

Inter-American Court of Human Rights
Case of Alfonso Martín del Campo-Dodd v.
United Mexican States
Judgment of September 03, 2004
(Preliminary Objections)

In the Alfonso Martín del Campo-Dodd case,

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

Alirio Abreu-Burelli, President*;
Sergio García-Ramírez, Judge;
Oliver Jackman, Judge;
Antônio A. Cançado-Trindade, Judge;
Cecilia Medina-Quiroga, Judge;
Manuel E. Ventura-Robles, Judge; and
Diego García-Sayán, Judge;

also present,

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

pursuant to articles 37, 56 y 58 of the Court's Rules of Procedure (hereinafter the "Rules of Procedure"), renders the following judgment on the preliminary objections filed by the United Mexican States (hereinafter the "State" or "Mexico").

I
INTRODUCTION OF THE CASE

1. On January 30, 2003, and pursuant to the provisions of articles 50 and 51 of the American Convention on Human Rights (hereinafter the "Convention" or the "American Convention") the Inter-American Commission on Human Rights (hereinafter the "Commission" or the "Inter-American Commission") brought before the Court the instant case against Mexico which originated in petition No 12.228, received at the Secretariat of the Commission on July 13, 1998.

* Judge Sergio García-Ramírez, of Mexican nationality, yielded the chair in the instant case to the Vice President of the Court, Judge Alirio Abreu-Burelli, in conformity with Article 4(3) of the Rules of Procedure of the Inter-American Court.

II FACTS SET FORTH IN THE APPLICATION

2. In its application, the Inter-American Commission stated that on December 16, 1998, the date on which Mexico recognised the Court's contentious competence, Mr. Alfonso Martín-del-Campo-Dodd (hereinafter "Alfonso Martín-del-Campo", "Martín-del-Campo" or the "alleged victim") was arbitrarily held in custody and continued to be held in such condition up to the time that the application was entered. The Commission indicated that the alleged victim "was illegally arrested on May 30, 1992, and subjected to torture by agents of the Judicial Police of Mexico's *Distrito Federal*, to make him confess that he had committed the double homicide of both, his sister, Patricia Martín-del-Campo.Dodd, and his brother-in-law, Gerardo Zamudio-Aldaba." The Commission stated that "said confession is the only element supporting the sentence to 50 years in prison imposed by Mexico's Judicial Authorities."

3. In like manner, the Inter-American Commission pointed out that, after Mexico's recognition of the contentious jurisdiction of the Inter-American Court, the alleged victim, before the Mexican courts, claimed illegality of his detention, but that the remedies available had been "manifestly ineffective." In this sense, the Commission stated that on April 5, 1999, Mr. Martín-del-Campo filed a recognition-of-innocence acknowledgement with the Superior Court of *Distrito Federal* "based on, among other unquestionable elements, a report issued by the office of the Internal Comptroller of the Attorney General's Office of Mexico's *Distrito Federal* itself, which established the responsibility for such illegal detention, and for the torture inflicted by one of the two policemen who took part in the cited events." In this regard the Commission expressed that "the courts did not respond with due diligence to Mr. Alfonso Martín-del-Campo's claim, or with such effectiveness as called for by the obligations prescribed by the American Convention;" that "the Judicial Authorities never started a thorough investigation to identify all the officers that inflicted the torture;" that "nobody has been trialed or punished judicially for such violations;" and that "the Mexican courts did not annul the confession obtained under torture, nor the judgment based on this serious occurrence, as required by the rules of the Inter-American human rights system."

4. The Commission requested the Court to establish the State's international liability and to declare that the latter violated articles 5 (Right to humane treatment), 7 (Right to personal liberty), 8 (Right to a fair trial) y 25 (Right to judicial protection) of the American Convention, and failed to comply with the provisions of Article 1(1) (Obligation to respect rights) of said covenant, to the detriment of Mr. Alfonso Martín-del-Campo. The Commission also requested the Court to declare the State liable for violation of articles 6, 8 and 10 of the Inter-American Convention to Prevent and Punish Torture (hereinafter "Inter-American Convention Against Torture") to the detriment of the alleged victim.

III PROCEEDINGS WITH THE COMMISSION

5. On July 13, 1998, Mr. Alfonso Martín-del-Campo submitted a brief with several appendices to the Inter-American Commission, whereby he filed a petition against Mexico. In such petition Mr. Martín-del-Campo indicated the following: "on May 30, 1992, [his] sister and [his] brother-in-law were murdered by unidentified individuals at the home [of the former] in Mexico City. At the same time he was

kidnapped and later arbitrarily detained and tortured so as to obtain from him a signed ministerial confession that incriminated [him]. He was later indicted illegally and convicted to 50 years in prison by a Court Decision Secretary rather than by a judge." On July 17, 1998, Mr. Martín-del-Campo submitted to the Commission additional information concerning his petition.

6. On August 10, 1998, the Commission sent a note to the petitioner whereby it advised him that "for the time being it was unable to process his request, since the information therein contained did not meet the requirements established in the Rules of Procedure of the Inter-American Commission [...], especially in relation to articles 32, 33, 34 and 37." In consequence, the Commission requested him to submit to it in due time the following information: a) a specific account of such facts as he felt constituted violations of the American Convention, with reference to the respective articles, and b) the final judgment of the internal jurisdiction with respect to the facts denounced.

7. On October 8, 1999, Mr. Alfonso Martín-del-Campo sent the Commission a brief in response to its previous request. Further, on October 29, 1999, Christians for the Abolition of Torture (hereinafter "ACAT"), the Center for Justice and International Law (hereinafter "CEJIL"), and the Lawyers Committee for Human Rights filed "a formal complaint, containing descriptions of what, in their opinion, were violations, by Mexico, of human rights established in the Convention". In their complaint, the claimants requested the Commission to conclude that the State violated articles 1(1), 2, 5, 7, 8 y 25 of the American Convention to the detriment of Mr. Alfonso Martín-del-Campo. Furthermore, in relation to exhaustion of domestic remedies, the claimants reported that the Office of the *Distrito Federal* Attorney General had initiated preliminary investigation SC/3839/95-03, after a penal complaint had been filed on May 11, 1995, for alleged tortures to which Mr. Martín-del-Campo had been subjected, without anyone having been identified as being responsible; that Penal Court 55 prosecuted Mr. Alfonso Martín-del-Campo and convicted him to 50 years in prison in the first instance, a decision that was rendered final on August 17, 1993 by Section Eight of the *Distrito Federal* Superior Court; that Mr. Alfonso Martín-del-Campo filed an amparo appeal motion against this judgment which was rejected on December 02, 1997; and that on April 05, 1999, the alleged victim filed a recognition-of-innocence remedy which was declared not applicable on April 29, 1999 by Penal Section 17 of the *Distrito Federal* Superior Court. Concerning non jurisdictional departments, the claimants pointed out that on October 14, 1994, the office of the Internal Comptroller of the *Distrito Federal* Attorney General's Office issued a resolution that determined administrative liability on the part of judicial police officer Sotero Galván-Gutiérrez, for having "arbitrarily detained" Mr. Alfonso Martín-del-Campo, and for "not having abstained from the use of force" against him; and that the alleged victim had filed complaints with the National Human Rights Committee and the *Distrito Federal* Human Rights Committee, which had produced no results.

8. On November 04, 1999 and with a reference to case number 12.228, the Commission transmitted to the State the pertinent sections of the claimants' communication, which had been received on October 29, 1999. For its part, the Commission, in conformity with the provisions of Article 37 of its Rules of Procedure and together with information relative to the facts, requested that the State provided any criteria which could help determine whether or not internal jurisdiction remedies had been exhausted in this case.

9. On February 2, 2000, the State submitted a brief whereby it transmitted its comments regarding to the claimants' communication and referred to the proceedings taken by the Prosecutorial Agency as a consequence of the events that occurred on May 30, 1992, when the lives of Mr. Gerardo Zamudio-Aldaba and Juana Patricia Martín-del-Campo-Dodd had been taken, and about its decision to prosecute Mr. Martín-del-Campo "for his probable responsibility in the perpetration of the double homicide." The State also pointed out that "from the time the examination of the case started, both, the accused and the defence, enjoyed the right to exhaust all means that they would have deemed required as proof to counter the allegation of his probable responsibility." It indicated that Mr. Martín-del-Campo was convicted to 50 years in prison and that he filed a motion of appeal against this decision and later filed an amparo appeal motion against the judgment, which was dismissed. In respect of the foregoing, the State expressed that in accordance with Article 23 of Mexico's Constitution, "as far as the judicial authorities are concerned, this matter sits as *res judicata*." Furthermore, Mexico pointed out that Mr. Martín-del-Campo filed a recognition-of-innocence remedy with the *Distrito Federal* Superior Court, which was declared not applicable on April 29, 1999. In turn, the State informed that the case had been under consideration by the *Distrito Federal* Human Rights Commission and the National Human Rights Commission, and that both had concluded that the denounced human rights violation had not been proven.

10. Lastly, the State expressed that "it cannot be considered that rights agreed in the American Convention would have been violated, especially those relative to personal liberty, those to which anyone accused in criminal proceedings is entitled, or those relative to proper argumentation and motivation, and judicial protection. By itself, this fact impedes the continuation of this case and its eventual admissibility." For this reason the State requested the Inter-American Commission to declare "inadmissibility or dismissal of the petition under Article 47 of the Convention and Article 41 of the Rules of Procedure [of the Commission], for failure to establish violations of such human rights as provided for in the Convention."

11. On February 17, 2000, the Commission submitted the State's communication to the claimants, and allowed them a term of 30 days to submit their comments. On March 16, 2000, the claimants applied for an extension of this term, which was granted by the Commission. On April 13, 2000, they submitted their respective comments to Mexico's communication, and expressed, *inter alia*, that "the [State's] contention that, by itself, the fact that the [alleged] victim would have exhausted all internal jurisdiction remedies for his defence precluded the possibility of violation of human rights was unacceptable, since, in fact, Article 46(1)(a) of the American Convention requires the victim to exhaust domestic remedies" before the victim can file a report with the Inter-American Commission. In this sense, they added that while "it is true that the resources to which the State made reference were used and exhausted, they did not function effectively to correct the situation of Mr. Martín-del-Campo's having been sentenced to 50 years in prison." On May 01, 2000, the Commission sent said comments to the State in order for it to submit "final comments."

12. On July 21, 2000, the State submitted a communication in which it stated, among other things, that "there is no violation of [Mr.] Martín-del-Campo's human rights, since individual liberties provided in both the Constitution of the United Mexican States and the American Convention were observed at all times." In like manner, the State pointed out that the Commission "must not be a fourth instance in addition to the States' jurisdictional mechanisms and that the matter constitutes *res*

judicata as established in Article 23 of the Federal Constitution, in the sense that 'No criminal trial shall have more than three instances.'"

13. On July 25, 2000, the Commission transmitted the State's communication to the claimants in order for them to submit their comments within a term of thirty days. On August 18, 2000, the claimants requested the holding of a hearing before the Inter-American Commission to be held in the course of its next session.

14. On October 11, 2000, and in the course of its 108th Regular Session, the Inter-American Commission held a hearing on this case, which was attended by the claimants and the State. During the hearing the claimants described the facts of the case and the legal basis that supported their petition. The State, indicated that the penal proceedings against Mr. Alfonso Martín-del-Campo had concluded with the handing down of a sentence to 50 years in prison against him, and that it was "*res judicata* from the jurisdictional point of view [since] at all stages of the prosecution, the preliminary investigation, the first instance, the motion of appeal before the Superior Court, and the amparo appeal hearing, at all such stages; it was afforded to the convicted party the benefit of defence, an impartial trial and due process, and judicial guarantees were observed." Further, Mexico alleged non occurrence of torture as alleged by the representatives, with support from the decisions of the *Distrito Federal* Attorney General's Office and Human Rights Commission, the National Human Rights Commission, and the *Distrito Federal* Superior Court, which had resolved on Mr. Martín-del-Campo's recognition-of-innocence argument.

15. The State likewise indicated that an amparo appeal hearing against the decision of the *Distrito Federal* Superior Court which declared the recognition-of-innocence remedy filed by Mr. Alfonso Martín-del-Campo not applicable had, "to the best of its knowledge not been filed." It added that this would be the right legal way to challenge it through the federal courts, and that said way was still available to the alleged victim to lay out his case against the cited decision. In this regard, the claimants informed at the above-mentioned hearing, that they had not filed an amparo appeal hearing because "it would be a repetition of the same concept of violation, the same argument that the Mexican authorities were denying the occurrence of torture, and were confirming the conviction." During the public hearing a member of the Inter-American Commission posed questions to the parties on the exhaustion of domestic remedies and asked the claimants to submit a report on this subject within a month.

16. On November 14, 2000, December 22, 2000, and February 16, 2001, the claimants sent to the Commission notes requesting extensions to the term granted in the course of the public hearing held, to submit information on the exhaustion of domestic remedies. The Inter-American Commission granted all the extensions requested. On March 22, 2001, the claimants submitted the information required. In their communication they, *inter alia*, expressed the following:

[...]

without detriment to the fact that the domestic instance has characterised itself in the instant case by flagrant violations against judicial protection and the due process (which would free the claimants from the obligation to exhaust them), these are the different remedies attempted both, judicially and administratively at the domestic level:

[...]

