family had on both the family's coexistence and the married life of Mr. Vélez Restrepo and Mrs. Román Amariles.

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[225] *Cf.* Advisory Opinion OC-17/02, para. 71, and *Case of Fornerón and daughter v. Argentina. Merits, reparations and costs*, para. 46.

232. Based on all the above findings, the Court concludes that the State is responsible for the violation of the right to protection of the family, embodied in Article 17(1) of the Convention, in relation to Article 1(1) thereof, to the detriment of Luis Gonzalo Vélez Restrepo, Aracelly Román Amariles, Mateo Vélez Román, and Juliana Vélez Román, and also for violating the right to special protection of children embodied in Article 19 of the American Convention to the detriment of Mateo and Juliana Vélez Román.

XI
RIGHTS TO JUDICIAL GUARANTEES AND JUDICIAL PROTECTION, IN RELATION TO THE OBLIGATIONS TO RESPECT AND GUARANTEE RIGHTS

233. First, it should be recalled that the State acknowledged partially its responsibility for the violation of Articles 8(1)[226] and 25[227] of the Convention, in relation to Article 1(1) thereof, for three reasons (*supra* para. 14(c)): (i) the absence of "a serious investigation that would have allowed the perpetrators of the attack suffered by Mr. […] Vélez Restrepo on August 29, 1996, to be determined and punished under criminal law;" (ii) because "[n]o serious investigation was conducted that that would have allowed the presumed authors of the threats of which Mr. […] Vélez Restrepo was presumably a victim to be determined and punished under criminal law," and (iii) because "[t]here was a violation of reasonable time in the investigation underway for the presumed attempted kidnapping of Mr. Vélez Restrepo on October 6, 199[7]."

234. In its brief with observations on the State's partial acknowledgment of responsibility, the Commission stated that the dispute that subsisted with regard to the violation of Articles 8(1) and 25 of the Convention was the alleged violation in relation to "the proceedings under the military criminal justice in the instant case."

235. The Court must rule on the matter that remains in dispute concerning the alleged violation of the principle of the natural judge, owing to the investigation conducted by the military criminal jurisdiction into the attack perpetrated by members of the Army against Mr. Vélez on August 29, 1996, and make some additional considerations on the lack of effective and diligent investigations in the instant case (*infra* section B).

A) Alleged violation of the guarantee of a natural judge

Observations of the Commission and arguments of the parties

236. The Commission and the representative indicated that the assignment of the criminal investigation into the attack on Mr. Vélez at Caquetá in 1996 to the military criminal jurisdiction "not only formally violated the right of access to justice of Mr. Vélez, but also

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[226] Article 8(1) of the American Convention establishes:

1. Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial Court, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

[227] Article 25 of the American Convention stipulates:

1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or Court 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.

constitutes the main reason for the impunity that exists in relation to the attack that took place on August 29, 1996." In addition, the Commission rejected the State's arguments on the competent jurisdiction at the time of the facts, and affirmed that the Court's jurisdiction is constant in relation to the standards in force, according to which "under no circumstance may the military jurisdiction operate in situations that violate the human rights of civilians." The Commission added that the Court has applied these standards in cases in which the facts occurred even before the facts of the instant case, and that this "does not constitute a retroactive application of the obligations of international law, […] but rather the interpretation of obligations that have existed from the moment that Colombia ratified the American Convention." In addition, it referred to some of its reports that, it affirmed, at the time of the facts of this case had already established the said standards. The Commission also argued that the prohibition that the military criminal jurisdiction examine human rights violations "was not based on the severity of the human rights violations, but rather on their nature."

237. The State argued that the criterion of the exceptional nature of the military jurisdiction, established by the current inter-American case law, did not exist at the time of the facts and that, in addition, it had been developed in cases in which grave human rights violations had been committed. It indicated that the Court's case law had undergone "important changes between 1996 and 2006" and that, according to the sources available at the time of the facts of this case, the military criminal jurisdiction had the status of a natural judge to examine "the violation of the personal integrity of Mr. Vélez." The State affirmed that, prior to the 2009 judgment in *Radilla Pacheco v. Mexico*, the applicable standard "to determine whether a conduct should be heard by the ordinary jurisdiction, was the extreme gravity of the human rights violations" and that "other human rights violations examined by military courts would not be *per se* violations of the American Convention." Likewise, it referred to the Court's decision in the 1997 judgment in *Genie Lacayo v. Nicaragua*, in which it did not declare a violation of the principle of the natural judge. It also referred to reports of the Inter-American Commission, and to a General Comment of the Human Rights Committee of the International Covenant on Civil and Political Rights, and to the case law of the Colombian Constitutional Court. The State argued that "it is not possible to declare [its] international responsibility […], because that would be against the principle of the non-retroactive nature of obligations in international law" and asked the Court to declare that it had "not violated the principle of the natural judge."

Considerations of the Court

238. According to the proven facts (*supra* paras. 106 and 107), the attack on Mr. Vélez Restrepo by soldiers on August 29, 1996, was the object of a preliminary investigation in the military criminal jurisdiction, and the final ruling decided "to abstain from opening a formal criminal investigation." In this preliminary inquiry into the offense of personal injuries, other supposed offenses to the detriment of individuals who were injured in relation to the incidents that took place on the said date during the protest demonstration in Caquetá were also investigated (*supra* para. 106). Consequently, the Court finds it relevant to recall that the guarantee of Article 8(1) of the Convention in relation to the intervention of the military justice system "does not refer only to the act of prosecution by a court but, above all, to the investigation itself, since it constitutes the start and the necessary presumption for the subsequent intervention of an incompetent court."[228]

[228] *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 Cabrera García and Montiel Flores v. Mexico. Preliminary objection, merits, reparations and costs*, para. 200. Similarly, c*f. Case of Garibaldi v. Brazil. Preliminary objections, merits, reparations and costs.* Judgment of September 23, 2009. Series C No. 203, para. 120.

239. The Court will now rule on Colombia's argument that, according to the sources available at the time of the facts of this case, the military criminal jurisdiction had the status of a competent court to hear "the violation to the personal integrity of Mr. Vélez."

240. On this point, the Court reiterates its consistent case law[229] regarding the lack of competence of the military criminal jurisdiction to prosecute human rights violations and the restrictive and exceptional scope that this should have in the States that still retain this jurisdiction. This Court has established that, owing to the legal right harmed, the said jurisdiction is not the competent system of justice to investigate and, as appropriate, prosecute and punish the authors of human rights violations, and that, only soldiers on active duty who have committed crimes or misdemeanors that, owing to their nature, harm juridical rights of a military nature, can be tried by the military justice system.[230] In addition, the Court notes that, prior to the facts of this case and at the time of the investigation, other international organs for the protection of human rights, such as the Inter-American Commission on Human Rights, and the Human Rights Committee of the International Covenant on Civil and Political Rights, had already indicated to Colombia that human rights violations should not be heard by the military criminal justice system.[231]

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[229] *Cf. 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 the 19 Tradesmen v. Colombia*. *Merits, reparations and costs*. Judgment of July 5, 2004. Series C No. 109, paras. 165, 166, 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. 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. Merits, reparations and costs*, 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 La Cantuta v. Peru. Merits, reparations and costs.* Judgment of November 29, 2006. Series C No. 162, para. 142; *Case of the La Rochela Massacre v. Colombia. Merits, reparations and costs*, para. 200; *Case of Escué Zapata v. Colombia. Merits, reparations and costs*, para. 105; *Case of Zambrano Vélez et al. v. Ecuador. Merits, reparations and costs*, para. 66; *Case of Tiu Tojín v. Guatemala. Merits, reparations and costs*, 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 and 273; *Case of Fernández Ortega et al. v. Mexico. Preliminary objection, merits, reparations and costs*, para. 176; *Case of Rosendo Cantú et al. v. Mexico. Preliminary objection, merits, reparations and costs*, para. 160, and *Case of Cabrera García and Montiel Flores v. Mexico. Preliminary objection, merits, reparations and costs*, paras. 197 to 199.

[230] Furthermore, on numerous occasions, the Court has indicated that "[w]hen the military justice system assumes competence on a matter that should be heard by the ordinary justice system, the right to a natural judge is impaired and, *a fortiori,* due process," which, in turn, is closely tied to the right of access to justice itself; *cf. inter alia*, *Case of Castillo Petruzzi et al. v. Peru. Merits, reparations and costs.* Judgment of May 30, 1999. Series C No. 52, para. 128, and *Case of Cabrera García and Montiel Flores v. Mexico. Preliminary objection, merits, reparations and costs*, para. 197.

