

INTER-AMERICAN COURT OF HUMAN RIGHTS

CASE OF GARCÍA CRUZ AND SÁNCHEZ SILVESTRE v. MEXICO

JUDGMENT OF NOVEMBER 26, 2013
(Merits, Reparations and Costs)

In the case of *García Cruz and Sánchez Silvestre*,

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

Diego García-Sayán, President;
Manuel E. Ventura Robles, Vice-President;
Alberto Pérez, Judge;
Eduardo Vio Grossi, Judge;
Roberto F. Caldas, Judge; and
Humberto Antonio Sierra Porto, Judge;

also present,

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

in accordance with Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”) and Articles 31, 32, 62, 63, 64, 65 and 67 of the Rules of Procedure of the Court (hereinafter “the Rules of Procedure”), delivers this Judgment, which is structured as follows:

* As stipulated in Article 19(1) of the Court’s Rules of Procedure, which establishes that in cases referencing Article 44 of the Convention, judges cannot participate in the hearing and deliberation of the case if they are nationals of the respondent State,” Judge Eduardo Ferrer Mac-Gregor Poisot, a Mexican national, did not participate in the processing of this case or in the deliberation or signing of this Judgment.

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I INTRODUCTION TO THE CASE

1. *The case before the Court.* On March 17, 2013, in accordance with Articles 51 and 61 of the Convention and Article 35 of the Court's Rules of Procedure, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") submitted case 12.288, "*Juan García Cruz and Santiago Sánchez Silvestre*" against the United States of Mexico (hereinafter, "the State" or "Mexico") to the Court. The Commission indicated that the case concerned the alleged "illegal detention and torture of Juan García Cruz and Santiago Sánchez Silvestre [in June, 1997], as well as their subsequent convictions to 3 years and 40 years imprisonment, as a consequence of two criminal trials in which [supposedly] no guarantees of due process were observed and, in particular, the [alleged] use of confessions obtained under torture and for the [supposed] failure to investigate and punish the actions denounced." The Commission referred to the conclusions reached in its Report on Merits No. 138/11 of October 13, 2011, with respect to Mexico's international responsibility in this case¹ and indicated that the Court had jurisdiction "to reach a decision regarding the facts [included in this Report] regarding the failure to investigate the evidence of torture from December 16, 1998, as well as the consequences of this lack of investigation in the proceedings against [García Cruz and Sánchez Silvestre]." The Commission explained that it submitted the case "given the absence of substantial information on the compliance with the recommendations"² and "the need to obtain justice for the victims." The Commission appointed Rodrigo Escobar Gil, Commissioner, and Emilio Álvarez Icaza L., Executive Secretary, as delegates and the attorneys Elizabeth Abi-Mershed, Deputy Executive Secretary, and Silvia Serrano Guzmán and Isabel Madariaga of the Executive Secretariat as legal advisers.

2. *Proceedings before the Inter-American Commission.* The initial petition was presented before the Commission on May 10, 2000, by *Servicios Legales e Investigación y Estudios Jurídicos A.C.* (SLIEJ) and the Center for Justice and International Law (CEJIL).³ The Commission approved Admissibility Report No. 80/03 on October 22, 2003,⁴ and on October 31, 2011, in accordance with Article 50 of the Convention, it issued the Report on Merits No. 138/11 (hereinafter the "Report on Merits" or "Report No. 138/11"), in which it reached a number of conclusions and

¹ In the Report on Merits No. 138/11, the Commission concluded that the State is responsible for the violation of: the right to "personal liberty (Article 7), humane treatment (Article 5), right to a fair trial and judicial protection (Articles 8 and 25), all in relation to the general obligation to respect rights in Article 1(1) of the American Convention;" "provisions 1, 8 and 10 of the Inter-American Convention to Prevent and Punish Torture," and "in application of the principle of *iura novit curiae*[,] for the violation of the obligation to adopt provisions of domestic law (Article 2) of the American Convention in connection with Article 6 of the Inter-American Convention to Prevent and Punish Torture and the obligations established in Article 1(1) of the American Convention," all to the detriment of Messrs. Juan García Cruz and Santiago Sánchez Silvestre. Cf. Report on Merits No. 138/11, Case 12.288, Juan García Cruz and Santiago Sánchez Silvestre, October 31, 2011. Available at: <http://www.oas.org/es/cidh/decisiones/corte/12.288FondoEsp.pdf>

² The Commission referred to the information and explanations provided by the State regarding its compliance with the five recommendations made in the Report on Merits and declared that this information "does not show tangible progress in the State's substantial compliance with the recommendations."

³ In a brief dated October 8, 2007, the victims informed the then-Executive Secretary of the Commission that, "from this date [,] in addition to SLIEJ and CEJIL, the Lawyers for Justice and Human Rights organization (AJDH for its Spanish acronym) would also be acting as a petitioner on [their] behalf."

⁴ In the Report on Admissibility, the Commission "conclude[d] that it had jurisdiction to consider the merits of this case" and "decide[d] to declare the present case admissible in relation to the alleged violations of the rights of Messrs. Juan García Cruz and Santiago Sánchez Silvestre, protected under Articles 5, 7, 8 and 25 of the American Convention in connection with Article 1(1) of that international instrument; as well as in Articles 1, 6, 8 and 10 of the Inter-American Convention to Prevent and Punish Torture." Cf. Report on Admissibility No. 80/03, Case 12.288, Juan García Cruz and Santiago Sánchez Silvestre, Mexico, October 22, 2003, (file on the proceedings before the Commission, pages 914 to 923).

made several recommendations to Mexico.⁵ This report was notified to Mexico on November 17, 2011, and it was granted a period of two months to report on the compliance with the recommendations. Upon submitting the case to the Court on March 17, 2013, the Commission explained that the State “had requested a number of extensions, which [were] granted [...] in order to obtain information on the progress made in complying fully with the recommendations made in the Report on Merits,” with the exception of the last extension requested on March 11, 2013, which was denied.⁶

II PROCEEDINGS BEFORE THE COURT

3. *Appointment of the Representatives’ Common Intervener.* On April 29, 2013, following the instructions of the President of the Court, CEJIL, SLIEJ and AJDH, the representatives of the presumed victims, and in compliance with the provisions of Article 25(2) of the Rules of Procedure, were asked to appoint a Common Intervener for the representatives. On May 14, 2013, the representatives indicated CEJIL would act as Common Intervener in this proceeding.”

4. *Information presented by the Commission subsequent to the submission of the case.* On May 10, 2013 the Commission presented a brief stating that, after submitting the case to the Court, the State had informed it that the writ of *amparo* filed by the victims had been admitted, that their criminal conviction had been reversed, and that on April 18, 2013 Messrs. García Cruz and Sánchez Silvestre had been released (*infra* paras. 49 to 51 and 59 to 61).

5. *Notification to the State and to the Common Intervener.* The submission of the case to the Court by the Commission was notified to the State and to the Common Intervener by the Secretariat of the Court on June 18, 2013.⁷

6. *Brief of pleadings, motions and evidence.* On August 19, 2013 the representatives of the presumed victims presented their brief of pleadings, motions and evidence. The representatives substantially agreed with the Commission in asking the Court to declare the State’s international responsibility for the violation of the same rights alleged by the Commission to the detriment of Messrs. García Cruz and Sánchez Silvestre.

7. *Friendly settlement agreement and the State’s acknowledgment of responsibility.* On November 7 and 8, 2013, the State and the representatives, respectively, notified the Court that they had reached a friendly settlement agreement and requested, *inter alia*, that they be permitted to sign this agreement at the Court. Mexico also asked the Court to issue a Judgment and “close the case.” On November 18, 2013, the official signing of the “friendly settlement

⁵ The Commission recommended that the State: i) “conduct a complete, impartial and effective judicial investigation in an expeditious manner, for the purpose of investigating the violations of personal integrity and personal liberty committed against Messrs. García Cruz y Sánchez Silvestre;” ii) “[a]dopt legislative, administrative, or any other type of measures for the purpose of adapting Mexican legislation and practices to international standards related to torture;” iii) “[a]dopt the necessary measures to review the validity of the criminal proceedings followed to the detriment of Messrs. García Cruz and Sánchez Silvestre, in view of the rights of which they were deprived, especially the evidentiary value of the confessions made under torture;” iv) “make full reparations to Messrs. García Cruz and Sánchez Silvestre, including both moral and material aspects, for the violations of human rights established herein,” and v) “[a]dopt] measures to prevent the repetition of events similar to those related to this case.”

⁶ According to the case file of the proceeding before the Commission, Mexico submitted reports to this organization on January 19, June 14, September 17 and December 12, 2012 as well as on March 11, 2013.

⁷ The notification was delivered at CEJIL’s office on June 19, 2013. As to the notification to the State, the courier delivered the document at the Mexican notifications office on June 24, 2013)

agreement and the State's acknowledgment of responsibility," took place for this case. (*infra* para. 10).

8. *Brief of the Common Intervener.* On November 19, 2013, the representatives' Common Intervener presented "several observations on two points of the friendly settlement agreement."⁸

9. *Observations of the Commission.* On November 20, 2013, the Commission presented its observations on the "friendly settlement agreement and the State's acknowledgment of responsibility" in this case.

III FRIENDLY SETTLEMENT AGREEMENT AND ACKNOWLEDGMENT OF THE STATE'S RESPONSIBILITY

A) *Friendly settlement agreement and acknowledgment of the State's responsibility*

10. On November 18, 2013, the parties met in San Jose, Costa Rica, for the purpose of formally signing the "Friendly settlement agreement and acknowledgment of the State's Responsibility."⁹ This act took place at the Court in the presence of the President of the Court, one of the victims, Mr. Santiago Sánchez Silvestre, and representatives of the victims and the State.¹⁰ The parties submitted this agreement to the Court and requested that it issue a ruling approving the agreement, defining its provisions and supervising its compliance.¹¹

11. The aforementioned agreement provides for a "friendly settlement" of the dispute in this case, agreed to by the parties and "based on the acknowledgment (of international responsibility)" on the part of the State.¹² In the agreement the parties expressed "their willingness to reach a friendly settlement in the Case of Juan García Cruz and Santiago Sánchez Silvestre, as stipulated [in the agreement...], omitting the public hearing."

12. In said agreement the State expressed "its full and absolute commitment to the application, respect, promotion and protection of human rights." In section V of the agreement, entitled "Legal Basis of the Acknowledgment of Responsibility by the State of Mexico," Mexico acknowledged its international responsibility in this case with respect to the facts and their legal consequences in the following terms:

⁸ Specifically, the representatives referred to: i) the importance of "the joint request [included in the friendly settlement agreement and acknowledgment of responsibility] for the Court to develop standards regarding the evidentiary value of confessions and procedural immediacy;" and ii) the need to safeguard the confidentiality of the victims' names" in the processing of this case (*infra* paras. 27 and 28). They also submitted a "clarification on the error in the birth date of Juan García Cruz."

⁹ Cf. "Friendly Settlement Agreement and the State's Acknowledgment of Responsibility in the Case of Juan García Cruz and Santiago Sánchez Silvestre", signed on November 18, 2013, in San Jose, Costa Rica.

¹⁰ The following individuals attended the signing of the friendly settlement agreement and the State's acknowledgment of responsibility: a) victim Santiago Sánchez Silvestre and the representatives: María del Pilar Noriega García from SLIEJ; Marcia Aguiluz, Carlos K. Zazueta and Daniela Araya from CEJIL; and b) for the State: Lía Limón García, Assistant Secretary for Legal Affairs and Human Rights of the Interior Ministry; Armando Gonzalo Álvarez Reina, Ambassador of Mexico in Costa Rica; Alejandro Alday González, Director General of Human Rights and Democracy at the Foreign Ministry; Alejandra Negrete Morayta, Deputy Director General of Public Policies of the National Human Rights Program of the Foreign Relations Ministry; and Rafael Barceló Durazo, Political Affairs and Human Rights Officer of the Embassy of Mexico in Costa Rica.

¹¹ Friendly settlement agreement and the State's acknowledgment of responsibility, *supra* note 9, paragraph "VII. Statements" "of the parties" second clause.

