

**INTER-AMERICAN COURT OF HUMAN RIGHTS**

***CASE OF UZCÁTEGUI ET AL. v. VENEZUELA***

**JUDGMENT OF SEPTEMBER 3, 2012  
(*Merits and Reparations*)**

In the case of Uzcátegui *et al.*,

the Inter-American Court of Human Rights (hereinafter “the Inter-American Court” or “the Court”), composed of the following Judges<sup>1</sup>:

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

Also present,

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

pursuant to Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”) and to Articles 31, 32, 65 and 67 of the Rules of Procedure of the Court<sup>2</sup> (hereinafter “the Rules of Procedure”), delivers this Judgment:

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<sup>1</sup> Judge Margarete May Macaulay informed the Court that for reasons of force majeure, she could not be present at the discussion and signing of this Judgment.

<sup>2</sup> Rules of Procedure of the Court approved by the Court during its Eighty-fifth Regular Period of Sessions held on November 16 to 28, 2009.

# INTER-AMERICAN COURT OF HUMAN RIGHTS

## CASE OF UZCÁTEGUI ET AL. v. VENEZUELA

### Table of Contents

<b>I. PURPOSE OF THE DISPUTE</b> .....	<b>4</b>
<b>II. PROCEEDINGS BEFORE THE COURT</b> .....	<b>5</b>
<b>III. JURISDICTION</b> .....	<b>7</b>
<b>IV. EVIDENCE</b> .....	<b>7</b>
A. - Documentary, testimonial and expert evidence .....	8
B. - Admission of documentary evidence .....	8
C. - Admission of the Statements of the alleged victims and of the testimonial and expert evidence .....	9
D. - Assessment of the file on Provisional Measures.....	9
<b>V. FACTS</b> .....	<b>10</b>
A. - Context.....	10
B. - The death of Néstor José Uzcátegui .....	13
B.1. <i>Undisputed facts</i> .....	13
B.2. <i>Disputed facts</i> .....	13
C. - The investigation into the death of Néstor José Uzcátegui .....	15
D. - The arrest of Luis and Carlos Eduardo Uzcátegui .....	22
E. - Alleged threats and harassment against Luis Enrique Uzcátegui .....	22
F. - Investigations into the alleged threats, harassment and arrests to the detriment of Luis and Carlos Eduardo Uzcátegui.....	25
G. - Criminal proceeding for slander against Luis Enrique Uzcátegui.....	30
<b>VI. MERITS</b> .....	<b>31</b>
<b>VI.1 DEPRIVATION OF THE LIFE OF NÉSTOR JOSÉ UZCÁTEGUI</b> .....	<b>31</b>
<b>(RIGHT TO LIFE)</b> .....	<b>31</b>
A. - Arguments .....	31
B. - Considerations of the Court .....	31
<b>VI.2 THE ARREST OF LUIS AND CARLOS UZCÁTEGUI ON JANUARY 1, 2001. ....</b>	<b>36</b>
<b>(RIGHTS TO PERSONAL LIBERTY AND RIGHTS OF THE CHILD)</b> .....	<b>36</b>
A. - Arguments .....	36
B. - Considerations of the Court .....	37
<b>VI.3 RIGHT TO HUMANE TREATMENT [PERSONAL INTEGRITY] AND FREEDOM OF EXPRESSION</b> .....	<b>40</b>
A. - Arguments. ....	41
A.1. <i>Alleged violation of the right to humane treatment [personal integrity] of Néstor José Uzcátegui</i> 41	
A.2. <i>Alleged violation of the right to humane treatment [personal integrity] for the treatment of Luis and Carlos Eduardo Uzcátegui when they were arrested</i> .....	41

A.3.	<i>Alleged violation of the right to humane treatment [personal integrity] for the threats and harassment suffered by Luis Enrique Uzcátegui</i> .....	41
A.4.	<i>Alleged violation of the freedom of expression of Luis Enrique Uzcátegui</i> .....	42
A.5.	<i>Alleged violation of the right to humane treatment [personal integrity] of the relatives of Néstor and Luis Enrique Uzcátegui</i> .....	43
A.6.	<i>Alleged violation of the right to humane treatment [personal integrity] of Carlos Uzcátegui in relation to the State's special obligation to protect him given his status as a minor</i> .....	44
B.	<b>Considerations of the Court</b> .....	44
B.1.	<i>Alleged violation of the right to humane treatment [personal integrity] of Néstor José Uzcátegui</i> 45	
B.2.	<i>Alleged violations of the right to humane treatment and freedom of expression to the detriment of Luis Enrique Uzcátegui</i> .....	45
B.3.	<i>Alleged violation of the right to humane treatment [personal integrity] of the relatives of Néstor and Luis Enrique Uzcátegui</i> .....	48
	<b>VI.4 RIGHT TO PRIVACY AND PRIVATE PROPERTY</b> .....	<b>49</b>
A.	- Arguments .....	49
B.	- Considerations of the Court .....	49
B.1.	<i>Right to privacy</i> .....	50
B.2.	<i>Right to property</i> .....	51
	<b>VI. 5 RIGHT TO A FAIR TRIAL [JUDICIAL GUARANTEES] AND JUDICIAL PROTECTION</b> .....	<b>52</b>
A.	- Arguments .....	52
B.	- Considerations of the Court .....	54
B.1.	<i>Investigation and process related to the execution of Néstor José Uzcátegui</i> .....	54
B.2.	<i>Investigations and legal proceedings related to the events of January 25, 2003.</i> .....	58
B.3.	<i>Investigations into the detention, threats and harassment against Luis and Carlos Eduardo Uzcátegui.</i> 59	
	<b>VII. REPARATIONS</b> .....	<b>60</b>
	<b>(APPLICATION OF ARTICLE 63(1) OF THE AMERICAN CONVENTION)</b> .....	<b>60</b>
A.	- Injured party .....	60
B.	- Obligation to investigate the facts .....	61
C.	- Measures of rehabilitation, satisfaction and guarantees of non- repetition .....	62
C.1.	<i>Rehabilitation Measures</i> .....	62
C.2.	<i>Measures of Satisfaction</i> .....	63
C.3.	<i>Guarantees of non-repetition.</i> .....	64
D.	- Compensation .....	67
D.1.	<i>Pecuniary damages</i> .....	67
D.2.	<i>Non-pecuniary damages</i> .....	68
E.	- Costs and Expenses .....	70
F.	- Reimbursement of expenses to the Victims' Legal Assistance Fund .....	71
G.	- Method of compliance with the payments ordered .....	71
	<b>VIII. OPERATIVE PARAGRAPHS</b> .....	<b>71</b>

## **I PURPOSE OF THE DISPUTE**

1. This case concerns the alleged extrajudicial execution of Néstor José Uzcátegui perpetrated on January 1, 2001, by members of the police of the state of Falcón, Bolivarian Republic of Venezuela, (hereinafter “the State” or “Venezuela”); the alleged persecution of Luis Enrique Uzcátegui by members of that same police force in reaction to his search for justice for the death of his brother Néstor; the alleged illegal and arbitrary arrest and raids carried out for the same reason, against family members of the Uzcátegui brothers; the threats against the life and personal integrity of Luis Uzcátegui, who has also faced slander charges and has been forced to move from his place of residence; and finally, the alleged lack of judicial protection and observance of due process guarantees.

2. In consideration that the State had not complied with its recommendations, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or “the Commission”) submitted this case to the Court on October 22, 2010. In its Merits Report, the Commission declared that the State is internationally responsible for the violation of the right to life, established in Article 4(1) of the American Convention, in relation to Article 1(1) thereof, to the detriment of Néstor José Uzcátegui; of the right to a fair trial [judicial guarantees] and judicial protection, established in Articles 8(1) and 25 of the American Convention, in relation to Article 1(1) thereof, to the detriment of the family of Néstor José Uzcátegui; of the right to humane treatment [personal integrity], personal liberty, honor and reputation and fair trial [judicial guarantees], established in Articles 5, 7, 11, 8, and 25 of the American Convention, in relation to Article 1(1) thereof, to the detriment of Luis Enrique Uzcátegui; the right to humane treatment [personal integrity], personal liberty, and a fair trial [judicial guarantees] and judicial protection, established in Articles 5, 7, 8, and 25 of the American Convention, in relation to Articles 1(1) and 19 thereof, to the detriment of Carlos Eduardo Uzcátegui; of the rights to freedom of thought and expression, and the principle of legality, established in Articles 13 and 9 of the American Convention, in relation to Articles 1(1) and 2 thereof, to the detriment of Luis Enrique Uzcátegui; and of the right to humane treatment [personal integrity], established in Article 5 of the American Convention, in relation to Article 1(1) thereof, to the detriment of the family of Néstor José Uzcátegui<sup>3</sup>. Finally, the Commission asked the Court to order the State to order specific measures of reparations.

3. For their part, the organizations “Comité de Familiares de Víctimas de los Sucesos de February-Marzo de 1989” (hereinafter “COFAVIC”) and the Center for Justice and International law (hereinafter “CEJIL”, representatives of the victims in this case (hereinafter “the representatives”), filed their brief containing pleadings, motions, and evidence (hereinafter “brief containing pleadings and motions”).<sup>4</sup> In addition to agreeing, in general terms and in line with their own assessments, with the violations alleged by the Commission, they argued that the State had also violated the rights of a child (Article 19 of the Convention); Articles 1, 2, and 6, of the Inter-American Convention to Prevent and Punish Torture; the right to private property (Article 21 of the Convention); the right to the truth (Articles 8, 25, and 13 of the Convention); and

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<sup>3</sup> Namely: Luis Gilberto Uzcátegui and Yrma Josefina Jiménez; his brothers, Carlos Eduardo, Luis Enrique, Irmely Gabriela, Paula Yulimar and Gleimar Coromoto; his brothers on his mother’s side, José Gregorio Mavarez Jiménez and José Leonardo Mavarez Jiménez; niece Josianni of Jesús Mora Uzctegui.

<sup>4</sup> Articles 25 and 40 of the Court’s Rules of Procedure.

the "right to protection in situations of extreme gravity and urgency and the right to file a complaint before the Inter-American System" (Articles 63(2) in relation to Articles 44 and 13(1) of the American Convention).

## II PROCEEDINGS BEFORE THE COURT

4. On October 22, 2010, the Commission submitted<sup>5</sup> to the Court the case previously processed before it<sup>6</sup>, under case file No. 12.661 against the Bolivarian Republic of Venezuela (hereinafter "the State" or "Venezuela"). As delegates, it appointed Paulo Sergio Pinheiro, Commissioner, and Santiago A. Canton, then Executive Secretary of the IACHR, and, as legal advisors, it appointed Mrs. Elizabeth Abi-Mershed, Deputy Executive Secretary and Karla I. Quintana Osuna and Nerea Aparicio, attorneys of the Executive Secretariat.

5. On December 9, 2010, the State and the representatives were notified of the submission of the case.

6. On February 9, 2011, the representatives filed their written brief containing pleadings and motions, in which, in addition to the matters indicated, they asked the Court to order the State to implement various measures of reparation, as well as the payment of costs and expenses. In addition, they requested access to the Victims' Legal Assistance Fund of the Court (hereinafter the "Legal Assistance Fund") (*supra* para. 3).

7. On May 13, 2011, the State filed its brief containing a preliminary objection and the brief answering the petition (hereinafter "answer to the petition"), appointing Mr. Germán Saltrón Negretti as its Agent. On June 24, 2011, the acting President of the Court issued an Order through which it decided, *inter alia*, that the alleged lack of impartiality of some judges of the Court, submitted by the State as a preliminary objection, had no legal basis and was unfounded. Thus, the President determined that the Court, in its full composition, continue hearing the case in its entirety until its conclusion.<sup>7</sup>

8. The Court also received *amicus curiae* briefs from the following organizations: "Article 19, Global Campaign for Freedom of Expression"<sup>8</sup> and the "Regional Alliance for Freedom of Expression and Information."<sup>9</sup>

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<sup>5</sup> Articles 51 and 61 of the Convention

<sup>6</sup> The proceedings before the Commission were conducted as follows: the initial petition was filed with the Commission on March 14, 2007 by the following organizations: "Committee of Relatives of Victims of the Events of February-March 1989" ("COFAVIC") and the "Center for Justice and International Rights" ("CEJIL"), and by Mr. Carlos Ayala Corao (the petitioners). On July 24, 2008, the Commission issued Admissibility Report No. 50/08, in which it declared the case admissible pursuant to the requirements of Articles 46 and 47 of the American Convention. Then, on July 14, 2010, the Commission, pursuant to Article 50 of the Convention, adopted the Report on Merits No. 88/10, in which it concluded that the State was responsible for several violations of the Convention and issued some recommendations. The State received legal notice of the Report on July 22, 2010, and it was given two months to report on compliance with the recommendations. In the absence of any information from the State, the Commission decided to refer the case to the Court.

<sup>7</sup> Cf. Order of May 13, 2011 issued by the Acting President of the Court, Judge Alberto Pérez Pérez.

<sup>8</sup> Brief submitted by Sejal Parmar on November 15, 2011.

<sup>9</sup> Brief submitted by Karina Banfi (Executive Secretary) on December 21 and 27, 2011. In addition, the following organizations became parties to the brief: Acción Ciudadana of Guatemala; National Press

9. On June 1, 2011, the President of the Court (hereinafter “the President”) issued an Order granting the request by the alleged victims to have access to the Legal Assistance Fund and approved the financial assistance necessary for the submission of a maximum of three statements.

10. On June 29, 2011, following the instructions of the President, and agreeing to the requests of the Commission and the representatives in their briefs submitting the case and of pleading and motions, respectively, the Secretary asked the representatives and the Commission to indicate whether they considered it necessary to require the State to submit, in addition to the attachments to its answer, other documents from case files and, where appropriate, to specify these. Moreover, the representatives were required to indicate which documents related to the provisional measures ordered they were requesting to be included, having regard to the purpose of this case.

11. On July 15, 2011, the representatives specified the documents contained in the file on provisional measures referenced in their brief of pleadings and motions.

12. On November 3, 2011, by Order of the President (*infra* para. 11), the State was asked to submit, no later than November 14, 2011, digital and updated copies of court records related to this case, from January 2011 until the present.<sup>10</sup>

13. On November 1, 2011, the representatives submitted part of the documentation requested from the State regarding the criminal proceedings for slander opened against Luis Enrique Uzcátegui.

14. On November 3, 2011, the President of the Court issued an Order in which he requested that affidavits be submitted from five alleged victims, one witness and five expert witnesses, proposed by the representatives and the State, as well as the closing arguments of the parties; made determinations regarding the Legal Assistance Fund; and set a deadline for the presentation of the written closing arguments and final observations.<sup>11</sup>

15. On November 25, 2011, in view of the fact that the State had only submitted part of the documentation requested on November 3, 2011, upon the instructions of the President, the request was reiterated through a note of the Secretariat.

16. The public hearing was held on November 28, 2011, during the 93rd Regular Period of Sessions, held at the seat of the Court.<sup>12</sup>

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Association of Bolivia (ANP); Asociación por los Derechos Civiles de Argentina; Centro de Archivo y Acceso a la Información Pública de Uruguay; Comité por la Libre Expresión (C-Libre) Honduras; Corporación Transparency of Colombia; Fundación Democracia sin Fronteras (FDsF) Honduras; Due Process of Law Foundation of the United States; Fundación para the Libertad of Prensa of Colombia; Fundación Pro Acceso of Chile; Department of Legal Studies of the Fundación Salvadoreña para el Desarrollo Económico y Social (FUSADES) - El Salvador; Programa de Acceso a la Información Pública of the Fundación Violeta Barrios de Chamorro, Nicaragua; Fundamedios of Ecuador; Fundar, Centro de Análisis e Investigación, Mexico; Instituto de Derecho y Economía Ambiental (IDEA) – Paraguay; Instituto de Prensa y Libertad de Expresión (IPLEX), Costa Rica; Transparency of Venezuela, Forum de Periodistas por las libertades de Expresión e Información – Panamá; Espacio público – Venezuela; Article 19 - Brazil (Observer Organization).

<sup>10</sup> Namely the following files were requested: No. IPO1-P-2008-000591 and IPO1-P-2008-005394, as well as a full digital copy of file No. IK01-P-2003-000008 (nomenclature of the Criminal Judicial Circuit of the State of Falcón) concerning the slander case against Luis Enrique Uzcátegui Jiménez.

<sup>11</sup> Cf. *Case of Néstor José and Luis Enrique Uzcátegui et al. v. Venezuela*. Order of the President of the Court of November 3, 2011.

<sup>12</sup> The following individuals appeared at this hearing: a) for the Inter-American Commission: Elizabeth Abi-Mershed, Deputy Executive Secretary; Catalina Botero, Special Rapporteur for Freedom of Expression; Karla Quintana Osuna and Lorena Cristina Ramírez, Advisers; b) for the representatives: Liliana Ortega, Willy

17. On December 7, 2011, the aforementioned request was reiterated to the State (*supra* paras. 12 and 15).

18. On January 24, 2012, the State presented its written closing arguments, along with attachments, and the Commission submitted its final written observations. On January 25, 2012, the representatives filed their closing written arguments together with the attachments.

19. On January 27 and February 3, 2012, following the instructions of the President, in a note from the Secretariat, a deadline was set for submitting observations to the documents forwarded by the representatives and the State along with their closing arguments, specifically indicating that this did not constitute a new opportunity to expand the arguments and that the admissibility of any documents that had not been requested by the Court or its President would be determined at the appropriate time. On February 17, 2012, the representatives and the Commission submitted the requested observations; the State, on the other hand, did not. On February 21, 2012, in a note from the Secretariat, the State was reminded of the request for the abovementioned observations.

20. On February 10 March 12, 2012, the same request was repeated once again (*supra* para. 12), without any response from the State.

21. On May 3, 2012 the State was notified, in a note from the Secretariat and upon the instructions of the President, of the expenditures made through the Legal Assistance fund<sup>13</sup> in the present case, and was granted a non-extendable deadline of May 15, 2012 to make any observations it deemed pertinent; the State did not submit any comments.

### **III JURISDICTION**

22. It has not been disputed that the Inter-American Court has jurisdiction to hear this case,<sup>14</sup> given that Venezuela has been a State Party to the American Convention since August 9, 1977, and accepted the binding jurisdiction of the Court on June 24, 1981.

### **IV EVIDENCE**

23. Based on the relevant provisions and Rules of Procedure<sup>15</sup> and on the Court's consistent case law<sup>16</sup>, the Court shall examine and assess the documentary evidence

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Chang and Dorialbys de la Rosa, of COFAVIC; Ariela Peralta and Francisco Quintana of CEJIL; and for the State: Germán Saltrón Negrettri, Agent, and Luis Britto García and Norevy Cortez, attorneys of the State Agency for Human Rights.

<sup>13</sup> Article 5 of the Court's Rules for the Operation of the Victims' Legal Assistance Fund.

<sup>14</sup> Article 62(3) of the Convention.

<sup>15</sup> Articles 46, 47, 48, 50, 51, 57 and 58 of the Court's Rules of Procedure.

submitted by the parties, including statements and expert reports, adhering to the principle of sound judgment.

**A. - Documentary, testimonial and expert evidence**

24. The Court received documents submitted by the Inter-American Commission, the representatives and the State. It also received affidavits from four alleged victims<sup>17</sup>, namely: 1) Gleimar Coromoto Uzcátegui Jiménez; 2) Paula Yulimar Uzcátegui Jiménez; 3) Irmely Gabriela Uzcátegui Jiménez; and 4) Yrma Jiménez, as well as the testimony of Claudia Carrillo. Moreover, it received expert testimony from Luis de la Barreda Solórzano, proposed by the Commission; Andrés Cañizales, Neugim Pastori, Juan Luis Modollel, Fredy Armando Peccerelli Monterroso, and Eva Riera, proposed by the representatives; and, finally, from Maria Alejandra Díaz and Liderly Montero Barrueta, proposed by the State. As to the testimony rendered at the public hearings, the Court heard statements from Luis Enrique Uzcátegui, alleged victim; from Jean Carlos Guerrero, a witness proposed by the representatives; and from Espartaco Martínez, a witness proposed by the State.

**B. - Admission of documentary evidence**

25. The Court notes that the representatives and the State submitted various documents along with their final written arguments. The Commission asked the Court to reject the documents submitted by the State on the grounds that these were time-barred, but did not specify which documents it was referring to. The representatives also requested that some of these documents be rejected and submitted observations regarding the assessment of others. The State did not submit any observations. The Court notes that several of the documents submitted were already in the file. Given that it can only admit documents submitted with the final written arguments in the exceptional circumstances provided for in the Rules<sup>18</sup>, the Court considers that it is not appropriate to admit those forwarded by the State in its final written arguments which were not presented at the proper procedural moment.

26. Furthermore, given that the representatives submitted, along with their final written arguments, evidence of litigation expenses related to this case, the Court will only consider those related to requests for costs and expenses incurred during the proceedings before this Court, subsequent to the date on which the brief of pleadings and motions was submitted.

27. Also, considering that the State did not comply with the Order of November 3, 2011 (*supra* paras. 12, 15, 17 and 20) the Court accepts that the State had no objections and, accordingly, incorporates into the case file the documents presented by the representatives relating to the domestic court proceedings undertaken in the present case.

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<sup>16</sup> Cf. *Case of the "White Van" (Paniagua Morales et al. ) v. Guatemala. Reparations and Costs.* Judgment of May 25, 2001, Series C No. 76, para. 51 and *Case of Kichwa Indigenous People of Sarayaku v. Ecuador. Merits and Reparations.* Judgment of June 27, 2012. Series C No. 245, para. 31.

<sup>17</sup> The representatives did not forward the statement of Mr. Carlos Eduardo Uzcátegui, indicating that he had decided not to testify for fear of reprisals.

<sup>18</sup> Article 57 of the Rules of Procedure of the Court.



**C. - Admission of the statements of the alleged victims and of the testimonial and expert evidence**

28. The Court also admits as evidence the statements and expert opinions rendered by the alleged victims and expert witnesses at the public hearing and through affidavits, which shall be assessed in conjunction with the other evidentiary elements.<sup>19</sup>

29. As to the affidavits submitted by the State, the Court notes that these do not contain answers to the questions raised by the representatives and duly admitted by the President (*supra* para. 14). Thus, the Court concludes that, although these were offered by the State, it did not comply with its obligation to coordinate and implement the necessary measures to convey the questions to the deponents and include the relevant answers. Such conduct is incompatible with the duty of procedural cooperation and with the principle of good faith which govern international proceedings.<sup>20</sup>

30. Furthermore, the Court takes note of the assertion made by the representatives, which was not refuted by the State, that several Venezuelan public notaries refused to take affidavits from witnesses and expert witnesses whose sworn statements were requested by Order of the President (*supra* para. 14). Based on its Rules of Procedure,<sup>21</sup> the Court deems such actions improper, given the failure to provide evidence required by the Court.<sup>22</sup>

**D. - Assessment of the file on provisional measures**

31. On November 25, 2002 the Commission submitted to the consideration of the Court a request for provisional measures in favor of Luis Enrique Uzcátegui Jiménez<sup>23</sup>, which were ordered on November 27, 2002<sup>24</sup> and are still in force.<sup>25</sup>

32. In their brief of pleadings and motions, the representatives asked the Court to "take judicial notice" of the file of provisional measures ordered in favor of Luis Enrique

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<sup>19</sup> Cf. *Case of Loayza Tamayo v. Peru. Merits*. Judgment of September 17, 1997. Series C No. 33, para. 43 and *Case of Kichwa Indigenous People of Sarayaku v. Ecuador*, para. 43.

<sup>20</sup> Cf. *Case Cantoral Benavides v. Peru. Preliminary Objections*. Judgment of September 3, 1998. Series C No. 40, para. 30, and *Case of Díaz Peña V. Venezuela. Preliminary Objection, Merits, Reparations and Costs*. Judgment of June 26, 2012. Series C No. 244, para. 33.

<sup>21</sup> Article 26 of the Court's Rules of Procedure.

<sup>22</sup> Cf. *Case of Perozo et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 195, para. 99 and *Case of Aritz Barbera et al. ("First Court for Administrative Matters") v. Venezuela. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 5, 2008. Series C No. 182, para. 14.

<sup>23</sup> Articles 63(2) of the Convention and 25 of the Court's Rules of Procedure, then in force.

<sup>24</sup> Cf. *Matter of Luis Uzcátegui and relatives regarding Venezuela*. Provisional Measures. Order of the Court of November 27, 2002.

Available at [http://www.Corteidh.or.cr/docs/medidas/Uzcátegui\\_se\\_01.pdf](http://www.Corteidh.or.cr/docs/medidas/Uzcátegui_se_01.pdf)

<sup>25</sup> Through the Orders of February 20, 2003, December 2, 2003, May 4, 2004 and January 27, 2009, the Court extended and ratified the Provisional Measures regarding Luis Uzcátegui and family members.

Available at [http://www.Corteidh.or.cr/docs/medidas/Uzcátegui\\_se\\_02.pdf](http://www.Corteidh.or.cr/docs/medidas/Uzcátegui_se_02.pdf)

[http://www.Corteidh.or.cr/docs/medidas/Uzcátegui\\_se\\_03.doc](http://www.Corteidh.or.cr/docs/medidas/Uzcátegui_se_03.doc)

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[http://www.Corteidh.or.cr/docs/medidas/Uzcátegui\\_se\\_04.doc](http://www.Corteidh.or.cr/docs/medidas/Uzcátegui_se_04.doc)

Uzcátegui and asked “that all the documents that have been presented in said proceedings form part of the supporting evidence in this case.” Also, in their brief of July 15, 2011, they requested that the Court “take into account” the file as a whole in order to “analyze the State’s [alleged] failure to comply with the measures of protection and the victims’ situation of vulnerability in this case.” For its part, the State argued in its response, and subsequently, that the reports it has submitted regarding the provisional measures “should be considered as evidence in favor of the State by the Court.”

33. The Court recalls that the purpose of the provisional measures proceedings, which are of an incidental, precautionary and protective nature, is different from that of a contentious case, both in procedural aspects and in the assessment of the evidence and the scope of the decisions.<sup>26</sup> Nevertheless, unlike other cases,<sup>27</sup> the beneficiaries of these measures of protection are also the alleged victims in this case. Furthermore, the purpose of the provisional measures coincides with many aspects of the merits of the dispute. Therefore, the briefs and documentation submitted in the provisional measures proceedings will be considered as part of the supporting evidence in the present case, where applicable, and provided that these have been specifically and properly referenced or identified, in a timely manner, by the parties with respect to their arguments.<sup>28</sup>

## **V FACTS**

34. Based on the evidence before it, this Court determines that the following facts have been duly proven and, therefore, shed light on the factual framework of this case.

### **A. - Context**

35. It is not disputed that, at the time when the alleged violations of the Convention took place, extrajudicial killings and other abuses were committed in the State by the

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<sup>26</sup> Cf. *Case of Perozo et al. v. Venezuela*, para. 69 and *Case of Kichwa Indigenous People of Sarayaku v. Ecuador*, para. 48.

<sup>27</sup> Cf. *Case of Ríos et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 29, 2009. Series C No. 194*, para. 58 and *Case of Kichwa Indigenous People of Sarayaku v. Ecuador*, para. 48.

<sup>28</sup> Cf. *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador*, para. 48.

police, particularly by state and local police forces.<sup>29</sup> This was alleged by the Commission<sup>30</sup> and the representatives<sup>31</sup> and was also acknowledged by the State.<sup>32</sup>

36. Although the State denied that “the Venezuelan State has a policy in this regard,” it nevertheless recognized that “extrajudicial executions took place in the country.”<sup>33</sup> Moreover, the State emphasized the action taken on this matter by the Ombudsman’s Office and the study carried out in 2006 by the National Commission for Police Reform<sup>34</sup> (hereinafter “CONAREPOL”), which analyzed the Venezuelan policing model that had made it possible to reform and adapt the police forces to “to the real situation, to the requirements of the Venezuelan people, and in accordance with international human rights standards.”<sup>35</sup> This report mentions, *inter alia*, the use of physical force by police officers, in a context of few oversight mechanisms and a lack of implementation protocols, where the use of force has become a means of affirming their authority.<sup>36</sup> Furthermore, the document notes that officers involved in causing death or injuries to civilians are not required to submit reports, and mentions the failure to investigate these cases and the impunity of the perpetrators.<sup>37</sup> The study

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<sup>29</sup> The Ombudsman’s Report of 2002 states that “some victims are intercepted and murdered in the street; others are shot by agents who burst into their homes without a warrant; others are killed in the course of police operations,” in which “the official version generally offered by the police forces refers to the alleged death of the presumed criminal in a confrontation” and “in some cases claims the existence, real or invested, of a criminal record, as if this fact justifies the execution.” The 2002 Annual Report of the Ombudsman’s Office of the Bolivarian Republic of Venezuela (Evidence file, volume 24, page 7831). Likewise, expert witness Liderly José Montero Barrueta, proposed by the State, stated that according to the investigation of the National Commission for Police Reform, the victims of police abuse were “poor [,] young men aged 15 to 24 years, dark-skinned, with various occupations and living in working class areas.” Expert testimony rendered by Liderly José Montero Barrueta by affidavit on November 15 2011 (Evidence file, volume 16, pages 5323 and 5324). See also 2003 Annual Report of the Ombudsman’s Office of the Bolivarian Republic of Venezuela (Evidence file, appendix 3 to brief of pleadings, motions and evidence in digital format, page 57).

<sup>30</sup> Cf. Final arguments of the Commission (Merits file, volume 5, page 1206) and brief submitting the case (Merits file, volume 1, pages 28 to 29).

<sup>31</sup> Cf. Brief of pleadings, motions and evidence (Merits file, volume 2, pages 122, 123, 127 and 135).

<sup>32</sup> Brief of final arguments of the State (Merits file, volume 5, page 1011).

<sup>33</sup> Brief of final arguments of the State (Merits file, volume 5, page 1011).

<sup>34</sup> Cf. National Commission for Police Reform, *Presentación y Caracterización de los cuerpos de Policía, Estudios*. Caracas 2006, and *Características de la Policía Venezolana*, Caracas 2006, available as of March 1, 2012 at <http://www.consejopolicia.gob.ve/index.php/documents/conarepol> and available as of September 1, 2012 at [http://issuu.com/unsvirtual/docs/report\\_conarepol/2?mode=a\\_p](http://issuu.com/unsvirtual/docs/report_conarepol/2?mode=a_p); Annual Report 2010 of the Ombudsman’s Office of the Bolivarian Republic of Venezuela (attachment to the brief of final arguments of the State in digital format, pages 363 and 364); Expert testimony rendered by Liderly José Montero Barrueta by affidavit on November 15, 2011 (Evidence file, volume 16, pages 5321 to 5329), and final arguments of the State (Merits file, volume 5, page 892).

<sup>35</sup> Cf. Final arguments of the State (Merits file, volume 5, page 892).

<sup>36</sup> Cf. National Commission for Police Reform, *Estudios. Características de la Policía Venezolana*, page 68. The CONAREPOL Study concluded that “the disciplinary regimen encourages impunity both as regards police infractions, and arbitrary action toward the officers themselves, weakening its role of monitoring and regulation of police actions.” National Commission for Police Reform, *Estudios. Características de la Policía Venezolana*, page 61. Also see 2010 Annual Report of the Ombudsman’s Office of the Bolivarian Republic of Venezuela forwarded by the State together with its final written arguments (attachment to the brief of final arguments of the State in digital format, page 364).

<sup>37</sup> Cf. National Commission for Police Reform, *Estudios. Características de la Policía Venezolana*, page 68. Also see 2010 Annual Report of the Ombudsman’s Office of the Bolivarian Republic of Venezuela forwarded by the State, together with its final written arguments (attachment to the brief of final arguments of the State in digital format, page 364). Expert testimony of Liderly José Montero Barrueta, (Evidence file, volume 16, page 5323). See also, National Commission for Police Reform, *Estudios. Características de la Policía Venezolana*, page 99 and subseq.

also referred to the absence of reliable and valid data on the abusive use of force by State security forces.<sup>38</sup> Moreover, in its final written arguments, the State emphasized the decrease in cases of "executions."<sup>39</sup>

37. The findings contained in the CONAREPOL report were, in turn, the subject of analysis by the expert witness Liderly José Montero Barrueta, proposed by the State, who among other comments, indicated that CONAREPOL had noted that one of the most common patterns of police action was the "disproportionate, indiscriminate and discretionary [...] use of force, negligence and lack of expertise in the use of firearms, numerous and aberrant methods of torture, threats and harassment, simulated executions, arbitrary arrests, illegal raids, delays in transferring injured persons to medical centers after injuring them, firing shots into the air, altering bullets and using illegal weapons." Finally, the expert witness stated that in "armed confrontations civilian deaths [were] far more likely to occur than police casualties, which suggests the highly lethal nature of police tactics and the cover-up of executions."<sup>40</sup>

38. Finally, despite the differences between the statistics provided by the State bodies<sup>41</sup> and by the parties, it is not disputed that since 2004, and more significantly since 2006, the number of complaints of alleged violations of the right to life by police officers has been declining.<sup>42</sup>

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<sup>38</sup> Cf. National Commission for Police Reform, *Estudios. Características de la Policía Venezolana*, page 61; 2003 Annual Report of the Ombudsman's Office of the Bolivarian Republic of Venezuela, page 66 and 2002 Annual Report of the Ombudsman's Office of the Bolivarian Republic of Venezuela (attachment 3 to the brief of pleadings, motions and evidence, volume 24, page 7831).

<sup>39</sup> Cf. Final arguments of the State (Merits file, volume 5, page 1012) and Ministry of the Interior and Justice, Order No. 124, of April 10, 2006, cited in 2010 Annual Report of the Ombudsman's Office of the Bolivarian Republic of Venezuela (digital attachment to Brief of final arguments of the State, page 363).

<sup>40</sup> Expert opinion rendered by affidavit by Liderly José Montero Barrueta on November 15, 2011 (Evidence file, volume 16, page 5324).

<sup>41</sup> Figures from the Scientific, Penal and Criminal Investigations Corps (hereinafter "CICPC") show that in 2001 alone, there were 1,251 reported deaths due to "resisting authorities"; during the period 2000-2006, 10,428 deaths were reported with an annual average of 1,489, with figures for the years 2002, 2003 and 2004 increasing to 1720, 2305 and 2150 respectively (National Commission for Police Reform, *Estudios. Características de la Policía Venezolana*, page 69). According to reports of the Ombudsman's Office cited by the State, between 2000 and 2005, the Office for the Protection of Fundamental Rights of the Attorney General's Office reported that "from 2000 to 2005, there were 5,520 criminal proceedings for the alleged commission of homicide by public officials in the exercise of their duties or in connection with their position." 2005 Annual Report of the Ombudsman's Office of the Bolivarian Republic of Venezuela. Available online at: <http://www.defensoria.gob.ve/dp/index.php/publications/reports-anauales>. In addition, figures of the Public Prosecutor's Office indicate that during the period 2000-2006, 5,684 civilians were killed in these circumstances (National Commission for Police Reform, *Estudios. Características de la Policía Venezolana*, page 70). The State also mentioned that between 2006 and 2010, the Attorney General's Office reported that 3,521 police officers were prosecuted for crimes committed in the exercise of their duties, and 274 were convicted. Brief of final arguments of the State (Merits file volume 4, Page 1046). As to the *Encuesta de Victimization y percepción de seguridad ciudadana* (Survey on Victimization and perceptions of citizen security), the CONAREPOL study indicated that "one of the substantial contributions of [this] tool is that it allows us to know the scale of the unreported crimes." (National Commission for Police Reform, *Estudios. Características of the Policía Venezolana*, page 30).

<sup>42</sup> The figures presented by the State, based on reports of the Ombudsman's Office, record a total of 2095 complaints for alleged violation of the right to life by police officers during the period 2001-2010. Brief of final arguments of the State (Merits file, volume 4, Page 970), which does not include the total of complaints received by the Public Prosecutor's Office, according to the representatives.

## **B. - The death of Néstor José Uzcátegui**

### *B.1. Undisputed facts*

39. Mr. Néstor José Uzcátegui was 21 years of age at the time of his death; he studied for his *bachillerato* and worked independently in construction. He lived with family members in a house located in the neighborhood of Las Velitas II, in the city of Coro, State of Falcón, which belonged to his grandmother Julia Chiquinquirá Jiménez. According to testimony from relatives, he and his family members had limited financial resources.<sup>43</sup>

40. The following facts are also not disputed, and thus, are considered proven: i) On the morning of January 1, 2001, officers of the Police Investigations Department ("DIPE" for its Spanish acronym) and an elite group of the Armed Police Forces of the state of Falcón ("Lince Group")<sup>44</sup>, raided the house in the district of Las Velitas II, in the city of Coro, State of Falcón, in search of Néstor José Uzcátegui, who at that time was with other members of his family<sup>45</sup>; ii) at least one of the police officers fired two shots at Néstor José Uzcátegui causing his death<sup>46</sup>; iii) Néstor José Uzcátegui was subsequently taken to the "Alfredo Van Brieken" University Hospital in a police vehicle<sup>47</sup>; v) at said hospital, he was declared dead due to "acute anemia caused by a visceral rupture produced by a firearm injury to the thorax"<sup>48</sup>, and vi) the forensic report indicates that he received two bullet wounds, and one bullet was removed<sup>49</sup>, which was sent to the "Recovered Objects Unit."<sup>50</sup>

### *B.2. Disputed facts*

41. As to the other facts surrounding the death of Néstor Uzcátegui, the Court notes that, from the evidence provided and the arguments put forward, it appears that there are two versions of the events.

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<sup>43</sup> In this regard, Luis Enrique Uzcátegui stated that "[his] family and [he were] humble people, from a humble community [and that] they had no [...] money." Testimony rendered by Luis Enrique Uzcátegui before the Court during the public hearing of November 28, 2011. See also Testimony rendered via affidavit by Gleimar Coromoto Uzcátegui Jiménez on November 14, 2011: "Néstor left school and worked at whatever he could because of our difficult financial situation" (Evidence file, volume 17, page 5498).

<sup>44</sup> Cf. Court file No. IP01-P-2010-005394, Police Report, statement by Juan Alexander Rojas dated January 1, 2001 (Evidence file, volume 7, pages 3557 and 3558).

<sup>45</sup> The State claimed that only his two brothers Carlos Eduardo and Luis were present, while the representatives asserted that other family members were also present, namely: his sisters Gleimar, aged 20, Paula Yulimar aged 15 and Irmely Gabriel, aged 16; his grandmother Julia Chiquinquirá Jiménez, aged 63, and his one year-old niece Josianni de Jesús Mora Uzcátegui (Evidence file, Merits, volume 2, page 139).

<sup>46</sup> Cf. Record of interview with Inspector Juan Alexander Rojas Reyes by the Technical Corps of the Judicial Police, Office of the State of Falcón, on September 27, 2001 (Evidence file, volume 21, pages 6666 and 6667).

<sup>47</sup> Cf. Statement of January 19, 2001 by Mrs. Julia Chiquinquirá Jiménez García before the Technical Corps of the Judicial Police, Office of the State of Falcón (Evidence file, volume 21, pages 6638-6639), and hearing before the 126<sup>th</sup> Prosecutor of the Metropolitan Area of Caracas. Also see statement by José Valdemar Rodríguez, December 7, 2005 (Evidence file, volume 21, pages 6662 and 6663).

<sup>48</sup> Cf. Death Certificate (Evidence file, volume 21, pages 6568); Expert report on autopsy conducted at Coro, on January 5, 2001, addressed to the head of the Technical Corps of the Judicial Police, Delegation Coro State Falcón, signed by Dr. Ángel P. Reyes Chirinos, Chief Forensic Examiner and Dr. Emilio Ramón Medina, Forensic Examiner II (Evidence file, volume 21, pages 6669), and Death Certificate of January 23, 2001 (Evidence file, volume 21, pages 6671).

<sup>49</sup> Cf. Expert report on autopsy of January 5, 2001 (Evidence file, volume 21, pages 6669).

<sup>50</sup> Cf. List of items received No. 0790 of January 12, 2001, File F-761687, CTPJ, State of Falcón (Evidence file, volume 2, page 902).

42. On the one hand, the testimonies of several family members of Néstor José Uzcátegui, all alleged victims in this case, state that a large number of police officers raided the home of Mrs. Julia Chiquinquirá Jiménez, grandmother of Néstor José Uzcátegui, without a court order and with violence, while the family was celebrating the New Year.<sup>51</sup> In the course of the raid, the police officers allegedly forced their way into the bathroom of the house, where Néstor José Uzcátegui was found unarmed, and shot him three times, fatally wounding him.<sup>52</sup> The family members present at the time said that after the shooting, the police had left a weapon at the scene of the incident to simulate a confrontation that had never taken place.<sup>53</sup> Furthermore, his brother, Luis Enrique, who was arrested at the same time, stated that Néstor José was injured and placed in the police van, in which he too was handcuffed and that one of the officers ordered the other to give him the *coup de grace*, which he did.<sup>54</sup>

43. However, the testimonies of the police officers who were present at the time of the incident, indicate that they arrived at the house after receiving a request for support from a police unit, whose members had reported that they were shot at by an individual answering to the description of Néstor José Uzcátegui.<sup>55</sup> The policemen also

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<sup>51</sup> Cf. Police Report of January 1, 2001, Technical Corps of the Judicial Police, Office of the State of Falcón, complaint filed by Gleimar Coromoto Uzcátegui Jiménez, attachment to the petitioners' brief of November 26, 2008 (Evidence file, volume 18, pages 5592 and 5593); Statement of January 18, 2001 of Luis Enrique Uzcátegui before the Technical Corps of the Judicial Police, Office of the State of Falcón (Evidence file, volume 18, pages 5595 and 5596); Statement of January 19, 2001 of Mrs. Julia Chiquinquirá Jiménez García before the Technical Corps of the Judicial Police, Office of the State of Falcón (Evidence file, volume 18, pages 5597 and 5598), and Statement of January 26, 2001 of Carlos Eduardo Uzcátegui before the Technical Corps of the Judicial Police, Office of the State of Falcón (Evidence file, volume 1, volume 18, page 5599).

<sup>52</sup> Cf. Statement of Gleimar Coromoto Uzcátegui Jiménez of January 1, 2001 before the Technical Corps of the Judicial Police, Office of the State of Falcón (Evidence file, volume 18, pages 5592 and 5593); Statement of January 18, 2001 of Luis Enrique Uzcátegui before the Technical Corps of the Judicial Police, Office of the State of Falcón (Evidence file, volume 18, pages 5595 and 5596); Statement of January 19, 2001 of Mrs. Julia Chiquinquirá Jiménez García before the Technical Corps of the Judicial Police, Office of the State of Falcón (Evidence file, volume 18, pages 5597 and 5598); Statement of January 26, 2001 of Carlos Eduardo Uzcátegui to the Technical Corps of the Judicial Police, Office of the State of Falcón (Evidence file, volume 18, pages 5599 and 5560), and Complaint filed by Luis Uzcátegui before the Second Assistant Prosecutor of the Second Prosecutors Office on June 20, 2001 (Evidence file, volume 7, page 3548).

<sup>53</sup> Cf. Statement of January 19, 2001 rendered by Mrs. Julia Chiquinquirá Jiménez García before the Technical Corps of the Judicial Police, Office of the State of Falcón (Evidence file, volume 18, pages 5597 and 5598); Statement of Gleimar Coromoto Uzcátegui Jiménez of January 1, 2001 before the Technical Corps of the Judicial Police, Office of the State of Falcón (Evidence file, volume 18, pages 5592 and 5593), Statement of Gleimar Coromoto Uzcátegui Jiménez before the Seventh Prosecutor of the Public Prosecutor's Office for the State of Falcón on August 15 2005 (Evidence file, volume 18, pages 5605 and 5606).

<sup>54</sup> Cf. Statement of Luis Enrique Uzcátegui at the public hearing on merits and possible reparations and costs, November 28, 2011.

<sup>55</sup> Cf. Police Report, Directorate of Investigations, General Headquarters of the Armed Police Forces of the State of Falcón, of January 1, 2001, signed by Deputy Inspector Alexander Rojas (Evidence file, volume 7, pages 3557 and 3558); Record of interview with Deputy Inspector Valdemar Rodríguez before the Technical Corps of the Judicial Police, Office of the State of Falcón of September 26, 2001 (Evidence file, volume 18, pages 5602 and 5603); Record of interview with Second Corporal Nelson Saavedra before the Technical Corps of the Judicial Police, Office of the State of Falcón, on September 26, 2001 (Evidence file, volume 18, pages 5601 and 5602); Record of interview with Inspector Juan Alexander Rojas Reyes before the Technical Corps of the Judicial Police, Office of the State of Falcón, on September 27, 2001 (Evidence file, volume 18, pages 5603 and 5604). Also, it was recorded that on the afternoon of January 1, 2001, a woman from the neighborhood where the Uzcátegui family lived, went to Directorate of Investigations of the Armed Police Forces of the State of Falcón to report that earlier that same day, in the morning, she had gone to the police station to report that Néstor José Uzcátegui was drunk and was carrying a firearm while walking around the neighborhood, firing shots into the air. See Directorate of Investigations, General Headquarters of the Armed Police Forces State Falcón, Record of interview with Maria Antonia Toyo on January 1, 2001, at 16:40 hours (Evidence file, volume 18, pages 5587 and 5588).

stated that they cordoned off the area while they urged the person who allegedly fired the shots to hand over his weapon.<sup>56</sup> The police officers added that there was no response to their requests, for which reason they entered the house through the back part and, after the police had evacuated his two brothers from the house, Néstor José Uzcátegui had come out of the bathroom firing at them; as a result, the officers responded with their service weapons.<sup>57</sup> During the exchange of fire Néstor José Uzcátegui was wounded and subsequently died on the way to hospital.<sup>58</sup>

### ***C. - The investigation into the death of Néstor José Uzcátegui***

44. On January 2, 2001 the Second Prosecutor of the State of Falcón (hereinafter "the Second Prosecutor's Office") ordered a criminal investigation to be opened into the death of Néstor José Uzcátegui<sup>59</sup>, based on information provided by the Technical Corps of the Judicial Police of the State of Falcón (hereinafter "CTPJ" for its Spanish acronym) and the Armed Police Forces of that State.<sup>60</sup>

45. On January 1, 18, 19 and 26, 2001 the family members who were present at the time of the incident, appeared before the Technical Corps of the Judicial Police of the State of Falcón to make statements and file their complaints.<sup>61</sup>

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<sup>56</sup> Cf. Police Report, Directorate of Investigations, General Headquarters of the Armed Police Forces of the State of Falcón, of January 1, 2001 signed by Deputy Inspector Alexander Rojas (Evidence file, volume 7, pages 3557 and 3558), and Record of interview with Deputy Inspector Valdemar Rodríguez by the Technical Corps of the Judicial Police, Office of the State of Falcón of September 26, 2001 (Evidence file, volume 18, pages 5602 and 5603).

<sup>57</sup> Cf. Police Report, Directorate of Investigations, General Headquarters of the Armed Police Forces of the State of Falcón, January 1, 2001, signed by Deputy Inspector Alexander Rojas (Evidence file, volume 7, pages 3557 and 3558); Record of interview with Deputy Inspector Valdemar Rodríguez by the Technical Corps of the Judicial Police, Office of the State of Falcón of September 26, 2001 (Evidence file, volume 18, pages 5602 and 5603), and Record of interview with Inspector Juan Alexander Rojas Reyes by the Technical Corps of the Judicial Police, Office of the State of Falcón of September 27, 2001 (Evidence file, volume 18, pages 5603 and 5604).

<sup>58</sup> Cf. Police Report, Directorate of Investigations, General Headquarters of the Armed Police Forces of the State of Falcón, January 1, 2001, signed by Deputy Inspector Alexander Rojas, (Evidence file, volume 7, pages 3557 and 3558), and final arguments of the State (Merits file, volume 5, pages 856-857).

<sup>59</sup> Cf. Second Prosecutor of the State of Falcón-Coro. Order to open an Investigation, dated January 2, 2001, Nº FAL-2-S/N, Attachment to the petitioners' brief of November 26, 2008. The investigation was opened based on Articles 292 and 304 of the Code of Criminal Procedure (COPP, for its Spanish acronym), which state: "Article 292. Investigation of the Public Prosecutor's Office: Whenever the Public Prosecutor's Office has knowledge of the commission of a punishable public action, shall order the necessary procedures to investigate and prove its commission, including all the circumstances that could determine its legal definition and the responsibility of the authors and other participants, securing the active and passive objects related to the perpetration." Article 309 of the COPP: "Article 309. Opening of the investigation. Once the suit has been filed or the complaint received, the prosecutor of the Public Prosecutor's Office shall order, without delay, the opening of the investigation, and shall order all the necessary procedures verify the circumstances described in Article 292. Through this order the Public Prosecutor's Office shall open the official investigation." Second Prosecutor of the State of Falcón, city of Coro. Order to Open an Investigation, January 2, 2001. (Evidence file, volume 21, page 6679).

<sup>60</sup> Cf. Official letter No. 8166 of the CTPJ dated January 1, 2001 addressed to the Second Prosecutor of the Public Prosecutor's Office of the State Falcón, signed by Jesús Martínez Ramones, Chief Commissioner, and Official letter No. 0001 of January 1, 2001 addressed to Dr. Henry Nelson, Second Prosecutor of the Public Prosecutor's Office State Falcón, from the Directorate of Investigations, General Headquarters of the Armed Police Forces State Falcón (Evidence file, volume 2, page 859).

<sup>61</sup> Cf. Statement of Gleimar C. Uzcátegui Jiménez of January 1, 2001 to the Technical Corps of the Judicial Police, Office of the State of Falcón (Evidence file, volume 18, pages 5592 and 5593); Statement of January 18, 2001 of Luis Enrique Uzcátegui to the Technical Corps of the Judicial Police, Office of the State of Falcón (Evidence file, volume 18, pages 5595 and 5596); Statement of January 19, 2001 by Mrs. Julia Chiquinquirá Jiménez García to the Technical Corps of the Judicial Police, Office of the State of Falcón Evidence file, volume 18, pages 5597 and 5598), and Statement of January 26, 2001 by Carlos Eduardo

46. On January 3, 2001 the CTPJ asked the Commander General of the Armed Police Forces of the State of Falcón, Oswaldo Rodríguez León, to report the names of the officers involved in the operation in which Néstor José Uzcátegui<sup>62</sup> lost his life.

47. On January 5, 2001, the Second Prosecutor's Office asked the CTPJ to order the following procedures: i) to take statements from the police officers present on the day of the incident; ii) to perform an expert assessment of the weapon collected, and iii) submit the results "with urgency".<sup>63</sup> Similarly, it requested that several procedures be carried out to ascertain the facts: ballistic comparison tests, survey of the crime scene and of the vehicles used.<sup>64</sup>

48. On January 10, 2001, the request made to the Commander General of the Armed Police Forces of the state of Falcón, Oswaldo Rodríguez León, was reiterated<sup>65</sup> (*supra* para. 46).

49. On February 6, 2001 the Senior Prosecutor of the Public Prosecutor's Office of the State of Falcón assigned the case to the First Prosecutor of the Public Prosecutor's Office (hereinafter "First Prosecutor"), since the investigation by the Second Prosecutor had concluded.<sup>66</sup>

50. On April 17, 2001 the First Prosecutor proposed that the investigative stage of the case be reopened "to carry out a more thorough investigation of the facts,"<sup>67</sup> noting that there were "numerous failings in the preliminary investigation."<sup>68</sup>

51. On June 14, 2001, the First Prosecutor reiterated the request for evidence assessment and in particular asked the CTPJ to carry out several procedures, including: i) taking statements from the officers involved in the operation that resulted in the death of Néstor José Uzcátegui; ii) expert assessment and identification of the vehicles used; iii) ballistic comparison tests; iv) identification of possible witnesses in the neighborhood, and 5) "any other procedure necessary to investigate the facts."<sup>69</sup>

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Uzcátegui to the Technical Corps of the Judicial Police, Office of the State of Falcón (Evidence file, volume 18, pages 5599 and 5560).

<sup>62</sup> Cf. Official letter N° 0021 signed by Jesús Martínez on January 5, 2001 (Evidence file, volume 7, page 3610) signed by Jesús Martínez, cited by the petitioners in their brief of March 14, 2007, not disputed by the State.

<sup>63</sup> Cf. Official letter FAL-2-29, of January 5, 2001 (Evidence file, volume 7, page 3566).

<sup>64</sup> Cf. Request by the Second Prosecutor of the District Court of the State of Falcón to the Chief Commissioner of the Technical Corps of the Judicial Police -Office of Coro, State of Falcón of June 14, 2001 (Evidence file, volume 21, pages 6680-6681).

<sup>65</sup> Cf. Official letter N° 0102. 10-01-2001, signed by Jesús Martínez Ramones, referenced in Official letter N° 9700-060 of September 19, 2001 (Evidence file, volume 2, page 950).

<sup>66</sup> Cf. Brief of February 6, 2001 of the Senior Prosecutor of the Public Prosecutor's Office addressed to the First Prosecutor of the Public Prosecutor's Office, Case N° 379-01 (Evidence file, volume 21, page 6682, and volume 1, page 336).

<sup>67</sup> Official letter FAL-1-587 of April 17, 2001, addressed to the Assistant Prosecutor of the Superior Criminal Court of the State of Falcón signed by Attorney Aníbal Eduardo Lossada Lossada, First Prosecutor of the Public Prosecutor's Office of the Criminal District Court of the State of Falcón (Evidence file, volume 21, page 6683, and volume 1, page 337).

<sup>68</sup> Brief of April 17, 2001, addressed to the Assistant Prosecutor of the Superior Criminal Court of the State of Falcón, signed by Attorney Aníbal Eduardo Lossada Lossada, First Prosecutor of the Public Prosecutor's Office of the Criminal District Court of the State of Falcón, Santa Ana de Coro, April 17, 2001 (Evidence file, volume 21, page 6683).

<sup>69</sup> Cf. Request of June 14, 2001 from the Second Prosecutor of the Public Prosecutor's Office of the State of Falcón to the Chief Commissioner of the Technical Corps of Judicial Police- Office of Coro-State of Falcón (Evidence file, volume 1, pages 338-339).



52. On June 20, 2001 Luis Uzcátegui again filed a complaint before the Second Prosecutor's Office regarding the incident in which his brother Néstor José died, as well as on the unlawful arrest and abuse suffered by him and his brother Carlos Eduardo on that same date (*infra* para. 88).<sup>70</sup>

53. On August 1, 2001 the CTPJ requested that ballistics comparison tests be carried out.<sup>71</sup>

54. On September 19, 2001, the CTPJ asked Commander General Rodríguez León to summon the police officers present at the time of the incident and provide the weapons and vehicles related to the incident.<sup>72</sup> It is not clear whether there was a response to this request.

55. On September 26 and 27, 2001, the police officers present on the day of the incident made statements to the CTPJ.<sup>73</sup>

56. On October 10, 2001, due to a change in the Prosecutor's Office investigating the facts,<sup>74</sup> Luis Uzcátegui requested information on the status of the proceeding from the Senior Prosecutor of the Prosecutor's Office in the State of Falcón. On October 17, 2001, the Senior Prosecutor explained that upon the instructions of the Office for the Protection of Fundamental Rights of the Public Prosecutor's Office, the case in question had been submitted to the Seventh Prosecutor of the State of Falcón.<sup>75</sup>

57. On November 2, 2001, the CTPJ asked Commander General Rodríguez León to report the identity of the police officers who manned the patrol vehicles involved in the incident.<sup>76</sup>

58. On November 14, 2001, the Operations Office of the Armed Police Forces of the State of Falcón informed the CTPJ of the State of Falcón, of the identity of the policemen who manned the identified police vehicles on January 1, 2002.<sup>77</sup>

59. On February 21, 2002, the Seventh Prosecutor's Office required the chief of the Scientific Investigations Corps to carry out the following procedures: i) request information on the identity of the officers who manned the aforementioned patrol cars; ii) identify the officers, summon them and interview them; iii) carry out ballistic tests; iv) conduct a survey at the scene of the incident; v) expand on the interview with the

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<sup>70</sup> Cf. Complaint filed on June 20, 2001 sent to the Assistant Prosecutor of the Second Prosecutor's Office and signed by Luis Enrique Uzcátegui (Evidence file, volume 1, page 340) Cf. Complaint filed on June 20, 2001 sent to the Assistant Prosecutor of the Second Prosecutor's Office and signed by Luis Enrique Uzcátegui. Attachment to the petitioners' brief of March 14, 2007.

<sup>71</sup> Cf. Technical report, Official letter N° 9700-060-775 (Evidence file, volume 7, page 3662).

<sup>72</sup> Cf. Official letter No. 9700-060 addressed to the Commander General of the Armed Police Forces, signed by Balmiro Chacin Dupuy (Evidence file, volume 1, page 345).

<sup>73</sup> Cf. Record of interview with Inspector Juan Alexander Rojas Reyes by the Technical Corps of the Judicial Police (Evidence file, volume 8, pages 5603 and 5604), Office of the State of Falcón of September 27, 2001 and Record of interview with Deputy Inspector Valdemar Rodríguez by the CTPJ, Office of the State of Falcón of September 26, 2001 (Evidence file, volume 18, pages 5602 and 5603).

<sup>74</sup> Cf. Request by Luis Enrique Uzcátegui to the Senior Prosecutor of the Public Prosecutor's Office of Coro, State of Falcón, October 10, 2001 (Evidence file, volume 21, page 6587).

<sup>75</sup> Cf. Brief of the Senior Prosecutor of the State of Falcón, dated October 17, 2001 (Evidence file, volume 21, page 6607).

<sup>76</sup> Cf. Official letter N° 6366 of November 2, 2001 (Evidence file, volume 2, page 956).

<sup>77</sup> Cf. Official letter N° 00002495 of November 14, 2001 (Evidence file, volume 7, page 3673).

woman who testified on the day of the incident regarding the conduct of Néstor José Uzcátegui, and vi) any other procedure that would help to clarify the facts.<sup>78</sup>

60. On February 25, 2002, the CTPJ ordered a survey of the scene of the incident to be carried out.<sup>79</sup>

61. On February 28, 2002, the Criminal Investigations Office of the Armed Police Forces of Falcón reported to the Scientific, Penal and Criminal Investigations Corps (hereinafter "CICPC" for its Spanish acronym) the names of the police officers involved in the operation in which Néstor José Uzcátegui was killed.<sup>80</sup>

62. On March 6, 2002 the CTPJ summoned four police officers to render statements regarding the incident.<sup>81</sup> In addition, a neighbor who made a statement on the day of the incident ratified her statement.<sup>82</sup>

63. On July 8, 2002, COFAVIC asked the Attorney General Office to carry out a number of procedures to investigate the death of Néstor José Uzcátegui; guarantee the victims protection and reparation for the harm caused; guarantee the victims information on the status of the investigations; and provide COFAVIC with access to the case file records, as well as information related to the status of the investigations.<sup>83</sup>

64. On August 28, 2002, the first survey was conducted at the scene of the events of this case.<sup>84</sup>

65. On January 30, 2003, the Seventh Prosecutor asked the Chief Commissioner of the Investigations Body to report "with urgency" on whether the procedures requested on February 21, 2002, had been carried out, (*supra* para. 59), and on the status of the case file.<sup>85</sup> There is no record of a response to this request.

66. On September 12, 2003, the Seventh Prosecutor forwarded the case file to the CTPJ for the following procedures to be carried out: i) a ballistics test to compare the evidence gathered of criminological interest; ii) collect monitoring records of the

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<sup>78</sup> Cf. Official letter No. FAL-7-0192-02, signed by Attorney Rafael Américo Medina. Seventh Prosecutor of the State of Falcón (Evidence file, volume 7, page 3651 and Evidence file, volume 2, pages 937 and 938).

<sup>79</sup> Cf. Site survey cited in case file forwarded by the State (Evidence file, volume 18, page 5601y Evidence file, volume 2, page 935).

<sup>80</sup> Cf. Official letter No. 000475 February 28, 2002 to the Head of the Scientific, Penal and Criminal Investigations Unit, signed by Commander General Oswaldo Antonio Rodríguez León. Attachment to the petitioners' brief of January 13, 2010. The police offers are: Gustavo Argueta, José Acosta; Wilmer Suárez, Martín Arteaga; Pedro Acosta, Francisco Primera; Ángel Jiménez and Wilmer López; Jesús Medina Enrique Romero, and Alexis Pereira and Jhon Hernández (Evidence file, volume 1, page 352).

<sup>81</sup> Cf. Official letter N° 9700-060-1516, signed by the Chief Commissioner of the CPTJ Chacin Dupuy. Document cited by the petitioners in their brief of March 14, 2007, not disputed by the State. The police offers are: Gustavo Argueta, José Acosta, Wilmer Suárez and Martín Arteaga (Evidence file, volume 2, pages 929 and 930).

<sup>82</sup> Cf. Record of interview with Toyo Adrianza María Antonia of March 7, 2002, signed by Deputy Inspector Richard Marrufo F. (Evidence file, volume 2, pages 931 and 932).

<sup>83</sup> Cf. Brief addressed to the Attorney General of the Bolivarian Republic of Venezuela signed by Liliana Ortega Mendoza, Executive Director of COFAVIC and received on July 8, 2002 (Evidence file, volume 2, pages 961-966, and volume 1, pages 357-361).

<sup>84</sup> Cf. Site survey carried out by the Scientific Penal and Criminal Investigations Corps -Delegation State Falcón, August 26, 2002 (Evidence file, volume 21, page 6684 a 6685).

<sup>85</sup> Cf. Official letter No. FAL-7-066-03, cited by the petitioners in their brief of March 14, 2007 and not disputed by the State (Evidence file, volume 2, page 967).

storeroom that housed the weapons assigned to the officers; iii) coordinate this investigation with the CICPC of the State of Zulia, and iv) order an expert assessment of the bullet trajectory.<sup>86</sup>

67. On September 16, 2003, the CICIPC requested the collaboration of General Commander Rodríguez León in carrying out these procedures.<sup>87</sup> On November 25, 2003, the Seventh Prosecutor asked the Chief of the CICPC to report on whether the procedures requested on September 12, 2003 were carried out.<sup>88</sup>

68. On December 15, 2003, the Seventh Prosecutor asked the Commander General Rodríguez León to send "as soon as possible" to the CICPC of Coro the weapons assigned to the officers involved in the incident in which Néstor José Uzcátegui died.<sup>89</sup> On December 23, 2004, the Prosecutor ordered him to provide, within 15 days, a certified copy of the weapons assigned to the aforementioned police officers.<sup>90</sup>

69. On March 29, 2005, the CICPC of Falcón informed the Seventh Prosecutor's Office that it had not been able to carry out a ballistics test to compare the firearm and the fragments recovered from the scene, as requested by the Prosecutor's Office (*supra* para. 67), since the weapon had been forwarded to the Weapons Department of the CICPC in Caracas.<sup>91</sup> Similarly, it reported that it had been unable to carry out the ballistics test on the weapons carried by the police officers, as these had not been provided by the Police Headquarters.<sup>92</sup>

70. On June 9, 2005, the Seventh Prosecutor again requested that the CICPC of Coro carry out the following complementary procedures in order to complete the investigation: i) appoint a commission of officials qualified to carry out a reconstruction of the events and survey the crime scene; ii) summon the seven police officers and the family members present on the day of the incident to appear at the scene of the events, and iii) provide a photographic record of the crime scene and of the evidence.<sup>93</sup>

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<sup>86</sup> Cf. Official letter No. FAL-7-0540-03, cited by the petitioners in their brief of March 14, 2007 and not disputed by the State (Evidence file, volume 2, page 968).

<sup>87</sup> Cf. Official letter number illegible of September 16, 2003 addressed to Commander General Oswaldo Antonio Rodríguez León, signed by Johny Márquez Parra, Sub Chief Commissioner of the Delegation State Falcón (Evidence file, volume 2, page 942).

<sup>88</sup> Cf. Official letter No. FAL 7-0540-03 addressed to the Chief of the Scientific, Penal and Criminal Investigations Unit of the State of Falcón, signed by Attorney Roldán Di Toro Méndez, Seventh Prosecutor of the Public Prosecutor's Office, State of Falcón (Evidence file, volume 2, page 968).

<sup>89</sup> Cf. Official letter FAL-7-0745-03 of December 15, 2003 addressed to Commander General of the Armed Police Forces of the State of Falcón, signed by Attorney Roldán Di Toro Méndez, Seventh Prosecutor of the Public Prosecutor's Office of the State of Falcón (Evidence file, volume 2, page 972).

<sup>90</sup> Cf. Official letter FAL-905-04 of December 23, 2004, addressed to Commander General of the Armed Police Forces of the State of Falcón, signed by Roldán Di Toro Méndez, Seventh Prosecutor of the Public Prosecutor's Office of the State of Falcón (Evidence file, volume 1, page 366).

<sup>91</sup> Cf. Official letter 9700-060 of March 29, 2005 addressed to Seventh Prosecutor of the Public Prosecutor's Office of the State of Falcón signed by the Chief Commissioner of the Sub-Office for Falcón, TSU Marcos Marín Perozo (Evidence file, volume 1, page 367).

<sup>92</sup> Cf. Official letter 9700-060 of March 29, 2005 addressed to the Seventh Prosecutor of the Public Prosecutor's Office of the State of Falcón signed by the Chief Commissioner of the Sub-Delegation of Falcón, TSU Marcos Marín Perozo (Evidence file, volume 1, page 367).

<sup>93</sup> Cf. Official letter N° FAL-7-514-05 Seventh Prosecutor of the Public Prosecutor's Office, State of Falcón (Evidence file, volume 1, page 290, and volume 7, page 3536).

71. On June 16, 2005, the proceeding to reconstruct the events could not be carried out because the Chief Commissioner of the CICPC, the expert surveyor of the CICPC of Falcón, and the police and witnesses did not appear.<sup>94</sup>

72. On July 29, 2005, the Seventh Prosecutor summoned the seven police officers as witnesses to appear for the reconstruction of the events and the survey of the scene of the incident.<sup>95</sup> In December 2005, Luis Uzcátegui<sup>96</sup> and three police officers filed statements before said Prosecutor's Office.<sup>97</sup>

73. On August 5, 2005, Commander General Rodríguez León notified the Seventh Prosecutor that the weapons assigned to the officers who participated in the operation of January 1, 2001, had been forwarded to the Criminal Investigations Corps for expert ballistic tests.<sup>98</sup>

74. On August 9, 2005, the Seventh Prosecutor asked the Chief of the CIPC to carry out, among other procedures, expert ballistic tests on the weapons carried by the police officers on the day of the incident and the site survey.<sup>99</sup>

75. On August 15, 2005, Gleimar C. Uzcátegui Jiménez and Paula Yulimar Uzcátegui rendered statements before the Seventh Prosecutor's Office.<sup>100</sup>

76. On October 5, 2005, the CICPC forwarded the survey to the Seventh Prosecutor.<sup>101</sup>

77. On October 11, 2005, the Chief of the Recovered Objects Unit of the CICPC and the Seventh Prosecutor drafted a formal document recording the fact that the evidence in the case was contained in two bags, one of which was in very poor state, since "the evidence inside it was wet and compacted, which prevented its identification."<sup>102</sup>

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<sup>94</sup> Cf. Report of June 16, 2005, signed by the Seventh Prosecutor of the Public Prosecutor's Office, State of Falcón and the Fifth Prosecutor of the Metropolitan Area of Caracas (Evidence file, volume 1, page 368).

<sup>95</sup> Official letter FAL-7-641-05 addressed to Oswaldo Rodríguez León, Commander General of the Armed Police Forces of the State of Falcón, signed by Attorney Roldán di Toro Méndez, Seventh Prosecutor of the Public Prosecutor's Office of the State of Falcón (Evidence file, volume 1, page 369).

<sup>96</sup> Statement of Luis Enrique Uzcátegui Jiménez before the Seventh Prosecutor of the Public Prosecutor's Office of the State of Falcón, on December 6, 2005 (Evidence file, volume 1, page 377).

<sup>97</sup> Records of hearings held on December 7, 2005 before the 126th Prosecutor of the Metropolitan Area of Caracas with jurisdiction on matters related to the protection of Fundamental Rights, statements rendered by José Rodríguez Valdemar, Juan Alexander Rojas Reyes and Nelson Gregorio Saavedra, Deputy Inspectors attached to the Armed Police Forces of the State of Falcón (Evidence file, volume 1, page 379).

<sup>98</sup> Official letter No. 001240 of the Directorate of Investigations of the General Headquarters of the Armed Police Forces of the State of Falcón to the Seventh Prosecutor of the Public Prosecutor's Office of the State of Falcón, signed by Commander General Oswaldo Rodríguez León (Evidence file, volume 1, page 370).

<sup>99</sup> Official letter No. FAL-7-0665-05 of August 9, 2005, signed by Attorney Roldán Di Toro Méndez, Seventh Prosecutor of the Public Prosecutor's Office of the State of Falcón (Evidence file, volume 1, page 371).

<sup>100</sup> Statement of Gleimar C. Uzcátegui Jiménez before the Seventh Prosecutor of the Public Prosecutor's Office of the State of Falcón of August 15, 2005 and Official letter FAL-7-699-05 of August 26, 2005, addressed to The Attorney General and signed by the Seventh Prosecutor of the Public Prosecutor's Office of the State of Falcón (Evidence file, volume 1, pages 373 a 376).

<sup>101</sup> Cf. Official letter N° 9700-060 signed by Pedro Requena, Chief Commissioner of the Sub-delegation of Coro, State of Falcón (Evidence file, volume 1, page 372).

<sup>102</sup> Report signed on October 11, 2005 in Santa Ana de Coro by the Head of the Recovered Objects Unit of the Scientific Penal and Criminal Investigations Corps, Coro branch office, Sub-Inspector Francisco J, Añez A., and the Seventh Prosecutor of the State of Falcón, Mario S. Molero R. Attachment to the petitioners' brief

78. In December 2005, Luis Uzcátegui<sup>103</sup> and three police officers rendered statements before the Seventh Prosecutor's Office.<sup>104</sup>

79. On September 3, 2008, the Analysis and Fact Reconstruction Division of the Body for Scientific Criminal, Criminological Investigations carried out an investigation consisting of a bullet trajectory analysis.<sup>105</sup>

80. On September 3 and 5, 2008 the Prosecutor's Office charged two police officers with the crimes of simulating a punishable act, improper use of a firearm and aggravated homicide, to the detriment of Néstor José Uzcátegui.<sup>106</sup>

81. On September 24, 2008, the Public Prosecutor's Office filed a request for precautionary measures, requesting pretrial detention for the individuals charged. The request was turned down by the Court of First Instance of the Criminal District of Falcón because the necessary procedural requirements under the General Criminal Procedure Code were not met.<sup>107</sup>

82. Between March and August 2009, the following persons rendered statements before the Seventeenth Prosecutor's Office of the Public Prosecutor's Office of the State of Falcón: Uzcátegui Jiménez Yrmeli Gabriela, Romero Leal Enrique Cecilio, Riera Gómez Alexis Rafael, Gustavo Antonio Argueta Tovar, López Colina Wuilmen, Jiménez Medina Ángel Antonio, Suárez López Wilmen José, Acosta José Luis, and Francisco Ramón Primera Oberto.<sup>108</sup>

83. On March 18, 2009 Police Weapons Division of Falcón forwarded a certified copy of the record sheets of the weapons showing the firearm specifications and details of the officers on duty at the time of the incident of January 1, 2001.<sup>109</sup> On the same date

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of January 13, 2010 (Evidence file, volume 1, page 383). Report by the Chief of the Coro branch office of the Scientific Penal and Criminal Investigations Corps of October 4, 2005 (Evidence file, volume 21, pages 6692 a 6693), and Report of October 11, 2005, Seventh Prosecutor of the State of Falcón (Evidence file, volume 21, page 6694).

<sup>103</sup> Statement by Luis Enrique Uzcátegui Jiménez before the Seventh Prosecutor of the Public Prosecutor's Office of the District Court of the State of Falcón of December 6, 2005 (Evidence file, volume 1, pages 377 a 378).

<sup>104</sup> Cf. Record of hearings held on December 7, 2005 before the 126<sup>th</sup> Prosecutor of the Metropolitan Area of Caracas with jurisdiction in the protection of fundamental rights, statements of José Rodríguez Valdemar, Juan Alexander Rojas Reyes and Nelson Gregorio Saavedra, Deputy Inspectors attached to the Armed Police Forces of the State of Falcón (Evidence file, volume 1, pages 379 to 382).

<sup>105</sup> Cf. Ballistic Test N° 9700-029-2120 of September 3, 2008 (Evidence file, volume 18, page 5616).

<sup>106</sup> In its communication of December 9, 2008, addressed to the Inter-American Court concerning the Provisional Measures "Matter of Luis Uzcátegui regarding Venezuela" the State of Venezuela refers to: Record of Charges, Seventeenth Prosecutor's Office of the Public Prosecutor's Office of the State of Falcón, case N° 11-F17-214-07 (provisional measures file, volume 4, page 2095).

<sup>107</sup> Reported by the State in its communication of December 9, 2008, addressed to the Inter-American Court as part of the Provisional Measures in the "Matter of Luis Uzcátegui regarding Venezuela" (provisional measures file, volume 6, page 2095).

<sup>108</sup> Cf. Record of interview on March 18, 2009 (Evidence file, volume 18, page 5617); Record of interview on August 5, 2009 (Evidence file, volume 18, page 5619); Record of interview on August 5, 2009 (Evidence file, volume 18, pages 5619-5620); Record of interview on August 6, 2009 (Evidence file, volume 18, page 5622); Record of interview on August 6, 2009 (Evidence file, volume 18, pages 5622 to 5623); Record of interview on August 6, 2009 (Evidence file, volume 18, page 5623); Record of interview on August 6, 2009 (Evidence file, volume 18, page 5624); Record of interview on August 6, 2009 (Evidence file, volume 18, pages 5624-5625), and Record of interview on August 12, 2009 (Evidence file, volume 18, page 5625).

<sup>109</sup> Cf. Official letter N. Dir. Log/Div. Com-024-09 dated March 18, 2009 (Evidence file, volume 18, page 5617).

they forwarded the certified copy of the weapons register (record book) for January 1, 2001.<sup>110</sup>

84. On December 3, 2009, the Ballistics Unit of the Falcón Scientific Penal and Criminal Investigation Corps carried out a specialized technical assessment of the evidence gathered at the scene of the incident of January 1, 2001.<sup>111</sup>

85. On February 14, 2011, the Seventeenth Prosecutor of the Public Prosecutor's Office of the State of Falcón took the statement of Paula Yulimar Uzcátegui Jiménez.<sup>112</sup>

86. Between March 17 and April 26, 2011, the Criminal Investigation Unit Against the Violation of Fundamental Rights carried out investigation procedures consisting of four reports in connection with the events of January 1, 2001.<sup>113</sup>

87. According to Prosecutor Spartacus Martinez, a witness proposed by the State, during the public hearing held at the seat of the Court in November 2011, formal charges were brought against two individuals.<sup>114</sup> As of the date of this Judgment, and despite having made repeated requests to the State, the Court has received no information on the current status of this process or on the results of said procedural action, nor has any documentation been provided relating to this matter.

#### ***D. - The arrest of Luis and Carlos Eduardo Uzcátegui***

88. Similarly, it has not been disputed that, in the context of the operation carried out on January 1, 2001, at the Uzcátegui family home, Luis Enrique Uzcátegui and Carlos Eduardo Uzcátegui – the latter being 17 years old at the time – were arrested and transported by police officers in a police vehicle to the headquarters of the Armed Police Forces of the State of Falcón, where a statement was taken from Luis Enrique Uzcátegui<sup>115</sup> and where they remained until January 2, 2001.

#### ***E. - Alleged threats and harassment against Luis Enrique Uzcátegui***

89. On June 20, 2001, Luis Enrique Uzcátegui filed a complaint alleging that on January 6, 2001, two police officers of the State of Falcón arrived while he was at the home of his relatives and "invited" him to go to Caracas, adding that the same

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<sup>110</sup> Cf. Official letter N. Dir. Log/Div. Com-023-09 dated March 18, 2009 (Evidence file, volume 18, page 5617).

<sup>111</sup> Cf. Technical report N° 9700-060-B-301 dated December 3, 2009 (Evidence file, volume 18, pages 5626 a 5627).

<sup>112</sup> Cf. Record of interview on February 14, 2011, with Paula Yulimar Uzcátegui Jiménez at the Seventeenth Prosecutor's Office of the Public Prosecutor's Office of the State of Falcón (Evidence file, volume 18, pages 5627- 5628).

<sup>113</sup> Cf. Expert report on presence of hematic substances in the house, March 17, 2011 (Evidence file, volume 18, pages 5629-5632); Expert report on intraorganic trajectory, April 15, 2011 (Evidence file, volume 18, pages 5633-5634); Expert report on ballistics, April 18, 2011 (Evidence file, volume 18, pages 5634-5638), and Report on the reconstruction of events, dated April 18, 2011 (Evidence file, volume 18, pages 5638-5652).

<sup>114</sup> Cf. Statement of witness Espartaco Martínez at public hearing on merits and possible reparations and costs, November 28, 2011.

<sup>115</sup> Cf. Complaint filed before Second Prosecutor by Mr. Luis Enrique Uzcátegui on June 1, 2001 (Evidence file, volume 1, pages 388, 389, 390, 391 and 392); Record of interview with Mr. Carlos Uzcátegui, January 26, 2001, police procedure carried out by Luis Miguel Freitas Alvarez (Evidence file, volume 1, pages 406-407), and Police Report. Directorate of Investigations, General Headquarters of the Armed Police Forces of the State of Falcón, January 1, 2001, signed by Deputy Inspector Alexander Rojas (Evidence file, volume 1, pages 394 -395).

individuals returned the following day, but that on that occasion they were not received.<sup>116</sup> The State did not mention this fact in its answer brief.<sup>117</sup>

90. On July 25, 2001, Luis Enrique Uzcátegui filed a complaint stating that on July 20, 2001, a police delegation had arrived at his home with a summons from Commander General Rodríguez León ordering him to appear that same day at the Police headquarters to discuss with him the complaints he had filed against the police officers in connection with the death of Néstor José Uzcátegui, whereupon he refused to sign the summons, and was then informed by the police officers that they would arrest him.<sup>118</sup>

91. On December 11, 2002, Luis Enrique and Paula Uzcátegui filed a complaint stating that on November 13, 2002, unidentified persons had tried to snatch Luis's three year-old niece from the arms of her mother Paula, whom they beat and threatened saying "if your brother continues with his complaint, the girl will be the one who suffers."<sup>119</sup> The State did not refer to this fact in its reply brief.

92. On December 22, 2003, Luis Enrique Uzcátegui alleged that on November 14, 2002 two individuals on motorcycles had shot at him while he was driving a car near his home. He was not injured.<sup>120</sup> The State did not refer to this fact in its reply.

93. On January 25, 2003, Luis Enrique Uzcátegui was detained by police as a result of an alleged claim by his sister Irmelis Gabriela Uzcátegui Jiménez<sup>121</sup>, that she and

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<sup>116</sup> Cf. Complaint filed by Luis Enrique Uzcátegui before the Second Assistant Prosecutor of the Second Prosecutor's Office, June 20, 2001 (Evidence file, volume 2, pages 829-830).

<sup>117</sup> Two incidents included in the IACHR reports are not mentioned in the brief submitting the case. One alleges that on March 15, 2001 officers of the Armed Police Forces of the State of Falcón raided the home of Mr. Luis Enrique Uzcátegui. They arrived without a warrant, kicked down the door and, because they did not find him there, they allegedly beat and threatened the brother of Mr. Luis Enrique Uzcátegui, the minor Carlos Eduardo. Episcopal Human Rights Vicariate of the Archdiocese of Caracas. Report on the Situation of Human Rights Defenders in Venezuela, 2007 (Evidence file, volume 24, page 8024). The other incident, on April 13, 2002, involves officers of the Armed Police Forces of the State of Falcón, attached to the DIPE group, who allegedly raided the home of the Uzcátegui family, without a warrant, in search of Mr. Luis Uzcátegui. They also insulted and threatened his mother, Mrs. Julia Jiménez, and caused damage to furniture in the house before leaving.

<sup>118</sup> Cf. Record of Hearing, Attorney General's Office, July 25, 2001 (Evidence file, volume 21, page 6711).

<sup>119</sup> Cf. Complaint of Luis Enrique Uzcátegui to the Technical Corps of the Judicial Police, Monitoring of Investigation, December 11, 2002 (Evidence file, volume 1, page 421).

<sup>120</sup> Brief of First Prosecutor of the Criminal District Court of the State of Falcón to the Attorney General's Office of the Republic of Venezuela, Office for the Protection of Fundamental Rights, dated November 10, 2005. Attachment to the petitioners' brief of December 7, 2005, addressed to the Inter-American Court within the Provisional Measures granted to Luis Enrique Uzcátegui (provisional measures file, volume VI, page 1126). Copy of the complaint filed before the Technical Corps of the Judicial Police dated December 11, 2002 by Luis Uzcátegui and Paula Yulimar Uzcátegui (Evidence file, volume 21, page 6608). In the complaint filed by Luis Enrique Uzcátegui before the First Prosecutor of the Public Prosecutor's Office of the State of Falcón on March 27, 2003, he himself stated that this incident had been carried out by individuals on motorcycles "which are only used by the FAP police forces". Complaint filed before the First Prosecutor of the Public Prosecutor's Office of the State of Falcón, March 27, 2003 (Evidence file, volume 8, page 4181).

<sup>121</sup> Cf. Police Report of January 25, 2003 (Evidence file, volume 8, page 3959); Prosecutor's written application of March 28, 2008 before the Third Supervising Judge of the Criminal District Court of the State of Falcón (Evidence file, volume 8, pages 4245-4263) and ruling of the Judge of the District Criminal Court of the State of Falcón, Second Supervising Court, of February 3, 2009 (Evidence file, volume 11, pages 4809 to 4816). Also see brief to the Senior Prosecutor of the Public Prosecutor's Office of the State of Falcón, Oswaldo Rodríguez León of January 29, 2003 (Evidence file, volume 9, pages 4328-4330); Police reports of January 25, 2003 (Evidence file, volume 9, pages 4331-4335); Police Report of January 25, 2003 (Evidence file, volume 8, page 3959), and Record of interview with Irmely Gabriela Uzcátegui Jiménez of January 28, 2003 before the Armed Police Forces (Evidence file, volume 8, page 3995).

her mother had been victims of domestic violence, and he was taken to the Police station where he was held until the next morning.<sup>122</sup> According to his statement rendered on January 29, 2003, the police had tried to frame him by ordering his sister to file a complaint accusing him of acts of violence that never took place. He was released after signing a "good behavior caution", together with his mother and sister.<sup>123</sup>

94. Similarly, from the body of evidence it appears that Luis Enrique Uzcátegui was not entered in the register of detained persons or in the arrest books<sup>124</sup> and that the Prosecutor's Office itself had opened an investigation that resulted in charges against the agents responsible for his arrest, for the crime of unlawful detention committed by a public official with abuse of authority.<sup>125</sup> Luis Enrique Uzcátegui reported these facts on March 27, 2003.<sup>126</sup>

95. Furthermore, the Court notes that the Commission reported that between the end of 2002 and the beginning of 2003, Luis Uzcátegui was frequently forced to move house and leave the State of Falcón, due to the threats and harassment to which he was subjected.<sup>127</sup> This fact was not disputed by the State.

96. The Court points out that the following facts do not form part of the case: i) due to insufficient background evidence, the fact that Luis Enrique Uzcátegui was mistreated during his arrest on January 25, 2003<sup>128</sup>, as stated by the representatives and by Luis Enrique Uzcátegui<sup>129</sup>; ii) in the absence of a record of a complaint filed

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<sup>122</sup> According to subsequent comments made by Irmely Gabriela Uzcátegui in another statement, the complaint she signed was not read out to her, and its content is not consistent with the truth. In this regard see the evidence forwarded by the State itself, Statement of Irmely Gabriela Uzcátegui Jiménez of January 29, 2003 before the First Prosecutor's Office of the Criminal Circuit Court of the State of Falcón (Evidence file, volume 9, page 4340). In several statements, Luis Enrique Uzcátegui reported that he had been arrested at his home, without a warrant, that he had been mistreated by the police and placed in a cell with five other detainees; Statement of Luis Enrique Uzcátegui Jiménez of January 29, 2003 before the First Prosecutor's Office of the Criminal Circuit Court of the State of Falcón. He added that the police had set a trap by ordering his sister to file a complaint accusing him of acts of violence that did not take place (Evidence file, volume 9, pages 4338 and 4339), Record of interview with January 31, 2005 before the First Prosecutor's Office of the District Court of the State of Falcón (Evidence file, volume 9, pages 4522 a 4524). See also Record of interview with Luis Enrique Uzcátegui of April 4, 2005 before the Scientific Penal and Criminal Investigations Corps of the Sub Office for Coro, State of Falcón (Evidence file, volume 9, pages 4557 a 4559); Press report: "Luis Enrique Uzcátegui affirms: it was a simple argument with my sister", El Falconiano, of February 1, 2003 (Evidence file, volume 8, page 3996), and press report: "Luis Enrique Uzcátegui accuses once again", La Prensa, of January 28, 2003 (Evidence file, volume 8, page 4050).

<sup>123</sup> Cf. Good Conduct Caution issued on January 26, 2003 (Evidence file, volume 9, page 4336). Also see record of interview with Luis Enrique Uzcátegui on November 9, 2005 by the Scientific, Penal and Criminal Investigations Corps, Coro branch office (Evidence file, volume 1, pages 528 and 529).

<sup>124</sup> Cf. Brief of the Prosecutor of January 28, 2003 (Evidence file, volume 8, page 4100) and Prosecutor's written application of March 28, 2008 before the Third Supervising Judge of the Criminal Circuit Court of the State of Falcón (Evidence file, volume 8 pages 4245 a 4263).

<sup>125</sup> Cf. Prosecutor's written application of March 28, 2008 before the Third Supervising Judge of the Criminal Circuit Court of the State of Falcón (Evidence file, volume 8 pages 4245-4263, and page 4100).

<sup>126</sup> Cf. Complaint filed before the First Prosecutor of the Public Prosecutor's Office of the State of Falcón (Evidence file, volume 8, pages 4183-4186).

<sup>127</sup> This information had already been submitted within the context of the Provisional Measures before the Inter-American Court.

<sup>128</sup> The evidence file shows that the Prosecutor's Office had asked Luis Enrique Uzcátegui to have a medical examination to confirm the mistreatment to which he was allegedly subjected, but he did not have one. See Press report: "Luis Enrique Uzcátegui asserts: it was a simple argument that I had with my sister", El Falconiano, February 1, 2003 (Evidence file, volume 8, page 3996).

<sup>129</sup> Cf. Statement of Luis Enrique Uzcátegui Jiménez of January 29, 2003 before the First Prosecutor of the Criminal Circuit Court of the State of Falcón (Evidence file, volume 9, pages 4338 and 4339); Record of



before the Venezuelan authorities, that on March 1, 2004 Luis Enrique Uzcátegui was allegedly arrested by officers of the Office of Prevention and Intelligence Services, who entered his home without a warrant,<sup>130</sup> and iii) since it was not included within the factual framework of the case submitted by the Commission, or in other evidence related to it, that on June 24, 2010 Luis Enrique Uzcátegui was arrested by two police officers of the State of Falcón in the city of Coro in an area known as "3 platos" and that he was released after informing the officers that he was a human rights activist.

**F. - Investigations into the alleged threats, harassment and arrests to the detriment of Luis and Carlos Eduardo Uzcátegui**

97. On June 20, June 21, July 25 and December 11, 2002, January 29, March 27, May 20, and December 22, 2003, and February 11, 2004, and January 31, 2005, and September 9, 2005, Luis Enrique Uzcátegui filed complaints before various Prosecutors and police departments, regarding the alleged acts of harassment, retaliation, surveillance and threats against him and his brother Carlos Eduardo<sup>131</sup> and, furthermore, disseminated this information to various media organizations.<sup>132</sup>

98. On November 2, 2002, the Senior Prosecutor's Office of the State of Falcón assigned the First Prosecutor of the Judicial District of the State of Falcón the task of opening an investigation into the facts regarding the detention of Luis Enrique Uzcátegui of January 25, 2003.<sup>133</sup>

99. On December 2, 2002, the First Prosecutor began the summary investigation into the alleged unlawful detention committed against Luis Enrique Uzcátegui.<sup>134</sup> On December 19, 2002, the Prosecutor asked Commander General Rodríguez León to release the summons issued to Luis Uzcátegui.<sup>135</sup>

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interview with January 31, 2005 before the First Prosecutor's Office of the District Court of the State of Falcón (Evidence file, volume 9, pages 4522 to 4524), and Record of Complaint filed before the First Prosecutor of the Public Prosecutor's Office of the State of Falcón on March 27, 2003 (Evidence file, volume 8, pages 4183-4186).

<sup>130</sup> According to Mr. Luis Enrique Uzcátegui, he was beaten, then taken to an unknown place, where he was detained for approximately 5 days, during which time he was subjected to alleged acts of torture and death threats. After his release, he was threatened with death, along with his immediate family members, if he reported the events that occurred. Cf. *Diario Nuevo Día, Sucesos*, "The DISIP kidnapped me for five days", Friday March 26, 2004. Year I Nº 144, attachment to the petitioners' brief of March 14, 2007 (Evidence file, volume 1, page 530).

<sup>131</sup> Cf. Complaint reiterated before the Ombudsman's Office, on August 30, 2002 and to various media organizations.

<sup>132</sup> Cf. Complaint of Luis Enrique Uzcátegui to the media. Page No. 5 of File No. 11F-7-235-01, undated (Evidence file, volume 18, page 6648). On March 26, 2004, Luis Uzcátegui told the newspaper *El Diario Nuevo Día* that he was unlawfully arrested once again on March 1, 2004, by officers of the Directorate of Intelligence and Prevention Services, who entered his home without a warrant and beat him. *El Diario Nuevo Día, Sucesos*, "The DISIP kidnapped me for five days", Friday March 26, 2004. Year I Nº 144 (Evidence file, volume 1, page 530). On January 11, 2005, Luis Uzcátegui told the newspaper *La Mañana* that he blamed the extermination groups –mainly their Commander in chief– for the death of his brother Néstor José. He also blamed him for what might happen to him, since he had suffered harassment from officials attached to the police. *La Mañana*, Santa Ana of Coro, Tuesday, January 11, 2005, "Four years without resolving the case" by María E. Romero (Evidence file, volume 1, page 531).

<sup>133</sup> Cf. Evidence file volume 8, page 3903.

<sup>134</sup> Cf. Evidence file volume 8, page 3915.

<sup>135</sup> Cf. Evidence file volume 8, page 3916.

100. On December 17, 2002, the Senior Prosecutor of the Public Prosecutor's Office of the State of Falcón, forwarded to the First Prosecutor "additional documents of the case in which Luis and Paula Uzcátegui appear as victims" (*supra* para. 91).<sup>136</sup>

101. On January 28, 2003, the First Prosecutor summoned Luis Uzcátegui to appear.<sup>137</sup> On January 29, 2003, the First Prosecutor of the Judicial District of the State of Falcón took the statements of Irmely Uzcátegui<sup>138</sup> and Luis Enrique Uzcátegui.<sup>139</sup> On January 29, 2003, the First Prosecutor requested information from the Third Prosecutor regarding Luis Enrique Uzcátegui's arrest on January 25, 2003.<sup>140</sup> On the same day, the Third Prosecutor reported that his office had no knowledge of said arrest.<sup>141</sup> That day, the First Prosecutor asked the Municipal Judge of Miranda of the Judicial District of the state of Falcón to "transfer and establish the Court at the headquarters of the General Department of the Armed Police Forces of the State of Falcón [...] in order to determine whether this department [...] or another has a record of the entry and release of citizens who had been apprehended [and specifically if among them] there is an entry/release record [for] Luis Enrique Uzcátegui."<sup>142</sup>

102. On January 29, 2003, the First Prosecutor asked the Medical Forensics Department of Coro-Falcón to order a forensic examination of Irmelis and Paula Uzcátegui.<sup>143</sup> On the same date, Commander General Rodríguez León filed a report with the Senior Prosecutor of the Public Prosecutor's Office of the State of Falcón, reporting on the events of January 25, 2003 which led to the arrest of Luis Enrique Uzcátegui.<sup>144</sup> In another official letter addressed to the First Prosecutor, Commander General Rodríguez León said that on that day "the commander ordered the corresponding investigation and an administrative report to establish responsibility."<sup>145</sup>

103. On January 31, 2003, the First Prosecutor forwarded to the Public Prosecutor's Office a copy of the record of judicial inspection carried out at the Department on January 30, 2003, in relation to Luis Enrique Uzcátegui's arrest.<sup>146</sup> That same day the Director for the Protection of Fundamental Rights filed a brief before the First Prosecutor delegated by the Attorney General, indicating that Luis Enrique Uzcátegui is the beneficiary of Provisional Measures and that, if an illegal detention occurred on

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<sup>136</sup> Cf. Specifically, a police report of December 2002 which states that a police delegation visited the scene of the incident to interview "several passers-by who upon being interviewed about the incident said they knew nothing about it" (Evidence file, volume 8, page 4101 and 4105).

<sup>137</sup> Cf. Official letter N. FAL-1-109 of January 28, 2003 (Evidence file, volume 8, page 3917).

<sup>138</sup> Cf. Statement of Irmely Gabriela Uzcátegui of January 29, 2003 before the First Prosecutor of the Judicial district of the State of Falcón (Evidence file, volume 8, pages 4340, 3954 and 3955).

<sup>139</sup> Cf. Statement of Luis Enrique Uzcátegui Jiménez of January 29, 2003 before the Senior Prosecutor of the Judicial district of the State of Falcón (Evidence file, volume 8, page 3952 and 3953).

<sup>140</sup> Cf. Official letter FAL 1-00117 of January 29, 2003 (Evidence file, volume 8, page 3918).

<sup>141</sup> Cf. Official letter FAL 3-0151-03 of January 29, 2003 (Evidence file, volume 8, page 3920).

<sup>142</sup> Official letter of the First Prosecutor of the Public Prosecutor's Office of January 29, 2003 (Evidence file, volume 8, page 3927).

<sup>143</sup> Cf. Official letter FAL 1-00125 of January 29, 2003 (Evidence file, volume 8, page 3955).

<sup>144</sup> Cf. Evidence file, volume 8, page 4328. On January 28, 2003, Commander General Rodríguez León presented an Official letter with the record of the interview signed by Irmely Uzcátegui and the good conduct caution signed on January 26, 2003 (Evidence file, volume 8, page 3924).

<sup>145</sup> Official letter 0000204 of January 29, 2003 (Evidence file, volume 8, page 3957).

<sup>146</sup> Cf. Official letter 1-137 of January 31, 2003 (Evidence file, volume 8, page 3962).

January 25, 2003, "it is incomprehensible that these police officers continue violating the civil rights of this citizen."<sup>147</sup>

104. On January 31, 2003, Luis Enrique Uzcátegui testified before the First Prosecutor of the Judicial District of the state of Falcón in relation to the events of January 25, 2003.<sup>148</sup> That same day, the First Prosecutor of the Criminal Court District of the State Falcón ordered the Commander in Chief of the Scientific Investigations Corps of the State Falcón to carry out various investigative procedures in relation to Luis Enrique Uzcátegui's detention on January 25, 2003.<sup>149</sup>

105. On February 7, 2003, the First Prosecutor requested assistance from the Third Prosecutor of the Public Prosecutor's Office of the State of Falcón to identify the persons involved in the events of January 25, 2003.<sup>150</sup> On February 13, 2003, the Third Prosecutor of the Public Prosecutor's Office provided the information requested.<sup>151</sup> On February 26, 2003, the First Prosecutor summoned the Ombudsman to appear to render a statement before the Prosecutor's Office.<sup>152</sup>

106. On February 10, 2003, Commander General Rodríguez León presented "a clarification of the complaints" of Luis Enrique Uzcátegui to the Second Prosecutor.<sup>153</sup> On February 27 of that year, Commander General Rodríguez León forwarded the First Prosecutor a report regarding Luis Enrique Uzcátegui, drafted by the department of internal affairs.<sup>154</sup>

107. On February 28, 2003, the First Prosecutor of the Public Prosecutor's Office of the State of Falcón, filed charges for the crime of unlawful arrest against one of the police officers for the detention of Luis Enrique Uzcátegui.<sup>155</sup> On March 21, 2005, the request submitted on January 31, 2003 was reiterated to the Commander in Chief of the Scientific Investigations Corps of the State of Falcón.<sup>156</sup>

108. On September 8, 2005, the First Prosecutor of the Criminal District of the State of Falcón summoned Paula Uzcátegui, Yrma Jiménez, and Isabel Palencia to render statements in connection with the events of January 25, 2003.<sup>157</sup> Also, on that same

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<sup>147</sup> Official letter N. DPDF-12-374 of January 31, 2003 (Evidence file, volume 8, page 4108).

<sup>148</sup> Cf. Statement of Luis Enrique Uzcátegui of January 31, 2005 First Prosecutor's Office of the Judicial District of the State of Falcón (Evidence file, volume 9, page 4522), and statement of Luis Enrique Uzcátegui of September 9, 2005 before the First Prosecutor's Office of the Judicial District of the State of Falcón (Evidence file, volume 9, page 4531).

<sup>149</sup> Cf. Official letter FAL 1-0144 of February 16, 2005 (Evidence file, volume 9, page 4516).

<sup>150</sup> Cf. Official letter FAL 1-180 of February 7, 2003 (Evidence file, volume 8, page 3964).

<sup>151</sup> Cf. Official letter FAL 3-226 of February 13, 2005 (Evidence file, volume 8, page 4043).

<sup>152</sup> Cf. Official letter of February 26, 2006 (Evidence file, volume 8, page 4044), and Official letter DDEF N. 00395-03 of February 27, 2003 (Evidence file, volume 8, pages 4046 and 4047). The Ombudsman stated that according to the applicable legislation, he was "exempt from testifying as a witness."

<sup>153</sup> Cf. Official letter clarifying complaint filed on February 10, 2003 (Evidence file, volume 8, page 3967 and subseq.).

<sup>154</sup> Cf. Official letter N. 0000497 of February 27, 2003 (Evidence file, volume 8, page 4048 and subseq.). Said report included copies of the record of the opening of an administrative inquiry into the officers present on the day of the events of January 25, 2003 (Evidence file, volume 8, page 4056). Records of the interviews with the same officers were also forwarded (Evidence file, volume 8, page 4060 and ss).

<sup>155</sup> Cf. Record of Charges, February 28, 2003 (Evidence file, volume 8, pages 4099 and 4100).

<sup>156</sup> Cf. Official letter FAL 1-038 dated March 1, 2006 (Evidence file, volume 9, page 4539).

<sup>157</sup> Cf. Official letter FAL 1- 1572 dated September 8, 2005 (Evidence file, volume 9, pages 4525 a 4527).

date, the First Prosecutor of the Criminal District of the State of Falcón summoned several police officers to appear in relation to the same incident.<sup>158</sup>

109. On May 12, 2005, the request made on January 31, 2003, was reiterated.<sup>159</sup> (*supra* para. 104). On October 5, 2005, the Prosecutor took the statements of the police officers identified by Luis Enrique Uzcátegui in connection with the detention of Luis Enrique and Carlos Eduardo Uzcátegui<sup>160</sup> (*supra* para. 88). That same day, the summons issued on September 8, 2005, was reiterated.<sup>161</sup>

110. On October 13, 2005 the summons ordered on September 8, 2005 were sent.<sup>162</sup>

111. On October 17, 2005, the First Prosecutor of the Criminal District of the State of Falcon took the statements of one of the police officers present at the incident on January 25, 2003.<sup>163</sup> On November 9, 2005, the First Prosecutor received the statement of Luis Enrique Uzcátegui in relation to the events of January 25, 2003.

112. On November 10, 2005, the First Prosecutor conducted out a criminal investigation at the Sub-delegation of the General Headquarters of the local police "in order to carry out a technical inspection of the record book for entries of detainees."<sup>164</sup> On February 2, 2006, the First Prosecutor of the Criminal District of the State of Falcón asked the Commander in Chief of the Body for Scientific Investigations of the State of Falcón to submit information regarding the arrest of Luis Enrique Uzcátegui on January 25, 2003.<sup>165</sup>

113. On March 1, 2006, the First Prosecutor submitted information to the Attorney General of the Republic of Venezuela regarding the progress made in investigating the detention of Luis Enrique Uzcátegui on January 25, 2003.<sup>166</sup>

114. On July 29, 2006, the Chief Commissioner of the Sub delegation of Coro in the State Falcón forwarded information relating to the case to the First Prosecutor of the Criminal Court District.<sup>167</sup>

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<sup>158</sup> Cf. Official letter FAL-1-1794 dated October 5, 2005 (Evidence file, volume 9, page 4532).

<sup>159</sup> Cf. Official letter FAL 1-038 dated March 1, 2006 (Evidence file, volume 9, page 4539).

<sup>160</sup> Cf. Official letter FAL-1-1794, addressed to the Scientific, Penal and Criminal Investigations Corps requesting that it summon and take statements from: Oswaldo Rodríguez León, Jesús López Marcano, Miguel Caldera; Inspectors Jhony Rojas. Valdemar Rodríguez; and officers Saavedra Yonny Polo and Felipe Rojas Quero (Merits file, volume 1, page 44, and Evidence file, volume 9, page 4532). Official letter FAL-1-1794, addressed to Scientific Penal and Criminal Investigations Corps requesting that statements be taken from Oswaldo Rodríguez León, Jesús López Marcano, Miguel Caldera: from inspectors Jhony Rojas. Valdemar Rodríguez: and from officers Saavedra Yonny Polo and Felipe Rojas Quero. Reference

<sup>161</sup> Cf. Official letter FAL 1-1793 of October 5, 2005; Official letter FAL 1-1792 of October 5, 2005, and Official letter FAL 1-1791 of October 5, 2005 (Evidence file, volume 9, pages 4528 to 4530).

<sup>162</sup> Cf. Official letter of October 13, 2005 (Evidence file, volume 9, pages 4533 and ss).

<sup>163</sup> Cf. Criminal Investigation Report of October 17, 2005 (Evidence file, volume 9, pages 4535 and 4536).

<sup>164</sup> Cf. Criminal Investigation Report of November 10, 2005 (Evidence file, volume 9, page 4211).

<sup>165</sup> Cf. Official letter of February 2, 2006 (Evidence file, volume 9, page 4537).

<sup>166</sup> This information contains records of the interviews with police officers present on January 25, 2003 at the General Police Headquarters where Luis Enrique Uzcátegui was detained. The interviews are dated June 2006 and April 4, 2005 (Evidence file, volume 9, page 4539 and ss). In addition, copies of the relevant pages of the "entries book" were provided as requested by the First Prosecutor (Evidence file, volume 9, page 4848 and subsq).

<sup>167</sup> Cf. Official letter N. 04291 of June 29, 2006 (Evidence file, volume 9, page 4542).

115. On April 18, 2007, the First Prosecutor summoned the accused, accompanied by their attorneys, in relation to the facts of January 25, 2003.<sup>168</sup>

116. On May 21, 2007, legal notice was provided of the charges filed against those alleged to be responsible for the crimes of deprivation of liberty.<sup>169</sup>

117. On March 28, 2008, the First Prosecutor filed charges before the Second Court of First Instance of the Criminal Judicial Circuit of the State of Falcón against three police officers for the crime of unlawful arrest to the detriment of Luis Uzcátegui for the events of January 25, 2003 (*supra* para. 93).<sup>170</sup>

118. On April 2, 2008, the Second Court of the State of Falcon notified Luis Uzcátegui of the charges brought by the prosecution, informing him that he had five days to file "his own complaint" or to "be party to the prosecution's accusation."<sup>171</sup>

119. On December 10, 2008, the three officers attached to the Police of the State of Falcón, were accused of committing the crimes of unlawful arrest and forced entry into a home, both offenses committed with abuse of authority, simulation of a punishable act and arrest without a warrant, contemplated and sanctioned in Articles 176, 184, 239 and 179 of the Venezuelan Criminal Code.<sup>172</sup>

120. On February 3, 2009, a preliminary hearing was held, which had been postponed on several occasions because several individuals involved in the proceeding failed to appear<sup>173</sup> (including Luis Enrique Uzcátegui). On this date the Court ordered the case to be dismissed because "the facts of the charges do not constitute a crime."<sup>174</sup>

121. On February 27, 2009, the Public Prosecutor of the State of Falcón appealed the aforementioned decision.<sup>175</sup>

122. On May 6, 2009, the Court of Appeals of the Criminal Judicial District of the state of Falcón declared the appeal inadmissible, noting that it was time-barred.<sup>176</sup>

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<sup>168</sup> Cf. Record of Notification of April 18, 2007 (Evidence file, volume 9, page 4226 and ss).

<sup>169</sup> Cf. Record of charges against Citizen Tremont Sánchez Harrison of May 21, 2007 (Evidence file, volume 9, page 4238 and subsq.).

<sup>170</sup> Cf. Judgment of the Supreme Court of Justice, Criminal Circuit Court of the State of Falcón, Second Supervising Court, Coro of February 3, 2009 (Evidence file, volume 1, page 584 and ss). Notification slip. Second Supervising Court of the Criminal Circuit Court of the State of Falcón of April 2, 2008, attachment to the petitioners' brief of November 26, 2008. See Judgment of the Supreme Court of Justice, Criminal Circuit Court of the State of Falcón, Second Supervising Court, Coro of February 3, 2009 Available at <http://falcon.tsj.gov.ve/decisiones/2009/febrero/591-3-IP01-P-2008-000591-S-N.html>.

<sup>171</sup> Cf. Notification slip of April 2, 2008, issued by the Second Court of Control of the Criminal Circuit Court of the State of Falcón (Merits file, volume 21, page 6695).

<sup>172</sup> Cf. State's Report of September 6, 2010, on compliance with the Provisional Measures ordered by the Inter-American Court in the matter of Luis Enrique Uzcátegui (Provisional measures file, volume 7, page 2356).

<sup>173</sup> Cf. Record of Hearing of February 3, 2009 (Provisional measures file, volume 6, page 2191 and ss).

<sup>174</sup> Judgment of the Supreme Court of Justice, Criminal Circuit Court of the State of Falcón, Second Court of Control, Coro of February 3, 2009 (Provisional measures file, volume 6, page 2191 and ss).

<sup>175</sup> Judgment of May 6, 2009 of the Court of Appeals of the Judicial district of the State of Falcón (provisional measures file, volume 7, page 2356).

<sup>176</sup> Cf. Official letter of May 6, 2009 (provisional measures file, volume 7, page 2356).

### **G. - Criminal proceeding for slander against Luis Enrique Uzcátegui**

123. Luis Enrique Uzcátegui was President of the Commission for the Defense of Human Rights of the State Falcón, to which he dedicated himself after the death of his brother Néstor José.<sup>177</sup>

124. On February 7, 2003, Commander General Rodríguez León filed a complaint against Luis Enrique Uzcátegui before the Criminal Judicial District of the State of Falcón "for allegedly committing the crime of continuous aggravated slander, established and sanctioned in Articles 444 [...] and 99 [...] of the Criminal Code" and in relation to the statements made by Luis Enrique Uzcátegui to the press on June 4, 2002<sup>178</sup>, November 15, 2002<sup>179</sup>, February 25, 2003<sup>180</sup> and January 25 [does not specify the year].<sup>181</sup>

125. On March 17, 2003, the complaint was admitted under Case No. IU-147-03.<sup>182</sup>

126. On May 20, 2005, the Second Trial Court ordered the opening of the public oral trial in relation to the proceedings against Luis Enrique Uzcátegui. Said trial was deferred until June 17, 2005 and then until July 19, 2005.

127. On April 20, 2006 the court dismissed the summons to an oral trial because the pre-trial conciliation hearing was never held, as established in the Criminal Procedure Code, once the private accusation is admitted. In the same ruling, the court summoned the parties to a conciliation hearing to be held on May 4, 2006, which the parties did not attend.<sup>183</sup>

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<sup>177</sup> Cf. Letter of Luis Uzcátegui of December 18, 2002 in the context of Provisional Measures before the Court (Evidence file, volume 1, page 457); *La Mañana* newspaper, "Family of Néstor Uzcátegui seeks justice for his murder" *Sucesos* of January 11, 2005 (Evidence file, volume 21, page 6606); Copy of Luis Uzcátegui's letter to the President and other members of the Commission on Social Affairs and Citizen Participation of the Legislative Council of the State of Falcón of December 19, 2003 (Evidence file, volume 21, page 6604), and *La Mañana*, "FAP continues violating Human Rights in Falcón", *Sucesos* January 25, 2003 (Evidence file, volume 8, page 4037).

<sup>178</sup> According to the charges, on February 6, 2003 Luis Enrique Uzcátegui Jiménez had told the daily newspaper *La Mañana* that: "It is not possible that a year and a half has gone by since the start of these killings that were committed brazenly by death squads and led by a killer Commander and a Second Commander, such as Oswaldo Rodríguez León and Jesús López Marcano, the coordinators of these extermination groups." [...] "Lock up these murderers disguised in police uniforms."

<sup>179</sup> According to the charges, on November 15, 2002 Luis Enrique Uzcátegui Jiménez had stated in the daily *La Mañana* that: "I also blame the Commander of the FAP and all his followers for whatever could happen to [him] and [his] family because they have been subjected to reprisals by police officers who are persecuting him, threatening him wherever they find him." On the same date, Luis Enrique Uzcátegui Jiménez had told the journalist Belikes Hernández of the newspaper *La Mañana* that "they are asking the Senior Prosecutor to make a statement about police executions."

<sup>180</sup> According to the charges, on February 25, 2003 Luis Enrique Uzcátegui Jiménez had stated, referring to Oswaldo Antonio Rodríguez León in *Diario La Mañana*, that "the FAP Commander has done nothing more than discredit the institution he leads, and create an extermination squad that threaten democracy in this country."

<sup>181</sup> According to the charges, on January 25 Luis Enrique Uzcátegui Jiménez had told *Diario La Mañana* that: "We must unmask the Police Commander, Commissioner Oswaldo Rodríguez León, who is the founder of the extermination group in Falcón, and the main person responsible for the series of killings that have been committed in the region."

<sup>182</sup> Cf. Admission of the Complaint by the First Trial Court, Santa Ana de Coro, March 17, 2003 (Evidence file, volume 15, pages 5032 to 5034).

<sup>183</sup> Cf. Brief of Second Criminal Court of the State of Falcón, April 20, 2006, (Evidence file, volume 1, pages 474 and 475).

128. On April 9, 2008, the Second Court dismissed the case apparently due to “the expiry of the criminal action”, as noted by the Commission, and which was not disputed by the State.<sup>184</sup>

**VI  
MERITS  
VI. 1**

**DEPRIVATION OF THE LIFE OF NÉSTOR JOSÉ UZCÁTEGUI  
(RIGHT TO LIFE)**

***A. - Arguments***

129. The Commission argued that the State violated the rights recognized in Article 4(1) of the American Convention, in relation to Articles 1(1) and 2 thereof, to the detriment of Néstor José Uzcátegui, given that he was extrajudicially executed by State police forces, as shown by the evidence contained in the domestic court record. It pointed out, in particular, that i) the facts reveal a substantial level of consistency and uniformity on the main points made in the testimonies rendered by relatives who were present at the time of the events; ii) there is no expert evidence that Néstor José Uzcátegui was carrying a weapon at the time of his death or that he fired against police officers; iii) there is evidence indicating that at least one of the shots was received from the top down; iv) the State did not immediately take the appropriate measures following the events, nor has it carried out a timely, efficient and diligent investigation; v) there is considerable and consistent evidence of a pattern of obstruction of justice by State authorities; and vi) Néstor José Uzcátegui’s death has features consistent with the context of extrajudicial killings in Venezuela.

130. The representatives added that the State had committed the aforementioned violation by failing to adopt mechanisms of control to prevent a disproportionate use of force by State agents, which in this case translated into a lack of domestic legislation to regulate the proper use of firearms by police officers. Likewise, the representatives recalled that at the time these events took place, there existed a pattern of extrajudicial killings by police groups in Venezuela and in the State of Falcón, which remain unpunished, and therefore the facts of the case are not isolated events, but rather part of a general climate of violence and impunity that primarily victimizes young men from low-income backgrounds in Venezuela. They further noted that this situation results in an aggravated violation of the right to life by the State.

131. The State alleged that the police officers acted lawfully in fulfillment of their duties and to protect the lives of their colleagues, given that Néstor José Uzcátegui had fired at a police unit, which led it to request police backup. It emphasized that such actions are within the grounds of justification set forth in the Venezuela’s Criminal Code. Furthermore, the State reaffirmed that there was no state policy in Venezuela to cover up violations of the right to life, that the Venezuelan Constitution requires the State to train law enforcement agencies and that it is essential to provide security while respecting people’s rights to life, humane treatment and a fair trial.

***B. - Considerations of the Court***

132. In light of what it has stated in its case law with respect to the right to life, the duty of the States to guarantee said right<sup>185</sup>, the use of force by its agents<sup>186</sup>, the duty

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<sup>184</sup> Despite the fact that on several occasions the State was asked to provide the case file relating to the slander suit against Luis Enrique Uzcátegui, this was not provided to the Court.

of the States to adapt their domestic legislation to the Convention<sup>187</sup>, and considering that it is appropriate, in this case, to determine the compatibility of the actions of the State agents with the American Convention<sup>188</sup> in relation to the deprivation of the life of Néstor José Uzcátegui<sup>189</sup>, the Court will proceed to examine whether the State complied with its obligations under the Convention and will also assess the evidence presented by the parties and the Commission in order to determine whether the use of force by the State's agents in this case was legitimate and, if applicable, necessary and proportionate.

133. As to the facts surrounding the death of Néstor José Uzcátegui, the Court notes that, from the evidence presented, and from the arguments made, it appears that there are two versions of what occurred: on the one hand, there is the version based on the testimony of various family members of Néstor José Uzcátegui and, on the other hand, the version based on the statements of the police officers present at the time of the events (*supra* paras. 39 to 43).

134. The Court notes that the versions of events related to this death contradict each other on several points, including the following: i) first, there are discrepancies regarding whether or not Néstor José Uzcátegui had fired at a police unit in the street, since on the one hand, some testimonies indicate that he was outside the house with a weapon<sup>190</sup> and, on the other, statements by family members indicate that he had not

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<sup>185</sup> Cf. *Case of Barrios Family v. Venezuela. Merits, Reparations and Costs*. Judgment of November 24, 2011. Series C No. 237, para. 48 and *Cf. Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits*. Judgment of November 19, 1999. Series C No. 63, para. 139.

<sup>186</sup> Cf. *Case of Barrios Family v. Venezuela*, para. 49 and *Case of Zambrano Vélez et al. v. Ecuador. Merits, Reparations and Costs. Judgment of July 4, 2007*. Series C No. 166, paras. 82 to 90.

<sup>187</sup> Cf. *Case of Zambrano Vélez et al. v. Ecuador*, para. 88 and *Case of Barrios Family v. Venezuela*, para. 49. See also *Case of Montero Aranguren et al. (Catia Detention Center) v. Venezuela. Preliminary Objection, Merits, Reparations and Costs*. Judgment of July 5, 2006. Series C No. 150, paras. 79 to 83.

<sup>188</sup> Article 62 (3) of the American Convention states: "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 a special agreement."

<sup>189</sup> Article 4(1) of the American Convention states: "Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life."

<sup>190</sup> Cf. Police Report of January 1, 2001 signed by Juan Alexander Rojas and José Rodríguez Valdemar (Evidence file, volume 18, page 5586); Record of interview with María Antonia Toyo of January 1, 2001 (Evidence file, volume 18, page 5587); Record of interview with María Antonia Toyo Adrianza of March 7, 2002 (Evidence file, volume 18, page 5600); Record of interview on September 26, 2001 signed by Nelson Gregorio Saavedra (Evidence file, volume 18, page 5601); Record of interview on September 26, 2001 signed by José Rodríguez Valdemar (Evidence file, volume 18, page 5602); Record of interview on September 27, 2001 signed by Juan Alexander Rojas (Evidence file, volume 18, pages 5603 and 5604); Record of interview on December 7, 2005 signed by José Rodríguez Valdemar (Evidence file, volume 18, pages 5608 and 5609); Record of interview on December 7, 2005 signed by Nelson Gregorio Saavedra (Evidence file, volume 18, pages 5610 and 5611); Record of interview on December 7, 2005 signed by Juan Alexander Rojas (Evidence file, volume 18, pages 5612-5614); Record of interview on August 5, 2009 signed by Alexis Rafael Riera Gómez (Evidence file, volume 18, pages 5619 and 5620); Record of interview on August 6, 2009 signed by Gustavo Antonio Argueta Tovar (Evidence file, volume 18, page 5622); Record of interview on August 6, 2009 signed by Wuilmen López Colina (Evidence file, volume 18, pages 5622 and 5623); Record of interview on August 6, 2009 signed by Ángel Antonio Jiménez Medina (Evidence file, volume 18, page 5623); Record of interview on August 6, 2009 signed by Wilmen José Suárez López (Evidence file, volume 18, page 5624); Record of interview on August 6, 2009 signed by José Luis Acosta (Evidence file, volume 18, page 5624), and Record of interview with August 12, 2009 signed by Francisco Ramón Primera Oberto (Evidence file, volume 18, page 5625).



been out of the house since the previous day<sup>191</sup>; ii) second, there are contradictory statements regarding the individuals who were present in the house at the time of the incident, since according to the police officers' testimonies<sup>192</sup>, only three people were present (Néstor José, Luis Enrique and Carlos Eduardo Uzcátegui), while the members of the Uzcátegui family who were interviewed said more people were gathered on that occasion to celebrate the new year<sup>193</sup>, and iii) in the third place, the police officers asserted that Néstor José Uzcátegui had a weapon which he fired against them, which prompted them to defend themselves<sup>194</sup>, while Néstor José's relatives testified that he did not have any weapons and had been executed without any confrontation having taken place.<sup>195</sup>

135. Given these major discrepancies in the aforementioned testimonies or statements, the Court recalls that, in accordance with its case law, it must keep in mind that "whenever the use of force [by State agents] results in the death or injuries to one or more individuals, the State has the obligation to give a satisfactory and convincing explanation of the events and to rebut allegations of its liability, through appropriate evidentiary elements."<sup>196</sup>

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<sup>191</sup> Cf. Testimony of Luis Enrique Uzcátegui before the Court during the public hearing held on November 28, 2011 and Record of interview with Julia Chiquinquirá Jiménez García on January 19, 2001 (Evidence file, volume 18, pages 5597 and 5598).

<sup>192</sup> Cf. Record of interview on September 26, 2001 signed by Valdemar Rodriguez (Evidence file, volume 18, page 5602); Record of interview on December 7, 2005 signed by José Rodriguez Valdemar (Evidence file, volume 18, pages 5608 and 5609), and Record of interview on December 7, 2005 signed by Juan Alexander Rojas (Evidence file, volume 18, pages 5612 a 5614)

<sup>193</sup> Cf. Record of interview with Luis Enrique Uzcátegui of January 1, 2001 (Evidence file, volume 18, page 5588); Record of interview with Gleimar Uzcátegui Jiménez on January 1, 2001 (Evidence file, volume 18, page 5592); Record of interview with Luis Enrique Uzcátegui on January 18, 2001 (Evidence file, volume 18, pages 5595 and 5596); Record of interview with Julia Chiquinquirá Jiménez García on January 19, 2001 (Evidence file, volume 18, pages 5597 and 5598); Record of interview with Carlos Eduardo Uzcátegui Jiménez on January 26, 2001 (Evidence file, volume 18, page 5599); Record of interview with Gleimar Uzcátegui on August 15, 2005 (Evidence file, volume 18, pages 5605 and 5606); Record of interview with Luis Enrique Uzcátegui on December 6, 2005 (Evidence file, volume 18, page 5607); Record of interview with Irmely Gabriela Uzcátegui Jiménez on March 18, 2009 (Evidence file, volume 18, pages 5617 and 5618) and Record of interview with Paula Yulimar Uzcátegui Jiménez on February 14, 2011 (Evidence file, volume 18, pages 5627 and 5628). Also see testimony of Luis Enrique Uzcátegui before the Court during the public hearing held on November 28, 2011.

<sup>194</sup> Cf. Police Report of January 1, 2001 signed by Juan Alexander Rojas and José Rodriguez Valdemar (Evidence file, volume 18, page 5586); Record of interview on September 26, 2001 signed by Nelson Gregorio Saavedra (Evidence file, volume 18, page 5601); Record of interview on September 26, 2001 signed by José Rodriguez Valdemar (Evidence file, volume 18, page 5602); Record of interview on September 27, 2001 signed by Juan Alexander Rojas (Evidence file, volume 18, pages 5603 and 5604); Record of interview on December 7, 2005 signed by José Rodriguez Valdemar (Evidence file, volume 18, pages 5608 and 5609), and Record of interview on December 7, 2005 signed by Juan Alexander Rojas (Evidence file, volume 18, pages 5612-5614).

<sup>195</sup> Cf. Testimony of Luis Enrique Uzcátegui before the Court during the public hearing held on November 28, 2011; Record of interview with Julia Chiquinquirá Jiménez García on January 19, 2001 (Evidence file, volume 18, pages 5597 and 5598); Record of interview with Irmely Gabriela Uzcátegui Jiménez on March 18, 2009 (Evidence file, volume 18, pages 5617 and 5618); Record of interview with Paula Yulimar Uzcátegui Jiménez on February 14, 2011 (Evidence file, volume 18, pages 5627 and 5628); Record of interview with Gleimar Uzcátegui on August 15, 2005 (Evidence file, volume 18, pages 5605 and 5606); Record of interview with Gleimar Uzcátegui Jiménez on January 1, 2001 (Evidence file, volume 18, page 5592), and Record of interview with Luis Enrique Uzcátegui on January 18, 2001 (Evidence file, volume 18, pages 5595 and 5596).

<sup>196</sup> Cf. *Case Cabrera García and Montiel Flores v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 26, 2010. Series C No. 220 para. 134 and *Case of Zambrano Vélez et al. v. Ecuador*, para. 108. See also *Case Juan Humberto Sánchez v. Honduras. Preliminary Objection, Merits, Reparations and Costs*. Judgment of June 7, 2003. Series C No. 99, para. 111.

136. The Court finds that there are contradictions between the different statements that underpin the State's argument. On the one hand, the State claims that Néstor José Uzcátegui had fired against a police unit but, on the other hand, the documentation submitted includes several testimonies gathered within the context of the investigation into his death, which merely indicate that Mr. Uzcátegui had "fired shots into the air"<sup>197</sup>, but do not mention any shots fired at police units. Other testimonies by police officers only mention that a citizen was "firing shots"<sup>198</sup>, but make no reference to any confrontation between that individual and police officers. Furthermore, according to the information presented by the State, based on the testimonies of police officers, the individual who allegedly confronted the police unit had allegedly fired at Unit P-176.<sup>199</sup> However, according to the testimony of one of the officers in that unit, they were "informed that some citizens in the sector [of] Las Velitas were firing shots"<sup>200</sup>, but he made no mention whatsoever of a confrontation involving his unit. Consequently, the Court finds that the testimonies presented by the State are inconsistent in demonstrating that Mr. Uzcátegui had actually been firing shots in the street or that he had done so against the police unit.

137. Moreover, regarding the alleged confrontation between the police and Néstor José Uzcátegui, the Court also finds that the evidence furnished by the State contradicts its own allegations in these proceedings. In particular, the version given by police officers who participated in the operation states that Néstor José Uzcátegui

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<sup>197</sup> Cf. Record of interview on August 6, 2009 with Officer López Colina Wuilmen, "I was on duty patrolling the perimeter of the city, when we heard a radio message saying that an unidentified citizen was firing shots into the air in the district of Las Velitas II, and so we drove to the area" (Evidence file, volume 18, page 5624)). Record of interview with Maria Antonia Toyo, January 1, 2001, "‘pelón cañada’ was drinking aguardiente and was walking near my house, carrying a firearm and shooting into the air, not caring whether he injured the people who were walking along the paths" (Evidence file, volume 18, page 5587).

<sup>198</sup> Cf. Record of interview on August 12, 2009, with Officer Francisco Ramón Primera Oberto: "we received a radio call from General Police Headquarters telling us to go to the district of Las Velitas where a citizen was firing shots, but when we arrived there, the Public Order officers were already there" (Evidence file, volume 18, page 5625) ; Record of interview, August 6, 2009 officer José Luis Acosta, "then Headquarters ordered us by radio to proceed to Las Velitas district, near the Chávez stream, because a citizen was firing shots, so we drove to there and when we arrived they were removing two suspects who were arrested and one who was wounded and on his way to the General Hospital of Coro where he later died" (Evidence file, volume 18, page 5624 and 5625), and Record of interview on August 5, 2009 Officer Riera Gómez Alexis Rafael, "we were patrolling the Cruz Verde district of this city, when a call was received from the General Police Headquarters of the State of Falcón, reporting that some citizens in the Las Velitas area were firing shots." (Evidence file, volume 18, pages 5619 and 5620).

<sup>199</sup> Cf. Record of interview on August 5, 2009, Juan Alexander Rojas Reyes, who received a radio call from Unit P-176, commanded by Inspector Jhon Hernandez, "who told me to provide support because an armed man had fired shots at a police commission"; Record of interview on December 7, 2005, Juan Alexander Rojas Reyes, the day of the events was 01/01/2001, around 11:30 in the morning approximately when I was patrolling this sector, in Unit P-118, and that's when Unit P-176 asked for support in an operation involving a man who had fired shots at a police unit (Evidence file, volume 18, page 5586); Record of interview, December 7, 2005, Rodríguez Valdemar Jose, the day of the events was 01/01/2001, "that day I was acting as head of the group of the Intelligence Department of the General Headquarters of the Policía of the State of Falcón when we received a call by police radio in which Unit P-176 requested police support because moments earlier, while making a routine patrol through the sector, an individual had fired at them" (Evidence file, volume 18, page 5608), and Record of interview, January 1, 2001, with Juan Alexander Rojas Reyes, "we received a radio call from Unit P-176, telling us to proceed to the area of Las Velitas II next to the Vereda bridge 78-79 of Calle 20, where an individual approximately 1.69 mts. tall, wearing black Bermuda shorts and no shirt, who was carrying a firearm, had fired shots at a police unit moments ago" (Evidence file, volume 18, page 5586).

<sup>200</sup> Cf. Record of interview on August 5, 2009 Inspector Riera Gómez Alexis Rafael, "we were patrolling the Cruz Verde district of this city, when we received a call from the General Headquarters of the Police of the State of Falcón, reporting that some citizens in the area of Las Velitas were firing shots (...)" (Evidence file, volume 18, page 5619).

allegedly fired at the police while standing at the bathroom door.<sup>201</sup> However, as noted in the incident reconstruction report<sup>202</sup> of April 26, 2011, forwarded by the State itself, that version is inconsistent with the ballistic report of April 18, 2011<sup>203</sup>, which states that the “shot fired originated at a higher angle with respect to position of the victim’s body”.<sup>204</sup> Likewise, this Court finds that the witness presented by the State, Prosecutor Espartaco Martínez, declared that the “Venezuelan State has already taken conclusive steps in this investigation which [seeks to] examine the responsibility of the police officers who participated in this action,” adding that the charges had been accelerated by the expert tests carried out recently (*supra* para. 86). The witness added that “the allegations by the police [regarding the death Néstor José Uzcátegui] were neither appropriate nor true”; that the Public Prosecutor’s Office considered that this argument “[had] no validity from the standpoint of the criminological elements gathered”; that in cases of human rights violations, “which is what we are concerned with”, the possible authors “are managing the process in a very skilful way”; and that the facts of this case are related to “crimes committed by persons familiar with criminology, which is the basis for conducting the investigation”<sup>205</sup>.

138. Based on the foregoing, this Court finds that there are inconsistencies between the statements made by those representing the State regarding the events that led to the death of Néstor José Uzcátegui and the evidence contained in the file presented by the State itself. In particular, the Court notes that there are discrepancies and inconsistencies between the statements of the Falcón officers who were present during the operation of January 1, 2011 and, further, that those statements are inconsistent with the expert evidence produced in the domestic criminal proceedings.<sup>206</sup>

139. Moreover, this Court has already confirmed that the events took place in a context of extrajudicial executions carried out by police squads or units and that this situation was known to different State entities (*supra* paras. 35 to 38), and to officials responsible for conducting the investigation into the death of Néstor José Uzcátegui. In this regard, the Court notes that in a brief of April 17, 2001, the First Prosecutor of the

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<sup>201</sup> Cf. File IP01-P-2010-005394 forwarded by the State (Evidence file, volume 18, pages 5653 and ss).

<sup>202</sup> Cf. Report of reconstruction of the incident N° UCCVDF-AMC-RH-0044-11 of April 26, 2011 (Evidence file, volume 18, pages 5649 to 5652).

<sup>203</sup> Cf. Expert report on bullet trajectory N° UCCVDF-AMC-RH-0043-11 of April 18, 2011 (Evidence file, volume 18, pages 5634 to 5638).

<sup>204</sup> Report on Reconstruction of Facts No. UCCVDF-AMC-RH-0044-11 of April 26, 2011. The same report adds that the absence of bullet holes on the walls of the house located in the northeast and southeast part of the bathroom together with the negative result of the “chemo-luminescence, corresponding to the luminol tests on the wall and floor in the northeast and southeast area of bathroom” are not consistent with the statements made by the police officers present at the scene of the incident, who reported that Néstor José Uzcátegui had shot at them while standing at the entrance to the bathroom. The report adds that the ballistic, planimetric and luminol evidence on the bathroom walls of the house, is consistent with the version of events given by Yrma Josefina Jiménez, mother of Néstor José Uzcátegui, and would suggest that when the bullets were fired, Néstor José Uzcátegui was in a crouching position, with his legs bent and making contact with the southwest and northeast walls of the bathroom. The report adds that in the same place they “observed chemo-luminescence, as a positive result of the luminol test, also showing the morphology of the contact, splatter and smearing” (of blood) and finally emphasizing that “the victim’s position and location, has logical coherence, between the exit wound in the left-hand lumbar area and the impact shown in the site survey dated 01/08/2005 [located on the southwest and northwest wall of the bathroom]”. All this would be consistent with the testimony of Yrma Jiménez who said that her son was shot inside bathroom (Evidence file, volume 18, pages 5638 and subsq.).

<sup>205</sup> Statement of Espartaco Martínez before the Court during the public hearing held on November 28, 2011.

<sup>206</sup> Cf. File IP01-P-2010-005394 forwarded by the State (Evidence file, volumes 7, 10 and 18).

Public Prosecutor's Office of the Judicial District of the State of Falcón stated that the "proceedings requested [in the context of the investigation into the death of Néstor José Uzcátegui,] were clearly insufficient given the complexity of the case, particularly since it involves a crime against a person and even more so because it involves an alleged police confrontation, a phenomenon that currently occurs quite frequently, [...] because of the state of impunity prevailing in the country as a result of a multifaceted problem that we are experiencing nowadays."<sup>207</sup>

140. Furthermore, as is analyzed below (*infra* paras. 216 to 231), the Court takes into account that the authorities' investigation of the facts surrounding the death of Néstor José Uzcátegui has not been prompt or effective, nor has it been conducted within a reasonable time, because several of the basic investigative procedures necessary in this type of incident were not carried out.

141. Based on the foregoing, the Court concludes that the State did not present consistent, coherent, varied, reliable and sufficient evidence to consider that the use of use of lethal force against Néstor José Uzcátegui was, in the circumstances of the incident, legitimate or, in this scenario, absolutely necessary and proportional, or that the police officers who participated in this operation attempted to use other less lethal means. In any case, the State's responsibility has been established since it did not demonstrate that the police officers had used lethal force because Mr. Uzcátegui's actions posed a real and imminent danger to themselves or to others.

142. With regard to domestic regulations governing use of force, the Court finds that the representatives have not specified which rules of domestic legislation are, in their view, incompatible with international standards on the use of force by State security forces. For its part, the State in its arguments has referred to the rules adopted in recent years, particularly since 2006, governing the use of force by members of the police. Therefore, the Court considers that insufficient elements have been provided to examine the facts in light of Article 2 of the Convention.

143. In conclusion, the Court considers that the State has not demonstrated in this case that the police officers of the State of Falcón used legitimate and, where applicable, necessary and proportional force against Mr. Néstor José Uzcátegui; rather, it has been clearly proven that his death is attributable to the State; therefore, it considers that the State is responsible for the arbitrary deprivation of the life of Mr. Néstor José Uzcátegui, in violation of his right to life, recognized in Article 4(1) of the American Convention, in conjunction with Article 1(1) thereof.

## **VI. 2 THE ARREST OF LUIS AND CARLOS UZCÁTEGUI ON JANUARY 1, 2001. (RIGHTS TO PERSONAL LIBERTY AND RIGHTS OF THE CHILD)**

### **A. - Arguments**

144. The Commission argued that the State is responsible for the violation of Articles 7(1), 7(2), 7(3), 7.4 and 7(5), in conjunction with Article 1(1), of the American Convention, to the detriment of Luis Enrique Uzcátegui, and in conjunction with Article 19 of said instrument to the detriment of Carlos Eduardo Uzcátegui, for his arrest on January 1, 2001. It argued that the arrest took place without a warrant and without

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<sup>207</sup> Brief of April 17, 2001, file IP01-P-2010-005394 forwarded by the State (Evidence file, volume 7, page 3552).

Luis and Carlos Eduardo being discovered committing a crime *in flagranti*, as established by Venezuelan legislation. The Commission added that the Law on the Protection of Children and Adolescents of Venezuela<sup>208</sup> establishes that the imprisonment of a child must be exceptional, that only the Investigative Police may summon or arrest an adolescent suspected of an offense under investigation, immediately informing the Public Prosecutor, and that when "an adolescent is apprehended by members of other police forces, those officers must immediately inform the Investigative Police so that it can immediately inform the Public Prosecutor, something that was not taken into account in this case." The Commission further alleged that the State had not demonstrated that the brothers Carlos and Luis Enrique Uzcátegui were registered on the day of their arrest or that the place, time and circumstances of the arrest were recorded, or that they were duly informed of the reasons for their arrest. Finally, the Commission pointed out that Carlos Eduardo and Luis Enrique Uzcátegui were not brought before a judge or any other official competent to exercise judicial functions, in accordance with Venezuela's domestic law.

145. The representatives agreed with the views expressed by the Commission and, in relation to Carlos Eduardo, pointed out that despite his status as a minor, there was no separation between adults and adolescents in the place of detention. They added that the State was responsible for the violation of Article 7(6) of the American Convention since the arrests of Luis Enrique and Carlos Eduardo Uzcátegui were not recorded in the incident book at Police Headquarters, and consequently "neither one of the brothers had an opportunity, either on their own or through others, to obtain a simple and effective remedy before a judge or competent court that could rule on the illegality of the detention." The representatives added that during the time the two brothers were at Police Headquarters, both were held *incommunicado*.

146. The State argued that the actions by the police forces of the State of Falcón "complied with the law and that the transfer to the police headquarters was undertaken in order to protect the physical integrity of Luis and Carlos Eduardo Uzcátegui, and so that they could make the relevant statements, since there was also a possibility of their complicity with Néstor Uzcátegui"<sup>209</sup>.

### **B. - Considerations of the Court**

147. Having regard to its case law on this matter, the Court<sup>210</sup> shall examine the alleged violations of Article 7 of the Convention<sup>211</sup> in the following order: the alleged

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<sup>208</sup> Cf. Law for the Protection of Children and Adolescents, Special Official Gazette N° 5.266 of October 2, 1998. Articles 652 and 653.

<sup>209</sup> Brief of the State of February 25, 2008 in the proceeding before the Commission (Evidence file volume 2, pages 1242 to 1243).

<sup>210</sup> Cf. *Case of Barrios Family v. Venezuela*, para. 53 and 54 and *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 21, 2007. Series C No. 170, para. 54. Also see *Case "Juvenile Reeducation Institute" v. Paraguay. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 2, 2004. Series C No. 112, para. 228.*

<sup>211</sup> Article 7 of the American Convention states: "1. Every person has the right to personal liberty and security. 2. No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto. 3. No one shall be subject to arbitrary arrest or imprisonment. 4. Anyone who is detained shall be informed of the reasons for his detention and shall be promptly notified of the charge or charges against him. 5. Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings. His release may be subject to guarantees to assure his appearance for trial. 6. Anyone who is deprived of his liberty shall be entitled to recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful. In States Parties whose laws provide that anyone who believes himself to be threatened

illegality of the detention of Luis and Carlos Eduardo Uzcátegui (Article 7(2)); the alleged arbitrary arrest suffered by Luis and Carlos Eduardo Uzcátegui (Article 7(3)); the right to be informed of the reasons for their arrest and promptly notified of the charges against them (Article 7(4)); the right to judicial review of the detention within a reasonable time (Article 7(5)); and 5) the right to have recourse to a competent court (Article 7(6)).

148. First, the Court must ascertain whether the arrest of Luis and Carlos Eduardo Uzcátegui was carried out according to Venezuelan law, in order to establish the conventionality of the arrest.

149. As confirmed in the records, and recalling that the Constitution of the Bolivarian Republic of Venezuela in effect at the time of the events provides that “*no person shall be arrested and detained except pursuant to a court order, unless caught in flagranti delicto*”<sup>212</sup>, none of the statements by the police officers present at the incident in question mention that Luis and Carlos Eduardo’s arrests resulted from engaging in criminal activity and being caught in the act; on the contrary, their statements emphasize that they were removed from their home during the operation they were carrying out related to Néstor José Uzcátegui.<sup>213</sup> It is also an undisputed fact that no arrest warrant was presented to them and that they were held at police headquarters until January 2, 2001. Moreover, no evidence was provided to show that the arrest was recorded.

150. Furthermore, although the State in a brief submitted before the Commission indicated that the brothers were arrested based on their alleged complicity with Néstor José Uzcátegui (*supra* para. 146), the Court notes that the State did not furnish sufficient evidence to show that Luis Enrique and Carlos Eduardo Uzcátegui had been arrested for that reason. On the contrary, aside from the State’s allegations (*supra* para. 146), it is recorded that the police officers present on the day of the incident claimed to have detained them in order to ensure their safety.<sup>214</sup>

151. Also, with regard to the recording of the arrest, as provided in Article 4(2) of the Constitution, in this case the State refers only to a court report issued on January 1, 2001. The Court notes that this report does not appear to conform to domestic

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with deprivation of his liberty is entitled to recourse to a competent court in order that it may decide on the lawfulness of such threat, this remedy may not be restricted or abolished. The interested party or another person in his behalf is entitled to seek these remedies.”

<sup>212</sup> Article 44 of the Constitution states: “1. No person shall be arrested or detained except by virtue of a court order, unless such person is caught *in flagranti*. In the latter case that person must be brought before a judge within forty-eight hours of his arrest. He shall remain free during trial, except for the reasons determined by law and assessed by a judge on a case by case basis. The bail required by law for the release of a detainee shall not be subject to tax of any kind. 2. Any person under arrest has the right to communicate immediately with members of his family, an attorney or any other person in whom he trusts, and such persons in turn have the right to be informed where the detainee is being held, to be notified immediately of the reasons for his arrest and to have a written record included in the case file concerning the physical and mental condition of the detainee, either by himself or with the aid of specialists. The competent authorities shall keep a public record of every arrest made, including the identity of the person arrested, the place, time, circumstances and officers who made the arrest.”

<sup>213</sup> Cf. Police Report, statement of Juan Alexander Rojas of January 1, 2001 (Evidence file, volume 8, pages 3557 and 3558).

<sup>214</sup> Some of the statements by police officers present on January 1, at the home of the Uzcátegui family, state that they proceeded to “remove [Luis and Carlos Eduardo Uzcátegui] from the place to protect their lives.” See the Police Report, Directorate of Investigations, General Headquarters of the Armed Police Forces of the State of Falcón, of January 1, 2001, signed by Deputy Inspector Alexander Rojas (Evidence file, volume 7, pages 3557 and 3558) and Record of interview with Inspector Juan Alexander Rojas Reyes before the Technical Corps of the Judicial Police, Office of the State of Falcón of September 27, 2001 (Evidence file, volume 18, pages 5603 and 5604).

regulations, which require the competent authority to keep a public record of every arrest made, including the identity of the person detained, place, time, circumstances, and officers who made the arrest. Such provisions are, moreover, consistent with this Court's case law.<sup>215</sup>

152. As to the arrest of minors<sup>216</sup>, the Court finds that, in this case, the State acknowledged the arrest of Carlos Eduardo Uzcátegui and, referring to the provisions of the 1998 Law for the Protection of Children and Adolescents (LOPNA), did not dispute the allegations of the representatives regarding the lack of separation between Carlos Eduardo Uzcátegui and the other detainees, nor did it prove that the police immediately informed the Public Prosecutor about his arrest, as required by said law.<sup>217</sup>

153. Considering the context of the events at the time<sup>218</sup>, and that no legitimate reasons for the arrest were provided, the Court concludes that the arrest of Luis and Carlos Eduardo Uzcátegui was not carried out in conformity with Article 44 of the Constitution and LOPNA, all of which contravenes the Convention and the Court's case law in respect of the conventional provisions applicable in this case<sup>219</sup>.

154. Therefore, the arrest of Luis Enrique Uzcátegui and Carlos Eduardo Uzcátegui is unlawful and violates Article 7(2) of the Convention, in relation to Article 1(1) thereof. Furthermore, by failing to comply with the special measures of protection for minors required by law and by the Convention, the State violated Article 19 of the Convention to the detriment of Carlos Eduardo Uzcátegui.

155. As to the alleged arbitrariness of the detention, the Court notes that the factual and evidentiary documentation furnished is insufficient to rule on the conduct of the Venezuelan authorities in relation to Article 7(3) of the American Convention and its case law in this regard.<sup>220</sup>

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<sup>215</sup> Cf. *Case of Juan Humberto Sánchez v. Honduras*, para. 189 and *Case of Bulacio v. Argentina. Merits, Reparations and Costs*. Judgment of September 18, 2003. Series C No. 100, para. 132. Also see *Case of Torres Millacura et al. v. Argentina. Merits, Reparations and Costs*. Judgment of August 26, 2011. Series C No. 229, para. 99.

<sup>216</sup> Article 19 of the American Convention states: "Every minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the State."

<sup>217</sup> Article 549 of LOPNA states: "Adolescents must always be separated from adults when in preventive custody or serving a prison sentence. The offices of the investigative police must have areas exclusively for adolescents arrested *in flagranti* or on the orders of a Prosecutor of the Public Prosecutor's Office, in order to be brought before a judge, and they must be transferred to specialized facilities as soon as possible." Article 692 of the LOPNA states: "The Investigative Police may summon or apprehend an adolescent presumed to be responsible for the matter under investigation but, in no case, may it order solitary confinement. In the event of an arrest, this shall be immediately reported to the prosecutor of the Public Prosecutor's Office".

<sup>218</sup> Cf. 2001 Annual Report of the Ombudsman's Office of the Bolivarian Republic of Venezuela (Evidence file, volume 24, pages 7825-7827); Annual Report 2002 of the Ombudsman's Office of the Bolivarian Republic of Venezuela (Evidence file, volume 24, page 7828-7831), and expert report by Liderly José Montero Barrueta (Evidence file, volume 24, pages 5323 and 5324).

<sup>219</sup> Cf. *Case of Barrios Family v. Venezuela*, para. 55; *Case Rosendo Cantú et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 31, 2010. Series C No. 216, para. 201; *Case Juan Humberto Sánchez v. Honduras*, para. 82 and *Case of Bulacio v. Argentina*, paras. 128, 135 and 136. See also *Legal Status and Human Rights of the Child*. Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, paras. 56, 59, 60, 86 and 93.

<sup>220</sup> Cf. *Case of Fleury et al. v. Haiti. Merits and Reparations*. Judgment of November 23, 2011. Series C No. 236, para. 59; *Case of Usón Ramírez v. Venezuela. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 20, 2009. Series C No. 207, para. 146; *Case Torres Millacura et al. v. Argentina*, paras. 77 and 78, and *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador*, para. 96.

156. Moreover, in carrying out the arrest, the police failed to inform the brothers Luis and Carlos Eduardo Uzcátegui of the reasons for their arrest, nor did the State provide specific evidence or arguments to show that it fulfilled its obligation to promptly notify them of the charges against them;<sup>221</sup> thus, the State also violated the right recognized in Article 7(4) of the American Convention, in conjunction with the provisions of Article 44 of the Constitution, to their detriment.

157. As to the application of Article 7(5) of the Convention in this case, regarding a proper judicial review of the arrest,<sup>222</sup> although the records confirm the allegations made by the parties and the Commission, that the Uzcátegui brothers were held for a period of time that did not exceed 36 hours<sup>223</sup>, the Court notes that there are insufficient elements to demonstrate the alleged violation of Article 7(5) of the Convention.

158. Finally, with respect to Article 7(6) of the Convention, which protects the right of a detainee to appear before a judge, regardless of the observance of other rights and of judicial actions in the specific case, this implies that the detainee effectively exercises this right, assuming that he can do so and that the State can provide this remedy effectively and resolve the matter.<sup>224</sup> In this case, the representatives have not provided information about internal remedies that would have enabled Luis and Carlos Eduardo Uzcátegui to review the legality of their arrest, nor have they alleged or shown that they tried to exercise, or actually had recourse to some type of remedy in this regard. Consequently, it is not appropriate to analyze the facts of the case in light of Article 7(6) of the Convention.

159. For all the above reasons, the Court finds that the State violated the right to personal liberty, established in Article 7(1), 7(2), and 7(4) of the Convention, in relation to the duty to respect said right set forth in Article 1(1) of the same instrument, to the detriment of Luis and Carlos Eduardo Uzcátegui, as well as in conjunction with Article 19 to the detriment of the latter.

### **VI.3 RIGHT TO HUMANE TREATMENT [PERSONAL INTEGRITY] AND FREEDOM OF EXPRESSION**

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<sup>221</sup> Cf., *mutatis mutandis*, *Case of Fleury et al. v. Haiti*, para. 60; *Case of Cabrera Montiel et al. v. Mexico*, paras. 105 and 106; *Case of Juan Humberto Sánchez v. Honduras*, para. 82; and *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador*, para. 71.

<sup>222</sup> Article 7(5) of the American Convention states: "Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings. His release may be subject to guarantees to assure his appearance for trial." It is therefore clear that anyone subject to any form of deprivation of liberty must be brought before the competent authorities, so as to guarantee, among other things, their rights to personal liberty, humane treatment [personal integrity] and guarantees of due process, which must occur immediately and within the maximum period for detention established by law, which in Venezuela is 48 hours.

<sup>223</sup> Cf. Merits Report Nº 88/10 (Merits file, volume 1, page 40) and Brief of pleadings and motions (Merits file, volume 1, page 175).

<sup>224</sup> Cf. *Case of Yvon Neptune v. Haiti. Merits, Reparations and Costs*. Judgment of May 6, 2008. Series C No. 180, para. 114.



## **A. - Arguments.**

### *A.1. Alleged violation of the right to humane treatment [personal integrity] of Néstor José Uzcátegui*

160. The Inter-American Commission did not present arguments in relation to the alleged violation of this right to the detriment of Néstor José Uzcátegui.

161. The representatives argued that when the police officers entered the bathroom of the house where Néstor José Uzcátegui was, "they began firing at him indiscriminately, affecting his physical safety with bullet shots to his body." They added that during the incident Nestor did not resist and that "the lack of respect for his personal safety and dignity was evident from the moment of the armed raid on his home until his subsequent extrajudicial execution." Finally, they added that the cruelty and violence used during his arrest, the beatings and assaults to which he was subjected, the anguish and uncertainty he experienced prior to his extrajudicial execution and the serious physical and emotional injury inflicted, reached such a degree of severity and violence that it caused Néstor José Uzcátegui intense physical and psychological suffering, all of which constitutes a serious violation of his right to humane treatment." Consequently, the representatives consider that the State violated Article 5(1) and 5(2) of the American Convention to his detriment.

162. The State argued that it did not violate the right to humane treatment of Néstor, Carlos and Luis Uzcátegui and the rest of the family members.

### *A.2. Alleged violation of the right to humane treatment [personal integrity] for the treatment of Luis and Carlos Eduardo Uzcátegui when they were arrested*

163. The Commission alleged the violation of Article 5 of the Convention to the detriment of Carlos and Luis Enrique Uzcátegui in conjunction with Article 1(1) thereof, and in the case of the arrest of Carlos, also in conjunction with Article 19 since he was a minor at the time of the incident. In particular, the Commission emphasized that the two brothers were forced into a police vehicle and were beaten while under arrest, all of which amounts to cruel, inhumane, and degrading treatment. The Commission added that the fear they felt at being secretly taken to an isolated area by police on the day of their brother's execution and after being beaten and hooded, knowing that the same thing could happen to them, is a violation of their rights under Article 5 of the American Convention.

164. The representatives stated that while under arrest, Luis and Eduardo Uzcátegui were insulted, physically assaulted and threatened, which produced a feeling of intense suffering and anguish. The added that due to their arrest, they were unable to attend the funeral of their brother Néstor.

165. The State did not present specific arguments in this regard.

### *A.3. Alleged violation of the right to humane treatment [personal integrity] for the threats and harassment suffered by Luis Enrique Uzcátegui*

166. The Commission argued that Luis Enrique Uzcátegui was a victim of death threats, physical attacks and numerous acts of harassment by police officers of the State of Falcón, which were intended to frighten him, so that he would not continue making allegations about the death of his brother Néstor and other victims of this type of police operation. Moreover, it argued that the State had failed to assess the risks, provide the necessary protection, investigate and, where appropriate, prosecute and

punish those responsible. The Commission added that the State's inaction actually created an inhibitory effect, even forcing the displacement of Luis Enrique Uzcátegui to another location. Finally, the Commission pointed out that the State did not provide measures of protection in such cases, i.e. there were no programs or measures in place to protect witnesses, and that the measures offered were not consistent with the facts or the purpose for which they were conceived, since the State offered Luis Enrique Uzcátegui protection by the State police itself.

167. The representatives stated that, in addition to the moral and psychological damage inflicted on him by the death of Néstor José, Luis Enrique Uzcátegui suffered constant threats, harassment, and attacks against his life and integrity. In this regard, they pointed out that all the acts of harassment and threats were the result of his work as a human rights activist, initiated by his charges regarding the death of his brother Néstor José. The representatives also stated that in the context of persecution endured by the family, especially Luis Enrique Uzcátegui, it is reasonable to assume that anyone who was or is subjected to this situation may experience fear, anxiety, and distress about his life, thus violating the right to humane treatment. Noting that most of the actions against Luis Enrique Uzcátegui occurred when he was protected by precautionary or provisional measures, the representatives argued that such measures were not implemented, and therefore the State violated what they termed the "right to protection in situations of extreme gravity and urgency and the right to file a complaint before the Inter-American System" (Articles 63(2) in conjunction with Articles 44 and 13(1) of the American Convention), having failed to effectively discharge its duty to provide special protection in respect of Luis Enrique Uzcátegui.

168. The State presented no specific arguments on this matter, but said there were no threats because "the citizen Luis Uzcátegui continued to perform his activities related to human rights normally and continued informing the press." Moreover, the State argued that it had fully complied with the provisional measures ordered by the Court, having made every effort to implement the measures of protection, despite the lack of cooperation from the beneficiary.

#### *A.4. Alleged violation of the freedom of expression of Luis Enrique Uzcátegui*

169. The Commission argued that the death threats, physical attacks and the many acts of harassment committed by police officers of the State Falcón against Luis Enrique Uzcátegui, together with the State's lack of action in this regard, certainly had an inhibiting effect on him, even causing him to move to another area, which implied, among other things, a violation of this right to freedom of thought and expression.

170. Furthermore, with respect to the criminal proceeding initiated against him for the crime of aggravated slander, the Commission argued that the domestic criminal norm invoked for this purpose is so ambiguous that it prevents any certainty and predictability about the prohibited conduct and the conduct protected by the right to freedom of expression." It argued that "the mere fact of subjecting someone to a criminal process as a consequence of legitimately exercising his right to freedom of expression, violates this right." It therefore considered that the State "violated the principle of legality enshrined in Articles 13(2) and 9 of the Convention". The Commission also considered that the complaint filed against Luis Enrique Uzcátegui implied "a disproportionate use of criminal law [...] to protect the honor of public servants from any accusations made against them for serious human rights violations." It argued that Luis Enrique Uzcátegui's statements "were made in the context of the exercise of his right to publicly complain and to do so before the competent

authorities” regarding the death of his brother and of other people in the same context.

171. In this regard, the Commission considered that the first measure of protection is to prevent the application of criminal law against those who have simply made such allegations, and stated that the State violated the rights enshrined in Article 13 of the Convention in relation to Article 1(1) thereof. It also held that Article 444 of the Venezuelan Criminal Code which codifies the crime of aggravated slander, violated the victim’s right to freedom of thought and expression and the principle of legality and retroactivity, in relation to the general obligation contained in Article 1(1) and the obligation to adopt domestic legal provisions contained in Article 2 of the Convention.

172. The representatives added that in response to these allegations, police officers subjected Luis Enrique Uzcátegui to numerous acts of harassment, arrests, persecutions, illegal raids of his home, and physical and verbal abuse, from 2001 until 2008, and that the arbitrary arrests that occurred on November 14, 2002 and January 25, 2003, violated his right to freedom of expression, had an intimidating effect on him and constituted a physical impediment to the exercise of that right. They said that the intimidation used against Mr. Uzcátegui due to the complaints he filed have not stopped and have not been effectively investigated by the State and that they regard the lack of investigation and the acquittal of several defendants as “a serious aggravating factor to the insecurity and the violation of the right to freedom of expression, given that, in the absence of any punishment of those responsible for the assaults, not even at the administrative level, the officers involved are still active in the police force, which produces a threatening effect directly on the victim, and indirectly on others who intend to report violations similar to those fought against by Luis Enrique Uzcátegui.”

173. The State argued that the criminal complaint filed by the Commander General of the Armed Police Forces against Luis Enrique Uzcátegui, is justified. It pointed out that Luis Enrique Uzcátegui exercised his freedom of expression and, given that he attributed certain actions or facts to a specific citizen, the latter had the right to demand accountability for what is said. It also indicated that the purpose of this complaint was not to scare Luis Enrique Uzcátegui, or to intimidate or silence him, given that ever since the complaint was filed, and up until the ruling, Mr. Uzcátegui continued to carry out human rights activities and inform the press. Furthermore, it argued that during the time that the complaint was being processed, the citizen Luis Enrique Uzcátegui did not attend the settlement hearing. In its final arguments, the State argued that in the case of Luis Enrique Uzcátegui, the petitioner’s idea was not to silence him for damage to his reputation, but to seek truth regarding the facts without endangering the reputation of all police officers of the State Falcón; that the right to freedom of expression implies responsibility for what is said, which may be of a criminal nature, and that the Commission has ignored the exceptions contemplated in Article 13(2) of the Convention; and that although Article 444 of the Criminal Code provides for a prison sentence of one to three years, in such cases the conditional suspension of the execution of the sentence is appropriate, so that the punitive nature of the sentence is mainly compensatory.

*A.5. Alleged violation of the right to humane treatment [personal integrity] of the relatives of Néstor and Luis Enrique Uzcátegui*

174. The Inter-American Commission held that the State violated, to the detriment of Néstor José Uzcátegui’s relatives, the right to fair trial [judicial guarantees] and access to an effective remedy, given the failure to carry out a proper investigation within a reasonable period regarding the circumstances surrounding the death of

Néstor José Uzcátegui. It argued that this resulted in the family members suffering anxiety, insecurity, frustration and helplessness in the face of the State authorities, and that they could therefore be considered victims of cruel, inhumane, and degrading treatment." Consequently, the Commission concluded that the State violated Article 5(1) and 5(2) of the American Convention in conjunction with Article 1(1) thereof, to the detriment of the parents of Néstor José Uzcátegui, Luis Gilberto Uzcátegui and Yrma Josefina Jiménez; his siblings, Carlos Eduardo, Luis Enrique, Irmely Gabriela, Paula Yulimar and Gleimar Coromoto; José Gregorio Mavarez Jiménez and José Leonardo Mavarez Jiménez and his niece Josianni de Jesús Mora Uzcátegui.

175. The representatives argued that Néstor José Uzcátegui's family members suffered intensely because of the attacks against him, because of the violent circumstances surrounding his extrajudicial execution and because of the execution itself. As a result, the representatives said the family experienced deep feelings of anguish and pain, particularly because the perpetrators were those who, as members of the State security forces, were supposed to protect his life and safety. They also pointed out that "the violation of the personal integrity of Néstor José's relatives continues today, given the absence of an effective investigation into the extrajudicial execution, which has resulted in a lack of prosecution and punishment of the perpetrators and masterminds of these acts." Therefore, they consider that the State violated Article 5(1) of the American Convention to the detriment of members of the Uzcátegui family.

176. The State did not present specific arguments in this regard, but affirmed that it did not violate the right to humane treatment [personal integrity] of the rest of the family members.

*A.6. Alleged violation of the right to humane treatment [personal integrity] of Carlos Uzcátegui in relation to the State's special obligation to protect him given his status as a minor*

177. The Commission argued that Carlos Uzcátegui was a minor at the time of the events, and that therefore the State should have followed the procedure laid down in the national laws, according to which children are subject to a special jurisdiction and cannot be detained with adults.

178. The representatives essentially agreed with the view expressed by the Commission.

179. The State denied that it had violated the rights of the child, since Carlos Uzcátegui was an adolescent, seventeen years of age, as recorded in the police report dated January 1, 2001, and Venezuelan law considers a person as a child until the age of eleven, while a person aged twelve to seventeen is considered an adolescent.

**B. Considerations of the Court**

180. The Court will now refer to the alleged violations to the right to humane treatment enshrined in Article 5 of the Convention<sup>225</sup>, in relation to: 1) Néstor José

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<sup>225</sup> Article 5 of the American Convention states: "1. Every person has the right to have his physical, mental, and moral integrity respected. 2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person. 3. Punishment shall not be extended to any person other than the criminal. 4. Accused persons shall, save in exceptional circumstances, be segregated from convicted persons, and shall be subject to separate treatment appropriate to their status as unconvicted persons. 5. Minors while subject to criminal proceedings shall be separated from adults and brought before specialized tribunals, as speedily as possible, so that they may be treated in accordance with their status as minors. 6. Punishments

Uzcátegui; 2) Luis Enrique Uzcátegui in respect of his arrest on January 1, 2001 and the alleged threats and harassment against him, and 3) the other family members.

*B.1. Alleged violation of the right to humane treatment [personal integrity] of Néstor José Uzcátegui*

181. In relation to the possible violation of the right to humane treatment of Néstor José Uzcátegui in the moments prior to his death, the Court considers, on the one hand, the particular circumstances in which it occurred, particularly the great level of force used by the police against the victim and, on the other hand, that there is not sufficient evidence in the record to reasonably presume that the latter, in those brief moments, suffered fear and anguish due to the awareness that the events that were taking place would lead to his possible death, which was uncertain. In the Court's opinion, the declared violation of the right to life includes, in this case and as an inherent part of it, the consequences arising therefrom, including disregard for the personal integrity of the victim. Therefore, it is not appropriate to declare that the State violated its obligation to respect the personal integrity of Néstor Uzcátegui and consequently, that it violated Article 5(1) in relation to Article 1(1) of the American Convention.

*B.2. Alleged violations of the right to humane treatment [personal integrity] and freedom of expression to the detriment of Luis Enrique Uzcátegui.*

182. With respect to the alleged acts of violence committed by the police against Luis and Carlos Eduardo Uzcátegui during their arrest on January 1, 2001, the Court notes that no other evidence was provided aside from the statements of the alleged victims from which to infer that the victims actually suffered harm to their physical, mental, or moral integrity after their release by the Police. However, it is reasonable to assume that their unlawful arrest at the very time of the execution of their brother Néstor had the purpose and also the result, that Messrs. Luis and Carlos Eduardo Uzcátegui experienced deep feelings of fear, suffering, and anxiety - as presumably happened- which constitute a specific and effective violation of their right to humane treatment.

183. As to the events of January 25, 2003, the Court has indicated that the evidentiary elements in the file were not sufficient or varied enough to prove that Luis Enrique Uzcátegui was subjected to mistreatment while in detention (*supra* para. 96). It should be emphasized that, as was indicated, the Prosecutor's Office asked Luis Enrique Uzcátegui to have a medical examination in order to confirm the mistreatment to which he was allegedly subjected, but he did not do so. At the same time, with respect to those facts, according to the statement by the authorities of the First Prosecutor's Office of the State of Falcón, Luis Enrique Uzcátegui's detention was not recorded in the logbook (*supra* para. 94).

184. Moreover, in relation to the alleged threats and harassment against Luis Enrique Uzcátegui, the Court notes that these began after he started his legal and media activities to seek justice for the death of his brother and other human rights violations committed by the security forces of the State Falcón (*supra* para. 123). In this regard, the Commission and the representatives alleged, without this being disputed by the State, that the threats and harassment against Luis Enrique Uzcátegui were intended to intimidate him and stop him from making such accusations.

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consisting of deprivation of liberty shall have as an essential aim the reform and social rehabilitation of prisoners."

185. The Court also takes into account that many of these facts were reported to the competent authorities (*supra* para. 97) and, in addition, it emphasizes that as from October 18, 2002, the Commission requested precautionary measures to protect the life and personal integrity of Luis Enrique Uzcátegui,<sup>226</sup> and that on November 27, 2002, the Court ordered provisional measures in his favor, at the request of the Commission (*supra* para. 31). It is therefore reasonable to assume that at the time when several of the acts of harassment and threats occurred, the State was fully aware of the risks facing Luis Enrique Uzcátegui, both as a result of his complaints and of the measures of protection requested and ordered at the domestic level,<sup>227</sup> and by virtue of the precautionary and provisional measures ordered.<sup>228</sup> Although, in regard to some of those facts,<sup>229</sup> the record contains no documentary evidence to substantiate the involvement of State agents in these alleged acts, the State did not dispute that such acts had occurred nor did it provide sufficient and satisfactory explanations regarding the effectiveness of measures of protection that it should have taken in the context of the provisional measures. As to compliance with the measures of protection ordered by the Court, it is clear from the evidence furnished by the State that several prosecutors' reports mention that the provisional measures ordered in favor of Luis Enrique Uzcátegui were not being implemented by the State<sup>230</sup>. In this regard, it should be recalled that the State has not demonstrated that it took sufficient and effective actions to prevent the threats and harassment against Luis Enrique Uzcátegui, nor has it conducted a serious and exhaustive investigation of those facts (*infra* paras. 232 to 240).

186. Moreover, as indicated previously, between the end of 2002 and beginning of 2003, Luis Uzcátegui often had to move house and travel outside the State of Falcón, due to the harassment and threats received (*supra* para. 95).

187. In this regard, in addition to the situation of risk facing Luis Enrique Uzcátegui, which was known to the State, and the obvious lack of protection for him, the events occurred in a context of frequent acts of harassment, threats, arbitrary arrests, intimidation and extrajudicial executions by police officers, particularly at the state and

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<sup>226</sup> Cf. *Matter of Luis Enrique Uzcátegui and relatives regarding Venezuela. Provisional Measures*. Order of the Court of November 27, 2002, Having Seen 2.d.

<sup>227</sup> In this case, six incidents were presented of alleged threats and harassment against Luis Enrique Uzcátegui which had allegedly taken place between January 2001 and March 2004: Incidents of January 6, 2001, July 20, 2001, November 13, 2002, November 14, 2002, January 25, 2003 and March 1, 2004. The representatives alleged that a number of alleged threats and harassment took place against Luis Enrique Uzcátegui on March 15, 2001, April 13, 2002 and June 24, 2010, which do not form part of the factual framework of this case.

<sup>228</sup> Cf. *Matter of Luis Uzcátegui and relatives regarding Venezuela. Provisional Measures*. Order of November 27, 2002, considering paragraph 5) and Orders of February 20, 2003, December 2, 2003 and May 4, 2004, which maintained these measures. This regard, the Court has stated that, when faced with situations of risk, the obligation to investigate the facts "being stricter, requires prompt and immediate action by the State bodies ordering timely and necessary measures to determine those responsible for the threats and crimes that have occurred in the same context." See also *Case Manuel Cepeda Vargas v. Colombia. Preliminary Objections, Merits and Reparations*. Judgment of May 26, 2010. Series C No. 213, para. 101 and *Case of Barrios Family v. Venezuela*, para. 124.

<sup>229</sup> Events of January 6, July 20, 2001; November 13 and 14, 2002; and March 1, 2004.

<sup>230</sup> Cf. *inter alia*, brief of the Senior Prosecutor of the Public Prosecutor's Office of the Judicial District of the State of Falcón addressed to the Fifth Judge of the Judicial District of the State of Falcón of January 30, 2003 (Evidence file, volume 9, pages 4317 and 4318), and brief of the Senior Prosecutor of the Public Prosecutor's Office of the Judicial District of the State of Falcón addressed to Vice-The Attorney General of February 25, 2003 (Evidence file, volume 9, pages 4370 and 4371).

local levels, to the detriment of human rights activists (*supra* paras. 35 to 38).<sup>231</sup> In this context, and given the abuses suffered by him and his family members, Luis Enrique Uzcátegui devoted himself to reporting information and lobbying activities in respect of persons who were in similar situations.

188. It is likewise recorded that on February 7, 2003 the then Commander General of the Armed Police Forces of the State of Falcón filed suit against Luis Uzcátegui, alleging defamation for four public statements made by him and published in the press between June 2002 and February 2003 (*supra* para. 124)<sup>232</sup>. Thus, while it is not up to the Court to rule on the legality of such statements, it is understandable that these could have caused a normal or legitimate reaction in the person who felt that these alluded to him. In turn, the statements published were also brought to the attention of the authorities competent to investigate them through complaints made, and so, in this context, these could be understood as part of a broader public debate about the possible involvement of state security forces in serious human rights violations.

189. In this case, Mr. Uzcátegui was kept in a situation of uncertainty, insecurity and intimidation by the criminal proceedings against him, given the high position held by the person who filed suit<sup>233</sup>, who was also mentioned in those statements as one of the people allegedly responsible for the facts, in the aforementioned context of threats, harassment and unlawful arrests. Thus, the criminal proceedings could have had an intimidating or inhibiting effect on the exercise of his freedom of expression, contrary to the State's obligation to guarantee the free and full exercise of this right in a democratic society.

190. With regard to the foregoing, the Court has established that it is possible for freedom of expression to be unlawfully curtailed by *de facto* conditions that directly or indirectly place those who exercise it in a situation of risk or increased vulnerability. For this reason, the State must refrain from acting in a manner that propitiates, encourages, favors or increases that vulnerability and must adopt, where appropriate, necessary and reasonable measures to prevent violations or protect the rights of those who find themselves in such a situation.<sup>234</sup>

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<sup>231</sup> In this regard, the Ombudsman's Office of Venezuela stated, in relation to the context of police abuses and executions, that "[t]he impunity with which those responsible act has an intimidating effect on witnesses, and on the population in general [and] [i]n many cases, the relatives and witnesses are threatened by the officers identified as being responsible, or by officers of the same police unit, or by unidentified persons." (2002 Annual Report of the Ombudsman's Office of the Bolivarian Republic of Venezuela (Evidence file, volume 24, page 7831 and Attachment 3 to the brief of pleadings, motions and evidence in digital format, page 22).

<sup>232</sup> It is appropriate to recall that, despite reiterated requests, the State did not forward the evidence from the file concerning the aforementioned complaint, or in particular, the decision to dismiss the case which ended the process and, as a result, it was not possible to determine the actions of the judge hearing the case, or the reasons for its delay. Indeed, from the documents provided by the representatives, it is clear that in early December 2003 the defense lawyers of Luis Enrique Uzcátegui requested the case file, and in response were informed that "said file is neither in the respective archive, nor at the court, nor at the Court of First Instance in which only the main piece of evidence appears", after which the judge in the case opened an administrative proceeding to "confirm the disappearance of the file [...] and to identify those responsible administratively" (Record of the President of the Criminal Circuit Court and Supervising Judge of the State of Falcón, December 17, 2003, Evidence file, volume 15, pages 5025 -5027).

<sup>233</sup> In the *Case of Otegi Mondragón v. Spain*, the European Court of Human Rights noted that, although it is legitimate that State institutions, as guarantors of institutional public order, should be protected by the competent authorities, the dominant position held by such institutions requires the authorities to exercise greater self-restraint in resorting to criminal proceedings. *European Court of Human Rights, Case Otegi Mondragón v. Spain, no 2034/07, March 15, 2011*, para. 58.

<sup>234</sup> Cf. *Case Manuel Cepeda Vargas v. Colombia. Preliminary Objections, Merits and Reparations*. Judgment of May 26, 2010. Series C No. 213, para. 172 and *Case of Perozo et al. v. Venezuela*, para. 118.

191. Consequently, the Court considers that the State has not demonstrated that it had taken sufficient and effective measures to prevent the threats and acts of harassment against Luis Enrique Uzcátegui, in the specific context of the State of Falcón at that time. Therefore, the Court finds that the State did not fulfill its obligation to adopt the necessary and reasonable measures to effectively guarantee the rights to humane treatment [personal integrity] and freedom of thought and expression of Mr. Luis Enrique Uzcátegui, and thereby failed to comply with the obligation enshrined in Articles 5(1) and 13 (1) of the Convention, in relation to Article 1(1) thereof.

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192. With regard to Article 444 of the Venezuelan Criminal Code<sup>235</sup> concerning the crime of slander, the Court notes that neither the Commission nor the representatives presented sufficient elements to justify the reasons why they considered that the norm invoked by the plaintiff in the aforementioned proceeding is ambiguous and broad, or why its very existence had deterred Mr. Uzcátegui from filing complaints before the national or international authorities in connection with alleged human rights violations or from issuing opinions criticizing the authorities. Consequently, the Court shall not proceed to examine the compatibility of said Article of the Criminal Code with Articles 2 and 9 of the Convention.

*B.3. Alleged violation of the right to humane treatment [personal integrity] of the relatives of Néstor and Luis Enrique Uzcátegui*

193. As established in its case law<sup>236</sup>, the Court notes that the relatives of Néstor José Uzcátegui and Luis Enrique Uzcátegui were affected in different ways, namely: i) they were present when police violently entered and executed Néstor Uzcátegui (*supra* para. 140); ii) they witnessed and were affected by several of the threats and acts of harassment against Luis Enrique Uzcátegui (*supra* para. 134); iii) some of them had to leave their place of residence due to the threats and harassment (*supra* paras. 91, 93 and 95), and even move to other States, and iv) they suffered psychological and mental consequences, which presumably caused them suffering and had other negative effects on their lives.

194. Therefore, the Court concludes that the State violated its obligation to respect the right to humane treatment [personal integrity], enshrined in Article 5(1) in relation to Article 1(1) of the American Convention, to the detriment of the parents of Néstor José Uzcátegui, Luis Gilberto Uzcátegui and Yrma Josefina Jiménez; his brothers Carlos Eduardo, Luis Enrique, Irmely Gabriela, Paula Yulimar and Gleimar Coromoto; José Gregorio Mavarez Jiménez and José Leonardo Mavarez Jiménez, and his niece Josianni de Jesús Mora Uzcátegui.

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See also, *inter alia*, *Legal Status and Rights of Undocumented Migrants*. Advisory Opinion OC-18/03. Series A No. 18, paras. 112 to 172.

<sup>235</sup> Article 444 of the Criminal Code states: "Anyone who, in communicating with several persons gathered together or separately, accuses an individual of a particular act capable of exposing him to public scorn or hatred, or offensive to his honor or reputation, shall be punished with a prison sentence of three to eighteen months. If the offense is committed in a public document or through writings or drawings disseminated or exposed to the public, or through other means of publicity, the penalty shall be thirty months in prison."

<sup>236</sup> Cf. *Case Castillo Páez V. Peru. Merits. Judgment of 3 of November 1997*. Series C No. 34, Operative Paragraph 4 and *Case of Barrios Family v. Venezuela*, para. 301 and 302. Also see *Case Blake v. Guatemala. Merits. Judgment of January 24, 1998*. Series C No. 36, para. 114 and *Case of Acevedo Jaramillo et al. V. Peru. Preliminary Objections, Merits, Reparations and Costs. Judgment of February 7, 2006*. Series C No. 144, para. 119.



195. Regarding the arguments of the representatives concerning the violation of Articles 44 and 63(2) of the Convention, the Court notes that the State's non-compliance with its duty to adopt appropriate measures of protection to safeguard the lives of the beneficiaries of the precautionary and provisional measures resulted in factors that led to the violation of those rights, which was already analyzed in the preceding paragraphs under Article 5(1), in relation to Article 1(1) of the Convention.

#### **VI.4 RIGHTS TO PRIVACY AND PRIVATE PROPERTY**

##### ***A. - Arguments***

196. The Commission held that the raids on Mr. Luis Enrique Uzcátegui's home, following the complaints he filed regarding his brother's death and other violent deaths that occurred during police operations, made him the target of threats, intimidation and harassment by members of the Falcón Police or persons associated with them. It further noted that this case is of particular importance because the violence occurred in the context of his work as a human rights defender. Therefore, the Commission considers that in this case there was a violation of Article 11 of the American Convention in relation to Article 1(1) of thereof, to the detriment of Luis Enrique Uzcátegui.

197. The representatives stated that Luis Enrique Uzcátegui devoted himself to seeking justice for the death of his brother and bringing together the family members of other victims of similar crimes in the State Falcón and that for this reason he was harassed, unlawfully arrested, beaten and on several occasions his home was raided. In particular, they recalled that on January 1, 2001, the police officers had entered the Uzcátegui family's house and had destroyed part of the building to force their way in. They added that there was no public interest or social imperative that would justify such actions and their extremely violent nature. Therefore, they argued that the State violated the right to private property, recognized in Article 21 of the American Convention in relation to Article 1(1) thereof, to the detriment of Luis Enrique Uzcátegui and his relatives.

198. Regarding the alleged violation of the home, the State argued that officers Armed Police Forces of the State of Falcón found it necessary to enter the house without a warrant and arrest the Uzcátegui brothers because they were faced with the commission of a crime. It added that the "conduct of the officers who participated in the procedure was covered by the exceptions provided for in Article 210, paragraphs 1 and 2 of the Venezuelan Code of Criminal Procedure." It added that there was another excuse for not demanding accountability for the conduct of the police officers, which is that the owner of the house allowed them to enter. Therefore, the State considered that its conduct is protected by its legislation.

##### ***B.- Considerations of the Court***

199. As regards the aforementioned arguments of the Commission and the representatives, the Court shall consider: 1) the right to privacy in relation to the alleged interference in the home of the grandmother, Julia Chiquinquirá Jiménez, and 2) the right to private property.

### B.1. Right to privacy

200. Pursuant to Article 11 of the Convention<sup>237</sup> and in accordance with its case law regarding the protection of privacy, family life, and the home,<sup>238</sup> and its powers to freely assess the evidence,<sup>239</sup> to use circumstantial evidence, indications and assumptions upon which to base its rulings,<sup>240</sup> and as regards the burden of proof<sup>241</sup>, the Court notes that the statements of the family members<sup>242</sup> who described the way in which the police entered the home on January 1, 2001, are consistent with the statements made by two of the policemen regarding the way in which the police entered (from the back) the house.<sup>243</sup>

201. Regarding the inviolability of the home, the Court finds that there is no record that the police entered the house in question with the consent of the victims or that the raid was carried out with a court order, as mandated by Article 47 of Venezuela's Constitution.<sup>244</sup> Moreover, the Court is aware that, given the conflicting versions of the shooting that caused the death of Néstor José Uzcátegui (*supra* paras. 133 to 138), there is no evidence to suggest that the operation carried out by police at the home of Julia Chiquinquirá Jiménez on January 1, 2001 was a response to Néstor José Uzcátegui's behavior in the morning, outside his house (*supra* para. 136). Also, there is no dispute that State agents participated in those actions.

202. Based on the foregoing, the Court finds that the police officers' entry into the home of Julia Chiquinquirá Jiménez, without a warrant or legal authorization and without the consent of its residents, constituted an arbitrary and abusive interference with their family home. Therefore, the State violated the right to privacy enshrined in Article 11(2) of the American Convention, in relation to Article 1(1) thereof, to the detriment of the family members who were in the house at the time of the events, namely Néstor José Uzcátegui, Luis Enrique Uzcátegui, Carlos Eduardo Uzcátegui,

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<sup>237</sup> Article 11 of the American Convention states 1. "Everyone has the right to have his honor respected and his dignity recognized. 2. No one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or of unlawful attacks on his honor or reputation. 3. Everyone has the right to the protection of the law against such interference or attacks."

<sup>238</sup> *Cf. Case of the Massacres of Ituango v. Colombia. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 1, 2006 Series C No. 148, paras. 193 and 194, and Case of Barrios Family v. Venezuela, para. 140.*

<sup>239</sup> *Cf. Case of Velásquez Rodríguez v. Honduras. Merits. Judgment of July 29, 1988. Series C No. 4, para. 127 and Case of Barrios Family v. Venezuela, para. 141.*

<sup>240</sup> *Cf. Case of Velásquez Rodríguez. Merits, para. 130. and Case of Barrios Family v. Venezuela, para. 141.*

<sup>241</sup> *Cf. Case of Velásquez Rodríguez. Merits, para. 135 and Case of Barrios Family v. Venezuela, para. 140.*

<sup>242</sup> *Cf. Record of interview with Luis Enrique Uzcátegui on January 18, 2001 (Evidence file, volume 18, pages 5595 and 5596); Record of interview with Julia Chiquinquirá Jiménez Garcia on January 19, 2001 (Evidence file, volume 18, pages 5597 and 5598); Record of interview with Carlos Eduardo Uzcátegui Jimenez on January 26, 2001 (Evidence file, volume 18, page 5599), and Record of interview with Gleimar Coromoto Uzcátegui on August 15, 2005 (Evidence file, volume 18, pages 5605 and 5606).*

<sup>243</sup> *Cf. Record of interviews with Rodríguez Valdemar José and Juan Alexander Rojas Reyes respectively on September 26 and 27, 2001 (Evidence file, volume 18, pages 5602 and 5604). See also the record of the interview with Rodríguez Valdemar José on December 7, 2005 (Evidence file, volume 18, page 5608).*

<sup>244</sup> Article 47 of the Venezuelan Constitution states: "A person's home and any private premises are inviolable. They may not be forcibly entered, except with a court order, to prevent the commission of a crime or carry out the decisions handed down by the courts, in accordance with the law, respecting human dignity in all cases."

Gleimar Coromoto Uzcátegui Jiménez, Paula Yulimar Uzcátegui Jiménez, Irmely Gabriela Uzcátegui Jiménez and Josianni de Jesús Mora Uzcátegui.

### *B.2. Right to private property*

203. In this case, and having regard to the provisions of Article 21 of the Convention<sup>245</sup> and to its case law,<sup>246</sup> the Court considers it a fact that the police officers who entered the home of the Uzcátegui family damaged the roof of the house, broke locks on the doors of the house, broke down a door and smashed the windows<sup>247</sup> and that, in addition to damaging the structure of the house, caused damage to objects inside the house.<sup>248</sup>

204. The Court also finds that, given the circumstances in which the action took place and, in particular, the socioeconomic status and vulnerability of the Uzcátegui family, the damage to their property during the raid had a far greater impact than it would have had for other family groups with other means. In this regard, the Court considers that States must take into account that groups of people living in adverse circumstances and with fewer resources, such as those living in poverty, experience an increase in the extent to which their rights are affected, precisely because of their more vulnerable situation.

205. Furthermore, for the purposes of this specific case, it is public knowledge that such people were frequently subjected to intimidation through the destruction of their goods, homes or personal belongings.<sup>249</sup>

206. Therefore, the Court finds that in this case, the damage caused to the structure and furniture of the Uzcátegui's home, had a significant impact on the family's property and therefore concludes that the State violated the right to property established in

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<sup>245</sup> Article 21 of the American Convention states: "Right to Property. 1. Everyone has the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment to the interest of society [...]".

<sup>246</sup> Cf. *Case of Barrios Family v. Venezuela*, para. 148 and *Case of Ivcher Bronstein v. Peru. Reparations and Costs. Judgment* of February 6, 2001. Series C No. 74, paras. 120 to 122. Also see *Case of Salvador Chiriboga v. Ecuador. Preliminary Objection and Merits. Judgment* of May 6, 2008. Series C No. 179, para. 55.

<sup>247</sup> Cf. Record of interview with Luis Enrique Uzcátegui on January 18, 2001 (Evidence file, volume 18, pages 5595 and 5596); Record of interview with Julia Chiquinquirá Jiménez García on January 19, 2001 (Evidence file, volume 18, pages 5597 and 5598); Record of interview with Carlos Eduardo Uzcátegui Jiménez on January 26, 2001 (Evidence file, volume 18, page 5599), and Record of interview with Gleimar Coromoto Uzcátegui on August 15, 2005 (Evidence file, volume 18, pages 5605 and 5606).

<sup>248</sup> Cf. Technical Inspection N° 001, carried out by Deputy Inspectors Jose Rodriguez and Richard Marrufo, on January 1, 2001 (Evidence file, volume 18, pages 5591 and 5592), observation that would be consistent with the testimonies of the relatives. The Court notes that this conclusion was reached in the context of the proceeding of reconstruction of facts carried out on April 26, 2011. Report on the Reconstruction of Events N° UCCVDF-AMC-RH-0044-11 of April 26, 2011, by Criminologist Richard Daal (Evidence file, volume 18, pages 5638 a 5652).

<sup>249</sup> Cf. Annual Report 2002 of the Ombudsman's Office of the Bolivarian Republic of Venezuela, page 35: "In the majority of the complaints received by the Ombudsman's Office the following common elements were identified: - police officers violently burst into homes or private premises, without presenting a court order, and often cause damage therein. - They violently enter homes or private premises where a criminal is allegedly hiding or where they suspect that a crime is being committed. - They raid homes threatening and intimidating people through physical or verbal abuse, or both." See also Annual Report 2001 of the Ombudsman's Office of the Bolivarian Republic of Venezuela: "The usual method of violating [the right to the inviolability of the home] is that members of the police and security forces burst into the homes of those affected, without a court order authorizing the procedure. This is part of a pattern of abuse of power which constitutes a violation of those rights. People are frequently subjected to intimidation through verbal and (or) physical abuse, and their belongings are confiscated or destroyed." Reports cited in the brief of pleadings and Available at <http://www.defensoria.gob.ve/dp/index.php/publications/reports-anauales>

Article 21(1) of the American Convention, in relation to Article 1(1) thereof, to the detriment of the persons who lived there, namely, Néstor José Uzcátegui, Luis Enrique Uzcátegui, Yrma Josefina Jiménez, Carlos Eduardo Uzcátegui, Gleimar Coromoto Uzcátegui Jiménez, Paula Yulimar Uzcátegui Jiménez, Irmely Gabriela Uzcátegui Jiménez and Josianni de Jesús Mora Uzcátegui.

## **VI.5 RIGHT TO A FAIR TRIAL [JUDICIAL GUARANTEES] AND JUDICIAL PROTECTION**

### ***A. - Arguments***

207. The Commission considered that the State violated the right to judicial guarantees, established in Articles 8 and 25 in relation to Article 1(1) of the American Convention, for failing to provide an effective remedy to guarantee access to justice, determine the truth of the facts, investigate, identify, and, where applicable, punish those responsible for the execution of Néstor José Uzcátegui, and make reparations for the consequences of the violations. Thus, it argued that the State is responsible for failing in its obligation of due diligence, for not having carried out a number of investigations, which it specified, and for violating the right to judicial guarantees, within a reasonable period. Moreover, it considered that there were failings in securing evidence related to the case and carrying out procedures that were indispensable for the investigation of the facts. It noted that members of the Armed Police Forces formed part of the Scientific, Penal and Criminal Investigations Corps, in charge of assisting the Public Prosecutor's Office in the investigation of the crimes, which could have influenced the fact that there were several irregularities in the investigation process. It also noted "with concern that that no administrative investigation was initiated" into the use of force by the police in the operation. The Commission recalled that there is still no final court ruling on these events and that the State has not fulfilled with its obligations in relation to the right to the truth.

208. Moreover, the Commission emphasized that "the origin or authorship [...] of the numerous threats and harassment suffered by Luis Enrique Uzcátegui in the domestic sphere, has not been determined, despite the fact that these [...] have continued for more than 9 years," and have not been investigated.

209. The Commission further noted that, in this case "the competent authorities have not respected the right of Néstor José Uzcátegui's family members to a fair trial [judicial guarantees], nor has the State granted an effective remedy to ensure access to justice, determine the truth of the facts, investigate, identify, try and, if applicable, punish those responsible for Néstor's execution, and make reparation for the consequences of the violations".

210. For their part, the representatives argued that "the violation of the personal integrity of Néstor José's relatives continues to this day, given that his extrajudicial execution was not efficiently investigated, which has meant that the perpetrators and masterminds responsible for this act have not been prosecuted or punished." The representatives considered that the State has an obligation to "take the necessary steps to guarantee an effective investigation" with respect to 1) the police intervention and the extrajudicial killing of Néstor José Uzcátegui, 2) the subsequent unlawful arrest of Luis Enrique and Carlos Eduardo, and 3) the threats, harassment, cruel and inhumane treatment to which they were subjected. In particular, the representatives pointed out that the investigations by the State were not carried out by a competent,

independent, and impartial authority, as required by the Convention, and that “the institutions responsible for carrying out the expert investigations were compromised because they had taken part in the events that gave rise to the violations.”<sup>250</sup>

211. The representatives further argued that this lack of diligence implied a risk for Luis Enrique Uzcátegui who, after publicly denouncing the facts and identifying those responsible, was summoned to make a statement before the very institution against which he had filed a complaint and the person against whom an investigation had begun, namely the Commander General of the Armed Police Forces of the State of Falcon. Given that the Technical Unit of the Judicial Police belonged to the Armed Police Forces, they held that “many of the procedures were completely ignored or were carried out deficiently.” In particular, they pointed out that there had been an unjustified delay in the investigation, which of itself constitutes a violation of the guarantees of a reasonable period and a violation of Article 8(1) of the Convention. Likewise, the representatives indicated that the authorities had assumed a passive attitude regarding the gathering of relevant evidence and had taken positive steps to obstruct the implementation of procedures and divert potential lines of inquiry. They also indicated that the authorities did not comply with basic investigative principles, given that, *inter alia*, they did not secure the crime scene and did not gather all the evidence available; some essential procedures were carried out nearly 7 or 8 years after Néstor’s death; and some evidence was not preserved and was contaminated from the moment the expert tests were carried out.

212. The representatives also pointed out that “although the right to truth is not explicitly stated in the text of the Convention, the protections enshrined in Articles 1(1), 8, 25 and 13 together, implicitly acknowledge this right.” They stated that the “lack of a prompt and effective investigation has not made it possible to uncover the truth of what happened” so that the family members and Venezuelan society can know the facts in order to prevent similar events from being repeated in future. Therefore, the representatives asked the Court to “declare that Venezuela violated the right to the truth to the detriment of the victims in this case and of Venezuelan society, resulting in violations of Articles 1 (1), 8, 25 and 13 of the Convention.”

213. The State, for its part, explained that the Public Prosecutor’s Office has a monopoly on the prosecution and that the prosecutors responsible for the investigation into the death of Néstor José Uzcátegui had carried out several procedures since the events of January 1, 2001, and that the process has not yet concluded. It also denied that the perpetrators had not been investigated and punished, since through the Public Prosecutor’s Office, it had properly processed two citizens for committing the crime of homicide and misuse of a firearm to the detriment of Mr. Néstor José Uzcátegui, which reflects the effectiveness of the investigation. It further argued that the State’s legislation does not establish the duration of an investigation, that the Venezuelan authorities have moved forward with the investigation procedures in order to conclude the process” and that the work of the Prosecutor’s office was effective.

214. With regard to the violation of the right to have access to justice of the victims and family members, the State argued that Venezuelan law contemplates the possibility of intervening in criminal proceedings as a victim and allows associations defending human rights to file complaints against police officers, which in this case meant that they could have opted for this path and participated in the proceeding,

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<sup>250</sup> The representatives explained that the Technical Corps of the Judicial Police which belongs to the Armed Police Forces and is under its command, was responsible for assisting f the Public Prosecutor’s Office with the investigation. Therefore, the representatives argued that “many of the procedures were completely ignored or were carried out deficiently.” (Merits file, volume 2, page 192).

requesting certain procedures to be carried out and conveying their needs to the Public Prosecutor's Office.

### **B.- Considerations of the Court**

215. The Court must determine whether the State has violated the rights recognized in Articles 8(1)<sup>251</sup> and 25(1)<sup>252</sup> of the Convention, in relation to Article 1(1) of said instrument, and shall therefore examine the different investigations and domestic criminal proceedings opened in this case, which allegedly violated the right to judicial guarantees and protection.

#### *B.1. Investigation and process related to the execution of Néstor José Uzcátegui*

##### *a.- Investigation procedures*

216. In this case, and particularly taking into account the fact that on January 2, 2001, the Second Prosecutor of the State of Falcón ordered an investigation to be opened regarding the events that led to the death of Néstor José Uzcátegui and that as of the rendering of this Judgment, there has been no clarification of what happened, nor have those responsible for the facts been punished, the Court concludes, with respect to this matter, that there are elements that indicate a lack due diligence.

217. In the first place, the Court finds that this process did not fully comply with several international standards<sup>253</sup> in respect of the forensic evaluation. This situation was noted by several prosecutors who participated in the investigation.<sup>254</sup> In particular, the Court notes that: i) no photographs were taken of Néstor José Uzcátegui's body or of the bullet holes or bloodstains at the scene of the incident; ii) there are no X-rays of the body; iii) no photographs were taken of the victim's clothing, no information about his clothing was recorded and no clothes were gathered; iv) no expert assessment was carried out to determine whether there was gunshot residue on Nestor Uzcátegui's hands, a procedure that would have been crucial to know whether he fired the weapon, as suggested in the testimonies of the police officers at the scene<sup>255</sup>; v) there is no

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<sup>251</sup> Article 8(1) of the American Convention states: "Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature."

<sup>252</sup> Article 25(1) of the American Convention states: "Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties."

<sup>253</sup> Cf. *Case González et al. ("Cotton Field") v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 16, 2009. Series C No. 205, para. 305. See also *United Nations, Manual on the effective prevention and investigation of extralegal, arbitrary and summary executions, E/ST/CSDHA/12*. Also see *Report of the United Nations High Commissioner for Human Rights on the obligation of States to investigate serious violations of human rights, and the use of forensic genetics*, July 4, 2011, A/HRC/18/25.

<sup>254</sup> Cf. Brief of April 17, 2001, addressed to Assistant Prosecutor of the Criminal Circuit Court of the State of Falcón signed by Attorney Aníbal Eduardo Lossada Lossada, First Prosecutor of the Public Prosecutor's Office of the Criminal Circuit Court of the State of Falcón. This prosecutor sent an official letter to the Assistant of the Senior Prosecutor of the same Circuit expressing his dissatisfaction with the investigation and indicating its serious shortcomings (Evidence file, volume 21, page 6683, and volume 1, page 337).

<sup>255</sup> Cf. Testimony rendered by Espartaco Martínez before the Court during the public hearing held on November 28, 2011. See also expert report rendered by Freddy Armando Pecerreli Monterroso by affidavit on November 18, 2011 (Evidence file, volume 17, page 5571).

record of the body's temperature being taken or if the body's stiffness was assessed; vi) no cause of death was established; vii) it is not clear whether the medical examiner who performed the autopsy actually visited the scene of the crime, and viii) other information from the autopsy is not recorded.<sup>256</sup>

218. Similarly, the Court finds that in the course of the investigation several evidentiary or evidence-gathering procedures were not carried out, or were not performed correctly or were carried out belatedly. In particular, the Court notes that: i) the expert assessment on the intra-organ trajectory of the bullets that hit the victim was carried out approximately 10 years after his death and, when it was done, could only be based on the autopsy and, furthermore, because of this delay, the trajectory of the bullet left inside the body of Néstor José was not recorded, and therefore the test performed a decade later was unable to elaborate on this point<sup>257</sup>; ii) no photographs were immediately taken of the crime scene<sup>258</sup>; iii) the ballistic comparison test was not carried out; iv) the police weapons used in the operation were not handed in by the police until four years after the events of January 1, 2001; v) no photographs were taken of the weapon recovered from the scene<sup>259</sup>; vi) there is no expert report on the ballistic tests carried out on that weapon or on the weapons of the police officers<sup>260</sup>; vii) no inquiries were carried out by experts to determine which police officers had fired their weapons; viii) the planimetric survey was conducted on August 28, 2002, more than a year and a half after the events, even though it had been requested immediately after the death by the Seventh Prosecutor of the State of Falcón;<sup>261</sup> ix) the procedure for the reconstruction of the events was requested by the Seventh Prosecutor's Office four and half years after the events and was actually carried out in April 2011<sup>262</sup>; x) no fingerprints were taken from the police weapons or from the gun found at the scene of the incident, and xi) although the Prosecutor's Office asked the Chief Commissioner of the Technical Unit of the Judicial Police to take statements from various officers, including Deputy Inspector Juan Alexis Rojas and Deputy Inspector Valdemar Rodríguez on January 5, 2001, they did not render their statements until 9 months later (on September 26, 2001).<sup>263</sup>

219. Furthermore, the Court is mindful that the evidence in this case was not properly preserved, as was reported on October 11, 2005, by the Chief of the

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<sup>256</sup> Cf. Expert report rendered by Freddy Armando Pecerreli Monterroso by affidavit on November 18, 2011 (Evidence file, volume 17, page 5578).

<sup>257</sup> Cf. Expert report on Intra-organic Trajectory, of April 15, 2011 (Evidence file, volume 18, pages 5633 to 5634).

<sup>258</sup> The Prosecutor's Office requested photographic record of the scene of the incident on June 9, 2005, i.e., four years after the events.

<sup>259</sup> Cf. Expert report rendered by Freddy Armando Pecerreli Monterroso via affidavit on November 18, 2011 (Evidence file, volume 17, page 5571).

<sup>260</sup> Cf. Expert report rendered by affidavit by Freddy Armando Pecerreli Monterroso on November 18, 2011 (Evidence file, volume 17, page 5571).

<sup>261</sup> Cf. Site survey carried out by the Scientific, Penal and Criminal Investigation Corps -Delegation State Falcón. August 26, 2002 (Evidence file, volume 21, page 6684 a 6685). Then an additional site survey was carried out by the Scientific, Penal and Criminal Investigation Corps-Delegation State Falcón, of August 1, 2005 (Evidence file, volume 21, page 6686 and subseq.).

<sup>262</sup> Cf. Official letter Nº FAL-7-514-05 of June 9, 2005, Seventh Prosecutor of the Public Prosecutor's Office State Falcón (Evidence file, volume 1, page 290, and volume 7, page 3536) and Report on the Reconstruction of the Facts of April 18, 2011 (Evidence file, volume 18, pages 5638 to 5652).

<sup>263</sup> Cf. Expert report rendered by the Dr. Juan Carlos Modollel by affidavit on November 24, 2011 (Evidence file, volume 17, page 5539).

Recovered Objects Unit of the Scientific, Penal and Criminal Investigations Corps.<sup>264</sup> Likewise, the Court notes that in several procedures the authorities omitted or delayed the testing or submission of evidence required by the prosecution, despite several requests made at different times.<sup>265</sup> Finally, it is significant that on October 24, 2005, the Head of the Scientific, Penal and Criminal Investigations Corps reported that he did not know the exact location of the evidence, and was therefore unable to identify it.<sup>266</sup>

220. With regard to the independence of the investigative body and considering its case law on the matter,<sup>267</sup> the Court notes that in this case several investigative procedures were performed by the same institution to which the police officers under investigation belonged (Technical Unit of the Judicial Police – CTPJ- attached to the Armed Police Forces<sup>268</sup>). In this regard, the Commission stated, without it being disputed by the State, that “until November 20, 2001, when Executive Decree No. 1511 entered into force creating the Scientific, Penal and Criminal Investigations Corps (“CICPC”), the CTPJ was responsible for assisting the Public Prosecutor’s Office in the investigation of crimes at the time when the events occurred,”<sup>269</sup> which could have led to several irregularities found in the investigation process.

221. Finally, there is nothing to suggest that any of the procedures undertaken by the authorities involved in the investigation or the court proceedings relating to the death of Néstor José Uzcátegui, took account of the context of extrajudicial executions that existed in the State of Falcón at that time. Indeed, the procedures carried out show that the case was addressed considering only the specific circumstances of the case and not the context in which it took place.<sup>270</sup>

222. In this regard, the Court considers that in order to comply with the duty to investigate cases such as this, it is not sufficient to have knowledge of the crime scene and material circumstances of the crime; rather it is essential to analyze the information concerning the power structures that permitted, planned and executed it,

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<sup>264</sup> Specifically, part of the evidence was wet and in poor condition, hindering its identification and analysis as a result of being kept for a long period in an evidence storeroom, without the basic conditions for its preservation and safekeeping. Official letter No. 9700-060 from Pedro José Requena, Chief Commissioner, Head of the Sub-delegation Coro, addressed to the Seventh Prosecutor of the Public Prosecutor’s Office, dated October 24, 2005 (Evidence file, volume 21, pages 6918).

<sup>265</sup> Also see expert report rendered by the Dr. Juan Carlos Modollel by affidavit on November 24, 2011 (Evidence file, volume 17, page 5539).

<sup>266</sup> Cf. Expert report rendered by the Dr. Juan Carlos Modollel by affidavit on November 24, 2011 (Evidence file, volume 17, page 5540). See also, Report of the Head of the Coro branch of the Scientific, Penal and Criminal Investigations Corps of October 4, 2005 (Evidence file, volume 21, pages 6692 and 6693), and Record of October 11, 2005, Seventh Prosecutor of the State of Falcón (Evidence file, volume 21, pages 6694).

<sup>267</sup> Cf. *Case Zambrano Vélez et al. v. Ecuador*, para. 122, *Case Durand and Ugarte V. Peru*. Judgment of August 16, 2000. Series C No. 68, paras. 125 and 126 and *Case of Montero Aranguren et al. (Detention Center of Catia) V. Venezuela*, para. 81.

<sup>268</sup> Law published in the Special Gazette N° 5262 of September 11, 1998. Available as of September 1: <http://docs.venezuela.justia.com/federales/leyes-organicas/ley-organica-del-ministerio-publico.pdf>.

<sup>269</sup> Article 2 of the “Law on Police Investigations”, pursuant to the “Law for the Reform of the Judicial Police” published in Special Gazette No. 5.262 of September 11, 1998 states: “the role of criminal investigations police corresponds to the police forces and units, whatever their nature and sphere of action, as required by the Public Prosecutor’s Office, in strict compliance with its sphere of competence, as established in the respective regulations. [...] For the purposes of this Article, the Public Prosecutor’s Office shall determine the nature of the crime or the circumstances of its perpetration.”

<sup>270</sup> Cf. *Case of the Massacre of Mapiripán v. Colombia. Merits, Reparations and Costs*. Judgment of September 15, 2005. Series C No. 134, para. 219; *Case González et al. (“Cotton Field”) v. Mexico*, para. 454 and *Case of Manuel Cepeda Vargas v. Colombia*, para. 119.



both intellectually and directly, and concerning the individuals or groups that were interested in or would benefit from the crime (beneficiaries). This, in turn, would lead to theories and lines of inquiry and to an examination of the crime scene, witnesses and other probative elements. Hence, in cases such as this, it is not a question of examining the crime in isolation, but rather of inserting it in a context that will provide the necessary elements to understand its operational structure.<sup>271</sup>

223. Based on all the above points, and despite the fact that Prosecutor Espartaco Martínez, the expert witness offered by the State, reported that at the time of issuing this Judgment two people are being tried for these events, the Court concludes that the authorities did not act with due diligence in investigating the death of Néstor Uzcátegui. Consequently, the State violated the rights to a fair trial [judicial guarantees] and judicial protection under Articles 8(1) and 25(1) of the American Convention, in relation to Article 1(1) thereof, to the detriment of the relatives of Néstor José Uzcátegui.

*b.- Reasonable period*

224. In this case, the Court, having confirmed that 12 and a half years after the events took place, the perpetrators of Nestor José Uzcátegui's execution have not been identified or punished, and recalling its case law regarding the fact that a lack of reasonable time for carrying out an investigation constitutes, in principle, a violation of judicial guarantees,<sup>272</sup> will consider four elements to determine the fairness of such term: a) the complexity of the matter, b) the procedural activity of the interested party, c) the conduct of the judicial authorities,<sup>273</sup> and iv) the impairment caused to the legal situation of the person involved in the proceedings.<sup>274</sup>

225. With respect to the first element, the Court notes that the delay in conducting the investigation into the death of Néstor José Uzcátegui cannot be justified on the basis of the complexity of the case. Clearly, this is not a case where there are numerous victims; the circumstances of his death were not particularly complex and, on the contrary, there was clear identification of the possible perpetrators and there were also witnesses. Nor did the prosecutors follow lines of inquiry that took into account the aforementioned police abuses and executions in the state of Falcon,<sup>275</sup> something that was not alleged by the State to justify the delay in the investigation.

226. Regarding the second element, even if in this case an investigation is an *ex officio* duty of the State, the Court has found that the relatives of the victim, especially Luis Uzcátegui, took on an active role by filing complaints and reporting the information available to them to the authorities. Moreover, on several occasions, they filed complaints against various authorities for the lack of procedural action, and called for the investigations to be moved forward.

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<sup>271</sup> Cf., *mutatis mutandi*, Case Manuel Cepeda Vargas v. Colombia, para. 119.

<sup>272</sup> Cf. Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago. Merits, Reparations and Costs. Judgment of June 21, 2002. Series C No. 94, para. 145, and Case of Valle Jaramillo et al. v. Colombia. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 192, para. 154.

<sup>273</sup> Cf. of Case Genie Lacayo v. Nicaragua. Merits, Reparations and Costs. Judgment of January 29, 1997. Series C No. 30, para. 77 and Case of Kawas Fernández v. Honduras. Merits, Reparations and Costs. Judgment of April 3, 2009 Series C No. 196, para. 112.

<sup>274</sup> Cf. Case Valle Jaramillo et al. v. Colombia. Merits, Reparations and Costs, para. 155 and Case of Barrios Family v. Venezuela, para. 273.

<sup>275</sup> Cf. Testimony of Espartaco Martínez before the Court during the public hearing on November 28, 2011.

227. As to the conduct of the authorities, the Court has already confirmed the delays in several investigative procedures as well as numerous omissions in the forensic autopsy and the gathering and storing of evidence (*supra* paras. 216 to 222), which resulted in considerable delays in the investigations and related charges. Similarly, the Court notes that, according to the information submitted by the State, in the course of the investigation process there are periods for which there is no evidence that any significant procedural or investigative action was carried out.

228. In this regard, the Court specifically notes that no information was presented regarding significant activity between March 6, 2002 and January 30, 2003, when the Seventh Prosecutor of the State of Falcón urgently requested information as to whether the measures ordered eleven months earlier had been carried out, in addition to the planimetric survey of December 2, 2003. Moreover, the Court is aware that, based on the evidence file, there was no activity by the authorities for over a year and a half, between September 12, 2003, when the Prosecutor again ordered that some procedures be carried out, and June 9, 2005, the date on which the Prosecutor once again requested the implementation of complementary measures. The Court also notes that there is no information on record about what occurred in the investigation between December 2005, when Luis Uzcátegui and three police officers testified, and April 2, 2008, two years and ten months later, the date on which the domestic court informed Luis Uzcátegui that the indictment had been filed and that it was not until September 2008 that the prosecution charged two police officers of the act, for the crime of simulating a punishable act, misuse of firearms, and aggravated homicide, to the detriment of Néstor José Uzcátegui

229. In this regard, the Court notes that it is not clear from the case file or from the arguments made by the State, that these periods of inactivity were justified on grounds related to the very nature of the investigation process. Finally, the Court finds that, as was indicated by the parties, in the 11 and a half years since the investigation began in connection with the killing of Néstor Uzcátegui, three Prosecutors' Offices and 23 different Prosecutors have been involved. It is reasonable to assume that such frequent changes of persons responsible for conducting the criminal prosecution of a crime (on average more than two per year) create obvious delays in procedures and difficulties in quickly and consistently following the lines of inquiry.

230. With respect to the fourth element, namely the adverse effect caused by the length of proceedings on the legal situation of those involved, the Court finds, as it has on previous occasions,<sup>276</sup> that in this case it is not necessary to analyze this point to determine the reasonableness of the period for the investigations mentioned herein.

231. Consequently, the Court concludes that the investigations into the death of Néstor José Uzcátegui exceeded a reasonable period, and thus, the State violated the rights established in Articles 8(1) and 25(1) of the American Convention, in relation to Article 1(1) thereof, to the detriment of Néstor José Uzcátegui's relatives.

*B.2. Investigations and legal proceedings related to the events of January 25, 2003.*

232. The Court also notes that one of the allegations made by Luis Enrique Uzcátegui regarding the context of harassment, threats and intimidation is that concerning his detention on January 25, 2003, at the General Police Headquarters of the city of Coro for alleged acts of domestic violence (*supra* paras. 93 and 97 to 122).

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<sup>276</sup> Cf. *Case of Barrios Family v. Venezuela*, para. 284 and *Case of Garibaldi v. Brazil. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 23, 2009. Series C No. 203, para. 138.

233. As mentioned previously, the First Prosecutor of the Public Prosecutor's Office of the State of Falcón opened an investigation into the facts on January 28, 2003 and on March 28, 2008, more than five years later, filed charges before the Second Court of the Judicial District of the State of Falcón against three police officers for the crime of unlawful deprivation of liberty.

234. Although a final judgment was issued on May 6, 2009 dismissing the charges in this case, and it is clear that at the beginning of the investigation the prosecutor ordered several procedures to be carried out, the Court notes that during the proceeding, there were inexplicable procedural delays and periods during which there was no procedural activity, such as, for example, between March 2003 and September 2005. It also notes that the circumstances of the case were not at all complex, since charges brought by the prosecutor on March 28, 2008 were based on material and objective elements that were easily obtained, most of which were in the Prosecution's possession within days of the events.

235. In the opinion of the Court, the fact that Luis Enrique Uzcátegui did not answer the summons to the preliminary hearings in 2008, as alleged by the State, does not explain the reasons for the delay by the authorities in formulating charges having had access - for five years - to the same evidence upon which the charges were based.

236. Therefore, the Court finds that the investigations and the procedures aimed at bringing charges for the events of January 25, 2003 in connection with the detention of Luis Enrique Uzcátegui exceeded a reasonable time and, therefore, the State violated the rights under the Articles 8(1) and 25(1) of the American Convention, in relation to Article 1(1) thereof, to the detriment of Luis Enrique Uzcátegui.

*B.3. Investigations into the detention, threats and harassment against Luis and Carlos Eduardo Uzcátegui.*

237. As for the other investigations regarding the detention, threats, and harassment against Luis Eduardo Uzcátegui and their families, the Court notes, first, that many of these facts were reported to the competent authorities; secondly, that some complaints were filed several weeks after the alleged incidents; and thirdly that, despite this, there is no evidence in the record that investigations were carried out by the relevant authorities<sup>277</sup> or that the State presented arguments or evidence to explain that the actions of the person concerned had been a significant hurdle for carrying out the investigations and inquiries into the allegations.

238. In addition, the Court notes that the body of evidence established that Luis Enrique Uzcátegui had identified several of the people who harassed and threatened him,<sup>278</sup> but it is not evident from the procedures followed by the authorities that they took statements or investigated in some other manner. The State did not present specific arguments mentioning the actions taken in this regard.

239. Consequently, the Court concludes that the investigations into the threats and acts of harassment were not investigated with due diligence and within a reasonable time, and that therefore the State violated the right of access to justice, recognized in

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<sup>277</sup> One of the few procedures mentioned concerns the events of November 14, 2002, when Luis Enrique Uzcátegui was allegedly the victim of shots fired from a motorcycle. A Police Report of December 2002 records the fact that a Police delegation went to the place and interviewed "several passers-by who when asked about the incident said they know nothing about it" (Evidence file, volume 8, page 4105).

<sup>278</sup> Cf. Second Court of Control, Criminal Circuit Court of Coro, File IP01-P-2008-000591, Exhibit 2, Accused: Harrison Joelis Tremont Sánchez, César Adan Martinez and Pedro José Romero Yáñez (Evidence file, volume 8, page 3902 and subsq.).

Articles 8(1) and 25(1) of the American Convention, in relation to Article 1(1) thereof, to the detriment Luis, Carlos Eduardo, and Paula Uzcátegui.

240. As to the right to know the truth, the Court recalls that this is essentially included in the right of the victim or his family members to obtain clarification from the competent State bodies regarding the violations and corresponding liability, through investigation and prosecution provided for in Articles 8 and 25 of the Convention,<sup>279</sup> which also constitutes a form of reparation.<sup>280</sup> Consequently, in this case, the Court will not render a decision on the alleged violation of the right to truth made by the representatives.<sup>281</sup>

## **VII REPARATIONS (APPLICATION OF ARTICLE 63(1) OF THE AMERICAN CONVENTION)**

241. In accordance with the Convention<sup>282</sup> and with its case law<sup>283</sup>, the Court will proceed to examine the claims presented by the Commission and by the representatives, as well as the arguments of the State, for the purpose of ordering measures aimed at repairing the damage caused to the victims. As to the State's arguments, the Court points out that it requested a generic dismissal of the claims for reparations and costs made by the Commission and the representatives, even though it also filed specific arguments for some of the reparation measures requested.

### **A.- Injured party**

242. Based on the foregoing considerations, the Court considers the following persons as the "injured party" in this case: Messrs. Néstor José Uzcátegui Jiménez, Luis Enrique Uzcátegui Jiménez and Carlos Eduardo Uzcátegui Jiménez, as well as their relatives Yrma Josefina Jiménez, Luis Gilberto Uzcátegui, Paula Yulimar Uzcátegui Jiménez, Gleimar Coromoto Uzcátegui Jiménez, Irmely Gabriela Uzcátegui Jiménez, José Leonardo Mavarez Jiménez, José Gregorio Mavarez Jiménez and Josianni De Jesús Mora Uzcátegui, and therefore as the beneficiaries of any reparations ordered by the Court.

243. The representatives requested that a daughter of Mr. Néstor José Uzcátegui, named Solanger, be considered as a beneficiary of the reparations. In this regard, the Court has stated that alleged victims must be named in the merits report prepared by

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<sup>279</sup> Cf. *Case of Barrios Family v. Venezuela*, para. 291 and *Case of Gómez Palomino V. Peru*. Merits, Reparations and Costs. Judgment of November 22, 2005. Series C No. 136, para. 78.

<sup>280</sup> Cf. *Case of Velásquez Rodríguez v. Honduras*. Merits, para. 181 and *Case of Barrios Family v. Venezuela*, para. 291.

<sup>281</sup> In the case of *Gomes Lund et al.*, the right to truth was linked to Article 13 since the Court noted that, according to the facts of the case, the right to know the truth is related to a suit filed by the relatives to gain access to certain information, linked to access to justice and with the right to seek and receive information. Also see *Case Gelman v. Uruguay*. Merits and Reparations. Judgment of February 24, 2011 Series C No. 221, para. 243.

<sup>282</sup> Article 63(1) of the American Convention states: "If the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party."

<sup>283</sup> Cf. *Case Castillo Páez V. Peru*. Reparations and Costs. Judgment of November 27, 1998. Series C No. 43, para. 50 and *Case of Kichwa Indigenous People of Sarayaku v. Ecuador*, paras. 279 a 281.

the Inter-American Commission.<sup>284</sup> Ms. Solanger Uzcátegui was not included in the Commission's merits report, and therefore cannot be considered as an injured party in this case, notwithstanding any reparations that may be appropriate at the domestic level.

### **B. - Obligation to investigate the facts**

244. Both the Commission and the representatives requested that the State be ordered to carry out a complete, impartial and effective investigation within a reasonable time, in order to identify, prosecute and punish those responsible for planning and carrying out the killing of Néstor José Uzcátegui Jiménez, depriving Luis Enrique and Carlos Eduardo Uzcátegui Jiménez of their liberty and carrying out the attacks to which they have been subjected since that time.

245. Furthermore, the Commission and the representatives agreed to request the declaration of the State's obligation to impose the corresponding administrative, disciplinary, or penal measures upon all state officials that contributed to the denial of justice and impunity with regard to the facts in this case. The representatives added that these measures must include the suspension from work of those officers against whom a criminal investigation has been initiated for a disproportionate use of force or a violation of fundamental rights.

246. The representatives added that the State must guarantee, through impartial, independent and competent institutions, a diligent investigation and prosecution within a reasonable period of time, identifying those responsible for the events. Moreover, they called on the State to ensure "that the investigation begun in the ordinary justice system is carried out with due diligence" and that "the authorities in charge of the investigation are provided with all necessary means to carry it out promptly." They also mentioned that the State must refrain from using provisions of domestic law to avoid its obligations. They requested that the State guarantee "full access and capacity to act to the victim's family in all the stages of the investigation" and, that the results of said investigation be publicly and widely publicized so that society can have access to them.

247. The State did not refer to this measure of reparation, although it argued, in relation to the violation of Articles 8(1) and 25 of the Convention that it had diligently investigated the violations denounced.

248. Bearing in mind that Chapter VI.5 of this Judgment established the violation of the rights to a fair trial [judicial guarantees] and judicial protection, in the absence of an investigation, prosecution and punishment of those responsible for the actions, the Court orders the State to pursue effectively and with the greatest diligence, the investigations opened and to open any others that may be necessary, in order to identify, try and sanction all those responsible and remove all *de facto* and *de jure* obstacles that could maintain impunity in this case.<sup>285</sup> The State shall comply with this obligation within a reasonable period, taking into account the criteria regarding investigations in this type of cases<sup>286</sup>, *inter alia*:

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<sup>284</sup> Cf. *Case of the Massacres of Ituango v. Colombia*, para. 98 and *Case of Barbani Duarte et al V. Uruguay. Merits Reparations and Costs*. Judgment of October 13, 2011. Series C No. 234, para. 42. See also *Case of Barrios Family v. Venezuela*, footnote 214.

<sup>285</sup> Cf. *Case of Velásquez Rodríguez v. Honduras, Merits*, para. 174 and *Case of González Medina and relatives v. Dominican Republic*. Preliminary Objections, Merits, Reparations and Costs. Judgment of February 27, 2012. Series C No. 240, para. 285.

<sup>286</sup> Cf. *Case Manuel Cepeda Vargas v. Colombia*, para. 216, and *Case of González Medina and relatives v. Dominican Republic*, para. 285.

- a) The pertinent investigations should be carried out taking into consideration the relationship between the different facts of the case and the context in which they occurred, avoiding omissions in gathering evidence and following logical lines of inquiry;
- b) The investigations should seek to effectively identify and individualize those responsible for the violations committed;
- c) Due diligence in the investigation implies that all competent State authorities are required to collaborate in gathering evidence and to refrain from actions that imply the obstruction of the investigative process;
- d) The competent authorities must carry out the relevant investigations *ex officio* and to that end must have access to all the logistical and scientific resources necessary to collect and process the evidence; likewise, those who participate in the investigation, including the victims' families, the witnesses, and the officials of the justice system, must have due guarantees of safety.

249. The Court considers, as it has established in its constant case law<sup>287</sup>, that the State must guarantee victim's family members full access and the ability to act in all the stages of the investigation and prosecution of those responsible, according to domestic law and the provisions of the American Convention. Moreover, the results of the proceedings must be publicly disclosed with the aim of informing Venezuelan society of the truth of the facts of this case, and those responsible for them.

250. Finally, as on other occasions,<sup>288</sup> the Court orders the State to examine, in accordance with the relevant disciplinary provisions, any potential procedural and investigative irregularities related to this case and, if applicable, to sanction the conduct of the relevant public servants.

### ***C. - Measures of rehabilitation, satisfaction and guarantees of non-repetition***

251. As established in its case law<sup>289</sup> and considering that the Judgment constitutes *per se* a form of reparation, the Court deems it appropriate to establish the following measures of reparation.

#### *C.1. Rehabilitation Measures*

252. The representatives requested that the Court order the State "to guarantee that the victims receive the medical and psychological treatment they need, from competent professionals, including the supply of any medications required." Additionally, they requested that the State cover "other expenses generated alongside the provision of treatment, such as transportation costs, among other needs that may arise."

253. In accordance with the preceding paragraphs and as it has done in other cases,<sup>290</sup> the Court orders the State to immediately, adequately and effectively provide medical and psychological care to the victims who request it, as follows:

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<sup>287</sup> Cf. *Case of El Caracazo V. Venezuela. Reparations and Costs*. Judgment of August 29, 2002. Series C No. 95, para. 118 and *Case of González Medina and relatives v. Dominican Republic*, para. 286.

<sup>288</sup> Cf. *Case of the Massacre of Dos Erres v. Guatemala*, para. 233, clause d) and *Case of Barrios Family v. Venezuela*, para. 325.

<sup>289</sup> Cf. *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Reparations and Costs*. Judgment of May 26, 2001. Series C No. 77, para. 84 and *Case of Kichwa Indigenous People of Sarayaku v. Ecuador*, para. 285.

- a) care shall be provided free of charge, through specialized health institutions;
- b) the respective treatments shall be provided for as long as is necessary, including the free supply of any medications that may be required, considering the specific ailments of the beneficiaries through a prior physical and psychological or psychiatric assessment, according to the particular circumstances and needs of each victim;
- c) the victims shall be offered treatment a family as well as individually, after an individual assessment<sup>291</sup>;
- d) to the extent possible, care shall be provided at the centers closest to the victims' place of residence, and
- e) in the event that the State should lack the staff or institutions able to provide care at the level required, it shall have recourse to specialized private or civil society institutions.

254. The victims who request this reparation measure or their legal representatives, have a period of six months, as from notification of this Judgment, to inform the State of their intention to receive psychological or psychiatric care. Once the State has been informed, it shall provide the appropriate treatment immediately.

### *C.2. Measures of Satisfaction*

#### *a. - Publication of the Judgment*

255. The representatives requested that the State be ordered to publish the Judgment in a newspaper with national circulation and in a local newspaper of the city of Coro, State of Falcón.

256. As it has done in other cases,<sup>292</sup> the Court orders the State to publish, within a period of six months, as from the notification of this Judgment:

- a) the official summary of the present Judgment prepared by the Court, a single time, in the Official Gazette;
- b) the official summary of the present Judgment prepared by the Court, a single time, in a newspaper with a wide national circulation, and in a local newspaper of the city of Coro, State of Falcón, and
- c) this Judgment in its totality on an official website, making it available for a period of one year.

#### *b. - Other requests*

257. The representatives requested that the Court order the State to hold "a public ceremony in which the State acknowledges its international responsibility for the human rights violations for which it has been convicted and offers a public apology in order to provide redress to the victims and their relatives." They specified that this public act of acknowledgment of international responsibility should be previously agreed upon with the victims and their representatives.

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<sup>290</sup> Cf. *Case Barrios Altos v. Peru. Reparations and Costs*. Judgment of November 30, 2001. Series C No. 87, paras. 42 and 45 and *Case of Kichwa Indigenous People of Sarayaku v. Ecuador*, para. 285.

<sup>291</sup> Cf. *Case 19 Tradesmen v. Colombia. Merits, Reparations and Costs*. Judgment of July 5, 2004. Series C No. 109, para. 278 and *Case of González Medina and relatives v. Dominican Republic*, para. 293.

<sup>292</sup> Cf. *Case Barrios Altos v. Peru. Reparations*, Operative Paragraph 5.d), and *Case of Kichwa Indigenous People of Sarayaku v. Ecuador*, para. 307.

258. The Court considers that the Judgment constitutes *per se* a form of reparation, and therefore, in this case, does not consider it appropriate to order the measure requested.

259. The representatives requested that the Court order the State to “erect a symbolic monument in the city of Coro, in the State of Falcón, to serve as a reminder of the grave human rights violations committed in that State.” The State expressed its opposition to the construction of symbolic monuments, considering this action as “reviving memories of people who have committed criminal acts, especially in cities in the country’s interior. Since Venezuela has a small population, all its inhabitants know each other.”

260. The Court, considering that the reparations ordered in this section are sufficient to repair the violations, does not consider it necessary to order said measure.

### *C.3. Guarantees of non-repetition.*

261. The Commission recommended that the State:

- a) “strengthen institutional capacity to fight the pattern of impunity in cases of extrajudicial executions, through effective criminal investigations with consistent judicial follow-up, thereby guaranteeing appropriate punishment and reparation;”
- b) “[s]trengthen institutional capacity to combat the pattern of impunity in cases of threats and deaths of relatives and their defenders for seeking justice, and through the design of investigation protocols that take into consideration the risks inherent to each activity, and that lead to the punishment of those responsible and to adequate reparation of the victims;”
- c) “impart training courses for members of police and military forces on human rights issues and on the special status of children, in the exercise of public security duties”;
- d) “adopt all legal, administrative and other measures [...]necessary to guarantee that when Police Forces apply lethal force, they do so in accordance with the obligations stemming from the duties to protect and guarantee the fundamental rights acknowledged by the American Convention,” and to establish and apply “effective protocols for the implementation of adequate monitoring and accountability mechanisms regarding the actions of said officers,” and
- e) “reform, within a reasonable time period, the definition of the crimes of libel and slander, according to international standards, thereby guaranteeing the right to freedom of expression; and that the standards of the Inter-American system for the protection of the freedom of expression be respected both in legislative reforms and in the administrative or judicial proceedings carried out in accordance with current legislation.”

262. The representatives requested that the Court order the State to:

- a) “[a]dopt a mechanism for registering detainees that is public and accessible in the places where people are detained before being brought before a competent judge”;
- b) “[c]reate the General Police Commission;”
- c) “[c]reate a unified, public and accessible database for complaints concerning human rights violations committed by security forces of the State of Venezuela;”
- d) “[t]rain officials of the Criminology Unit of the Public Prosecutors’ Office;”;
- e) “[a]dapt the protocols on due diligence in investigations to international standards;”
- f) “[a]dapt rules on the disproportionate use of force and firearms to international standards;”
- g) “[t]rain security forces on the exceptional use of lethal force and the prohibition of torture,” and
- h) “[a]dequately implement legislation for the protection of witnesses in Venezuela.”

263. The State held that its Constitution requires it to train the institutions responsible for public security,<sup>293</sup> and that therefore the Attorney General’s Office,

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<sup>293</sup> Cf. Constitution of Venezuela, Chapter IV, Article 332 (Merits file, volume 2, pages 370 and 371).



together with the Ombudsman's Office, have worked to give human rights courses to the police forces throughout the country. It added that the Police Force of the state of Falcón has imparted training courses on human rights, that a Diploma Course on human rights has been implemented and that the National Experimental University for Security has been created, which trains officers in the use of force so that it is applied in line with international human rights standards.

264. The State also reported that it had adopted the Organic Law for Police Services and for the National Police Force, which will allow for a greater control of its actions and a better coordination for the prevention of crime, as well as of the Law on National Police Forces, which will ensure greater respect of human rights during police actions, as well as the national training plan on the progressive and differentiated use of force and the use of potentially lethal force. Furthermore, the State mentioned the publication of "rules and guidelines for the progressive and differentiated use of force by police officers" in Official Gazette No. 39.390 of Friday March 19, 2010.

265. The Court, assessing the information provided by the State and the efforts described above, and encouraging it to continue with these, thereby strengthening the institutional capabilities of the security forces, in line with principles and rules for the protection of human rights, considers that it is not appropriate to agree to the request made by the Commission and the representatives on this matter.

266. With respect to the representatives' request to order training for the operators of the Criminology Unit of the Public Prosecutor's Office, the Court does not consider it appropriate to order this additional training measure.

267. The representatives requested that the Court order the State to "adopt or revise appropriate protocols for the investigation of violations related to the right to life and humane treatment [personal integrity]", and also to adopt "appropriate protocols to limit the use of force by security agents, which are compatible with the standards established by international law". They also requested that the State be ordered to "effectively [i]mplement legislation for the protection of witnesses in Venezuela".

268. The Court notes that Mr. Liderly José Montero Barrueta, an expert offered by the State, explained that since the creation of the CONAREPOL in 2006 the Venezuelan police system has undergone reforms in relation to the provisions that regulate it and to the training of its members.<sup>294</sup> These points were not refuted by the representatives or by the Commission. Specifically, the Court confirms that i) in 2008, the Organic Law of the Police Service and the National Bolivarian Police Force was approved, and that Article 65 thereof establishes the twelve basic rules of police actions<sup>295</sup>; ii) in 2009 the

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<sup>294</sup> Cf. Expert testimony of Liderly José Montero Barrueta via affidavit on November 15, 2011 (Evidence file, volume 16, pages 5323-5325).

<sup>295</sup> These are: 1. Respect and protect human dignity and defend and promote the Human Rights of all persons, without discrimination based on ethnic origin, sex, religion, nationality, language, political opinion, economic or any other status; 2. Serve the community and protect all persons against unlawful acts, with respect, fulfilling the duties imposed by the Constitution of the Bolivarian Republic of Venezuela and other laws; 3. Exercise the police service ethically, impartially, lawfully and with transparency, proportionality and humanity; 4. Value and encourage honesty and consequently, denounce any act of corruption discovered in the course of providing policing services; 5. Police shall observe, in all actions, a correct and careful conduct in their relations with people, whom they will seek to protect and assist in all circumstances; 6. Safeguard the right to meet and to hold peaceful public protests, based on the principles of respect for human dignity, tolerance, cooperation, understanding and timely, proportional and necessary intervention; 7. Respect the physical integrity of all persons and under no circumstances inflict, instigate or tolerate any arbitrary, illegal or discriminatory act, torture or other cruel, inhuman or degrading treatment, which involves physical, psychological and moral violence, in compliance with of the absolute nature of the right to physical, mental and moral integrity guarantees in the Constitution; 8. Exercise the police service using appropriate methods and means in line with the Constitution to preserve peace and guarantee individual and collective security; 9. Maximize precautions when police actions are directed at children or adolescents, and toward senior

General Police Council was created as an advisory body for the definition, planning and coordination of public policies on policing, and the National Bolivarian Police was created as a "model for the selection and training of police officers applying the principles established by law;"<sup>296</sup>; iii) in 2010 the first Technical Assistance Program was implemented to adapt the police forces of the entire country to the new police standards;<sup>297</sup> and iv) in 2010 a training program on the progressive and differentiated use of force by the Police was implemented, as a tool to be applied by police officers in their actions toward citizens<sup>298</sup> and the Victims' Assistance Office as part of the organizational structure of all the police forces, which is governed by the principles of access to justice; fair treatment; assistance; prompt action and information.<sup>299</sup> In addition, the expert witness pointed out that several internal control mechanisms exist to oversee the Venezuelan police forces (such as the Police Monitoring Office, the Office of Response to Police Misconduct and the Police Disciplinary Council), as well as external ones (such as Citizen Committees for Police Monitoring, Community Councils and Structural Community and Social Organizations).<sup>300</sup>

269. Based on the foregoing considerations, the Court does not consider it necessary to order an additional measure of reparation in this regard; and, as to the request to implement effective legislation for the protection of witnesses, the Court considers that insufficient elements were provided to conclude that alleged failings in the implementation of such legislation have any bearing on this case; therefore, it is not appropriate to order the requested measure of reparation.

270. The Commission requested that the State be ordered to "reform, within a reasonable period of time, the definition of the crimes of libel and slander, according to international standards, thereby guaranteeing the right to freedom of expression." It added that the State must respect the standards of the Inter-American System regarding this right, "both in legislative reforms and in administrative or judicial proceedings."

271. In this case, the Court did not analyze the compatibility of the criminal definition of libel and slander with the American Convention (*supra* para. 192), and therefore it is not appropriate to order the requested measure.

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citizens and persons with disabilities, to guarantee their safety and their physical, psychological and moral integrity, considering the preeminence of their rights at all times; 10. Refrain from executing orders that involve unlawful actions or omissions or those that injure or undermine the Human Rights guaranteed in the Constitution or in the relevant international treaties, and oppose any known violation of Human Rights; 11. Report any known human rights violations or when there are signs that these will occur, and 12. Ensure full protection for the health and integrity of persons in custody, taking immediate steps to provide medical attention. *Organic Law of the Police Service and of the National Bolivarian Police Force*, Special Official Gazette N° 5.880 of April 9, 2008, approved by Decree N° 5.895 of February 26, 2008.

<sup>296</sup> Cf. Expert report rendered by Liderly José Montero Barrueta by affidavit on November 15, 2011 (Evidence file, volume 16, pages 5323-5325).

<sup>297</sup> Cf. Expert report rendered by Liderly José Montero Barrueta before a notary public on November 15, 2011 (Evidence file, volume 16, pages 5323-5325).

<sup>298</sup> This instrument establishes, among other things, that "[t]he officer should use the lowest degree of force possible to achieve the mission" and that "[a]t no time should there be unnecessary physical harm or moral mistreatment of citizens subject to police action", and it is governed by the principles of legality, necessity, proportionality and progressiveness. Expert report of Liderly José Montero Barrueta by affidavit on November 15, 2011 (Evidence file, volume 16, page 5327).

<sup>299</sup> Cf. Expert report of Liderly José Montero Barrueta by affidavit on November 15, 2011 (Evidence file, volume 14, page 5328).

<sup>300</sup> Cf. Expert report of Liderly José Montero Barrueta rendered via affidavit on November 15, 2011 (Evidence file, volume 14, page 5329).

272. Furthermore, as a guarantee of non-repetition, the representatives asked the Court to order the State to a) create a unified, public and accessible database on complaints related to human rights violations committed by security forces of the State<sup>301</sup>; b) adopt a mechanism for registering detainees that is public and accessible, and c) create the General Police Commission.

273. Regarding the creation of a unified database, the Court notes that no connection has been proven between this request and the violations declared in this case. Moreover, according to the regulations mentioned by the expert witness Liderly José Montero Barrueta, Venezuelan legislation requires the preparation of annual reports by the police forces to detect patterns or trends related to compliance with the law and police standards<sup>302</sup>, and the obligation of the Governing Body for police services to “[g]ather and process information related to crime indices, police actions and other public security matters, which must be provided by Government bodies and institutions at the different political levels, and by private individuals and corporations when requested.”<sup>303</sup> The Court also finds that the request lacks precision as to the nature of the data that would be accessible through this database and its link to the principle of presumption of innocence. Accordingly, the Court deems it inappropriate to order this measure.

274. As to the adoption of a public and accessible registration mechanism, the Court, having become aware, in the *case of the Barrios Family v. Venezuela*,<sup>304</sup> that the “Manual of Rules and Procedures of the Guarantees of the Rights of Detainees” establishes a procedure for arrests in Venezuela, requiring that an official register be kept containing the information indicated as necessary for that purpose, considers it unnecessary to order the measure of reparation requested.

275. Finally, regarding the request made by the representatives to order the creation of the General Police Commission, the Court considers that, given the reforms to Venezuela’s national police system since 2006, as well as the reparations ordered in this chapter, it is not necessary to order said measure.

## **D.- Compensation**

### *D.1. Pecuniary damages*

276. The Commission requested the State be ordered to adequately compensate the victims for the pecuniary damage suffered.

277. The representatives requested that the State be ordered to pay compensation for i) loss of earnings of the deceased victim<sup>305</sup>; ii) funeral expenses incurred by the

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<sup>301</sup> According to the representatives, “there is no database recording these facts in a unified [and standardized] way”, so it is not possible “to know with certainty the scale of this phenomenon, or to identify the agencies in which there is a more serious problem.” They added that for this reason, “it is necessary to produce reliable data [on complaints of human rights violations committed by security forces of the Venezuelan State], and that all agencies adopt the same scientific method for gathering information, with clear and standard definitions of the facts identified, and that these express precisely the circumstances in which the events took place and the persons implicated.” They added that “[t]he data should be analyzed by competent personnel and the results should be made public and easily accessible.”

<sup>302</sup> Cf. Resolution “Rules on accountability in Police Forces in the different political and territorial spheres”, Article 7. Expert report of Liderly José Montero Barrueta via affidavit on November 15, 2011 (Evidence file, volume 16, page 5327).

<sup>303</sup> Organic Law of the Police Service and of the National Bolivarian Police Corps, Article 18.12.

<sup>304</sup> Cf. *Case of Barrios Family v. Venezuela*, para. 353.

<sup>305</sup> To calculate loss of earnings, the representatives took into account the victim’s age at the time of his death (21 years), life expectancy in Venezuela in the year of his death (72.4 years) and the minimum

family of Néstor José Uzcátegui<sup>306</sup>; iii) damage to the home caused by the police during the raid on January 1, 2001 for which the authorities never provided compensation<sup>307</sup>; iv) various expenses incurred by the relatives of Néstor José Uzcátegui<sup>308</sup> in their efforts to obtain justice and establish the truth, and v) various expenses for medical treatment and medicines, particularly for the children.<sup>309</sup>

278. The Court, taking into consideration its case law,<sup>310</sup> the victim's age at the time of his death and other elements present in the case file, and based on the principle of equity, orders the State to pay the amount of US\$ 65,000.00 (sixty-five thousand dollars of the United States of America), for loss of earnings and US\$ 100.00 (one hundred dollars of the United States of America)<sup>311</sup> for funeral expenses for Néstor José Uzcátegui. As to the expenses claimed for medical treatment and medicines, the Court notes that the representatives did not specify which of the alleged victims incurred expenses for treatment received, or the nature of the damage or treatments received, and it is therefore not appropriate to order such compensation.

279. With regard to the damage to the home, the Court, noting that although in this case evidentiary elements were not provided specifying the damage caused to the property of Luis Enrique Uzcátegui's family, such damages have been proven (*supra* paras. 203 -206). Therefore, the Court deems it appropriate to order the State to pay, in equity, a compensation of US\$ 3,000.00 (three thousand dollars of the United States of America) in favor of the persons indicated in paragraph 206 of this Judgment.

#### *D.2. Non-pecuniary damages*

280. The Commission requested that the State be ordered to adequately compensate the victims for the moral damage suffered. The representatives requested that the payment of compensation be ordered for the moral damage caused by the death of Néstor José,<sup>312</sup> the arrests of Carlos Eduardo and Luis Enrique Uzcátegui<sup>313</sup> and for the

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wage in Venezuela. Based on this, the representatives calculated, using the minimum wage and updating the amounts to their current value from 2001 until 2011, and adding the lost earnings as from 2011 until the end of the life expectancy period, for an estimated total of US\$ 391,792.00 (three hundred and ninety-one thousand, seven hundred and ninety-two dollars of the United States of America).

<sup>306</sup> They requested a total of Bs. 470,000.00 for this item. These expenses correspond to the sum of 1) Bs. 400,000.00 for funeral services paid to the firm *Servicios Especiales La Paz C.A.* and 2) Bs. 70,000.00 for a grave and burial paid to the General Cemetery of Coro. These amounts are today equivalent to Bs. 400.00, and Bs. 70.00, as a result of decree No. 5.229 with the rank, value and force of law, known as the Monetary Reconversion Act, published in the Official Gazette No. 38.641 dated March 9, 2007.

<sup>307</sup> The representatives justified this request explaining that the relatives did not keep receipts of the expenses incurred in repairing the structural damage to their house.

<sup>308</sup> They asked the Court to set in equity the amount of US\$ 3,000.00 (three thousand dollars of the United States of America). The representatives justified this request explaining that these expenses were incurred more than ten years ago and that the relatives have not kept the corresponding receipts.

<sup>309</sup> The representatives stated that as a result of the events, members of the Uzcátegui Jiménez family incurred medical expenses and asked the Court to set an amount corresponding to this item. The representatives explained that the family members had not kept the receipts for those expenses.

<sup>310</sup> Cf. *Case Bámaca Velásquez v. Guatemala. Reparations and Costs*. Judgment of February 22, 2002. Series C No. 91, para. 43 and *Case of Fontevecchia and D'Amico v. Argentina*. Merits, Reparations and Costs. Judgment of November 29, 2011. Series C No. 238, para. 114.

<sup>311</sup> The representatives requested the sum of 450 Strong Bolivars, equivalent to approximately US\$ 105 (one hundred and five dollars of the United States of America).

<sup>312</sup> With respect to the extrajudicial killing of Néstor José Uzcátegui, the representatives asked the Court to order the State to pay the sum of US\$ 80,000.00 (eighty thousand dollars of the United States of America), to be distributed among his heirs. In this regard, the representatives stated that the extrajudicial execution of Néstor José implied a violation of Article 5 of the American Convention and that in cases of extreme violence it is reasonable to presume that the person experienced great suffering before death. They

moral damage to the detriment of the relatives of the three brothers<sup>314</sup>.

281. Having regard to its case law<sup>315</sup> and taking into account the particular circumstances of this case, the Court sets, in equity, the following amounts in favor of the victims, as compensation for non-pecuniary damage:

Name	Amount (in dollars of the United States of America)
Néstor José Uzcátegui	US\$ 60,000.00
Luis Enrique Uzcátegui	US\$ 50,000.00
Carlos Eduardo Uzcátegui	US\$ 25,000.00
Yrma Josefina Jiménez (mother)	US\$ 15,000.00
Luis Gilberto Uzcátegui (father)	US\$ 15,000.00
Gregorio Mavarez Jiménez (brother)	US\$ 10,000.00
José Leonardo Mavarez Jiménez (brother)	US\$ 10,000.00
Paula Yulimar Uzcátegui Jiménez (sister)	US\$ 10,000.00
Gleimar Coromoto Uzcátegui Jiménez (sister)	US\$ 10,000.00
Irmely Gabriela Uzcátegui Jiménez (sister)	US\$ 10,000.00

specified that the heirs of Néstor José are his daughter, Solanger, and his parents, Yrma Josefina Jiménez and Luis Gilberto Uzcátegui.

<sup>313</sup> Regarding the moral damages caused by and during the illegal detention to which Luis Enrique and Carlos Eduardo Uzcátegui were submitted, the representatives requested the amount of US\$ 20,000.00 (twenty thousand dollars of the United States of America) for each one. The representatives alleged that, while they were under the custody of police officers, Luis Enrique and Carlos Eduardo suffered threats and beatings, isolation and were held incommunicado, which constituted a disproportionate use of force. The representatives asked the Court to order of an additional amount, in equity, in favor of Carlos Eduardo Uzcátegui, for having been a minor at the time of the events. Furthermore, the representatives requested that the State of Venezuela be ordered to pay additional compensation, set in equity, for Luis Enrique Uzcátegui for his work on this case, the violations to which he has been subjected to date, and the lack of compliance with the measures of protection ordered in his favor.

<sup>314</sup> Specifically, they referred to the way in which Néstor's execution was carried out, the violence used against him and the great impact caused by these events; the representatives requested that the Court to determine a compensation in equity and based on its case law of US\$ 50,000.00 (fifty thousand dollars of the United States of America) for each of the direct family members of Néstor José Uzcátegui. These would include his daughter, Solanger and his parents, Irma Josefina Jiménez and Luis Gilberto Uzcátegui. Likewise, they requested compensation in equity and in accordance with its case law, of US\$ 50,000.00 (fifty thousand dollars of the United States of America) for the family members who witnessed his extrajudicial execution, for the emotional suffering and the impact these events had on their lives.

<sup>315</sup> Cf. *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Reparations and Costs*, para. 84, and *Case of Kichwa Indigenous People of Sarayaku v. Ecuador*, para. 318.

Josianni De Jesús Mora Jiménez (niece)	US\$ 5,000.00
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### ***E.- Costs and Expenses***

282. The representatives requested that the Court order the State to pay the following amounts in respect of costs and expenses: i) the amount set by the Court, in equity, for expenses incurred by the family of Néstor José Uzcátegui during the domestic legal proceedings; ii) the sum of US\$ 66,520.62 (sixty-six thousand, five hundred and twenty dollars of the United States of America and sixty-two cents) for expenses incurred by COFAVIC at the domestic and international levels, and iii) the sum of US\$ 11,837.00 (eleven thousand, eight hundred and thirty-seven dollars of the United States of America) for CEJIL. The representatives requested that the amounts set in respect of costs and expenses be paid directly to COFAVIC and CEJIL.

283. Based on its case law<sup>316</sup>, the Court notes that since 2002, the family of Néstor José Uzcátegui received *pro bono* support from COFAVIC in the domestic legal proceedings and that the representatives did not forward any evidence whatsoever of the expenses incurred by the Uzcátegui Jiménez family in the domestic legal proceedings. However, the Court, inferring that the family incurred various expenses from the start of those proceedings, decides to set, in equity, the amount of US\$ 5,000.00 (five thousand dollars of the United States of America), which shall be paid to Mr. Luis Enrique Uzcátegui.

284. As to the receipts forwarded in relation to certain expenses, the Court considers that these are not clearly related to outlays exclusively linked to the present case and also confirms that COFAVIC submitted fees for psychological treatment for members of the Uzcátegui Jiménez family, without providing more specific information or the details of said fees. Regarding the expenses and outlays related to medical care and various medications, the Court notes that among the expenditures mentioned by COFAVIC are those for “psycho-social support offered to the victims’ relatives”, without providing additional elements to distinguish them from those claimed for the item corresponding to consequential damages; therefore the Court considers these alleged expenses under the item of costs and expenses. The Court further notes that some expenses are not related to this case. As to the receipts for payments made to CEJIL, the Court considers that it was not proven that the receipts provided by the representatives relate to expenses incurred only in the present case and, moreover, some of the receipts are not legible and therefore, the amount or nature of the expense that these are supposed to prove is not clear.<sup>317</sup>

285. Nevertheless, the Court considers that COFAVIC and CEJIL incurred various expenses in relation to this case, both in the domestic courts and before the Inter-American System, and therefore it decides to set, in equity, the total amount of US\$ 25,000.00 (twenty-five thousand dollars of the United States of America) in favor of COFAVIC and the sum of US\$ 4,000.00 (four thousand dollars of the United States of America) in favor of CEJIL.

<sup>316</sup> Cf. *Case Garrido and Baigorria v. Argentina. Reparations and Costs*. Judgment of August 27, 1998. Series C No. 39, para. 82; *Case González Medina and relatives v. Dominican Republic*, paras. 325 and 326, and *Case of Kichwa Indigenous People of Sarayaku v. Ecuador*, para. 328 and 329.

<sup>317</sup> Cf., For example Invoice of the Hotel Campo Alegre, Caracas, Venezuela, No. 31318 (Appendix 9 to pleadings brief, Appendix IV, pp. 22 and 23 computer file) and Invoice for “Transport by road to Coro, State Falcón” of October 2011 (Appendix 5 to the Brief of final written arguments presented by the representatives, p. 10 of the computer file).

**F.- Reimbursement of expenses to the Victims' Legal Assistance Fund**

286. In this case, the victims were granted the necessary financial aid, through the Assistance Fund, for the presentation of one statement and an expert report at the public hearing held in Costa Rica, as well as for the formalization expenses and to send a statement rendered by affidavit (*supra* para. 14).

287. The State had an opportunity to present its observations on the expenditures made in this case, which amounted to US\$ 4,833.12 (four thousand eight hundred and thirty-three dollars and twelve cents of the United States of America); however, it did not do so (*supra* para. 21). Therefore, considering the violations declared in this Judgment, it is appropriate for the Court<sup>318</sup> to order the State to reimburse said Fund for the amount mentioned, within ninety days of notification of this Judgment.

**G.- Method of compliance with the payments ordered**

288. The State must pay the aforementioned amounts, in full and without deductions derived from future taxes, within one year of notification of this Judgment, directly to the persons and organizations indicated or, if applicable, to their heirs pursuant to domestic law, and will do so through a payment in dollars of the United States of America or the equivalent amount in Strong Bolivars, using for the corresponding estimate the exchange rate between both currencies in force on the New York Stock Exchange on the day prior to payment.

289. If, for reasons attributable to the beneficiaries of the compensations or their successors, it is not possible for them to receive the amounts ordered within the indicated period, the State shall deposit those amounts in an account held in the beneficiary's name or in a certificate of deposit in a reputable Venezuelan financial institution, in United States dollars and under the most favorable financial terms allowed by law and banking practices. If, after 10 years, the compensation has not been claimed, these amounts shall be returned to the State with the accrued interest.

290. If the State should fall into arrears with its payments, it shall pay interest on the amount owed corresponding to banking interest rates on arrears in Venezuela.

**VIII  
OPERATIVE PARAGRAPHS**

291. Therefore,

**THE COURT**

**DECLARES,**

Unanimously, that:

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<sup>318</sup> Article 5 of the Rules of the Inter-American Court of Human Rights for the Operation of the Victims' Legal Assistance Fund.

1. The State is responsible for the violation of the right to life, enshrined in Article 4(1) of the American Convention on Human Rights, in relation to Article 1(1) of said instrument, to the detriment of Néstor José Uzcátegui Jiménez, as stated in paragraphs 132 to 143 of this Judgment.

2. The State is responsible for the violation of the right to personal liberty, enshrined in Article 7(1), 7(2) and 7(4) of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of Luis Enrique Uzcátegui Jiménez and Carlos Eduardo Uzcátegui Jiménez, and in relation to Article 19 of the Convention to the detriment of the latter, under the terms of paragraphs 147 to 154, 156 and 159 of this Judgment.

3. The State is responsible for the violation of the right to humane treatment [personal integrity], enshrined in Article 5(1) of the American Convention on Human Rights, in conjunction with Article 1(1) of said instrument, to the detriment of Carlos Eduardo Uzcátegui, Luis Gilberto Uzcátegui, Yrma Josefina Jiménez, Gleimar Coromoto Uzcátegui Jiménez, Paula Yulimar Uzcátegui Jiménez, Irmely Gabriela Uzcátegui Jiménez, José Gregorio Mavárez Jiménez, José Leonardo Mavárez Jiménez and Josianni de Jesús Mora Uzcátegui, pursuant to paragraphs 193 to 195 of this Judgment.

4. The State is responsible for the violation of the rights to humane treatment [personal integrity] and freedom of thought and expression, recognized in Articles 5 and 13 of the American Convention on Human Rights, respectively, in relation to Article 1(1) thereof, to the detriment of Luis Enrique Uzcátegui Jiménez, pursuant to paragraphs 182 to 197 this Judgment.

5. The State is responsible for the violation of the right to privacy enshrined in Article 11 of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of Néstor José Uzcátegui, Luis Enrique Uzcátegui, Carlos Eduardo Uzcátegui, Gleimar Coromoto Uzcátegui Jiménez, Paula Yulimar Uzcátegui Jiménez, Irmely Gabriela Uzcátegui Jiménez and Josianni de Jesús Mora Uzcátegui, pursuant to paragraphs 200 to 202 this Judgment.

6. The State is responsible for the violation of the right to private property, enshrined in Article 21 of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of Néstor José Uzcátegui, Luis Enrique Uzcátegui, Yrma Josefina Jiménez, Carlos Eduardo Uzcátegui, Gleimar Coromoto Uzcátegui Jiménez, Paula Yulimar Uzcátegui Jiménez, Irmely Gabriela Uzcátegui Jiménez and Josianni de Jesús Mora Uzcátegui, pursuant to paragraphs 203 to 206 of this Judgment.

7. The State is responsible for the violation of the rights to a fair trial and judicial protection, recognized in Articles 8(1) and 25(1) of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of Luis Enrique Uzcátegui Jiménez and his relatives, pursuant to paragraphs 216 to 240 of this Judgment.

8. It is not appropriate to examine the facts of this case in light of Articles 1, 2 and 6 of the Inter-American Convention to Prevent and Punish Torture, or of Articles 2, 9, 44 and 63(2) of the Convention, for the reasons stated in paragraphs 96, 182, 183 and 192 of this Judgment.



9. The alleged violation of Article 7(3), 7(4) and 7(6) of the American Convention on Human Rights was not demonstrated, for the reasons stated in paragraphs 155, 157 and 158 of this Judgment.

**AND ORDERS,**

Unanimously that:

1. This Judgment constitutes *per se* a form of reparation.
2. The State shall conduct an effective investigation into the facts of this case, in order to investigate them, determine the corresponding criminal responsibilities and effectively apply the sanctions and consequences contemplated by law, under the terms of paragraphs 248 to 250 of this Judgment.
3. The State shall provide medical and psychological care, free of charge and in an immediate, appropriate and effective manner, to those victims who request it, under the terms of paragraphs 253 and 254 of this Judgment.
4. The State shall issue the publications indicated in paragraph 256 of this Judgment.
5. The State shall pay the amounts stipulated in paragraphs 278, 279, 281, 285 and 287 of this Judgment, as compensation for pecuniary and non-pecuniary damages, for reimbursement of costs and expenses, and for the reimbursement of the Victims' Legal Assistance Fund, under the terms of those paragraphs and of paragraphs 288 to 290 of this Judgment.
6. The Court, in exercise of its authority and, in compliance with its duties under to the American Convention on Human Rights, shall monitor full compliance with this Judgment and shall consider this case concluded once the State has fully complied with the measures ordered in this Judgment. Within the term of one year as of notification of this Judgment, the State shall submit a report to this Court concerning the measures adopted in compliance with this Judgment.

Judge Vio Grossi informed the Court of his Concurrent Opinion, which is attached to this Judgment.

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

Diego García Sayán  
President

Manuel Ventura Robles

Leonardo A. Franco

Rhadys Abreu Blondet

Alberto Pérez Pérez

Eduardo Vio Grossi

Pablo Saavedra Alessandri  
Secretary

So ordered,

Diego García Sayán  
President

Pablo Saavedra Alessandri  
Secretary

**INDIVIDUAL CONCURRING OPINION  
OF JUDGE EDUARDO VIO GROSSI,  
INTER-AMERICAN COURT OF HUMAN RIGHTS  
CASE OF UZCATEGUI *ET AL.* v. VENEZUELA  
JUDGMENT OF SEPTEMBER 3, 2012  
(*Merits and Reparations*)**

**Introduction.**

1.- I, the undersigned, issue this Individual Concurring Opinion in relation to the Judgment indicated in the title, hereinafter the Judgment, having regard to the fact that, although I support it, I believe it should also include the two proposals formulated during the respective debate which, nevertheless, were rejected by the Inter-American Court of Human Rights, hereinafter the Court. I consider that these proposals are important for the strengthening the Court's powers, for the legal security and certainty of its rulings, which are final and not subject to appeal, and for the effective and best possible protection of human rights.

2. - The first of these proposals was to include in the Judgment, among the Court's considerations regarding reparations, the following paragraph:

*"H.-Provisional Measures.*

*314.- Having regard to the observations made on this aspect (supra paras.\*) and given that the beneficiaries of the provisional measures ordered in this case are the beneficiaries of the measures of reparation ordered in the proceedings, those remain, as of now, without effect, and are replaced by the latter, which include not only the State's general and permanent obligation to respect the rights and freedoms enshrined in the Convention and to guarantee their full and free exercise to everyone subject to its jurisdiction,<sup>1</sup> but also the obligation to adopt, in compliance with this judgment, all the appropriate measures for the purpose of guaranteeing the injured parties the enjoyment of the infringed rights<sup>2</sup> as well as to avoid irreparable damage that could result or continue to result as a consequence of such violations.<sup>3</sup> Having regard to the foregoing, the implementation and observance of the aforementioned obligations shall be subject to monitoring of compliance with judgment and no longer subject to provisional measures."*

3. - The second suggestion, therefore, was to incorporate the following as an operative paragraph of the Judgment:

*"315. - ...*

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<sup>1</sup> Article 1(1) of the Convention.

<sup>2</sup> 63(1) of the Convention.

<sup>3</sup> Article 63 (2)

7. - *To annul the provisional measures ordered in this case, without detriment to which the State must comply with the general and permanent obligation to protect the beneficiaries of the proceedings as well as the obligation to guarantee their enjoyment of the rights violated and to prevent irreparable damage caused by said violations, all this under the terms of paragraph \* of this Judgment."*

4.- In relation to the aforementioned proposals, it is useful to recall that the Judgment delivered in the Case of the Kichwa Indigenous People of Sarayaku v. Ecuador, (Merits and Reparations), of June 27, 2012, stated:

*"G. Provisional measures*

*340. Provisional measures were ordered from the time this case was under consideration by the Inter-American Commission (supra para. 5), for the purpose of protecting the lives and integrity of the members of the Sarayaku Community through a series of actions to be implemented by the State. The protection ordered was intended to prevent, inter alia, the thwarting of potential reparations that the Court might order in its favor. For the purpose of assessing the information contained in the provisional measures file (supra para. 48), unlike in most other cases, the particular group of beneficiaries of such measures of protection are identical to the beneficiaries of the measures of reparations ordered in this Judgment on merits and reparations. In other words, the duty to protect the rights to life and personal integrity of the members of the Sarayaku People, initially set out in the orders for provisional measures, are, hereafter, covered by the reparations ordered in this Judgment, which must be complied with from the moment the State receives legal notice thereof. Thus, given the special nature of the present case, the State's obligations within the provisional measures framework, are replaced by the measures ordered in this Judgment and, therefore, their implementation and enforcement shall be subject to the monitoring of compliance with the Judgment instead of the provisional measures.<sup>4</sup> Consequently, the provisional measures no longer have any effect."*

5. - And, therefore, said Ruling ordered in one of its operative paragraphs, that:

*"10. The provisional measures ordered in this case have been annulled under the terms of paragraph 340 of the Judgment."*

6. - As can be ascertained, the proposals formulated in this case are quite similar to decision taken by the Court just two months ago in the Case of the Kichwa Indigenous People of Sarayaku V. Ecuador.

7. - The Court's decision on this occasion obliges me to reiterate my position regarding the adoption of provisional measures<sup>5</sup>, given that, having issued the Judgment on

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<sup>4</sup> In similar vein, Cf. *Case of Fermín Ramírez v. Guatemala. Merits, Reparations and Costs*. Judgment of June 20, 2005. Series C N. 126, operative paragraph 14. See also relevant decisions in the cases of *Raxcacó Reyes v. Guatemala. Merits, Reparations and Costs*. Judgment of September 15, 2005. Series C No. 133, operative paragraph 15. In addition, see *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua. Provisional Measures*. Order of the Inter-American Court of November 26, 2007, considering paragraphs 10 and 11; and *Case of the Sawhoyamaya Indigenous Community v. Paraguay. Monitoring Compliance with Judgment*. Order of the Court of February 2, 2007, considering paragraphs 8 to 21.

<sup>5</sup> This position was expressed both in the Dissenting Opinions issued on July 15, 2011 regarding the Orders of the Court related to the *"Provisional Measures regarding the Republic of Colombia, Case of Gutiérrez Soler V. Colombia,"* June 30, 2011, the *"Provisional Measures regarding the United Mexican States, the Case of*

merits, a preclusion operates regarding its power to order new provisional measures in the case, once those already ordered have ceased, it being understood, nevertheless, that their purpose and effects are assumed by the Judgment.

## **I. - Provisional measures**

9. - And this in consideration, first of all, of the conventional rule applicable in this case, namely is Article 63(2) of the American Convention on Human Rights, hereinafter "the Convention", which states:

*"[i]n cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court shall adopt such provisional measures as it deems pertinent in matters it has under consideration. With respect to a case not yet submitted to the Court, it may act at the request of the Commission."*

10.- Considering that case law is the "subsidiary means for the determination of rules of law,"<sup>6</sup> it is therefore the Court's responsibility to define the meaning and scope of the provisions contained in the above conventional rule, i.e. to interpret it "in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose"<sup>7</sup> and, therefore, seeking the will of the States that created it, which also have the power to amend it<sup>8</sup>, all this considering also that the maximum guarantee of protection that the Court should grant in fulfillment of its role in delivering justice in matters of human rights, is the unconditional respect for the rules that govern it.

11.- Thus, in that perspective, the argument is that the aforesaid rule must be understood to mean that the Court can only order provisional measures in matters that are under its consideration or regarding those on which the Inter-American Commission on Human Rights, hereinafter "the Commission", has requested them, even if they have not been brought before the Court. In other words, in the first eventuality, as part of the proceedings in contentious cases and, in the second, regarding matters likely to become contentious cases.

12. - Basically, it affirms that these measures are ordered under the contentious jurisdiction of the Court.<sup>9</sup> It also should be recalled, for this purpose, that within the

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*Rosendo Cantu et al. v. Mexico,* July 1, 2011 and the "Provisional Measures regarding the Republic of Honduras, Case of *Kawas Fernandez v. Honduras*", of July 5, 2011, and also in the brief of the Record of Complaint which, related to the same Orders, submitted before the Court on August 17, 2011. And it has been made present in the Individual Concurring Opinion regarding the Order for "Provisional Measures regarding the Republic of Colombia, Case of the 19 Tradesmen V. Colombia", of June 26, 2012; Concurring Opinion, Case *Torres Millacura et al. V. Argentina*, Judgment of August 26, 2011, *Merits, Reparations and Costs*; Concurring Opinion Case of *Barrios Family v. Venezuela*, Judgment of November 24, 2011, *Merits, Reparations and Costs*; Dissenting Opinion, Order for *Provisional Measures in the Matter Millacura Lllaipen regarding Argentina*, of November 25, 2011; and Concurring Opinion with Order concerning "Provisional Measures regarding the United Mexican States, Case of *Fernández Ortega et al.*", of February 20, 2012.

<sup>6</sup> Article 38(1)(d) of the Statute of the International Court of Justice.

<sup>7</sup> Article 31(1) of the Vienna Convention on the Law on Treaties.

<sup>8</sup> Article 76(1) of the Convention and Arts 39 to 41 Vienna Convention.

<sup>9</sup> The Court has contentious jurisdiction and non-contentious or advisory jurisdiction. The former is set forth in Articles 61, 62 and 63 of the Convention and the latter in Article 64 thereof. This is likewise

Convention, the aforementioned provision 63(2) is found after the provisions of Articles 61 and 62, which refer to said jurisdiction, and before Article 64, which refers to advisory jurisdiction, from which it becomes evident that the first three rules comprise a whole. The same occurs with the Court's Rules of Procedure, where the provisional measures are addressed in Article 27 thereof, i.e. in Title II "Procedure."

13.- Furthermore, it should be recalled that Article 62(3) of the Convention, states:

*"[t]he 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 a special agreement."*

14. - Therefore, the harmonious interpretation of the aforementioned conventional rules lead to the conclusion that "the matters before" the Court, and the scope within which provisional measures may be ordered, can be no other than "case[s] concerning the interpretation and application of the provisions of this Convention brought before it" in the exercise of its contentious jurisdiction, that is, those in which it delivers justice, and those on which it rules.

15. - Thus, it should be borne in mind, firstly, that, according to its ordinary meaning<sup>10</sup>, a meaning of the word to "know" is to "[h]ear a matter with legitimate authority to do so"<sup>11</sup>. The example provided in this regard is "[t]he judge hearing the case"<sup>12</sup>. Therefore, it can be said that the Court's jurisdiction with respect to the "case" that is "brought" before it, consists of deciding or ruling on whether the provisions of the Convention have been interpreted and applied therein. This is what the Court hears. Therefore, the authority of the Court to "hear" a contentious case translates as "ruling on it."

15.- Secondly, the aforementioned theory that provisional measures are in order, as a general rule, during the processing of a contentious case, is reinforced by the fact that the words "matters" and "cases" must be understood, for the purposes indicated, as synonymous. And this is so, firstly because of the common meaning of such terms.<sup>13</sup> While among the meanings of the term "matter" are "[t]he material in question" and the "case"<sup>14</sup>, with regard to the latter it states that "[m]atter concerned or proposed to consult someone and request their opinion" and "[a]ny matters investigated by the police or that are settled at trial before the courts."<sup>15</sup>

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indicated in Article 2 of the Court's Statute. And perhaps for this reason, the Court's Rules of Procedure refer to Title II as "Procedure" and Title III as "Advisory Opinions".

<sup>10</sup> Article 31(1) of the Vienna Convention.

<sup>11</sup> Dictionary of the Spanish Language, Real Academia Española, 22nd Edition, Madrid, Spain, 2001.

<sup>12</sup> Idem.

<sup>13</sup> Idem.

<sup>14</sup> Idem.

<sup>15</sup> Idem.

16. - But also, it can be said that, according to the context of the terms,<sup>16</sup> the actual rules applicable to provisional measures give both words the same meaning, as is evident when one notes that the Convention refers to "*matters*," with regard to the Court only in the transcript of Article 63(2), whereas it uses the word "*case*," in singular or plural, in five of its provisions.<sup>17</sup> This pattern is also evident in the Statute of the Court, where, although in three of its provisions it refers to "*matter*," in one example it does so in relation to the President's duties<sup>18</sup> and, in the other two, in reference to contentious jurisdiction.<sup>19</sup> By contrast, in a fourth provision, the term "*case*" is used.<sup>20</sup> And, the same is evident in the Court's Rules of Procedure, given that while the word "*case*" is used in 27 articles,<sup>21</sup> "*matter*" is used only in the provision concerning the authority of the Court to order provisional measures at the request of the Commission<sup>22</sup>, in "*matters yet to be submitted to (its) consideration.*"

17. - But, even regarding the latter provision, it should be noted that it appears after reiterating<sup>23</sup> the provisions of Article 63(3) of the Convention and before stipulating that in "*contentious cases under [its] consideration*," the victims or their representatives may request provisional measures, in such a manner that this rule does not contradict, but quite the contrary, the interpretation in any way such that the words "*matter*" and "*case*" are for these purposes, synonymous.

18. - Consequently, not only the Convention - an agreement between States and an autonomous and principal source, therefore, of the rule applicable to this matter - states that the words "*matter*" and "*case*" are, as regards provisional measures,

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<sup>16</sup> Article 31(1) of the Vienna Convention.

<sup>17</sup> These refer, respectively, to the right to appeal before the Court (Art. 57), to its jurisdiction (Art. 61), to the obligation to annually inform the OAS General Assembly of its work (Art. 65), the binding nature of its judgments (Art. 68(1)) and the notification of its judgments (Art. 69).

<sup>18</sup> Which could well be regarding the Court's advisory function and even to administrative matters (Article 12(2)).

<sup>19</sup> The impediments and disqualification of judges in contentious cases (Article 19(1), 2 and 3) and to the appearance of the Commission in trials followed before it (Article 28).

<sup>20</sup> Annual report to be submitted to the General Assembly of the OAS (Article 30).

<sup>21</sup> In the Articles concerning the definition of *Amicus Curiae* (Article 2(3)) and Judge (Article 2(17)), Decisions and Voting (Article 16), continuation in Office of the Judges (Article 17), National Judges (Article 19), *Ad Hoc* judges in Interstate cases (Article 20), Impediments, Recusals and Disqualification (Article 21), Official Languages (Article 22), Representation of the States (Article 23), Participation of the Alleged Victims or their Representatives (Article 25), Cooperation of the States (Article 26), Joinder of Cases and Proceedings (Article 30), Publication of the Judgments and Other Decisions (Article 32), Initiation of Proceedings (Article 34), Filing of the Case by the Commission (Article 35), Inter-American Defender (Article 37), Preliminary Review of the Presentation of the Case (Article 38), Notification of the Case (Article 39(1) 39(2) and 39(4)), Brief containing Pleadings, Motions and Evidence (Arts. 40(1) and 40(2)), The State's Answer (Article 41(2)), Preliminary Objections (Article 42.6), Other Steps in the Written Proceedings (Article 43), Arguments of *Amicus Curiae* (Article 44(1) and 44(3)), Objections to Expert Witnesses (Article 48(1)b,d,e) and Hearing (Article 51(1) and 51(10)).

<sup>22</sup> Article 27(2) of the Rules.

<sup>23</sup> Article 27(1) of the Rules.

synonymous. However, the States themselves have reiterated this in the Statute of the Court<sup>24</sup> and it is even contemplated in the Rules of Procedure, approved by the Court.<sup>25</sup>

19. - Additionally, it should be emphasized that Article 27 of the Rules of Procedure of the Court, which is found in Title II "*Procedure*," states that, "[a]t any stage of the proceedings" the Court may order provisional measures, which leaves no doubt as to how this legislative body interpreted the provisions of Article 63(2) of the Convention, namely that such measures take place within a contentious case proceeding that the Court is hearing or ruling upon.

20.- This is reinforced by everything that the Court itself has stated in relation to the second possibility of ordering provisional measures contemplated in Article 63(2) of the Convention, namely, in "*a case not yet submitted to its consideration*":

*"[o]n previous occasions, the Court has interpreted that the phrase 'matters not yet submitted to it', contained in Article 63(2) of the Convention, supposes that there is at least a possibility that the matter behind the request for provisional measures may be brought before the Court in its contentious jurisdiction. For this small possibility to exist, the procedure set forth in Articles 44 and 46 to 48 of the American Convention must have been initiated before the Commission."*<sup>26</sup>

21.- This case-law therefore implies that in order for the Court to order provisional measures with respect to "*matters not yet brought before it*", there must be, on the one hand, a possibility that these may become contentious cases and, on the other, that the Commission, "*even when there is strictly still no contentious case before the Inter-American System*,"<sup>27</sup>, may make the corresponding request.

22.- The Court's affirmations clearly establish, then, that the general rule is that provisional measures are in order in contentious cases, i.e., on which it rules, and only exceptionally and where requested by the Commission, on matters that are likely to become contentious cases.

23.- And it could not be otherwise, given that if it were not so, the procedure for such measures would be completely different, separate, and unrelated to the contentious case, in the context of which they are requested and ordered, which, evidently, is quite

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<sup>24</sup> Approved through Order N° 448 adopted by the General Assembly of the OAS in its Ninth Period of Sessions, held in La Paz, Bolivia, October 1979.

<sup>25</sup> Approved by the Court at its Eighty-fifth Ordinary Period of Sessions held on November 16 to 28 2009.

<sup>26</sup> Cf. *Matter of Garcia Uribe et al.* Request for Provisional Measures regarding Mexico. Order of the Court of February 2, 2006, Considering paragraphs 3 and 4; *Matter José Luis Galdamez Alvarez et al.* Provisional Measures regarding Honduras. Order of the Court of February 22, 2011, Considering paragraph 9, and *Matter Alvarado Reyes et al.* Provisional Measures regarding the United Mexican States. Order of the Court of May 15, 2011, Considering paragraph 10.

<sup>27</sup> Cf. *Matter of Alvarado Reyes et al.* Provisional Measures regarding the United Mexican States, *supra* note 20, Considering paragraph 11: "*The Court has considered it necessary to clarify that, given the protective nature of provisional measures [...], exceptionally, it may order them even when a contentious case has not been filed before the Inter-American System, in situations that, prima facie, may have a serious and urgent effect on human rights. To this end, it is necessary to assess the problem at issue, the effectiveness of the State's actions regarding the situation, and the degree of vulnerability of the persons for whom the measures are requested should they not be adopted. Therefore, the Inter-American Commission must present sufficient justification in relation to the said criteria, and the State must not have demonstrated clearly and sufficiently the effectiveness of any measures it has taken at the domestic level.*"



different to the provisions of the regulatory texts. Therefore, it should be added that, without a doubt, the facts giving rise to the risk which the provisional measures ordered seek to prevent and the beneficiaries of such measures, are clearly linked to the corresponding contentious case. Finally, it is appropriate to note that even the Court's own decisions regarding provisional measures refer, in their names and therefore perhaps as a result, to the contentious case.

## **II.- Effects of the Judgment.**

24. - From the foregoing, it appears, therefore, that if provisional measures are admissible and are decreed in the proceeding before the Court, relating to an act that it hears or rules upon within the sphere of its contentious jurisdiction, these cease once such consideration or trial ends, being replaced, however, by the judgment.

25. - Indeed, the judgment on merits settles the respective contentious case, rules on it, i.e. there is no longer a dispute, since it has been resolved. The first phrase of Article 67 of the American Convention establishes that:

*"[t]he judgment of the Court shall be final and not subject to appeal."*

26. - As a result, the letter g. of paragraph 1 of Article 65 of Rules of the Court adds that:

*"[L]a judgment shall contain: [...] the ruling on the case".*

27. - However, a final order may be a conviction or an acquittal for the State concerned. In the first eventuality, the provision of Article 63(1) of the Convention applies, which states:

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

28.- In this regard, it should be considered that this provision constitutes a whole with the aforementioned Article 63(2), which means, therefore, that the Convention not only expressly regulates the provisional measures as part of the Court's contentious jurisdiction, but that it does so in the sense that they are admissible before the Court delivers a judgment on merits in the case, since if these were ordered later, they would no longer be related to a matter "*under its consideration*," as set forth in Article 63(2) and within which it determines and states the provisions of Article 63(1).

29.- Similarly, it should be pointed out that if "*the*" decision or judgment results in the conviction of the State under the terms established in the aforementioned Article 63(1) of the Convention, this latter rule should be understood, then, in accordance with that provided for in the following Article 63(2), which logically leads to the conclusion that when the Court decides or rules that there has been a "*violation of a right or freedom protected*" by the Convention and, consequently, orders the State to "*ensure to the injured party the enjoyment of the right or freedom that was violated*," this necessarily entails an obligation to "*prevent irreparable damage to persons*," especially "*[i]n cases of extreme gravity and urgency*."

30.- In other words, if the judgment on merits results in a conviction, the precautionary nature of the provisional measures<sup>28</sup> makes no sense, given that these were specifically intended to preserve a legal situation that would allow for the issuance of the judgment. And obviously, once delivered, an essential part of the judgment's purpose, is the protective nature of such measures. Otherwise, the "*final and non-appealable*" nature of that decision would not be understood. It is perhaps for this reason that on more than one occasion, the judgments of the Court have expressly included devices that are the very essence of provisional measures.<sup>29</sup> Obviously, the provisional measures would be even less justifiable on the assumption that said judgment is an acquittal.

31. - In short, it is reiterated that the above means nothing more than, effectively, that the ruling on merits of the contentious case is "*final and not subject to appeal*," in other words, it is "*the decision on the case*", which, as noted in the doctrine, is the solemn decision of the judge to conclude the process, a statement of legal certainty regarding the corresponding case. And this also occurs especially "*when [the Court] finds a violation of a right or freedom protected*" in the Convention and, consequently, orders that "*the injured party's right or freedom that was violated be guaranteed*," a judgment that State Parties to the Convention "*agree to comply with*,"<sup>30</sup> and, if they fail to do so, the Court, after receiving "*the pertinent information*" obtained by monitoring compliance<sup>31</sup>, shall include it in its annual report to the OAS General Assembly, requesting the relevant "*recommendations*."<sup>32</sup>

32. - From the foregoing, it is also appropriate to note that it can be logically gathered that, because the judgment on merits is "final" and "*not subject to appeal*", after hearing and ruling on the relevant case, the Court resolves it in its entirety, or completely and in a single and final instance, and so it can no longer hear or rule on it. The ruling is the result, then, of the Court's consideration of the case, i.e., it is the judgment it makes "*relating to the interpretation and application*" of the Convention.

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<sup>28</sup> Cf. *Matter of Alvarado Reyes et al. Provisional Measures regarding the United Mexican States*, *supra* note 20, Considering paragraph 5: "*Under international human rights law, provisional measures are not only preventive in nature, in the sense that they preserve a juridical situation, but they are also essentially protective inasmuch as they seek to safeguard human rights and avoid irreparable damage to persons. The measures are applicable provided the basic requirements of extreme gravity and urgency, and the need to prevent irreparable damage to persons are met. Thus, provisional measures become a true jurisdictional guarantee of a preventive nature.*"

<sup>29</sup> *Case of Kawas Fernandez V. Honduras. Merits, Reparations and Costs. Judgment of April 3, 2009. Series C No. 196, para. 193*: "*Moreover, it has been established that various witnesses related to the events of the instant case have been threatened, and that one such witness is a beneficiary of the provisional measures ordered by this Court in the course of the proceeding before it [...]. Accordingly, based on the body of evidence in this case, the State must apply its domestic law to provide effective protection to any witnesses of the events related to the murder of Mrs. Blanca Jeannette Kawas-Fernández and offer guarantees to any person who may wish to testify. The State must guarantee the enforcement of any and all orders issued by a competent authority restricting or limiting any contact between said witnesses and the parties who are likely to be responsible for the facts and take the necessary measures should such orders not be observed. Also, the State must, in a fully diligent manner and within a reasonable period of time, process and fully deal with any complaint of coercion, intimidation or threats made by the witnesses in the domestic proceedings and take all legally prescribed measures for their investigation. [...]*"

<sup>30</sup> Article 68(1) of the Convention.

<sup>31</sup> Article 69(4) of the Rules of Procedure.

<sup>32</sup> Article 65 of the Convention.

Therefore, following the ruling it ceases to hear or rule on the case, and therefore the circumstances provided for in Article 63(2) are not present in order to proceed with provisional measures, i.e., that it concerns "*matters that [Court] is hearing*" or ruling on.

33. - But, in addition, this ruling is *res judicata* in nature<sup>33</sup>, it can no longer be altered, and it is also final for the Court; therefore, it cannot be replaced or devalued by provisional measures or create the risk that such eventualities may occur, which could happen if the measures ordered before the judgment continued to have effect, or if after the ruling new, measures were enacted. In that eventuality, such measures would not only be "*provisional*"<sup>34</sup> but could also imply the violation of the principle of "*res judicata*", i.e. that the case be re-examined.

34. - For this reason the pertinent conventional rules provide that, after the judgment has been delivered, the Court may carry out, in the relevant contentious case, only two actions: one that is procedural, and another that is administrative but which could become procedural. Firstly, it may interpret the judgment, if necessary.<sup>35</sup> And secondly, it will submit an annual report to the OAS General Assembly on the States that have not complied with its rulings.<sup>36</sup> At the same time, and in this case, the Statute of the Court only refers to the aforementioned report to the OAS General Assembly<sup>37</sup> and, in turn, the Rules of Procedure of the Court govern the judgment on reparations and costs,<sup>38</sup> the request for interpretation,<sup>39</sup> the monitoring of compliance with judgments and other decisions made by the Court,<sup>40</sup> and rectify any obvious mistakes, clerical errors or calculation errors.<sup>41</sup> All these matters, except the latter, are addressed in the Rules of Procedure as part of Title II "*Procedure*" and before the start of Title III "*Advisory opinions.*"

35.- Considering, then, the principle of public law that you can only do what the rule orders, the aforementioned actions are the only actions the Court may undertake in a contentious case that has already been ruled on; furthermore, they must all be aimed exclusively at ensuring compliance with the respective ruling by the State concerned.

36. - In short, the treaty rules, statutes and regulations do not explicitly include provisional measures among the proceedings that follow the relevant judgment. There is no rule that allows the Court to proceed with provisional measures after it has ruled on the contentious case in question.

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<sup>33</sup> Article 59 of the Statute of the Court International of Justice: "[t]he decision of the Court has no binding force except between the parties and in respect of that particular case."

<sup>34</sup> The Statute of the Court International Court, in Article 41(2), refers more directly to the provisional nature of the measures: "*pending the final decision, notice of the measures suggested shall forthwith be given to the parties and to the Security Council.*"

<sup>35</sup> Article 67 of the Convention.

<sup>36</sup> Article 65 of the Convention.

<sup>37</sup> Article 30 of the Statute.

<sup>38</sup> Article 66 of the Rules.

<sup>39</sup> Article 68 of the Rules.

<sup>40</sup> Article 69 of the Rules.

<sup>41</sup> Article 76 of the Rules of the Court.

### III. - Lack of authority

37. – For the same reason, it would not be possible to apply to the institution of provisional measures "*the theory of inherent powers*" since they, by their very nature, were conceived as powers that an international organization requires to comply with the roles not provided for, but, in its base Convention or constituent Treaty<sup>42</sup> and thus such powers must be understood to be granted. In contrast, these powers are expressly awarded to the Court, and are therefore "*explicit*", they are found in Article 63(2) of the Convention and must be adhered to, which is the rule that should be applied or, if appropriate, interpreted. Therefore, it is not possible to apply the "*theory of implicit powers*" principle to such measures, as, in contrast, occurred with the provisions in the report submitted by the Court to the OAS General Assembly, where, based on the provisions of the Convention<sup>43</sup> and the Statute of the Court,<sup>44</sup> the monitoring of compliance with judgments<sup>45</sup> was established in the Rules of Procedure and is thus a procedural institution.<sup>46</sup>

38.- Nor would it be appropriate to invoke the *pro homine* principle, at least in the way it is enshrined in the Convention<sup>47</sup>, to justify the adoption of provisional measures after the issuance of the judgment on merits, for, although this principle refers to the "*rights*" of persons recognized therein, such measures are conceived as a power of the Court.<sup>48</sup> Furthermore, it should be kept in mind that, if an application included that principle with regard to the latter, it would be referring to the fact that the rule that regulates it should be interpreted in the light of its object and purpose, which is, to avoid the irreparable damage that a person involved in a contentious case could suffer, during the proceeding before the Court, where the judgment is expected to avoid or repair the damage definitively.

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<sup>42</sup> Cour Internationale de Justice. Réparation des dommages subis au service des Nations Unies. Avis Consultatif du 11 avril 1949: "[d]e l'avis de la Cour, l' [O] rganisation était destinée à exercer des fonctions et à jouir de droits - et elle l'a fait - qui ne peuvent s'expliquer que si l'Organisation possède une large mesure de personnalité internationale et la capacité d'agir sur le plan international. Elle est actuellement le type le plus élevé d'organisation internationale, et elle ne pourrait répondre aux intentions de ses fondateurs si elle était dépourvue de la personnalité internationale. On doit admettre que ses Membres, en lui assignant certaines fonctions, avec les devoirs et les responsabilités qui les accompagnent, l'ont revêtue de la compétence nécessaire pour lui permettre de s'acquitter effectivement de ces fonctions."

<sup>43</sup> Arts. 65 and 68 of the Convention.

<sup>44</sup> Article 30 of the Court's Statute.

<sup>45</sup> Article 60 of the Convention.

<sup>46</sup> Cf. Case of Baena Ricardo et al. v. Panama. Jurisdiction. Judgment of November 28, 2003. Series C No. 104, para. 100: "[t]he legal grounds for the authority of the Inter-American Court to supervise compliance with its decisions is to be found in Articles" 33, 62.1, 62(3) and 65 of the Convention.

<sup>47</sup> Article 29 of the Convention.

<sup>48</sup> Cf. *Matter of Certain Venezuelan Prisons*. Provisional Measures regarding Venezuela. Order of July 6, 2011, Considering paragraph 4: "Article 63(2) of the Convention requires that for the Court to be able to order provisional measures three conditions must be present: (i) "extreme gravity"; (ii) "urgency," and (iii) the need "to avoid irreparable damage to persons." These three conditions must coexist and be present in any situation in which the Court's intervention is requested. Likewise, the three conditions described must persist in order for the Court to maintain the protection ordered. If one of them ceases to be present, the Court must assess the appropriateness of continuing with the protection ordered."

39. - Finally, it is not admissible to allude to the practice of the Court, regarding the repeated ordering of provisional measures after delivering the judgment on merits in the respective contentious case, to argue that, thereby, the act is legitimate specifically because it was accepted by States who did not protest against it and effectively complied with the provisions of such measures. And such a reference would not be worthy of consideration because the attitude of the States concerned would not be an unequivocal demonstration of their will or intention to accept or agree that the aforementioned practice is a new rule that arises in the absence of treaty addressing the matter and, consequently, it imposes a new obligation upon them, but rather would also be an expression that, on the subject, it says nothing and, simply, having previously and conventionally committed to it, complies with a court order. Therefore, such compliance does not create a new obligation for the State, but rather the State responds to the provisions of a conventional rule.

40.- The *estoppel* rule or *doctrine of one's own acts* or of *preclusion* would not be admissible regarding the State Party in the proceeding, since with its indicated actions, it had no intention of creating, through the relevant procedural act contemplated in the Convention, a new international legal rule or a new international legal obligation.

41. - Furthermore, one should also note that the State ruling has been, with respect to such measures, individual and not for the whole or the majority of States Parties to the Convention, so that it in this case the "*authentic interpretation*" may not be applied, in other words, considered as a "*subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation.*"<sup>49</sup>

## **Conclusion**

42. - In short, with the delivery of the judgment on merits, reparations and costs in proceedings, a preclusion takes effect regarding the Court's authority to order provisional measures in relation to the contentious case in question, since, following this, it can only amend the obvious mistakes, clerical errors and calculation errors, interpret it and then monitor compliance, and report annually to the political body — the OAS General Assembly, in the event of non-compliance.

43. - The ruling does not mean, however, that the object and purpose pursued by the provisional measures ordered during the proceeding are legally unprotected, but precisely the opposite, since it imposes upon the State concerned the specific obligation to ensure "*the injured party the enjoyment of the right or freedom that was violated,*" particularly in "*cases of extreme gravity and urgency, and when it is necessary to avoid irreparable damage to persons.*" In this sense, then, it is a question of not diminishing but rather strengthening and even enhancing the effects of the judgment on merits, and thereby protecting human rights, ordering the reestablishment of those that have been violated.

44. - However, the judgment on merits in a contentious case does not imply, as stated by the Court regarding the lifting of provisional measures, that "*the State is relieved of its treaty obligations to protect under the Convention*"<sup>50</sup>, since its general and

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<sup>49</sup> Article 31(3)(b) of the Vienna Convention on the Law of Treaties.

<sup>50</sup> Matter A.J. *et al.* Provisional Measures regarding Haiti, Order of February 22, 2011, Considering paragraph 16: "Lastly, the Court reiterates that Article 1(1) of the Convention establishes the general obligation of the States Parties to respect the rights and freedoms recognized therein and to ensure to all

permanent obligation remains to “*respect the rights and freedoms recognized (in the Convention) and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms.*”<sup>51</sup>

45. - And, certainly, all this is no impediment for the Court to order provisional measures for the same people for whom they were issued in a case already resolved, if the Commission, in exercise of its “*principal role of promoting the observance and defense of human rights*”<sup>52</sup>, reasonably requests it in a new case not yet submitted to its consideration, or if it so decides in another that has already been submitted.

Eduardo Vio Grossi  
Judge

Pablo Saavedra Alessandri  
Secretary

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persons subject to their jurisdiction the free and full exercise of those rights and freedoms, under all circumstances. Moreover, provisional measures are of an exceptional nature and are complementary to this general obligation of the States. In this regard, the presumptions considered by the Court to lift provisional measures cannot signify that the State is relieved of its protection obligations under the Convention.”

<sup>51</sup> Article 1(1) of the Convention.

<sup>52</sup> Article 41 of the Convention.