[231] In 1993, in its Second Report on the Situation of Human Rights in Colombia, the Inter-American Commission stated that it was necessary "to regulate […] very clearly what constitutes a criminal act related to active duty in order to avoid the possibility of human rights violations being classified as acts inherent in active duty." *Cf.* Inter-American Commission on Human Rights, *Second Report on the Situation of Human Rights in Colombia.* OEA/Ser.L/V/II.84 Doc. 39 rev. 14 October 1993 (document available on the webpage of the Inter-American Commission at: http://www.cidh.oas.org/countryrep/Colombia93sp/indice.htm, last consulted on September 3, 2012). For its part, in May 1997, the United Nations Human Right Committee of the International Covenant on Civil and Political Rights issued its concluding observations on the report of Colombia in which it "urge[d Colombia]that all necessary steps be taken to ensure that members of the armed forces and the police accused of human rights abuses are tried by independent civilian courts and suspended from active duty during the period of investigation." In this regard, the said Committee recommended "that the jurisdiction of the military courts with respect to human rights violations be transferred to civilian courts." *Cf.* CCPR/C/79/Add.76 of 5 May 1997 (file of annexes to the pleadings and motions brief, tome I, annex 1).

241. In this regard, it should be mentioned that, even though this Court's consistent case law is the interpretive authority of the obligations established in the American Convention, the obligation not to investigate and prosecute human rights violations under the military criminal jurisdiction is a guarantee of due process derived from the obligations contained in Article 8(1) of the American Convention and does not depend solely on what this Court has reaffirmed in its case law. The guarantee that violations of human rights such as life and personal integrity are investigated by a competent court is embodied in the American Convention and is not the result of its application and interpretation by this Court in the exercise of its contentious jurisdiction; thus it must be respected by the States Parties from the moment they ratify the said treaty.

242. Regarding Colombia's reference to the judgment in the case of *Genie Lacayo v. Nicaragua,*[232] in which it did not declare a violation of the guarantee of a natural judge, the Court notes that, at the time the State could have investigated the attack perpetrated by soldiers against Mr. Vélez Restrepo, it also delivered the judgment in the case of *Durand and Ugarte v. Peru,* in which it stated that the military criminal jurisdiction only applies to "soldiers, for the perpetration of crimes or misdemeanors that, owing to their nature, harm military juridical rights."[233] This has been the constant criterion of this Court's case law (*supra* para. 240). The Court notes that Colombia could have taken this into consideration to investigate the attack on Mr. Vélez Restrepo in the competent ordinary criminal jurisdiction, since there is no evidence that, in 2000, the offense of injuries had prescribed.

243. The Court stresses that it has been able to construct the restrictive jurisprudential criterion, which it is currently developing fully, through the analysis of the different contentious cases that have been submitted to its consideration. The Court also emphasizes that, in several cases the facts of which took place prior to 1996,[234] the year in which the attack against Mr. Vélez Restrepo was committed, this Court upheld the said restrictive and exceptional scope of the military criminal jurisdiction (*supra* para. 240). This confirms the foregoing, in the sense that the obligation not to prosecute human rights violations under the military jurisdiction is a guarantee of due process derived from the obligations included in Article 8(1) of the American Convention. Furthermore, it should be mentioned that, even though the standard in question has been developed mainly through cases on grave human rights violations, this is only because the facts submitted to this Court's jurisdiction were of this nature, and not because the competence to hear the case must be assigned to the ordinary jurisdiction only and exclusively in such cases.

244. Therefore, the Court reiterates that the criteria to investigate and prosecute human rights violations before the ordinary jurisdiction reside not on the gravity of the violations, but rather on their very nature and on that of the protected juridical right. The Court repeats that, regardless of the year in which the acts that violated human rights occurred, the guarantee of a natural judge must be analyzed according to the object and purpose of the American Convention, which is the effective protection of the individual.[235]

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[232] *Cf. Case of Genie Lacayo v. Nicaragua*. Merits, reparations and costs. Judgment of January 29, 1997. Series C No. 30.

[233] The factual situation of the case of *Durand and Ugarte* refers to the suppression of a 1986 prison uprising, in which soldiers "used disproportionate force that was far in excess of the limits of their function, which resulted in the death of a large number of prisoners." *Cf. Case of Durand and Ugarte v. Peru. Merits*, para. 118.

[234] *Cf. Case of the La Rochela Massacre v. Colombia. Merits, reparations and costs*, para. 200, the facts of which occurred as of 1989; *Case of Escué Zapata v. Colombia. Merits, reparations and costs,* the facts of which occurred as of 1988, and *Case of Zambrano Vélez et al. v. Ecuador. Merits, reparations and costs*, the facts of which occurred as of 1993.

[235] *Cf. Case of the 19 Tradesmen v. Colombia*. *Merits, reparations and costs*, para. 173, and *Case of the La Rochela Massacre v. Colombia. Merits, reparations and costs*, para. 200.

245. Based on the above considerations, the Court concludes that the State violated the guarantee of a natural judge regarding the investigation into the attack perpetrated by soldiers against Mr. Vélez Restrepo on August 29, 1996; consequently, Colombia is responsible for the violation of Article 8(1) of the Convention, in relation to Article 1(1) thereof, to the detriment of Mr. Vélez Restrepo.

B) Absence of effective and diligent investigations

246. The Court considers it important to emphasize that none of the violations committed against Mr. Vélez Restrepo and his family was investigated effectively in the criminal jurisdiction. Both the attack of August 29, 1996, and the subsequent threats, harassment and attempted deprivation of liberty remain in impunity. This Court has verified that the only punishments meted out by the domestic courts were two disciplinary sanctions within the Armed Forces. However, these proceedings did not sanction any soldier directly for physically attacking Mr. Vélez Restrepo on August 29, 1996, and the State has not even proved that the sanctions were final, because it indicated that it had not found the rulings that decided the appeals filed by the soldiers (*supra* para. 103); hence the Court was unable to examine the corresponding final rulings.

247. In this regard, the Court reiterates that the obligation to investigate is an obligation of means and not of results, which must be assumed by the State as its own juridical duty and not as a mere formality predestined to be unsuccessful, or as a simple measure responding to private interests that depends on the procedural initiative of the victims or their next of kin or on the private contribution of probative elements.[236] The State's obligation to investigate must be complied with diligently in order to avoid impunity and the repetition of such acts. In this regard, the Court recalls that impunity encourages the repetition of human rights violations.[237] The State authorities have the responsibility to carry out a serious, impartial, and effective investigation using all legal means available, designed to determine the truth and to pursue, capture, prosecute, and eventually punish the authors of the facts, especially in a case such as this one in which State agents were involved.[238]

248. Regarding the investigation into the attack perpetrated by soldiers against Mr. Vélez Restrepo on august 29, 1996, the State asked the Court to "acknowledge the progress made in the investigation and punishment" under the disciplinary proceedings conducted before the Armed Forces and the Attorney General's Office. In this regard, the Court has recognized that disciplinary proceedings can fulfill a complementary function to guarantee the rights established in the Convention, but reiterates that they tend to protect the administrative function and the correction and control of public officials and are not intended to clarify the facts and establish responsibilities in the case, as the criminal jurisdiction does.[239]

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[236] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits*. Judgment of July 29, 1988. Series C No. 4, para. 177, and *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador. Merits and reparations*. Judgment of June 27, 2012. Series C No. 245, para. 265.

[237] *Cf. Case of the Ituango Massacres v. Colombia. Preliminary objection, merits, reparations and costs*, para. 319, and *Case of González Medina and family members v. Dominican Republic. Preliminary objections, merits, reparations and costs*, para. 203.

[238] *Cf. Case of the Pueblo Bello Massacre v. Colombia. Merits, reparations and costs*, para. 143, and *Case of González Medina and family members v. Dominican Republic. Preliminary objections, merits, reparations and costs*, para. 204.

[239] *Cf. Case of the "Mapiripán Massacre" v. Colombia. Merits, reparations and costs*, para. 215, and *Case of Manuel Cepeda Vargas v. Colombia. Preliminary objections, merits, reparations and costs*, para. 133.

249. Moreover, the Court must call attention to the fact that no one was punished for having beaten Mr. Vélez Restrepo on August 29, 1996, in either the criminal or the disciplinary investigations. The Court notes that one of the disciplinary decisions established that one of the soldiers was sanctioned for having given the order that Mr. Vélez Restrepo's "video camera be seized," and that "in compliance with that order, it appears that abuses were committed against Mr. […] Vélez." The Court recalls that the attack on Mr. Vélez Restrepo was even recorded in images and sound. Even though the faces of the soldiers who hit him were not revealed, it is reasonable to state that, in a case that was not very complicated to investigate, many other elements existed that would have permitted the identification of the soldiers responsible for hitting him. The Court stresses that the lack of diligence in the investigation also includes these aspects.