1. The proceedings were carried out in the first instance at Penal Court 55 of the *Distrito Federal*. The judgment at the first instance was handed down on May 28, 1993, and, declared Mr. Martín-del-Campo guilty of homicide for the death of Ms. Juana Patricia Martín-del-Campo and Mr. Gerardo Zamudio-Aldaba exclusively on the basis of

the confession made by the former under torture, and sentenced him to 50 years in prison.

2. Said judgment was appealed and it was the Eighth Penal Section of the *Distrito Federal* Superior Court which had to examine the appeal motion filed under number 454/93. On August 17, 1993, the Eighth Section confirmed the first instance judgment.

3. In June 1997 Mr. Martín-del-Campo filed a direct amparo appeal motion against the final decision of the *Distrito Federal* Eighth Penal Section, which was referenced under number 2004/97-475. The amparo appeal judgment was handed down on December 2, 1997, and it confirmed the judgment appealed also on the basis of confessional evidence.

4. On April 5, 1999, Mr. Martín-del-Campo filed a recognition-of-innocence remedy with the *Distrito Federal* Superior Court, which admitted it and in turn forwarded it for study and consideration to Penal Section Seventeen under number RI-1/99. Penal Section Seventeen then handed down its final judgment on the matter on April 29, 1999, having found such remedy to be groundless and not applicable.

[...]

5. A complaint was filed through administrative channels with the Office of the Internal Comptroller of the *Distrito Federal* Attorney General's Office which was identified as case number QC/0011/FEB-94 and, pursuant to the October 14, 1994, decision, judicial police officer Sotero Galván-Gutiérrez was found to be liable for having arbitrarily detained and beaten Mr. Alfonso Martín-del-Campo-Dodd, and for not having safeguarded the latter's human rights.

6. In addition, a complaint claiming torture was filed with the *Distrito Federal* Attorney General's Office On May 11, 1995, under preliminary investigation number SC/3839/95-03, which was not duly admitted and which was ultimately dismissed.

7. Complaints were likewise submitted to the National and the *Distrito Federal* Human Rights commissions which produced no results.

8. Lastly, and without detriment of the non-obligation to continue exhausting domestic remedies whenever they are found to be ineffective and in violation of the due process, on March 19, 2001, a direct civil rights protection remedy was filed with the District Judge In Office against the recognition-of-innocence judgment. This remedy is currently being examined.

17. On March 23, 2001, the Commission transmitted to the State the communication submitted by the claimants on March 22, 2001, and granted a term of thirty days for it to submit its respective comments.

18. On April 23, 2001, the State submitted its comments to said communication and thereby expressed the following:

as a result of the hearing held before the Commission on October 11, 2000, it became evident that there were internal jurisdiction remedies which had not been exhausted in the instant case.

[...]

The internal jurisdiction remedies whose existence the State has fully demonstrated in its previous replies, have been at all times available to the claimants and it has been proven that they are adequate and efficient, which in no way implies that the results obtained from the application thereof must necessarily be favourable to the claimants.

[...]

This means that in the instant case the hypothesis that make viable the exceptions in the Convention and the jurisprudence of the Court are not updated.

The foregoing considerations notwithstanding, the Mexican Government wishes to stress the fact that, as acknowledged by the claimants themselves, on March 19, 2001, they filed with a District judge an amparo appeal against the *Distrito Federal* Superior Court's decision that on April 29, 1999, declared non applicability of the recognition-of-innocence remedy. It is appropriate to point out that a revision remedy would be applicable against the decision of the District judge before the Circuit Courts or before the Supreme Court itself, who shall adopt a final decision on the amparo appeal motion filed.

19. On May 7, 2001, the Commission transmitted the State's communication to the claimants and granted them a term of one month to submit their comments.

20. On June 01, 2001, the claimants submitted a communication whereby they reported that on April 16, 2001, District Court Six for Penal Rights Protection of the *Distrito Federal* dismissed the amparo appeal motion filed on March 19, 2001, against the decision of Penal Section Seventeen of the *Distrito Federal* Superior Court concerning the recognition-of-innocence remedy filed by the alleged victim, since it concluded that it had not been filed in due time. The claimants added that "the way in which the District Court resolves its matters is one more example of the ineffectiveness and inefficiency of domestic remedies." On June 8, 2001, the Inter-American Commission transmitted the cited communication of the claimants to the State and allowed it one month to submit the comments that it would deem pertinent.

21. On July 12, 2001, the State submitted its comments to the information provided by the claimants on June 01, 2001, which included the following:

in accordance with the information provided by the claimants, the amparo appeal motion filed with the Sixth District Court on Penal Rights Protection in the *Distrito Federal* was resolved on April 16, 2001. The resolution was issued in the sense that the case on trial had to be dismissed because of its having been filed extemporaneously.

The claimants challenged the decision of the amparo judge by means of a revision remedy filed on May 3, 2001, which was heard by Circuit Court Five on Penal Matters in *Distrito Federal*. Once this Court makes its final decision, it shall be transmitted to the Commission.

Regardless of what sense the final decision to be made by the Circuit Court will have, the Government wishes to inform [the Commission] that several criteria have been issued within the realm of the Federal Judicial Branch, concerning the appropriateness of the recognition-of-innocence remedy filed by the accused.

Said criteria have stressed that the resolution that would have applied to the recognition-of-innocence petition is not per se an attack against the personal freedom of the complainant, and that, the procedure for challenging it through the amparo appeal motion is subject to the general procedural rules of this trial. In this sense, 15 days were allowed as of the adoption of the decision that declared the recognition-of-innocence groundless or not applicable, to file an amparo appeal hearing.

[...]

The claimants' failure to file an amparo appeal hearing can in no way be blamed on authorities and, instead, proves that internal jurisdiction remedies were not duly exhausted.

The recognition-of-innocence action could have been brought prior to the filing of the direct amparo appeal motion applicable against the second instance judgment, which reaffirms the fact that the claimants could have availed themselves of such remedy as of August 17, 1993, the date on which the second-instance judgment was handed down.

22. On August 10, 2001, the claimants requested the Inter-American Commission to hold a "hearing during the next session, in order to obtain a report on admissibility as soon as possible." On August 27, 2001, the Commission informed that it would not be possible to satisfy the cited request by the representatives.

23. On October 1st, 2001, the claimants informed that on September 3rd, 2001, the Fourth Penal Court of the First Circuit confirmed the resolution of the District Court, whereby the civil rights protection action was dismissed. The claimants indicated that said decision "marked the end of all internal remedies for a revision of the case."

24. On October 10, 2001, the Inter-American Commission approved Report No. 81/01, whereby case No. 12.228 was declared admissible, "to the extent that it referred to alleged violations of rights protected by articles 5, 7, 8 and 25 of the American Convention". In said report, the Commission pointed out that the State "did not allege [...] non exhaustion of internal remedies during the initial stages of the proceedings [, i]n the opposite sense, it only did so on its third submission to the [Commission], after one hearing and more than one year after its first communication on this matter." In this respect the Commission invoked the jurisprudence of the Inter-American Court on the exception of non exhaustion of internal remedies, and considered that the State "waived [said] exception in this matter [...], since it did not submit it within the terms legally established, nor did it submit it on its first procedural opportunity, that is, as part of its answer to the petition that gave rise to the process." On October 18, 2001 the Commission brought said report to the knowledge of the parties and marked the start of the two-month term allowed the claimants to submit their additional observations on the merits of the case. Likewise, in said communication the Commission placed itself at the disposal of the parties to arrive at a friendly settlement according to Article 48(1)(f) of the American Convention. Neither the claimants nor the State responded concerning the possibility to come to terms under the friendly settlement procedure in this case.

25. On December 17, 2001, the claimants requested an extension of the term to submit their observations on the merits of the case. On December 28, 2001, the Commission extended the term, as requested, for one month.

26. On January 28, 2002, the claimants submitted their final observations on the merits of the case. In their document, they provided an explanation of the facts in this case and of the legal arguments that supported their petition, and requested the Commission to "issue the report on the merits, where it will declare that Mexico is liable for the violation, against [Mr.] Alfonso Martín-del-Campo-Dodd, of the rights enshrined in articles 5, 7, 8 y 25 of the American Convention [...], all said articles in connection with the generic duty to protect and respect the rights enshrined in said Convention[; and] that it, in the same report, declare that the State [...] has violated Article 8 of the Inter-American Convention to Prevent and Punish Torture, to the detriment of [Mr.] Alfonso Martín-del-Campo-Dodd,

27. On January 29, 2002, the Commission, in conformity with Article 38(1) of its Rules of Procedure, transmitted said observations to the State and granted a term of two months for the submission of its respective final observations.

28. On April 04, 2002 the State submitted its observations on the merits of the case, whereby it pointed out that it complied with its duty to investigate the alleged incidents of torture experienced by Mr. Martín-del-Campo, to which effect "actions were undertaken at the *Distrito Federal* Attorney General's Office, and at the *Distrito Federal* and National Human Rights Commissions, which led to the conclusion that sufficient elements to determine that [Mr.] Martín-del-Campo had been tortured had not been found." The State reiterated that Mr. Alfonso Martín-del-Campo "has had

access to all judicial and administrative remedies provided by the Mexican legal system for the defence of his rights" and that all of these proceedings have determined his having responsibility in these events. Lastly, the State informed that the *Distrito Federal* Attorney General's Office ordered the reopening of preliminary investigation SC/3839/95-03 "for alleged untruthfulness on the part of Mr. Sotero Galván-Gutiérrez, in statements concerning torture [allegedly] applied against Mr. Alfonso Martín-del-Campo."

29. On March 22, 2002, the Lawyers Committee for Human Rights submitted a notice announcing its withdrawal, as claimant, from the case.

30. On October 18, 2002, the Commission, at the request of the State, held a hearing on the merits of the case. On this occasion both, the claimants and the State reiterated their arguments on the questions of law and fact which had been maintained during the processing of the case, especially in communications that contain the respective observation on the merits.

31. On October 22, 2002, the Inter-American Commission approved Report No. 63/02 on the merits of the case, in conformity with Article 50 of the American Convention. The Commission concluded that:

The facts established in [said] report constitute violations of Articles 5, 7, 8(1), 8(2), 8(3) and 25 of the American Convention, as well as of articles 6, 8 and 10 of the Inter-American Convention to [P]revent and [P]unish [T]orture; all in violation of the observance and assurance duty enshrined in Article 1(1) of the American Convention.

In turn, the Commission recommended to the State:

1. To encourage measures pertinent to annul the confession obtained under torture at the facilities of the [Office of the *Distrito Federal* Attorney General] on May 30, 1992, and all proceedings associated therewith; to revise the entire judicial proceedings conducted against the victim in the instant case; and to order immediately the release of Alfonso Martín-del-Campo-Dodd pending the substantiation of such measures.

2. To carry out a complete, impartial and effective investigation to determine the responsibility attributable to all perpetrators of human rights violations against Alfonso Martín-del-Campo-Dodd.

3. To provide adequate reparation to Alfonso Martín-del-Campo-Dodd for the violations of human rights [...] established.

32. On October 30, 2002, the Inter-American Commission transmitted to the State the report on the merits of the case, and granted a term of two months for it to inform about the measures adopted in compliance with the recommendations made. In turn, the Commission informed the claimants that same day about the issuance of Report No. 63/02 and asked them, pursuant to Article 43(3) of the Rules of Procedure of the Commission, to submit their comments about the submission of the case to the Inter-American Court within one month's time. On November 28, 2002, the claimants requested a fifteen-day extension of said term, which was granted by the Commission. On December 03, 2002, the Inter-American Commission transmitted *ex officio* to the claimants as confidential materials certain considerations laid out in Report No. 63/02 on the merits of the case.

33. On December 21, 2002, the claimants submitted their comments on the submission of the case to the Court.

34. On December 30, 2002, the State submitted its reply to Report No. 63/02 relative to the merits of the case issued by the Commission. In said brief the State expressed, in relation to the first of the Commission's recommendations (*supra* para. 31), that "it had decided [...] to undertake the responsibility of encouraging a legislative reform within the realm of the civil courts in order to make possible, at any given time, the annulment of proceedings within the process when there is proof that a confession has been obtained through torture or when some similar circumstance is proven." However, the State alleged that "the homicide trial in which [Mr.] Alfonso Martín del Campo was prosecuted [...] is *res judicata* and, in terms of the applicable legislation, it is not possible at this time to invoke any given legal remedy which may permit the revision of the prosecution in its entirety and encourage the pertinent measures to annul the confession obtained presumably under torture." In turn, the State maintained that, in spite of the above, it was "studying the possibility to establish some legal basis that [would] make it possible to implement a mechanism that [would] follow up the recommendation" of the Inter-American Commission. Concerning the second recommendation made by the Commission in its report (*supra* para. 31), the State pointed out that on December 26, 2002 the Deputy Attorney General for Central Preliminary Investigations of the *Distrito Federal* Attorney General's Office had adopted a resolution ordering the reopening of Preliminary Investigation SC/3839/95-03, relative to offences allegedly perpetrated by several public servants against Mr. Alfonso Martín-del-Campo. Concerning the reparation recommended by the Commission (*supra* para. 31), The State expressed that "taking into consideration the current status of the preliminary investigations and the proceedings already legally resolved, the reparation would not be altogether 'adequate,' for the lack of certain elements to be taken into consideration, which would probably be included as a result of the preliminary investigation that just started."