¹² Friendly settlement agreement and the State's acknowledgment of responsibility, *supra* note 9, paragraph "II. Purpose."

The parties agree that the facts which constitute the factual basis of this Agreement and, therefore, the acknowledgment of the responsibility of the State of Mexico, are those proven facts as determined by the Commission in its Report No. 138/11 of October 31, 2011. They are the same facts that form an integral part of this agreement. Based on these facts, the State of Mexico acknowledges that it is responsible for the violation of the rights contained in the American Convention: personal liberty (Article 7), humane treatment (Article 5), right to a fair trial and judicial protection (Articles 8 and 25), all of the above in relation to the general obligation to respect rights in Article 1(1); for the violation of provisions of 1, 8 and 10 of the Inter-American Convention to Prevent and Punish Torture, and for the violation of the obligation to adopt domestic legal provisions (Article 2 of the American Convention), in connection with Article 6 of the Inter-American Convention to Prevent and Punish Torture), all these violations to the detriment of the victims.

The State of Mexico makes this acknowledgment in relation to all the facts contained in the Report on Merits No. 138/11, including those prior to the acknowledgment of the Court's contentious jurisdiction.

13. In the settlement the parties also agreed that Mexico should comply with several measures of "comprehensive reparation" for the violations committed in this case to the detriment of Juan García Cruz and Santiago Sánchez Silvestre (*infra* paras. 63 to 102) and should grant two measures of "good faith" in favor of the daughter and wife of Mr. Sánchez Silvestre. In addition, the "terms of compliance and supervision" were agreed upon. In this regard, the State made a commitment to abide by the terms of the [...] Agreement [...] by means of a mechanism that promotes dialogue and the involvement of the beneficiaries [...] in the actions taken for these purposes."

14. For their part, in this agreement "[the] victims and their representatives acknowledged the Mexican State's institutional efforts and willingness to resolve this case through amicable negotiation, reflected especially in its acknowledgment of [the] facts and legal consequences which occurred prior to the date of recognition of the Court's contentious jurisdiction." In addition, during the formal signing of the agreement, CEJIL stated that this act reflected the goals of the inter-American system, in which the protection of the victims' human rights and the compensation for violations committed against them is crucial.

15. Also, in the aforementioned agreement, the parties made a "joint request" to the Court "to develop international standards" on two substantive issues.¹³

B) Observations of the Commission

16. In its observations (*supra* para. 9), the Commission expressed its "satisfaction with the agreement [...] signed by the parties," and "evaluate[d] very positively the State's acknowledgment of responsibility based on the legal and factual rulings of the Report on Merits." It also noted that, "the measures of reparation agreed by the parties include different components of a comprehensive reparation scheme, under terms of the Court's jurisprudence."

¹³ The request was made in the following terms: "[in] spite of the fact that in this case the dispute regarding the facts of the case and the international responsibility of the State of Mexico has ended, and that the corresponding reparations have been agreed upon, there is still a need to develop case law on the right to judicial guarantees so that the events which occurred in this case are not repeated. Therefore both parties request that the Judgment issued by the Inter-American Court of Human Rights develop international standards on the guarantees that should be respected in order to give evidentiary value to a confession, and on the application of the principle of procedural immediacy in light of the guarantees contemplated in the American Convention on Human Rights." Subsequently, in a written communication of November 19, 2013, (*supra* para. 8), the representatives referred to the importance of the joint request made in the agreement for the development of "international standards regarding the evidentiary value of confessions and the Mexican doctrine of procedural immediacy." In this regard, they "emphasize[d] that, as the parties have acknowledged in the aforementioned agreement, the development of these standards will help to prevent a repetition of events such as those that occurred in this case" and "recall[ed] that the use of confessions obtained through torture is a constant in the Mexican judicial system and that this practice is encouraged by the Mexican doctrine of procedural immediacy." Furthermore, they emphasized that the inclusion of this clause is of such importance for the victims and their representatives that during the negotiation of the friendly settlement agreement, its inclusion was considered as a condition *sine qua non* to reach an amicable settlement of this matter."

It also expressed its satisfaction regarding the parties' joint request that the Court rule on the points of law requested (*supra* para. 15), and "endorsed the request" given the "impact this ruling could have on the Inter-American public order."

C) Considerations of the Court

17. In accordance with Article 63 (Friendly Settlement) of the Court's Rules of Procedure,¹⁴ the Court shall decide on the provisions and legal effects of the Friendly Settlement Agreement agreed to by the parties and the acknowledgment of international responsibility made by the State.

18. The Court has confirmed that this agreement envisages a settlement of the dispute between the parties in this case in relation to the facts, the violation of human rights and the determination of reparations. Furthermore, it includes an acknowledgment of the international responsibility by the State with respect to all the facts and human rights violations declared by the Commission in its Merits Report, including those that occurred prior to Mexico's acceptance of the Court's contentious jurisdiction. The Court considers that, given the manner in which the State acknowledged its responsibility for the violations declared by the Inter-American Commission (*supra* para. 12), the State also understands the legal considerations which led the Commission to conclude that these violations were committed to the detriment of the victims in this case.

19. The Court highlights the willingness of the victims, their representatives and the State to reach a settlement to the dispute in this case and particularly emphasizes the procedural stage at which the settlement was reached. This case differs from others in that the friendly settlement reached by the parties and the State's acknowledgment of international responsibility occurred an early stage of the proceedings before this Court, prior to the deadline set for the State to present its response, in which it asked the Court to dispense with the proposed public hearing.¹⁵ This allows the Court to arrive at a Judgment on the merits, reparations and costs much sooner than if the case had entailed an international proceeding to obtain justice and reparations for the victims in this case. Thus, the dispute in this proceeding ended without the need to hold a public hearing, or to receive expert evidence, testimony or statements from the victims, and without the need to conduct the final written procedure.

20. Furthermore, the Court stresses the significance of the State's acknowledgment of responsibility, given that it accepted all the facts presented in the Commission's Report on Merits, including those prior to the State's acceptance of the Court's contentious jurisdiction, as well as the legal claims contained in the Report with respect to the violations of the victims' human rights.

21. Based on the foregoing, and in accordance with the terms under which the agreement between the parties was signed and the State's acknowledgment of international responsibility in the case, the Court considers that the dispute over the facts has concluded, together with the arguments concerning the violations "of the following rights contained in the [American Convention]: personal liberty (Article 7), humane treatment (Article 5), right to a fair trial and judicial protection (Articles 8 and 25), all in relation to the general obligation to respect rights

¹⁴ Article 63 provides that "When the Commission; the victims or alleged victims, or their representatives; the respondent State; or, if applicable, the petitioning State in a case before the Court inform it of the existence of a friendly settlement, compromise, or any other occurrence likely to lead to a settlement of the dispute, the Court shall rule upon its admissibility and juridical effects at the appropriate procedural time."

¹⁵ In the proceedings before the Court, no documentary evidence, victims' statements or expert reports were received, nor did the Court or its President request evidence or explanations to clarify the case.

enshrined in Article 1(1); for the violation of provisions 1, 8 and 10 of the Inter-American Convention to Prevent and Punish Torture; for the violation of the obligation to adopt domestic legal provisions (Article 2 of the American Convention in connection with Article 6 of the Inter-American Convention to Prevent and Punish Torture), all of these violations to the detriment of the victims [Messrs. Juan García Cruz and Santiago Sánchez Silvestre].”¹⁶

22. Furthermore, the Court appreciates the parties’ willingness and efforts to reach a friendly settlement agreement, which also reflects the willingness of Mexico to comprehensively repair the damage caused to the victims by the violations that occurred in this case and to avoid the repetition of such violations. The Court also considers that the settlement reached by the parties contributes to the goals of the inter-American system for the protection of human rights, particularly to its objective to find just solutions to specific and structural problems of the case.¹⁷ In addition, it makes it possible to offer reparation for the violations committed against the victims of this case more quickly than if the litigation had followed its normal course before the Court. In order to help accomplish this goal, the Court issues this Judgment in the shortest time possible, paying particular attention to the fact that the settlement reached by the parties requires Mexico to comply with all reparations within a period that begins from the notification of this Court’s Judgment.

23. The Court believes that the State’s acknowledgment of responsibility is a positive contribution to this proceeding and to the application of the principles underlying the Convention.¹⁸ Moreover, as in other cases,¹⁹ the Court considers that a friendly settlement agreement and an acknowledgment of responsibility is legally binding in this case.

24. With regard to the compensation measures set out in the settlement agreed by the State, the victims and their representatives, the Court endorses these under the terms established in this Judgment (*infra* paras. 63 to 102) since they contribute to the object and purpose of the Convention. The Court will analyze these measures in Chapter VII in order to determine their scope and means of implementation.

IV JURISDICTION OF THE COURT

25. In accordance with Article 62(3) of the American Convention, the Court has jurisdiction to hear this case, given that Mexico has been a State Party to the Convention since March 24, 1981, and recognized the Court’s contentious jurisdiction on September 16, 1998. Mexico also ratified the Inter-American Convention to Prevent and Punish Torture on November 2, 1987.

26. The Court recalls that, as a general rule, it has temporary jurisdiction beginning on the date of ratification of the respective instruments and the acknowledgment of its contentious jurisdiction, according to the terms of said ratifications and acknowledgment.²⁰ Even though the

¹⁶ Cf. Friendly Settlement Agreement and Acknowledgment of the State’s Responsibility, *supra* note 9, section “V. Legal basis of the State’s acknowledgment of responsibility.”

¹⁷ Cf. *Case of Pacheco Teruel et al. v. Honduras. Merits, Reparations and Costs*. Judgment of April 27, 2012. Series C No. 241, para. 19, and *Case of García and Family v. Guatemala. Merits, Reparations and Costs*. Judgment of November 29, 2012. Series C No. 258, para. 23.

¹⁸ Cf. *Case of Caracazo v. Venezuela. Merits*. Judgment of November 11, 1999. Series C No. 58, para. 43 and *Case of García and Family v. Guatemala*, *supra* note 17, para. 22.

¹⁹ Cf. *Case of Acevedo Jaramillo et al. v. Peru. Preliminary Objections, Merits, Reparations and Costs*. Judgment of February 7, 2006. Series C No. 144, para. 179; *Caso Pacheco Teruel et al. v. Honduras*, *supra* note 17, para. 19, and *Caso García and Family v. Guatemala*, *supra* note 17, para. 22.

²⁰ Cf. *Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia. Merits, Reparations and Costs*. Judgment of September 1, 2010. Series C No. 217, para. 20 and *Case of García and Family v. Guatemala*, *supra* note 17, para. 26.

declaration acknowledging the Court's jurisdiction includes a time limit,²¹ in this case, the State accepted all the facts contained in the Commission's Report on Merits, "including those prior to the acceptance of the Court's contentious jurisdiction" (*supra* para. 12). In other words, the State has clearly demonstrated its willingness to accept all the facts included in the Commission's Merits Report, together with the violations declared in this case and their legal consequences, thereby consenting to the Court's full endorsement of the Settlement signed by the parties in this case. Thus, Mexico has expressly renounced any time limit on the Court's exercise of its jurisdiction. In this specific case, this Court views the State's acceptance in a positive light.

V REQUEST FOR THE CONFIDENTIALITY OF THE VICTIMS' IDENTITY

27. During the proceedings before the Court, the representatives reported that their clients had informed them that the names of the victims used in the domestic criminal proceedings differed from those used in this international proceeding, and explained that the victims had concealed their true identities for fear that their families would suffer reprisals.²² Therefore, in the friendly settlement agreement, the parties requested that in the proceeding before the Court and in this Judgment, "they continue to use the names that the victims had during [these] proceedings,"²³ and be required to "maintain strict confidentiality [...] of the victims' personal information."²⁴ On November 19, 2013, the representatives' Common Intervener repeated this request, arguing that, "the safety of the victims cannot be guaranteed until the conclusion of [the preliminary criminal investigation initiated for the crime of torture] and of any other legal proceeding arising from it."

28. The Court approves the request to keep the victims' identity confidential in the interests of protecting their personal integrity and security and that of their families. This confidentiality must be respected both within the context of this case before the Court and also in the statements or any other information that any of the parties make public about this case. The Commission and the parties must guarantee the confidentiality of the victims' identity by refraining from releasing such information to third parties not involved in this case.

VI SUMMARY OF THE FACTS OF THE CASE AND THE VIOLATIONS OF HUMAN RIGHTS

VI. A) INTRODUCTION

29. The knowledge of all the legal aspects of the friendly settlement agreement and the State's acknowledgment of responsibility, together with the stage of the proceedings at which they were presented for consideration and the endorsement of said agreement, make it unnecessary for this Court to make its own determination of the facts and legal consequences in this case, based on an analysis and assessment of the evidence submitted thus far in the

²¹ The instrument through which Mexico accepted the Court's contentious jurisdiction includes a time limit with respect to the cases that could be submitted to its consideration, in the following terms: "2. The acceptance of the Court's contentious jurisdiction will apply only to facts or legal actions subsequent to the date on which this declaration is deposited, and consequently will have no retroactive effects." Text of the statement of acceptance of the contentious jurisdiction of the Court, signed December 16, 1998.

²² Brief of October 9, 2013, and annexes.

²³ Friendly settlement agreement and the State's acknowledgment of responsibility, *supra* note 9, section "I. Preliminary Considerations."

²⁴ Friendly settlement agreement and the State's acknowledgment of responsibility, *supra* note 9, section "XII. Final Provisions," second paragraph.

proceedings. Nevertheless, in the interest of ensuring a better understanding of the State's international responsibility in this case and ensuring that this Judgment also constitutes a form of reparation for the victims and helps to prevent the repetition of similar violations, the Court finds it necessary to present a summary of the facts of this case (*infra* paras. 32 to 51) and of the human rights violations included in the State's acknowledgment of responsibility (*infra* paras. 52 to 62).

30. In view of the foregoing, and given that "the dispute on the facts of the case and the international responsibility of the State of Mexico has ceased" (*supra* paras. 11, 15 and 22), the Court deems it unnecessary to grant the parties' request, also agreed to by the Commission, that it "develop international standards on the guarantees that must be respected in order to give evidentiary value to a confession, and in the application of the principle of procedural immediacy in light of the guarantees provided for in the Convention" (*supra* para. 15 and 16), a request that was also made in a fairly general and abstract manner.

31. Moreover, the Court notes that with regard to the alleged interpretation "of the principle of procedural immediacy within the Mexican legal system" which, according to the Commission, has been issued by the Supreme Court of Justice and other Mexican circuit courts²⁵, no specific reference was made to those precedents in the criminal convictions and appeals in this case examined in the Report on Merits.

VI. B) SUMMARY OF THE FACTS OF THE CASE

32. Given that the State acknowledged its international responsibility in relation to "all the facts contained in Report No. 138/11" of the Commission, the Court will proceed to summarize the facts of the case, bearing in mind that they are described in Chapter "V. Established Facts" of the Report (paragraphs 42 to 120), along with other factual determinations contained in Chapter "VI. Legal Analysis" (paragraphs 121 to 249 of the Report) on aspects that involved a more detailed analysis and evaluation of the evidence. Likewise, the Court will briefly explain some significant facts that occurred after the adoption of said Report (*infra* VI. B.4).

33. Messrs. Juan García Cruz and Santiago Sánchez Silvestre were criminally prosecuted in two cases:

- a) for the crimes of "possession of firearms for the exclusive use of the Army, the Navy and the Air Force; Criminal Association and Rebellion" (criminal proceeding No. 66/97); and
- b) for "the crimes of homicide, injury, violent robbery, organized crime and damage to property" (criminal proceeding No. 172/97).²⁶

B.1) Arrest, subjection to torture and first statements in the preliminary inquiry phase

34. On June 6, 1997, Judicial Police agents of the Federal District arrested Messrs. Juan García Cruz and Santiago Sánchez Silvestre without a warrant.²⁷ At the time, they were aged 20 and 37

²⁵ Cf. Report on Merits No. 138/11, paras. 232, 233 and 236.

²⁶ Cf. Report on Merits No. 138/11, paras. 42 and 69.

²⁷ Regarding the legality of the arrest, the Commission maintained that "the judicial authorities [...] did not conduct additional or effective criminal investigations to confirm or reject the allegations" of Messrs. García Cruz and Sánchez Silvestre regarding the violations of their right to personal liberty. The Commission noted that in their report, the officers who carried out the arrest stated that "the arrest was made in flagrante on Ignacio Zaragoza Street, near the 'Santa Martha Acatitla' metro station". They also noted that, on the contrary, Messrs. García Cruz and Sánchez Silvestre

years old, respectively, and worked in construction in the Federal District. “[T]hey were subjected to torture while in the custody of the police officers who arrested them” “for the purpose of breaking their mental resistance and forcing them to incriminate themselves or confess to certain criminal actions.” “The effects of torture were evident in the first statements each made before the Public Prosecutor, and also in the first legal testimony that both gave on June 8, 1997.”²⁸ On June 6, 1997, they made “statements” to the Judicial Police,²⁹ during which time they “were not provided with the assistance of a defense counsel.”³⁰

35. On June 6, 1997, Messrs. Juan García Cruz and Santiago Sánchez Silvestre also “rendered their first statement before the Public Prosecutor” of the Federal District. “The torture to which they were subjected compelled them to declare themselves guilty of the crimes and actions they were charged with regarding the possession of firearms for the exclusive use of the Army, homicide and injuries, among other charges. In the transcripts of these statements the prosecuting authority indicated that both showed “external signs of recent injuries” and both said that Judicial Police officers had caused these injuries. The official of the Public Prosecutor’s Office asked the General Director of Specialist Services to appoint an expert in medicine to determine the psychological and physical status and injuries of Messrs. García Cruz and Sánchez Silvestre before making their initial statement at prosecution. The first medical certificates, issued by the Departmental Forensic Medicine Unit of the Attorney General’s Office of the Federal District on the afternoon of June 6, 1997, stated that each of the victims “showed external signs of recent injuries, which by their nature, would take two weeks to heal.” After issuing their first statements on June 7, 1997, the forensic medical experts of the Specialist Services Division of the Federal District’s Attorney General’s Office issued a second medical certificate indicating that both victims had injuries which, by their nature, were not life threatening and would heal in less than two weeks.” A third medical certificate was issued in the evening of the same day with the same conclusion. It added that an “x-ray evaluation” was required for the “injuries to the shoulders and arms of [the victims], [and that] the affected areas also showed increased size as well as limited movement.” On June 8, 1997, Messrs. García Cruz and Sánchez Silvestre gave testimony before the Federal Public Prosecutor, and were accompanied by a “law student” as their “person of trust.”³¹

36. Article 287 of the Mexican Federal Code of Criminal Procedure establishes, *inter alia*, that “[a] confession made before the Public Prosecutor and before the judge, should [...] be made [...] without coercion, or physical or moral violence,” “with the assistance of a defense counsel or a person of trust.”³²

37. “Juan García Cruz and Santiago Sánchez Silvestre were investigated and prosecuted in two criminal cases based on these same testimonies at prosecution, in which they stated that they were not arrested at the place indicated by the judicial police [,] and that they were injured and tortured by those [officers].” “[F]rom the initial investigative procedures” and “on repeated occasions” Messrs. García Cruz and Sánchez Silvestre and their legal representatives filed complaints or brought these acts of aggression and torture to the attention of the judicial authorities. “The judicial [and] prosecution authorities did not open an investigation” to obtain

affirmed from their first statement before the Public Prosecutor that they were arrested at the house where they lived. Cf. Report on Merits No. 138/11, paras. 42 to 44, 135, 142, 143 and 164.

²⁸ Report on Merits No. 138/11, paras. 42, 136, 210 and 213.

²⁹ Report on Merits No. 138/11, para. 185.

³⁰ The Commission indicated that there was no record that the victims were offered “the possibility of having legal counsel (or legal assistance) or that they were warned about the eventual consequences of their statements in terms of [their] inclusion in the criminal charges against them.” Report on Merits No. 138/11, paras. 185 and 187.

³¹ Cf. Report on Merits No. 138/11, paras. 44, 56, 57, 61, 63, 99 and 176.

³² Cf. Report on Merits No. 138/11, para. 64.

information related directly to the allegations of torture and injuries to Messrs. García Cruz and Sánchez Silvestre³³.

B. 2) Criminal proceedings for the crime of “possession of firearms for the exclusive use of the Army, the Navy and the Air Force; Criminal conspiracy and Rebellion”

38. On June 8, 1997, “the Federal Public Prosecutor brought a legal action” against Messrs. García Cruz and Sánchez Silvestre, “placing them at the disposal of the Seventh District Court [of Criminal Matters of the Federal District].” That same day “a public hearing took place [...] in which both gave their preliminary statements.” On June 11, “the Seventh District judge issued a formal order of imprisonment against [both].”³⁴

39. On June 24, 1997, Messrs. García Cruz and Sánchez Silvestre “rescinded the appointment of the court-appointed counsel” and designated a private defense counsel.³⁵

40. On August 28, 1998, the Seventh District Court for Criminal Matters of the Federal District “issued the first instance judgment, declaring [them] criminally responsible for committing the offence of ‘possession of firearms for the exclusive use of the Army, the Navy and the Air Force’ and imposing a three-year prison sentence and a fine of twelve days.” The defense counsel of both defendants and the official of the Federal Public Prosecutor filed appeals.³⁶

41. On August 21, 1999, the First Unitary Court of the First Circuit of Mexico issued a judgment which “confirmed the prison sentence ordered by the court of first instance and reduced the fine imposed.” With respect to the evidentiary value of the statements made by Messrs. García Cruz and Sánchez Silvestre, the Court indicated that “although it is true that the medical certificates in the case file mention injuries to those sentenced here today, stating that they did indeed show signs of injury [...] it is also true that these certificates do not effectively demonstrate that the injuries were inflicted by their captors to extract incriminating statements, since no medical evidence whatsoever was produced to demonstrate that situation; therefore it cannot be said that their statements lack any validity[...].”³⁷

42. Messrs. García Cruz and Sánchez Silvestre “filed an appeal against the abovementioned sentence of the First Unitary Court of the First Circuit.”³⁸ On October 18, 1999, the Third Collegiate Court of the First Circuit of Criminal Matters issued a ruling on the appeal, in which it

³³ On November 5, 1997 the private defense counsel of Messrs. García Cruz and Sánchez Silvestre asked the Seventh Judge to “notify the Public Prosecutor for a proper investigation into the torture they were subjected to.” On November 12, “[t]he Public Prosecutor submitted a report to the Seventh Judge, indicating [...] that, in the judgment of the undersigned, no evidence was found to corroborate the crime of TORTURE referred to in Article 3 of the Federal Law to Prevent and Punish Torture [...]” (*infra* note 69) Cf. Report on Merits No. 138/11, paras. 81, 149, 164, 165, 167, 170, 173, 175, 177 and 178.

³⁴ Report on Merits No. 138/11, paras. 42 and 69-73.

³⁵ Report on Merits No. 138/11, para. 188.

³⁶ Report on Merits No. 138/11, paras. 82 to 86. The private counsel of Messrs. García Cruz and Sánchez Silvestre alleged, among other reasons, that: the Public Defender’s Office made a “serious omission” “leaving [them] in a state of defenselessness;” “it is unacceptable that the elements proving the crime have been accepted;” “the Federal Law to Prevent and Punish Torture should be applied, which invalidates any statement made under torture [...] and] the Public Prosecutor should be urged to open the corresponding investigation;” and that this “infringed the principle of presumed innocence [...] ‘by expecting those being prosecuted to demonstrate their innocence, and validates the proceedings conducted by the Public Prosecutor without these following the requirements established in the Federal Code of Criminal Procedures [...]’”

³⁷ Report on Merits No. 138/11, paras. 85 and 86.

³⁸ Among other aspects, they claimed that the statements of the police officers who arrested them were not properly assessed, that the accused did not have an adequate defense and that they were forced to make statements to the Public Prosecutor through the use of physical and psychological violence.” Cf. Report on Merits No. 138/11, para. 89.

"upheld the contested judgment, except with respect to the amount of the fine." As to the allegations of torture, it also upheld the judgment of the First Court. Regarding the alleged shortcomings of the court-appointed defense counsel, it pointed out, *inter alia*, that "if the defense counsel did not fulfill his obligation, this fact was not caused by the trial Judge, according to the criterion based on the Jurisprudence Thesis No. 119 of the First Court of Mexico's Supreme Court of Justice." With respect to the circumstances of the arrest, "it has been established that there were no elements of proof to demonstrate that the arrest took place in the home of Messrs. Juan García Cruz and Santiago Sánchez Silvestre."³⁹

B. 3) Criminal proceedings for the crimes of homicide, injuries, violent robbery, organized crime and damage to property

43. On December 9, 1996, the Public Prosecutor opened the preliminary investigation into the events that occurred on that same day, in which a police officer was killed by a gunshot wound, and a police officer and other persons were wounded.⁴⁰ The statements at prosecution rendered by Messrs. García Cruz and Sánchez Silvestre on June 6 and 8, 1997, were included in this investigation.⁴¹ (*Supra* para. 35).

44. On June 11, 1997, the Public Prosecutor "filed criminal proceedings" against Messrs. García Cruz and Sánchez Silvestre for the crimes of homicide, injuries, violent robbery, organized crime and damage to property, "safeguarding their right to extend the criminal proceedings with respect to the other parties involved" and "presented the investigation procedure" to the Criminal Judge of First Instance on Duty in Nezahualcóyotl, in the state of Mexico. That same day the Fourth Criminal Judge of the First Instance of the Judicial District of Texcoco in Nezahualcóyotl "issued an order for the arrest of [both ...] so that they could be brought before him immediately in order to continue with the criminal proceedings."⁴²

45. "On June 13, 2000, Juan García Cruz and Santiago Sánchez Silvestre made their preliminary statements in this criminal case, denying the charges against them; moreover, [Mr.] Sánchez Silvestre expressly stated that he had been subjected to torture."⁴³

46. On September 6, 2001 the Third Judge issued the judgment "establishing the criminal liability of Santiago Sánchez Silvestre and Juan García Cruz for committing the crimes of homicide, injuries, violent robbery, organized crime and damage to property 'against [five persons, the] Patrimony of the State of Mexico and the Community, respectively.'" He sentenced them "to a forty-year prison term and a fine of one thousand days." Considering that the criminal liability of the accused had been proven, the judge indicated that "the full evidentiary value of the prosecution statements is acknowledged [...], by virtue of the fact that the accused were assisted by a person of trust [...], which confers full evidentiary value upon the investigation and above all on the plain and simple confession they rendered." Messrs. García Cruz and Sánchez Silvestre filed an appeal against this sentence.⁴⁴

47. On February 12, 2002 the Superior Court of Justice of the State of Mexico ruled on the appeal, confirming the forty-year prison sentence but amending other operative paragraphs. Moreover, "it dismissed the allegations of torture [...] and considered [that the] statements at prosecution [made by Messrs. García Cruz and Sánchez Silvestre] had full evidentiary value."

³⁹ Report on Merits No. 138/11, paras. 89 to 93.

⁴⁰ Report on Merits No. 138/11, paras. 94, 113 and 114.

⁴¹ Report on Merits No. 138/11, para. 98.

⁴² Report on Merits No. 138/11, paras. 101 and 102.

⁴³ Report on Merits No. 138/11, paras. 105 and 106.

⁴⁴ Report on Merits No. 138/11, paras. 113 and 116.

The Court confirmed, *inter alia*, that “there is no proof that the [physical injuries] were caused precisely at the time when they were making statements to the Investigative Body assisted by a person of trust.” Messrs. García Cruz and Sánchez Silvestre “filed a writ of amparo” against this sentence.⁴⁵

48. On October 5, 2007, the First Collegiate Criminal Court of Texcoco of the Superior Court of Justice of the State of Mexico issued a ruling on the writ of amparo, in which it dismissed the allegations of torture made by Messrs. Juan García Cruz and Santiago Sánchez Silvestre and ruled that their prosecution statements had full evidentiary value, based on the same considerations as the judgment of February 12, 2002.”⁴⁶

B.4) Events subsequent to Report No. 138/11 of October 31, 2011

49. On December 19, 2011, the Prosecutor’s Office for the Investigation of Crimes Committed by Public Servants began a preliminary investigation into the probable commission of the crime of torture to the detriment of Messrs. García Cruz and Sánchez Silvestre in relation to the events that occurred in 1997.⁴⁷

50. On March 26, 2012 the Second Collegiate Criminal Court of Texcoco issued a ruling on the appeal for a special review filed by Messrs. García Cruz and Sánchez Silvestre. It ruled that their request to be declared innocent was inadmissible because the dismissal of the evidentiary value of the confessions did not directly affect the “convicting value” of the other evidence used as a basis for the conviction.⁴⁸

51. On June 27, 2012, Messrs. García Cruz and Sánchez Silvestre filed an application for a direct appeal against the criminal ruling of October 5, 2007, issued by the First Collegiate Criminal Court of Texcoco to the Superior Court of Justice of the State of Mexico,⁴⁹ and against its implementation (*supra* para. 48). On March 25, 2013, the Collegiate Court of the Auxiliary Circuit of the Seventh Region admitted the direct appeal filed by the victims “in order to restore [to them] the enjoyment of the guarantees that had been violated and their human rights.” This Collegiate Court decided, *inter alia*, that the criminal sentence of October 5, 2007, was “based on statements obtained through [...] coercion” and “contravened the Constitutional principles of non self-incrimination, presumed innocence and adequate defense, since the conviction was based on unlawful evidence obtained in breach of the constitutional and legal principles contained in both domestic and supranational standards.” The *amparo* ruling decided to return the trial documents to the Collegiate Court of origin and ordered the “[judicial] authority responsible: a) to [declare] the appealed judgment void: b) [i]n its place, to issue another ruling reiterating the considerations that were not the subject of the *amparo* award related to the acceptance of the elements of the crimes of aggravated homicide, injuries, violent robbery and damage to

⁴⁵ Report on Merits No. 138/11, paras. 116 to 118.

⁴⁶ Report on Merits No. 138/11, paras. 118 to 119.

⁴⁷ Answer briefs of the State to the Report on Merits No. 138/11 of January 17 and June 14, 2002, and official letter of the Attorney General’s Office of the Federal District, of December 22, 2011 (file processed before the Commission, Volumes VI and VII, pages 3101 and 3751).

⁴⁸ Report dated June 14, 2012, on compliance with the recommendations contained in the Report on Merits No. 138/11 and the judgment issued on March 26, 2012, by the Second Collegiate Criminal Chamber of Texcoco (file being processed before the Commission, Volume VI, pages 2981 to 3033, and 3042).

⁴⁹ This ruling was issued in execution of the judgment of the Second Collegiate Court in Criminal Matters of the Second Circuit of Toluca, State of Mexico on September 13, 2007, admitting a direct *amparo* action filed by the victims and ordering the First Criminal Collegiate Chamber of Texcoco “to annul” the appealed judgment of February 12, 2002, which resolved the appeal filed by the victims against the conviction issued on September 6, 2001, in the criminal proceedings against them for the crimes of homicide, injuries, violent robbery, organized crime, and damage to property and “to issue another [judgment].”

property; c) based on these enforcement guidelines, to rule that the offense of organized crime is not proven; d) to [...] consider: [t]he right of the complainants to an adequate defense; [t]hat the plaintiffs' confessions were obtained through torture; [t]hat the identification of the plaintiffs by means of photographs constitutes illegal evidence and [t]hat the statements of those who conducted the arrest [...] are ineffective as testimonial evidence, and e) to issue a ruling in accordance with the law" regarding the plaintiffs' responsibility for committing the crimes of aggravated homicide, injuries, violent robbery, and damage to property.⁵⁰ On April 18, 2013, the First Collegiate Criminal Chamber of Texcoco ruled to overturn the criminal conviction of September 6, 2001, delivered by the Third Criminal Judge of the Court of First Instance of the Judicial District of Netzahualcóyotl (*supra* para. 46), issued an acquittal and ordered the release of Juan García Cruz and Santiago Sánchez Silvestre, which took place on the same day.⁵¹

VI.C) HUMAN RIGHTS VIOLATIONS

52. In view of the State's acknowledgment of the facts and of the violations of rights, which has ended the dispute in this process, Mexico is responsible for human rights violations to the detriment of Messrs. Juan García Cruz and Santiago Sánchez Silvestre which are summarized below (*supra* paras. 10 to 23)⁵².

53. Regarding the violation of the right to humane treatment, the State acknowledged its responsibility for violating Articles 5(1) and 5(2)⁵³ of the Convention and Articles 1, 6, 8 and 10 of Inter-American Convention to Prevent and Punish Torture given that, following their arrest, Messrs. Juan García Cruz and Santiago Sánchez Silvestre were tortured "during the time they were in the custody of the police officers" and before giving their first statements to the Public Prosecutor. Moreover, the violation of these rights occurred because of a failure to investigate the allegations of torture, even though there was evidence that this had indeed taken place (in the records of their testimony and in the medical certificates documenting their physical injuries) and that both victims informed the prosecution and judicial authorities of the acts committed against them by the police officers.⁵⁴

54. Regarding the right to personal liberty, the State acknowledged its responsibility for the violation of Article 7(1), 7(2), 7(3) and 7(4)⁵⁵ of the Convention, "in relation to Article 5(1) and 5(2), all the foregoing in relation to Article 1(1) of the Convention."⁵⁶ This, as a consequence of

⁵⁰ Judgment delivered on March 25, 2013 by the Collegiate Court of the Circuit of the Auxiliary Center of the Seventh Region related to the Direct Amparo Action 778/2012 (Merits file and Reparations, Volume I, pages 109 to 377).

⁵¹ Judgment issued on April 18, 2013 by the First Collegiate Criminal Chamber of Texcoco (file of annexes to the petition briefs, arguments and evidence, Volume III, pages 5032 and 50333); Document number 1171/2013 of April 18, 2013 of the Third Criminal Court of the First Instance Court of the Judicial District of Netzahualcóyotl, State of Mexico (Merits file, Volume I, pages 102 to 105) and release documents of Santiago Sánchez Silvestre and Juan García Cruz from the Nezahualcóyotl Detention Center (Merits file, Volume I, pages 107 and 108).

⁵² The Commission's arguments regarding the violation of human rights to the detriment of Messrs. Juan García Cruz and Santiago Sánchez Silvestre are contained in paragraph "VI. Legal Analysis" of the Report on Merits No. 138/11 (paras. 121 to 249).

⁵³ Article 5 (Right to Humane Treatment) provides that:

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

[...]

⁵⁴ Report on Merits No. 138/11, paras. 126 and 132 to 136.

⁵⁵ Article 7 (Right to Personal Liberty) establishes that:

1. Every person has the right to personal liberty and security.
2. No one shall be deprived of 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 subjected 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.

⁵⁶ Report on Merits No. 138/11, para. 152.

the State's failure to guarantee this right, given the lack of an investigation into the allegations made by García Cruz and Sánchez Silvestre that they were illegally arrested at their homes without a warrant, and that they were subjected to arbitrary detention because "they were subjected to torture" during their initial detention and until they were brought before the competent authority.⁵⁷ The State also accepted its international responsibility for the ineffective nature of the judicial review of their arrest, given that the "judicial intervention [in the trial for the crime of possessing firearms for the exclusive use of the Army] was not an effective means for ensuring the legality of the actions by the police officers responsible for the arrest and custody of Juan García Cruz and Santiago Sánchez Silvestre and restoring their rights, particularly taking into account the testimony of [both] in light of the medical certificates presented during the judicial proceedings."⁵⁸

55. Regarding the "right to a fair trial and judicial protection, as well as the obligation to investigate acts of torture committed against Juan García Cruz and Santiago Sánchez Silvestre," Mexico is responsible for violating Articles 8 and 25 of the Convention in relation to Article 1(1) of the same instrument and Articles 1, 6, 8 and 10 of the Inter-American Convention to Prevent and Punish Torture,⁵⁹ due to:

- i. "the lack of a serious, exhaustive and impartial investigation into alleged acts of torture," which forced them to plead guilty to the crimes of possession of firearms for the exclusive use of the Army, homicide and injuries, *inter alia*, by means of written confessions, which they subsequently retracted." Messrs. García Cruz and Sánchez Silvestre "were investigated and prosecuted in two criminal cases on the basis of that same testimony at prosecution, in which they stated that their arrest did not take place at the location indicated by the judicial police, and that they were injured and tortured by these officers."⁶⁰
- ii. the violation of the right to defense, in relation to the guarantees protected by Article 8(2) d, e and f⁶¹ of the Convention, given that at the time when they gave statements to the Judicial Police on June 6, 1997, and to the Federal Public Prosecutors on June 8, 1997, they were not assisted by a defense attorney and did not receive adequate

⁵⁷ Report on Merits No. 138/11, para. 148.

⁵⁸ Report on Merits No. 138/11, para. 151.

⁵⁹ Report on Merits No. 138/11, paras. 153 to 216.

Article 8(1) (Right to a Fair Trial) stipulates that: "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."

Article 25(1) (Right to Judicial Protection) establishes that: "Everyone has the right to a simple and prompt recourse, or any other effective recourse, before 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 is may have been committed by persons acting in the course of their official duties."

Article 8 of the Inter-American Convention to Prevent and Punish Torture establishes that:

The State Parties guarantee to every person making an accusation of having been subjected to torture in any territory under its jurisdiction the right to have the case examined impartially.

Furthermore, when there is a complaint or serious reason to believe that torture has been committed in any territory under their jurisdiction, the State Parties guarantee that their respective authorities proceed properly and immediately to conduct an investigation into the case and to initiate, whenever appropriate, the corresponding criminal process.

[...]

⁶⁰ Report on Merits, paras. 178, 176 and 170.

⁶¹ Article 8 (2) of the Convention provides, *inter alia*, that "[d]uring the proceedings, every person is entitled, with full equality, to the following minimum guarantees: [...]

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

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

f) the right of the defense to examine witnesses present in the court and to obtain the appearance, as witnesses, of experts or other persons who may shed light on the facts."

- counsel given the errors made by the State-appointed defense counsel in the criminal case against them for the crime of possessing firearms reserved for the exclusive use of the Army, the Navy and the Air Force;⁶²
- iii. the violation of the principle of presumption of innocence protected in Article 8(2) of the Convention and the guarantees protected in Article 8(2)g⁶³ and 8(3)⁶⁴ of the same instrument, as well as Article 10 of the Inter-American Convention to Prevent and Punish Torture,⁶⁵ because “in both criminal cases [the] courts accepted the prosecution statements [made on June 6 and 8, 1997, respectively, to the Public Prosecutor of the Federal District and the Federal Public Prosecutor], to establish the criminal responsibility of the defendants, indicating that there was no evidence of torture,” “placing the burden of proof on them and presuming [them] to be guilty.” The courts did not comply with the requirement to completely exclude “the statements made to the Public Prosecutor and the judicial statement rendered on June 8, 1997,” “given that according to international standards the existence of torture invalidated the use of this evidence.”⁶⁶

56. Furthermore, the State acknowledged that it “failed to fulfill its general obligation to adopt domestic legal provisions, established in Article 2 of the Convention, as well as the obligation contained in Article 6 of the Convention Against Torture.”⁶⁷ The analysis made by the Commission to reach these conclusions is contained in paragraphs 217 to 249 of the Report on Merits.⁶⁸

57. The Court considers it important to emphasize that the State’s failure to meet its obligation to investigate the acts of torture in this case stems primarily from the authorities’ omission to open an independent inquiry into the criminal proceedings brought against the victims.⁶⁹ The

⁶² Report on Merits, paras. 184 to 187 and 190 to 194.

⁶³ Article 8(2) of the Convention provides, *inter alia*, that “[d]uring the proceedings, every person has the right, in full equality, to the following minimum guarantees: [...] g) right to not be compelled to testify against oneself or to confess guilt.”

⁶⁴ Article 8(3) of the Convention provides that: “A confession of guilt by the accused shall be valid only if it is made without coercion of any kind.”

⁶⁵ Article 10 of the Inter-American Convention to Prevent and Punish Torture establishes that:

No statement or confession that is proven to have been made through torture can be admitted as evidence in proceedings, except when it is used against a person or persons accused of having obtained it through torture, and only as evidence that the statement was made.

⁶⁶ Report on Merits, paras. 201, 210 and 215-216.

⁶⁷ Report on Merits, para. 249.

Article 2 (Duty to Adopt Provisions of Domestic Law) of the Convention establishes that:

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

Article 6 of the Inter-American Convention to Prevent and Punish Torture stipulates that:

In accordance with the terms of Article 1, the State Parties shall take effective measures to prevent and punish torture in any territory within their jurisdiction.

The State Parties shall ensure that all acts of torture and attempts to commit torture are offenses under their criminal law and shall make such acts punishable by severe penalties that take into account their serious nature.

The State Parties likewise shall take effective measures to prevent and punish other cruel, inhuman or degrading treatment or punishment within their jurisdiction.

⁶⁸ The Commission included considerations, *inter alia*, on the “incompatibility of the Inter-American standards” of the “domestic legislation related to the use of torture and the right of defense.”

⁶⁹ In this case, the judge presiding the criminal proceedings against Messrs. García Cruz and Sánchez Silvestre for the crime of possession of firearms for the exclusive use of the Army, the Navy and the Air Force, notified the Public Prosecutor of the complaint filed by the defendants alleging they had suffered torture (*supra* nota 33). The prosecutor merely submitted a report to the judge at this same proceeding against Messrs. García Cruz and Sánchez Silvestre, concluding that in his view, “no evidence was [found] to corroborate elements that constitute TORTURE.” He based his assessment on the fact that the physical injuries documented by the doctors of the Public Prosecutor’s Office were not serious, and argued that “these were incidental inconveniences resulting from the capture of two persons who were

Court also considers it essential to point out that the criminal proceedings brought against Messrs. García Cruz and Sánchez Silvestre for possessing firearms used exclusively by the Army has a different purpose than the investigation into the acts of torture committed to their detriment.⁷⁰ Given the allegations of torture made by García Cruz and Sánchez Silvestre and the evidence contained both in their statements and in the medical certificates confirming their physical injuries (*supra* paras. 34 and 35),⁷¹ the State had a responsibility to immediately open an effective investigation into the allegations of torture, in accordance with specific protocols and standards.⁷² Whether or not these acts constituted the crime of torture or other offences, such as injuries, was not a ruling to be made by the judges conducting the criminal proceedings against Messrs. García Cruz and Sánchez Silvestre.

58. Furthermore, the Court reiterates its jurisprudence on the rule of excluding evidence obtained through torture, cruel, inhuman or degrading treatment and coercion capable of breaking a person's spontaneous expression of will.⁷³ The Court has also stated that to accept or give probative value to statements or confessions obtained under duress, affecting the person rendering it or a third party, in turn constitutes an infringement of the right to a fair trial.⁷⁴ In view of the criminal judgment issued on February 12, 2002 (*supra* para. 47), the Court deems it appropriate to emphasize that any act of torture that may have occurred prior to a defendant making a statement could have an impact at the time when the statement is rendered.⁷⁵

59. Moreover, it has come to the Court's attention that in 2013, after the Commission had issued its Report on Merits and submitted this case to the Court, two judgments of particular importance were issued which, due to their contents and being aimed at the protection of the

carrying guns" adding that there is a "possibility they could have been caused" by "the physical training" carried out "by the Guerilla Movement." In addition, the prosecutor argued that the lawyer for the accused could file a complaint for the crime of physical injury. *Cf.* Report on Merits No. 138/11, paras. 81 and 149. Likewise, in the proceedings brought against Messrs. García Cruz and Sánchez Silvestre for the offences of homicide, injuries, violent robbery, organized crime and damage to property, the official of the Public Prosecutor's Office was not notified about the probable acts of torture reported by Messrs. Juan García Cruz and Santiago Sánchez Silvestre. *Cf.* Report on Merits No. 138/11, para. 120.

⁷⁰ *Cf. Case of Cabrera García and Montiel Flores v. Mexico. Preliminary Objections, Merits, Reparations and Costs.* Judgment of November 26, 2010. Series C No. 220, paras. 169 and 201.

⁷¹ The judicial and prosecution authorities in the criminal proceedings conducted against the victims had knowledge of the presumed acts of torture against the victims, since they alleged repeatedly, and at different stages of the criminal proceedings, that they were tortured. This was confirmed through medical certificates confirming visible physical injuries. *Cf.* Report on Merits No. 138/11, paras. 57 and 61.

⁷² *Cf. Case of Gómez Paquiyauri Brothers v. Peru. Merits, Reparations and Costs.* Judgment of July 8, 2004. Series C No. 110, paras. 153 and 154; *Case of Cabrera García and Montiel Flores v. Mexico, supra* note 70, paras. 135 and 192 and *Case of García Lucero et al. v. Chile. Preliminary Objections, Merits, Reparations and Costs.* Judgment of August 28, 2013. Series C No. 267, paras. 122 and 124.

⁷³ *Cf. Case of Cabrera García and Montiel Flores v. Mexico. Preliminary Objections, Merits, Reparations and Costs.* Judgment of November 26, 2010. Series C No. 220, paras. 165 and 166. Article 8(3) of the Convention clearly states that "[a] confession of guilt by the accused shall be valid only if it is made without coercion of any kind." Furthermore, the Court has ruled that when a person alleges, during a proceeding, that his statement or confession had been obtained under duress, the State has the obligation to verify the truth of the complaint by means of an investigation conducted with due diligence. The Court recalls that the State, in its role as guarantor, has as much responsibility for guaranteeing the rights of an individual in its custody as for providing information and evidence concerning what happened to the detainee. Likewise, the State is presumed responsible for any injuries exhibited by a person who has been in the custody of state officials and has an obligation to provide a satisfactory and convincing explanation of what happened and prove that any statement made was voluntary. *Cf. Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits.* Judgment of November 19, 1999. Series C No. 63, para. 170; *Case of Cabrera García and Montiel Flores v. Mexico, supra* note 70, paras. 134 and 136, and *Case of Mendoza et al. v. Argentina. Preliminary Objections, Merits and Reparations.* Judgment of May 14, 2013. Series C No. 260, para. 203.

⁷⁴ *Cf. Case of Cabrera García and Montiel Flores v. Mexico, supra* note 70, para. 167.

⁷⁵ The Court has held that any statement made subsequent to an alleged act of torture may be the consequence of the abuse suffered by the person, and particularly of the fear that remains after such an act, which adds to the situation of vulnerability in which the person finds himself upon being detained. *Cf. Case of Cantoral Benavides v. Peru. Merits.* Judgment of August 18, 2000. Series C No. 69, para. 104 and *Case of Cabrera García and Montiel Flores v. Mexico, supra* note 70, paras. 173 to 175.

human rights of the victims in this case, allowed for “conventionality control.”⁷⁶ One was an appeal and the other was related to criminal matters (*supra* paras. 4 and 51). These judgments turned out to be particularly relevant for “ending the dispute” and reaching a friendly settlement agreement. In this regard, it was confirmed that “[w]ith [the criminal judgment of April 18, 2013] the Third Recommendation of the Report on Merits was fulfilled.”⁷⁷ The Court emphasizes that the aforementioned judgments invoke the standards contained in the Convention and international standards contained in the Court’s jurisprudence regarding judicial guarantees in criminal proceedings, particularly with regard to the right to a defense, to the evidence upon which a judge may base his judgment, to the absolute exclusion of evidence obtained through torture or cruel and inhuman treatment, to the invalidity of a confession obtained under any type of coercion and the elements that constitute an act of torture.⁷⁸

60. The *amparo* ruling of March 25, 2013 (*supra* para. 51) included some observations about the “principle of immediacy” in criminal proceedings and its connection with the guarantees of due process.⁷⁹ Moreover, it specified that “any preliminary statements from anyone arrested *in flagrante* and brought before a judicial authority, will be vitiated and considered unlawful when the suspect or his legal representative has not been permitted to have a prior interview in private before making a preliminary statement.” Similarly, upon ruling on the inadequate assessment of the evidence and its unconstitutionality, it affirmed that “no procedure resulting from a stage at which no judge is present - i.e. the preliminary inquiry - can be taken in the proceedings as an action on the part of an authority which, presuming good faith, does not bear adversarial questioning, since the Public Prosecutor acts as a party in the process and the results of its inquiry should be submitted to scrutiny in the trial. In other words, the Public Prosecutor is simply another party, whose information is as much subject to rebuttal as that of the defendant.”⁸⁰ Furthermore, it considered that in this case, one may “infer the possibility of the alleged commission of acts of torture to the detriment” of Messrs. García Cruz and Sánchez

⁷⁶ In its consistent case law, the Court has established that it is aware that domestic authorities are subject to the rule of law and, therefore, are obligated to apply the current provisions of domestic law. When a State is Party to an international treaty such as the American Convention, all its organs, including its judges, are also subject to it. This requires the State to ensure that the effects of the Convention’s provisions are not undermined by the application of standards that are contrary to its object and purpose and that lack legal effects from the outset. Accordingly, this Court has established that all state authorities have an obligation to apply a “conventionality control” between domestic standards and the Convention, each within their respective spheres of competence and according to the relevant procedural rules. This refers to the analysis made by each State body and official (particularly judges and other judicial officials) regarding the compatibility of national standards and practices with the American Convention. In their decisions and specific actions, these bodies and officials must comply with the general obligation to guarantee the rights and liberties protected by the Convention, ensuring that they do not apply domestic legal standards which violate the treaty, and that they correctly apply this treaty and the case law developed by the Court. *Cf. inter alia: Case of Almonacid Arellano et al. v. Chile. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 26, 2006. Series C No. 124; Case of La Cantuta v. Peru. Merits, Reparations and Costs. Judgment of November 29, 2006. Series C No. 162, para. 173; Case of Gomes Lund et al. (“Guerilla of Araguaia”) v. Brazil. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2010. Series C No. 219, para. 176; Case of Cabrera García and Montiel Flores v. Mexico, supra note 70, para. 225; Case of Gelman v. Uruguay. Merits and Reparations. Judgment of February 24, 2011. Series C No. 221, para. 193; Case of Furlan and Family v. Argentina. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 31, 2012. Series C No. 246, paras. 302 and 303, and Case of Mendoza et al. v. Argentina, supra note 73, para. 221. See also: Case of Gelman v. Uruguay. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of March 20, 2013. Considering paras. 65 to 90.*

⁷⁷ *Cf.* Friendly settlement agreement and acknowledgment of the State’s responsibility, *supra* note 9, Section III. “Proceedings of the Case before the Inter-American System of Protection of Human Rights,” para. 8.

⁷⁸ *Cf.* Judgment issued on April 18, 2013 by the First Collegiate Criminal Chamber of Texcoco in compliance with the appeal ruling issued on March 25, 2013 (case file of annexes to the pleadings and motions brief, pages 4456, 4457, 4620, 4797 and 4798).

⁷⁹ It held that “‘immediacy’ as a principle characteristic of an adversarial criminal process clearly requires the judge to directly witness the submission of evidence presented by the parties and the adversarial examination to which they are mutually subjected. What should not be confused with the benchmark of evidence assessment has been termed obtaining prompt proceedings. This last concept should be reviewed in light of the principles and standards of due legal process.” *Cf.* Judgment in the direct *amparo* action 778/2012 handed down by the Collegiate Court of the Auxiliary Center Circuit of the Seventh Region on March 25, 2013. (Case Merits file, page 263).

⁸⁰ *Cf.* Judgment in the direct *amparo* action 778/2012, *supra* note 79, page 262.

Silvestre. In this regard, it pointed out that both Article 8 of the Convention and the Court's jurisprudence exclude the validity of evidence obtained under any type of coercion.⁸¹ Therefore, it concluded that the sentence handed down against the defendants "violates the guarantees of legality and legal certainty, as well as the correct application of the law, [since there was no] proper assessment of the evidence."

61. The subsequent criminal judgment of April 18, 2013 (*supra* para. 51), revoked the conviction of September 6, 2001 (*supra* para. 46), acquitted Juan García Cruz and Santiago Sánchez Silvestre of the crimes of violent theft of a motor vehicle, damage to property, homicide, injuries and organized crime, and ordered their "immediate and complete release." The aforementioned Collegiate Chamber considered "obligatory the diffuse control of conventionality," and analyzed the assessment of the evidence, "ensuring that it complied with national law, international human rights standards [...] as well as [...] the Court's mandatory case law." Furthermore, this judgment stated that "the guiding and binding criteria of the Court provide a foundation for this collegiate court, not only because of their binding nature but also because the International Court may be regarded as an interpreter [...] of the content of the American Convention."⁸²

62. Nevertheless, the Court points out that although these domestic rulings were particularly significant in establishing the basis for reaching a friendly settlement agreement in this case, these decisions were issued 15 years, 10 months and 11 days after the violations occurred. Throughout this time, Messrs. García Cruz and Sánchez Silvestre were deprived of their liberty in violation of their human rights. Consequently, it is of the utmost importance that the State implement reparation measures for the non-repetition of actions similar to this case in Mexico.

VII REPARATIONS

(Application of Article 63(1) of the American Convention in the context of the approval of the friendly settlement agreement)

63. Based on the provisions of Article 63(1) of the Convention,⁸³ the Court has held that any violation of an international obligation that has caused damage creates a duty to make adequate reparation⁸⁴ and that this provision, based on a general concept of law, constitutes one of the fundamental principles of contemporary International Law on State responsibility.⁸⁵

⁸¹ In this regard, the judgment states that the appellate court judge should have considered that: 1) "from their first statements at prosecution, both [defendants] stated that their injuries had been caused by state officials;" 2) the "circumstances under which they were detained," since this "was carried out without an arrest warrant;" 3) the "context that precedes this case with respect to use of coercion to obtain the confessions and statements." With regard to this last point, the ruling took into consideration, *inter alia*, a report by the United Nations Special Rapporteur on Torture, which indicated that, "in standard practice [there exists] a great risk that findings are [...] produced through coercion." *Cf.* Judgment of direct amparo action 778/2012, *supra* note 79, pages 275 and 276.

⁸² The domestic court regarded the conventionality control as "the unofficial investigation that judges of any jurisdiction should conduct to determine if the standards are compatible [...] with the American Convention." *Cf.* Judgment issued April 18, 2013 by the First Criminal Collegiate Chamber of Texcoco (file of annexes to the brief of pleadings and motions, pages 4440, 4450 and 4451).

⁸³ Article 63(1) of the Convention provides that, "[when] a violation of a right or liberty protected by [the] Convention is determined, the Court shall rule that the injured party be ensured the enjoyment of his violated right or freedom. It should also rule, if appropriate, to redress the consequences of the measure or situation that contributed to the violation of these rights and the payment of a fair compensation to the injured party."

⁸⁴ *Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and Costs.* Judgment of July 21, 1989. Series C No. 7, para. 25, and *Case of Luna López v. Honduras. Merits, Reparations and Costs.* Judgment of October 10, 2013. Series C No. 269, para. 213.

⁸⁵ *Cf. Case of Aloeboetoe et al. v. Suriname. Reparations and Costs.* Judgment of September 10, 1993. Series C No. 15, para. 43, and *Case of Luna López v. Honduras, supra* note 84, para. 213.

64. This Court has also established that reparations must have a causal link with the facts of the case, the violations declared, the damages verified and the measures requested to repair the respective damages. Therefore, the Court shall adhere to that principle in order to rule appropriately and according to law.⁸⁶

65. Reparation of the damage caused by a violation of an international obligation requires, wherever possible, full restitution (*restitutio in integrum*), which implies restoring the previous situation.⁸⁷ When this is not feasible, as in most cases involving human rights violations, the Court will decide on measures to guarantee the infringed rights and to offer redress for the consequences of the violations. Accordingly, the Court has considered the need to grant various measures of reparation, so as to provide full redress for the damage caused. Therefore, in addition to pecuniary compensation, the obligation to investigate, measures of restitution, rehabilitation and satisfaction and guarantees of non-repetition are of special importance given the damage caused.⁸⁸

66. Taking into consideration the friendly settlement agreement reached between the parties to redress the victims in this case (*supra* paras. 23 and 24), and previously endorsed by the Court, and considering the importance and magnitude of the violations acknowledged by the State, the Court will analyze the agreed measures in order to determine their scope and manner of implementation, in light of the criteria established in its case law and in relation to the nature, object and purpose of the obligation to provide comprehensive redress for the damage caused to the victims.⁸⁹

A) Injured party and other beneficiaries of the friendly settlement agreement

67. The Court considers Messrs. Juan García Cruz and Santiago Sánchez Silvestre as the “injured party,” since they are named as the victims in the Commission’s Report on Merits, in accordance with Article 35(1) (b) of the Court’s Rules of Procedure,⁹⁰ and declared as such in this Judgment, based on the agreement reached by the parties and the acknowledgment made by the State (*supra* paras. 12 and 22). Therefore, Messrs. García Cruz and Sánchez Silvestre shall be considered as beneficiaries of the reparations ordered by the Court.⁹¹

68. Notwithstanding the foregoing, the Court notes that in section, “X. Other reparations awarded in good faith” under the friendly settlement agreement, the State agreed to award “in good faith” two measures to benefit the “daughter and wife of Santiago Sánchez Silvestre” (*infra*

⁸⁶ Cf. *Case of Ticona Estrada et al. v. Bolivia. Merits, Reparations and Costs*. Judgment of November 27, 2008. Series C No. 191, para. 110, and *Case of Luna López v. Honduras, supra* note 84, para. 215.

⁸⁷ Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and Costs, supra* note 84, para. 26.

⁸⁸ Cf. *Case of Cantoral Benavides v. Peru. Reparations and Costs*. Judgment of December 3, 2001. Series C No. 88, paras. 79-81 and *Case of the Constitutional Court (Camba Campos et al.) v. Ecuador. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 28, 2013. Series C No. 268, para. 244.

⁸⁹ Cf. *Case of Velásquez Rodríguez. Reparations and Costs, supra* note 84, paras. 25 to 27 and *Case of Luna López v. Honduras, supra* note 84, para. 214.

⁹⁰ In accordance with the provisions of Article 35 of the Court’s Rules of Procedure and consistent with its case law, the presumed victims should be established in the Report on Merits. Cf. *Case of the Ituango Massacres v. Colombia. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 1, 2006. Series C No. 148, para. 98; *Case of Nadege Dorzema et al. v. Dominican Republic. Merits, Reparations and Costs*. Judgment of October 24, 2012. Series C No. 251, paras. 29 and 37, and *Case of Suárez Peralta v. Ecuador. Preliminary Exceptions, Merits, Reparations and Costs*. Judgment of May 21, 2013. Series C No. 261, paras. 27 and 165.

⁹¹ Cf. *Case of Suarez Rosero v. Ecuador. Reparations and Costs*. Judgment of January 20, 1999. Series C No. 44, para. 233 and *Case of Luna López v. Honduras, supra* note 84, para. 216.

paras. 77 and 82).⁹² Given the State's broad acknowledgment of responsibility and the nature and scope of the agreement in favor of the victim's family, the Court ratifies the agreement and considers the daughter and wife of Mr. Santiago Sánchez Silvestre as beneficiaries of the reparation measures set out in the friendly settlement agreement.

B) Obligation to investigate acts of torture

69. In the friendly settlement agreement, the section on "guarantees of non-repetition" included the State's obligation to investigate "acts constituting torture to the detriment of the victims". In this regard, the following clarifications were made in the agreement:

- i) concerning "the State's obligation to investigate and punish," the State agreed to "[...] diligently conduct and complete, through the Attorney General's Office of the Republic, all investigations and measures necessary to establish responsibility and, where appropriate, to punish the commission of the crime of torture," including "actions and omissions that were committed to the detriment of the victims and that resulted in the Mexican State's international responsibility." In addition, "pursuant to this obligation [...] the State should remove all obstacles, *de facto y de jure*, that perpetuate impunity;"
- ii) regarding "access to the investigation and the victims' participation [...] in the prosecution process, the State recognize[d] their sovereign right to access and consult, on their own behalf or through representatives, the records of the investigation conducted into the crime of torture, in order to assist the Federal Prosecutor's Office." It further indicated that "[t]his right could be exercised in other criminal proceedings carried out as part of the full inquiry into the facts of this case." To accomplish this, the parties "will meet as often as is necessary with the Federal Prosecutor's Office in order to raise issues and make observations related to the investigation of the case;"
- iii) on the "facts related to the criminal investigation," it was pointed out that "in order to continue with the investigation of the facts of the case, without prejudging the probable responsibility of the persons investigated, of those who might be found to be involved, as well as of those who might be criminally or administratively sanctioned for the actions related to the crime committed to the detriment of the victims, the State recognizes that the Federal Public Prosecutor's Office must consider the factual basis acknowledged in the Agreement," and
- iv) as regards the "obligation to investigate ex officio," the State recognize[d] that the investigations must be conducted in accordance with all the obligations established in the Constitution of the United States of Mexico [...] and in the international treaties to which the Mexican State is a Party."

70. The Court appreciates the fact that in the agreement the State expressly recognized the importance of fulfilling its obligation to investigate the facts, identify, prosecute and, if necessary, punish with due diligence, while guaranteeing the victims' right to have access to and participate in the criminal proceedings. Furthermore, the Court emphasizes stresses the significance of specifying the need to consider the facts acknowledged by the State in this case, and that the investigation be carried out in accordance with the obligations established both in its Constitution and in the international treaties to which Mexico is a party. In this regard, this Court stresses the particular importance of the American Convention and the Inter-American Convention to Prevent and Punish Torture.

⁹² The agreement states that the measures awarded "in good faith" "consider that prior to the proceedings before the C[ommission] the families of [Messrs. García Cruz and Sánchez Silvestre] were not claimed or acknowledged as victims [...]."

71. The obligation to investigate the facts, identify, prosecute and, if necessary, punish those responsible, must be fulfilled within a reasonable period of time. In this case, the State failed to discharge its obligation *ex officio* for approximately fourteen years (*supra* para. 49).

C) Measure of restitution: expungement of criminal records

72. In the friendly settlement agreement, in the section on “Reparation for non-pecuniary damage and measures of satisfaction,” the State “agree [d] to expunge any criminal records existing against the victims in this case, whenever these refer to the facts that form the basis of [the friendly settlement] Agreement.” The agreement also stipulated that this measure would be coordinated by the Human Rights Defense Unit of the Interior Ministry and should be implemented within one year of the notification of [this] Judgment.”

73. The Court recalls that the existing criminal records of the victims related to the facts of this case are concerned as much with the criminal conviction for the crime of possessing firearms for the exclusive use of the Army, the Navy and the Air Force, as with the conviction for the crimes of homicide, injuries, violent robbery, organized crime and damage to property (*supra* paras. 40 to 42 and 46 to 48). It has been proven to this Court that this last judgment was revoked and that Messrs. García Cruz and Sánchez Silvestre were acquitted of those crimes. Even though the documents concerning the annulment of the criminal conviction for possession of firearms have not been forwarded to this Court, the Court understands that the State’s commitment to expunge any criminal records that may exist to the detriment of the victims for the facts in this case, includes both criminal convictions for which this measure was approved under the terms agreed by the parties. In line with its previous orders in this regard,⁹³ the Court recalls that the implementation of this measure implies that all legal, administrative, criminal and police records that exist against Messrs. García Cruz and Sánchez Silvestre in relation to this case should be eliminated.

D) Measure of rehabilitation: medical and psychological care

74. In the friendly settlement agreement, in the section on “Reparation for non-pecuniary damages and compensation measures,” the State “agree [d] to grant the victims preferential and free medical care through the *Program of Free Access to Medical Services and Medicines for Federal District Residents lacking Social Security Benefits* provided by the Federal District’s Department of Health.” It specified that this involves, “three levels of care under the aforementioned Program, [...], [the victims] having access to all interventions and care for diseases and illnesses, including those of a psychological nature.” Furthermore, “they will have access to the pharmaceutical services and products established in the social security medical coverage.” The agreement also stated that “ [i]n the event that they should require medical services that are provided at facilities outside their place of residence, they will have the right to claim the respective travel and subsistence costs from the State.” “As to the third level of care, appropriate specialized medical care will be provided through the National Health Institutes, the Federal Referral Hospitals and the Regional High-Specialty Hospitals, as applicable.”

75. Moreover, it was agreed that, “[if] the victims should move to another Mexican State, medical care will be provided in the new place of residence through the *Seguro Popular* scheme, or any related program offering the same level of care as established in the aforementioned program.” It further provided that, “the Human Rights Defense Unit of the Interior Ministry and

⁹³ Cf. *Case of Cantoral Benavides v. Peru. Reparations and Costs*, *supra* note 88, para. 78 and *Case of Palamara Iribarne v. Chile. Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 135, para. 253.

the Federal Health Ministry's General Liaison for Legal Affairs and Human Rights will administer all matters related to this measure of reparation," which "will be implemented within six months of notification of [this] Judgment."

76. In addition, it was agreed that the State would "provide psychological care to the victims," through the Social Advocate for Victims of Crime," "in their homes or in the facilities of the Care Center for Victims nearest to their homes, whichever the victims prefer." Mexico also pledged to ensure that the Human Rights Defense Unit of the Interior Ministry and the General Directorate of Human Rights facilitate and expedite any proceedings necessary to provide this service, which will be initiated no later than ninety calendar days after notification of [this] judgment, [...] and will be provided for as long as the victims require it."

77. Among the "reparations awarded in good faith" to the family of one of the victims (*supra* para. 68), the State "agree [d] to provide [the wife of Mr. Sánchez Silvestre] with free medical care [...] taking into account her special circumstances and under the same terms [as the care offered to the victims] indicated above."

78. The Court appreciates the State's commitment to provide medical, psychological and/or specialized psychiatric care at different levels, both to Messrs. García Cruz and Sánchez Silvestre and to the latter's wife. Thus, the Court ratifies these measures under the terms agreed by the parties, considering that they include the different aspects of this measure indicated by this Court in its consistent case law.⁹⁴

E) Measures of reparation and guarantees of non-repetition

E.1) Measures of satisfaction

E.1.a) Provision of housing for the victims

79. In the section entitled "Reparation for non-pecuniary damage and measures of satisfaction" of the friendly settlement agreement, it was stipulated that, "[the] Human Rights Defense Unit of the Interior Ministry and the General Directorate of Human Rights and Democracy of the Ministry of Foreign Affairs will take the necessary steps to register the victims in the New Collective Housing Program implemented by the Federal District's Institute of Housing, in order to provide each victim with housing in the Federal District." It further stated that the houses would be "provided within two years as of the notification of [this] judgment." The houses would be handed over "free of charge, and therefore the victims shall not pay taxes, compensation or contributions of any kind for the fulfilment of this point of the [friendly settlement] Agreement."

80. The Court appreciates Mexico's commitment, which will contribute to establish the conditions and means to enable the victims to restore their dignity after being deprived of liberty for more

⁹⁴ Under this measure of reparation, the State has an obligation to offer, through its specialized health institutions and in an immediate, adequate and effective manner, the medical and psychological or psychiatric care of those named as victims, subject to informed consent, including the provision of free medicines, taking into account the medical conditions of each. In the case that the State is lacking said institutions, it should turn to private institutions or to specialized institutions of the civil society. Furthermore, the respective treatments should be provided, to the extent possible, in the centers closest to the places of their residence and for as long as necessary. In providing psychological or psychiatric treatment the circumstances and particular needs of each one must be taken into account, so that they are offered individual or family treatments, according to what was agreed with each following an individual medical assessment. Cf. *Case of Cantoral Benavides v. Peru. Reparations and Costs*, *supra* note 88, para. 57 and *Case of Mendoza et al. v. Argentina*, *supra* note 73, paras. 311 and 312.

than fifteen years; therefore the Court endorses this measure of reparation under the terms agreed by the parties.

E.1.b) Award of "educational scholarships"

81. In the section entitled "Reparation for non-pecuniary damage and measures of satisfaction" of the friendly settlement agreement, the State "pledge[d] to guarantee the education of the victims until the completion of their university or technical studies, according to their interests." To this end, "the Interior Ministry [will pay for educational scholarships], through the Trust for the Fulfillment of Human Rights Obligations, based on the Trust's Rules of Operation." The friendly settlement agreement also stated that "[the] victims agree to start or resume their studies within three years of the notification of [this] judgment."

82. Furthermore, as part of the "reparations awarded in good faith" to the victims' families (*supra* para. 68), Mexico agreed to guarantee [through the provision of an academic scholarship] the education of [... the daughter of Mr. Santiago Sánchez Silvestre], until she completes her university or technical studies, according to her expressed interests." This scholarship "will be awarded in full each year, provided that she submits certification for the school year immediately preceding the one for which she is seeking the scholarship." Moreover, the State added that "[the] calculation of the scholarship awarded will be determined by the Rules of Operation of the Trust for the Fulfillment of Human Rights Obligations," and that "compliance with this measure will be supervised by the Unit for the Defense of Human Rights of the Interior Ministry."

83. The Court appreciates Mexico's commitment to ensure that the victims receive training for a profession or trade, to which the victims did not have access because they were deprived of liberty, and ratifies those measures under the terms agreed by the parties.

E.1.c) Public act of acknowledgment of international responsibility

84. The section entitled "Reparation for non-pecuniary damage and measures of satisfaction" of the friendly settlement agreement stipulates that "with the prior and informed consent of the victims and their representatives, [the State] will organize a public act of apology and acknowledgement of responsibility, to be carried out by national government authorities of a rank not lower than Under-Secretary of State, in which "representatives of the Federal Judicial Authority, the Minister of the Interior and the Minister of Foreign Relations will participate." Furthermore, the parties agreed that the act "should be held within six months of notification of [this] judgment."

85. The Court appreciates the State's willingness to organize a public act of apology and acknowledgement of its international responsibility, and therefore endorses this measure under the terms agreed by the parties. Moreover, as it has in other cases,⁹⁵ the Court considers that during this act reference should be made to the facts and human rights violations declared in this Judgment.

E.1.d) Publication of this Judgment

86. In the section entitled "guarantees of non-repetition" of the friendly settlement agreement, the State "agree [d] to publish, once only, in the Official Gazette of the Federation and in another newspaper with wide national circulation, the official summary of the Judgment

⁹⁵ Cf. *Case of Cantoral Benavides v. Peru. Reparations and Costs*, *supra* note 88, para. 81; *Case of Nadege Dorzema et al. v. Dominican Republic*, *supra* note 90, para. 265 and *Case of Luna López v. Honduras*, *supra* note 84, para. 227.

issued by the Court in this case, within six months of this Judgment being notified to the Mexican State." Likewise, it stated that, "a public version of the Judgment will be published on the website of the Ministry of Foreign Relations for a period of one year."

87. The Court endorses the aforementioned measures intended to disseminate this Judgment under the terms agreed by the parties.

E.2) Guarantees of non-repetition

E.2.a) Organization of a seminar

88. In the section entitled "guarantees of non-repetition" of the friendly settlement agreement, the State "agree[d] to organize a seminar with experts to discuss the implementation of the doctrine of procedural immediacy adopted by the Supreme Court of Justice and to present the conclusions of that event to the various officials responsible for public defense services and the administration and implementation of justice." It stipulated that the seminar "shall be held within twelve months of the notification of [this] judgment."

89. The Court endorses this measure under the terms agreed by the parties.

E.2.b) Publication of the Judgment of the direct amparo action 778/2012

90. The section entitled "guarantees of non-repetition" of the friendly settlement agreement stipulates that, "[c]onsidering the importance of the judgment in the direct *amparo* action 778/2012 for the proceedings of this case, [and that ...] this decision exemplifies the willingness of the Mexican courts to implement the constitutional reform published in the Federation's Official Gazette on June 10, 2011, as well as international human rights standards and conventionality control, the Mexican State undertakes to publish, once only, in the Official Gazette of the Federation and in another newspaper with wide national circulation, the official summary of said judgment, with the prior agreement of the victims and their representatives, within six months of notification of [this] Judgment." In addition, the State "agree[d] to call on the Supreme Court of Justice to publish the public version of this judgment on its website for a period of one year," and in the event of it "not being published [by the Supreme Court], it shall be published on the website of the federal agency agreed by the parties."

91. The Court appreciates the efforts made by the judicial authorities to resolve the victim's application for *amparo* (*supra* para. 60) in 2013. However, it also notes that it has taken fifteen years and ten months since the violations of the human rights of Messrs. García Cruz y Sánchez Silvestre occurred for the domestic court to carry out the required review and protect the victims' rights. The Court ratifies the aforementioned measure of reparation under the terms agreed by the parties and considers that it will serve to disseminate an exemplary domestic legal decision on the exercise of conventionality control by national judges and courts.

E.2.c) Training for "judicial officials"

92. In the section entitled "guarantees of non-repetition" of the friendly settlement agreement, the State "agree[d] to continue offering training to public officials responsible for the public defense and the administration and implementation of justice under the highest international standards in order to identify, respond, prevent, report and punish the use of torture techniques." Likewise the State expressed its commitment to present, "within the monitoring compliance process before the Court [...], detailed information on the contents and

implementation of said training, including the public officials who will benefit as well as objective measurements of the effects and impact of the training." Moreover, to accomplish this, it required the State "to present a report every six months over a two-year period following notification of [this] Judgment."

93. The Court considers that, in light of the facts of this case, this measure to guarantee non-repetition, which includes training for "judicial officials" under the terms mentioned in the previous paragraph, is particularly important given that some of the violations in this case are derived from the failure of the judicial authorities and the Public Prosecutor to investigate the allegations of torture as well as their use of incriminating statements made by the victims while under torture to uphold the criminal convictions. In this regard, the Court welcomes the State's commitment to continue training public authorities in human rights, and therefore ratifies this measure of reparation under the terms agreed by the parties.

F) Compensation for pecuniary and non-pecuniary damages and reimbursement of costs and expenses

94. In the sections entitled "Reparation for non-pecuniary damage and measures of satisfaction" and "Reparation for pecuniary damage" of the friendly settlement agreement, the State undertook to pay each victim the amounts agreed for non-pecuniary damages and "loss of earnings" under the terms and conditions specified in this agreement.

95. Furthermore, Mexico agreed to pay the amounts stated in the agreement as reimbursement of costs and expenses "to the attorney María del Pilar Noriega García and [...] to CEJIL [... for] expenses incurred in handling this case from the time of the victims' arrest until the proceedings before the Inter-American Court," under the terms and conditions stipulated in the agreement.

96. According to the provisions of the agreement, the compensation and reimbursement of costs and expenses "shall be paid by the State within 90 calendar days of the notification of [this] Judgment," and, "[i]f [these] pecuniary obligations of the State are not met within the period stipulated, the State shall pay the amounts owed adjusted for inflation and a moratorium interest rate of 4% annually." The Defense of Human Rights Unit of the Interior Ministry "will be responsible for ensuring compliance with these measures." The agreement also provides that, "[t]he parties are bound to maintain strict confidentiality concerning the amounts of the financial compensation."

97. In its case law the Court has developed the concept of pecuniary damage and specified the situations when it should be paid. The Court has established that pecuniary damage entails "the loss of or detriment to the victims' earnings, the expenses incurred in relation to the events and financial consequences that have a causal link with the facts of the case."⁹⁶ Also, with respect to the concept of pecuniary damage, the Court has ruled that "this may include both the suffering and affliction caused to the direct victims and their families, the impairment of highly significant personal values, as well as changes of a non-pecuniary nature in the lives of the victim or his family."⁹⁷

⁹⁶ *Case of Bamaca Velásquez v. Guatemala. Reparations and Costs.* Judgment of February 22, 2002. Series C No. 91, para. 43 and *Case of Luna López v. Honduras*, *supra* note 84, para. 246.

⁹⁷ *Cf. Case of the "Street Children" (Villagrán Morales et al.)*, *supra*, para. 84; *Case of Trujillo Oroza v. Bolivia. Reparations and Costs.* Judgment of February 27, 2002. Series C No. 92, para. 77 and *Case of Luna López v. Honduras*, *supra* note 84, para. 251.

98. Furthermore, the Court reiterates that, in accordance with its case law,⁹⁸ the costs and expenses incurred form part of the reparations, given that the actions taken by the victims to obtain justice at both national and international levels imply expenses that should be compensated when the State's international responsibility is declared through a criminal conviction.

99. The Court considers it appropriate to endorse the reparations agreed by the State in the friendly settlement agreement to compensate Messrs. Juan García Cruz and Santiago Sánchez Silvestre for lost earnings and non-pecuniary damages, and to reimburse the aforementioned representatives of the victims for the costs and expenses incurred in the proceedings at the domestic and international levels. Considering the circumstances of this case, the Court believes that the timely payment of the compensation is particularly important to mitigate the pecuniary consequences and the profound suffering that the violations caused the victims in various aspects of their lives, particularly as regards their integrity, family life and their work. The Court also deems it appropriate to ratify the requirement "to keep the amounts of economic compensation in the strictest confidence," as established in the agreement. For this reason the amounts have not been included in this Judgment.

G) Method of compliance with the agreed measures and settlement of potential disputes in the friendly settlement agreement

100. Regarding the payment of educational scholarships for the victims and for the daughter of one of them, the compensation for pecuniary and non-pecuniary damages and the reimbursement of costs and expenses established in this Judgment, the Court notes that the parties agreed on the actions to be taken if the State should fall into arrears with the payment. It further ruled that the amounts will be paid in the manner established in the "Rules of Operation of the Trust for the Fulfillment of Human Rights Obligations." This document was not provided to the Court. Nevertheless, the Court deems it pertinent to recall that, according to its case law, the aforementioned payments must be made directly to the persons or organizations indicated in this Judgment within the time periods specified in the friendly settlement agreement. These amounts cannot be affected or conditioned by taxes now or in the future. Therefore they should be paid to the beneficiaries in full, as agreed by the parties.

101. The parties agreed that the friendly settlement agreement would "enter in force from the time the Court issues [this] Judgment [...] and will conclude when all the commitments have been fulfilled." Moreover, said agreement established that, "[n]otwithstanding the responsibility of the State as a whole, and that of the various powers and bodies that constitute it, the Interior Ministry, the Attorney' General's Office and the Ministry of Foreign Relations shall coordinate the actions to ensure full compliance of [th]e Agreement."

102. The friendly settlement agreement signed between the victims, their representatives and the State has been ratified by this Judgment; therefore, any dispute or difference that may arise shall be clarified by this Court.

⁹⁸ Cf. *Case of Garrido and Baigorria v. Argentina. Reparations and Costs*. Judgment of August 27, 1998. Series C No. 39, para. 79 and *Case of Luna López v. Honduras*, *supra* note 84, para. 258.

VIII
OPERATIVE PARAGRAPHS

103. Therefore,

THE COURT

DECIDES,

Unanimously,

1. To ratify the “Friendly settlement agreement and the State’s acknowledgment of responsibility” signed by the victims, their representatives and Mexico.
2. To accept the State’s full acknowledgement of international responsibility expressed in this agreement.
3. To view in a positive light the aforementioned “Friendly settlement agreement and the State’s acknowledgment of responsibility” given its significance in achieving a settlement to the dispute in this international proceeding.

DECLARES,

Unanimously that,

4. As acknowledged in the friendly settlement agreement, the State is responsible for “the violation of the following rights contained in the C[onvention]: personal liberty (Article 7), humane treatment (Article 5), right to a fair trial and judicial protection (Articles 8 and 25), all in relation to the general responsibility to respect rights (Article 1(1)); for the violation of provisions 1, 8 and 10 of the Inter-American Convention to Prevent and Punish Torture; and for the violation of the obligation to adopt provisions of domestic law (Article 2 of the American Convention, in connection with Article 6 of Inter-American Convention to Prevent and Punish Torture),” to the detriment of Messrs. Juan García Cruz and Santiago Sánchez Silvestre.

AND ORDERS,

Unanimously that,

5. This Judgment constitutes *per se* a form of reparation.
6. In accordance with the friendly settlement agreement, the State shall:
 - a) “diligently undertake and complete all the investigations and actions necessary to determine responsibilities and [,] if necessary, to punish the commission of the crime of torture, to the detriment of Messrs. García Cruz and Sánchez Silvestre, according to the terms of paragraphs 69 to 71 of this Judgment;
 - b) “expunge any criminal records that may exist against Messrs. [García Cruz and Sánchez Silvestre],” in relation to the facts of this case, under the terms of paragraphs 72 and 73 of this Judgment;

- c) "grant the victims preferential and free medical care through the *Program of Free Access to Medical Services and Medicines for Federal District Residents lacking Social Security Benefits*," and offer them psychological care through "[t]he Social Advocate for Victims of Crime[, ...] either in their homes or at the nearest facility of the Care Center for Victims, under the terms of paragraphs 74 to 78 of this Judgment;
- d) "award the [... wife of Mr. Santiago Sánchez Silvestre] free medical care through the *Program of Free Access to Medical Services and Medicines for Federal District Residents lacking Social Security Benefits*," under the terms of paragraphs 74 to 78 of this Judgment;
- e) organize "a public act of apology and acknowledgement of [international]responsibility" for the facts of this case, under the terms of paragraphs 84 and 85 of this Judgment;
- f) issue the publications stipulated in paragraphs 86 and 87 of this Judgment;
- g) "guarantee the victims' education until the completion of their university or technical studies, according to their interests [, ... through] the award of educational scholarships," under the terms of paragraphs 81 to 83 of this Judgment;
- h) "guarantee the education of [... Mr. Santiago Sánchez Silvestre's daughter,] until the completion of her university or technical studies, according to her interests," through the award of a "scholarship," under the terms of paragraphs 82 and 83 of this Judgment;
- i) "provide each victim with housing in the Federal District" through the "New Collective Housing Program implemented by the Federal District's Institute of Housing," under the terms of paragraphs 79 and 80 of this Judgment;
- j) "organize a seminar with experts to discuss the implementation of the doctrine of procedural immediacy adopted by the Supreme Court of Justice and to present the conclusions of that event to the various officials responsible for public defense services and for the administration and implementation of justice," under the terms of paragraphs 88 and 89 of this Judgment;
- k) "publish, once only, in the Official Gazette of the Federation and in another newspaper with wide national circulation, the official summary of [the Judgment of the direct *amparo* action 778/2012], previously agreed with the victims and their representatives," under the terms of paragraphs 90 and 91 of this Judgment;
- l) implement a "Program for judicial officials" in order to "continue offering training to public officials responsible for the public defense and the administration and implementation of justice under the highest international standards in order to identify, respond, prevent, report and punish the use of torture techniques," under the terms of paragraphs 92 and 93 of this Judgment;
- m) pay each of the victims the amount agreed in compensation for pecuniary and non-pecuniary damages, under the terms of paragraphs 94, 96, 97, 99 and 100 of this Judgment; and

n) pay the agreed amounts for reimbursement of costs and expenses to the attorney María del Pilar Noriega García and to CEJIL, under the terms of paragraphs 95, 96, 98, 99 and 100 of this Judgment.

7. Within one year of the notification of this Judgment, the State shall provide the Court with a report on the measures adopted in compliance thereof.

8. The Court shall monitor full compliance with this Judgment, in exercise of its powers and in compliance with its obligations under the American Convention, and will consider this case closed when the State has fully complied with all the provisions herein.

Done in Spanish and English, the Spanish text being authentic, in San Jose, Costa Rica, on November 26, 2013.

Diego García-Sayán
President

Manuel Ventura Robles

Alberto Pérez Pérez

Eduardo Vio Grossi

Roberto F. Caldas

Humberto Antonio Sierra Porto

Pablo Saavedra Alessandri
Secretary

So ordered,

Diego García-Sayán

President

Pablo Saavedra Alessandri
Secretary