250. The Court also finds it relevant to refer to the terms in which the State made its partial acknowledgement of responsibility concerning the absence of a serious criminal investigation of the attack on Mr. Vélez Restrepo of August 29, 1996. Colombia acknowledged its responsibility only because it had been unable to prove its diligence in the said investigation as a result of the loss of the criminal case file (*supra* para. 14). In this regard, the Court has already established that the said criminal investigation did not respect the guarantee of due process of the principle of the natural judge (*supra* para. 245). In addition, the Court notes that, the considering paragraphs of the final decision of the military criminal investigation, a document that was provided to these proceedings, do not even mentioned the specific attack suffered by the journalist Vélez Restrepo and decided that "it [was] not possible to open criminal proceedings and direct the investigation towards any specific soldier on active duty."[240] This Court finds that this reveals a lack of due diligence in the investigation.

251. Finally, regarding the investigation of the attempted deprivation of liberty of Mr. Vélez Restrepo, the State acknowledged that, in the investigation into the crime of attempted kidnapping "the reasonable time" was violated (*supra* para. 14). The Court has noted that, in the Merits Report, the Commission argued that the investigation into the attempted kidnapping "has not been carried out diligently and within a reasonable time." Since the State did not expressly accept the alleged lack of diligence in the investigation, the Court must recall that the conduct of the judicial authorities constitutes one of the elements that form part of the analysis to determine a violation of reasonable time.[241] Therefore, the Court understands that, implicitly, the State acknowledged that it had not complied with this standard of due diligence.

252. Based on the above considerations and on the State's partial acknowledgment of responsibility, the Court concludes that the domestic investigations did not constitute effective remedies to guarantee access to justice and the determination of the truth, the investigation and punishment of those responsible, and the integral reparation of the consequences of the violations. None of the human rights violations declared in this Judgment was investigated seriously and diligently by the State authorities. Consequently, the State is responsible for the violation of Articles 8(1) and 25 of the Convention, in relation to Article 1(1) thereof, to the detriment of Luis Gonzalo Vélez Restrepo, Aracelly Román Amariles, and their children Mateo and Juliana Vélez Román.

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[240] The first part of the decision mentions Mr. Vélez Restrepo merely to indicate that he was one of the injured attended at the María Auxiliadora Hospital in Florencia and that he was the only one of the injured who went to the Institute of Legal Medicine and Forensic Sciences for an evaluation.

[241] *Cf. Case of Genie Lacayo v. Nicaragua*. Merits, reparations and costs, para. 77, and *Case of Díaz Peña v. Venezuela*. Preliminary objection, merits, reparations and costs, para. 49.

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

253. Based on the provisions of Article 63(1) of the American Convention,[242] the Court has indicated that any violation of an international obligation that has produced harm entails the obligation to repair this adequately[243] and that this provision reflects a customary norm that constitutes one of the fundamental principles of contemporary international law on State responsibility.[244]

254. 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 feasible, as in most cases of human rights violations, the Court will determine measures to guarantee the violated rights and to redress the consequences of the violations.[245] Therefore, the Court has considered the need to grant different measures of reparation, in order to repair the harm comprehensively, so that, in addition to pecuniary compensation, measures of restitution and satisfaction, and guarantees of non-repetition have special relevance to the harm caused.[246]

255. This Court has established that the reparations must have a causal nexus with the facts of the case, the violations declared, the harm proved, and the measures requested to repair the respective harm. Therefore, the Court must observe the said concurrence in order to rule appropriately and according to the law.[247]

256. Before beginning to determine the measures of reparation, the Court reiterates the value and importance of the partial acknowledgement of responsibility made by Colombia, and also recalls that, when ruling on the reparations, it will take into consideration the arguments presented by Colombia when alleging "non-compliance by the Commission with the basic requirements for filing a case before the Court," in relation to compliance with recommendations 4, 5, and 6 of the Merits Report" (*supra* paras. 36 and 42). The Court also emphasizes the State's declaration that it "deeply regrets what happened and that its intention is […] to achieve integral reparation for the victims of this case, respecting the criteria of reasonableness and proportionality, and that similar acts should not be repeated."

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[242] Article 63(1) of the 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."

[243] *Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and costs*. Judgment of July 21, 1989. Series C No. 7, para. 25, and *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador. Merits and reparations*, para. 279.

[244] *Cf. Case of Garrido and Baigorria v. Argentina. Reparations and costs.* Judgment of August 27, 1998. Series C No. 39, para. 40, and *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador. Merits and reparations.* Judgment of June 27, 2012. Series C No. 245, para. 279.

[245] *Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and costs*, para. 26, and *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador. Merits and reparations*, para. 280.

[246] *Cf. Case of Cantoral Benavides v. Peru. Reparations and costs.* Judgment of December 3, 2001. Series C No. 88, paras. 79 to 81, and *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador. Merits and reparations*, para. 280.

[247] *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 the Kichwa Indigenous People of Sarayaku v. Ecuador. Merits and reparations*, para. 281.

257. Based on the State's partial acknowledgment of responsibility and the findings concerning this acknowledgment, as well as those on the merits and the violations of the American Convention declared in the preceding chapters, the Court will proceed to analyze the claims submitted by the Commission and the representative, as well as the State's arguments, in light of the criteria established in the Court's case law on the nature and scope of the obligation to repair,[248] in order to determine measures aimed at repairing the harm caused to the victims.

A) Injured Party

258. The Court reiterates that, in the terms of Article 63(1) of the Convention, the injured party is considered to be those who have been declared victims of the violation of any right recognized therein. Therefore, this Court considers Luis Gonzalo Vélez Restrepo, his wife, Aracelly Román Amariles, and their children Mateo and Juliana Vélez Román, the "injured party" and, in their capacity as victims of the violations declared in chapters IX, X and XI, they will be considered beneficiaries of the reparations ordered by the Court.

B) Measures of integral reparation: restitution, rehabilitation and satisfaction, guarantee of non-repetition, and obligation to investigate

259. The Court will determine other measures that seek to repair the non-pecuniary damage and will order measures of a public scope or repercussion.[249] International case law, and particularly that of the Court, has repeatedly established that the judgment constitutes *per se* a form of reparation.[250] Nevertheless, considering the circumstances of the case *sub judice,* and based on the harm to Mr. Vélez Restrepo, Mrs. Román Amariles, and their children Mateo and Juliana Vélez Román, as well as the consequences of a non-pecuniary nature arising from the violations to the Convention declared to their detriment, the Court finds it pertinent to establish measures of restitution, rehabilitation, and satisfaction, as well as guarantees of non-repetition.

B.1) Restitution: guarantee the conditions for the return of the Vélez Román family to Colombia

260. The Commission asked the Court to order the State "to adopt the necessary measures to protect and safeguard the safety of the Vélez Román family should they decide to return to Colombia on either a temporary or permanent basis."

261. In this regard, the State argued that it had not failed to comply with the said recommendation made by the Commission in its Merits Report, since it has expressed "[i]ts absolute commitment to provide Luis Gonzalo Vélez and his family with the necessary safety measures should they consider returning to Colombia." Colombia underscored that this measure is subject to the Vélez Román family "expressing its interest in returning to the country" and that, once they do so, "the State will activate the relevant mechanisms established in [its] laws." Hence, Colombia asked that "compliance with this

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[248] *Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and costs*, paras. 25 and 26, and *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador. Merits and reparations*, para. 283.

[249] *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 the Kichwa Indigenous People of Sarayaku v. Ecuador. Merits and reparations*, para. 285.

[250] *Cf. Case of Neira Alegría et al. v. Peru. Reparations and costs.* Judgment of September 19, 1996. Series C No. 29, para. 56, and *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador. Merits and reparations*, para. 285.

recommendation be suspended until the [representative] states his opinion in this regard." Consequently, it asked the Court to reject this measure of reparation.

262. The representative did not refer to this measure of reparation.

263. The Court finds it relevant to recall that the State has the obligation to guarantee the freedom of movement and residence of Mr. Vélez Restrepo and the members of the Vélez Román family, which includes the obligation to establish the conditions and means that permit them to return safely and with dignity.[251] This, in turn, constitutes a restitution of the right violated.

264. In this regard, the Court appreciates the State's intention to provide the necessary safety measures for Mr. Vélez and family to return to live in Colombia when they so decide. However, the Court observes that the representative did not refer to this measure, and that, when testifying at the public hearing, Mr. Vélez Restrepo and Mrs. Román Amariles expressed their desire to return to Colombia, but at the same time consider that certain circumstances make it difficult for them to take that decision, such as fear because of the country's security situation, their situation of financial instability owing to the fact that Mr. Vélez Restrepo lost his job in Colombia and has not contributed to social security, and the family's situation because their children are studying in the United States of America. The Court underscores that the two latter reasons result from the forced exile.