35. On January 21, 2003, the Inter-American Commission decided to submit the case to the Court.

IV PROCEEDINGS WITH THE COURT

36. On January 30, 2003, the Inter-American Commission filed the application with the Court. The appendices to the application were received on February 03, 2003.

37. In conformity with Article 22 of the Rules of Procedure, the Commission named Messrs. Juan Méndez and Santiago A. Canton as its Delegates before the Court, and Messrs. Mario López-Garelli y Ariel Dulitzky¹ as its legal advisors. Similarly, and in conformity with Article 33 of the Rules of Procedure, the Commission provided the names and addresses of the alleged victim and of his next of kin, and informed that they would be represented by ACAT and CEJIL.

38. On February 20, 2003, after a preliminary study of the application by the President of the Court (hereinafter the "President"), the Secretariat of the Court (hereinafter the "Secretariat"), transmitted it to the State together with its appendices and informed it about the terms allowed for a response and for the designation of its representation in the proceedings.

¹ The Commission made several changes to its representation in the process of the instant case.

39. On February 17, 2003, and in conformity with Article 35(1)(d) and 35(1)(e) of the Rules of Procedure, the application was transmitted to Ms. Viviana Krsticevic, Mr. Juan Carlos Gutiérrez-Contreras and Ms. Alejandra Nuño, of CEJIL, and to Ms. Nahyeli Ortiz of ACAT, in their capacity as representatives of the alleged victim and his next of kin² (hereinafter the “representatives of the alleged victim and his next of kin” or the “representatives”), and they were informed that, pursuant to Article 35(4) of the Rules of Procedure³, they were allowed a term of thirty days to submit the brief containing pleadings, motions and evidence (hereinafter “brief of pleadings and motions”).

40. On March 31, 2003, after two extensions granted, the representatives of the alleged victim and his next of kin submitted their brief of pleadings and motions together with its appendices. In said brief they expressed that they agreed with what had been requested by the Commission in the application and requested, in addition, that the Inter-American Court conclude that the State violated Article 5 (Right to Humane Treatment) of the American Convention to the detriment of the next of kin of the alleged victim, and that the State also violated Article 2 (Domestic Legal Effects) of the same instrument.

41. On May 05, 2003, after two extensions granted, the State submitted its brief of preliminary objections, the response to the application, and observations to the brief on pleadings and motions. The appendices to said brief were received at the Secretariat on May 14, 2003. The preliminary objections entered are: 1) lack of jurisdiction of the Inter-American Court “to take knowledge of the events and actions that occurred prior to December 16, 1998, in case No. 12.228”; and 2) non observance, on the part of the Inter-American Commission, of “the basic rules for the processing of individual petitions provided for in the American Convention and in the applicable rules of procedure;” “lack of objectiveness and neutrality of the Inter-American Commission on Human Rights before the Court as to processing, admissibility, decision on the merits and submission of the petition,” and influence on the part of the Inter-American Commission against “the procedural balance, which resulted in a situation of defencelessness affecting the Mexican State during the processing of the complaint.” In turn, the State expressed that “in the event that the objections set forth were eventually declared either partially admissible, or not applicable [...] it is requested that the [...] Court finds and declare that no human rights provided for in the American Convention [...] and in the Inter-American Convention [against] Torture were found to have been violated.”

42. The State named Mr. Juan José Gómez-Camacho, General Director for Human Rights of the Ministry of Foreign Affairs as its Agent; Mr. Juan Manuel Gómez-Robledo, Legal Advisor of the Ministry of Foreign Affairs, and Ms. María del Refugio González-Domínguez, General Coordinator for Legal Affairs of the Ministry of Foreign Affairs, as Alternate Agents; and Mr. Ricardo García-Cervantes, Ambassador of Mexico to Costa Rica; Mr. Jorge Ulises Carmona-Tinoco, External Legal Advisor of the Ministry of Foreign Affairs; Mr. José Ignacio Martín-del-Campo-Covarrubias, Director of Individual Human Rights Cases before International Organisations of the Ministry of Foreign Affairs; Mr. Javier Raúl Ayala-Casillas, Justice, Seventh Penal

² CEJIL and ACAT made changes to their representations in the process of the instant case.

³ Rules of Procedure approved by the Inter-American Court of Human Rights at its XLIX Regular Period of Sessions through its Resolution of November 24, 2000, which entered into force on June 01, 2001. This article, among others, was modified by the Court during its LXI Regular Period of Sessions through its Resolution of November 25, 2003. Such modification entered into force on January 01, 2004.

Section of the *Distrito Federal* Superior Court; and Mr. Juan Carlos Solís-Martínez, General Director for Human Rights of the *Distrito Federal* Attorney General's Office, as Advisors.⁴

43. On May 27, 2003, the Secretariat, in conformity with Article 37(4) of the Rules of Procedure, granted the Commission and the representatives of the alleged victim and his next of kin thirty days as of the date of receipt of the brief of preliminary objections entered, the response to the application, and observations to the brief on pleadings and motions, to submit written arguments on the preliminary objections.

44. On June 24 and July 21, 2003, the representatives of the alleged victim and his next of kin requested an extension of the term allowed for the submission of written arguments on preliminary objections.

45. On June 24 and July 22, 2003, the Secretariat, following the President's instructions, granted to the representatives of the alleged victim and his next of kin, and to the Commission, the extension requested by the former. The term for the submission of the cited written arguments on preliminary objections was extended to July 28, 2003.

46. On July 28, 2003, the representatives of the alleged victim and his next of kin submitted their written arguments on the preliminary objections entered by the State. In their brief the representatives requested that the Inter-American Court: "in conformity with Article 37(6) [of the] Rules of Procedure [in force], defer the decision on the other preliminary objections entered by the State [...] contingent upon that which relates to the merits of the case, since [they] intrinsically relate to the latter"⁵; "reject the objection relative to exhaustion of domestic remedies in consideration of the fact that it was entered extemporaneously," and that "in accordance with the provisions of Article 3(9) of the Rules of Procedure [in force they be] given the opportunity to submit [...] observations to the State's brief relative to matters of fact, merits and reparations."

47. On July 28, 2003, the Commission submitted its arguments to the preliminary objections entered by the State, whereby it requested the Court to dismiss them.

48. On August 07, 2003, the State sent a note asking "to be informed about which the procedure to be followed [would] be, since it wished to transmit its observations" to the written arguments on preliminary objections submitted by the Commission and the representatives of the alleged victim and his next of kin.

49. On September 05, 2003, the State submitted "a document which purpose was to clarify and specify the main points of the [preliminary] objections set out by the [State] in its response to the application." Several appendices to the State's brief were received on September 22, 2003.

⁴ During the process of the instant case the State made changes to its representation.

⁵ The representatives of the alleged victim and his next of kin indicated that the preliminary objection interposed by the State on the Court's *ratione temporis* competence, as well as the arguments relative to the Court's competence to apply the Inter-American Convention against Torture in the instant case and with the "fourth-instance formula" had to be examined in the eventual stage on the merits.

50. On September 16, 2003, the Secretariat, following instructions from the Inter-American Court, informed the parties that, in accordance with Article 39 of the Rules of Procedure, it had admitted the request of the representatives of the alleged victim and his next of kin in the sense of authorising the performance of other acts of the written procedure. In consideration of the foregoing, the Court granted said representatives and the Commission a non extendable term up to October 16, 2003, to submit their reply brief, and granted the State a final non-extendable extension for thirty days from receipt of such reply briefs, for the submission of its rejoinder brief. Furthermore, the Secretariat indicated that the brief submitted by Mexico on September 5, 2006 had been considered by the Court as the rejoinder brief (*supra* para. 49), without affecting the State's possibility to submit additional arguments.

51. On October 16, 2003, the Inter-American Commission and the representatives of the alleged victim and his next of kin submitted their reply briefs, respectively. On November 04, 2003, the appendices to the representatives' reply brief were received at the Secretariat's headquarters.

52. On November 19, 2003, the State submitted its "clarifications and comments" concerning the October 16, 2003 briefs of the Commission and of the representatives of the alleged victim and his next of kin. The appendices to the above-mentioned rejoinder brief were received at the Secretariat's headquarters on December 16, 2003.

53. On March 01, 2004, the President issued a ruling whereby the parties were summoned to attend a public hearing to be held at the Inter-American Court on April 27, 2004, to hear their oral arguments on the preliminary objections entered by the State (*supra* para. 41).

54. On April 27, 2004, the Court, at a public hearing on preliminary objections, heard the oral arguments of the State, the Inter-American Commission, and the representatives of the alleged victim and his next of kin.

Appeared before the Court:

for the State:

Juan José Gómez-Camacho, Agent;
María del Refugio González-Domínguez, Alternate Agent;
José Ignacio Martín-del-Campo-Covarrubias, advisor;
Jorge Ulises Carmona-Tinoco, advisor;
Ulises Sandal Ramos-Koprivitza, advisor; and
Alejandro Sousa-Bravo, advisor.

For the Inter-American Commission on Human Rights:

Santiago A. Canton, Delegate;
Elizabeth Abi-Mershed, advisor;
Mario López-Garelli, advisor; and
Lilly Ching, advisor.

For the representatives of the alleged victim and his next of kin:

Viviana Krsticevic, representative;
Alejandra Nuño, representative;
Roxanna Altholz, representative;
Arturo Requesens, representative; and
Fabienne Cabaret, representative.

55. On July 07, 2004, and following the President's instructions, the Secretariat asked the Inter-American Commission, the representatives of the alleged victim and his next of kin, and the State, in conformity with Article 45(2) of the Rules of Procedure, to submit the following documents as evidence to facilitate adjudication of the case: a) the decision whereby the revision remedy entered by Mr. Alfonso Martín-del-Campo on January 19, 1998, against the judgment in the amparo appeal hearing handed down on December 02, 1997, by the Fourth Penal Court of the First Circuit, was dismissed as not applicable, and b) a copy of the documents pertaining to such actions under preliminary investigation SC/3839/95-03 started by the Prosecutorial Agency as were performed after March 17, 2003 and up to the date of said communication (July 07, 2004).

56. On July 16, 2004, the State delivered a note where it requested "an extension to submit the documentation required," alleging that the Supreme Court went "on recess." That same day, and following the President's instructions, the Secretariat granted an extension up to July 26, 2004, to the State, the Inter-American Commission and the representatives for submission of the documentation required as evidence to facilitate adjudication of the case. On July 26, 2004, the State submitted said documentation. That same day the representatives of the alleged victim and his next of kin informed that, even after several efforts made before state authorities, they were unable to obtain the documents requested. In like manner, on July 16, 2004, the Commission informed that, despite efforts made, it was impossible to obtain copies of the documents requested.

V JURISDICTION

57. The Court has jurisdiction, in the terms set forth in Article 62(3) of the Convention, to hear the two preliminary objections brought by the State in the instant case, by virtue of the fact that Mexico has been a State Party to the American Convention since March 24, 1981, and accepted the jurisdiction of the Court on December 16, 1998. Additionally, Mexico has been a State Party to the Inter-American Convention to Prevent and Punish Torture since June 22, 1987.

VI PELIMINARY CONSIDERATIONS

58. At this point the Court feels it is necessary to refer to several facts relative to the instant case, for consideration of the preliminary objections brought by the State, concerning the domestic penal proceedings, the preliminary investigations carried out by the *Distrito Federal* Attorney General's Office, and the procedure before the Inter-American Commission:

58.1 It is appropriate, concerning preliminary investigation 10^a/2160/92-05 and the penal proceedings before the courts in Mexico to point out the following:

58.1.1 On May 30, 1992, Juana Patricia Martín-del-Campo-Dodd and her husband, Gerardo Zamudio-Aldaba, were murdered at their home in the early morning hours. The couple lived at said home with their three daughters and with Mr. Alfonso Martín-del-Campo, the brother of Ms. Juana Patricia Martín-del-Campo-Dodd.

58.1.2 On the morning of May 30, 1992, the Prosecutorial Agency reported formally to have started the preliminary investigation 10^a/2160/92-05 concerning the homicide of Ms. Juana Patricia Martín-del-Campo-Dodd and Mr. Gerardo Zamudio-Aldaba,

58.1.3 That same day and after the occurrence of such events, Mr. Alfonso Martín-del-Campo appeared at the Prosecutorial Agency's Tenth Investigation Agency, at the Benito Juárez sector, and deposed before Mr. Sotero Galván-Gutiérrez, an officer of the *Distrito Federal* Judicial Police.

58.1.4 Mr. Sotero Galvan-Gutiérrez then submitted a report on this case and placed Mr. Alfonso Martín-del-Campo at the disposal of the head of the Prosecutorial Agency's Tenth Investigation Agency. In said report the officer of the Judicial Police indicated that Mr. Alfonso Martín-del-Campo appeared at said Agency to "report the events that had occurred" and that when questioned about the facts he "started to change his original version and to contradict himself, having expressed that he was strongly inebriated, for which reason he did not remember what had occurred; he later said that he had had many problems with his brother-in-law when they got home and was unable to remember why they were arguing; lastly, he said that he had killed his brother-in-law as well as his sister."

58.1.5 On May 30, 1992⁶, at 14:00 hours, Mr. Jesús López-Sánchez, an expert of the Forensic Medicine Service of the General Directorate of Technical Services, under the *Distrito Federal* Attorney General's Office, examined Mr. Alfonso Martín-del-Campo clinically, thereby having found the following injuries: two contusions at the rear of both parietal bones, skin laceration in the parasellar region of the left eye, laceration on the left side of the nose, a contusion where forehead hair grows laceration in the right knee, red spots in the middle section of the face, and dermal epidermic laceration in elbow and back of right hand.

58.1.6 On May 30, 1992, Mr. Alfonso Martín-del-Campo made a deposition at the Tenth Investigation Agency of the Prosecutorial Agency. In said deposition it is written that the alleged victim expressed that on that same day, in the early morning hours, he

⁶ The document where the existence of such medical report is certified is dated May 29, 1992. In this respect, on August 07, 1995, expert Jesús López-Sánchez deposed before the Office of the Deputy Attorney for Central Preliminary Investigations of the *Distrito Federal* Office of the Attorney General under the proceedings of preliminary investigation SC/3839/95-03, and expressed that he performed a medical examination of Mr. Alfonso Martín-del-Campo at the request of the Prosecutorial Agency, on May 30, 1992, at the time specified, and that "with regard to the date on them, that is May 29, 1992, and the fact that it should have supposedly been May 30, 1992, perhaps [...] he made a human mistake."

"enter[ed] into the room of Gerardo Zamudio-Aldaba and [Juana] Patricia Martín-del-Campo, who were lying on their bed, and immediately start[ed] to stab several times the body of his brother-in-law [...], using, on each of his hands, the knives that he had taken from the kitchen [...] and at that time his sister Juana Patricia woke up [...] and he also start[ed] to stab her body several times [...] and once he made sure that they were dead [...] he start[ed] to plan how to simulate a burglary and a kidnapping with the idea of giving the impression that [he...did not] participate in those events."

58.1.7 On May 30, 1992⁷, at 19:30 hours, Mr. Jesús López-Sánchez, an expert of the Forensic Medicine Service of the Directorate General of Technical Services, under the *Distrito Federal* Attorney General's Office, clinically examined Mr. Alfonso Martín-del-Campo, thereby having found that his injuries, as well as his physical condition were, at the time of the examination, the same as indicated after the clinical examination performed previously by him that same day.

58.1.8 On May 30, 1992, at 21:20 hours, Mr. Antonio Vargas-Lacunas and Ms. Beatriz Minor-Morales, photography and criminology experts, respectively, performed the task of reconstruction of the events, with the participation, among others, of Mr. Alfonso Martín-del-Campo, at the request of the Head of the Special Homicide Prosecutors' Department of the Tenth Investigation Agency.

58.1.9 On May 31, 1992, Mr. Guillermo León-González, an expert psychiatrist of the Forensic Psychiatry Service of the General Directorate of Technical Services under the *Distrito Federal* Attorney General's Office, examined Mr. Alfonso Martín-del-Campo to determine the status of his mental health, and concluded that he "[did not] show at th[at] time signs of any mental disorder; he h[ad] the capacity to want and to understand."

58.1.10 On June 01, 1992, the Prosecutorial Agency submitted an "inquiry order with arrest of suspect" to the Fifty-fifth Penal Judge of the *Distrito Federal* upon verification that there were "sufficient elements to accuse Alfonso Martín-del-Campo." The Prosecutorial Agency indicated that "since the [...] case [was] evidently urgent [...] and there was no judicial authority at hand to issue the corresponding order to arrest, [on May 30, 1992] it proceed[ed] to arrest [Mr. Martín-del-Campo, in conformity] with the provisions in Article[s] 16, and 132, 266 and 268 of the Penal Procedural Code for the *Distrito Federal*."

58.1.11 That same day Mr. Alfonso Martín-del-Campo was brought before the Fifty-fifth Penal Judge of the *Distrito Federal*, and his deposition before the Prosecutorial Agency was read to him, whereupon the alleged victim stated that he totally den[ied] it since he had been subjected to physical pressure by the judicial officials." At the request of the defence, the Court Decision Secretary of this court

7

supra note 6.

issued a certificate attesting to the injuries that Mr. Martín-del-Campo had suffered.

58.1.12 On June 4, 1992, the Fifty-fifth Penal Judge of the *Distrito Federal* formally ordered the imprisonment of Mr. Alfonso Martín-del-Campo as allegedly responsible for the homicide of Ms. Juana Patricia Martín-del-Campo-Dodd and Mr. Gerardo Zamudio-Aldaba and declared regular proceedings open to process the case 57/92.

58.1.13 On July 14, 1992, the Fifty-fifth Penal Judge of the *Distrito Federal* held a hearing for the clearing of evidence, where Mr. Martín-del-Campo extended his deposition and stated that he did not recognise his Prosecutorial Agency deposition “since he was forced and physically pressured to sign as well as to make it.”

58.1.14. On September 09, 1992, the Fifty-fifth Penal Judge of the *Distrito Federal* brought Messrs. Galván-Gutiérrez and Martín-del-Campo together for a face-to-face confrontation in relation to the alleged physical pressure to which the latter was subjected for purposes of obtaining a confession (*infra* para. 58.2.4).

58.1.15 On May 28, 1993, the Fifty-fifth Penal Judge of the *Distrito Federal* handed down a final decision in this case, whereby Mr. Alfonso Martín-del-Campo was declared penally responsible for the offence of homicide against Juana Patricia Martín-del-Campo-Dodd and Gerardo Zamudio-Aldaba, and convicted to 50 years in prison. In this judgment the court pointed out that the statement made by Mr. Alfonso Martín-del-Campo in the sense that it was he “who took the lives of those now dead [...] is indeed corroborated by the evidence [assessed by the court,⁸] since it [...] was [...] provided [...] by the accused in his first deposition, without sufficient time for defensive briefing or reflection, and therefore [,] it must [...] prevail over

⁸ Among others: 1) statements made before the Fifty-fifth Penal Judge of the Distrito Federal by Mr. Gerardo García-Chavarria, Mr. Raúl García-Chavarria, Ms. Inés Guzmán-Sánchez, Ms. Nora Violeta Garibay-Martínez, Mr. Sergio Sierra-Fuentes, Mr. Antonio Arreola-Diez, Mr. Miguel Ángel Gutiérrez-Lara, Mr. Víctor Ramón Zetina-Vargas, Mr. Carlos Alberto García-Urquiza, Ms. Claudia Rosales-Pamanes, and Sotero Galván-Gutiérrez; 2) the May 30, 1992, report of Mr. Sotero Galván-Gutiérrez, an agent of the Judicial Police; 3) the mechanics report signed by the official expert on May 30, 1992; 4) the forensic chemistry report signed by expert Gabriel Bucio-Alvarado of May 30, 1992; 5) the report signed by the Federal Road and Harbour Police on May 30, 1992; 6) the report signed by official experts in events relative to vehicle traffic of May 31, 1992; 7) the certification of vehicles and damages prepared by the investigating authority; 8) the visual inspection at the place of the crash; 9) the knife certification provided by the Prosecutorial Agency; 10) the official criminology and photography report signed by official experts on May 31, 1992; 11) the haematological tracing report signed by experts in forensic chemistry of June 01, 1992; 12) the forensic chemistry report signed by experts María del Socorro López and María de Jesús Arenas of June 01, 1992; 13) the forensic chemistry reports signed by experts Francisco J. Origuél-Coutiño and María del Socorro López; 14) the forensic chemistry report pertinent to the haematological study in the 1991 Ford Thunderbird car with license plates number 998-ERN; 15) the hair report signed by the official forensic pathology expert Sebastián G. Castillo-Medina; 16) the car mechanics report signed by Mauro Zaragoza-Vázquez the expert provided by the defence; 17) the criminalistics report signed by Juventino Montiel-Sosa, the expert provided by the defence; 18) the meeting of experts held before this judicial authority on November 27, 1992; 19) the criminalistics third-party report signed by expert Gregorio Ávila-Olguín of December 30, 1992; 20) the *in-situ* visual inspection; 21) the official criminalistics report signed by experts Beatriz Minor-Morales and Antonio Vargas-Lagunas of May 30, 1992; 22) the judicial inspection at the site where the events took place; 23) the judicial inspection made in the 1991 Ford Thunderbird car with license plates 998-ERN; and 24) the medical and physical condition certificate of Alfonso Martín-del-Campo issued by the Prosecutorial Agency.

statements made thereafter[.] While the accused point[ed] out that his confession was obtained [on the] basis [of] blows, threats and torture, this is not corroborated[.] since even if there is judicial recognition of the injuries that he showed when he made his preparatory statement[,...] there is no evidence that may prove fully that said injuries were inflicted by members of the Judicial Police to force him to admit that he had committed the acts attribute[d] to him."

58.1.16 On May 28, 1993, Mr. Alfonso Martín-del-Campo and his public defender filed an appeal against the May 28, 1993 judgment. On June 02, 1993, The Fifty-fifth Penal Judge of the *Distrito Federal* admitted in both aspects the appeal entered. On July 13, 1993, Mr. Martín-del-Campo's public defender submitted his brief of grievances to the Eighth Penal Section of the *Distrito Federal* Superior Court. Similarly, on July 15, 1993, Mr. Alfonso Martín-del-Campo submitted his brief of grievances to the same Section.

58.1.17 On August 17, 1993, the Eighth Section of the *Distrito Federal* Superior Court confirmed the May 28, 1993, judgment handed down against Mr. Alfonso Martín-del-Campo and pointed out, concerning Mr. Martín-del-Campo's Prosecutorial Agency deposition, that the latter was "the only relevant indication of evidence as to the solving of this case." Similarly, the Court indicated that, while Mr. Martín-de-Campo declared before the judge that he had been physically pressured and gave another version of the events, said arguments were not "worthy of any recognition whatsoever as evidence since they contradicted the reality of the situation, in addition to the fact that they were discredited by pieces of conclusive evidence against him that had been already assessed."

58.1.18 On June 18, 1997, Mr. Alfonso Martín-del-Campo filed a direct amparo appeal motion with the First Circuit Court against the judgment delivered by the Eighth Section of the *Distrito Federal* Superior Court on August 17, 1993, which had confirmed the first-instance conviction.

58.1.19 On December 02, 1997, the Fourth Penal Court of the *Distrito Federal* First Circuit decided to deny "the protection of the federal justice requested by [Mr. Martín-del-Campo] against the decision of the Eighth Section of the *Distrito Federal* Superior Court, that he contested."

58.1.20 On January 19, 1998, Mr. Alfonso Martín-del-Campo filed a revision remedy against the decision of the Fourth Penal Court of the *Distrito Federal* First Circuit delivered on December 02, 1997. On February 09, 1998, the First Section of the Supreme Court decided to dismiss such revision remedy as non applicable.

58.1.21 On July 13, 1998, Mr. Alfonso Martín-del-Campo denounced the facts of this case before the Inter-American Commission.

58.1.22 *On August 10, 1998, the Inter-American Commission requested Mr. Alfonso Martín-del-Campo to submit additional information on admissibility requirements.*

58.1.23 *On December 16, 1998, Mexico recognised the Court's contentious jurisdiction.*

58.1.24 *On April 05, 1999, Mr. Martín-del-Campo filed a recognition of innocence remedy with the Seventeenth Penal Section of the Distrito Federal Superior Court, in conformity with Article 614(2) of the Penal Procedural Code for the Distrito Federal.*

58.1.25 *On April 29, 1999, the Seventeenth Penal Section of the Distrito Federal Superior Court declared the recognition of innocence action groundless. Said Court felt that Mr. Martín-del-Campo's assertion that the October 14, 1994, decision of the Internal Comptroller's department of the Distrito Federal Office of the Attorney General, whereby an administrative sanction was imposed against officer Sotero Galván-Gutiérrez "invalidates the confessional evidence on which the sentence delivered against him was founded" was not correct, since the Eighth Section of the Distrito Federal Superior Court, in admitting "the evidence of the two different cases of aggravated homicide and [Mr.] Alfonso Martín-del-Campo's penal responsibility [...] in the commission of said homicides, did not base itself solely on the deposition of the accused at the Prosecutorial Agency, but also on such circumstantial evidence as Article 261 of the Distrito Federal Penal Procedural Code refers to[.] The evidence taken into account by the Eighth Section provided the elements which constituted the chain of events that became the entire circumstantial evidence on which the sentence was based." Furthermore, the Seventeenth Penal Section "primarily stressed the admission of responsibility itself, by the accused Alfonso Martín-del-Campo before the Prosecutorial Agency [...] in respect of the principle of prosecutorial immediacy, since this was done with remarkable immediacy to the events, without the time required to have been briefed or to have reflected on the matter."*

58.1.26 *On October 08 and 29, 1999, Mr. Alfonso Martín-del-Campo, CEJIL, ACAT, and the Lawyers Committee for Human Rights, respectively, filed a complaint with the Inter-American Commission.*

58.1.27 *On November 04, 1999, the Inter-American Commission transmitted to the State, under case number, 12.228, the pertinent sections of the petitioners' briefs.*

58.1.28 *On February 02, 2000, the State submitted its brief of observations to the Commission's November 04, 1999, communication.*

58.1.29 *On October 11, 2000, during its 108th Regular Session, the Inter-American Commission held a public hearing where the petitioners and the State's representatives appeared.*

58.1.30 On March 19, 2001, Mr. Alfonso Martín-del-Campo filed an indirect amparo appeal motion against the April 29, 1999, decision whereby the recognition of innocence remedy filed with the Office of the Common Parties Officer of the District Courts for Penal Civil Rights Protection of the *Distrito Federal*, which was in turn transferred to the Sixth Penal Civil Rights Protection Court of the *Distrito Federal*.

58.1.31 On April 16, 2002, the Sixth Penal Civil Rights Protection Court of *Distrito Federal* decided to dismiss the amparo appeal motion filed by Mr. Martín-del-Campo, when the provision on non applicability provided for in section XII of Article 73 of the Law on Civil Rights Protection, which establishes that the motion amparo appeal hearing shall be non applicable against acts tacitly consented, such acts being understood as those against which no protection action is brought within the terms established in articles 21, 22, and 218 of that Law.

58.1.32 On May 03, 2001, Mr. Martín-del-Campo filed a revision remedy with the Sixth Penal Civil Rights Protection Court of *Distrito Federal* against its April 16, 2001, decision. On September 03, 2001, the Fourth Penal Court of *Distrito Federal* First Circuit confirmed the judgment subject to review and dismissed the amparo appeal motion.

58.1.33 *On October 10, 2001, the Inter-American Commission approved the Non Admissibility Report No. 81/01.*

58.1.34 *On October 22, 2002, the Inter-American Commission approved Report No. 63/02 on the Merits.*

58.1.35 *On December 30, 2002, the State replied on the Commission's recommendations in Report No. 63/02 on the Merits.*

58.1.36 *On January 30, 2003, the Commission submitted the case to the Court.*

58.2 Concerning the previously-mentioned preliminary investigation 10^a/2160/92-05 and preliminary investigation SC/3839/95-03 started by the Prosecutorial Agency for abuse of authority, corruption and offences against the administration of justice committed by public servants, and for the offence of torture against Mr. Alfonso Martín-del-Campo:

58.2.1 On January 27, 1993, the National Human Rights Commission informed the Office of the General Supervisor for the Defence of Human Rights of the *Distrito Federal* Office of the Attorney General, that on January 06, 1993, Mr. Alfonso Martín-del-Campo-de-la-Peña, the father of the alleged victim, filed a complaint on the penal proceedings conducted against his son, and denounced that he was stricken and tortured so as to force him to declare himself guilty of the homicide of Juana Patricia Martín-del-Campo-Dodd and Gerardo Zamudio-Aldaba. The National Human Rights Commission asked him to submit a report relative to the facts on his complaint.

58.2.2 On March 24, 1993, the National Human Rights Commission reiterated the request to the Office of the Supervisor General for the

Defence of Human Rights of the *Distrito Federal* Office of the Attorney General.

58.2.3 On February 04, 1994, the Directorate General for Legal Affairs of the *Distrito Federal* Office of the Attorney General sent to the Office of the Internal Comptroller of that institution the information provided by the National Human Rights Commission, and expressed that "based on the analysis of the documents in possession of [such] Office of the Supervisor, it is concluded that there could be actions that could be construed as undue acts committed by public servants of [the] institution in the course of preliminary investigation 10a/2160/92-05." It requested that an investigation be carried out on the facts denounced and "should any probable responsibility on the part of personnel [of the Prosecutorial Agency and the Judicial Police of *Distrito Federal*] be determined, apart from establishing whichever administrative responsibility would apply [...] it will bring the matter to the knowledge of the Prosecutorial Agency agent to start the respective preliminary investigation and, if applicable, also the respective penal action against those responsible."

58.2.4 On October 14, 1994, the Office of the Internal Comptroller of the *Distrito Federal* Office of the Attorney General decided that Mr. Sotero Galván-Gutiérrez was administratively responsible for "neglecting to comply with his obligation to safeguard the legality and honesty with which he should act, by having committed acts that implied abuse or undue performance of his duties; having arbitrarily detained [Mr. Alfonso Martín-del-Campo], [...] not showing good behavior at work; not respecting the principles of legality and constitutionality [...]; not [...] abstaining from the use of force; and not safeguarding the basic rights of [Mr. Martín-del-Campo]." In like manner, such Office of the Comptroller decided that public servants Juan Marcos Badillo-Sarabia and Delfino Javier Zamora-Cortés were not administratively responsible for the faults attributed to them.

58.2.5 On March 13, 1995, the Office of the Internal Comptroller of the *Distrito Federal* Office of the Attorney General informed the General Directorate of Preliminary Investigations about the administrative decision adopted in order that it, if applicable, act according to the powers of such General Directorate.

58.2.6 On March 22, 1995, the General Directorate of Preliminary Investigations sent the communication of the Office of the Internal Comptroller of the *Distrito Federal* Office of the Attorney General to the head of the Reports and Complaints Desk and instructed him to record and slate it for prosecution as regards their alleged responsibility as public servants of the institution in the course of preliminary investigation 10a/2160/92-05.

58.2.7 On March 29, 1995, Ms. Bessie Dodd-Burke, the mother of the alleged victim, requested the General Directorate of Preliminary Investigations to carry out investigations on the officials that took part on his son's indictment, since they acted "contrary to the law and were

responsible for abuse of authority [and] collusion of officials, such being offences that are committed by justice administrators.”

58.2.8 On May 11, 1995 Ms. Bessie Dodd-Burke requested Auxiliary Desk Two of the Office of the Special Prosecutor for Public Servants Offences of the General Directorate of Preliminary Investigations to “continue the corresponding preliminary investigation through which it may be possible to investigate in depth to the last consequences those public servants who took part in the process of preliminary investigation 10a/2160/92-05, who participated in the arbitrary detention, torture, isolation and abuse of authority to which [Mr. Martín-del-Campo] was subject.” She similarly requested an investigation of “the judicial authorities responsible for sentencing [the alleged victim] formally to prison since this was never done according to law [and] it is a case of abuse of authority and corruption.”

58.2.9 On June 28 and July 3 and 6, 1995, Ms. Bessie Dodd-Burke submitted an extension to her complaint to Desk Two of Public Servants Offences, an auxiliary body of the Special Prosecutor’s Office of the General Directorate for Preliminary Investigations of the *Distrito Federal* Attorney General’s Office in the course of preliminary investigation SC/3839/95-05.

58.2.10 On June 10, 1996, Mr. Bessie Dodd-Burke submitted a ratification and an extension to her complaint to the Office of the Special Prosecutor for Offences Committed by Public Servants, of the *Distrito Federal* Office of the Attorney General SC/3839/95-05.

58.2.11 On August 01, 1997, the Office of Deputy Prosecutor “A” for Penal Procedures of the General Directorate for the Investigation of Offences Against the Safety of Persons, Institutions and Justice Administration of the *Distrito Federal* Office of the Attorney General, decided that the “events denounced by Alfonso Martín-del-Campo and Bessie Dodd-Burke are not represented as offences since no sufficient elements were found that would characterise as offences against the administration of justice” the events denounced. It therefore ordered the transfer of the action to the General Directorate for the Investigation of Offences Against the Safety of Persons, Institutions and Justice Administration proposing consultation towards non application of penal action in the preliminary investigation SC/3839/95-03.

58.2.12 On August 20, 1997, Ms. Bessie Dodd-Burke submitted a note of disagreement against the decision made in the preliminary investigation SC/3839/95-03 of August 01, 1997 “for not having assessed according to law in respect of all the flaws” that she pointed out in the extension to and reiteration of her report.

58.2.13 On December 08, 1997, Mr. Martín-del-Campo submitted his note of disagreement against the decision made in preliminary investigation SC/3839/95-03 of August 01, 1997.

58.2.14 On January 12, 1998, Ms. Bessie Dodd-Burke appeared before the Office of the Attorney General of *Distrito Federal* in her capacity as complainant, to depose concerning the facts under investigation. During these proceedings she expressed again her disagreement "against the August 01, 1997 proposal for non application of penal action."

58.2.15 On March 04, 1998, the General Directorate for the Investigation of Offences Against the Safety of Persons, Institutions and Justice Administration of the *Distrito Federal* Office of the Attorney General, decided, with respect to preliminary investigation SC/3839/95-03, to revoke in its entirety the resolution towards non application of penal action issued on August 01, 1997, since it considered that it was not correctly founded and justified, and further ordered that "once [the revocation is] consummated, a determination is to be made as to what would be applicable according to law."

58.2.16 On May 25, 1998, the Office of Deputy Prosecutor "A" for Penal Procedures of the General Directorate for the Investigation of Offences Against the Safety of Persons, Institutions and Justice Administration of the *Distrito Federal* Office of the Attorney General, reformulated the consultation towards non application of penal action in preliminary investigation SC/3839/95-03, since "there are not sufficient convincing elements to bring penal action." For this reason it ordered the transfer of the proceedings to the General Directorate for the Investigation of Offences Against the Safety of Persons, Institutions and Justice Administration of the *Distrito Federal* Office of the Attorney General.

58.2.17 On July 02, 1998, Ms. Bessie Dodd-Burke submitted a note of disagreement regarding the May 25, 1998, decision on non application of penal action in preliminary investigation SC/3839/95-03, since she was not allowed sufficient time to obtain an extension from her witnesses and provide proof of the offence denounced.

58.2.18 *On July 13, 1998, Mr. Alfonso Martín-del-Campo denounced the facts before the Inter-American Commission.*

58.2.19 On July 22, 1998, the General Directorate for the Investigation of Offences Against the Safety of Persons, Institutions and Justice Administration of the *Distrito Federal* Office of the Attorney General, confirmed the non application of penal action decision of May 25, 1998 in the preliminary investigation SC/3839/95-03. In this respect it pointed out that it "complied with the orders [...] of the March 12, 1998 decision, the consultation on non application of the penal action as proposed having been found to be duly founded and justified [...]. Indeed, the different allegations made by the complainants Alfonso Martín-del-Campo, and Bessie Dodd-Burke against the public servants [denounced] were not confirmed with any piece of evidence whatsoever which could substantiate them, there having been stated, in the opposite sense, the denial of those probably responsible parties and the facts in the [...] record themselves, no proof having been found, therefore, of the elements that would

constitute offences against the administration of justice in any of their aspects."

58.2.20 *On August 10, 1998, the Inter-American Commission requested Mr. Alfonso Martín-del-Campo additional information on admissibility requirements.*

58.2.21 *On December 16, 1998, Mexico recognised the jurisdiction of the Court.*

58.2.22 On March 24, 1999, the Prosecutor's Assisting Agent of the Prosecutorial Agency concluded, concerning preliminary investigation SC/3839/95-03 that it was not appropriate to approve it since the desk officer in charge had to take a number of steps such as solving the corruption case and duly number the appendix to the preliminary investigation documents so as to ensure folio numbering continuity, as well as any other steps deemed necessary. In the same conclusion it was pointed out that the complainants "did not provide evidence that would prove that the public servants [denounced] would have used violence against [Mr.] Alfonso Martín-del-Campo-Dodd in the performance of their duties or as a consequence thereof, or would have mistreated or insulted him; nor that they would have committed acts or omitted any act which would have inflicted any damage or which would have afforded anyone undue advantage; nor was it found that [Mr.] Alfonso Martín-del-Campo-Dodd would have been forced, through isolation or any other unlawful means, to depose against himself, or that an illegal decision on the merits or final judgment would have been knowingly delivered in violation of some inviolable precept of the law or which would have been contrary to the proceedings of the prosecution."

58.2.23 On July 26, 1999, the Office of Deputy Prosecutor "A" for Penal Procedures of the General Directorate for the Investigation of Offences Against the Safety of Persons, Institutions and Justice Administration of the *Distrito Federal* Office of the Attorney General ordered the transfer of the proceedings to its Director proposing the consultation on non application of penal action in preliminary investigation SC/3839/95-03.

58.2.24 *On October 08 and 29, 1999, Mr. Alfonso Martín-del-Campo, CEJIL, ACAT, and the Lawyers Committee for Human Rights, respectively, denounced the facts before the Inter-American Commission.*

58.2.25 *On November 04, 1999, the Inter-American Commission transmitted to the State, under case number 12.228, the pertinent sections of the petitioners' briefs.*

58.2.26 On December 27, 1999, the Prosecutor's Assisting Agent of the Prosecutorial Agency and the person responsible for the Agency as Area Director decided to authorise the proposal for non application of the penal action, given preliminary investigation SC/3839/95-03 in the

process of consultation. In this sense, they established that evidence of the offence of torture was not found.

58.2.27 On January 26, 2000, Ms. Bessie Dodd-Burke submitted a note of disagreement against the decision to approve the motion of non application of penal action in connection with preliminary investigation SC/3839/95-03.

58.2.28 *On February 02, 2000, the State submitted its brief of observations to the November 04, 1999, communication of the Commission.*

58.2.29 On February 21, 2000, the Coordinator of the Prosecutor's Assisting Agents of the Prosecutorial Agency determined that the term of 10 working days [...] allowed for the complainant to file in writing any note of disagreement with respect to the authorisation of non application of penal action [in preliminary investigation SC/3839/95-03], which was notified on January 19, 2000 expired on February 02, 2000, no note of disagreement having been received in writing within the term allowed."

58.2.30 On March 15, 2000, Ms. Bessie Dodd-Burke extended her statement of disagreement with respect to non application of penal action.

58.2.31 On April 5, 2000, Ms. Bessie Dodd-Burke requested the Office of the Parties Officer at the Coordinating department of the Prosecutor's Assisting Agents of the Prosecutorial Agency to inform her about the proceedings concerning her January 26, 2000, disagreement statement.

58.2.32 On May 03, 2000, the Coordinating department of the Prosecutor's Assisting Agents of the Prosecutorial Agency informed the Office of the Deputy Prosecutor for Central Preliminary Investigations about the advisability of withdrawing the record of preliminary investigation SC/3839/95-05 from the Historical and the Concentration files of said institution "in order to sustain the statement of disagreement" submitted in due time by Ms. Bessie Dodd-Burke on January 26, 2000.

58.2.33 On May 10, 2000 the Office of the Deputy Prosecutor for Central Preliminary Investigations of the *Distrito Federal* Office of the Attorney General decided to reopen preliminary investigation SC/3839/95-03, to which effect it extracted it from said institution's Historical and Concentration File.

58.2.34 On June 06, 2000, the Office of the Deputy Prosecutor for Central Preliminary Investigations of the *Distrito Federal* Office of the Attorney General confirmed final authorisation for non application of penal action in preliminary investigation SC/3839/95-03, as follows:

- a) In her statement of disagreement, Ms. Bessie Dodd-Burke reported the "public servants denounced for the 'brutal

beating and torture and other offences' [...] without submitting any evidence; that is, she did not adequately support or justify said disagreement;"

b) the "possible perpetration of the offence of torture is denounced only and solely by [Mr.] Alfonso Martín-del-Campo-Dodd, as well as by his mother Bessie Dodd [Burke], who was not an eye witness;"

c) the allegation of torture "was not in any way proven, since the injuries shown [by Mr. Martín-del-Campo] had already been inflicted at the time he was placed under the authority of the people's representation;"

d) "in his own statement before the Prosecutorial Agency, [Mr. Martín-del-Campo pointed out] that he himself hit his nose [when he was] at home and [that] he possibly suffered certain injuries when the vehicle he [was driving] in the direction of Mexico City crashed, as well as [...] the fact that some of his injuries were inflicted at the time that he attacked his brother-in-law and his sister;"

e) the deposition before the Prosecutorial Agency "was made freely and spontaneously, without any pressure whatsoever" by Mr. Alfonso Martín-del-Campo;

f) Mr. Sotero Galván-Gutiérrez "denies the accusation made by the complainant" and recognises "the statement that he made before the Internal Comptroller's Office [of the *Distrito Federal* Office of the Attorney General], where administrative action was brought against him;"

g) in his statement of April 12, 1996, Mr. Galván-Gutiérrez pointed out that "he d[id] not ratify his statement made during [the] face-to-face confrontation [held on September 09, 1992] after carefully reading [...] his answers which had always been negative[...]" and that the positive answer concerning the blows "was possibly the result of an error on the part of the person doing the writing;"

h) not having applied for a release on bail for Mr. Martín-del-Campo during his statement before the Prosecutorial Agency in view of the seriousness of the offence attributed to him, did not qualify the public defender's action as an offence;

i) "it is not possible to establish" possible offences committed by the public servants who were involved in the establishment of preliminary investigation 10^a/2160/92-05 or by personnel attached to Penal Court 55 who examined the penal case where Mr. Alfonso Martín-del-Campo was convicted.

j) in conclusion, the case presented by Mr. Alfonso Martín-del-Campo and Ms. Bessie Dodd-Burke is both, not applicable and groundless, just as is their disagreement expressed with respect to the authorisation for non application of penal action.

58.2.35 On June 13, 2000, the Office of the Deputy Prosecutor for Central Preliminary Investigations of the *Distrito Federal* Office of the Attorney General requested the preliminary investigation SC/3839/95-03 to be sent to the Historical and Concentration File, since it was decided to authorize non application of penal action as a final decision.

58.2.36 On June 30, 2000, Ms. Bessie Dodd-Burke filed for an amparo appeal hearing against the *Distrito Federal* Penal District Judge in Office against the June 06, 2000, decision (*supra* para. 58.2.34), relative to the disagreement stated, which confirmed non exercise of penal action in preliminary investigation SC/3839/95-03.

58.2.37 *On October 11, 2000, in the course of its 108th Regular Session, the Inter-American Commission held a public hearing which was attended by the petitioners and the State.*

58.2.38 *On October 10, 2001, the Inter-American Commission approved Admissibility Report number 81/01.*

58.2.39 On February 14, 2002, the *Distrito Federal* Fourteenth District Court for Federal Penal Procedures dismissed the amparo appeal hearing filed by Ms. Bessie Dodd-Burke. Said court felt that "the negative attitude shown by the complainant justifies the non applicability hypothesis since non publication of the notices intended to involve [...] third parties affected, [...] makes it impossible to certify full compliance with the constitutional procedural requirement and, therefore, in the absence of justification for such omission, it must be understood that there is no interest on her part to pursue these protection proceedings and that the omission on her part tends to prevent the possibility of prejudice in this matter."

58.2.40 On September 27, 2002, Mr. Martín-del-Campo requested the reopening of preliminary investigation SC/3839/95-03, to which effect he provided a medical psychological diagnosis from an examination made on July 05, 2002, by Messrs. Fernando Alejandro Valadez-Pérez and Javier Enrique Sam as new evidence. In the results of this examination it was concluded that "the different symptoms shown by the individual examined: severe anxiety and depression, recurrence of the events, hypervigilance and avoidance [...] are co-related with extreme stress situations and the sensation of loss of life[...] caused by torture, and cruel, inhuman and degrading treatment. Also with the physical injuries shown and the blows on his face, neck and body which he suffered."

58.2.41 *On October 22, 2002, the Inter-American Commission approved Merits Report number 63/02.*

58.2.42 On December 26, 2002, the Office of the Deputy Prosecutor for Central Preliminary Investigations of the *Distrito Federal* Office of the Attorney General ordered the reopening of preliminary investigation SC/3839/95-03 because, among other things, of the submission of the medical psychological examination performed on the alleged victim on July 05, 2002.

58.2.43 *On December 30, 2002, the State replied to the recommendations in the Commission's Merits Report number 63/02.*

58.2.44 On January 13, 2003, the Office of the Deputy Prosecutor for Central Preliminary Investigations of the *Distrito Federal* Office of the Attorney General ordered the slating of preliminary investigation SC/3839/95-03, which was returned from the File and which was referenced in the Record of Investigation Unit Two at the agency in charge of the investigation of offences against the administration of justice of said institution for the pertinent legal purposes.

58.2.45 *On January 30, 2003, the Inter-American Commission submitted this case to the consideration of the Court.*

58.2.46 On March 17 and 24, 2003, Messrs Javier Enríquez-Sam and Fernando Alejandro Valadez-Pérez, appeared, respectively, before the Office of the Attorney General of *Distrito Federal* to depose concerning their July 05, 2002 report on their examination of Mr. Martín-del-Campo. On July 15, 2003, the cited experts appeared again before the *Distrito Federal* Office of the Attorney General and showed the documents that had been analysed for the preparation of the cited psychological diagnosis.

58.2.47 On April 17, 2004, Investigation Unit Two of the agency in charge of the investigation of offences against the administration of justice requested to the Office of the General Co-ordinator of Expert Services to order a joint intervention of official psychiatry and psychology experts with a background and experience in the analysis of cases of torture in order that they, subject to a study of preliminary investigation SC/3839/95-03, provide all elements necessary to clarify the incidents under investigation, and to establish whether Mr. Martín-del-Campo was subjected to psychological torture as indicated in the events denounced. On April 13, 2004, said office of the Coordinator informed that its medical personnel did not have "either the background or the experience in the analysis of torture."

58.2.48 On July 02, 2004, Investigation Unit Two of the agency in charge of the investigation of offences against the administration of justice decided to request the support of the Office of the Attorney General of the Republic's expert services department for the appointment of trained legal medical and/or forensic experts with knowledge in the application of the international rules contained in the United Nations Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, of the Office of the United Nations High Commissioner for Human Rights, known as the "Istanbul Protocol", in order that they certify whether or not Mr. Martín-del-Campo suffers from post-traumatic sequels that may evidence possible physical or psychological torture.

58.2.49 Up to the date on which this judgment was delivered, preliminary investigation SC/3839/95-03 continued to be open.

VII PRELIMINARY OBJECTIONS

59. The State entered the following preliminary objections:

1. the lack of jurisdiction of the Inter-American Court to hear about the events and incidents having occurred prior to December 16, 1998, in case N° 12.228; and

2. non observance by the Inter-American Commission, of the basic rules for the processing of individual petitions as provided for in the American Convention and in the applicable rules of procedure; lack of objectiveness and neutrality on the part of the Inter-American Commission with regard to processing of the petition, admissibility, decision on the merits and submission of the petition to the court; and alteration by the Inter-American Commission of the prosecutorial balance, which resulted in defencelessness of the State during processing of the complaint.

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* * *

FIRST PRELIMINARY OBJECTION

60. Following is the Court's summation of the arguments of the State, the Inter-American Commission, and the representatives of the alleged victim and his next of kin for this preliminary objection:

The State's arguments

61. In the written brief of preliminary objections, response to the application and observations to the brief containing motions and arguments, the State requested the Inter-American Court that it declare that it does not have jurisdiction "to hear the instant case, since the events occurred and were consummated outside the time bounds of its jurisdiction, in conformity with the non retroactive recognition of its jurisdiction on the part of the [State] on December 16, 1998." Regarding to the filing of this preliminary objection, the State expressed the following:

a) it is founded on Article 62 of the American Convention and on the terms and scope of the State's December 16, 1998, recognition of the Inter-American Court's contentious jurisdiction;

b) the State's recognition of the Court's contentious jurisdiction "is conditioned temporarily, to 'the events or legal actions having occurred after the date on which [ratification of such recognition] was deposited, for which reason it shall not have retroactive effects;' "

c) recognition of the contentious jurisdiction of an international jurisdictional mechanism such as the Court implies "an important, voluntary and positive decision on the part of the States, for purposes of strengthening the primary protection system governing the internal bodies through the possibility to set forth complaints" before the inter-American system. It would be, therefore, important to have clear and precise rules concerning the level of submission of the States to such procedures;

d) one of the main purposes of the States' prerogative to attribute a temporary condition to the jurisdiction of an international jurisdictional body

is, among others, "to set a point in time for the sake of the certainty and legal security that must prevail in and inspire every judicial process for the pursuit of justice;"

e) one *bona fide* interpretation of the condition set forth by the State in its declaration of recognition of the Court's contentious jurisdiction, as well as common sense, indicate that the former refers to events or legal actions as elements that generate, *per se*, alleged human rights violations. "In the instant case this means that the only category of events or actions over which the Court may exercise its contentious jurisdiction is that of events or actions that occurred after December 16, 1998, and only if it were alleged that said actions could, *per se*, be construed as violations of the American Convention;"

f) in processing the instant case the Court must limit itself to the purpose of the application filed by the Commission, within the bounds of the chronological terms indicated by the declaration of recognition of the Court's contentious jurisdiction, since it "would not be able to do so outside of such bounds, lest it deliver an *ultra petita* decision." [] In this sense, the Commission stated that the events that took place before December 16, 1998, are considered "precedents;"

g) the only thing "that [the Commission] deploras of all things that have occurred after December 16, 1998, is the special annulment remedy known as 'recognition of innocence of the accused,' that was artfully filed by the [representatives of the alleged victim and his relatives] on April 05, 1999;"

h) the Inter-American court cannot judge facts and events, or the alleged effects thereof, beyond the time limitations to which the date of recognition of its contentious jurisdiction by the State holds it. In a case like this, the Court could refer to such facts only in a descriptive manner and is not allowed to issue a moral judgment on their legality or illegality or, by the same reason, on whether or not an alleged violation of human rights was committed;

i) no events or actions prior to December 16, 1998, were of a "continuous," not in the least of a "permanent or undetermined" nature, such as the Commission and the representatives of the alleged victim and his next of kin attempt to describe them, since all relevant events and actions took place and ended at times that are perfectly defined in chronological terms prior to said date. In this sense, "having occurred prior to December 16, 1998, the arrest whose legality was not challenged, the preliminary investigation, the prosecution at its two instances [...] where Mr. Alfonso Martín-del-Campo's penal liability was determined, and the amparo appeal hearing, among other things, cannot possibly be brought to the consideration, judgment or decision of the Court." For this reason, judging the effects of said events would be "to extend *de facto* the temporary jurisdiction of the Court making its effects retroactive;"

j) of relevance regarding to this preliminary objection, are the criteria on the "non continued" nature of imprisonment *per se*. In addition, the latter is not itself a violation of the Convention; for which reason, in order to be qualified to judge the effects thereof, the Court would have to determine whether or not the initial events described as precedents were violations of the alleged victim's human rights;

k) referring to sequels or consequences of torture is different from speaking about a violation that is committed in a “continued” manner. All violations have sequels and consequences, but this is totally different from a violation being committed “continuously” over time; and

l) because of the above reasons, application in the instant case of the Inter-American Convention to Prevent and Punish Torture is beyond the Court’s jurisdiction.

The Commission’s arguments

62. The Inter-American Commission asked the Court to dismiss the preliminary objection filed by the State and to “reaffirm its jurisdiction” in the instant case. In this sense, the Commission submitted the following arguments:

a) the purpose of the application submitted in the instant case is not to establish responsibility on the part of the State for violation of rights enshrined in the American Convention relative to events that occurred prior to December 16, 1998, the date on which Mexico recognised the Inter-American Court’s contentious jurisdiction. Contrary to this, the purpose of the application is to address events that occurred after December 16, 1998, which have caused the State to bear international responsibility for maintaining Mr. Martín-del-Campo arbitrarily detained, and for rejecting the recognition-of-innocence remedy filed on April 05, 1999, with the *Distrito Federal* Superior Court, “despite unquestionable proof that he was forced to confess under torture;”

b) according to the practice of human rights protection bodies, the fact that a claim originated in an event that occurred prior to the date of recognition of their jurisdiction does not invalidate said jurisdiction with respect to other events that occurred thereafter;

c) as of the time of recognition of the Court’s contentious jurisdiction, acts attributable to the State must adjust to the obligations established in the American Convention and are, furthermore, fully susceptible of eventual review by the Inter-American Court;

d) events that occurred prior to recognition of the Court’s contentious jurisdiction are presented as a reference context in the instant case. The Court may take these facts into consideration to the extent that this is required in order to understand the situation prevailing after recognition of its jurisdiction and whenever it may be regarded that they have created a situation that extends beyond said date;

e) there is no disagreement between the State and the Inter-American Commission about the circumstance that the detention and presumed confession of Mr. Martín-del-Campo occurred in May 1992. Nor is the fact that these events occurred before the deposit of the instrument containing Mexico’s declaration of acceptance of the Inter-American Court’s contentious jurisdiction. However, there is disagreement between the parties concerning “continuity” of the effects of these events;

f) the “detention resulting from a confession obtained from Mr. [Alfonso Martín-]del-Campo [...] by means of torture and with the ‘legal advice’ of a graduate in computer science, continues to have effects up to this day.” In the instant case, arbitrary denial of personal freedom and denial of justice are not violations that became consummated instantaneously;”

g) while it is true that the act of torture whose victim was Mr. Alfonso Martín-del-Campo is a single act not being claimed as an act of a “continuous nature,” the consequences of said act and the consequent arbitrary detention and denial of justice are different in nature, since they have been affecting Mr. Martín-del-Campo with equal or greater intensity today than on the day on which the confession was signed. The consequences of torture do not end, nor have they been repaired;

h) arbitrary detention is a “permanent offence.” Offences of this type have a result and imply, by the will of the perpetrator, maintaining a typical situation that lasts a certain length of time. In the case of offences of this type the act is constantly renewed; there is no pause between the different actions, and what prevails is the consummation of the act *per se*. It is for this reason that it is pointed out that prevalence refers to the action, not to its effects. In this case the action started on December 16, 1998, the day on which Mexico recognized the Court’s contentious jurisdiction, but because of its nature as a “permanent offence” it is necessary, in order to become informed concerning whether or not Mr. Martín-del-Campo’s detention is arbitrary, to take its background into account. The Court is, therefore, not being required to have *ratione temporis* jurisdiction over previous events, only over later events.

i) the “authorities that took part in this case had several possibilities to repair the alleged violations and did not do so. Said omission has persisted after the [recognition] of the contentious jurisdiction of the [...] Court [by Mexico] and has become reiterated during the submission and justification of the recognition-of-innocence remedy, for which reason international responsibility on the part of the State is generated [...] concerning the facts in the instant case.” In turn, rejection of the cited recognition-of-innocence remedy implies not only denial of justice, but also legal validation of Mr. Alfonso Martín-del-Campo’s statement which was obtained under torture at the *Distrito Federal* Office of the Attorney General; and

j) the Inter-American Convention to Prevent and Punish Torture was ratified by the State on June 22, 1987. However, such rules were not applied by the attorneys who took part in the recognition-of-innocence remedy filed on behalf of Mr. Alfonso Martín-del-Campo, giving again full value to his “confession obtained under torture.” Similarly, the State “continues to fail to comply with its obligation to investigate duly and punish all persons responsible for the acts of torture perpetrated by the authorities” of Mexico against Mr. Martín-del-Campo.

Arguments of the representatives of the alleged victim and his next of kin

63. The representatives of the alleged victim and his next of kin asked the Court to declare that it has jurisdiction to hear the facts in the instant case. Regarding these, they alleged the following:

a) the Court has jurisdiction to examine the facts supporting the purpose of the Commission's application, which is no other than to request the Court to declare that the State denied Mr. Alfonso Martín-del-Campo the rights to personal liberty, due process, effective judicial protection, and personal safety, by holding him under custody "arbitrarily" and rejecting the innocence remedy attempted in his favour. In like manner, the representatives requested the Court to declare that the State fully accredited Mr. Martín-del-Campo's confession which was obtained by means of torture in violation of the prohibition expressly stated in Article 8 of the American Convention and Article 10 of the Inter-American Convention to Prevent and Punish Torture, and that it did not duly investigate nor has, to this date, punished all of those responsible for such acts;

b) there are, in the instant case, certain events that clearly fall under the Inter-American Court's jurisdiction, since they occurred after December 16, 1998, the date on which the State recognized the Court's contentious jurisdiction, to wit: the April 29, 1999, decision concerning the recognition of innocence remedy; the decision to dismiss the April 16, 2001, amparo appeal motion and its September 03, 2001, revision; and the closing, by the Prosecutorial Agency, of the investigation of the June 06, 2000, events related to torture which, while reopened on December 26, 2002 and up to April 27, 2004, has not resulted in the prosecution or penal punishment of any of the eleven public officials denounced.

c) the different international courts and bodies have recognised *ratione temporis* jurisdiction regarding the events occurred prior to the recognition of the court's contentious jurisdiction but which, despite such recognition, prevail over time thus becoming illegal "continued" acts; or that jurisdiction exists when the consequences or effects of such violations persist even after such recognition.

d) the Court has jurisdiction to hear the instant case concerning a series of events of a "continuous" nature or whose effects have persisted to this date, despite the fact that they occurred prior to the recognition of its contentious jurisdiction. The following are regarded as "continuous" violations: "failure to investigate seriously and effectively acts of torture and other offences denounced" by the alleged victim two days after his arrest; "lack of adjustment of Mexican legislation and practice to international parameters concerning prevention, investigation and punishment for torture;" "illegal and arbitrary imprisonment" of Mr. Alfonso Martín-del-Campo and, lastly, "the serious consequences that all the preceding circumstances have generated concerning the physical and psychological safety of [the alleged victim], as well as the personal safety of his next of kin;"

e) Mr. Martín-del-Campo's detention was based on a "confession obtained under torture" which was, furthermore, carried out without the benefit of a defence attorney and according to an erroneous interpretation of the principle of procedural celerity. Such arbitrary detention "was reconfirm[ed] by means of the judgment which denied the April 29, 1999, recognition of innocence [remedy] which, again, alleges the principle of procedural celerity;

f) the violation of Mr. Alfonso Martín-del-Campo's physical, mental and moral integrity must be approached from the "continued effects" perspective. The May 30, 1992, acts of which State police officials took advantage in order to torture him were instantaneous, but the effects and consequences thereof continue to prevail. In this sense it is of basic importance for the Court to bear in mind the torture sequels which victimised and continue to victimise Mr. Alfonso Martín-del-Campo, to the extent that they are direct consequences of violations committed by State agents, prior to the recognition of the Court's contentious jurisdiction." However, the effects that torture may have on a person are matters that pertain to the essence of the individual and the question of whether or not such sequels or effects are directly attributable to the State can be determined only after having acquired thorough knowledge of the case; and

g) the acts being denounced in the instant case were perpetrated when the American Convention and the Inter-American Convention to Prevent and Punish Torture were positive law for the State and, therefore, "it had the obligation to ensure enjoyment of the rights and liberties enshrined in both instruments."

Considerations of the Court

64. In the first instance, the State entered the preliminary objection of lack of jurisdiction *ratione temporis* of the Inter-American Court, for the Court not to take into consideration events in the instant case that took place prior to the date on which it recognised the Court's contentious jurisdiction.

65. The preliminary objection was entered by the State on the basis of the text of its recognition of the Court's contentious jurisdiction, which was submitted to the Secretary General of the OAS on December 16, 1998, and which reads as follows:

1. The United Mexican States recognise as binding in full right the contentious jurisdiction of the Inter-American Court of Human Rights concerning cases relative to interpretation or application of the American Convention on Human Rights, in conformity with its Article 62(1), with the exception of cases related to the application of Article 33 of the Constitution of the United Mexican States.
2. Acceptance of the contentious jurisdiction of the Inter-American Court of Human Rights shall be applicable only to events or legal actions having occurred after the date of deposit of this declaration, for which reason it shall not have retroactive effects.
3. Acceptance of the contentious jurisdiction of the Inter-American Court of Human Rights is of a general nature, and shall continue to be in force until one year after the date on which the United Mexican States submit a notice indicating that it has denounced it.

66. This declaration was made by the State in consistency with Article 62 of the American Convention, which establishes:

1. A State Party may, upon depositing its instrument of ratification or adherence to this Convention, or at any subsequent time, declare that it recognizes as binding, *ipso facto*, and not requiring special agreement, the jurisdiction of the Court on all matters relating to the interpretation or application of this Convention.
2. Such declaration may be made unconditionally, on the condition of reciprocity, for a specified period, or for specific cases. It shall be presented to the

Secretary General of the Organization, who shall transmit copies thereof to the other member states of the Organization and to the Secretary of the Court.

3. The jurisdiction of the Court shall comprise all cases concerning the interpretation and application of the provisions of this Convention that are submitted to it, provided that the States Parties to the case recognize or have recognized such jurisdiction, whether by special declaration pursuant to the preceding paragraphs, or by an special agreement.

67. Based on such declaration, the State maintains that the only acts or events in the instant case that the Court has jurisdiction to hear are those that occurred after December 16, 1998, and only in the event that it were alleged that said acts could be *per se* constituted as violations of the Convention.

68. It is advisable, prior analysing the preliminary objection, that the Court reiterate some international law rules on this subject, such as it did in delivering a judgment on preliminary objections in the Case of Cantos in 2001. In said judgment the Court pointed out that:

34. In this respect, it is evident from the text of the Convention that a State may be a party to it and accept or reject the obligatory jurisdiction of the Court. Article 62 of the Convention uses the verb "may" to signify that acceptance of the jurisdiction is optional. It should also be emphasized that the Convention establishes obligations for States. These obligations are the same for all the States parties, in other words, they bind in the same way and with the same strength both the State party that has accepted the obligatory jurisdiction of the Court and the State party that has not done so. Also, it is necessary to distinguish between "reservations to the Convention" and "acceptance of the jurisdiction of the Court". The latter is a unilateral act of each State, governed by the terms of the American Convention as a whole and, therefore, not subject to reservations. Although some doctrine refers to "reservations" to the acceptance of the jurisdiction of an international court, in reality, this refers to limitations in the acceptance of the jurisdiction and not, technically, to reservations to a multilateral treaty.

35. When codifying general law on this issue, Article 28 of the Vienna Convention on the Law of Treaties establishes that:

Unless a different intention appears from the treaty or is otherwise established, its provisions do not bind a party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the treaty with respect to that party.⁹.

69. Furthermore, as a jurisdictional body, the Court has the power to determine the scope of its own jurisdiction as something inherent to its attributions (*compétence de la compétence/Kompetenz-Kompetenz*)¹⁰ and that the acknowledgement instruments of the optional clause of the mandatory jurisdiction assumes the admisibility, by the States that represent it, of the Court's authority to solve any controversy relative to its jurisdiction.¹¹

70. In the case of Mexico it must be pointed out that it recognised the Court's contentious jurisdiction in the understanding that, as established in Article 62 of the American Convention, it would "be applicable only to events or legal actions having

⁹ Cfr. *Case of Cantos. Preliminary Objections*. Judgment of September 07, 2001. Series C No. 85, para. 34 and 35.

¹⁰ Cfr. *Case of Baena Ricardo et al.* Judgment of November 28, 2003. Series C No. 104 para. 68; *Case of the Constitucional Court - Competence*. Judgment of September 24, 1999. Series C No. 55 para 31; and *Case of Ivcher Bronstein*. Competence. Judgment September 24, 1999. Series C No. 54, para. 32.

¹¹ Cfr. *Case of Baena Ricardo et al.*, *supra* note 10, para. 33; and *Case of Ivcher Bronstein. Competence*, *supra* note 10, para. 34.

occurred after the date of deposit of [the] declaration, for which reason it shall not have retroactive effects.”

71. This Court also notices that the Inter-American Commission pointed out that the purpose of its application was not to establish the State’s international liability in the violation of the American Convention concerning events that occurred prior to Mexico’s recognition of the Court’s contentious jurisdiction, and that, “contrary to this, the purpose of the application is to address events that occurred after December 16, 1998.” The representatives of the alleged victim and his next of kin indicated that “there are, in the instant case, certain events that clearly fall under the Inter-American Court’s jurisdiction, since they occurred after December 16, 1998.”

72. In addition, the Inter-American Commission alleged the continuous or permanent nature of the arbitrary detention and the denial of justice that presumably affect Mr. Martín-del-Campo. For their part, the representatives argued that the allegedly illegal and arbitrary imprisonment of Mr. Alfonso Martín-del-Campo, the failure to investigate acts of torture, and the failure to adjust the legislation and the practice to international standards of prevention, investigation and punishment of torture, are acts of a continuous nature. In turn, the representatives pointed out that the effects on the alleged victim’s physical and psychological integrity as well as on the personal integrity of the next of kin would have to be analysed from “the perspective of continuous effects.”

73. On the basis of the preceding considerations both, the Inter-American Commission, and the representatives of the alleged victim and his next of kin pointed out that the events that occurred prior to the date of recognition of the Court’s contentious jurisdiction must be regarded as “reference context in this case” and, therefore, they must be taken into account by this Court when the time comes to decide on the merits of the case.

74. For its part, the State indicated, *inter alia*, that none of the events or acts prior to December 16, 1998, are of a continuous or permanent nature, “since all relevant events and actions took place and ended at times that are perfectly defined in chronological terms prior to said date,” for which reason hearing about the “effects” of such events would be equivalent to extending the Court’s jurisdiction retroactively.

75. In examining the facts set forth in the arguments of the parties, this Court notices that there is no disagreement between the State, the Commission and the representatives of the alleged victim and his next of kin in the assertion that those events of the instant case that occurred after December 16, 1998, may fall under the *ratione temporis* jurisdiction of the Court. In particular, the State stressed that said events could only “be analysed as to their individuality and compatibility *per se* with the American Convention.”

76. The discrepancy arises from the fact that the Commission and the representatives of the alleged victim and his next of kin argued that the Court has jurisdiction to hear about the violation of certain rights to the detriment of Mr. Alfonso Martín-del-Campo arising from alleged events that occurred or that started to occur prior to December 16, 1998 and that still prevail, which, for such reason imply violations of a continuous or permanent nature.

77. Following, the Court must, in determining the scope of its jurisdiction in the instant case, set forth its reasons if it accepts and welcomes the reasons alleged by the Commission and the representatives of the alleged victim and his next of kin, in the sense that some of the events or acts that took place prior to December 16, 1998, are of a continuous or permanent nature or have "continuous effects."

78. The Court must determine whether the alleged offence of torture as alleged by the Inter-American Commission and the representatives of the alleged victim and his next of kin is an instantaneous offence¹² or a continuing or recurrent offence¹³. Each act of torture is consummated or terminated within itself, the perpetration thereof not extending over time, for which reason the alleged act, or acts, of torture to the detriment of Mr. Martín-del-Campo falls short of the Court's jurisdiction in that it is an instantaneous act and because of the fact that it occurred prior to December 16, 1998. In like manner, the sequels of torture alleged by the representatives of the alleged victim and his next of kin are not equivalent to a continuous offence. It is appropriate to point out that the Court has, in its constant jurisprudence, reiterated its absolute objection to torture, as well as the duty of the States Parties to investigate, prosecute and punish those responsible for the application of torture.

79. It is necessary for the Court to point out with total clarity on this matter that, if the alleged offence was continuous or permanent, the Court would have jurisdiction to decide concerning acts or events that occurred after recognition of the Court's jurisdiction¹⁴. But in a case of this nature, the alleged offence that would be the cause of the violation alleged (torture) was instantaneous; it occurred and became consummated before recognition of the contentious jurisdiction. Concerning investigation of the offence, said investigation did take place and was reopened on several occasions. This occurred after recognition of the court's contentious jurisdiction, but neither the Commission nor the representatives of the alleged victim have provided elements concerning the effects suffered, on the basis of which specific violations of the due process could have been identified and with respect to which the Court would have been able to hear the case.

80. Nor can the Court hear any of the facts relative to the penal proceedings within the internal jurisdiction against Mr. Alfonso Martín-del-Campo, including alleged arbitrary detention and incarceration and alleged denial of justice, since the regular processing of this case ended with the February 09, 1998, decision of the First Section of the Supreme Court, which decided to dismiss, on the basis of non applicability, the revision remedy entered by Mr. Martín-del-Campo on January 19, 1998, against the December 02, 1997, judgment of the Fourth Penal Court of the *Distrito Federal* First Circuit (*supra* para. 58.1.20).

81. The recognition of innocence remedy entered by Mr. Martín-del-Campo before the Seventeenth Penal Section of the *Distrito Federal* Superior Court on April 05, 1999, after recognition by Mexico of the Court's contentious jurisdiction on December

¹² The offence is construed as instantaneous when the execution of its constituting elements marks the end of its consummation.

¹³ It is maintained that the offence is continuous or permanent when its consummation extends over time.

¹⁴ *Cfr. Case of Blake. Preliminary Objections.* Judgment of July 02, 1996. Series C No. 27, para. 39 and 40.

16, 1998, is a special remedy; for which reason as of the time of recognition by Mexico of the Court's contentious jurisdiction, the proceedings before the regular penal court were brought to an end (*supra* para. 58(1)(24) y 25).

82. Despite the fact that the Commission and the representatives of the alleged victim alleged violation of the due process in the rejection of the recognition of innocence remedy, the Court has corroborated that in reality the objection set forth does not relate to the processing of this remedy *per se*, but to the outcome of the action. The Commission and the representatives of the alleged victim allege that in declaring such remedy groundless the effects of a confession presumably obtained under torture were maintained. The national courts felt, however, that the judgment was based on other evidence in addition to the confession (*supra* para. 58.1.15). The Court does not have jurisdiction to revise this decision, unless a specific act of non compliance with the rules of the due process had been alleged concerning the processing of such remedy, which neither the Commission nor the representatives of the alleged victim did.

83. The decision being now delivered by the court does not in the least involve judgment about the existence or non existence of torture against Mr. Alfonso Martín-del-Campo, but is founded solely and exclusively on legal considerations deriving from the Court's rules on jurisdiction, the lack of observance of which would imply excess in the exercise of powers defined in the Convention, which would also generate legal insecurity.

84. In exercising the protection function attributed to it by the American Convention, the Court seeks a fair balance between the protection imperatives, equity considerations and legal security, as may be clearly inferred from the Court's constant jurisprudence.

85. In consideration of the foregoing, the Court feels that the principle of non retroactivity of international rules enshrined in the Vienna Convention on the Law of Treaties and in international law in general must be applied and, in accordance with the terms in which Mexico recognised the Court's contentious jurisdiction, it admits the *ratione temporis* preliminary objection entered by the State for the Court not to hear the case of alleged violations of the American Convention or the Inter-American Convention to Prevent and Punish Torture that occurred before December 16, 1998 (*supra* para. 57), and consequently declares that it is not up to the Court to analyse the second preliminary objection.

VIII

86. Therefore,

THE COURT,

DECIDES:

Unanimously ,

1. To admit the first preliminary objection *ratione temporis*, entered by the State, in terms of para. 78-85 of the present judgment.

2. To file the case.

3. To notify this decision to the State, the Inter-American Commission on Human Rights, and the representatives of the alleged victim and his next of kin.

Judge Medina-Quiroga brought her Reasoned Opinion, which is attached to this decision, to the knowledge of the Court.

Done in Spanish and English, the Spanish text being authentic, in San Jose, Costa Rica, on September 03, 2004.

Alirio Abreu-Burelli
President

Sergio García-Ramírez

Oliver Jackman

Antônio A. Cançado Trindade

Cecilia Medina-Quiroga

Manuel E. Ventura-Robles

Diego García-Sayán

Pablo Saavedra-Alessandri
Secretary

So ordered,

Alirio Abreu-Burelli
President

Pablo Saavedra-Alessandri
Secretary

**REASONED OPINION OF JUDGE CECILIA MEDINA
IN THE CASE OF MARTIN-DEL-CAMPO**

I concur in the Court's decision that it must not bring into consideration any of the alleged cases of violation of human rights mentioned in the case submitted to it by the Inter-American Commission on Human Rights and in the brief of observations submitted by the representatives of the victim, but my reasons are, in some aspects, different.

The State's objection refers to several alleged violations of the Convention claimed in the brief of the Inter-American Commission whereby it submits the case to this Court, and in the brief of observations of the victim's representatives.

The first one is claimed to be related to an alleged violation of Article 7 of the American Convention consisting of the State's maintaining Mr. Martín-del-Campo arbitrarily detained. Arbitrariness in such imprisonment would arise from the fact that the judgment delivered in a penal prosecution against him on May 28, 1993 – and therefore prior to Mexico's recognition of the Court's contentious jurisdiction "applicable to the facts or to legal actions occurring after the date" of recognition – would have been based solely on a confession of the accused which would have been obtained under torture. Even considering that I could agree with the argument that an arbitrary detention is being maintained on a continuous basis, it is impossible, in this case, to examine the alleged arbitrariness of such detention without examining the proceedings themselves which resulted in a final judgement delivered prior to the date of recognition and with respect to which this Court does not have jurisdiction. Therefore, I agree with the admission of the non jurisdiction objection *ratione temporis* in connection with this part of the violations alleged.

The second one refers to the declaration of innocence remedy. At first, if violations relative to this remedy were alleged, the Court could have jurisdiction to examine the case, since the remedy was processed after the State's recognition of this Court's contentious jurisdiction. Naturally, in order for the Court to be able to admit this case, the submission of the Commission and that of the representatives of the victim would have necessarily had to present the facts based on which a violation of the Convention was alleged. However, the only reason alleged by both, the Commission and the representatives of the victim, to challenge the compatibility of the processing of the declaration of innocence remedy with the State's international obligations that arise from the Convention, is that said remedy was rejected under circumstances where it should have been admitted since the judgment against which it had been entered, was based solely on a confession obtained under torture. This allegation is not sufficient to establish a claim with respect to a violation of Article 8, since alleging that a remedy has not been admitted is not something that could be related to any of the requirements that this provision establishes to ensure due process. In consequence, the Court cannot pronounce itself on an alleged violation of this article, since no violation pertinent to it has been alleged.

The third one refers to the continuity of the offence of torture. Regarding this, I agree with the reasoning of this Court in paragraph 78 of the judgement. Defining a violation as a continuous one for purposes of stretching the Court's jurisdiction, a jurisdiction that it would not have if we took into consideration the date on which such violation was perpetrated, is something that cannot be applied to torture, since

it is an act that ends once it has been committed. Therefore, I concur in the argument that the objection for non jurisdiction *ratione temporis* in relation to this allegation must be admitted.

The fourth one refers to the non compliance on the part of the State with its obligation to investigate, prosecute and punish for an act of torture. This allegation, in my opinion, cannot be rejected on the allegation that the Court does not have jurisdiction because of the date on which the events occurred (and this seems to emanate from the operative part of the judgement), since the allegation of lack of investigation of such torture and, in general, the investigation thereof by the State, have extended beyond the date on which the State recognised the jurisdiction of the Court. Without prejudice to the latter, I feel that, as in the case of alleged violation of Article 8 with respect to the declaration of innocence remedy, again here the Court has nothing about which it can pronounce itself, since the Commission justifies the allegation merely stating that the State "continues neglecting its duty to investigate properly and punish all those responsible for the acts of torture that were established by the authorities themselves," and the representatives of the victim allege, in support of the existence of a violation, that thus far "none of the eleven public officials denounced has been prosecuted or punished penally." Neither of these two arguments refers to the matter with respect to which the Court could have pronounced itself, that is, examination for defects in the investigation which must be done under the obligation to guarantee (Article 5 read in conjunction with Article 1(1) of the Convention) in light of the due process. These considerations are, to me, the basis for non examination of the case on the merits in this respect.

Cecilia Medina-Quiroga
Judge

Pablo Saavedra-Alessandri
Secretary