265. The Court considers that an appropriate measure to repair the consequences of the violations that have been declared is to order the State to guarantee the conditions for the Vélez Román family to return to live in Colombia if they so decide.[252] Since the Vélez Román family's intention to return to Colombia is unclear, the State's compliance with this measure requires the victims' prior expression of their real and true intention to return to Colombia, and they are granted one year for this. If, within the said time frame, the victims express their intention of returning to Colombia, a period of two years will then begin to be calculated for the State and the victims to reach the relevant agreement for the State to guarantee them the said conditions for their return to Colombia. The State must pay the expenses of the return of the members of the family and their belongings.

266. If, within the said one-year period, the members of the Vélez Román family state that they do not wish to live in Colombia, the State will not have a measure of reparation to fulfill in relation to this Judgment. However, if, in the future, Mr. Vélez Restrepo and the members of his family return to Colombia, the State must comply with its general obligation to guarantee them the rights to life and personal integrity, in accordance with the provisions of Articles 5 and 7 of the American Convention on Human Rights in relation to Article 1(1) thereof..

B.2) Rehabilitation: health care for the victims

267. The representative stated that he "considers […] essential" the need to "determine measures of reparation that provide adequate attention to the victims' psychological and physical problems," and therefore asked the Court to order the State to cover "the cost for the Vélez Román family of all the psycho-social and medical assistance required to alleviate

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[251] *Cf. Case of the Moiwana Community v. Suriname. Preliminary objections, merits, reparations and costs*, para. 120, and *Case of Chitay Nech et al. v. Guatemala. Preliminary objections, merits, reparations and costs.* Judgment of May 25, 2010. Series C No. 212, para. 150.

[252] *Cf. Case of Contreras et al. v. El Salvador. Merits, reparations and costs*, para. 197.

the persistent mental and physical effects of the violations suffered," who "require this professional treatment, both individually and as a family and, to date, have been unable to receive it." In particular, he indicated that Mr. Vélez Restrepo, his wife and their son Mateo "need to receive individual professional treatment," because they suffer from "debilitating physical effects" as a "result of their prolonged situation as victims of grave violations and as exiles." In this regard, he asked the Court to order the State to pay the sum of US$20,000 to Mr. Vélez Restrepo, US$15,000 to Mrs. Román Amariles, and US$15,000 to Mateo Vélez Román**,** and he explained that the amounts for this concept "respond to the geographical and financial realities of the family living in exile in New York, United States."

268. The State did not refer specifically to this measure of reparation.

269. The Court considers, as it has done so on other cases,[253] that it is necessary to determine a measure of reparation that provides adequate treatment for the health problems suffered by the victims as a result of the violations established in this Judgment.

270. The Court determines that, if the victims express their intention to return to live in Colombia, in accordance with the time frames established in paragraph 265 of this Judgment, the State will have the obligation to provide them with immediate, adequate and effective health care if they request this, free of charge, and by its specialized health care institutions, including the provision of any medication they may eventually require, also free of charge, taking into consideration the ailments of each of them. If the State is unable to do this through its own health care institutions, it must have recourse to specialized private institutions or institutions of civil society. In addition, the respective treatment must be provided, insofar as possible, in the centers nearest to their places of residence in Colombia for all the time necessary.[254] When providing the psychological or psychiatric treatment the specific circumstances and needs of each victim must be considered, so that they are provided with family or individual treatment, as agreed with each of them following an individual assessment.[255] The victims who request this measure of reparation, or their legal representatives, must inform the State of their intention to receive psychological or psychiatric treatment.[256]

271. If the members of the Vélez Román family decide not to return to live in Colombia, the Court finds it appropriate that, in order to help cover the costs of health care, the State must deliver, once and within six months of the date of expiry of the one-year time frame established in paragraph 265 for the victims to express their intention of whether or not to return to live in Colombia, the sums of US$20,000 (twenty thousand United States dollars), US$15,000 (fifteen thousand United States dollars), and US$15,000 (fifteen thousand United States dollars) to Luis Gonzalo Vélez Restrepo, Aracelly Román Amariles and Mateo Vélez Román, respectively.

B.3) Satisfaction: publication and dissemination of the Judgment

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253 *Cf. Case of Cantoral Benavides v. Peru. Reparations and costs*, paras. 51(d) to 51(f), 61(a) and 61(c), eighth operative paragraph, and *Case of Contreras et al. v. El Salvador. Merits, reparations and costs*, para. 200.

254 *Cf. Case of the 19 Tradesmen v. Colombia. Merits, reparations and costs*, para. 278, and *Case of Pacheco Teruel et al. v. Honduras. Merits, reparations and costs.* Judgment of April 27, 2012 Series C No. 241, para. 116.

255 *Cf. Case of the 19 Tradesmen v. Colombia. Merits, reparations and costs*, para. 278, and *Case of Pacheco Teruel et al. v. Honduras. Merits, reparations and costs*, para. 116.

256 *Cf.* Case of *Fernández Ortega et al. v. Mexico. Preliminary objection, merits, reparations and costs*, para. 252, and *Case of Pacheco Teruel et al. v. Honduras. Merits, reparations and costs*, para. 117.

272. Regarding the publication and dissemination of the Judgment, the representative asked the Court to order the State "[t]o publish opportunely and repeatedly in the newspapers *El Espectador, El Tiempo and El Colombiano,* as well as in the Official Gazette, the pertinent parts of the Court's Judgment, in particular the section on proven facts and the operative paragraphs," and that the State make the said publication, "translated into the English language, "in a newspaper with widespread circulation in the United States, specifically in the area where the family lives."

273. The State indicated that "it will respect the decision of the […] Court in this regard, in keeping with the criteria of reasonableness and proportionality and the causal nexus with the violations that have really been proved." However, it observed "that the [Court's] practice reveals that it is sufficient to publish the important [parts] of the Judgment in a single national newspaper."

274. The Court determines, as it has in other cases,[257] 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 once, in the official gazette; (b) the official summary of this Judgment prepared by the Court, once, in a national newspaper with widespread circulation, and (c) this Judgment in its entirety, available for one year, on an official website.

B.5) Guarantees of non-repetition: training for the Armed Forces

275. The Commission and the representative both asked the Court to order the State "to provide training to the armed forces on the role of journalists in a democracy, and their right to cover, freely and safely, situations of public order and armed conflict." In its brief submitting the case, the Commission referred to the undertaking made by the State "to promote, in the coming months, training for the armed forces." It added that States have a "special obligation to protect journalists at risk," which entails the adoption of certain measures such as the training of security forces so they are aware of the importance of journalists and social communicators in a democratic society. For his part, the representative added that the said training should also cover the role played by "other human rights defenders in a democracy."

276. The State asked the Court to reject this measure because it has been complying with it and demonstrated its commitment to continue to comply with it. In its response to the Merits Report, it undertook to promote the said training for the armed forces. It stressed that this recommendation is "of gradual short and medium-term implementation and impact." In this regard, the State forwarded "Directive No. 19/2010 of the Office of Human Rights and International Humanitarian Law of the National Army, which includes the command policies to enhance respect for journalists and social communicators [in order to] 'supervise, respect, and protect, […] according to the circumstances, the means and resources available to those who exercise the profession of journalists and social communicators' and 'acknowledge the plausible work [they] perform in Colombia.'" It indicated that this is complemented "by a copy of the leaflet that each Colombian soldier carries in his equipment entitled: 'Respect, attention, recognition, protection, prevention, application and dissemination of human rights and international humanitarian law with regard to special groups,' which emphasizes the work of journalists and the importance of protecting them."

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[257] *Cf. Case of Cantoral Benavides v. Peru. Reparations and costs*, para. 79, and *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador. Merits and reparations*, para. 307.

277. The Court appreciates the measures taken by Colombia in this area, through directives that seek to raise awareness within the Armed Forces about the work of journalists and social communicators and the danger they face, especially during armed conflicts, and also about the necessary respect they must exercise so that the latter can exercise their profession without obstacles.[258] The existence and validity of these measures was not contested by the Commission and it did not provide information indicating any possible shortcomings. Nevertheless, this Court finds it important that the State continue to enhance its institutional capacities by training the members of the Armed Forces in order to avoid the repetition of acts such as those that occurred in this case. To this end, the State must incorporate into its human rights education programs for the Armed Forces, a specific module on the protection of the right to freedom of thought and expression and on the work of journalists and social communicators.

B.5) Obligation to investigate the facts that gave rise to the violations and to identify, prosecute and, as appropriate, punish those responsible

278. In its brief submitting the case, the Commission asked that the State be ordered "to conduct, within a reasonable time and under the ordinary jurisdiction, a diligent investigation of all the acts of violence and harassment against [Mr.] Vélez Restrepo and his family, in order to identify, prosecute and punish those eventually found responsible for the said acts," and "to conduct an investigation in order to identify those eventually found responsible for the lack of measures of protection and the omissions in the protection of Mr. Vélez and his family, and to apply the corresponding administrative, disciplinary, or other sanctions." Subsequently, in its final observations, the Commission indicated that the State only advised it that the criminal action was time-barred "at the stage of compliance with the recommendations of the Merits Report"; consequently, in the said Report, "it did not […] adopt a position regarding the applicability […] of the Court's case law regarding the statute of limitations." In this regard, it indicated that "even when the crime cannot prescribe under international law, there are certain rules that must be applied when determining the time that has elapsed for the effects of the statute of limitations," and it referred to exceptions to invoking and applying the statute of limitations. Hence, it considered prudent that the Court assess whether any of these exceptions are applicable to this case.

279. In the pleadings and arguments brief, the representative asked the Court to order the State "to conduct, within a reasonable time and under the ordinary jurisdiction, a diligent investigation into all the acts of violence and harassment perpetrated against Mr. Vélez, in order to identify, prosecute and punish those responsible for the said acts," and "an investigation in order to identify those possibly responsible for the defects in the investigation and the omissions in the protection of Mr. Vélez and his family, and to apply the corresponding administrative, disciplinary, or any other sanctions." Following his pleadings and motions brief, the representative argued that happened to Mr. Vélez "is a case of grave human rights violations." In that regard, he considered that what had happened to Mr. Vélez on August 29, 1996, must be understood as an act of "torture." Furthermore, he considered that the threats and harassment suffered by the Vélez Román family "culminated in his forced exile in the United States" and "should not be seen as violations that have no connection to the torture suffered by [Mr.] Vélez," because they also caused them "severe psychological harm."

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[258] *Cf.* Leaflet "*Respeto, atención, reconocimiento, protección, prevención, promoción, aplicación and difusión de los derechos humanos y DIH de los grupos especiales.*" Permanent Directive No. 19/2010 of the Office of Human Rights and International Humanitarian Law of the National Army (annexes to the answering brief, annex 2, merits file, tome I, folios 455 to 463).

280. The State argued that actions for the offenses of injuries and threats were subject to the statute of limitations and did not constitute a "grave human rights violation," which "makes it legally impossible to treat these conducts as offenses that cannot become time-barred." In this regard, it indicated that "not even applying the broadest concept as regards the possibility of making the principle of the prescription of the criminal action more flexible, would it be possible to lift the statute of limitations with regard to [these] two […] offenses," because this principle not only "harmonizes fully with the provisions of the Convention as regards guarantees for the defendants," but "disregarding it would give rise to a new international violation by the State." Therefore, the State asked the Court "to apply its consistent case law that prohibition of implementing the statute of limitations applies only exceptionally in the case of […] grave human rights violations" and, consequently, to "reject the claims of the Commission and [the] victims' representative that it order the reopening of [these] proceedings."

281. In Chapters IX, X and XI of this Judgment, the Court determined that the facts of this case involved violations of personal integrity, freedom of expression, freedom of movement and residence, protection of the family, and the rights of the child, but the Court did not declare that they constituted acts of torture or forced disappearance. Furthermore, the Court declared the violation of Articles 8 and 25 of the Convention owing to the absence of effective and diligent investigations into the acts of violence against Mr. Vélez Restrepo, the threats and harassment, and the attempted deprivation of liberty, as well as into the violation of the guarantee of a natural judge in relation to the investigation into the said attack.

282. The Court reiterates that any violation of human rights supposes a certain gravity based on their very nature, because it entails non-compliance with certain State obligations to respect and guarantee the rights and freedoms of the individual. However, this must not be confused with what the Court, in all its case law, has considered "grave human rights violations," which have their own connotation and consequences. Moreover, this Court has indicated that it is not correct to expect that the application of the statute of limitations is inadmissible in every case submitted to the Court merely because human rights violations are involved.[259]

283. The Court has already indicated that, in criminal matters, application of the statute of limitations determines the extinction of punitive possibilities owing to the passage of time and that, generally, it limits the punitive powers of the State to prosecute the illegal conduct and punish the authors.[260] According to the Court's consistent and unvarying case law, in certain circumstances international law considers that application of the statute of limitations is inadmissible and inappropriate, in order to maintain the State's punitive powers in force over time in relation to conducts, such as the forced disappearance of persons, extrajudicial execution, and torture, the seriousness of which makes their punishment necessary in order to avoid their repetition.[261] The Court considers that, in the

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[259] *Cf. Case of Vera Vera et al. v. Ecuador. Preliminary objection, merits, reparations and costs.* Judgment of May 19, 2011. Series C No. 226, paras. 117 and 118.

[260] *Cf. Case of Albán Cornejo et al. v. Ecuador. Merits Reparations and costs*. Judgment of November 22, 2007. Series C No. 171, para. 111, and *Case of Vera Vera et al. v. Ecuador. Preliminary objection, merits, reparations and costs*, para. 117.

[261] *Cf. inter alia, Case of Barrios Altos v. Peru. Merits.* Judgment of March 14, 2001. Series C No. 75, para. 41; *Case of Barrios Altos v. Peru. Interpretation of the judgment on merits*. Judgment of September 3, 2001. Series C No. 83, para. 15; *Case of Trujillo Oroza v. Bolivia. Reparations and costs*. Judgment of February 27, 2002. Series C No. 92, para. 106; *Case of El Caracazo v. Venezuela. Reparations and costs*. Judgment of August 29, 2002. Series C No. 95, para. 119*; Case of Bulacio v. Argentina. Merits, reparations and costs*. Judgment of

instant case, the necessary presumptions do not exist to apply any of the exceptions to implementation of the statute of limitations argued by the Commission.

284. Based on the above, and taking into consideration its consistent case law, the Court finds that it is not possible to determine that the statute of limitations cannot be applied in the case of the acts of violence on August 29, 1996 (*supra* paras. 80 to 82), and the threats and harassments of 1996 and 1997 (*supra* paras. 85 to 93). However, based on the impunity that prevails in the instant case, the Court finds it necessary to order the State to advise whether, under Colombian law, it is possible to adopt other measures or actions that allow the responsibilities in this case for the said acts to be determined and, if so, to take these measures or actions.

285. With regard to the investigation into the attempted deprivation of liberty of Mr. Vélez Restrepo on October 6, 1997 (*supra* para. 94), the Court takes into account that, in its answering brief, the State indicated its intention to "[advance] the investigation that is still ongoing into the presumed attempted kidnapping."[262] The Court considers that the State must investigate this incident diligently and within a reasonable time, in order to clarify it and punish those responsible.

C) Other measures requested

C.1) Written apology and its dissemination in the media

286. The representative asked that the State be ordered to make a public acknowledgment of responsibility and a public apology to Mr. Vélez Restrepo, his wife Aracelly Román Amariles, and their children Mateo and Juliana Vélez Román, by measures such as a "formal written statement issued by high-ranking State authorities" and its publication in several newspapers in Colombia and the United States, as well as the "preparation and recording of a video clip for television" to be broadcast "on institutional and commercial channels in Colombia […] and on the Day of the Journalist." In this regard, the Court recalls that, in its judgments, when it orders a public act of acknowledgment of responsibility it requires that there be a public ceremony in the presence of high-ranking State officials and the victims in the case, in which reference is made to the human rights violations that have been declared. The Court appreciates the fact that, in the instant case, Colombia has made a partial acknowledgment of responsibility (*supra* paras. 13 and 14) and that, at the public hearing, it apologized to the Vélez Román family (*supra* para. 17). This is complemented by the fact that, in this Judgment, the Court has declared violations to human rights additional to the ones acknowledged by the State. The recording of the said public hearing is available on the Court's web page. Consequently, the Court does not consider it appropriate to order the measures requested by the representative and finds that

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September 18, 2003. Series C No. 100, para. 116; *Case of Myrna Mack Chang v. Guatemala. Merits, reparations and costs.* Judgment of November 25, 2003. Series C No. 101, para. 276; *Case of Molina Theissen v. Guatemala. Reparations and costs.* Judgment of July 3, 2004. Series C No. 108, para. 84; *Case of the Gómez Paquiyauri Brothers v. Peru. Merits, reparations and costs*. Judgment of July 8, 2004. Series C No. 110, para. 150; *Case of Tibi v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of September 7, 2004. Series C No. 114, para. 259; *Case of the Plan de Sánchez Massacre v. Guatemala. Reparations and costs*. Judgment of November 19, 2004. Series C No. 116, para. 99; *Case of Carpio Nicolle et al. v. Guatemala. Merits, reparations and costs.* Judgment of November 22, 2004. Series C No. 117, para. 130; *Case of the Serrano Cruz Sisters v. El Salvador. Merits, reparations and costs.* Judgment of March 1, 2005. Series *Case of Gelman v. Uruguay. Merits and reparations*. Judgment of February 24, 2011 Series C No. 221, para. 225, and *Case of Vera Vera et al. v. Ecuador. Preliminary objection, merits, reparations and costs*, para. 117.

[262] On April 26, 2012, by a writ of prohibition, the prosecutor for the investigation abstained from opening preliminary proceedings (file of useful evidence presented by the State, tome II, folios 518 to 520). However, in its final arguments the State did not submit any consideration in this regard.

the delivery of this Judgment, together with its dissemination in different media, both a national newspaper with widespread circulation and two official ones, are sufficient and adequate measure of reparations to make reparation for the violations suffered by the victims and to comply with the purpose indicated by the representative.[263]

C.2) "Measures of educational rehabilitation"

287. Regarding the representative's request that a sum of money be allocated to cover the cost of courses so that Mr. Vélez Restrepo and Mrs. Román Amariles can to improve their "professional and social profile in the [United] States,"[264] the Court considers that the compensation granted for non-pecuniary damage is sufficient and adequate to redress the violations suffered by the victims and does not find it necessary to order this measure.

C.3) To continue adopting and strengthening special programs to protect journalists at risk and investigate crimes against them

288. Both the Commission and the representative requested that the State be ordered "to continue adopting and strengthening the special programs to protect journalists at risk and investigate crimes against them." In its submission brief, the Commission clarified that the State had expressed "its absolute commitment" to this recommendation. The Commission indicated that Colombia had "described the activities, results and budget of the Protection Program of the Ministry of the Interior and Justice and advised that the Human Rights Unit of the Prosecutor General's Office has a working group of 19 special prosecutors in charge of investigating crimes against journalists." In this regard, the Commission considered that the information provided by the State "may reveal important steps in the compliance with this recommendation, […] which must continue to be enhanced and strengthened." Therefore, the Commission underscored the relevance of this type of program, and considered it important that the Court "take into consideration the State's efforts […] to protect journalists at risk."

289. For its part, the State argued that this measure should be considered unfounded, because the State has already been complying with it, which "proves the State's political will and good faith to comply with it, and the specific results of the measures implemented to date." Consequently, it asked the Court to reject the request to order this measure.

290. The Court observes that the State presented specific information on programs and actions implemented in this area,[265] and the Commission did not contest their existence or

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[263] *Cf. Case of Radilla Pacheco v. Mexico. Preliminary objections, merits, reparations and costs*, para. 359, and *Case of Díaz Peña v. Venezuela. Preliminary objection, merits, reparations and costs*, para. 156.

[264] They indicated that they wished "to take intensive English courses," and "to enroll in professional training classes" of "film camerography" and "computer systems and technology," respectively. The representative requested the sum of US$20,000 to cover the cost of these courses.

[265] The State provided information on: (i) the existence of an "broad legal framework designed to guarantee […] freedom of opinion and expression" in Colombia; (ii) the creation, in 1997, of a program to protect the rights of groups that were vulnerable owing to the exercise of their political, public, social and humanitarian activities or functions; (iii) the creation, in 2000, of the Protection Program that includes journalists and social communicators in its target population, and through which specific measures of prevention and protection have been implemented; (iv) the benefits and progress reported by this program in the protection and safety conditions of journalists, which is revealed by the increase in the number of beneficiaries of the said program and a decrease in the crimes of murder against them, and (v) the progress in the fight against impunity in relation to crimes against journalists and communicators, such as "the aggravation of the conduct and the increase in the punishment when attacks are made against individuals belonging to special groups, such as journalists," and that "attached to the Human Rights Unit of the Prosecutor General's Office is a working group in charge of conducting the investigations into crimes against journalists composed of 19 special prosecutors." *Cf.* Note DIDHD/GOI No.10500/0485 of February 22, 2011

validity, or provide any information indicating their possible shortcomings. To the contrary, the Commission emphasized the importance of the steps taken by the State as regards the programs and actions it has been implementing in this area, and both the Commission and the representative expressed their wish that the State continue strengthening the special programs for the protection of journalists at risk and the investigation of crimes committed against them. Since the State has taken certain actions to implement the measure of reparation requested and, taking into consideration that it has expressed its "absolute commitment" to comply with it, the Court does not consider it appropriate to order the requested measure. Nevertheless, the Court finds it extremely important to urge Colombia to comply with the said commitment to continue taking all necessary measures to adopt and strengthen the special programs designed to protect journalists at risk and to investigate the crimes committed against them.

D) Compensation

291. Before determining compensation, the Court takes note that the State indicated that, when establishing the amounts corresponding to damage, the Court should "abide by what has really been proved in the proceedings, in keeping with the causal nexus that the Court finds has been effectively demonstrated." It also asked the Court to "reject all those assertions that seek to substantiate damage and that are based exclusively on the statements of the victims or their representative when, owing to their nature, […] they require special probative support."

D.1) Pecuniary damage

292. In its case law, the Court has developed the concept of pecuniary damages and the assumptions under which it must be compensated. This Court has established that pecuniary damage supposes "the loss of or detriment to the victims' income, the expenses incurred owing to the facts, and the consequences of a pecuniary nature that have a causal nexus with the facts of the case."[266]

D.1.a) Loss of earnings

293. The representative asked the Court to order payment to Mr. Vélez Restrepo for loss of earnings, because "as of October 6, 1997, […] he abandoned his usual professional work until 2004, the date on which he obtained a one-year work contract" and, despite having had several jobs for his own account, "he has been unable to [re-establish] a professional activity with a regular income that would allow him to support his family in similar conditions […] to those they enjoyed in Colombia." In addition, he explained that it was complicated to calculate the losses and harm to the earnings of Mr. Vélez, owing to the changes in his finances as a result of his exile and the different socio-economic conditions between his life as a professional in Colombia prior to the facts and his situation in the United States as of 1997, "where he has not enjoyed work stability, so that the loss of earnings has persisted over time." In order to determine this, he forwarded a calculation with an estimate of the earnings Mr. Vélez failed to perceive, but also asked the Court to "establish in equity" the compensation corresponding to the loss of earnings of Mr. Vélez, "without this being less than US$175,000.00, an amount that represents approximately half

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from the Ministry of Foreign Affairs of Colombia (annexes to the answering brief, annex 1, merits file, tome I, folios 432 to 454).

[266] *Cf. Case of Bámaca Velásquez v. Guatemala. Reparations and costs*. Judgment of February 22, 2002. Series C No. 91, para. 43, and *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador. Merits and reparations*, para. 309.

what he would have earned as a professional cameraman in Colombia from October 1997 to April 2011."[267]

294. For its part, the State indicated that there is a "complete absence of evidence that would prove the degree of damage caused to Mr. Vélez." It added that the amount for loss of earnings "has no basis" and "is excessive" considering that "there is no causal nexus between the events of August 29, 1996, and the subsequent exile."

295. The Court recalls that it declared that the State is responsible for Mr. Vélez Restrepo and his family having to leave Colombia in 1997 and 1998, and recognizes that this harmed his possibility of exercising his work as a journalist in the way that he did in Colombia as a cameraman for a national news program, particularly since the family obtained political asylum in a country where the official language is not Mr. Vélez Restrepo's mother tongue. Consequently, and taking into account that the representative did not provide evidence that would allow the Court to verify the amount indicated as corresponding to the monthly earnings of Mr. Vélez Restrepo in 1997, the Court determines, for reasons of equity, to establish the sum of US$50,000.00 (fifty thousand United States dollars) for Mr. Vélez Restrepo's loss of earning. This sum must be paid within one year of notification of this Judgment.

D.1.b) *Consequential damages*

296. The representative asked the Court to order the State to pay "consequential damages and for damage to the family wealth" of Mr. Vélez Restrepo, his wife Aracelly Román Amariles, and their children Mateo and Juliana Vélez Román, considering the "expenses and losses they incurred, as well as the impact on the family wealth."[268] Therefore, he asked that the Court "establish in equity compensation […] of US$75,000.00," which "reflects the fact that an important part of the pecuniary damage has been incurred in the United States, directly in dollars."

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[267] The representative asked that, when ordering payment of the loss of earnings of Mr. Vélez, the Court take into consideration that: (i) at the time of the facts "he worked as a [cameraman for news on law and order] with a work contract [with] *Noticiero Colombia 12:30*;" (ii) his monthly income, [which] included [his] salary, benefits, travel expenses, and additional filming he did on the weekends, was $1,068,000 Colombian pesos a month; (iii) that the amount that Mr. Vélez received as his monthly earnings must be updated, corresponding to $3,325,605.65 Colombian pesos a month; (iv) the period to be compensated: "between the month of October 1997, the date on which he lost his job as a cameraman, and [June 2011]"; thus the loss of earnings amounts to $626,366,541.77 Colombian pesos (file of annexes to the pleadings and motions brief, tome II, annex 20(a) and 20(b), folios 668 to 672).

[268] According to the representative, these expenses and losses relate to: (i) "the repeated efforts to denounce the violations and demand justice before the Colombian authorities in September 1996 and October 1997;" (ii) "the period of medical leave that followed the attack on Mr. Vélez in Caquetá; "(iii) "the psychological treatment received by the Vélez Román as a family and individually between September 1996 and May 1997," estimated at US$2,153.87; (iv) "moving house twice, in October 1996 and early 1997"; (v) "the loss of property and belongings owing to the separation and forced exile in 1997-1998, including the furniture, electrical appliances, […] clothes, bicycles, etc.;" (vi) "the year Mrs. Román, Mateo, and Juliana lived in Medellín separated from Mr. Vélez"; (vii) "the move and relocation to the United States of the family of Mr. Vélez as of September 1998"; (viii) "the right of inheritance of Mr. Vélez left to him by his mother Rosa Restrepo, which he was never able to exercise due to his absence"; (ix) "the private medical insurance they paid for six months in 2001 so as not to lose its coverage during Mrs. Román's illness and operation"; (x) "the move and installation of the [Vélez Román] family in Greenville, South Carolina"; (xi) "the medical expenses incurred by Mr. Vélez in Greenville for the tests and treatment not covered by the medical insurance, estimated at US$1,200"; (xii) "the return and relocation of the family in New York in 2008"; (xiii) "the trips to Medellín of Mateo and Juliana Vélez Román in 2010, with an approximate cost of [US]$5,000"; (xiv) "the constant telephone communications with relatives in Colombia for almost 15 years," and (xv) "any other financial cost that, in fairness, should be recognized between August 1996 and 2011."

297. The State indicated that "there is no evidence of the causal nexus between the expenditures incurred by Mr. Vélez and his family, argued as consequential damages, and the facts of the instant case," which is "essential when ordering compensation for this concept." Therefore, Colombia asked the Court to "abide by the expenses that have been authenticated with vouchers or invoices."

298. Regarding consequential damage, the Court observes that the representative did not provide evidence that would allow it to verify either the expenses or the amounts indicated as corresponding to "consequential damage and damage to the family wealth"; furthermore, the body of evidence reveals that some of them were not assumed by the Vélez Román family. Nevertheless, the Court finds it reasonable that, in order to treat the psychological damage suffered as a result of the violations declared in this Judgment, the Vélez Román family had to incur expenses for the concept of psychological treatment,[269] and it is also reasonable that they incurred other expenses because, owing to the threats, they had to move house, and also incurred expenses owing to their move to the United States, which meant that they had to leave their belongings in Colombia. Consequently, the Court establishes, in equity, the sum of US$40,000.00 (forty thousand United States dollars) for consequential damage, which must be paid to Mr. Vélez Restrepo within one year of notification of this Judgment.

D.2) Non-pecuniary damage

299. In its case law, the Court has developed the concept of non-pecuniary damage and has established that it "may include both the suffering and difficulties caused to the direct victim and his next of kin, the harm to values that are of great significance to the individual, and also the alterations, of a non-pecuniary nature, in the living conditions of the victims or their family."[270]

300. The representative asked the Court to order that, as a measure of reparation for the non-pecuniary damage suffered, the State pay the sums of: (i) US$140,000[271] to Mr. Vélez Restrepo;[272] (ii) US$100,000 to Mrs. Román Amariles;[273] (iii) US$50,000 to Mateo Vélez Román,[274] and (iv) US$40,000 to Juliana Vélez Román.[275]

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[269] The estimate presented by the representative indicated that the updated amount for the concept of individual psychological treatment for each member of the Vélez Restrepo family and for the couple amounted to $3,840,347.20 Colombian pesos.

[270] *Cf. Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Reparations and costs*, para. 84, and *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador. Merits and reparations*, para. 318.

[271] In the pleadings and motions brief the representative asked the Court to order the payment of US$150,000 to Mr. Vélez Restrepo as a measure of reparation for the non-pecuniary damage. However, in his final written arguments he stated that "in light of the testimony given [by Mr. Vélez] during the public hearing […], the amount for the concept of non-pecuniary damage sh[ould] be reduced to US$140,000.

[272] Regarding Mr. Vélez Restrepo, the representative argued that the moral and mental damage suffered result from: (i) the violation of his rights to physical integrity and life that caused him "intense physical, mental and moral suffering," the physical and psychological effects of which remain, 15 years after the events; (ii) the violation to his rights to freedom of thought and expression, and to dignity and honor, because the events "had an intimidating effect […] that had a negative impact on his professional work"; (iii) the forced separation he suffered from his immediate family from October 1997 to September 1998; (iv) the financial, family, and professional crises he has experienced in the United States; (v) the separation from his parents, siblings, nieces and nephews, and other relatives in Medellín; (vi) the death of his mother, without being able to see or be with her during her final days; (vii) the impunity in which the facts remain, and (viii) the irreparable damage to his life project, because the facts culminated with exile in the United States and this has prevented him from "following a professional and personal trajectory under normal conditions."

[273] Regarding Mrs. Román Amariles, the representative argued that the non-pecuniary damage suffered results from: (i) the threats and harassments of which she was a victim in Colombia as of September 1997; (ii) the

301. For its part, the State asked that the Court, taking into account its partial acknowledgment of responsibility, "to establish the amounts it considers appropriate." However, it observed that "the sums requested […] are excessive in comparison with those ordered by [the] Court in cases of similar or even greater harm."

302. Considering the circumstances of the case *sub judice*, the suffering that the violations committed caused the victims, as well as the change in their living conditions and the other consequences of a non-pecuniary nature they suffered, the Court finds it appropriate to establish an amount, in equity, as compensation for non-pecuniary damage. The Court takes into account the suffering and harm caused to the victims owing to the human rights violations declared in the instant case, the impunity in which these violations remain, and the different consequences that exile has had on the members of the Vélez Román family, such as the separation from their relatives in Colombia, the financial and employment situation they have faced in the United States of America, and the harm to Mr. Vélez Restrepo's professional activities as a journalist. The Court finds it appropriate to establish, in equity, the sum of US$60,000 (sixty thousand United States dollars) in favor of Luis Gonzalo Vélez Restrepo, as compensation for non-pecuniary damage. Also, for the same concept, the Court establishes, in equity, compensation of US$40,000 (forty thousand United States dollars) for Aracelly Román Amariles, as well as compensation of US$30,000 (thirty thousand United States dollars) for Mateo Vélez Román, and US$20,000 (twenty thousand United States dollars) for Juliana Vélez Román. These amounts must be paid within one year of notification of the Judgment.

E) Costs and expenses

303. As the Court has indicated previously, costs and expenses are included in the concept of reparation established in Article 63(1) of the American Convention.[276]

304. In the pleadings and motions brief, the representative asked the Court to order the State to reimburse the expenses he had incurred "by processing the case before the Court," corresponding to US$1,602.27, which covers "the cost of travelling as a team from Washington to New York […] in February 2011 to work with members of the Vélez Restrepo family for several days." In his final written arguments, he asked that, for the concept of costs and expenses, the Court order, "in equity, the payment of US$10,000 in recognition of

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temporary family separation from October 1997 to September 1998; (iii) the exile and separation from her family in Colombia; (iv) the sacrifice and concern for the safety and well-being of her family; (v) the impunity in which the facts remain, and (vi) the harm to her life project since "the violations suffered and their consequences have put an end to her personal and professional projects."

[274] Regarding Mateo Vélez Román, the representative argued that the non-pecuniary damage suffered results from: (i) his status as a "direct and indirect victim of the threats, surveillance and harassment in Colombia"; (ii) the difficult family experience in Bogotá and the separation from his father in October 1997; (iii) the separation from his mother and his sister in Medellín; (iv) the exile and the situation he has had to undergo in the United States as an immigrant, where he has even had "to work while he was studying in order to provide financial support to his family"; (v) the "fight to define his identity because he feels that he has lost much of his Colombian roots and culture" and the "loss of his family ties with his grandparents, uncles, aunts and cousins," and (vi) the "stress and physical signs of frailty" owing to "the psychological impact of all he has experienced."

[275] Regarding Juliana Vélez Román, the representative argued that the non-pecuniary damage suffered relates to: (i) the "abnormal turn" to her life "because of the grave violations suffered by her family in Colombia"; (ii) the separation from her father "at a very early age"; (iii) the exile in a country other than her own, with different socio-economic conditions and the separation from her family in Colombia, and (iv) having to share "the suffering of her parents and brother."

[276] *Cf. Case of Garrido and Baigorria v. Argentina. Reparations and costs*, para. 79, and *Case of Fontevecchia and D'Amico v. Argentina.* Merits, reparations and costs, para. 124.

the work [he] and [his] team had carried out before the inter-American system as well as other expenses incurred during the litigation."

305. Regarding costs and expenses, the State indicated that "it would abide by what is proved before the […] Court."

306. The Court reiterates that, in keeping with its case law,[277] costs and expenses form part of the concept of reparation, provided that the measures taken by the victims in order to obtain justice, at both the national and the international level, entail expenditure that must be compensated when the State's international responsibility is declared in a judgment. Regarding their reimbursement, the Court must prudently assess their scope, which includes the expenses generated before the authorities of the domestic jurisdiction, as well as those generated during the proceedings before this Court, taking into account the circumstances of the specific case and the nature of the international jurisdiction for the protection of human rights. This assessment can be made based on the principle of equity and taking into consideration the expenses indicated by the parties, provided their *quantum* is reasonable.

307. The Court has indicated that "the claims of the victims or their representatives regarding costs and expenses, and the supporting evidence, must be presented to the Court at the first procedural moment granted to them; that is, in the pleadings and motions brief, without prejudice to the said claims being updated at a later time, in accordance with the new costs and expenses incurred as a result of the proceedings before this Court."[278] In addition, the Court reiterates that it is not sufficient to merely submit probative documents; but rather, the parties must present arguments relating the evidence to the fact they consider it represents and, since this relates to alleged financial disbursements, must clearly establish the items and their justification.[279]

308. In the instant case, the Court has verified that the representative submitted vouchers for expenses in the amount of US$1,842.27 (one thousand eight hundred and forty two United States dollars and twenty-seven cents) corresponding to travel, accommodation and food in New York for three members of the International Human Rights Law Clinic of George Washington University in February 2011.[280] Consequently, the said expenses will be taken into account when determining the respective costs and expenses. In addition, as it has in other cases, the Court can infer that the representative incurred expenses in the processing of the case before the inter-American human rights system.

309. Therefore, the Court establishes, in equity, the sum of US$9,000 (nine thousand United States dollars) for costs and expenses in favor of Arturo J. Carrillo, the victims' representative.

F) *Method of complying with the payments ordered*

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277 *Cf. Case of Garrido and Baigorria v. Argentina. Reparations and costs*, para. 82, and *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador. Merits and reparations*, para. 328.

278 *Cf. Case of Molina Theissen v. Guatemala. Reparations and costs*, para. 22, and *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador. Merits and reparations*, para. 329.

279 *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. 277, and *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador. Merits and reparations*, para. 329.

280 *Cf.* Vouchers for expenses of the George Washington University International Human Rights Clinic, from February 18 to 21, 2011 (file of annexes to the pleadings and motions brief, tome II, folios 668 to 683).

310. The State must make the payment of the compensation for pecuniary and non-pecuniary damage and the reimbursement of costs and expenses established in this Judgment directly to the persons indicated herein, within one year of notification of this Judgment, in the terms of the following paragraphs. In the event of the death of the victims before the payment of the corresponding amounts, the latter will be delivered to their heirs, in keeping with the applicable domestic laws.

311. The State must comply with its pecuniary obligations by payment in United States dollars.

312. 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 time frames indicated, the State shall deposit the said amounts in their favor in an account or certificate of deposit in a solvent Colombian financial institution, in United States dollars, and in the most favorable financial conditions allowed by law and banking practice. If, after ten years, the allocated amount has not been claimed, the amounts will be returned to the State with the accrued interest.

313. The amounts allocated in this Judgment for the concepts of rehabilitation, pecuniary and non-pecuniary damages and reimbursement of costs and expenses must be delivered to the victims in their entirety, as established in this Judgment, and may not be affected or conditioned by current or future taxes or charges.

314. If the State should fall into arrears with its payments, it must pay interest on the amount owed corresponding to bank interest on arrears in Colombia.

315. In accordance with its consistent practice, the Court reserves the authority inherent in its powers and also derived from Article 65 of the American Convention, to monitor full compliance with this Judgment. The case will be closed when the State has complied fully with the provisions of this Judgment.

316. Within one year of notification of this Judgment, the State must submit a report to the Court on the measures taken to comply with it.

XIII
OPERATIVE PARAGRAPHS

317. Therefore,

THE COURT

DECIDES,

unanimously,

1. To reject the preliminary objection filed by the State on the alleged lack of competence of the Court to examine facts or presumptions included in the Merits Report "that do not comply with the requirements of the Convention," in the terms of paragraphs 30 to 33 of this Judgment.

2. To accept the partial acknowledgment of international responsibility made by the State, in the terms of paragraphs 20 to 26 of this Judgment.

DECLARES,

unanimously that:

1. The State is responsible for the violation of the right to personal integrity recognized in Article 5(1) of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of Luis Gonzalo Vélez Restrepo, Aracelly Román Amariles, and their children Mateo and Juliana Vélez Román, in the terms of paragraphs 123 to 135, 150, 151, 155 to 181 and 186 to 205 of this Judgment.

2. 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 Article 1(1) thereof, to the detriment of Luis Gonzalo Vélez Restrepo, in the terms of paragraphs 123 to 126, 136 to 151 and 209 to 215 of this Judgment.

3. The State is responsible for the violation of the right to freedom of movement and residence, recognized in Article 22(1) of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of Luis Gonzalo Vélez Restrepo, Aracelly Román Amariles, and their children Mateo and Juliana Vélez Román, in the terms of paragraphs 219 to 224 of this Judgment.

4. The State is responsible for the violation of the right to the protection of the family, recognized in Article 17(1) of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of Luis Gonzalo Vélez Restrepo and Aracelly Román Amariles, in the terms of paragraphs 225 and 228 to 232 of this Judgment.

5. The State is responsible for the violation of the right to protection of the family and of the rights of the child, recognized in Articles 17(1) and 19 of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of Mateo and Juliana Vélez Román, in the terms of paragraphs 225 to 232 of this Judgment.

6. The State is responsible for the violation of the rights to judicial guarantees and judicial protection, recognized in Articles 8(1) and 25 of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of Luis Gonzalo Vélez Restrepo, Aracelly Román Amariles, and their children Mateo and Juliana Vélez Román, in the terms of paragraphs 233 to 235 and 238 to 252 of this Judgment.

7. The State is not responsible for the alleged violation of Article 4 of the American Convention on Human Rights, in relation to Article 1(1) of this instrument, in accordance with paragraph 182 of this Judgment.

AND ORDERS,

unanimously that:

1. This Judgment constitutes *per se* a form of reparation.

2. The State must guarantee the conditions for the members of the Vélez Román family to return to live in Colombia, if they so decide, in the terms established in paragraphs 263 to 266 of this Judgment.

3. The State must provide health care to the victims through its specialized health care institutions if the victims indicate their intention of returning to live in Colombia, in keeping with the time frames established in paragraph 265 of this Judgment, and in accordance with the terms established in paragraphs 269 and 270 of this Judgment. If the members of the Vélez Román family decide not to return to live in Colombia, the State must pay them the amounts established in paragraph 271 of this Judgment, in order to help cover the costs of health care, as established in the said paragraph 271.

4. The State must make the publications indicated in paragraph 274 of this Judgment, within six months of its notification.

5. The State must incorporate into its human rights education programs for the Armed Forces, a specific module on the protection of the right to freedom of thought and expression and on the role of journalists and social communicators, in the terms of paragraph 277 of this Judgment.

6. The State must advise whether, under Colombian law, it is possible to adopt other measures or actions that would permit determining responsibilities in this case for the acts of violence on August 29, 1996, and the threats and harassment in 1996 and 1997 and, if so, it must implement the said measures or actions, in the terms of paragraphs 281 to 284 of this Judgment.

7. The State must conduct, effectively and with a reasonable time, the criminal investigation into the attempted deprivation of liberty of Luis Gonzalo Vélez Restrepo that took place on October 6, 1997, in a way that leads to the clarification of the facts, the determination of the corresponding criminal responsibilities, and the effective application of the sanctions and consequences established by law, in accordance with paragraph 285 of this Judgment.

8. The State must pay the amounts established in paragraphs 295, 298, 302 and 307 to 309 of this Judgment, as compensation for pecuniary and non-pecuniary damage and for reimbursement of costs and expenses, in the terms of the said paragraphs and also of paragraphs 310 to 314 of this Judgment.

9. The State must, within one year of notification of this Judgment, provide the Court with a report on the measures adopted to comply with it.

10. The Court will monitor full compliance with this Judgment, in exercise of its authority and in compliance with its obligations under the American Convention on Human Rights, and will conclude this case when the State has complied fully with its provisions.

Done, at San José, Costa Rica, on September 3, 2012, in the Spanish and English languages, the Spanish text being authentic.

Diego García-Sayán
President

Manuel Ventura Robles

Leonardo A. Franco

Rhadys Abreu Blondet

Alberto Pérez Pérez

Eduardo Vio Grossi

Pablo Saavedra Alessandri
Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary