

INTER-AMERICAN COURT OF HUMAN RIGHTS

CASE OF RUANO TORRES ET AL. V. El Salvador

JUDGMENT OF OCTOBER 5, 2015

(Merits, reparations and costs)

In the case of *Ruano Torres et al. v. El Salvador*,

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

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

also present,

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

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

CONTENTS

I INTRODUCTION OF THE CASE	4
II PROCEEDINGS BEFORE THE COURT	5
III JURISDICTION	7
IV ACKNOWLEDGMENT OF INTERNATIONAL RESPONSIBILITY	7
V EVIDENCE.....	14
A. Documentary, testimonial and expert evidence	14
B. Admission of the evidence	14
B.1 Admission of the documentary evidence	14
B.2 Admission of the statements and of the expert opinions.....	15
C. Assessment of the evidence	15
VI FACTS	16
A. Background to the case	16
B. Linking of José Agapito Ruano Torres to the criminal investigation	17
C. Arrest of José Agapito Ruano Torres	18
D. Criminal proceedings against José Agapito Ruano Torres	22
E. Application for habeas corpus before the Constitutional Chamber	31
F. Proceeding before the Office of the Human Rights Ombudsman	32
VII MERITS.....	33
VII-1 RIGHTS TO PERSONAL INTEGRITY AND THE PROHIBITION OF TORTURE, PERSONAL LIBERTY, PRESUMPTION OF INNOCENCE AND JUDICIAL PROTECTION IN RELATION TO THE OBLIGATION TO RESPECT AND GUARANTEE RIGHTS.....	34
A. Violation of the right to personal integrity and prohibition of torture to the detriment of José Agapito Ruano Torres	34
B. Violation of the right to presumption of innocence of José Agapito Ruano Torres	36
C. Violation of the right to judicial protection of José Agapito Ruano Torres	39
D. Violation of the right to personal liberty of José Agapito Ruano Torres	40
VII-2 RIGHT TO DEFENSE IN RELATION TO THE OBLIGATION TO RESPECT AND GUARANTEE RIGHTS.....	41
A. Arguments of the parties and of the Commission	42
B. Considerations of the Court	42
VII-3 RIGHT TO PERSONAL INTEGRITY OF THE FAMILY OF JOSÉ AGAPITO RUANO TORRES	51
VIII REPARATIONS	54
A. Injured party	55
B. Obligation to investigate the facts that caused the violations and to identify, prosecute and, if appropriate, punish those responsible	55
C. Measures of restitution, rehabilitation, satisfaction and guarantees of non- repetition	57
D. Compensation	63

E. Costs and expenses..... 66

F. Victims' Legal Assistance Fund 67

G. Method of compliance with the payments ordered 67

IX OPERATIVE PARAGRAPHS..... **68**

I
INTRODUCTION OF THE CASE

1. *The case submitted to the Court.* On February 13, 2014, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") submitted a brief (hereinafter "submission brief") to the jurisdiction of the Court, in the case of "José Agapito Ruano Torres and Family"¹ against the Republic of El Salvador (hereinafter "the State" or "El Salvador"). According to the Commission, this case is related to:

- a) The detention of Mr. Ruano Torres in the early hours of the morning on October 17, 2000, at his home, where he was allegedly mistreated in front of his family; the Commission concluded that the physical and verbal abuse to which he was subjected constituted torture;
- b) the alleged violation of the minimum guarantees of due process given that Mr. Ruano Torres was criminally tried and convicted for the crime of kidnapping with serious doubts as to whether he was indeed the person nicknamed *Chopo*, who was alleged to have participated in the crime, and without the minimum steps being taken to verify his identity;
- c) the alleged violation of the right to the presumption of innocence, given that the only two pieces of evidence upon which the conviction was based were gathered using several irregular methods;
- d) the alleged failure by the Office of the Public Defender to adequately perform its duties;
- e) the alleged arbitrary sentence of deprivation of liberty imposed as a result of the conviction, which was handed down in violation of the guarantees of due process, and
- f) the supposed lack of effective remedies to investigate the torture inflicted upon the victim, protect him from due process violations, or to review the deprivation of liberty.

2. *Proceeding before the Commission.* The proceeding before the Commission was as follows:

- a) *Petition.* On December 12, 2003 Mr. Pedro Torres Hércules (hereinafter "the petitioner"), cousin of Mr. José Agapito Ruano Torres (hereinafter "the alleged victim"), lodged the initial petition with the Commission.
- b) *Admissibility Report.* On October 17, 2008, the Commission approved Admissibility Report No. 77/08 in which it concluded that Petition 1094-03 was admissible.²
- c) *Merits Report.* On November 4, 2013, the Commission approved Merits Report No. 82/13, pursuant to Article 50 of the Convention (hereinafter also "the Merits Report" or "Report No. 82/13"), in which it reached a series of conclusions and made several recommendations to the State:
 - a. *Conclusions.* The Commission concluded that the State of El Salvador was responsible for the violation of the following rights:
 - i. The rights to judicial guarantees and judicial protection, personal liberty and personal integrity to the detriment of Mr. José Agapito Ruano Torres, and
 - ii. The rights to mental and moral integrity to the detriment of his wife María Maribel Guevara de Ruano, his son Oscar Manuel Ruano Guevara, his daughter Keily Lisbeth Ruano Guevara, and his cousin Pedro Torres Hércules.
 - b. *Recommendations.* The Commission also made a series of recommendations to the State:

¹ The Merits Report No. 82/13 included the following family members as alleged victims: María Maribel Guevara de Ruano (wife), Oscar Manuel Ruano Guevara (son), Keily Lisbeth Ruano Guevara (daughter), and Pedro Torres Hércules (cousin).

² The Commission decided to declare admissible the petition in relation to Articles 5, 7, 8 and 25 of the American Convention, pursuant to Article 1(1) thereof, to the detriment of José Agapito Ruano Torres.

- i. Adopt, as promptly as possible, the measures necessary to cancel the effects of Mr. [José Agapito] Ruano Torres's conviction, including the alternative measures to incarceration which remain in force[;]
 - ii. In light of the time that Mr. [José Agapito] Ruano Torres has been deprived of his liberty under the sentence imposed, the Commission recommends that, should the victim so desire, the sentence be revised to bring it into line with the standards governing the presumption of innocence and the right of defense in the terms set out in [the] report [;]
 - iii. Provide the victims in this case with integral reparation, including both the material and nonmaterial aspects [;]
 - iv. Conduct a serious, diligent, and effective investigation, within a reasonable time, to cast light on the acts of torture described by Mr. Ruano Torres, identify the guilty, and impose the corresponding penalties [;]
 - v. Take the applicable administrative, disciplinary, and criminal steps in connection with the actions and omissions of the State agents (police officers, prosecutors, public defenders, and judges of the various courts) whose actions contributed to the violations of José Agapito Ruano Torres's rights [, and]
 - vi. Take the necessary steps to prevent similar incidents in the future, in compliance with the duty of preventing and guaranteeing the fundamental rights enshrined in the American Convention. Specifically, develop training programs for State officials that include the international provisions established in the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Istanbul Protocol.
- c. *Notification to the State.* The Merits Report was notified to the State on November 13, 2013. The State was granted two months to report on compliance with the recommendations.

d) *Report on the Commission's recommendations.* On January 22, 2014, the State forwarded information on its implementation of the recommendations made by the Commission in Report No. 82/13 and requested that an extension be granted. However, the Commission noted that the State refrained from expressly renouncing the right to file preliminary objections based on the terms established in Article 51 of the American Convention, for which reason it was not possible to grant the extension requested. On February 14, 2014, the State forwarded additional information.

e) *Submission to the Court.* On February 13, 2014, the Commission submitted to the jurisdiction of the Inter-American Court all the facts and human rights violations described in the Merits Report, "given the need to obtain justice for the [alleged] victim and his family" and "considering the impossibility of granting an extension to the State of El Salvador and the lack of information regarding specific and substantive progress in complying with the reparations." The Commission appointed Commissioner Rosa María Ortiz and Executive Secretary Emilio Álvarez Icaza L. as its delegates before the Court. It also indicated that Elizabeth Abi-Mershed, Assistant Executive Secretary, and the lawyers Silvia Serrano Guzmán and Erick Acuña Pereda would act as legal advisers.

3. *Requests of the Inter-American Commission.* Based on the foregoing, the Commission asked the Court to declare the State's international responsibility for the violations described in the Merits Report (*supra* para. 2(c)(a)). The Commission also asked the Court to require the State to implement certain measures of reparation, which are described and analyzed in Chapter VIII of this Judgment.

II PROCEEDINGS BEFORE THE COURT

4. *Appointment of Inter-American Public Defenders.* In the brief submitting the case, the Commission indicated that Mr. Pedro Torres Hércules and the association "Human Rights Commission

of El Salvador” had acted as petitioners throughout the proceedings. In a communication forwarded by the Secretariat,³ following the instructions of the President of the Court during the preliminary hearing for the submission of the case, on April 24, 2014, Mr. Pedro Torres Hércules requested that an Inter-American Defender be appointed. On April 30, 2014, the Human Rights Commission of El Salvador announced that it would no longer continue to act as a representative in this case. Following the respective communications with the Inter-American Association of Public Defenders (AIDEF)⁴, on May 14, 2014, the Coordinator General of the Association informed the Court that Mr. Rudy Orlando Arreola Higueros (Guatemala) and Mr. Alberto Hassim González Herrera (Panama) had been appointed as inter-American public defenders to act as legal representatives of the alleged victims in this case (hereinafter “the representatives”).⁵

5. *Notification to the representatives and the State.* The Court notified the submission of the case by the Commission to the inter-American public defenders acting on behalf of the alleged victims on June 6, 2014, and to the State on June 30, 2014.

6. *Brief with pleadings, motions and evidence.* On August 7, 2014, the representatives of the alleged victims submitted their brief with pleadings, motions and evidence (hereinafter “pleadings and motions brief”) to the Court. The representatives substantially endorsed the Commission’s arguments and asked the Court to declare the international responsibility of the State for the violation of the same articles of the American Convention alleged by the Commission. In addition, they alleged the violation of Articles 7(1), 7(2), 8(1) and 8(2)(e) of the American Convention. Furthermore, they included arguments related to the corresponding articles of the American Declaration on the Rights and Duties of Man (hereinafter “the American Declaration”), that is, Articles I, XVIII, XXV and XXVI. Likewise, in their brief, the representatives linked the alleged violation of each substantive right with Articles 1(1) and 2 of the American Convention. Finally, the inter-American defenders requested the use of the Victims’ Legal Assistance Fund of the Inter-American Court (hereinafter the “Assistance Fund of the Court” or the “Fund”) “both for the exercise of the defense in the inter-American proceeding and [for] all the expenses incurred in any activity related to it.”

7. *Answering brief.* On November 18, 2014, the State submitted to the Court its brief answering the submission of the case and its observations to the pleadings and motions brief (hereinafter “answering brief”). In its answering brief the State acknowledged its international responsibility. The State appointed Mrs. Tania Camila Rosa, the Foreign Ministry’s Director General of Human Rights, and Mr. Sebastián Vaquerano López, Ambassador of El Salvador in Costa Rica, as its Agents.

8. *Observations on the State’s acknowledgment of international responsibility.* On January 5, 2015, the representatives and the Commission, respectively, presented their observations regarding the State’s acknowledgment of responsibility.

³ Although as an alleged victim, the representation would be duly accredited under Article 35(1)(b) of the Court’s Rules of Procedure to Mr. Pedro Torres Hércules, upon the instructions of the President of the Court the alleged victims were informed that Article 37 of the Rules of the Court establishes the mechanism of the Inter-American Defender, under which, “[i]n cases where alleged victims are acting without duly accredited legal representation, the Court may, on its own motion, appoint an Inter-American Defender to represent them during the processing of the case.”

⁴ In a communication dated May 6, 2014, and pursuant to Article 2 of the Agreement of Understanding between the AIDEF and the Court, and following the instructions of the President of the Court, the General Coordinator of AIDEF was asked to appoint, within 10 days, the defender who would act as legal representative in this case and to provide details of an address for the notification of pertinent communications.

⁵ In application of Article 37 (Inter-American Defender) of the Rules of the Court, which establishes that “[i]n cases where alleged victims are acting without duly accredited legal representation, the Court may, on its own motion, appoint an Inter-American Defender to represent them during the processing of the case.” As established in the explanatory statement of the Court’s Rules of Procedure, the implementation of the mechanism of the Inter-American Defender aims “to guarantee access to inter-American justice by granting free legal aid to presumed victims who do not have the financial resources or lack legal representation before the Court.”

9. *Public hearing.* In an Order of the President of the Court, dated March 11, 2015,⁶ the parties and the Inter-American Commission were summoned to a public hearing to receive their final oral arguments and observations on the merits and eventual reparations and costs, respectively, in this case. The President also declared admissible the application made to the Victim's Legal Assistance Fund to cover the expenses incurred by the inter-American defenders in representing the alleged victims. The public hearing took place on April 23, 2015, during the 52nd Special Session of the Court held in Cartagena, Colombia.⁷ During that hearing, the Court received the statement of the alleged victim, José Agapito Ruano Torres. In addition, the Court received the affidavits requested in that Order.

10. *Final written arguments and observations.* On May 21 and 22, 2015, the representatives and the State, respectively, forwarded their final written arguments. On May 24, 2015, the Commission presented its final written observations.

11. *Observations of the parties and the Commission.* The President granted the parties and the Commission a period of time to present any observations deemed pertinent to the annexes forwarded by the State with its final written arguments. On June 22, 2015, the representatives and the Commission forwarded the observations requested.

12. *Disbursements in application of the Victims' Legal Assistance Fund.* On June 8, 2015, the Secretariat, following the instructions of the President of the Court, forwarded information to the State regarding the disbursements made in application of the Victims' Legal Assistance Fund in this case and, pursuant to Article 5 (f) of the Rules for the Operation of the Fund, granted it a period to present any observations deemed pertinent. The State did not present any observations within the period granted.

13. *Deliberation of the case.* The Court began deliberation of this Judgment on September 30, 2015.

III JURISDICTION

14. The Inter-American Court has jurisdiction to hear this case pursuant to Article 62(3) of the Convention, given that El Salvador has been a State Party to the American Convention since June 23, 1978, and accepted the Court's contentious jurisdiction on June 6, 1995.

IV ACKNOWLEDGMENT OF INTERNATIONAL RESPONSIBILITY

Acquiescence of the State and observations of the Commission and the representatives

⁶ Cf. *Ruano Torres et al. v. El Salvador*. Order of the President of the Inter-American Court of March 11, 2015. Available at: http://www.corteidh.or.cr/docs/asuntos/ruano_11_03_15.pdf

⁷ The hearing was attended by the following: a) for the Inter-American Commission: James Louis Cavallaro, First Vice President of the Inter-American Commission, Silvia Serrano Guzmán and Erick Acuña Pereda, lawyers of the Executive Secretariat; b) for the representatives of the alleged victims: Rudy Orlando Arreola Higueros, Inter-American Public Defender, and Alberto Hassim González Herrera, Inter-American Public Defender, and c) for the State of El Salvador: Tania Camila Rosa, Director General of Human Rights of the Foreign Ministry and Agent of the State, and Gloria Evelyn Martínez Ramos, Director of the Foreign Ministry's International Systems for the Protection of Human Rights.

15. The **State** declared before the Inter-American Court that, pursuant to Articles 41(1)(a) and 62 of the Rules of the Court, it "recogniz[ed] and accept[ed] the facts alleged by the Commission [...] in Merits Report No. 82/13," particularly the facts described in "Chapter IV, which the Commission considers proven, including the circumstances in which the identification and detention of Mr. José Agapito Ruano Torres was conducted, as well as the criminal proceedings followed against him for the crime of kidnapping." Regarding the facts described in the pleadings and motions brief of the representatives, the State considered that these were "within the factual framework established in the presentation of the case by the Commission [...] and contained in Section IV of the Merits Report." During the public hearing, the State recognized and accepted the alleged facts and confirmed its acknowledgment of responsibility for the facts described and considered proven by the Commission in its Merits Report. It also specified that its acquiescence included the circumstances in which Mr. José Agapito Ruano Torres' identification took place and his arrest in the early hours of October 17, 2000, as a result of which Mr. Ruano Torres' personal integrity was violated. The State also acknowledged the irregularities observed during the criminal proceedings followed against Mr. José Agapito Ruano Torres for the crime of kidnapping, especially those related to the deficient performance of the public defenders in this case. The State admitted that due process guarantees, including the right to judicial protection, were not observed in this case, to the detriment of Mr. Ruano Torres. The State further acknowledged that these circumstances, together with the imprisonment of the alleged victim for 13 years, had an impact on his wife and children, who suffered the absence of Mr. Ruano Torres. The State also referred to the testimony given by the petitioner and cousin of the alleged victim, Mr. Pedro Torres Hércules, who, according to the State's representatives, "personifies the essence of a defender of human rights." The State recalled that Mr. Pedro Torres Hércules prepared and presented each of the arguments in the case, which was first heard by the Commission and then by the Court, before the legal representation was assumed by inter-American Public Defenders. In addition to confirming its acknowledgement and acceptance of the facts alleged by the Commission, in its final arguments the State, in presenting its observations on the statements and expert opinions provided by affidavit, explained its understanding of certain facts based on the position adopted by the Office of the Attorney General of the Republic (*infra* para. 23).

16. With regard to the violation of rights alleged in the Commission's report and the brief of the representatives, the State did not refer to these explicitly in its answer. However, during the public hearing it said it recognized its responsibility for the "human rights violations" described and proven by the Commission in its Merits Report. In its final arguments, the State also recognized "the conclusions reached in the Commission's Merits Report regarding the violations committed to the detriment of Mr. José Agapito Ruano Torres and his family."

17. As to the reparations, the State described the actions implemented in response to the Commission's Merits Report. It pointed out that the Second Trial Court of San Salvador had convened a special hearing to review the final judgment on September 2, 2014, and had decided to uphold the conviction. The State indicated that it understood that reparations had value in terms of the progress achieved in implementing the recommendations. However, it argued that given the complexity involved in observing the legal norms and procedures established in El Salvador's domestic law, any advances in the implementation of those recommendations were subject to that consideration. Nevertheless, the State reiterated its willingness to find the means necessary to comply with the reparations ordered in this case. The State did not comment explicitly on the measures of reparation requested in the representatives' pleadings and motions brief. However, during the public hearing, the State asked Mr. Ruano Torres how the State could help to rebuild the fabric of his family, which was separated during the 13 years that he was deprived of his liberty. The State recognized that the damage caused to the victim was irreparable and offered to provide support to alleviate the pain through a psychosocial assistance program, referring also to other specific measures that could be implemented. In its final written arguments, the State confirmed its "firm intention to promote the measures of reparation requested by the representatives" and acknowledged its obligation to pay

the costs and expenses once these had been established and its international responsibility for the facts of this case had been declared.

18. The **Commission** welcomed the State's acknowledgment of responsibility, considering it a positive contribution to the proceedings and to the effective exercise of the human rights established in the American Convention. As to the scope of the acknowledgment of responsibility in relation to the facts, the Commission noted that, according to the literal meaning of its brief, the State acknowledged and accepted the facts alleged by the Commission in its Merits Report. The Commission also understood that, in the absence of any indication to the contrary, and given its decision not to present evidence, the State was also acknowledging the legal consequences of those facts in the terms of the Commission's Merits Report, as well as the reparations. In its final written observations, the Commission asked the Court to accept the State's acknowledgment of international responsibility and to establish that the latter encompasses all the facts and violations committed in this case and included in Merits Report No. 82/13. The Commission also requested that the Court make a detailed assessment of the facts, the applicable law and the corresponding reparations.

19. In particular, with regard to the reparations, the Commission noted that the ruling of the Second Trial Court of San Salvador, on September 19, 2014, did not take into account the substantive and procedural matters analyzed in the Merits Report, but only the grounds exhaustively specified in El Salvador's rules of criminal procedure, concluding that in this case those grounds were not applicable. In this sense, the Commission considered that the judgment does not appear to satisfy the main reparation requested, namely, the review of the conviction in light of the inter-American standards of due process, and especially the principle of presumption of innocence and right of defense. The Commission advised that this decision could conflict with the State's acknowledgment of responsibility. The Commission appreciated the State's willingness to publish the Judgment in order to give it visibility and to use it as a means to guide the actions of the country's various judicial and police authorities and those of the Office of the Attorney General. However, it reiterated to the State the need to set aside the conviction and, consequently, to annul any judicial or other types of records existing against José Agapito Ruano Torres in relation to the facts of this case.

20. The **representatives** pointed out that at the beginning of its answering brief, the State referred to its argument in the proceedings before the Commission, which contrasted with the position adopted at the end of its answer, namely, the acknowledgment of its international responsibility in this case. Regarding reparations, the representatives pointed out that this was more of a formal acknowledgment, rather than a monetary one, inasmuch as the actions undertaken by the State in relation to the Commission's recommendations had not produced a substantive or significant effect. In the opinion of the representatives, the decision adopted by the domestic court following the special review hearing had proven ineffective in terms of annulling the conviction as recommended by the Commission. The representatives also called for a review of the judgment and adherence to international standards regarding the presumption of innocence and the right of defense, something that could not occur because the conviction had been upheld. Finally, the representatives accepted the State's offer to help rebuild the fabric of family life by assuming responsibility for the psychosocial treatment of José Agapito Ruano Torres and his next of kin.

Considerations of the Court

21. Pursuant to Articles 62⁸ and 64⁹ of the Rules of Procedure, and in exercise of its powers for the international judicial protection of human rights, a matter of international public order that transcends the will of the parties, it is incumbent on this Court to ensure that acts of acquiescence are acceptable for the objectives sought by the inter-American system. In this task, it is not restricted to merely confirming, recording or taking note of the State's acquiescence, or to verifying the formal conditions of the said acts, but it must relate them to the nature and severity of the violations that have been alleged, the demands and interests of justice, the particular circumstances of the specific case, and the attitude and position of the parties,¹⁰ in order to clarify, to the extent possible and in the exercise of its jurisdiction, the truth of what happened.¹¹ Thus, an acknowledgement cannot limit, either directly or indirectly, the Court's exercise of its powers to hear the case that has been submitted to it¹² and to decide whether there has been a violation of a right or freedom protected by the Convention.¹³ To this end, the Court will analyze what has been stated in the specific case.¹⁴

22. With regard to the facts of this case, the Court confirms that the State repeatedly expressed its acknowledgement and acceptance of the facts presented by the Inter-American Commission in Chapter IV of Merits Report No. 82/13, entitled "Established Facts," which are further developed in the sections entitled "A. Identification and arrest of José Agapito Ruano Torres" and "B. Criminal proceedings against José Agapito Ruano Torres." Consequently, the Court considers that the State's acquiescence encompasses the facts that took place from August 22, 2000, as described in the Merits Report in the terms in which the case was submitted to this Court. Therefore, the Court considers that there is no dispute regarding the facts that constitute the factual basis of this case. As to the facts presented in the representatives' pleadings and motions brief, the Court notes that the position expressed by the State is limited to the factual framework presented by the Commission.

23. However, the Court advises that discrepancies could exist between the State's acceptance of the facts and its understanding of certain matters according to the Office of the Attorney General of the Republic, as presented in its final arguments (*supra* para. 15). Indeed, the State argued that, according to the Office of the Attorney General: i) the records show that steps were taken to identify Mr. Ruano Torres, such as the identification parade, which has been disputed before this Court, but

⁸ Article 62. Acquiescence

If the respondent informs the Court of its acceptance of the facts or its total or partial acquiescence to the claims stated in the presentation of the case or the brief submitted by the alleged victims or their representatives, the Court shall decide, having heard the opinions of all those participating in the proceedings and at the appropriate procedural moment, whether to accept that acquiescence, and shall rule upon its juridical effects.

⁹ Article 64. Continuation of a Case

Bearing in mind its responsibility to protect human rights, the Court may decide to continue the consideration of a case notwithstanding the existence of the conditions indicated in the preceding Articles.

¹⁰ Cf. *Case of Kimel v. Argentina. Merits, reparations and costs*. Judgment of May 2, 2008. Series C No. 177, para. 24, and *Case of Gonzales Lluy et al. v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of September 1, 2015. Series C No. 298, para. 49.

¹¹ Cf. *Case of Manuel Cepeda Vargas v. Colombia. Preliminary objections, merits, reparations and costs*. Judgment of May 26, 2010. Series C No. 213, para. 17, and *Case of Gonzales Lluy et al. v. Ecuador, supra*, para. 49.

¹² Article 62(3) of the Convention establishes: "The jurisdiction of the Court shall comprise all cases concerning the interpretation and application of the provisions of this Convention that are submitted to it, provided that the States Parties to the case recognize or have recognized such jurisdiction, whether by special Statement pursuant to the preceding paragraphs, or by a special agreement."

¹³ Article 63(1) of the Convention establishes: "If the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party."

¹⁴ Cf. *Case of Myrna Mack Chang v. Guatemala*. Judgment of November 25, 2003. Series C No. 101, para. 105, and *Case of Tiu Tojín v. Guatemala. Merits, reparations and costs*. Judgment of November 26, 2008. Series C No. 190, para. 24.

that this procedure was carried out with authorization and judicial control; ii) neither the victim's family nor his defense counsel approached the Office of the Attorney General to request that witnesses be interviewed in order to establish that the nickname *Chopo* did not belong to Mr. Ruano Torres; and iii) the credibility of Rodolfo Ruano Torres seemed questionable as did his interest in clarifying the accusation against José Agapito Ruano Torres and, furthermore, Mr. Rodolfo Ruano Torres did not appear at the review of judgment hearing. The State asked the Court to consider the arguments presented and argued that its attitude was consistent with its acknowledgment of international responsibility.

24. The Court notes that the State's arguments are within the framework of the principle of *estoppel* which, according to international practice and its own case law, means that when a party to a litigation has adopted a specific position to its own benefit or to the detriment of the other party, under the *estoppel* principle it cannot later take a different position that contradicts the first one.¹⁵ Thus, in its answering brief, the State accepted the facts described in the Commission's Merits Report without objection; therefore, the final written arguments are not the appropriate procedural moment for contradicting or limiting the effect of its acquiescence,¹⁶ particularly in relation to the scope of the description of the facts. Consequently, the Court will not give legal effect to the position adopted by the Office of the Attorney General regarding some of the facts described in the Commission's Merits Report.

25. The State acknowledged its international responsibility with regard to the conclusions reached by the Commission in its Merits Report (*supra* para. 2(c)(a)). This Court considers that such acknowledgement also constitutes acquiescence, on the part of the State, to the legal claims made by the Commission regarding the violation of the rights to judicial guarantees, judicial protection, personal liberty and personal integrity of Mr. Ruano Torres, and for the violation of the right to mental and moral integrity of his wife María Maribel Guevara de Ruano, his son Oscar Manuel Ruano Guevara, his daughter Keily Lisbeth Ruano Guevara, and his cousin Pedro Torres Hércules.

26. In their pleadings and motions brief, the representatives, alleged additional violations of Articles 7(1), 7(2), 8(1) and 8(2)(e) of the Convention (*supra* para. 6). In this regard, the Court recalls that such legal claims may be presented autonomously based on the factual framework. Therefore, considering that the State did not comment on those legal claims made by the representatives, the Court concludes they that are not included in the State's acquiescence.

27. Furthermore, the Court notes that in their pleadings and motions brief the representatives related each substantive right to Articles 1(1) and 2 of the American Convention. Given that the representatives did not describe the facts or develop legal arguments upon which to base the violation of Article 2 of the Convention, namely the duty to adopt provisions of domestic law, the Court will not rule on this matter.

¹⁵ Cf. *Case of Neira Alegría et al. v. Peru. Preliminary objections*. Judgment of December 11, 1991. Series C No. 13, para. 29, and *Case of the Peasant Community of Santa Bárbara v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of September 1, 2015. Series C No. 299, para. 27.

¹⁶ Cf. *Case of the Río Negro Massacres v. Guatemala. Preliminary objection, merits, reparations and costs*. Judgment of September 4, 2012. Series C No. 250, para. 25.

28. The Court also advises that in their pleadings and motions brief, the representatives alleged violations of Articles I¹⁷, XVIII¹⁸, XXV¹⁹ and XXVI²⁰ of the American Declaration, together with the violations of the corresponding articles of the American Convention on Human Rights. The State did not comment on this matter in its answering brief.

29. On this point, the Court notes, in the first place, that the facts that form the basis of the alleged human rights violations in this case occurred after the date on which El Salvador ratified the American Convention (*supra* para.14). Therefore, although it is up to the Court to consider the provisions of the American Declaration when exercising its contentious jurisdiction in interpreting and applying the American Convention,²¹ pursuant to Article 29(d)²² thereof, the truth is that “[f]or the States Parties to the Convention the specific source of their obligations related to the protection of human rights is, in principle, the Convention itself.”²³ As this Court has stated previously, this does not imply that the States Parties to the Convention are released from their obligations derived from the Declaration by the fact of being members of the OAS.²⁴ However, in the instant case the specific and primary source of the State’s international obligations is the American Convention. Furthermore, it is pertinent to point out that, although the representatives included the alleged violation of various articles of the American Declaration, they did not formulate such arguments pursuant to Article 29(d) of the Convention; rather, these were invoked “in correspondence” with the rights and freedoms recognized in the American Convention. In other words, the representatives did not argue that the provisions of the Convention that were allegedly violated in this case imply “excluding or limiting the effect that the American Declaration [...] may have.” Therefore, the Court considers that in this case it is not appropriate to rule on the articles of the American Declaration that were invoked.

¹⁷ This article states that “Every human being has the right to life, liberty and the security of his person.”

¹⁸ This article states that “Every person may resort to the courts to ensure respect for his legal rights. There should likewise be available to him a simple, brief procedure whereby the courts will protect him from acts of authority that, to his prejudice, violate any fundamental constitutional rights.”

¹⁹ This article contemplates the right to protection against arbitrary detention, in the following terms:

“No person may be deprived of his liberty except in the cases and according to the procedures established by pre-existing law.

No person may be deprived of liberty for non-fulfillment of obligations of a purely civil character.

Every individual who has been deprived of his liberty has the right to have the legality of his detention ascertained without delay by a court, and the right to be tried without undue delay or, otherwise, to be released. He also has the right to humane treatment during the time he is in custody.”

²⁰ This article establishes the right to due process of law as follows:

“Every accused person is presumed to be innocent until proved guilty.

Every person accused of an offense has the right to be given an impartial and public hearing, and to be tried by courts previously established in accordance with pre-existing laws, and not to receive cruel, infamous or unusual punishment.”

²¹ Cf. *Case of the Moiwana Community v. Suriname*. Judgment of June 15, 2005. Series C No. 124, para. 63, and *Case of Argüelles et al. v. Argentina. Preliminary objections, merits, reparations and costs*. Judgment of November 20, 2014. Series C No. 288, para. 37.

²² Article 29 concerning the rules of interpretation establishes that: “No provision of this Convention shall be interpreted as: [...] d) excluding or limiting the effect that the American Declaration of the Rights and Duties of Man and other international acts of the same nature may have.”

²³ *Interpretation of the American Statement on the Rights and Duties of Man within the Framework of Article 64 of the American Convention on Human Rights*. Advisory Opinion OC-10/89 of July 14, 1989. Series A No. 10, para. 46, and *Case of Argüelles et al. v. Argentina, supra*, para. 37.

²⁴ Cf. *Interpretation of the American Declaration on the Rights and Duties of Man within the Framework of Article 64 of the American Convention on Human Rights*. Advisory Opinion OC-10/89, *supra*, para. 46, and *Case of Argüelles et al. v. Argentina, supra*, para. 37.

30. As to the measures of reparation, the Court confirms that the State, in accepting the conclusions reached in Report No. 82/13 and some of the proposed reparations, recognized its obligation to provide redress for the violations suffered by the victims. The disagreement lies in the nature and scope of those measures, as well as the amount of the compensation owed.

31. In the Court's view, the position expressed by the State during the different procedural stages before this Court constitutes an acknowledgment of international responsibility for the facts and the violations indicated by the Inter-American Commission in Merits Report No. 82/13. Thus, the State's acquiescence amounts to a full acceptance of the facts and a partial recognition of the alleged violations committed to the detriment of Mr. José Agapito Ruano Torres and his next of kin, namely: María Maribel Guevara de Ruano, Oscar Manuel Ruano Guevara, Keily Lisbeth Ruano Guevara and Pedro Torres Hércules, which produces full juridical effects under Articles 62 and 64 of the Court's Rules of Procedure.

32. The State's acquiescence, together with its expressed commitment to implement the necessary measures of reparation, in permanent dialogue with the representatives and under the criteria established by the Court, constitutes a positive contribution to this proceeding, to the observance of the principles that inspire the Convention and, in part, satisfies the need to redress the harm caused to the victims of human rights violations.²⁵

33. In the case *sub judice*, the Commission requested that the Court issue a judgment containing a detailed assessment of the facts, the applicable law and the corresponding reparations, "taking into account the need to obtain truth and justice for the victim and his family, and addressing the new points that this case raises for the development of inter-American case law on the right to defense and presumption of innocence."

34. By virtue of the authority vested in this Court as an international body responsible for the protection of human rights, and having regard to the specific facts of this case and the violations acknowledged by the State, this Court, in addition to considering that it has an obligation to rule in the cases submitted to it, pursuant to Articles 62(3), 63(1) and 66 of the Convention, deems it necessary to issue a judgment that establishes the facts that occurred, in order to provide reparation for Mr. Ruano Torres and his family, avoid the repetition of similar facts and, in general, satisfy the purposes of the inter-American jurisdiction on human rights.

35. As to the alleged violations of the American Convention, in the particular circumstances of this case, the Court does not consider it necessary, on this occasion, to discuss all the points subject to litigation, given that some legal claims made, such as the rights to personal liberty, personal integrity and the prohibition of torture, the presumption of innocence and judicial protection with respect to José Agapito Ruano Torres, have already been comprehensively established by the Inter-American Court in other cases. Nevertheless, in order to ensure a better understanding of the State's international responsibility in this case and the causal nexus between the violations established and the reparations to be ordered, the Court finds it pertinent to specify the human rights violations encompassed by the State's acknowledgment of responsibility, as well as the origin and scope of the violations autonomously invoked by the representatives regarding which the dispute persists.

36. Furthermore, given the demands for justice in this case, the Court deems it necessary to examine the scope of the State's international responsibility for the actions of the public defenders in the criminal proceedings, a matter that has not been addressed previously in the case law of this

²⁵ Cf. *Case of the Caracazo v. Venezuela. Merits*. Judgment of November 11, 1999. Series C No. 58, para. 43, and *Case of Rodríguez Vera et al. (Disappeared of the Palace of Justice) v. Colombia. Preliminary objections, merits, reparations and costs*. Judgment of November 14, 2014. Series C No. 287, para. 26.

Court. These developments will contribute to the establishment of case law criteria to guide the actions of the States and to protect the human rights of the victims in this case.

37. Finally, the Court will settle the dispute concerning the reparations requested by the Commission and the representatives.

V EVIDENCE

38. Based on the provisions of Articles 46 to 51, 57 and 58 of the Rules, the Court will now examine the admissibility of the documentary evidence forwarded by the parties, as well as the statements and expert opinions rendered by means of affidavits and during the public hearing.

A. Documentary, testimonial and expert evidence

39. The Court received various documents presented as evidence by the Inter-American Commission, the representatives and the State, together with their main briefs. In addition, the Court received the affidavits provided by María Maribel Guevara de Ruano and Pedro Torres Hércules. It also received the expert opinions rendered by affidavit by the experts Diana Lourdes Miranda Guerrero and Alberto Martín Binder. With regard to the evidence given at the public hearing, the Court received the statement of José Agapito Ruano Torres.

B. Admission of the evidence

B.1 Admission of the documentary evidence

40. In this case, as in others, the Court admits the probative value of those documents presented by the parties and by the Commission at the proper procedural opportunity²⁶ that were not challenged or disputed.²⁷

41. With respect to the press reports presented by the representatives, this Court has considered that these may be assessed when they concern public and well-known facts or statements by State officials, or when they corroborate aspects related to the case.²⁸ Consequently, the Court decides to admit those documents that are complete or, at least, those whose source and date of publication can be confirmed.²⁹

²⁶ In relation to the procedural opportunity for the presentation of documentary evidence, pursuant to Article 57(2) of the Rules, the latter must be generally presented with the briefs submitting the case, of pleadings and motions or the answering brief, as appropriate.

²⁷ Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*. Judgment of July 29, 1988. Series C No. 4, para. 140, and *Case of Omar Humberto Maldonado Vargas et al. v. Chile. Merits, reparations and costs*. Judgment of September 2, 2015. Series C No. 300, para. 12.

²⁸ Cf. *Case of Velásquez Rodríguez v. Honduras. Merits, supra*, para. 146, and *Case of Omar Humberto Maldonado Vargas et al. v. Chile, supra*, para. 12.

²⁹ In relation to the press report of October 18, 2000 attached to Annex I.3) of the brief of pleadings, motions and evidence, entitled " `Los Guaza´ kidnapping gang arrested in north of the country" and published in the *Diario de Hoy*, the Court notes that the representatives indicated that "the authorities of the newspaper archive and the press of San Salvador [did] not allow a copy to be removed from the premises, and it was not possible to take photographs of it; therefore, they [sent] the clipping provided at the time by the alleged victim." However, the Court admits the digital version provided since it was not challenged by the State, on the understanding that the source and date of publication correspond to that indicated by the representatives.

42. The Commission presented several compact disks containing the audio of the public hearing held during the domestic criminal proceedings as Annex 2 to its Merits Report. The Court admits the audios presented by the Commission since these were not disputed or challenged.

43. That said, the Court recalls that evidence offered outside of the proper procedural moment is not admissible, except in the situations established in Article 57(2) of the Rules, namely, *force majeure*, serious impediment or if the evidence refers to an event that occurred after the procedural moments indicated.

44. According to the Secretariat, Annex II to the pleadings and motions brief, identified as "Executive Decrees 103, 104, 105 and 106 issued by El Salvador's National Minimum Wage Council," was not received and no direct electronic link was provided to that document. In their final written arguments, the representatives provided the following link <<http://www.educaconta.com/2013/07/salario-minimo-en-el-salvador-2013-2015.html>> for the calculation of loss of earnings. As to documents indicated by means of electronic links, the Court has considered that neither the legal certainty nor the procedural balance is impaired when one of the parties provides, at least, the direct electronic link to the document mentioned as evidence and it is possible to access it, since it can be immediately traced by the Court and the other parties.³⁰ However, the Court notes that the link cited by the representatives does not provide access to the aforementioned Executive Decrees. Furthermore, those documents refer to workers employed in different sectors to the one in which Mr. Ruano Torres worked. In addition, the link was provided extemporaneously, and therefore cannot be admitted as evidence.

45. The State presented certain documents with its final written arguments.³¹ The representatives objected to the documentation provided by the State at this procedural stage, considering that it was "submitted extemporaneously." Both the Commission and the representatives pointed out that the documents refer to the remunerated activities allegedly carried out by Mr. Ruano Torres during the phases of "trust" and "day release" from prison, as well as the rules of conduct imposed on him, all related to compliance with the custodial sentence. The Court confirms that the State presented these documents without offering any justification for the fact that they were submitted after the answering brief. Consequently, pursuant to Article 57(2) of the Rules, the Court decides not to admit these documents because they are time-barred, since the State was aware of them before submitting the answering brief; therefore the Court will not consider these documents in its decision.

B.2 Admission of the statements and of the expert opinions

46. The Court considers it pertinent to admit the statements and expert opinions received at the public hearing and rendered through affidavits, insofar as these are in keeping with the object defined by the President in the Order requiring them³² and the purpose of the instant case.

C. Assessment of the evidence

³⁰ Cf. *Case of Escué Zapata v. Colombia. Merits, reparations and costs*. Judgment of July 4, 2007. Series C No. 165, para. 26, and *Case of Omar Humberto Maldonado Vargas et al. v. Chile, supra*, para. 12.

³¹ The State presented the following two Annexes: 1. Report of the General Directorate of Prisons of the Ministry of Justice and Public Security, dated May 5, 2015, on the remunerated activities carried out by Mr. Jose Agapito Ruano Torres during the phases of "trust" and "day release" from prison; and 2. Report of the Department of Evidence and Conditional Liberty of the Supreme Court of Justice on the supervision of the phases of "conditional release" and "reinsertion into productive life" of Mr. Jose Agapito Ruano Torres of May 12, 2015.

³² The purpose of all these statements are established in the Order of the President of the Court of March 11, 2015, first and fifth operative paragraphs, available on the Court's web site at the following link: http://www.corteidh.or.cr/docs/asuntos/ruano_11_03_15.pdf

47. Based on its constant case law concerning evidence and its assessment,³³ the Court will examine and assess the documentary evidence forwarded by the parties and the Commission, as well as the statements and expert opinions that were requested and included by this Court, when establishing the facts of the case and ruling on the merits. To this end, it will abide by the principles of sound judicial discretion within the corresponding legal framework, taking into account the body of evidence and the arguments submitted in this case.³⁴

48. Finally, pursuant to its case law, the Court recalls that the statements made by the alleged victims cannot be assessed in isolation, but rather within the body of evidence in the proceedings, insofar as such statements may provide further information on the presumed violations and their consequences.³⁵

VI FACTS

49. As a form of reparation to the victims, in this chapter the Court will establish the facts of this case based on the factual framework submitted to the Court's consideration by the Inter-American Commission, the State's acknowledgment of responsibility and the body of evidence.

A. Background to the case

50. On the evening of August 22, 2000, at approximately 19:15, Mr. Jaime Ernesto Rodríguez Marroquín was driving a public transport bus from the capital, San Salvador, to the city of Tonacatepeque. As he drove along the route, he was approached by three men who were traveling on the bus who pointed a gun at the fare collector, and ordered him to stop the vehicle. Mr. Rodríguez Marroquín was then forced to get off the bus³⁶ and was then driven away in a station wagon. He was later taken on foot to a deserted rural area.³⁷

51. On August 23, 2000, Mr. Mauricio Antonio Torres Mejía, who worked as a fare collector on that bus, went to the house of Mr. Rodríguez Marroquín's brother to tell him what had happened. Based on that account, the victim's brother reported the kidnapping of Mr. Rodríguez Marroquín to the Criminal Investigation Division of the National Civil Police.³⁸ That same day, the kidnappers called Mr. Rodríguez Marroquín's family and demanded money in exchange for his release.³⁹

³³ Cf. *Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Merits*. Judgment of March 8, 1998. Series C No. 37, paras. 69 to 76, and *Case of Omar Humberto Maldonado Vargas et al. v. Chile, supra*, para. 16.

³⁴ Cf. *Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Merits, supra*, para. 76, and *Case of Omar Humberto Maldonado Vargas et al. v. Chile, supra*, para. 16.

³⁵ Cf. *Case of Loayza Tamayo v. Peru. Merits*. Judgment of September 17, 1997. Series C No. 33, para. 43, and *Case of Omar Humberto Maldonado Vargas et al. v. Chile, supra*, para. 16.

³⁶ Cf. Record of interview with the witness Mauricio Antonio Torres Mejía by the Criminal Investigation Division of the National Civil Police on August 25, 2000 (evidence file, volume III, Annex 1 to the submission of the case, folios 1099 to 1100).

³⁷ Cf. Record of interview with the victim, Jaime Ernesto Rodríguez Marroquín, by the Criminal Investigation Division of the National Civil Police on September 2, 2000 (evidence file, volume III, Annex 1 to the submission of the case, folios 1107 to 1110).

³⁸ Cf. Complaint N° 01PLB23082000 filed before the Criminal Investigation Division of the National Civil Police on August 23, 2000 (evidence file, volume III, Annex 1 to the submission of the case, folios 1078 to 1079).

³⁹ Cf. Record of interview with the victim, Jaime Ernesto Rodríguez Marroquín, by the Criminal Investigation Division of the National Civil Police on September 2, 2000 (evidence file, volume III, Annex 1 to the submission of the case, folios 1107 to 1110).

52. On August 26, 2000, Mr. Rodríguez Marroquín was set free by the kidnappers.⁴⁰ In the days that followed, after receiving threats by telephone, he paid the kidnappers the sum of fifty thousand colones.⁴¹

B. Linking of José Agapito Ruano Torres to the criminal investigation

53. On October 9, 2000, the Criminal Investigation Division of the National Civil Police interviewed Francisco Javier Amaya Villalta, who was being detained for the crime of extortion against a member of a cooperative. Mr. Amaya Villalta claimed to have information regarding the kidnapping of Jaime Ernesto Rodríguez Marroquín since he had also taken part in the crime.⁴² In his statement, made at the Special Crimes Unit of the Office of the Attorney General of the Republic,⁴³ he identified the persons who had allegedly taken part in the kidnapping, providing their names and surnames. Mr. Amaya Villalta also mentioned an individual "known only as `Chopo," describing him as a man aged 24, approximately 1.55 meters in height and who lived in "Canton Colón de Guazapa."⁴⁴

54. On October 10, 2000, the investigator in charge of the case and his assistant, both of the Criminal Investigation Division of the National Civil Police, went to the department of Police Records and Archives in order to obtain a certified photocopy of the personal files of two police officers indicated as possible suspects in the crime, and also visited the municipal government offices of the cities of Guazapa, Tonacatepeque and San José Guayabal, to collect the identity documents of the other individuals named as alleged participants in the kidnapping of Mr. Rodríguez Marroquín.⁴⁵

55. On October 12, 2000, after confirming the information provided by Mr. Amaya Villalta, the Office of the Attorney General of the Republic requested that the Justice of the Peace of Tonacatepeque offer him a plea bargain to avoid a criminal action against him, given his intention to cooperate in the investigation of Mr. Rodríguez Marroquín's kidnapping, and establishing as a condition of the deal that Mr. Amaya Villalta provide a verbal description of the person nicknamed *Chopo* in order to identify him.⁴⁶ There is no record in the case file that the verbal description was ever provided.

56. On that same day, agents of the Criminal Investigation Division of the National Civil Police visited various places where the suspects in the kidnapping lived. While visiting the Colón district of

⁴⁰ Cf. Record of interview with the victim, Jaime Ernesto Rodríguez Marroquín, by the Criminal Investigation Division of the National Civil Police of September 2, 2000 (evidence file, volume III, Annex 1 to the submission of the case, folios 1107 to 1110).

⁴¹ Cf. Record of interview with the victim, Jaime Ernesto Rodríguez Marroquín, by the Criminal Investigation Division of the National Civil Police of October 13, 2000 (evidence file, volume III, Annex 1 to the submission of the case, folios 1265 to 1266). See also, statement rendered by José Oliverio Hernández Menéndez at the public hearing (evidence file, volume V, Annex 2 to the submission of the case, folio 2132).

⁴² Cf. Statement rendered by José Oliverio Hernández Menéndez during the public hearing (evidence file, volume V, Annex 2 to the submission of the case, folio 2132), and Record signed by José Oliverio Hernández Menéndez and José Francisco Guzmán on October 9, 2000 (evidence file, volume III, Annex 1 to the submission of the case, folios 1147 to 1148).

⁴³ See Articles 222, 259 and 340 of the Code of Criminal Procedure (Decree No. 904 of December 4, 1996, published in the Official Gazette N° 11, Volume 334, of January 20, 1997, which entered into force on April 20, 1998).

⁴⁴ Cf. Statement provided by Francisco Javier Amaya Villalta during questioning at the Special Crimes Unit of the Office of the Attorney General of the Republic on October 9, 2000 (evidence file, volume III, Annex 1 to the submission of the case, folios 1149 to 1156).

⁴⁵ Cf. Official Letter of the Special Crimes Unit of the Office of the Attorney General of the Republic ordering certain measures, dated October 9, 2000 (evidence file, volume III, Annex 1 to the submission of the case, folio 1157), and Record of the investigator in charge of the case of October 10, 2000 (evidence file, volume III, Annex 1 to the submission of the case, folios 1165 to 1166).

⁴⁶ Cf. Request that a plea bargain be offered to the accused, Francisco Javier Amaya Villalta, forwarded to the Justice of the Peace by assistant prosecutors at the Office of the Attorney General of the Republic on October 12, 2000 (evidence file, volume III, Annex 1 to the submission of the case, folios 1272 to 1276).

the town of Guazapa they “tr[ie]d to obtain information on the identity of the individual nicknamed CHOPO, and [were] told that his name is AGAPITO RUANO and that he apparently live[d] in the Nance Verde housing development [,] in Barrio San José.”⁴⁷

57. On October 13, 2000, the chief of the Anti-kidnapping Unit of the Criminal Investigation Division sent an official letter to the municipal authorities of Guazapa requesting a copy of the personal identity document of “Agapito Ruano.”⁴⁸ According to this document, in 2000 José Agapito Ruano Torres was 24 years old and 1.72 meters tall.⁴⁹ At that time he worked as a construction laborer⁵⁰ and lived in the Monte Cristo housing development in the jurisdiction of Guazapa.⁵¹

58. On October 16, 2000, the Magistrate’s Court of Tonacatepeque granted Francisco Javier Amaya Villalta a plea bargain for a period of two months in order for him to provide all necessary and useful information he had concerning the kidnapping of Mr. Rodríguez Marroquín.⁵² In a sworn statement made that same day, Mr. Amaya Villalta once again named the individuals supposedly implicated in the kidnapping, and specifically mentioned a person known by the nickname *Chopo* “whose real name is José Agapito Ruano Torres, and who is approximately 24 years old, one meter fifty-five tall, more or less, and lives in the Monte Cristo development.”⁵³ With regard to the sworn statement, the police agent in charge of the investigation of the kidnapping stated that Amaya Villalta “had entered into negotiations with the prosecutor” since he was the one who “made the connections.”⁵⁴

C. Arrest of José Agapito Ruano Torres

59. Following the statement made by Francisco Javier Amaya Villalta, on October 16, 2000, the Office of the Attorney General of the Republic ordered the administrative detention of the alleged suspects in the kidnapping of Mr. Rodríguez Marroquín, including José Agapito Ruano Torres.⁵⁵ In addition, the Magistrate’s Court of Guazapa authorized the execution of a search and seizure warrant at the home of José Agapito Ruano Torres for the purpose of verifying whether there were any “cellular

⁴⁷ Record of the investigator in charge of the case of October 12, 2000 (evidence file, volume III, Annex 1 to the submission of the case, folios 1312 to 1313).

⁴⁸ Cf. Official Letter No. 169UAS.DIC.00 dated October 13, 2000 (evidence file, volume III, Annex 1 to the submission of the case, folio 1262).

⁴⁹ Cf. Identity card of José Agapito Ruano Torres (evidence file, volume III, Annex 1 to the submission of the case, folio 1263).

⁵⁰ Cf. Statement rendered before the Inter-American Court by José Agapito Ruano Torres in the public hearing held on April 23, 2015, and Certificate of the Labor Management Institute of the Construction Industry (evidence file, volume IV, Annex 1 to the submission of the case, folio 1863).

⁵¹ Cf. Statement rendered by affidavit by María Maribel Guevara de Ruano on April 9, 2015 (evidence file, volume VII, affidavits, folio 2414).

⁵² Cf. Record of the hearing of October 16, 2000, in which the Justice of the Peace of Tonacatepeque ruled on the request for a plea bargain in favor of the accused Francisco Javier Amaya Villalta (evidence file, volume III, Annex 1 to the submission of the case, folios 1278 to 1280).

⁵³ Statement of Francisco Javier Amaya Villalta before the Justice of the Peace of Tonacatepeque of October 16, 2000 (evidence file, volume III, Annex 1 to the submission of the case, folios 1286 to 1292).

⁵⁴ Statement rendered by José Oliverio Hernández Menéndez during the public hearing (evidence file, volume V, Annex 2 to the submission of the case, folio 2132).

⁵⁵ Cf. Decision ordering the administrative detention, adopted by the Special Crimes Unit of the Office of the Attorney General of the Republic on October 16, 2000 (evidence file, volume III, Annex 1 to the submission of the case, folios 1293 to 1299).

phones, money, weapons or other personal items connected to the kidnapping of Mr. Rodríguez Marroquín.⁵⁶

60. In the early hours of October 17, 2000, agents of the National Civil Police carried out "Operation Guaza," in which they proceeded to arrest the alleged suspects in the kidnapping of Mr. Rodríguez Marroquín.⁵⁷ Mr. Ruano Torres was arrested while he was at home with his wife, María Maribel Guevara de Ruano, and their two year-old son, Oscar Manuel Ruano Guevara.

61. According to the written report prepared by the Criminal Investigation Division of the National Civil Police, approximately eight police officers accompanied by a prosecutor of the Special Crimes Unit, went to the home of Mr. Ruano Torres and forced the door open "because the persons in charge of the case believed the suspect to be dangerous."⁵⁸ According to the report, Mr. Ruano Torres resisted the arrest and therefore the police officers had to use "necessary force."⁵⁹ The report notes that Mr. Ruano Torres was shown the administrative arrest warrant issued in his name and that he was made aware of his rights; his identification card was checked; and he was asked whether he would appoint a private defense counsel to which he answered "no."⁶⁰ During the search, the police officers indicated that "they did not find any of the items they were looking for."⁶¹ However, they proceeded to seize "a camouflage hat, four cartridges [... and] two color photographs of the suspect, in which he appears with an M16 rifle."⁶²

62. With regard to these facts, Mr. Ruano Torres stated that he was sleeping when the police officers broke down the door to his home and proceeded to hit him, aiming a blow toward his neck. Then they threw him to the ground, handcuffed him and dragged him out of the house, accusing him of being *Chopo*. Once outside, one of the officers, "using the heel of his boot kicked [him] on the foot, dislocating [his] big toe," and threatened to kill him if he did not tell the truth about his name. Then, "[they] began to mistreat [him], loaded a rifle and said that [he] would be killed, placed a boot on [his] neck and smeared [him] with dog excrement [...] and told [him] to say [...] who his companions [were], bent [his] arms back [...] while he was handcuffed, [...] then pushed them forward [...] and hit [his] neck, [...] after that [he] was pushed out into the street [...] and] in the patrol car [an officer] put a rope [...] around his neck, [...] tightened it for one moment [..., another officer] told him 'you're strangling him, take the rope off him', [then] a blow was [...] aimed at his throat, which almost knocked him out."⁶³ Mr. Ruano Torres also alleged that he was threatened with death so that when

⁵⁶ Official Letter N° 443 from the Justice of the Peace of Guazapa to the assistant prosecutors of the Office of the Attorney General of the Republic of October 16, 2000 (evidence file, volume III, Annex 1 to the submission of the case, folio 1308).

⁵⁷ Cf. Statements rendered by different members of the National Civil Police during the public hearing (evidence file, volume V, Annex 2 to the submission of the case, folio 2132). See also, Press report entitled "Gang of kidnapers 'Los Guaza' arrested in the north of the country," published in *Diario de Hoy* on October 18, 2000 (evidence file, volume VI, Annex I.3) of the pleadings, motions and evidence brief, folios 2283 to 2284).

⁵⁸ Record of detention of José Agapito Ruano Torres, search of the property and seizure of objects of October 17, 2000 (evidence file, volume III, Annex 1 to the submission of the case, folios 1368 to 1371).

⁵⁹ Record of detention of José Agapito Ruano Torres, search of the building and seizure of objects of October 17, 2000 (evidence file, volume III, Annex 1 to the submission of the case, folios 1368 to 1371).

⁶⁰ Cf. Record of detention of José Agapito Ruano Torres, search of the property and seizure of objects of October 17, 2000 (evidence file, volume III, Annex 1 to the submission of the case, folios 1368 to 1371).

⁶¹ Record of detention of José Agapito Ruano Torres, search of the property and seizure of objects of October 17, 2000 (evidence file, volume III, Annex 1 to the submission of the case, folios 1368 to 1371).

⁶² Record of detention of José Agapito Ruano Torres, search of the property and seizure of objects of October 17, 2000 (evidence file, volume III, Annex 1 to the submission of the case, folios 1368 to 1371).

⁶³ Statement rendered before the Inter-American Court by José Agapito Ruano Torres during the public hearing held on April 23, 2015. See also, Brief of José Agapito Ruano Torres presented before the Office of the Human Rights Ombudsman on February 19, 2001 (evidence file, volume V, Annex 3 to the submission of the case, folio 2141).

he faced the television cameras he would say that he was being arrested for being a kidnapper and confess to being *Chopo*.⁶⁴ During his arrest, his wife María Maribel Guevara de Ruano and his two year-old son, Oscar Manuel Ruano Guevara, were present and witnessed the events.⁶⁵

63. Mr. Ruano Torres' wife made statements along the same lines and added that: i) the police officers asked her if her husband was *Chopo*, to which replied "no"; ii) Mr. Ruano Torres told the officers that his brother was nicknamed *Chopo* and that he could take them to him; iii) when she gave the police officers Mr. Ruano Torres' identification card, they pulled out his photo and glued it to a blank sheet of paper; iv) they destroyed furniture and other household items, and that v) she never saw a legal warrant nor was she read anything.⁶⁶ She also indicated that Rodolfo Ruano Torres had moved out of that house one year before the facts occurred.⁶⁷ Years later, Mr. Ruano Torres' son recalled that on the day his father was arrested he "only could only see that they were hitting [his] dad and that a man told [him] not to look."⁶⁸

64. Following his arrest, Mr. Ruano Torres was transferred to the Criminal Investigation Division of the National Civil Police in the city of Guazapa.⁶⁹ He was given a medical checkup, which found that he had lacerations around his neck, chest and shoulders and scars on his nose and on his thighs.⁷⁰ He was subsequently transferred to the Central Penitentiary of "La Esperanza" in the Canton of San Luis Mariona de Ayutuxtepeque.⁷¹

65. With regard to the violence inflicted on Mr. Ruano Torres during his arrest by the police officers, from the body of evidence in this case there are sufficient elements of conviction to conclude that he was: i) beaten;⁷² ii) dragged along the floor;⁷³ iii) trampled on by the officers with the heels of their

⁶⁴ Cf. Brief of José Agapito Ruano Torres presented before the Office of the Human Rights Ombudsman on February 19, 2001 (evidence file, volume V, Annex 3 to the submission of the case, folio 2141), and Statement rendered before the Inter-American Court by José Agapito Ruano Torres during the public hearing held on April 23, 2015.

⁶⁵ Cf. Affidavit rendered by María Maribel Guevara de Ruano on April 9, 2015 (evidence file, volume VII, affidavits, folio 2414), and simple statement rendered by Oscar Manuel Ruano Guevara before the Human Rights Commission of El Salvador undated (evidence file, volume V, Annex 5 to the submission of the case, folios 2150 to 2152).

⁶⁶ Cf. Statement rendered by María Maribel Guevara de Ruano before the Human Rights Commission of El Salvador undated (evidence file, volume V, Annex 4 to the submission of the case, folios 2144 to 2147), and statement rendered by affidavit by María Maribel Guevara de Ruano on April 9, 2015 (evidence file, volume VII, affidavits, folios 2414 to 2415).

⁶⁷ Cf. Simple statement rendered by María Maribel Guevara de Ruano before the Human Rights Commission of El Salvador undated (evidence file, volume V, Annex 4 to the submission of the case, folios 2144 to 2147).

⁶⁸ Simple statement rendered by Oscar Manuel Ruano Guevara before the Human Rights Commission of El Salvador undated (evidence file, volume V, Annex 5 to the submission of the case, folios 2150 to 2152). See also, Affidavit rendered by María Maribel Guevara de Ruano on April 9, 2015 (evidence file, volume VII, affidavits, folios 2414 to 2415).

⁶⁹ Cf. Official Letter No. 184 of October 17, 2000 (evidence file, volume III, Annex 1 to the submission of the case, folio 1416).

⁷⁰ Cf. Report of the clinical examination carried out by the Medical Services Unit of the National Civil Police of October 17, 2000 (evidence file, volume III, Annex 1 to the submission of the case, folios 1374 to 1377).

⁷¹ Cf. Formal instruction issued by the Court of First Instance of Tonacatepeque on October 27, 2000 (evidence file, volume III, Annex 1 to the submission of the case, folio 1529).

⁷² Cf. Statement rendered before the Inter-American Court by José Agapito Ruano Torres during the public hearing held on April 23, 2015; affidavit rendered by María Maribel Guevara de Ruano on April 9, 2015 (evidence file, volume VII, affidavits, folio 2415), and affidavit rendered by Pedro Torres Hércules on April 9, 2015 (evidence file, volume VII, affidavits, folio 2420).

⁷³ Cf. Statement rendered before the Inter-American Court by José Agapito Ruano Torres during the public hearing held on April 23, 2015; Report of clinical examination carried out by the Medical Services Unit of the National Civil Police of October 17, 2000 (evidence file, volume III, Annex 1 to the submission of the case, folio 1376); Record of the preliminary hearing held before the Court of First Instance of Tonacatepeque on April 19, 2001 (evidence file, volume IV, Annex 1 to the submission of the case, folio 1733), and affidavit rendered by María Maribel Guevara de Ruano on April 9, 2015 (evidence file, volume VII, affidavits, folio 2415).

boots causing the big toe of his right foot to bleed;⁷⁴ iv) threatened with death;⁷⁵ v) a rope was placed around his neck to the point of almost choking him,⁷⁶ and vi) his face was pressed near a mound of excrement.⁷⁷

66. According to the record of his arrest, an official letter was sent to the Office of the Public Defender requesting that a defense counsel be assigned to Mr. Ruano Torres.⁷⁸ Alonso Bonilla Evenor⁷⁹ was appointed as his public defender.

67. On October 18, 2000, assistant prosecutors at the Office the Attorney General requested that the various suspects in the kidnapping of Mr. Rodríguez Marroquín, including Mr. Ruano Torres, be held in pre-trial detention. The request was based on Articles 292 and 293, second subparagraph, of the Code of Criminal Procedure,⁸⁰ and mentioned the following considerations: i) there are sufficient grounds to reasonably affirm that the accused probably participated in the kidnapping of Jaime Ernesto Rodríguez Marroquín; ii) bearing in mind the seriousness of the crime and that the sentence would likely exceed three years in prison, pre-trial detention should be applied as an exceptional measure, since the accused presents an imminent flight risk and such interference could hinder specific aspects of the investigation and frustrate the start of the trial, and iii) as to exceptionality, it would be contrary to the sound conduct of the proceeding to impose a measure other than pre-trial detention, given that Article 294 of the Criminal Procedure Code expressly prohibits the substitution of the precautionary measure of pre-trial detention in cases of kidnapping such as this.⁸¹

⁷⁴ Cf. Statement rendered before the Inter-American Court by José Agapito Ruano Torres during the public hearing held the 23 April 2015, and affidavit rendered by Pedro Torres Hércules on April 9, 2015 (evidence file, volume VII, affidavits, folios 2419 and 2420).

⁷⁵ Cf. Statement rendered before the Inter-American Court by José Agapito Ruano Torres in the public hearing held on April 23, 2015; Record of the preliminary hearing held before the Court of First Instance of Tonacatepeque on April 19, 2001 (evidence file, volume IV, Annex 1 to the submission of the case, folio 1733), and affidavit rendered by Pedro Torres Hércules on April 9, 2015 (evidence file, volume VII, affidavits, folio 2420).

⁷⁶ Cf. Statement rendered before the Inter-American Court by José Agapito Ruano Torres during the public hearing held on April 23, 2015; Report of the clinical examination carried out by the Medical Services Unit of the National Civil Police of October 17, 2000 (evidence file, volume III, Annex 1 to the submission of the case, folio 1376); affidavit rendered by María Maribel Guevara de Ruano on April 9, 2015 (evidence file, volume VII, affidavits, folio 2415), and affidavit rendered by Pedro Torres Hércules on April 9, 2015 (evidence file, volume VII, affidavits, folio 2420).

⁷⁷ Cf. Statement rendered before the Inter-American Court by José Agapito Ruano Torres at the public hearing held on April 23, 2015; affidavit rendered by María Maribel Guevara de Ruano on April 9, 2015 (evidence file, volume VII, affidavits, folio 2415), and affidavit rendered by Pedro Torres Hércules on April 9, 2015 (evidence file, volume VII, affidavits, folio 2419).

⁷⁸ Cf. Official Letter No. 182 of October 17, 2000 (evidence file, volume III, Annex 1 to the submission of the case, folio 1413).

⁷⁹ Cf. Record of identification and rights of the defendant of October 17, 2000 (evidence file, volume III, Annex 1 to the submission of the case, folios 1448 to 1449).

⁸⁰ Cf. Request for formal investigation and provisional detention submitted by assistant prosecutors of the Office of the Attorney General of the Republic before the Justice of the Peace of Tonacatepeque on October 18, 2000 (evidence file, volume III, Annex 1 to the submission of the case, folios 1068 to 1077).

⁸¹ Cf. Request for formal investigation and provisional detention submitted by assistant prosecutors of the Office of the Attorney General of the Republic before the Justice of the Peace of Tonacatepeque on October 18, 2000 (evidence file, volume III, Annex 1 to the submission of the case, folios 1068 to 1077).

68. That same day the Justice of the Peace of Tonacatepeque ordered that the suspects remain in custody for the duration of the investigation⁸² and scheduled a preliminary hearing.⁸³

D. Criminal proceedings against José Agapito Ruano Torres

69. The preliminary hearing was held on October 20, 2000, before the Magistrate's Court of Tonacatepeque.⁸⁴ Public Defenders Mario René Chávez Corvera and Soraya Melany Contreras were appointed to represent four of the accused, including José Agapito Ruano Torres.⁸⁵ The defense team requested that all the defendants be acquitted, arguing that none of the accused had been individualized and there was no certainty regarding their participation in the crime. According to the record of that hearing, the accused were asked if they wished to make statements regarding the facts, to which the defendants, including José Agapito Ruano Torres, replied that they would refrain from making any statements.⁸⁶

70. The Justice of the Peace of Tonacatepeque rejected the request of the defense team, ordered the pre-trial investigation to proceed and remanded all the accused in pre-trial detention to ensure their presence at the preliminary hearing.⁸⁷

71. In justifying that decision, the Justice of the Peace of Tonacatepeque held that:

On the understanding that Pre-trial Detention [⁸⁸] [...] should not be applied as a general rule, but rather as a measure of an exceptional nature [...] it should be noted that on this occasion, it is appropriate to order said measure against the detained suspects, inasmuch as the procedural requirements established in Articles 292 and 293 N° 1 and 2 C. Pr. Pn. have been met; and, in consideration of the possibility that they might seek to evade justice; of the frequency with which this type of crime is being committed, causing social alarm; but especially, in consideration of the possibility that they might seek to obstruct or interfere with specific actions of the investigation, either by intimidating or threatening the victim or the witnesses [...].⁸⁹

⁸² Detention for the Duration of the Inquiry - Article 291 of the Code of Criminal Procedure.

"When a person accused of committing an offence is brought before the judge, the judge shall order him detained for the duration of the inquiry and transferred to the appropriate prison with a written notice to the head of the prison. On completion of the inquiry, the judge must order pre-trial detention or release for the accused, as appropriate. Failure to do so will make him liable to criminal responsibility. The inquiry shall last no longer than 72 hours from the time the accused was brought before the judge."

⁸³ Cf. Record issued by the Justice of the Peace of Tonacatepeque on October 18, 2000 (evidence file, volume III, Annex 1 to the submission of the case, folios 1458 to 1460).

⁸⁴ Cf. Record of preliminary hearing of October 20, 2000 (evidence file, volume III, Annex 1 to the submission of the case, folios 1486 to 1495).

⁸⁵ Cf. Record of preliminary hearing of October 20, 2000 (evidence file, volume III, Annex 1 to the submission of the case, folio 1491).

⁸⁶ Cf. Record of preliminary hearing of October 20, 2000 (evidence file, volume III, Annex 1 to the submission of the case, folio 1493).

⁸⁷ Cf. Record of preliminary hearing of October 20, 2000 (evidence file, volume III, Annex 1 to the submission of the case, folios 1486 to 1495).

⁸⁸ Article 292 of the Code of Criminal Procedure.- "To order the provisional detention of the accused, the following requirements must be met:

1) It must be proven that an act characterized as an offence has been committed and that there are substantial grounds to believe that the accused is either the perpetrator or a participant; and,

2) The offence must carry a maximum prison term of more than three years or, if less, the judge must deem that pre-trial detention necessary given the circumstances of the act, the alarm which the act has caused to society or the frequency with which similar acts are committed; otherwise, the accused must be subject to another precautionary measure."

⁸⁹ Record issued by the Justice of the Peace of Tonacatepeque on October 20, 2000 (evidence file, volume III, Annex 1 to the submission of the case, folios 1510 to 1516).

72. On October 27, 2000, the Court of First Instance of Tonacatepeque formally indicted the accused.⁹⁰

73. On October 30, 2000, Pedro Torres Hércules,⁹¹ cousin of José Agapito Ruano Torres, filed a complaint with the Disciplinary Investigation Unit of the National Civil Police alleging that his relative had suffered “abuse of authority and physical, moral and psychological mistreatment” during his arrest.⁹²

74. Then, on November 27, 2000, Pedro Torres Hércules submitted a brief to the Court of First Instance of Tonacatepeque requesting a special hearing, and including the statements of witnesses who stated that José Agapito Ruano Torres had been working on the remodeling of a school when the kidnapping of Mr. Rodríguez Marroquín took place. However, the Court of First Instance of Tonacatepeque refused to receive the information arguing that it would be “a trial court that [would] assess the evidence” and recommending that he approach the Special Crimes Unit of the Office of the Attorney General.⁹³ As acknowledged by the State, on November 29, 2000, Pedro Torres Hércules attempted to present that evidence to the Office of the Attorney General but it was rejected.⁹⁴

75. On December 1, 2000, the Court of First Instance of Tonacatepeque ordered that Mr. Rodríguez Marroquín⁹⁵ be summoned to attend an identity parade, after questioning in which he described⁹⁶ eight of the people who had participated in his kidnapping without providing their names. The identity parade took place on January 11, 2001, in which Mr. Rodríguez Marroquín said he recognized the person wearing the number 2, who said his name was José Agapito Ruano Torres.⁹⁷

76. On December 7, 2000 José Agapito Ruano Torres filed an application for *habeas corpus* with the Constitutional Chamber of the Supreme Court of Justice⁹⁸ (*infra* paras. 106 to 111).

77. On March 12, 2001, Pedro Torres Hércules submitted a brief to the Attorney General of the Republic requesting that the public defenders assigned to Mr. Ruano Torres be changed, given that

⁹⁰ Cf. Formal instruction issued by the Court of First Instance of Tonacatepeque on October 27, 2000 (evidence file, volume III, Annex 1 to the submission of the case, folios 1529 to 1539).

⁹¹ Pedro Torres Hércules, petitioner and cousin of the alleged victim, lived in Guatemala at the time of the facts. After learning of the arrest of his cousin, José Agapito Ruano Torres, he decided to travel to El Salvador to find out about his situation and take the necessary steps to demonstrate his innocence. Cf. Simple statement rendered by Pedro Torres Hércules before the Human Rights Commission of El Salvador, undated (evidence file, volume V, Annex 7 to the submission of the case, folios 2158 to 2162), and affidavit rendered by Pedro Torres Hércules on April 9, 2015 (evidence file, volume VII, affidavits, folios 2420 to 2428).

⁹² Brief submitted by the Auxiliary Agent of the Office of the Attorney General of the Republic to the Court of First Instance of Tonacatepeque on April 18, 2001 (evidence file, volume IV, Annex 1 to the submission of the case, folio 1654).

⁹³ Cf. Brief submitted to the Court of First Instance of Tonacatepeque by Pedro Torres Hércules on November 27, 2000 (evidence file, volume V, Annex 8 to the submission of the case, folios 2165 to 2168).

⁹⁴ Cf. Brief submitted to the assistant prosecutors in the Office of the Attorney General by Pedro Torres Hércules on November 29, 2000 (evidence file, volume V, Annex 9 to the submission of the case, folios 2170 to 2171), and Brief of Pedro Torres Hércules of November 29, 2000 (file of proceeding before the Commission, volume I, folios 222 to 223).

⁹⁵ Cf. Order issued by the Justice of the Peace of Tonacatepeque on December 1, 2000 (evidence file, volume III, Annex 1 to the submission of the case, folios 1594 to 1595).

⁹⁶ Cf. Interrogation prior to the identity parade of January 11, 2001 (evidence file, volume III, Annex 1 to the submission of the case, folios 1598 to 1600).

⁹⁷ Cf. Identity parade on January 11, 2001 (evidence file, volume III, Annex 1 to the submission of the case, folios 1605 to 1606).

⁹⁸ Cf. Application for *habeas corpus* filed with the Constitutional Chamber on December 7, 2000 (evidence file, volume V, Annex 10 to the submission of the case, folios 2173 to 2174).

they had repeatedly refused to assist him, or to challenge the irregular conduct of the identity parade.⁹⁹ The petitioner pointed out that although they had made several requests for a change of public defenders, the regional prosecutor had always denied their petitions.¹⁰⁰

78. On March 19, 2001, after Mr. Ruano Torres filed a new petition requesting a change of public defender, he was assigned Emilia Martine Castillo del Castillo.¹⁰¹ However, in a brief submitted to the Second Trial Court of San Salvador, Mr. Ruano Torres stated that the new public defender had refused to challenge the identity parade because "it would be damaging to her colleague Corvera and [...] in any event, nothing could be done at that point and that the challenge should have been filed right away."¹⁰²

79. On April 18, 2001, the prosecutor assigned to the case, following the complaint filed with the Disciplinary Investigation Unit of the National Civil Police (*supra* para. 73) for the purpose of investigating the alleged mistreatment of Mr. Ruano Torres at the time of his arrest,¹⁰³ submitted a request to the Court of First Instance of Tonacatepeque. In his brief, the prosecutor requested authorization for the transfer of José Agapito Ruano Torres to the Institute of Forensic Medicine of San Salvador on April 20, 2001, in order to undergo a psychological evaluation.¹⁰⁴ The following day, the Court of First Instance of Tonacatepeque ruled the request out of order and put the prosecutor on notice that, "in the future, any request of this nature must be submitted at least six days in advance, in order to make [...] the appropriate arrangements."¹⁰⁵ The case file does not indicate whether the requested evaluation was ever carried out.

80. On April 19, 2001, the Office of the Attorney General of the Republic filed formal charges against various individuals accused in the kidnapping of Mr. Rodríguez Marroquín, among them José Agapito Ruano Torres.¹⁰⁶

81. On April 25, 2001, the public defender Emilia Martine Castillo del Castillo filed a brief with the Examining Magistrate of Tonacatepeque offering a list of witnesses and documentary evidence to be presented at the preliminary hearing to be held before the Court of First Instance of Tonacatepeque.¹⁰⁷ That document stated that the witnesses would help corroborate that José Agapito Ruano Torres was not *Chopo* and that he was at a different location on the day of the kidnapping. The defense also

⁹⁹ Cf. Brief submitted to the Attorney General of the Republic by Pedro Torres Hércules on March 12, 2001 (evidence file, volume V, Annex 14 to the submission of the case, folios 2185 to 2186).

¹⁰⁰ Cf. Brief submitted to the Attorney General of the Republic by Pedro Torres Hércules on March 12, 2001 (evidence file, volume V, Annex 14 to the submission of the case, folios 2185 to 2186).

¹⁰¹ Cf. Brief submitted to the Court of First Instance of Tonacatepeque on March 16, 2001, presented on March 19, 2001 (evidence file, volume IV, Annex 1 to the submission of the case, folios 1639 to 1640).

¹⁰² Brief submitted to the Second Trial Court of San Salvador by José Agapito Ruano Torres on September 5, 2001 presented the following day (evidence file, volume IV, Annex 1 to the submission of the case, folios 1839 to 1845).

¹⁰³ Cf. Brief submitted by the Auxiliary Agent of the Office of the Attorney General of the Republic to the Court of First Instance of Tonacatepeque on April 18, 2001 (evidence file, volume IV, Annex 1 to the submission of the case, folios 1654 to 1655).

¹⁰⁴ Cf. Brief submitted by the Auxiliary Agent of the Office of the Attorney General of the Republic to the Court of First Instance of Tonacatepeque on April 18, 2001 (evidence file, volume IV, Annex 1 to the submission of the case, folios 1654 to 1655).

¹⁰⁵ Order issued by the Justice of the Peace of Tonacatepeque on April 19, 2001 (evidence file, volume IV, Annex 1 to the submission of the case, folios 1657 to 1658).

¹⁰⁶ Cf. Accusation brief submitted by the assistant prosecutors of the Office of the Attorney General of the Republic to the Court of First Instance of Tonacatepeque on April 19, 2001 (evidence file, volume IV, Annex 1 to the submission of the case, folios 1664 to 1685).

¹⁰⁷ Cf. Brief submitted by the public defender Emilia Martine Castillo del Castillo to the Court of First Instance of Tonacatepeque on April 25, 2001 (evidence file, volume IV, Annex 1 to the submission of the case, folios 1708 to 1711).

attached a series of documents claiming that Mr. Ruano Torres was carrying out construction work at a school in Guazapa on the date and time of Mr. Rodríguez Marroquín's kidnapping.

82. During the preliminary hearing, on April 26, 2001, the judge ruled that evidence inadmissible "since it is not essential evidence."¹⁰⁸ In an interview conducted by the Office of the Human Rights Ombudsman, the judge of that court stated that the evidence presented at the preliminary hearing was not accepted "because it was untimely."¹⁰⁹ At that same hearing, Mr. Ruano Torres said that he would refrain from making any statement, but when he was granted some last words he stated that he was not *Chopo* and that "the police agents [...] threatened [him] with death and that is how they implicated [him] in the kidnapping."¹¹⁰ The public defender requested the annulment of the pre-trial evidence, a request that was declared inadmissible by the Court of First Instance of Tonacatepeque.¹¹¹

83. The Court of First Instance of Tonacatepeque ordered the opening of proceedings against the rest of the accused, except for the absent defendants, and rejected the request for final acquittal by the defense attorney of José Agapito Ruano Torres "since those defendants ha[d] been identified [and] [were] directly linked to the proceeding."¹¹²

84. On June 18, 2001, José Agapito Ruano Torres submitted a brief to the Second Trial Court of San Salvador requesting a special review hearing and "the annulment of the identification and localization procedures."¹¹³ In that regard, Mr. Ruano Torres indicated that the police officers who identified him as *Chopo* did so based solely on the information provided by one person. For that reason, he requested that investigators be sent to the area where he lived in order to verify that the nickname *Chopo* did not apply to him and that they could even confirm this point with the local Mayor. Mr. Ruano Torres also stated that there were documents available to prove that he was working at a school when the kidnapping took place. Those requests were rejected by the Second Trial Court of San Salvador on the grounds that the investigative phase had concluded and that his defense should have submitted those requests at the appropriate time.¹¹⁴ The court also decided not to grant the annulment as requested.¹¹⁵

85. On September 6, 2001, Mr. Ruano Torres submitted another brief to the Second Trial Court of San Salvador,¹¹⁶ alleging that his public defenders had acted to his detriment at every stage of the

¹⁰⁸ Record of the preliminary hearing before the Court of First Instance of Tonacatepeque on April 19, 2001 (evidence file, volume IV, Annex 1 to the submission of the case, folio 1736).

¹⁰⁹ Resolution issued by the Office of the Human Rights Ombudsman on June 9, 2003 (evidence file, volume V, Annex 1 to the submission of the case, folio 2065).

¹¹⁰ Record of the preliminary hearing held before the Court of First Instance of Tonacatepeque on April 19, 2001 (evidence file, volume IV, Annex 1 to the submission of the case, folio 1733).

¹¹¹ Cf. Record of the preliminary hearing held before the Court of First Instance of Tonacatepeque on April 19, 2001 (evidence file, volume IV, Annex 1 to the submission of the case, folio 1734).

¹¹² Record of the preliminary hearing held before the Court of First Instance of Tonacatepeque on April 19, 2001 (evidence file, volume IV, Annex 1 to the submission of the case, folios 1735 to 1737).

¹¹³ Cf. Brief submitted to the Second Trial Court of San Salvador by José Agapito Ruano Torres of June 17, 2001 presented the following day (evidence file, volume IV, Annex 1 to the submission of the case, folios 1805 to 1808).

¹¹⁴ Cf. Record issued by the Second Trial Court of San Salvador on June 22, 2001 (evidence file, volume IV, Annex 1 to the submission of the case, folio 1809).

¹¹⁵ Cf. Record issued by the Second Trial Court of San Salvador on June 22, 2001 (evidence file, volume IV, Annex 1 to the submission of the case, folio 1809).

¹¹⁶ Cf. Brief submitted to the Second Trial Court of San Salvador by José Agapito Ruano Torres of September 5, 2001, presented the following day (evidence file, volume IV, Annex 1 to the submission of the case, folios 1839 to 1845).

proceedings in which they had taken part.¹¹⁷ He also requested that Pedro Torres Hércules, who had witnessed the irregularities committed during the identity parade and had the necessary information to prove that he was not *Chopo*, be summoned to testify in his favor. On September 17, 2001, the Second Trial Court of San Salvador decided that as to “the witness testimony offered [...] this Court considers that a decision on the admissibility of said evidence will be made at the appropriate time in the proceedings.”¹¹⁸ There is no evidence in the case file of the Second Trial Court making any subsequent reference to those requests.

86. On September 24, 2001, Pedro Torres Hércules submitted a brief to the Second Trial Court of San Salvador, in which the Mayor of Guazapa attested to José Agapito Ruano Torres’ honesty and pointed out that the nickname *Chopo* belonged to his brother “Rodolfo Ruano Torres, who [was] the person wanted by the [National Civil Police] and, due to a confusion, the young man [José] Agapito was detained.”¹¹⁹ The Second Trial Court of San Salvador did not rule in that regard and merely stated, “add that information to his record.”¹²⁰

87. On September 27, 2001, Roberto Ruano Torres, brother of José Agapito, and two other persons appearing as witnesses, submitted a brief to the Second Trial Court of San Salvador stating that the person known as *Chopo* was Rodolfo Ruano Torres and not José Agapito Ruano Torres.¹²¹ Therefore, they pointed out, “if what the case says is true, the person who should know something would be the brother who is the one who goes by that ALIAS.”¹²²

88. On that same date, José Agapito Ruano Torres hired a private attorney, who requested the suspension of the public hearing “in order to better study the case” and exercise the right of defense.¹²³ The case file contains no record of the decision of the Second Trial Court of San Salvador regarding the private attorney’s request. Nevertheless, the public hearing took place on the planned date and Mr. Ruano Torres was represented by the public defenders.¹²⁴

89. The pre-trial hearing began on October 1, 2001, in the Second Trial Court of San Salvador. At the beginning of the hearing the accused, including José Agapito Ruano Torres, were asked if they wished to make statements. The audio of the pre-trial hearing shows that Mr. Ruano Torres stated “I am willing to make a statement.”¹²⁵ However, despite his response, the Court asked another of the accused if he wished to testify, and therefore he was not heard. In addition, several witnesses stated

¹¹⁷ Namely: i) preventing him from making a statement; ii) refusing to introduce information regarding the true identity of *Chopo*, who was his brother Rodolfo; iii) not challenging the irregularities committed during the identity parade, and iv) in general, refusing to take any action he requested in order to demonstrate his innocence by proving that he was not *Chopo*.

¹¹⁸ Record issued by the Second Trial Court of San Salvador on September 17, 2001 (evidence file, volume IV, Annex 1 to the submission of the case, folio 1848).

¹¹⁹ Brief submitted to the Second Trial Court of San Salvador by the Mayor of Guazapa of September 21, 2001 presented on September 24, 2001 (evidence file, volume IV, Annex 1 to the submission of the case, folio 1850).

¹²⁰ Record issued by the Second Trial Court of San Salvador on September 26, 2001 (evidence file, volume IV, Annex 1 to the submission of the case, folio 1853).

¹²¹ Cf. Brief submitted to the Second Trial Court of San Salvador by Roberto Ruano Torres and other persons dated September 27, 2001, presented that same day (evidence file, volume IV, Annex 1 to the submission of the case, folios 1859 to 1860).

¹²² Brief submitted to the Second Trial Court of San Salvador by Roberto Ruano Torres and other persons of September 27, 2001 presented that same day (evidence file, volume IV, Annex 1 to the submission of the case, folios 1859 to 1860).

¹²³ Cf. Appointment of private defense counsel by José Agapito Ruano Torres on September 27, 2001 (evidence file, volume IV, Annex 1 to the submission of the case, folio 1857), and Brief of the private attorney Marvin de Jesús Colorado Torres of September 28, 2001 (evidence file, volume IV, Annex 1 to the submission of the case, folio 1864).

¹²⁴ Audio of the Public hearing (evidence file, volume V, Annex 2 to the submission of the case, folio 2132).

¹²⁵ Audio of the Public hearing (evidence file, volume V, Annex 2 to the submission of the case, folio 2132).

that on the day that Mr. Rodríguez Marroquín was kidnapped, Mr. Ruano Torres was working with his brother Roberto remodeling a school until late in the evening. They also pointed out that the nickname *Chopo* belonged to Rodolfo Ruano Torres, the brother of José Agapito Ruano Torres. During the questioning of Mr. Rodríguez Marroquín, he named and pointed out all of the accused present at the hearing, including José Agapito Ruano Torres, as participants in his kidnapping.

90. On October 5, 2001, the Second Trial Court of San Salvador convicted José Agapito Ruano Torres and the other defendants as co-perpetrators in the kidnapping of Mr. Rodríguez Marroquín, and sentenced them to fifteen years in prison. It also imposed the accessory penalty of loss of citizenship rights and the payment of five thousand colones for civil liability.¹²⁶

91. In its analysis of the evidence provided during the criminal proceedings the Second Trial Court of San Salvador stated the following:

Based on the statements of the victim, Mr. JAIME ERNESTO RODRIGUEZ MARROQUIN, and those of the witness FRANCISCO JAVIER AMAYA VILLALTA, provided as pre-trial evidence, the Court has determined that these statements corroborate the circumstances related to the time, place and manner in which the facts occurred, and establishes the following: [...] b) that they are consistent in determining the place, time and manner in which the victim Mr. JAIME ERNESTO RODRIGUEZ MARROQUIN was deprived of his liberty, and in identifying the individuals involved in committing the kidnapping and those who collaborated in transferring him to the area where he was held captive, namely, the accused JOAQUIN RODRIGUEZ MARROQUIN, JOSE AGAPITO RUANO TORRES and JOSE ORELLANA PEREZ, together with the absent suspects FRANCISCO JAVIER AMAYA VILLALTA and SAMUEL HERNANDEZ RAMIREZ alias "Oasis"¹²⁷[.]

[...]

In the identity parade, the victim managed to recognize [, among others,] José Agapito Ruano Torres [...].¹²⁸

[...]

[...]n their depositions [...] they tried to place the accused at a location different to the area where the events took place, but those circumstances were not corroborated by any other evidentiary sources; it should also be borne in mind that they [the deponents] are relatives and friends of the accused; and there are contradictions between their statements and the depositions of the other witnesses.¹²⁹

[...]

[T]his Court considers that indeed there is no record of the decision regarding the prosecutor's petition [to receive the statement of Amaya as pre-trial evidence. I]n that procedure to obtain pre-trial evidence all the procedural parties concerned at that moment were present; therefore no right was violated since this was done in accordance with the principle of immediacy and the adversarial principle, and no appeal was lodged [...].¹³⁰

92. On October 17, 2001, the Office of the Human Rights Ombudsman submitted a complaint regarding the lack of participation of some witnesses during the public hearing, despite having been summoned, and requested a report from the Court of First Instance of Tonacatepeque and the Second

¹²⁶ Cf. Judgment issued by the Second Trial Court of San Salvador on October 5, 2001 (evidence file, volume IV, Annex 1 to the submission of the case, folios 1874 to 1908).

¹²⁷ Judgment issued by the Second Trial Court of San Salvador on October 5, 2001 (evidence file, volume IV, Annex 1 to the submission of the case, folio 1899).

¹²⁸ Judgment issued by the Second Trial Court of San Salvador on October 5, 2001 (evidence file, volume IV, Annex 1 to the submission of the case, folio 1900).

¹²⁹ Judgment issued by the Second Trial Court of San Salvador on October 5, 2001 (evidence file, volume IV, Annex 1 to the submission of the case, folio 1901).

¹³⁰ Judgment issued by the Second Trial Court of San Salvador on October 5, 2001 (evidence file, volume IV, Annex 1 to the submission of the case, folio 1902).

Trial Court of San Salvador.¹³¹ With regard to the situation of Mr. Ruano Torres, the Second Trial Court of San Salvador indicated that the testimony of Eleazar Antonio Alemán, Roberto Ruano Torres, José Alberto and Ana Marlene Orellana Barrera, Nublas Antonio and Miguel Antonio Torres, and María Maribel Guevara, had already been admitted during the preliminary hearing. Furthermore, the court pointed out that José Agapito Ruano Torres' own defense "stated that it would not use the testimony of the witness Leonel Alcides Orellana."¹³²

93. The case file shows that the public defense of José Agapito Ruano Torres did not lodge any motions for appeal or review of the conviction. In a brief sent to the National Coordinator of the Office of the Public Defender, in 2002, the public defense argued that the motion to review was not in order because, among other reasons, "[there] was no direct or manifest violation of constitutional guarantees." The defense added the filing of this motion could only be attempted if Rodolfo Ruano Torres "made a sworn statement confessing that it was he and not his brother [...] who took part in the kidnapping."¹³³

94. On October 16, 2002, after the Supreme Court of Justice had ruled inadmissible the motions for cassation appeal filed on behalf of other convicted persons,¹³⁴ the Second Trial Court of San Salvador requested that the conviction against José Agapito Ruano Torres and the other defendants be declared final.¹³⁵

95. On May 13, 2002, Mr. Ruano Torres submitted to the Chief of the Judicial Investigation Division of the Supreme Court of Justice a complaint against the Court of First Instance of Tonacatepeque and the Second Trial Court of San Salvador which had participated in the criminal proceedings.¹³⁶ In that complaint, Mr. Ruano Torres alleged that neither of the two aforementioned courts had taken any measures in his favor despite the fact that he had submitted numerous briefs clarifying that it was his brother Rodolfo who was known as *Chopo* and not him. He also indicated that during the public hearing the Second Trial Court of San Salvador had refused to allow his brother to testify as a witness. On October 22, 2003, the Office of the President of the Supreme Court of Justice declared the complaint inadmissible because "no elements were found that would evidence probable cause to open a disciplinary inquiry."¹³⁷

96. On August 11, 2003, José Agapito Ruano Torres filed on his own behalf and without professional legal counsel, a motion to review the conviction before the Second Trial Court of San

¹³¹ Cf. Resolution issued by the Office of the Human Rights Ombudsman on October 17, 2001 (evidence file, volume IV, Annex 1 to the submission of the case, folio 1962).

¹³² Official Letter No. 3049-2 of the Second Trial Court of San Salvador of October 25, 2001 (evidence file, volume IV, Annex 1 to the submission of the case, folios 1966 to 1968).

¹³³ Report on the proceeding against Mr. José Agapito Ruano sent to the National Coordinator of the Office of Public Defender on March 19, 2002 (evidence file, volume V, Annex 17 to the submission of the case, folios 2198 to 2199).

¹³⁴ The case file contains the motions for cassation filed on behalf of Miguel Guzmán Mazariego, José Orellana Pérez, José León Pérez, Joaquín Rodríguez and Ricardo Antonio Figueroa. Cf. Resolution of the Criminal Chamber of the Supreme Court of Justice issued on June 18, 2002 (evidence file, volume IV, Annex 1 to the submission of the case, folios 2011 to 2014).

¹³⁵ Cf. Record issued by the Second Trial Court of San Salvador on October 16, 2002 (evidence file, volume IV, Annex 1 to the submission of the case, folio 2020).

¹³⁶ Cf. Brief submitted to the Head of the Department of Judicial Investigation of the Supreme Court of Justice by José Agapito Ruano Torres of May 13, 2002 (evidence file, volume V, Annex 19 to the submission of the case, folios 2209 to 2212).

¹³⁷ Decision issued by the President of the Supreme Court of Justice of October 22, 2003 (evidence file, volume V, Annex 20 to the submission of the case, folios 2214 to 2216).

Salvador.¹³⁸ In that motion, he stated that his lawyer had not allowed him to make a statement at the beginning of the pre-trial hearing and that he had offered to have his brother Rodolfo appear at the hearing as evidence, given that he was known as *Chopo*. On August 13, 2003, the Second Trial Court ruled the motion inadmissible stating that there had been no violation of his constitutional guarantees because he, José Agapito Ruano Torres, had chosen not to make a statement.¹³⁹

97. On September 22, 2003, José Agapito Ruano Torres filed another motion to review his conviction with the Second Trial Court of San Salvador,¹⁴⁰ based on the same arguments. On September 29, 2003, the court decided not to admit this new motion, considering it a reiteration of the previous one.¹⁴¹

98. On September 22, 2006, Toribio Chiquillo Rodríguez, one of the persons convicted for the kidnapping of Mr. Rodríguez Marroquín, submitted a brief to the Second Trial Court of San Salvador indicating that the individual who had participated in the kidnapping was Rodolfo Ruano Torres, known as *Chopo*, and not José Agapito Ruano Torres, "who is innocent of the acts for which he has been convicted."¹⁴² He stated that from the very beginning of the proceedings, the public defender did not allow him to speak on this matter.¹⁴³

99. On November 22, 2006, José Agapito filed a new motion for review with the Second Trial Court of San Salvador. He argued that he was not allowed to make a statement even though he had stated "I am willing to testify." He also pointed out that Mr. Rodríguez Marroquín had admitted that his recognition and pointing out of Mr. Ruano Torres at the identity parade was based on media reports.¹⁴⁴ He added that "the defense always pressured [him] so that he would not testify." Mr. Ruano Torres also requested that the evidence presented be discussed and analyzed – that is, the documentary statement regarding his work on the day of the kidnapping and the testimony of Rodolfo Ruano Torres and Toribio Chiquillo Rodríguez- in order to be granted alternative measures to imprisonment.

100. On November 27, 2006, the Second Trial Court of San Salvador rejected the motion and ruled it inadmissible. With regard to the refusal to allow Mr. Ruano Torres to make a statement, the court acknowledged that "at the moment [when] he wanted to make a statement, he was not listened to."¹⁴⁵ Furthermore, the court maintained that at the end of the pre-trial hearing "he only said he was innocent," that being the moment in the proceeding when "he should have indicated that he wished to make a statement."¹⁴⁶ The court also noted that the times when Mr. Rodríguez Marroquín pointed

¹³⁸ Cf. Special motion to review the conviction filed by José Agapito Ruano Torres before the Second Trial Court of San Salvador on August 11, 2003 (evidence file, volume V, Annex 1 to the submission of the case, folios 2089 to 2091).

¹³⁹ Cf. Decision issued by the Second Trial Court of San Salvador on August 13, 2003 (evidence file, volume V, Annex 1 to the submission of the case, folios 2092 to 2093).

¹⁴⁰ Cf. Special motion for review of judgment filed by José Agapito Ruano Torres before the Second Trial Court of San Salvador on September 24, 2003 (evidence file, volume V, Annex 1 to the submission of the case, folios 2094 to 2096).

¹⁴¹ Cf. Decision issued by the Second Trial Court of San Salvador on September 29, 2003 (evidence file, volume V, Annex 1 to the submission of the case, folios 2097 to 2098).

¹⁴² Brief submitted to the Second Trial Court of San Salvador by Toribio Chiquillo Rodríguez of September 12, 2006, and presented on September 22, 2006 (evidence file, volume V, Annex 23 to the submission of the case, folios 2231 to 2232).

¹⁴³ Cf. Brief submitted to the Second Trial Court of San Salvador by Toribio Chiquillo Rodríguez of September 12, 2006, and presented on September 22, 2006 (evidence file, volume V, Annex 23 to the submission of the case, folios 2231 to 2232).

¹⁴⁴ Cf. Special motion to review of Judgment filed by José Agapito Ruano Torres before the Second Trial Court of San Salvador on November 22, 2006 (evidence file, volume V, Annex 24 to the submission of the case, folios 2234 to 2238).

¹⁴⁵ Decision issued by the Second Trial Court of San Salvador on November 27, 2006 (evidence file, volume V, Annex 25 to the submission of the case, folios 2240 to 2242).

¹⁴⁶ Cf. Decision issued by the Second Trial Court of San Salvador on November 27, 2006 (evidence file, volume V, Annex 25 to the submission of the case, folios 2240 to 2242).

him out were "spontaneous and direct" and indicated that Mr. Ruano Torres could "allege whatever is relevant in the trial, in exercise of his right to a material defense."¹⁴⁷

101. On January 5, 2007, at the Correctional Center of Apanteos in Santa Ana, where José Agapito Ruano Torres was being held, violent events took place during a prison mutiny, which resulted in the death of 21 inmates.¹⁴⁸ Mr. Pedro Torres Hércules reported that after learning about those events, the prison authorities told him that Mr. Ruano Torres was not on the lists of transferred or deceased inmates who had been identified. However, he said that they advised him to go to the Forensic Medicine Center as there were deceased persons who had not yet been identified. Mr. Torres Hércules said that he was unable to enter that center "because a large crowd of people had gathered there waiting for an opportunity to identify their loved ones." He said that until they were told that Mr. Ruano Torres was still at the Correctional Center of Apanteos, his wife and son went through some "very difficult moments."¹⁴⁹

102. On September 24, 2009, the First Parole and Enforcement of Sentences Court granted Mr. Ruano Torres parole.¹⁵⁰ However, the Office of the Attorney General of the Republic appealed that decision and on October 15, 2009, the First Criminal Chamber of the First Section of the Judicial Center revoked the decision.¹⁵¹

103. On May 9, 2013, the First Parole and Enforcement of Sentences Court granted Mr. Ruano Torres parole, subject to a probationary period up to June 26, 2015.¹⁵² The court considered that José Agapito Ruano Torres met the requirements set by the Criminal Code given that i) he had served two-thirds of his sentence; ii) he was a first-time offender; iii) he had paid the fine as ordered; iv) his record showed no offenses or disciplinary sanctions; and v) according to the criminology assessment carried out, he displayed "good conduct" and "good behavior" and "showed low levels of aggression and dangerousness," on account of which "the prognosis for his social reinsertion [was] favorable."¹⁵³ According to the court's decision, Mr. Ruano Torres was required to: i) not leave the country without prior judicial authorization; ii) remain resident at the address given; iii) keep away from the workplace or home of the victim and his family, and iv) report to the Department of Evidence and Probation every four months. The court added that failure to comply with any of those requirements would result in the cancellation of the benefit granted.¹⁵⁴

104. On September 19, 2014, after the special review of judgment hearing, the Second Trial Court of San Salvador confirmed the conviction against José Agapito Ruano Torres in the context of a motion

¹⁴⁷ Decision issued by the Second Trial Court of San Salvador on November 27, 2006 (evidence file, volume V, Annex 25 to the submission of the case, folios 2240 to 2242).

¹⁴⁸ Cf. Press Release N° 2/07 issued by the Inter-American Commission on Human Rights on January 9, 2007 (evidence file, volume V, Annex 26 to the submission of the case, folio 2244).

¹⁴⁹ Brief submitted to the Inter-American Commission on Human Rights by Pedro Torres Hércules on January 11, 2007, and presented on January 26, 2007 (evidence file, volume V, Annex 27 to the submission of the case, folios 2246 to 2249).

¹⁵⁰ Cf. Decision issued by the First Criminal Chamber of the First Section of the Judicial Center on October 15, 2009 (evidence file, volume V, Annex 28 to the submission of the case, folios 2251 to 2258).

¹⁵¹ Cf. Decision issued by the First Criminal Chamber of the First Section of the Judicial Center on October 15, 2009 (evidence file, volume V, Annex 28 to the submission of the case, folios 2251 to 2258).

¹⁵² Cf. Decision issued by the First Court of Parole and Enforcement of Sentences on May 9, 2013 (evidence file, volume V, Annex 29 to the submission of the case, folios 2260 to 2267).

¹⁵³ Decision issued by the First Court of Parole and Enforcement of Sentences on May 9, 2013 (evidence file, volume V, Annex 29 to the submission of the case, folios 2261 to 2262).

¹⁵⁴ Cf. Decision issued by the First Court of Parole and Enforcement of Sentences on May 9, 2013 (evidence file, volume V, Annex 29 to the submission of the case, folios 2260 to 2267).

to review the final conviction filed by the public defense team after the Commission had issued its Merits Report,¹⁵⁵ in the following terms:

[...] this Court has unanimously concluded that the assertions made concerning the violations of fundamental rights have not been proven during this hearing and, having conducted a full review of the grounds for the judgment, the Court has confirmed the credibility of the victim in this case, and has found that the evidence submitted at this hearing has been insufficient to demonstrate any errors regarding the violation of fundamental rights. Accordingly, the Court deems it pertinent to uphold the judgment and to declare inadmissible the request of the defense, given that they did not demonstrate the motives or reasons that prompted a motion for a Review of the Judgment; consequently, the final conviction must remain in place [.]

105. On June 26, 2015, Mr. Ruano Torres would have served the full sentence imposed.

E. Petition for habeas corpus before the Constitutional Chamber

106. On December 7, 2000, José Agapito Ruano Torres filed a petition for *habeas corpus* with the Constitutional Chamber of the Supreme Court of Justice, in which he claimed that: i) his arrest had been arbitrary; ii) he was subjected to physical, mental and moral mistreatment; iii) at the time of his arrest he was not properly identified, since they addressed him by the nickname *Chopo*, and iv) it was not until a police officer found his identification card that they began to call him by his name.¹⁵⁶

107. On January 3, 2001, Mr. Ruano Torres filed an extension of *habeas corpus*, in which he: i) requested the investigation and sanction of the prosecutor and the police officers who, without due diligence, identified him as *Chopo* and accused him of participating in the kidnapping of Mr. Rodríguez Marroquín; ii) reiterated the physical and psychological harm inflicted on him during his arrest; iii) denounced the “negligent and indifferent attitude” of his public defenders who did not allow him to file several motions and take other actions in order to prove that he was not involved in the kidnapping;¹⁵⁷ and iv) indicated that he requested that his public defender be changed but that the prosecutor in Apopa told him that “it was not necessary.”¹⁵⁸

108. On February 19, 2001, Mr. Ruano Torres requested a new extension of *habeas corpus* indicating that he was detained in prison due to a judicial and police error regarding his identity.¹⁵⁹ On that basis, he requested that an investigator be sent to the area where he lived to confirm that his brother was the one known as *Chopo* and not him. Furthermore, Mr. Ruano Torres maintained that the case file should be reviewed to confirm that his name did not appear among those mentioned by Francisco Javier Amaya Villalta. He also pointed out that even the Court of First Instance of Tonacatepeque, when asked about this situation, stated that “[in] any event, there is a nickname based on which he has been deprived of his liberty and is being prosecuted.”

¹⁵⁵ Cf. Decision issued by the Second Trial Court of San Salvador on September 19, 2014 (merits file, volume I, Annex 1 to the State’s answering brief, folios 438 to 473).

¹⁵⁶ Cf. Application for *habeas corpus* filed before the Constitutional Chamber on December 7, 2000 (evidence file, volume V, Annex 10 to the submission of the case, folios 2173 to 2174).

¹⁵⁷ This included: i) not being able to testify during the preliminary hearing because he was told that “what a suspect says is not credible and actually works against him”; ii) not being able to call Mr. Rodríguez Marroquín and Mr. Amaya Villalta to testify that he had not taken part in the kidnapping; iii) failing to request that the clinical report issued after his detention document the evidence of torture and mistreatment to which he was subjected; iv) the refusal to request a special hearing in order to be able to present evidence to prove that *Chopo* was his brother Rodolfo Ruano Torres, and not him; and v) the refusal to lodge a petition for *habeas corpus* arguing that “they take so long that they could decide on it even after the preliminary hearing.”

¹⁵⁸ Cf. Application for *habeas corpus* filed with the Constitutional Chamber on December 7, 2000 (evidence file, volume V, Annex 11 to the submission of the case, folios 2176 to 2177).

¹⁵⁹ Cf. Brief requesting the extension of the *habeas corpus* petition filed with the Constitutional Chamber on February 19, 2001 (evidence file, volume V, Annex 13 to the submission of the case, folios 2182 to 2183).

109. On March 14, 2001, Mr. Pedro Torres Hércules submitted a brief to the President of the Supreme Court of Justice requesting that, due to the lack of response to the *habeas corpus* petition lodged with the Constitutional Chamber on December 7, 2000, (*supra* para. 106) a hearing be scheduled with the prosecutor in the case, as well as Mr. Rodríguez Marroquín, Mr. Amaya Villalta and a number of witnesses. The purpose of this hearing would be to prove that Mr. Ruano Torres was not *Chopo* and, therefore, that he did not take part in the kidnapping.¹⁶⁰ He also indicated that “the defense has been unwilling to do its work and instead has adopted a submissive posture toward the Office of the Attorney General.”¹⁶¹

110. On June 8, 2001, Pedro Torres Hércules filed a new petition for an extension of *habeas corpus* with the Constitutional Chamber of the Supreme Court of Justice. He stated that, to date, the Court had not ruled on the matter and reiterated the omissions and errors committed by the police officers in identifying Ruano Torres as *Chopo*, the acts of torture and mistreatment inflicted upon him during his arrest, and the alleged fraud committed during the identity parade.¹⁶²

111. On August 7, 2001, the Constitutional Chamber of the Supreme Court of Justice ruled on the petition for *habeas corpus* and decided that Mr. Ruano Torres should remain in custody and that the criminal case should continue its course.¹⁶³ The Court stated that prior to Mr. Ruano Torres’ detention, “the identities of the accused were determined as a result of a properly conducted investigation [...] based on information obtained from the general public.”¹⁶⁴ As to the allegations of torture and mistreatment inflicted on Mr. Ruano Torres during his arrest, the Constitutional Chamber considered that although there had been use of force, this had not violated his fundamental rights given that - according to police report on the incident- it had been necessary to control him because he had resisted arrest.¹⁶⁵

F. Proceeding before the Office of the Human Rights Ombudsman

112. On October 15, 2001, José Agapito Ruano Torres submitted a complaint to the Office of the Human Rights Ombudsman¹⁶⁶ in which he requested that a motion to review be filed in order to reopen the judicial proceedings. First, Mr. Ruano Torres pointed out that a serious judicial error had been committed in mistaking him for his brother, Rodolfo Ruano Torres, known as *Chopo*, “who admits to having taken part in the facts.” Second, he pointed out that he was not allowed to make a statement at the start of the pre-trial hearing, even though he was willing to do so. Third, he stated that the Court had denied his request to have his brother, Rodolfo Ruano Torres, testify at the hearing, although he was willing to do so. Fourth, he indicated that the Second Trial Court of San Salvador did not properly assess the testimonial and documentary evidence submitted. He also stated that the

¹⁶⁰ Cf. Brief submitted to the Supreme Court of Justice by Pedro Torres Hércules on March 14, 2001 (evidence file, volume V, Annex 15 to the submission of the case, folios 2188 to 2190).

¹⁶¹ Brief submitted to the Supreme Court of Justice by Pedro Torres Hércules on March 14, 2001 (evidence file, volume V, Annex 15 to the submission of the case, folio 2188).

¹⁶² Cf. Brief submitted to the Supreme Court of Justice by Pedro Torres Hércules of June 8, 2001 (evidence file, volume V, Annex 16 to the submission of the case, folios 2192 to 2196).

¹⁶³ Cf. Decision issued by the Constitutional Chamber of the Supreme Court of Justice on August 7, 2001 (evidence file, volume IV, Annex 1 to the submission of the case, folios 1828 to 1834).

¹⁶⁴ Decision issued by the Constitutional Chamber of the Supreme Court of Justice on August 7, 2001 (evidence file, volume IV, Annex 1 to the submission of the case, folio 1832).

¹⁶⁵ Cf. Decision issued by the Constitutional Chamber of the Supreme Court of Justice on August 7, 2001 (evidence file, volume IV, Annex 1 to the submission of the case, folio 1834).

¹⁶⁶ Cf. Brief submitted to the Office of the Human Rights Ombudsman by José Agapito Ruano Torres of October 15, 2001 (evidence file, volume V, Annex 21 to the submission of the case, folios 2219 to 2222).

other persons convicted in the kidnapping admitted that he had not taken part in the crime but, rather, that it had been his brother Rodolfo, known as *Chopo*, who had been involved.

113. On June 9, 2003, the Office of the Human Rights Ombudsman issued a resolution in which it established the violation of due process to the detriment of José Agapito Ruano Torres. The resolution also recommended to the Office of the Public Defender of the Office of the Attorney General of the Republic that, given the irregularities in the proceedings - jointly endorsed by omission of the various judges, prosecutors and public defenders- it should review the judgment against Mr. Ruano Torres.¹⁶⁷ Based on the information provided by both parties, there is no evidence that the Office of the Public Defender of the Office of the Attorney General of the Republic ever pursued a review of the judgment against Mr. Ruano Torres. With regard to the pre-trial evidence provided by Francisco Javier Amaya Villalta, the resolution issued by the Office of the Human Rights Ombudsman established that: his real name was Ricardo Flores Amaya, a fact that was never investigated; and, the principle that both parties must be heard was violated given that the accused never had the opportunity to rebut what he said. Furthermore, the resolution pointed out that there was no evidence that any inquiry was conducted to ascertain that the nickname *Chopo* belonged to José Agapito Ruano Torres, which created a situation of legal uncertainty. With regard to the identity parade in which José Agapito Ruano Torres took part, the resolution pointed out that the principle of due process was violated because serious irregularities were committed. Likewise, in its resolution, the Office of the Human Rights Ombudsman maintained that the fact that Mr. Ruano Torres had been exposed to the communication media prior to the identity parade, meant that this means to produce evidence was tainted and violated his right to presumption of innocence. As to the various participants involved in the proceedings to prosecute Mr. Ruano Torres, the resolution pointed out that: i) his public defense harmed his position by not promoting the investigation of his case and by not recognizing the various irregularities committed in the identity parade and preventing him from exercising his material defense; ii) the prosecutors' performance violated the principles of promoting investigations on their own initiative, impartiality and objectivity by failing to investigate the mitigating circumstances, and iii) the Magistrate's Court of Tonacatepeque ignored all the irregularities that had taken place prior to hearing the case and the Judge of First Instance of Tonacatepeque endorsed the irregularities by not exercising an effective jurisdictional control over the investigation.¹⁶⁸

114. On October 4, 2004, the Office of the Human Rights Ombudsman ratified its previous resolution of June 9, 2003. It reiterated the violations found during the prosecution and trial of Mr. Ruano Torres; the responsibility of the three public defenders, the Office of the Attorney General and the various judges who participated in the proceedings; and, it requested that the public defenders seek a review of the judgment against Mr. Ruano Torres.¹⁶⁹

VII MERITS

115. As it has in other cases,¹⁷⁰ this Court deems it essential to reiterate that it does not assess the criminal responsibility of individuals. Consequently, in this case the Court will not rule on the guilt or

¹⁶⁷ Cf. Resolution issued by the Office of the Human Rights Ombudsman on June 9, 2003 (evidence file, volume IV, Annex 1 to the submission of the case, folios 2059 to 2078).

¹⁶⁸ Cf. Resolution issued by the Office of the Human Rights Ombudsman on June 9, 2003 (evidence file, volume IV, Annex 1 to the submission of the case, folios 2059 to 2078).

¹⁶⁹ Cf. Resolution issued by the Office of the Human Rights Ombudsman on October 4, 2004 (evidence file, volume V, Annex 22 to the submission of the case, folios 2224 to 2229).

¹⁷⁰ Cf. *Case of Velásquez Rodríguez v. Honduras. Merits, supra*, para. 134, and *Case of Espinoza González v. Peru. Preliminary objections, Merits, reparations and costs. Judgment of November 20, 2014. Series C No. 289, para. 101.*

innocence of Mr. Ruano Torres or any of the other persons who were tried with him. Instead, it will consider whether the criminal proceedings and the acts of certain public officials in this case are compatible with the American Convention.¹⁷¹ In this regard, the Court has established that “[t]he elucidation of whether or not the State has violated its international obligations owing to the actions of its judicial organs may make it necessary for the Court to examine the respective domestic proceedings.”¹⁷²

116. As noted in this Judgment (*supra* paras. 25 and 35), the Court accepted the State’s acknowledgment of international responsibility in relation to the violations established by the Commission in its Merits Report. In order to determine the scope of those violations, the Court will specify the human rights violations derived therefrom. It will then analyze the different aspects of the case in relation to the right of defense, since it is necessary to define the scope of the State’s responsibility regarding certain matters that have not been addressed previously in the case law of this Court. The Court will also make the corresponding observations regarding the personal integrity of the victim’s next of kin.

VII-1

RIGHTS TO PERSONAL INTEGRITY AND THE PROHIBITION OF TORTURE, PERSONAL LIBERTY, PRESUMPTION OF INNOCENCE AND JUDICIAL PROTECTION IN RELATION TO THE OBLIGATION TO RESPECT AND GUARANTEE RIGHTS

117. Once the scope of the State’s acquiescence (*supra* Chapter IV) has been established, the Court will proceed to determine the human rights violations encompassed by the State’s acknowledgment of responsibility, as well as the origin and scope of the rights invoked autonomously by the representatives, related to personal integrity and the prohibition of torture, personal liberty, the presumption of innocence and judicial protection, with respect to José Agapito Ruano Torres.

A. Violation of the right to personal integrity and prohibition of torture to the detriment of José Agapito Ruano Torres

118. Article 5(1) of the Convention recognizes, in general terms, the right to personal integrity, including physical, mental and moral integrity. For its part, Article 5(2) establishes, more specifically, the absolute prohibition to subject a person to torture or to cruel, inhuman or degrading treatment or punishment, as well as the right of all persons deprived of their liberty to be treated with respect for the inherent dignity of the human being. Any violation of Article 5(2) of the Convention necessarily implies a violation of Article 5(1) thereof.¹⁷³

119. In this regard, the Court has indicated that the violation of a person’s right to physical and psychological integrity has several gradations and encompasses treatment ranging from torture to other types of humiliation or cruel, inhuman or degrading treatment, with varying degrees of physical and psychological harm, according to extrinsic and intrinsic factors (duration of the mistreatment,

¹⁷¹ Cf. *Case Suárez Rosero v. Ecuador. Merits*. Judgment of November 12, 1997. Series C No. 35, para. 37; *Case of Castillo Petruzzi et al. v. Peru. Merits, reparations and costs*. Judgment of May 30, 1999. Series C No. 52, para. 90, and *Case of Cruz Sánchez et al. v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of April 17, 2015. Series C No. 292, para. 281.

¹⁷² *Case of the “Street Children” (Villagrán Morales et al.) v. Guatemala. Merits*. Judgment of November 19, 1999. Series C No. 63, para. 222, and *Case of Norín Catrimán et al. (Leaders, members and activist of the Mapuche Indigenous Community) v. Chile. Merits, reparations and costs*. Judgment of May 29, 2014. Series C No. 279, para. 186.

¹⁷³ Cf. *Case of Yvon Neptune v. Haiti. Merits, reparations and costs*. Judgment of May 6, 2008. Series C No. 180, para. 129, and *Case of Rodríguez Vera et al. (Disappeared of the Palace of Justice) v. Colombia, supra*, para. 417.

age, sex, health, context, vulnerability, etc.), which must be evaluated in each specific situation.¹⁷⁴ In other words, the personal characteristics of an alleged victim of torture or cruel, inhuman, or degrading treatment should be taken into consideration when determining whether his or her personal integrity has been violated, since those characteristics may change the insight of his or her individual reality and, therefore, increase the suffering and the sense of humiliation when the person is subjected to certain types of treatment.¹⁷⁵

120. The Court reiterates its case law in the sense that torture and cruel, inhuman or degrading treatment or punishment are strictly prohibited under international human rights law. The absolute prohibition of torture, both physical and psychological, now belongs to the domain of international *ius cogens*.¹⁷⁶

121. That said, in order to define the meaning of "torture" in light of Article 5(2) of the American Convention, the Court's case law has indicated that an act that constitutes torture is committed when the ill-treatment: (a) is intentional; (b) causes severe physical or mental suffering, and (c) is committed for a particular purpose or objective.¹⁷⁷ It has also been recognized that the threat and real danger of subjecting a person to physical harm produces, in certain circumstances, a moral anguish of such intensity that it can be considered psychological torture.¹⁷⁸

122. As to the use of force by the security forces, this Court has indicated that this must be based on the criteria of legitimacy, necessity, suitability and proportionality.¹⁷⁹ Likewise, the Court has indicated that any use of force that is not strictly necessary to ensure proper behavior on the part of the detainee constitutes an assault on the dignity of the person, in violation of Article 5 of the American Convention.¹⁸⁰

123. In its Merits Report No. 82/13, the Inter-American Commission concluded that the acts of violence to which Mr. Ruano Torres¹⁸¹ was subjected (*supra* para. 65) reached a sufficient level of intensity to meet the criterion of severe or intense harm that is implicit in torture. This was reinforced by the absence of a diligent investigation by the State. According to the Commission, the use of

¹⁷⁴ Cf. *Case of Loayza Tamayo v. Peru. Merits, supra*, paras. 57 and 58, and *Case of Espinoza Gonzáles v. Peru, supra*, para. 142.

¹⁷⁵ Cf. *Case of Ximenes Lopes v. Brazil. Merits, reparations and costs*. Judgment of July 4, 2006. Series C No. 149, para. 127, and *Case of Espinoza Gonzáles v. Peru, supra*, para. 142.

¹⁷⁶ Cf. *Case of Cantoral Benavides v. Peru. Merits*. Judgment of August 18, 2000. Series C No. 69, para. 95; *Case of Caesar v. Trinidad and Tobago. Merits, reparations and costs*. Judgment March 11, 2005. Series C No. 123, para. 100, and *Case of Ximenes Lopes v. Brazil, supra*, para. 126.

¹⁷⁷ Cf. *Case of Bueno Alves v. Argentina. Merits, reparations and costs*. Judgment of May 11, 2007. Series C No. 164, para. 79, and *Case of Espinoza Gonzáles v. Peru, supra*, para. 143.

¹⁷⁸ Cf. *Case of Cantoral Benavides v. Peru. Merits, supra*, para. 102, and *Case of Rodríguez Vera et al. (Disappeared of the Palace of Justice) v. Colombia, supra*, para. 420.

¹⁷⁹ Cf. *Case of Montero Aranguren et al. (Detention Center of Catia) v. Venezuela. Merits, reparations and costs*. Judgment of July 5, 2006. Series C No. 150, paras. 67 to 69, and *Case of Fleury et al. v. Haiti. Merits and reparations*. Judgment of November 23, 2011. Series C No. 236, para. 74.

¹⁸⁰ Cf. *Case of Loayza Tamayo v. Peru. Merits, supra*, para. 57, and *Case of Espinoza Gonzáles v. Peru, supra*, para. 184.

¹⁸¹ In paragraph 162 of Merits Report No. 82/13 the Commission stated that:

According to the statement of José Agapito Ruano Torres, he was: i) beaten and thrown to the ground while he was sleeping; ii) dragged along the floor towards the door of his house; iii) choked with a rope; iv) kicked and beaten in the extremities; and v) threatened with death. This description is consistent with the statement of his wife María Maribel Guevara. In addition, the report of the medical examination carried out by the Medical Services Unit of the National Civil Police the same day of the arrest of Mr. Ruano Torres indicates that he presented lacerations on his neck, thorax and shoulders, and scars on his nose and thighs.

violence against Mr. Ruano Torres was not necessary, but was based on the *a priori* presumption by the police authorities involved in the arrest that Mr. Ruano Torres supposedly posed a danger. Thus, the actions carried out by the police officers were not intended to neutralize a risk or reduce resistance that could have arisen at the time of the facts. Rather, according to the Commission, “the objective was to reduce the physical and psychological endurance of Mr. Ruano Torres, and even to obtain his confession or self-identification as *Chopo*.” The State accepted those conclusions in its acknowledgment of responsibility. Accordingly, the Court accepts the State’s acquiescence regarding the fact that the actions carried out by the police authorities at the time of Mr. Ruano Torres’ arrest constituted torture. Therefore, the Court declares that the State violated Article 5(1) and 5(2) of the American Convention, in relation to Article 1(1) thereof, to the detriment of Mr. José Agapito Ruano Torres.

124. The Court has indicated that, according to Article 1(1) of the American Convention, the obligation to ensure the rights recognized in Article 5(1) and 5(2) of the American Convention implies the duty of the State to investigate possible acts of torture or other cruel, inhuman or degrading treatment.¹⁸² In the instant case, this duty is based on the facts established previously (*supra* para. 65), which the domestic courts should have investigated. The Court finds that, despite the fact that those acts were brought to the attention of the authorities (*supra* paras. 73 and 106), they failed to initiate, immediately and *ex officio*, an impartial, independent and thorough investigation to ensure the prompt collection and preservation of evidence in order to establish what had happened to Mr. Ruano Torres. In this regard, the Court notes that the Court of First Instance of Tonacatepeque did not allow him to undergo a psychological evaluation, as requested by the prosecutor (*supra* para. 79), and that no subsequent effort was made to pursue the investigation into the acts of torture.

125. Therefore, the Court accepts the State’s acknowledgment of responsibility regarding the fact that it did not open, *ex officio* and with due diligence, an investigation into the acts of torture and mistreatment inflicted on Mr. Ruano Torres following the complaint filed before the Disciplinary Investigation Unit of the National Civil Police. Thus, the State failed in its obligation to ensure the right to personal integrity recognized in Article 5(1) and 5(2) of the American Convention, in connection with Article 1(1) thereof, to the detriment of Mr. José Agapito Ruano Torres.

B. Violation of the right to presumption of innocence to the detriment of José Agapito Ruano Torres

126. Article 8(2) of the Convention establishes that “[e]very person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law.” Thus, the Court has stated that the principle of presumption of innocence constitutes a cornerstone of judicial guarantees.¹⁸³ The presumption of innocence implies that the defendant enjoys a legal status of innocence or non-culpability while a decision is taken regarding his criminal liability. This means that the defendant must be treated by the State in a manner that accords with their status as a person who has not been convicted.¹⁸⁴ Therefore, the principle of presumption of innocence means that a person cannot be convicted unless there is clear evidence, or evidence beyond all reasonable doubt, of their guilt,¹⁸⁵ following a trial with full guarantees of due process.

¹⁸² Cf. *Case of Ximenes Lopes v. Brazil*, *supra*, para. 147, and *Case of Espinoza González v. Peru*, *supra*, para. 239.

¹⁸³ Cf. *Case of Suárez Rosero v. Ecuador. Merits*, *supra*, para. 77, and *Case of J v. Peru. Preliminary objection, merits, reparations and costs*. Judgment of November 27, 2013. Series C No. 275, para. 233.

¹⁸⁴ Cf. *Case of J v. Peru*, *supra*, para. 157, and *Case of Norín Catrimán et al. (Leaders, members and activist of the Mapuche Indigenous Community) v. Chile*, *supra*, para. 310.

¹⁸⁵ Cf. *Case of Cantoral Benavides v. Peru. Merits*, *supra*, para. 120, and *Case of J v. Peru*, *supra*, para. 228.

127. The legal status of innocence is expressed in a number of obligations that guide the overall conduct of the criminal proceedings. Thus, irrefutable proof of guilt constitutes an essential requirement for imposing criminal punishment; hence, the burden of proof lies with the accuser and not with the accused.¹⁸⁶ This means that the defendant does not have to prove that he has not committed the offense of which he is accused, because the *onus probandi* is on those who have made the accusation¹⁸⁷ and any doubt that arises must benefit the accused. In addition, the principle of the presumption of innocence signifies that the judges must not open the proceedings with a preconceived idea that the accused has committed the offense of which he is accused.¹⁸⁸ Furthermore, the State must not convict someone informally or issue a judgment before society, thereby contributing to form public opinion, while that person's criminal responsibility has not been proved according to the law.¹⁸⁹

128. In this regard, the Court considers that the presumption of innocence requires the accuser to prove that an unlawful act can be attributed to the accused person, in other words, that he or she has participated culpably in its commission and that the judicial authorities must rule with certainty, and beyond any reasonable doubt, in order to declare the criminal responsibility of the accused, including certain factual aspects related to the guilt of the defendant.

129. In the instant case, the Commission's observations on the presumption of innocence refer to two interrelated aspects protected by this right regarding the level of certainty required as a premise for the legitimacy of a conviction. The first concerns the individualization and identification of a person before linking him to an investigation and a criminal proceeding. The second concerns the *onus probandi* and the evidence upon which the conviction in this case was based.

130. On the first aspect, in its Merits Report the Commission identified numerous elements - from the time of the preliminary investigation and throughout the proceedings - which cast doubt on the identity of Mr. José Agapito Ruano Torres as *Chopo*. In spite of this, Mr. Ruano Torres was convicted without the police authorities, the investigators or the judicial authorities taking even basic steps to respond to the doubts raised about his identity, a point that was acknowledged by the State. The Court emphasizes that the State should have made every effort to investigate and reliably ascertain the identity of the person whose nickname was *Chopo*. In this regard, El Salvador's legislation requires that the Office of the Public Prosecutor "investigate not only the facts and circumstances of the charges, but also those that serve to acquit the defendant."¹⁹⁰ However, the Office of the Attorney General did nothing to investigate the facts provided by José Agapito Ruano Torres to rule out his involvement in the kidnapping or to ensure the appearance of the person purported to be *Chopo*. For their part, the authorities did not provide a full response as to whether the doubts regarding this factual aspect had been resolved. The Court considers that in situations such as this case, in which reasonable arguments were presented regarding the non-participation of one of the accused in the crime, since he was not the person known by the nickname *Chopo*, the Court considers that respect for and the guarantee of the presumption of innocence should have prevailed.

¹⁸⁶ Cf. *Case of Cabrera García and Montiel Flores v. Mexico. Preliminary objection, merits, reparations and costs.* Judgment of November 26, 2010. Series C No. 220, para. 182, and *Case of Norín Catrimán et al. (Leaders, members and activist of the Mapuche Indigenous Community) v. Chile, supra*, para. 171.

¹⁸⁷ Cf. *Case of Ricardo Canese v. Paraguay. Merits, reparations and costs.* Judgment of August 31, 2004. Series C No. 111, para. 154, and *Case of Brewer Carias v. Venezuela. Preliminary objections.* Judgment of May 26, 2014. Series C No. 278, para. 108.

¹⁸⁸ Cf. *Case of Cabrera García and Montiel Flores v. Mexico, supra*, para. 184, and *Case of Norín Catrimán et al. (Leaders, members and activist of the Mapuche Indigenous Community) v. Chile, supra*, para. 171.

¹⁸⁹ Cf. *Case of Lori Berenson Mejía v. Peru. Merits, reparations and costs.* Judgment of November 25, 2004. Series C No. 119, para. 160, and *Case of J v. Peru, supra*, para. 235.

¹⁹⁰ Article 75 of the Code of Criminal Procedure.

131. Regarding the second aspect, the Court notes that the judgment delivered on October 5, 2001, (*supra* para. 90) by the Second Trial Court of San Salvador was based on the corroborating statements of Jaime Ernesto Rodríguez Marroquín and Francisco Javier Amaya Villalta, which resulted in a conviction. It did not allude to other evidence for corroboration. As to the testimonial evidence regarding José Agapito Ruano Torres' work at the school at the time when the kidnapping occurred, the Second Trial Court affirmed that "those circumstances have not been corroborated by any other evidentiary sources; [...] it comes from relatives and friends."¹⁹¹ The Court emphasizes that in this case, the two pieces of evidence mentioned determined the outcome of the criminal case, and were the main basis for the trial and subsequent conviction of José Agapito Ruano Torres.

132. On this point, as noted by the Commission, the Court advises that there is no procedural justification in the case file to indicate the reasons why the statement of Amaya Villalta was made in advance of the trial. The record shows that during his statement, only the private attorney of one of the accused was present. Once Amaya Villalta had identified the other alleged participants in the crime, they did not have an opportunity to exercise their right to defense, including the right to cross-examine, which is one of the fundamental components of the adversarial system. Finally, the aforementioned statement was made in the absence of the other co-defendants, among them Mr. Ruano Torres, who were unable to exercise their right to defense at that moment, or at a later stage of the criminal trial, and did not have an opportunity to cross-examine him, thereby undermining the reliability of the process and violating the minimum guarantees afforded to any person accused of a crime.

133. As to the use of mechanisms aimed at securing one of the defendant's cooperation with the prosecution in exchange for certain concessions— such as the mechanism of the "effective collaborator," the "*arrepentido*" (repentant suspect) or, in this case, a plea bargain offered to one of the suspects after helping to clarify the participation of another defendant accused of the same crime or of another more serious one - beyond their compatibility with the American Convention, an issue not addressed in this case, it is possible to affirm that the statement of a co-defendant should be given limited evidentiary value, aside from its specific content, when it is the only evidence upon which the decision to convict is based, since objectively it would not be sufficient in and of itself to disregard the presumption of innocence. Therefore, basing a conviction on the statement of a co-defendant without any other elements of corroboration would violate the presumption of innocence.

134. Another element assessed by the Court in this case was the statement made by Mr. Rodríguez Marroquín, the victim of the crime, regarding the accused and the positive identification of José Agapito Ruano Torres as one of the participants in the kidnapping during the identity parade and at the public hearing. The State acknowledged the irregularities committed in the identity parade, namely that the prosecutor had pointed out José Agapito Ruano Torres in order for the victim of the kidnapping to identify him, and that false names had been entered in the record of the procedure. Furthermore, the State acknowledged that Mr. Rodríguez Marroquín had seen pictures in the media of the suspects arrested in the context of "Operation Guaza" and linked to the criminal process (*supra* para. 113).

135. Based on the foregoing and on the State's acknowledgment of responsibility, the Court considers that the State is internationally responsible for the violation of Article 8(2) of the American Convention, which recognizes the presumption of innocence, in relation to Article 1(1) thereof, to the detriment of José Agapito Ruano Torres.

¹⁹¹ Judgment issued by the Second Trial Court of San Salvador on October 5, 2001 (evidence file, volume IV, Annex 1 to the submission of the case, folio 1901).

C. Violation of the right to judicial protection to the detriment of José Agapito Ruano Torres

136. Article 25(1)¹⁹² of the Convention establishes, in general terms, the obligation of the States to guarantee an effective judicial remedy against acts that violate fundamental rights. In interpreting the text of Article 25 of the Convention, the Court has held that the State's obligation to provide a judicial remedy is not limited solely to the mere existence of the courts or formal proceedings, or even to the possibility of having recourse to those courts,¹⁹³ but that the remedies must be effective. In other words, they must provide results or answers to the violations of rights established in the Convention, in the Constitution or by law.¹⁹⁴ This Court has also held that a remedy which proves illusory because of the general conditions prevailing in the country, or even in the particular circumstances of a given case, cannot be considered effective. That could be the case, for example, when its practical application has been shown to be ineffective; when the Judiciary lacks the means to carry out its judgments; or in any other situation that constitutes a denial of justice.¹⁹⁵ Therefore, an effective judicial remedy is one that allows for analysis by a competent court in order to determine whether or not there has been a human rights violation and, if so, to provide redress.¹⁹⁶ The existence of this guarantee "is one of the fundamental pillars not only of the American Convention, but of the very rule of law in a democratic society in the terms of the Convention."¹⁹⁷

137. According to the Merits Report, the violation of Article 25(1) of the American Convention was based on the authorities' failure to address the violations of due process denounced in various briefs throughout the criminal trial, and their rejection of the motions for review filed in August and September of 2003 and in November of 2006 (*supra* paras. 96, 97 and 99), which proved ineffective.

138. In this case, the Court considers that the violation of Article 25(1) of the Convention is not configured by the mere disagreement with an unfavorable decision; rather, it is related to the authorities' lack of response to the merits of the arguments, since the judicial authorities did not conduct an analysis to determine whether or not any human rights had been violated, such as the right to the presumption of innocence and the right to defense, and, if appropriate, to provide adequate reparation. In sum, the remedies of review did not constitute an effective remedy to redress the human rights violations and, in particular, to ensure respect for the presumption of innocence and the right of defense.

¹⁹² This Article states that:

Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned, or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

¹⁹³ Cf. *Case of the Saramaka People v. Suriname. Preliminary objections, merits, reparations and costs*. Judgment of November 28, 2007. Series C No. 172, para. 177, and *Case of the Kuna Indigenous People of Madungandí and the Emberá Indigenous People of Bayano and their members v. Panama. Preliminary objections, merits, reparations and costs*. Judgment of October 14, 2014. Series C No. 284, para. 165.

¹⁹⁴ Cf. *Judicial Guarantees in States of Emergency (Arts. 27.2, 25 and 8 American Convention on Human Rights)*. Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9, paras. 23 and 24; *Case of Fernández Ortega et al. v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of August 30, 2010 Series C No. 215, para. 182, and *Case of Omar Humberto Maldonado Vargas et al. v. Chile, supra*, para. 123.

¹⁹⁵ Cf. *Case of Las Palmeras v. Colombia. Merits*. Judgment of December 6, 2001. Series C No. 90, para. 58, and *Case of Forneron and Daughter v. Argentina. Merits, reparations and costs*. Judgment of April 27, 2012. Series C No. 242, para. 107.

¹⁹⁶ Cf. *Case of the Saramaka People v. Suriname, supra*, para. 177, and *Case of the Kuna Indigenous People of Madungandí and the Emberá Indigenous People of Bayano and their members v. Panama, supra*, para. 165.

¹⁹⁷ *Case of Castillo Páez v. Peru. Merits*. Judgment of November 3, 1997. Series C No. 34, para. 82, and *Case of the Kuna Indigenous People of Madungandí and the Emberá Indigenous People of Bayano and their members v. Panama, supra*, para. 167.

139. Accordingly, and taking into account the State's acknowledgment of responsibility, the Court concludes that the State is responsible for the violation of Article 25(1) of the American Convention, in relation to Article 1(1) thereof, to the detriment of José Agapito Ruano Torres.

D. Violation of the right to personal liberty of José Agapito Ruano Torres

140. The Court has indicated that the essence of Article 7¹⁹⁸ of the American Convention is the protection of the liberty of the individual from arbitrary or illegal interference by the State.¹⁹⁹ In general terms, Article 7(1) protects the right to personal liberty and security, whereas the other subparagraphs of that article protect specific aspects of that right. Any violation of those subparagraphs necessarily entails the violation of Article 7(1) of the Convention, "because the failure to respect the guarantees of a person deprived of liberty leads to the lack of protection of that person's right to liberty."²⁰⁰ Article 7 also contains regulatory mandates that prohibit unlawful²⁰¹ or arbitrary detentions or arrests²⁰² and guarantees that anyone deprived of his liberty may appeal the legality of his detention before a competent judge or court, for a decision on the lawfulness of the arrest or detention, so that the latter can decide, promptly, on the lawfulness of the deprivation of liberty and, if appropriate, order his release.²⁰³ The Court has also emphasized that such guarantees

¹⁹⁸ In its pertinent parts, Article 7 states:

1. Every person has the right to personal liberty and security.
2. No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto.
3. No one shall be subject to arbitrary arrest or imprisonment.

[...]

6. Anyone who is deprived of his liberty shall be entitled to recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful. In States Parties whose laws provide that anyone who believes himself to be threatened with deprivation of his liberty is entitled to recourse to a competent court in order that it may decide on the lawfulness of such threat, this remedy may not be restricted or abolished. The interested party or another person in his behalf is entitled to seek these remedies.

¹⁹⁹ Cf. *Case of the "Juvenile Reeducation Institute" v. Paraguay. Preliminary objections, merits, reparations and costs.* Judgment of September 2, 2004. Series C No. 112, para. 223, and *Case of Argüelles et al. v. Argentina, supra*, para. 114.

²⁰⁰ *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador. Preliminary objection, merits, reparations and costs.* Judgment of November 21, 2007. Series C No. 170, para. 54, and *Case of Norín Catrimán et al. (Leaders, members and activist of the Mapuche Indigenous Community) v. Chile, supra*, para. 308.

²⁰¹ This implies that "no person may be deprived of his liberty except in the cases or circumstances expressly defined by law (material aspect), but, in addition, with strict adherence to the procedures objectively defined therein (formal aspect)." *Case of Gangaram Panday v. Suriname. Merits, reparations and costs.* Judgment of January 21, 1994. Series C No. 16, para. 47, and *Case of Expelled Dominicans and Haitians v. Dominican Republic. Preliminary objections, merits, reparations and costs.* Judgment of August 28, 2014. Series C No. 282, para. 347.

²⁰² Consequently, no one may be subjected to arrest or imprisonment for reasons and by methods which, although classified as legal, in practice are unreasonable, unforeseeable or lacking in proportionality. Moreover, the arrest could be considered arbitrary if facts attributable to State occur that could be deemed incompatible with the respect for the fundamental rights of the individual. Cf. *Case of Gangaram Panday v. Suriname, supra*, para. 47, and *Case of Norín Catrimán et al. (Leaders, members and activist of the Mapuche Indigenous Community) v. Chile, supra*, para. 309. The Working Group on Arbitrary Detention has also stated: "Where the absence of such guarantees or their violation, circumvention or non-implementation constitutes a matter of a high degree of gravity, the Working Group may conclude that the custody is arbitrary." Cf. Report of the Working Group on Arbitrary Detention, *Civil and political rights, including questions of torture and detention*, Doc. E/CN.4/1999/63, December 18, 1998, para. 70.

²⁰³ Cf. *Habeas Corpus under Suspension of Guarantees* (Arts. 27.2, 25.1 and 7.6 American Convention on Human Rights). Advisory Opinion OC-8/87 of January 30, 1987. Series A No. 8, para. 33, and *Case of Espinoza González v. Peru, supra*, para. 135.

"should not only exist formally in the legislation, but they must also be effective, that is, they must fulfill the objective of obtaining, without delay, a decision on the legality of the arrest or detention."²⁰⁴

141. In its Merits Report the Commission concluded that the State violated Article 7(3) and 7(6) of the American Convention. The representatives requested that the Court also declare the State responsible for the violation of Articles 7(1) and 7(2) of the American Convention to the detriment of José Agapito Ruano Torres. In particular, they held that "even when the arrest of a person is lawful, that is, if an arrest warrant was issued in accordance with the requirements established by law and within the framework of the judicial jurisdiction [,] it may become arbitrary if, during the arrest of the accused, or in subsequent stages of his trial, his fundamental or basic judicial guarantees have been violated. This is the case with Mr. José Agapito Ruano Torres, whose [...] right to presumption of innocence and personal integrity were violated; therefore, even though his arrest was lawful, it was based on two irreparable and irreversible errors, the consequence of which resulted in the arbitrary nature of the arrest, which would then make it illegal." The representative added that, "[a]lthough it is true [that] the arrest of Mr. Ruano Torres was lawful, since there was a warrant for his arrest endorsed by Article 13 of the Constitution of [E]l Salvador [...] it is also true that it became arbitrary."

142. The Court accepts the State's acknowledgement of responsibility regarding the fact that the deprivation of liberty of José Agapito Ruano Torres was arbitrary, in violation of Article 7(3) of the Convention, given that his conviction was based on a criminal trial that violated judicial guarantees, in the terms established in this Judgment.

143. Regarding the violation of Article 7(6), as was established by the Commission and accepted by the State, the *habeas corpus* remedy was ineffective because it failed to protect Mr. Ruano Torres' right to personal liberty, given that the judicial authorities did not pursue the minimal formalities needed to determine whether or not his arrest had been arbitrary, did not recognize any violation of his constitutional rights and ordered that he remain in custody (*supra* para. 111). Moreover, it took nine months for the *habeas corpus* petition to be resolved, which is an unreasonable time, particularly aggravated by the fact that Mr. Ruano Torres was deprived of his liberty.

144. The Court recalls that any violation of clauses 2 to 7 of Article 7 of the Convention necessarily entails the violation of clause 1 of Article 7 thereof,²⁰⁵ as stated by the representatives. Therefore, in this case the Court also finds it pertinent to declare a violation of Article 7(1) of the Convention.

145. Although the representatives also invoked Article 7(2) of the Convention, they recognized at the same time that the detention was lawful (*supra* para. 141). Therefore, the Court considers that there are not sufficient elements to rule on this matter.

146. Consequently, the Court considers that the State violated the right to personal liberty recognized in Article 7(1), 7(3) and 7(6) of the American Convention, in relation to Article 1(1) thereof, to the detriment of José Agapito Ruano Torres.

VII-2 RIGHT OF DEFENSE IN RELATION TO THE OBLIGATION TO RESPECT AND GUARANTEE RIGHTS

²⁰⁴ *Case of Acosta Calderón v. Ecuador. Merits, reparations and costs.* Judgment of June 24, 2005. Series C No. 129, para. 97, and *Case of the Peasant Community of Santa Bárbara v. Peru, supra*, para. 232.

²⁰⁵ *Cf. Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador, supra*, para. 54, and *Case of Wong Ho Wing v. Peru. Preliminary objection, merits, reparations and costs.* Judgment of June 30, 2015. Series C No. 297, para. 236.

A. Arguments of the parties and of the Commission

147. The **Commission** indicated that, together with the Human Rights Committee and the European Court of Human Rights, it considers that "States cannot be held responsible for all the failings of the public defense counsel." Nevertheless, it considers that the State is responsible "if public defenders incur in omissions or failings that evidently allow the conclusion that effective assistance was not rendered." The Commission argued that during the criminal trial followed against Mr. Ruano Torres, the public defenders were responsible for the following grave acts or omissions, as was recognized by the State: i) no motions were filed either at the initial hearing, the preliminary hearing or the pre-trial hearing, to assert the central point of Mr. Jose Agapito Ruano Torres' defense: that is, the argument that the person who participated in the kidnapping of Mr. Rodriguez Marroquín was his brother Rodolfo Ruano Torres, who was known as *Chopo* ; ii) the defense team did not challenge the irregularities in the evidence used against Mr. Ruano Torres, and iii) the public defenders did not lodge any appeals against the first-instance conviction, allowing it to gain the status of a final judgment. Although Mr. Ruano Torres requested changes to his defense team and lodged formal complaints about the performance of his public defenders, both during the proceedings and after they had concluded, the State did not provide a prompt response to his requests, nor did it conduct a disciplinary investigation into the allegations made by Mr. Ruano Torres. The Commission considered that there was "sufficient evidence to conclude that the inadequate performance of the public defenders played an essential role in Mr. Ruano Torres' conviction." Therefore, it concluded that the State of El Salvador violated the right of defense established in Article 8(2)(d) of the American Convention, to the detriment of José Agapito Ruano Torres.

148. The **representatives** pointed out that José Agapito Ruano Torres did not receive appropriate professional legal counsel to confront and challenge, in a serious and effective manner, the charges leveled against him, given that his public defenders sidelined Mr. Ruano Torres' efforts and omitted fundamental actions that decisively led to the subsequent conviction. In particular, the defense "[did] not request or demand the annulment of the pre-trial evidence, in which the defendant was directly accused in his absence and without the presence of a private or public defense counsel to refute those charges. In other words, during that proceeding, the adversarial principle was violated, along with the prohibition of a trial *in absentia*, something that was rightly pointed out by the Office of the Human Rights Ombudsman of El Salvador in its resolution of June 9, 2003." Furthermore, the public defense also omitted to request the annulment of the identity parade and insist that the court admit the statement of Rodolfo Ruano Torres. Therefore, the representatives agreed with the Commission that the State violated the right of defense, to the detriment of Mr. José Agapito Ruano Torres.

149. The **State** argued that Mr. Ruano Torres was assisted by a team of public defenders from the moment of his arrest until the completion of the proceedings, adding that "certain remedies in his favor were not filed because the defense concluded that these were not in order." However, the State acknowledged its responsibility and accepted the facts alleged in the presentation of the case by the Commission in its Merits Report.

B. Considerations of the Court

150. The State acknowledged its international responsibility for the violation of the right of defense recognized in Article 8(2)(d) of the American Convention, as established by the Inter-American Commission in its Merits Report. In their arguments, the representatives also included Articles 8(1) and 8(2)(e) of that instrument. In this regard, the Court recalls that alleged victims and their representatives may invoke the violation of rights other than those included in the Merits Report, provided that these refer to facts contained in that document, given that the alleged victims are the

holders of all the rights embodied in the Convention.²⁰⁶ Therefore, based on the foregoing arguments (*supra* para. 36), the Court will now consider the applicability of the provisions invoked and the scope of the alleged violations.

151. The Court has indicated that the right to due process refers to the series of requirements that must be observed at the different procedural stages to ensure that the individual is able to defend his rights adequately *vis-à-vis* any act of the State adopted by any public authority, whether administrative, legislative or judicial, that affects those rights.²⁰⁷ Due process is also closely related to the notion of justice,²⁰⁸ which is reflected in: i) access to justice that is not merely formal, but that recognizes and resolves the factors of real inequality, ii) a fair trial, and iii) the settlement of disputes so that the decision adopted attains the highest level of correctness in the law, that is to say, that a just solution is ensured insofar as possible.²⁰⁹

152. In conventional terms, due process is expressed in the “judicial guarantees” recognized in Article 8 of the American Convention. This provision of the Convention establishes a system of guarantees that condition the exercise of the *ius puniendi* of the State and that seek to ensure that the accused is not subjected to arbitrary decisions, because “the due guarantees” must be observed to ensure the right to due process in the proceedings in question.²¹⁰ Furthermore, other provisions of the Convention, such as Articles 7 and 25, contain regulations that materially correspond to the substantive and procedural components of due process. In the case of *Cantoral Huamaní and García Santa Cruz v. Peru*, concerning the extrajudicial execution of trade union leaders, the Inter-American Court held that the requirements of Article 8 of the Convention “also extend to other non-judicial organs responsible for the investigation prior to the judicial proceedings [...]”.²¹¹ Therefore, from the beginning of the first steps taken during a proceeding, all procedural guarantees must be ensured in order to safeguard the right of defense of the accused.²¹² Likewise, all the required elements must concur to ensure the greatest possible balance between the parties, for the sake of the defense of the interests and rights thereof. This implies, among other aspects, that the principle of adversarial proceeding must prevail.²¹³

²⁰⁶ Cf. *Case of Five Pensioners v. Peru. Merits, reparations and costs*. Judgment of February 28, 2003. Series C No. 98, para. 155, and *Case of Wong Ho Wing v. Peru, supra*, para. 35.

²⁰⁷ Cf. *Case of the Constitutional Court v. Peru. Merits, reparations and costs*. Judgment of January 31, 2001. Series C No. 69, para. 71, and *Case of Expelled Dominicans and Haitians v. Dominican Republic, supra*, para. 349.

²⁰⁸ Cf. *The Right to Information on Consular Assistance within the Framework of the Guarantees of Due Process of Law*. Advisory Opinion OC-16/99 of October 1, 1999. Series A No. 16, para. 117, and *Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection*. Advisory Opinion OC-21/14 of August 19, 2014. Series A No. 21, para. 109.

²⁰⁹ Cf. *Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection*. Advisory Opinion OC-21/14, *supra*, para. 109.

²¹⁰ Cf. *Exceptions to the Exhaustion of Domestic Remedies (Arts. 46.1, 46.2.a and 46.2.b, American Convention on Human Rights)*. Advisory Opinion OC-11/90 of August 10, 1990. Series A No. 11, para. 28, and *Case of J v. Peru, supra*, para. 258.

²¹¹ *Case of Cantoral Huamaní and García Santa Cruz v. Peru. Preliminary objection, merits, reparations and costs*. Judgment of July 10, 2007. Series C No. 167, para. 133, and *Case of J v. Peru, supra*, para. 182. The European Court of Human Rights has also reaffirmed the application of the requirements of due process to the pre-trial proceedings. Indeed, even if the primary purpose of Article 6 of the European Convention, as far as criminal proceedings are concerned, is to ensure a fair trial by a “tribunal” competent to determine “any criminal charge,” the European Court has held that it does not follow that the Article has no application to pre-trial proceedings. Thus, Article 6 – especially paragraph 3 thereof – may be relevant before a case is sent for trial, if and insofar as, the fairness of the trial is likely to be seriously prejudiced by an initial failure to comply with its provisions. ECHR, *Case of Dzhuhlay v. Ukraine*, No. 24439/06. Judgment of April 3, 2014, para. 84.

²¹² Cf. *Case of Palamara Iribarne v. Chile. Merits, reparations and costs*. Judgment of November 22, 2005. Series C No. 135, paras. 174 and 175.

²¹³ Cf. *Juridical Condition and Human Rights of the Child*. Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, para. 132, and *Case of Palamara Iribarne v. Chile, supra*, para. 178.

153. The right of defense is a central component of due process which requires the State to treat an individual at all times as a true party to the proceeding, in the broadest sense of this concept, and not simply as an object thereof.²¹⁴ The right of defense must necessarily be exercised from the moment a person is accused of perpetrating or participating in an illegal act and ends when the proceeding ceases, including, where applicable, the enforcement phase.²¹⁵ The right of defense is reflected in two facets within the criminal trial: first, through the actions of the accused himself, particularly the opportunity to freely make a statement regarding the acts attributed to him and, second, through the legal representation exercised by a professional attorney, who advises the defendant on his rights and duties and exercises, *inter alia*, a critical control over the lawfulness of the production of evidence.²¹⁶ The American Convention provides specific guarantees both for the exercise of the right to a material defense, for example through the right not to be compelled to be a witness against himself (Article 8(2)(g)) or the conditions under which a confession could be valid (Article 8(3)), and for the legal defense, in the terms described below.

154. In relation to the latter aspect, an issue of particular interest in this case, paragraphs d) and e) of Article 8(2) establish, within the list of minimum guarantees in criminal matters, the right of the accused to “*defend himself personally or to be assisted by legal counsel of his own choosing*” or, if he does not do so, he has “*the inalienable right to be assisted by counsel provided by the State, paid or not as the domestic law provides.*”

155. While this provision contemplates different alternatives for the design of mechanisms that guarantee that right, when a person who requires legal assistance does not have resources, this must necessarily be provided by the State free of charge.²¹⁷ However, in cases such as this, which involve a criminal matter and where the right to legal defense is inalienable because of the nature of the rights involved and the need to ensure both equality of arms and full respect for the presumption of innocence, the requirement to provide an attorney to properly conduct the legal defense in the proceeding implies that the defense provided by the State is not limited solely to the cases of those who lack resources.

156. In this regard, the Court recognizes that a distinctive feature of most States Parties to the Convention is the development of a public policy and an institutional framework to guarantee to anyone who requires it, at all stages of a judicial proceeding, their inalienable right to be assisted by legal counsel in criminal proceedings, through public defenders.²¹⁸ This ensures access to justice for the most disadvantaged people who are most affected by the “criminal selectivity” of the criminal justice process. Thus, the General Assembly of the OAS has confirmed “the fundamental importance of cost-free legal counsel services for promoting and protecting the right of access to justice for everyone, particularly those who are especially vulnerable.”²¹⁹ The provision of cost-free public legal aid through the institution of the public defender undoubtedly serves to adequately compensate for the procedural inequality of those facing the punitive power of the State, who are in a particularly

²¹⁴ Cf. *Case of Barreto Leiva v. Venezuela. Merits, reparations and costs*. Judgment of November 17, 2009. Series C No. 206, para. 29, and *Case of Argüelles et al. v. Argentina, supra*, para. 175.

²¹⁵ Cf. *Case of Barreto Leiva v. Venezuela, supra*, para. 29, and *Case of Argüelles et al. v. Argentina, supra*, para. 175.

²¹⁶ Cf. *Case of Barreto Leiva v. Venezuela, supra*, para. 61, and *Case of Argüelles et al. v. Argentina, supra*, para. 177.

²¹⁷ Cf., *Exceptions to the Exhaustion of Domestic Remedies (Arts. 46.1, 46.2.a and 46.2.b, American Convention on Human Rights)*. Advisory Opinion OC-11/90 *supra*, para. 25.

²¹⁸ Argentina, Bolivia, Brazil, Colombia, Costa Rica, Chile, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Paraguay, Panama, Peru, Dominican Republic and Uruguay.

²¹⁹ Resolution AG/RES. 2656 (XLI-O/11), *Guarantees for access to justice. The role of official public defenders*, June 7, 2011, para. 3.

vulnerable situation by being deprived of liberty, and to guarantee their effective access to justice on equal terms.²²⁰

157. Nevertheless, the Court has considered that the appointment of a defense counsel for the sole purpose of complying with a procedural formality would be tantamount to not having technical legal representation; therefore, it is imperative that the defense counsel act diligently in order to protect the procedural guarantees of the accused and thereby prevent his rights from being violated,²²¹ thereby breaking the bond of trust. Therefore, the institution of the public defender, as a mechanism through which the State guarantees the inalienable right of any individual accused of a crime to be assisted by defense counsel, must provide sufficient guarantees to ensure effective action, on equal terms with the prosecution. The Court has recognized that to accomplish this objective the State must adopt all appropriate measures²²² to ensure access to qualified and trained defense attorneys who can act with functional autonomy.

158. Similarly, the expert witness Alberto Binder considered that the right to defense includes an effective and prompt defense, conducted by qualified professionals, which safeguards the specific interests of the accused and is not merely intended to comply with a formality in order to legitimize the proceeding. Thus, any form of "apparent" defense would violate the American Convention. In this regard, he emphasized that "[t]he bond of trust must be protected in every way possible within the public defense systems and [therefore, there must be] expeditious and prompt mechanisms so that the accused can request that the standard of his defense be evaluated. Moreover, no public defender may subordinate the interests of the person he is defending to other social or institutional interests or to the preservation of 'justice'."²²³

159. In this regard, and beyond the institutional and organic structure of each country, the General Assembly of the OAS has urged States to "take steps to ensure that official public defenders have an adequate budget and are independent and functionally, financially and/or budgetarily, and technically autonomous."²²⁴ In the view of the OAS General Assembly, such measures are appropriate to guarantee "an efficient public service that is free of from any interference and improper control by other branches of government that might impair its functional autonomy, and whose mandate is to protect the interests of the person it is defending."²²⁵

160. In El Salvador, the constitutional mandate to ensure that "[a]ny person accused of a crime, [...] is provided with all the guarantees necessary for his defense"²²⁶ is implemented through the technical assistance provided by the Office of the Public Defender at the request of any individual who

²²⁰ Cf. *mutatis mutandis*, *Case of Vélez Loor v. Panama. Preliminary objections, merits, reparations and costs*. Judgment of November 23, 2010. Series C No. 218, para. 132, and *Case of Argüelles et al. v. Argentina, supra*, para. 177.

²²¹ Cf. *Case of Cabrera García and Montiel Flores v. Mexico, supra*, para. 155.

²²² Cf. *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador, supra*, para. 159, and *Case of Cabrera García and Montiel Flores v. Mexico, supra*, para. 155.

²²³ Expert opinion rendered by affidavit by Alberto M. Binder on April 8, 2015 (evidence file, volume VII, affidavits, folio 2409).

²²⁴ General Assembly of the OAS, Resolution AG/RES. 2801 (XLIII-O/13), *Toward Autonomy for Official Public Defenders as a Guarantee of Access to Justice*, June 5, 2013, para. 4; Resolution AG/RES. 2821 (XLIV-O/14), *Toward Autonomy for and Strengthening of Official Public Defenders as a Guarantee of Access to Justice*, June 10, 2014, para. 5. See also, Resolution AG/RES. 2656 (XLI-O/11), *Guarantees for Access to Justice. The Role of the Official Public Defenders*, June 7, 2011, para. 4; Resolution AG/RES. 2714 (XLII-O/12), *Official Public Defenders as a Guarantee of Access to Justice for Persons in Situations of Vulnerability*, June 4, 2012, para. 4.

²²⁵ General Assembly of the OAS, Resolution AG/RES. 2801 (XLIII-O/13), *Toward Autonomy for Official Public Defenders as a Guarantee of Access to Justice*, June 5, 2013, para. 5; Resolution AG/RES. 2821 (XLIV-O/14), *Toward Autonomy for and Strengthening of Official Public Defenders as a Guarantee of Access to Justice*, June 10, 2014, para. 6.

²²⁶ Article 12 of the Constitution of the Republic of El Salvador.

is threatened or deprived of their personal liberty, regardless of nationality, sex, religion or financial status.²²⁷ According to Article 33 of the Organic Law of the Attorney General's Office, "the function of the Office of the Public Defender is to guarantee the legal protection of the individual liberty of adults and minors who are accused of committing a criminal offense."²²⁸ Thus, in El Salvador's institutional structure, the Office of the Public Defender forms part of the Office of the Attorney General of the Republic and therefore its conduct must be regarded as an act of the State in the terms established in the draft articles on the responsibility of States for internationally wrongful acts by officials responsible for the administration of justice.²²⁹

161. The Court notes that public defenders conducted the defense of Mr. José Agapito Ruano Torres during the criminal trial No. 77-2001-2, in which he was convicted. Unlike previous cases - in which the violation of the right to defense accorded to anyone accused of a crime under the guarantees contemplated in Article 8(2) of the Convention, was configured by the conduct of the police, the prosecutors or the judicial authorities in preventing the defense attorneys from assisting the accused at key points of the proceedings, such as taking the defendant's statement without the assistance of his defense counsel-²³⁰ in the instant case, the arguments refer to the alleged inadequate performance of the Office of the Public Defender. That is, that the legal defense provided by the State did not act efficiently.

162. Therefore, the instant case places the Court in the situation of having to determine the scope of the State's international responsibility for the actions of public defenders in criminal matters. However, to define the criterion for determining the scope of the State's responsibility in such cases, the Commission, aside from its own criteria,²³¹ has also cited the views of the Human Rights Committee²³² and the European Court of Human Rights²³³ that "States cannot be held responsible for all the failings of the public defense counsel [...] but that the State is responsible if the public defenders

²²⁷ See <http://www.pgr.gob.sv/cdp.html>

²²⁸ Under Article 34 the Office of the Public Defender has the following specific functions:

1. Exercise the technical defense of the individual liberty of adults and minors who are accused of committing a criminal offense.
2. Provide professional legal defense counsel from the beginning of the extrajudicial proceedings or those of the trial of the detained persons and those absent defendants who request it, either on their own behalf, or through their relatives or any other person; likewise, when so required by a competent judge, file any applicable legal motions and measures.
3. Provide legal assistance, through a public defender, in relation to prison supervision and the execution of the sentence, in the phase after the final Judgment filed in accordance with the Criminal Code.
4. Monitor and oversee, through the public defender, the application of the final measure imposed under the Juvenile Criminal Law.

²²⁹ U.N. General Assembly, *Responsibility of States for internationally wrongful acts*, A/RES/56/83, January 28, 2002.

²³⁰ Cf. *Case of Tibi v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of September 7, 2004. Series C No. 114, paras. 193, 194 and 196; *Case of Acosta Calderón v. Ecuador, supra*, paras. 124 and 126; *Case of López Álvarez v. Honduras. Merits, reparations and costs*. Judgment of February 1, 2006. Series C No. 141, para. 152; *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador, supra*, para. 158, and *Case of Barreto Leiva v. Venezuela, supra*, paras. 60 to 64.

²³¹ IACHR, Report on the Merits No. 41/04, Case 12.417, *Whitley Myrie, Jamaica*, October 12, 2004, para. 62.

²³² Committee on Human Rights, *Byrong Young v. Jamaica*, Communication No. 615/1997. Decision of November 4, 1997, Doc. CCPR/C/62/D/615/1995, para. 5.5, and *Michael Adams v. Jamaica*, Communication No. 607/1994. Decision of November 20, 1996, Doc. CCPR/C/58/D/607/1994, para. 8.4.

²³³ ECHR, *Case of Artico v. Italy*, No. 6694/74. Judgment of May 13, 1980, para. 33, and *Case of Kamasinski v. Austria*, No. 9783/82. Judgment of December 19, 1989, para. 65.

commit omissions or failures that evidently allow the conclusion that effective assistance was not rendered.”²³⁴

163. Although the provision of a public defense counsel is a function of the State, or is regarded as a public service, it is also one in which the defender should enjoy the necessary autonomy to adequately exercise his counseling functions according to his best professional judgment and considering the interests of the accused. The Court considers that the State cannot be held responsible for all the failings of the public defense, given the independence of the profession and the professional judgment of the defense counsel. Therefore, the Court considers that, as part of the State’s duty to guarantee an adequate public defense, it is necessary to implement adequate processes for the selection of public defenders, ensure control over their work and provide them with regular training.

164. Having regard to the foregoing, the Court considers that in order to determine whether or not the State has violated the right of defense it is necessary to assess whether the actions or omissions of the public defender constituted inexcusable negligence or manifest failure in the exercise of the defense, which had - or could have - a decisive adverse effect on the interests of the accused. In this regard, the Court will analyze the proceedings as a whole, unless a specific action or omission is so serious that it constitutes, in and of itself, a violation of said guarantee.

165. For example, in the case of *Chaparro Álvarez and Lapo Iñigo*, the Court considered that the attitude of the public defender assigned to Mr. Lapo, who was not present during the questioning and only appeared for the opening statement and at the end of it, was clearly incompatible with the obligation established in Article 8(2)(e) of the Convention.²³⁵

166. Also, it is pertinent to point out that a minor discrepancy with the defense strategy or with the outcome of a proceeding would not be sufficient to compromise the right of defense; rather, as mentioned previously, it would be necessary to prove inexcusable negligence or manifest failure. In cases settled in different countries, the domestic courts have identified a number of specific assumptions that are indicative of a violation of the right of defense and which, given their nature, have resulted in the annulment of proceedings or the revocation of judgments issued:

- a) Failure to take basic steps for the production of evidence.²³⁶
- b) Procedural inactivity to protect the interests of the defendant.²³⁷
- c) Lack of technical legal knowledge of criminal proceedings²³⁸.

²³⁴ Paragraph 145 of Merits Report No. 82/13.

²³⁵ *Cf. Case of Chaparro Álvarez and Lapo Iñiguez v. Ecuador, supra*, para. 159.

²³⁶ *Cf. Constitutional Court of Colombia, Seventh Review Chamber, Judgment T-395/10, May 24, 2010* (“[...] If the defense counsel had acted diligently as required by the nature of his profession, he should have demanded evidence for the full identification of the perpetrator, which would surely have provoked a different decision.”)

²³⁷ *Cf. Supreme Court of Justice of Colombia, Criminal Cassation Chamber, Case number 42337, Judgment of March 18, 2015* (“The defense did not fulfil its constitutional mandate to limit and oppose the punitive power of the State, did not resist the punitive claims of the prosecution, did not put forward arguments in favor of the accused, did not develop a theory to benefit his client, did not attempt to lessen the effects of the criminal sanction and, in general, did not ensure the necessary procedural balance. To summarize, in addition to the lack of a technical legal defense there was a lack of a qualified defense, which of itself denotes the infringement of a fundamental guarantee, which can only be reestablished by returning to the procedural moment when it became evident that the official defense attorney assigned to the defendant by the Office of the Prosecutor had abandoned the case.”)

²³⁸ *Cf. Court of Criminal Appeals, Second Judicial Circuit of San José, Costa Rica, Judgment 00323, File 10-003213-0042-PE, February 21, 2014* (“In this particular case, the behavior of the defense counsel during the trial shows that he did not have sufficient knowledge to assert the rights of the accused. This is evident in the following actions: the incorrect questioning of the witnesses; trying to read the conclusions in the oral trial; not being familiar with the various stages of the trial; not knowing how to offer helpful evidence, or what to do when a witness does not appear for a justified reason, especially when it involves essential evidence for the interests of his client. This was so patent that the representatives of the Office of the Attorney General itself [...] brought to the Court’s attention the fact that the defense of the accused had not been conducted

- d) Failure to file remedies and motions to the detriment of the rights of the accused.²³⁹
- e) Inadequate grounds for the remedies filed.²⁴⁰
- f) Abandonment of the defense.²⁴¹

167. In the instant case, in assessing the actions of the public defense as a whole, the Court notes that the defense team representing Mr. Ruano Torres did not request the annulment of the identity parade in light of the irregularities that allegedly occurred, according to the accused himself and other persons,²⁴² and based on the fact that the victim of the crime had seen pictures of the detainees in the media (*supra* para. 113). Thus, the positive identification of José Agapito Ruano Torres as one of the participants in the crime during the identity parade and at the public hearing became the main basis for his conviction. Furthermore, the public defense attorney did not file any motions for the conviction to be reviewed (*supra* para. 93) by a different and higher judge or court to the one that

correctly and that the attorney displayed an obvious ignorance of the criminal proceedings and of the manner in which the oral trial should be conducted. [...] During the hearing, the Court found it necessary to admonish the defense on the manner in which it conducted the questioning; to advise him of the prohibition of asking leading or suggestive questions; on how to offer helpful evidence; and to explain the stages of the trial. This shows that the court *a quo's* conclusion regarding the adequacy of the defense was misguided. [...] In this specific case the failings in the exercise of the technical defense were so blatant that they evidence a state of defenselessness that cannot be ignored.”)

²³⁹ Cf. Constitutional Court of Colombia, Seventh Review Chamber, Judgment T-395/10, May 24, 2010 (“As to the inadequacies of the legal defense resulting from the inactivity of the public defender [...] it was confirmed that, indeed, [...] he did not properly exercise his functions, since he did not challenge any of the measures or decisions issued by the prosecution, did not request a single piece of evidence, or dispute the allegations made during the pre-trial proceedings. [...] The same occurred during the trial phase, where his participation was limited to merely stating at the public hearing that his client was guilty [...]. Nor did he challenge the conviction.”)

²⁴⁰ Cf. Supreme Court of Justice of Argentina, “Guzmán, Jorge Alberto”, Ruling 333:1671, August 31, 2010 (“[...] T]he public defender, instead of providing a legal basis for the appeal *in forma pauperis* [...] merely transcribed the offenses alleged during the presentation, but did not undertake a specific and reasoned criticism of the arguments which relied on the declaration of guilt and the quantification of the penalty [...] Therefore, in line with rulings in similar cases, “Noriega” (Rulings: 330:3526) and “Nacheri, Alberto Guillermo” (Ruling: 332:1095), that circumstance [...] amounts to an inadmissible impairment of the right of defense during the trial of the accused. This determines the annulment of the entire proceeding pursuant to the appeal lodged *in forma pauperis* [...] given the failure of the defense to provide effective assistance, especially since the legal defense was provided by the State [...] and that the proper substantiation of that challenge was fundamental in order to effectively conduct the comprehensive review of the conviction [...]”); and Court of Criminal Appeals, Second Judicial Circuit of San José, Costa Rica, Judgment 00971, File 14-000057-0016-PE, July 9, 2015 (“[...] T]he challenge must express the grounds for the inconformity or disagreement with the appealed ruling, the grievance caused, the claims, and in addition, must offer evidence to substantiate the allegations. The aforementioned aspects were left unaddressed, without any justification whatsoever by the [defense attorney], which reveals a serious technical and legal ignorance or a careless attitude on his part, in terms of defending the interests of the individual who was his client at the time.”)

²⁴¹ Cf. Constitutional Court of Guatemala, file 4469-2013, Writ of amparo appeal, March 13, 2014 (“[...] T]he alleged abandonment of the appellant’s claim was not motivated by the petitioner’s lack of interest; rather this was due to the misguided actions of his defense attorney, who omitted to present the brief in a timely manner, so that he could comply with the arraignment. [...] T]he procedural failings can only be attributable to the technical defense of the accused, hence, the accused could not be required to appear at that court, since that procedural duty was entrusted to his defense attorney who failed to discharge that obligation. Therefore, the right of the accused to appeal cannot be affected by the failings of the attorney.”) See also, Constitutional Court of Guatemala, file 1560-2014, Writ of amparo appeal, June 17, 2014.

²⁴² The Commission questioned this action based on the statement made by Ruano Torres to the Office of the Human Rights Ombudsman; the statement of a witness contained in the record and of one of the persons that had taken part in the procedure. Those statements indicate, *inter alia*, that the record of the identity parade does not faithfully include the names of all the persons involved in that procedure. Likewise, they held that the prosecutor had pointed out José Agapito Ruano Torres during the identity parade. In this regard, the Office of the Human Rights Ombudsman concluded that “[...] there were notable irregularities in the identity parade of suspects in which Mr. José Agapito Ruano Torres participated, according to the statements of inmates, in the first place because he was pointed out by the Prosecutor and in second place, because the names entered in the respective record do not correspond to the suspects who actually participated, whose names were not recorded at the time when the proceeding was carried out.” Decision issued by the Office of the Human Rights Ombudsman on June 9, 2003 (evidence file, volume V, Annex 1 to the submission of the case, folios 2072 to 2073). This situation was recognized by the State.

delivered that judgment.²⁴³ This would have made it possible to obtain a two-stage judicial ruling, since a comprehensive review of the judgment serves to confirm the reasoning and gives greater credibility to the State's jurisdictional action, while providing greater security and protection to the rights of the convicted person.²⁴⁴ In this regard, the Court emphasizes that such an omission cannot be remedied by filing a motion to review once the judgment has been made final, which has specific causes and is decided by the same Court that delivered the judgment. In this case it was obvious that such omissions, far from being a defense strategy that favored the accused, acted against the rights and interests of Mr. Ruano Torres and left him in a state of vulnerability, violating his inalienable right to be assisted by a defense counsel.

168. The Court considers that the State's international responsibility may also be compromised by the judicial authorities' response to the actions or omissions attributable to the public defense. When it is obvious that the public defenders did not act with due diligence, the judicial authorities have an obligation of protection or control. Certainly, the judiciary must ensure that the right to defense does not become illusory through ineffectual legal assistance. It is therefore essential that the judicial authorities fulfill their duty to safeguard due process. This duty of protection or control has been recognized by various courts in our continent, which have annulled proceedings when there has been a patent failure to act properly on the part of the legal defense.

169. By way of illustration, it is important, first of all, to refer to the Supreme Court of Justice of Argentina which has a well-established definition of the role of judges in situations in which the right of defense is compromised.²⁴⁵ The Supreme Court of Justice of Argentina has considered that when "a reading of the file reveals a breach of the constitutional guarantee of defense at a trial which [...] affects the very validity of the proceeding, [said] circumstance [...] must be addressed and resolved as a priority over any other question raised. This is so, because the judicial control of the conduct of the proceeding, albeit *ex officio*, constitutes a prior requirement derived from the jurisdictional function of [that] Court when aspects that concern public order are compromised."²⁴⁶

170. Similarly, the Criminal Cassation Chamber of the Supreme Court of Justice of Colombia has affirmed that "the right of defense [is] a fundamental and immanent guarantee of due process that is not tied to the outcome of the proceedings, but rather to the continuous protection of the accused, in an effort to maintain the balance of powers that come together in the dialectical game in the face of the State's punitive action, it being necessary to ensure a proper balance between the prosecution and the defense. In other words, the significance of an irregularity arising from the absence or abandonment of the right of defense is significant of itself."²⁴⁷ Consequently, it is the judge who, as the director of the proceeding, is called upon to safeguard this guarantee, which does not prevent the guardianship judge from eventually protecting that right. In this regard, the Constitutional Court of Colombia has held that, under certain circumstances, the remedy of protection or guardianship is appropriate in the event of the violation of the right to legal defense. The elements to consider would

²⁴³ Cf. *Case of Herrera Ulloa v. Costa Rica. Preliminary objections, merits, reparations and costs*. Judgment of July 2, 2004. Series C No. 107, para. 158, and *Case of Norín Catrimán et al. (Leaders, members and activist of the Mapuche Indigenous Community) v. Chile, supra*, para. 269.

²⁴⁴ Cf. *Case of Barreto Leiva v. Venezuela, supra*, para. 89, and *Case of Norín Catrimán et al. (Leaders, members and activist of the Mapuche Indigenous Community) v. Chile, supra*, para. 270.

²⁴⁵ Cf. Supreme Court of Justice of Argentina, "Rojas Molina", Ruling 189:34, of February 7, 1941. The Supreme Court of Justice of Argentina held that in that case "[...] essential rules of procedure were infringed and that the accused ha[d] been convicted without being heard, because the defense attorney assigned to him ha[d] not said a single word in defense of the accused" and stated that "there ha[d] been such negligence that he did not even appeal the judgment that sentenced his client to [17] years in prison." Therefore, the Supreme Court declared the entire proceeding null and void.

²⁴⁶ Supreme Court of Justice of Argentina, "Scilingo," Ruling 320:854, May 6, 1997.

²⁴⁷ Supreme Court of Justice of Colombia, Criminal Cassation Chamber, Case number 42337, Judgment of March 18, 2015.

be: "(1) that there were indeed failings in the defense that cannot be accepted, from any perspective, as part of the wide degree of freedom available to the attorney to choose an adequate defense strategy; (2) that the aforementioned deficiencies are not attributable to the accused; (3) that the lack of a material or technical defense had, or could have, a clear and decisive effect on the judgment, resulting in one of the four defects noted -substantive, factual, organic or procedural -; (4) that, as a consequence of all the above, there appears to be a blatant violation of the fundamental rights of the accused. In other words, if the errors committed by the defense of the accused do not have a decisive and significant impact on the judicial ruling, or if they do not have a subsequent effect on the rest of his fundamental rights, an appeal for protection against the judicial decisions in the case would not be applicable."²⁴⁸

171. In a ruling on a mandatory legal consultation on constitutionality submitted by the Third Criminal Chamber, the Constitutional Chamber of the Supreme Court of Costa Rica has indicated that due process is violated only in cases of serious and obvious negligence on the part of the defense counsel. Therefore, "[t]he defendant's assessment concerning the inefficiency or lack of diligence of his defense counsel cannot be considered as an infringement of due process, except where such actions are completely negligent or are clearly contrary to the interests of the defendant."²⁴⁹ In another judgment, the Criminal Court of Appeals of San José held that: "[...] the appointment of a legal professional to conduct the defense of the accused does not constitute a mere formality. It is a fundamental right that must be fully and effectively protected. In this specific case, the errors in the technical defense [were] so blatant, that they showed a state of defenselessness that cannot be ignored. The accused person has the right to be tried with respect for the rules contained in the Code of Criminal Procedure, the Constitution and the American Convention on Human Rights. This includes the right to an adequate technical defense, something that did not occur in this case."²⁵⁰

172. In sum, the State's international responsibility may also be established if the defense counsel's inexcusable negligence or manifest failure should have been obvious to the judicial authorities; or if it was brought to their attention and they did not take the necessary and appropriate steps to prevent and/or remedy the violation of the right of defense, so that the situation led to a violation of due process, attributable to the State.

173. In the instant case it is clear that, prior to the public hearing, Mr. Ruano Torres requested the accreditation of a private defender, who requested the suspension of the hearing in order to "better study the case," a petition that was rejected by the Second Trial Court of San Salvador (*supra* para. 88). In addition, several complaints regarding the inefficacy of the public defense were submitted to the Second Trial Court of San Salvador, either directly or through other persons, yet no favorable response was received during the proceedings or thereafter (*supra* paras. 85, 96 and 99). Furthermore, such circumstances were brought to the attention of the Constitutional Chamber of the Supreme Court of Justice through the petition for *habeas corpus*, which perpetuated the prevailing situation (*supra* paras. 107, 109 and 111). In addition, the disciplinary complaint filed was declared inadmissible by the Supreme Court of Justice (*supra* para. 95). In short, the judicial authorities failed in their duty to ensure the effective exercise of the right to a legal defense.

174. In the circumstances described, the Court considers that the obvious failures in the actions of the public defenders and the lack of an adequate and effective response by the judicial authorities placed José Agapito Ruano Torres in a state of total vulnerability, which was aggravated by the fact

²⁴⁸ Constitutional Court of Colombia, Seventh Review Chamber, Judgment T-395/10, May 24, 2010.

²⁴⁹ Supreme Court of Justice of Costa Rica, Constitutional Chamber, Judgment 04520, File 99-003704-0007-CO, June 15, 1999, citing Judgment 05966-93 of November 16, 1993.

²⁵⁰ Court of Criminal Appeals, Second Judicial Circuit of San José of Costa Rica, Judgment 00323, File 10-003213-0042-PE, 21 February 2014.

that he was deprived of his liberty throughout the course of his trial. Furthermore, by virtue of those circumstances, it is possible to consider that he did not receive a hearing with the due guarantees.

175. Based on the foregoing considerations and on the State's acknowledgment of responsibility, the Court concludes that the State is responsible for the violation of Articles 8(1), 8(2)(d) and 8(2)(e) of the American Convention, in relation to Article 1(1) thereof, to the detriment of José Agapito Ruano Torres.

VII-3

RIGHT TO PERSONAL INTEGRITY OF THE FAMILY OF JOSÉ AGAPITO RUANO TORRES

176. The Court has reiterated on several occasions that the families of victims of human rights violations may, in turn, be victims.²⁵¹ This Court has considered that it is possible to declare the violation of the right to mental and moral integrity of the "direct next of kin" of victims and of other persons with close links to those victims. This is because of the additional suffering they have endured as a consequence of the particular circumstances of the violations perpetrated against their loved ones, and because of subsequent actions or omissions by the State authorities regarding these facts,²⁵² taking into account, also, the steps taken to obtain justice and the existence of close family ties.²⁵³ The Court has also declared the violation of this right because of the suffering caused by the actions perpetrated against their loved ones.²⁵⁴

177. In cases involving serious human rights violations, such as massacres,²⁵⁵ forced disappearance of persons,²⁵⁶ extrajudicial executions²⁵⁷ and, more recently, torture,²⁵⁸ the Court has considered that the Commission or the representatives do not need to prove the violation of the personal integrity of the direct next of kin, given that a *iuris tantum* presumption operates. The *iuris tantum* presumption results in an inversion of the burden of proof: in other words, the "direct next of kin" are not required to prove the violation of their right to mental and moral integrity; rather, it is for the State to disprove that claim.²⁵⁹ The Court has considered as "direct next of kin" the mothers and fathers, sons and daughters, husbands and wives, and permanent companions of victims of grave human rights violations. However, the *iuris tantum* presumption in favor of "direct next of kin" does not exclude other persons not included in this category if they can demonstrate that particularly close ties exist

²⁵¹ Cf. *Case of Castillo Páez v. Peru. Merits, supra*, operative paragraph four, and *Case of the Peasant Community of Santa Bárbara v. Peru, supra*, para. 274.

²⁵² Cf. *Case of Blake v. Guatemala. Merits. Judgment of January 24, 1998. Series C No. 36, para. 114, and Case of Cruz Sánchez et al. v. Peru, supra*, para. 443.

²⁵³ Cf. *Case of Bámaca Velásquez v. Guatemala. Merits. Judgment of November 25, 2000. Series C No. 70, para. 163, and Case of Gonzales Lluy et al. v. Ecuador, supra*, para. 211.

²⁵⁴ Cf. *Case of the Serrano Cruz Sisters v. El Salvador. Merits, reparations and costs. Judgment of March 1, 2005. Series C No. 120, paras. 113 and 114, and Case of Gonzales Lluy et al. v. Ecuador, supra*, para. 211.

²⁵⁵ Cf. *Case of the "Mapiripán Massacre" v. Colombia. Merits, reparations and costs. Judgment of September 15, 2005. Series C No. 134, para. 146.*

²⁵⁶ Cf. *Case of Blake v. Guatemala. Merits, supra*, para. 114, and *Case of the Peasant Community of Santa Bárbara v. Peru, supra*, para. 274.

²⁵⁷ Cf. *Case of La Cantuta v. Peru. Merits, reparations and costs. Judgment of November 29, 2006. Series C No. 162, para. 218, and Case of Cruz Sánchez et al. v. Peru, supra*, para. 444.

²⁵⁸ Cf. *Case of Espinoza Gonzáles v. Peru, supra*, para. 297.

²⁵⁹ Cf. *Case of Valle Jaramillo et al. v. Colombia. Merits, reparations and costs. Judgment of November 27, 2008. Series C No. 192, para. 119, and Case of Cruz Sánchez et al. v. Peru, supra*, para. 444.

between them and the victims in the case that would allow the Court to declare the violation of their right to personal integrity.²⁶⁰

178. In cases where “the circumstances do not entail a grave violation of human rights in the terms of the Court’s case law, the violation of personal integrity of the next of kin, in relation to the pain and suffering caused, must be proven.”²⁶¹ This category includes violations of the rights to personal liberty, judicial guarantees and judicial protection. In such cases, the Court will first assess the existence of a particularly close link between the family members and the victim in order to determine if their right to personal integrity was affected²⁶² and will then determine whether the evidence in the case file demonstrates a violation of the right to personal integrity of the alleged victim.²⁶³ In order to prove the alleged effects on the personal integrity of family members resulting from the violation of the rights to personal liberty, judicial guarantees and judicial protection, the Court has emphasized and accepted specific evidence of four types of adverse effects: on the daily lives of the next of kin; on their physical and mental health; the suffering experienced by the next of kin during prison visits upon seeing their loved ones in precarious conditions of detention; and the adverse effects on the children.²⁶⁴

179. In the instant case, the following persons were named as alleged victims of the violation of Article 5 of the Convention: María Maribel Guevara de Ruano (wife), Oscar Manuel Ruano Guevara (son), Keily Lisbeth Ruano Guevara (daughter), and Pedro Torres Hércules (cousin). The State acknowledged the said violation to the detriment of the aforementioned persons.

180. The case file also confirms that the torture inflicted on Mr. Ruano Torres²⁶⁵ was witnessed by his wife María Maribel Guevara de Ruano and her son, Oscar Manuel Ruano Guevara, who was only two years old at the time,²⁶⁶ and that both subsequently suffered psychological effects as a result of this event.²⁶⁷ The Court recalls that the fact of having witnessed the arrest and mistreatment of a family member can aggravate the emotional damage suffered by the next of kin.²⁶⁸

181. The evidence in the case file also shows that “during these events his wife was always at his side, supporting him and visiting him at the prison until the last day of his incarceration;”²⁶⁹ thus, it

²⁶⁰ Cf. *Case of Valle Jaramillo et al. v. Colombia*, *supra*, para. 119, and *Case of Cruz Sánchez et al. v. Peru*, *supra*, para. 445.

²⁶¹ *Case of Tarazona Arrieta et al. v. Peru. Preliminary objection, merits, reparations and costs*. Judgment of October 15, 2014. Series C No. 286, para. 146.

²⁶² Cf. *Case of Valle Jaramillo et al. v. Colombia*, *supra*, para. 119; *Case of Luna López v. Honduras. Merits, reparations and costs*. Judgment of October 10, 2013. Series C No. 269, para. 204, and *Case of Cruz Sánchez et al. v. Peru*, *supra*, para. 445.

²⁶³ Cf. *Case of Valle Jaramillo et al. v. Colombia*, *supra*, para. 119, and *Case of Cruz Sánchez et al. v. Peru*, *supra*, para. 445.

²⁶⁴ Cf. *Case of López Álvarez v. Honduras*, *supra*, paras. 116 and 117, and *Case Mendoza et al. v. Argentina. Preliminary objections, merits and reparations*. Judgment of May 14, 2013. Series C No. 260, paras. 274 to 288.

²⁶⁵ Cf. Affidavit rendered by María Maribel Guevara de Ruano on April 9, 2015 (evidence file, volume VII, affidavits, folios 2414 to 2415).

²⁶⁶ Cf. Affidavit rendered by Pedro Torres Hércules on April 9, 2015 (evidence file, volume VII, affidavits, folios 2419 to 2420).

²⁶⁷ Cf. Affidavit rendered by María Maribel Guevara de Ruano on April 9, 2015 (evidence file, volume VII, affidavits, folio 2415).

²⁶⁸ Cf. *Case of Bueno Alves v. Argentina*, *supra*, para. 104, and *Case of Escué Zapata v. Colombia. Merits, reparations and costs*, *supra*, para. 79.

²⁶⁹ Expert opinion rendered by Diana Lourdes Miranda Guerrero on April 9, 2015 (evidence file, volume VII, affidavits, folio 2431).

is clear that they maintained close family ties. Furthermore, there is evidence that the violation of Mr. Ruano Torres' rights had a major impact on her life:

[A]s a consequence of the irregular arrest and criminal trial initiated against her husband, she has suffered from nerves, stomach problems and nausea and diarrhea. She felt frightened whenever she saw police agents in the street because of the injustices done to her husband. She had problems sleeping and had nightmares that they were banging on her door. She felt very lonely and missed the love of her husband. She suffered from depression for approximately six years and did not go to the doctor because she did not have enough money, so she bought tranquilizers at the pharmacy. She faced her pregnancy practically alone. She also felt shame, discomfort and nervousness at having her private parts abusively searched when she visited her husband in prison.²⁷⁰

182. The Court notes that Mrs. Guevara de Ruano was also affected by the precarious prison conditions endured by her husband. When she visited him, she found him "depressed, fearful, and thin, with his face blotchy and pale" and suffering from various skin conditions.²⁷¹ She also suffered fear, anguish and uncertainty after a mutiny took place in the prison where Mr. Ruano Torres was held in 2007 (*supra* para. 101). She stated that:

Twenty-five days after the massacre at the Apanteos Penitentiary, which took place on January 5, 2007, [she] found out that [her] husband was alive. He was wearing old, torn clothes that did not belong to him, and mismatched shoes; he was wearing the clothes belonging to the dead, because the clothes he was wearing were not his. He was not given food or water, and he was hungry. [She] suffered because [she] was worried that her husband had died and the most distressing part was not having any news of him, and to be told that they should go and check in the morgue.²⁷²

183. Based on the foregoing, it is clear that María Maribel Guevara de Ruano suffered mental and physical consequences after her husband's arbitrary arrest and subsequent deprivation of liberty. It also affected her daily life because she had to raise her children and care for them alone, without the support of her husband.

184. As to the children of José Agapito Ruano Torres and María Maribel Guevara de Ruano, Oscar Manuel Ruano Guevara and Keily Lisbeth Ruano Guevara, the evidence in the case file shows that the arbitrary detention of their father had a strong impact on their lives. With regard to Oscar Manuel, the evidence in the file mentions that in the years following the detention of José Agapito Ruano Torres, "he cried for his father. Whenever he saw photos of his father he would destroy whatever he was holding in his hands. As he grew up, the boy became rebellious and when he was in third grade he had to repeat the school year three times. He would ask why his father was in jail."²⁷³ With regard to Keily Lisbeth, who was born in 2009, she spent the first three years of her life without the presence of her father because Mr. Ruano Torres was not granted parole until 2012. The psychologist Diana Lourdes Miranda Guerrero stated that after his release from prison on parole, Mr. Ruano Torres "had difficulties resuming his role as a full-time father"²⁷⁴ which also affected the relationship between the children and their father.

²⁷⁰ Affidavit rendered by María Maribel Guevara de Ruano on April 9, 2015 (evidence file, volume VII, affidavits, folio 2415).

²⁷¹ Cf. Affidavit rendered by María Maribel Guevara de Ruano on April 9, 2015 (evidence file, volume VII, affidavits, folio 2416).

²⁷² Affidavit rendered by María Maribel Guevara de Ruano on April 9, 2015 (evidence file, volume VII, affidavits, folio 2416).

²⁷³ Affidavit rendered by María Maribel Guevara de Ruano on April 9, 2015 (evidence file, volume VII, affidavits, folio 2415).

²⁷⁴ Expert opinion provided by affidavit by Diana Lourdes Miranda Guerrero on April 9, 2015 (evidence file, volume VII, affidavits, folio 2433).

185. From the evidence in the file it is clear that, as a consequence of Mr. Ruano Torres' arbitrary deprivation of liberty and the violation of his judicial guarantees, his children did not develop a close bond with their father and have suffered the emotional and financial consequences of this situation.²⁷⁵ In other words, the arbitrary detention of their father affected their mental and moral integrity as well as their personal development.

186. As to Pedro Torres Hércules, the Court considers that his commitment to the search for justice for his cousin has been clearly demonstrated. In particular, the Court takes note of the fact that, once he found out about the detention of Mr. Ruano Torres, "[d]oubting that his cousin would do something like that, and thinking it over, he returned to El Salvador" from Guatemala, where he was living at that time.²⁷⁶ From that moment, he was constantly involved in the quest for justice for his cousin,²⁷⁷ and it was due to his efforts that the case reached the Inter-American Commission and subsequently the Court. The State also acknowledged that "his commitment to the case and to obtaining justice for his cousin is undeniable."

187. Mr. Torres Hércules stated that in addition to leaving his job for a period of time to follow up on the case, which affected his finances and his family life, he suffered - along with the victim's direct next of kin - the uncertainty and fear for his cousin's life during the prison mutiny of 2007. He stated that after that event "in which there were many dead [...he] experienced more than twenty days of uncertainty thinking that his cousin Agapito was amongst the dead, without knowing if some tragedy had befallen him; those were days of great suffering and despair [without] obtaining a response from the prison authorities."²⁷⁸ Therefore, the Court considers proven that a close relationship existed between José Agapito Ruano Torres and his cousin, Pedro Torres Hércules, that the latter was deeply committed to obtaining justice for his relative, and that he also suffered as a result of his cousin's arbitrary detention and prison conditions.

188. For all the foregoing reasons, the Court concludes that María Maribel Guevara de Ruano and Oscar Manuel Ruano Guevara suffered pain and anguish when witnessing the torture inflicted on José Agapito Ruano Torres, and that María Maribel Guevara de Ruano, Oscar Manuel Ruano Guevara, Keily Lisbeth Ruano Guevara and Pedro Torres Hércules suffered pain and anguish, together with feelings of frustration and impotence, as a result of the violation of the rights to personal liberty, judicial guarantees and judicial protection of José Agapito Ruano Torres, and also because of the precarious prison conditions he endured. Therefore, the Court declares that the State violated the right to personal integrity recognized in Article 5(1) of the American Convention, in relation to Article 1(1) thereof, to the detriment of María Maribel Guevara de Ruano, Oscar Manuel Ruano Guevara, Keily Lisbeth Ruano Guevara and Pedro Torres Hércules.

VIII REPARATIONS (Application of Article 63(1) of the American Convention)

189. Based on the provisions of Article 63(1) of the American Convention,²⁷⁹ the Court has indicated that any violation of an international obligation that has produced harm entails the obligation to make

²⁷⁵ Cf. *Case of López Álvarez v. Honduras*, *supra*, para. 116.

²⁷⁶ Cf. Affidavit rendered by Pedro Torres Hércules on April 9, 2015 (evidence file, volume VII, affidavits, folio 2418).

²⁷⁷ Cf. Affidavit rendered by Pedro Torres Hércules on April 9, 2015 (evidence file, volume VII, affidavits, folios 2421 to 2426).

²⁷⁸ Affidavit rendered by Pedro Torres Hércules on April 9, 2015 (evidence file, volume VII, affidavits, folio 2428).

²⁷⁹ Article 63(1) of the Convention establishes that "[i]f the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or

adequate reparation and that this provision reflects a customary norm that constitutes one of the fundamental principles of contemporary international law on State responsibility.²⁸⁰

190. The reparation of the harm caused by the violation of an international obligation requires, whenever possible, full restitution (*restitutio in integrum*), which consists of the re-establishment of the previous situation. If this is not feasible, the Court will determine measures to guarantee the rights that have been violated and to redress the consequences of those violations.²⁸¹ Therefore, the Court has considered it necessary to grant different measures of reparation in order to redress the harm comprehensively; thus, in addition to pecuniary compensation, measures of restitution, rehabilitation and satisfaction, and guarantees of non-repetition have special relevance for the harm caused.²⁸²

191. The Court has established that reparations must have a causal nexus with the facts of the case, the violations declared, the harm proved, and the measures requested to redress the respective damage caused. Therefore, the Court must observe the concurrence of these factors in order to rule appropriately and according to the law.²⁸³

192. Considering the violations of the Convention declared in the foregoing chapters, the Court will proceed to examine the claims presented by the Commission and the representatives, as well as the arguments of the State, in light of the criteria established in its case law regarding the nature and scope of the obligation to make reparation,²⁸⁴ in order to establish measures aimed at redressing the harm caused to the victims.

A. Injured party

193. Under the terms of Article 63(1) of the Convention, this Court considers as injured party anyone who has been declared a victim of the violation of any right recognized therein.²⁸⁵ Therefore, the Court considers as "injured party" José Agapito Ruano Torres, María Maribel Guevara de Ruano, Oscar Manuel Ruano Guevara, Keily Lisbeth Ruano Guevara and Pedro Torres Hércules who, as victims of the violations declared in this Judgment, shall be considered as beneficiaries of the reparations ordered by the Court.

B. Obligation to investigate the facts that caused the violations and to identify, prosecute and, if appropriate, punish those responsible

B.1 Regarding the torture

freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party."

²⁸⁰ Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and costs*. Judgment of July 21, 1989. Series C No. 7, para. 25, and *Case of Omar Humberto Maldonado Vargas et al. v. Chile, supra*, para. 149.

²⁸¹ Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and costs, supra*, para. 26, and *Case of Omar Humberto Maldonado Vargas et al. v. Chile, supra*, para. 150.

²⁸² Cf. *Case of Cantoral Benavides v. Peru. Reparations and costs*. Judgment of December 3, 2001. Series C No. 88, paras. 79 to 81, and *Case of Omar Humberto Maldonado Vargas et al. v. Chile, supra*, para. 150.

²⁸³ 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 Omar Humberto Maldonado Vargas et al. v. Chile, supra*, para. 149.

²⁸⁴ Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and costs, supra*, paras. 25 to 27, and *Case of Omar Humberto Maldonado Vargas et al. v. Chile, supra*, para. 151.

²⁸⁵ Cf. *Case of the Massacre of La Rochela v. Colombia. Merits, reparations and costs*. Judgment of May 11, 2007. Series C No. 163, para. 233, and *Case of Omar Humberto Maldonado Vargas et al. v. Chile, supra*, para. 153.

Arguments of the parties and of the Commission

194. The **Commission** requested that the Court order the State to “conduct a serious, diligent and effective investigation, within a reasonable time, to clarify the acts of torture described by Mr. Ruano Torres, identify those responsible and impose the corresponding sanctions.”

195. The **representatives** requested that the Court order the State to “conduct a serious, diligent and effective investigation, within a reasonable time, to establish the acts of torture described and denounced,” and to “identify those responsible and apply the corresponding sanctions”.

196. The **State** pointed out that the General Directorate of the National Civil Police had ordered an investigation to clarify the facts regarding the torture, identify those responsible and impose the appropriate sanctions. This instruction was forwarded to the Internal Affairs Unit, responsible for conducting the inquiry.

Considerations of the Court

197. In this Judgment the Court declared, *inter alia*, that Mr. José Agapito Ruano Torres was subjected to acts of torture at the time of his arrest and that the State failed in its duty to guarantee his rights because it did not investigate those acts of torture (*supra* paras. 123 and 125).

198. Therefore, as it has done on other occasions,²⁸⁶ the Court requires that the State investigate those facts effectively through a proceeding directed against those allegedly responsible for the violations of personal integrity. Consequently, this Court decides that the State must initiate and carry out, within a reasonable time, an effective investigation and criminal prosecution of the acts committed in violation of Article 5(2) of the Convention against Mr. José Agapito Ruano Torres, to determine the possible criminal responsibilities and, where appropriate, apply the sanctions and consequences stipulated by law. Thus, the State must diligently take all the necessary steps to identify, prosecute and, where appropriate, punish all those responsible for the facts denounced by Mr. Ruano Torres, and for the criminal or any other consequences that could result from the investigation of the facts. Likewise, the competent authorities must take into consideration international standards for the documentation and interpretation of forensic evidence related to the acts of torture committed, particularly those defined in the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“the Istanbul Protocol”).²⁸⁷

199. The Court notes that the State reported that some of the police officers responsible for the violations had died or were no longer members of the police force. However, this does not preclude the investigation of those who are no longer members of the police force given that, for the purposes of verifying elements of a criminal nature, it is sufficient to prove the facts according to the circumstances at the time when the crime was committed.

B.2 Regarding the actions of the public defenders

Arguments of the parties and of the Commission

²⁸⁶ Cf. *Case of Cantoral Benavides v. Peru. Reparations and Costs*, *supra*, para. 70, and *Case of Omar Humberto Maldonado Vargas et al. v. Chile*, *supra*, para. 155.

²⁸⁷ Cf. United Nations Office of the High Commissioner for Human Rights, *Istanbul Protocol. Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, New York and Geneva, 2001.

200. The **Commission** recommended that the Court order the State to issue “the applicable administrative, disciplinary and criminal measures in connection with the actions or omissions of the State agents (police officers, prosecutors, public defenders and judges of the various courts) whose actions contributed to the violation of the rights of José Agapito Ruano Torres.”

201. Likewise, the **representatives** asked the Court to order the State to “punish the agents of the State (police officers, judges, public defenders) responsible for the [...] conviction of [José] Agapito.”

202. The **State** reported that it had instructed the Judicial Investigation Division to conduct “the pertinent audits and proceed according to the disciplinary rules established in the Law of the Judiciary, in order to determine the responsibilities in relation to the case.” It also indicated that the Prosecutor General had “reported the immediate opening of an administrative process to analyze the role played by the public defenders in the case, in order to determine the responsibilities if any, and apply the corresponding sanctions, if appropriate.”

Considerations of the Court

203. In this Judgment the Court has declared that the State violated Articles 8(1), 8(2)(d) and 8(2)(e) of the American Convention, in relation to Article 1(1) thereof, given the state of vulnerability in which Mr. Ruano Torres found himself during the criminal trial against him, owing to the deficient performance of the public defenders, which was not duly addressed by the judicial authorities (*supra* Chapter VII-2).

204. The Court notes that, despite the fact that the State claimed to be conducting investigations into the actions of the Judiciary and the public defenders, so far date it has provided no concrete evidence that such investigations ever took place or of their results.

205. Therefore, this Court considers that the State must determine, within a reasonable time, and through the competent public institutions, the possible responsibility of the officials of the Office of the Public Defender whose actions contributed to the violation of the rights of Mr. José Agapito Ruano Torres and, where appropriate, apply the sanctions established by law.

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

C.1 Restitution

Arguments of the parties and of the Commission

206. The **Commission** asked the Court to order the State “to adopt, as soon as possible, the necessary measures to annul the effects of Mr. Ruano Torres’ conviction, including the alternative measures to imprisonment that were in effect [at the time],” and, “if the victim so wishes, to review the conviction to ensure that it meets the standards related to the presumption of innocence and the right of defense.” Subsequently, the Commission noted that, once Mr. Ruano Torres had served his sentence, the petition for *habeas corpus* would no longer be the “appropriate” remedy for seeking a review of the judgment, and asked the Court to order the State “to set aside the conviction [...] and [...] annul any criminal records or any other type of record existing against the victim related to the facts of this case.”

207. The **representatives** asked the Court to order the State to “annul the effects of the conviction of the alleged victim.” They subsequently called on the State to promote a new review hearing to “annul the conviction imposed on José Agapito Ruano Torres as well as its effects.” They also asked

the Court to order “the removal of the victim’s name from any public records in which he appears as a consequence of the conviction [...] and from the archive of criminal records”.

208. The **State** expressed its willingness to accept the recommendations made by the Commission, and said it understood that the reparations have value in the measure that progress is achieved in implementing those recommendations. The State pointed out that the Second Trial Court of San Salvador had held a special hearing to review the final judgment on September 2, 2014, and had upheld the conviction. However, it indicated that the annulment of the judgment “is a possibility that it is still open,” given that “in recent years there have been important advances in the case law of the Constitutional Chamber in matters of *habeas corpus* which, at this time, could offer the possibility of a different decision.” However, to date, the conviction against José Agapito Ruano Torres has not been annulled despite the fact that several motions have been filed for a review.

Considerations of the Court

209. In this Judgment the Court has declared the State of El Salvador responsible for the violation of Articles 7(3), 8(1), 8(2), 8(2)(d), 8(2)(e) and 25(1) of the American Convention, in relation to Article 1(1) thereof, to the detriment of José Agapito Ruano Torres. The Court confirmed the violation of the right to the presumption of innocence given that the criminal trial against Mr. Ruano Torres did not eliminate any trace of doubt regarding the identity of the person known by the nickname *Chopo* (*supra* paras. 129 a 135). Likewise, in the instant case there was no judicial oversight of the decision to convict, given that the legal defense was ineffective and did not file any motion to appeal the conviction (*supra* para. 167). Furthermore, the motions for review were not an effective remedy to redress the human rights violations and, in particular, to ensure respect for the presumption of innocence and the right to legal defense (*supra* paras. 137 to 139). Therefore, Mr. Ruano Torres’ imprisonment, resulting from a criminal trial that violated his judicial guarantees, became arbitrary (*supra* para. 142).

210. The Court points out that, at the time of issuing this Judgment, Mr. Ruano Torres has served his full sentence (*supra* para. 105); consequently, it is not possible to restore the time that he has spent being arbitrarily deprived of his liberty.

211. Therefore, having regard to the violations established in the instant case, the Court decides that the conviction handed down in criminal trial No. 77-2001-2 against José Agapito Ruano Torres has no legal effects in relation to the victim and, accordingly, orders the State to take all necessary steps to annul any consequences derived therefrom, together with any judicial, administrative, criminal or police records related to that proceeding. The State has one year from notification of this Judgment to comply with this measure.

212. In addition, the Court deems it pertinent to grant an amount in compensation as reparation for the fact that Mr. Ruano Torres was arbitrarily deprived of his liberty for 12 years, 6 months and 22 days, in violation of his procedural guarantees (*infra* para. 250).

C.2 Rehabilitation

C.2.a Psychological and/or psychiatric treatment

Arguments of the parties

213. During the public hearing and in its final written arguments the **State** offered Mr. José Agapito Ruano Torres and his next of kin “psychological treatment [...] through the public health care services with a prior assessment of their individual needs, to support the integration of their family group.”

214. In their final written arguments, the **representatives** accepted “the offer to restore the family fabric by providing psychosocial treatment for José Agapito Ruano Torres and his family in State institutions [...] or, if these types of facilities are not available, to fund their treatment in private centers or clinics [,] in order to make it effective and ensure that reparation for the psychological effects does not become illusory.” They added that “[s]aid treatment should be provided free of charge with adequate professional care from psychologists and social workers, through a treatment program consistent with the profile and characteristics of José Agapito Ruano Torres and his family.” The **Commission** did not comment on this matter.

Considerations of the Court

215. Having confirmed the impact caused by the facts of this case (*supra* Chapter VII) on the personal integrity of José Agapito Ruano Torres and his next of kin, María Maribel Guevara de Ruano, Oscar Manuel Ruano Guevara, Keily Lisbeth Ruano Guevara and Pedro Torres Hércules, the Court, as it has done in other cases,²⁸⁸ considers it pertinent to order a measure of reparation for all of these individuals, consisting of appropriate treatment for their psychological suffering as a result of the violations established in this Judgment. Therefore, the Court orders the State to provide, free of charge, through its specialized health care institutions, immediate, adequate and effective psychological and/or psychiatric treatment, if they so request it, and with their informed consent, including the free supply of any medications they may eventually require. The treatment must be provided, to the extent possible, at the center nearest to their places of residence in El Salvador for as long as may be necessary.

216. The psychological treatment provided must take into account the particular circumstances and needs of each victim, so that they can be provided with collective, family or individual treatment, as agreed with each of them and following an individual assessment.²⁸⁹ The victims who request this measure of reparation, or their legal representatives, have a period of six months from notification of this Judgment to inform the State of their intention to receive psychological and/or psychiatric treatment.²⁹⁰

C.2.b Academic or vocational training

Arguments of the parties

217. During the public hearing and in its final written arguments the **State** offered to provide Mr. José Agapito Ruano Torres and his family with “technical, vocational, or formal training in accordance with their interests,” for himself and for members of his family.

218. In their final written arguments, the **representatives** accepted “[t]he scholarships granted to study at national elementary, middle and higher level education centers, as appropriate,” for Mr. Ruano Torres and his next of kin, “including Pedro Torres Hércules [...] if they wish to complete university studies or higher technical education, in order to be able to resume their truncated life project.” The **Commission** did not comment on this point.

Considerations of the Court

²⁸⁸ Cf. *Case of Barrios Altos v. Peru. Reparations and Costs*. Judgment of November 30, 2001. Series C No. 87, paras. 42 and 45, and *Case of the Peasant Community of Santa Bárbara v. Peru, supra*, para. 308.

²⁸⁹ Cf. *Case of the 19 Merchants v. Colombia. Merits, reparations and costs*. Judgment of July 5, 2004. Series C No. 109, para. 278, and *Case of the Peasant Community of Santa Bárbara v. Peru, supra*, para. 308.

²⁹⁰ Cf. *Case of Fernández Ortega et al. v. Mexico, supra*, para. 252, and *Case of the Peasant Community of Santa Bárbara v. Peru, supra*, para. 308.

219. In this Judgment the Court has established that the facts of the case caused harm to Mr. Ruano Torres and his family because they brought about significant changes, both in their lives and in their relationships, thereby affecting their personal development (*supra* Chapter VII-3). Having regard to the foregoing, and taking into account the offer made by the State, the Court, as it has done in other cases,²⁹¹ deems it appropriate to order, as a measure of satisfaction, that the State award scholarships in Salvadorian public institutions to José Agapito Ruano Torres and his family members, María Maribel Guevara de Ruano, Oscar Manuel Ruano Guevara, Keily Lisbeth Ruano Guevara and Pedro Torres Hércules. These scholarships should cover all the costs of their education until the conclusion of their advanced studies, whether these are of a technical or academic nature. The State's compliance with this obligation means that the beneficiaries must take certain steps in order to exercise their right to this measure of reparation.²⁹² Therefore, those who request this measure of reparation, or their legal representatives, have six months as of notification of this Judgment to advise the State of their scholarship requirements.

C.3 Satisfaction

C.3.a Publication of the Judgment

Arguments of the parties

220. The **representatives** requested that the Court order the State to publish the Judgment "at least once in the Official Gazette and in another newspaper with wide national circulation." The **Commission** emphasized the importance of publishing the Judgment.

221. The **State** offered "to publish, once, the official summary of the Judgment prepared by the Court in the Official Gazette and on an official web site for one year."

Considerations of the Court

222. The Court decides to order the State to publish, within six months of notification of this Judgment: a) the official summary of this Judgment prepared by the Court, once, in the Official Gazette; b) the official summary of this Judgment prepared by the Court, once, in a newspaper with wide national circulation, and c) this Judgment in full, available for one year, on the main page of an official national web site, in a manner that is accessible to the public.

C.3.b Commemorative plaque

Arguments of the parties

223. The **representatives** requested that the Court order the State to "display a plaque at the headquarters of the Office of the Public Defender of El Salvador bearing the name of [José Agapito Ruano Torres] as a symbol to remind public defenders of their duty to safeguard their honorable profession." The **Commission** did not comment on this measure.

224. The **State** offered to display a plaque in acknowledgment of its responsibility at the Office of the Public Defender for a period of two years.

²⁹¹ Cf. *Case of the Gómez Paquiyauri Brothers v. Peru. Merits, reparations and costs*. Judgment of July 8, 2004. Series C No. 110, para. 237, and *Case of Norín Catrimán et al. (Leaders, members and activist of the Mapuche Indigenous Community) v. Chile, supra*, para. 432.

²⁹² Cf. *Case of Escué Zapata v. Colombia. Interpretation of Judgment on merits, reparations and costs*. Judgment of May 5, 2008 Series C No. 178, paras. 27 and 28, and *Case of Norín Catrimán et al. (Leaders, members and activist of the Mapuche Indigenous Community) v. Chile, supra*, para. 432.

Considerations of the Court

225. Taking into account the State's acquiescence and the facts of this case, the Court orders the State to display a plaque, in a visible place, at the headquarters of the Office of the Public Defender for the purpose of raising institutional awareness and preventing a repetition of events such as those that occurred in this case. The plaque must be installed within one year of notification of this Judgment. The wording on the plaque must be agreed between the victims or their representatives and the State.

C.4 Guarantees of non-repetition

C.4.a Education and training programs

Arguments of the parties and of the Commission

226. The **Commission** emphasized the importance that the State take the necessary steps to prevent the repetition of facts similar to those in this case in the future. In particular, the Commission asked the Court to order the State to implement "training programs for State officials based on the international standards and principles established for the effective investigation and documentation of torture and other cruel, inhuman or degrading treatment or punishment and the Istanbul Protocol." These programs should comply with "the duty to protect and guarantee the fundamental rights recognized in the American Convention."

227. The **representatives** requested that the Court order the State to implement "training programs for State officials based on the international standards and principles established for the effective investigation and documentation of torture and other cruel, inhuman or degrading treatment or punishment and the Istanbul Protocol."

228. For its part, the **State** pointed out that, since 2009, it has implemented various human rights training programs at the following institutions: the National Academy of Public Security, responsible for the basic training of police officers; the Prosecutors' Training School of the Office of the Prosecutor General of the Republic; the Office of the Attorney General of the Republic; and at the Judicial Training Academy of the National Council of the Judiciary. In particular, it stated that the National Academy of Public Security "has reinforced its training programs and the study of instruments such as the Istanbul Protocol, the Inter-American Convention to Prevent and Punish Torture, and the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The State added that once this Court has issued its ruling in this case, it will be used [...] as a case study for training the teaching staff of that institution;" that "the Attorney General of the Republic has developed a training module in international human rights law, and has offered to reinforce training at national level in topics such as *habeas corpus*;" and that the Judicial Training Academy "imparts courses on the international instruments for the protection of human rights and the Inter-American Human Rights System." Furthermore, it pointed out that the Office of the Attorney General has already implemented a Criminal Prosecution Policy that requires all prosecutors to respect the fundamental rights of defendants in the exercise of their functions and to ensure that these are also respected by judges, officials, agents and auxiliaries of the National Civil Police in their actions. Finally, the State proposed that Mr. Pedro Torres Hércules share his experiences with the inter-American system through training courses imparted at the Human Rights Academy of the Office of the Human Rights Ombudsman of El Salvador.

Considerations of the Court

229. This Court has established that the training of public officials is an important measure to ensure the non-repetition of the facts that generated the violations in this case, and has ordered the training of police officers, prosecutors, and judges in the prevention, investigation and punishment of torture in various cases.²⁹³ In the case of the *Massacres of El Mozote and nearby places v. El Salvador*, this Court ordered the State to implement a permanent and compulsory program or course on human rights, with a children- and gender-based perspective for the Armed Forces of El Salvador.²⁹⁴ In the case of *Rochac Hernández et al. v. El Salvador*, it ordered the State to implement permanent human rights programs directed at the police, prosecutors, judges and the military, as well as the officials responsible for providing assistance to families and victims of forced disappearance, including topics such as the human rights of children who disappeared during the internal armed conflict, the inter-American system for the protection of human rights, and the doctrine of conventionality control.²⁹⁵ To date, the Court has not ordered any training program for the effective investigation and documentation of torture, directed at the National Civil Police and/or institutions involved in the system of administration of justice of El Salvador.

230. The Court positively assesses the State's expressed willingness to improve the training of personnel of the National Civil Police, the Office of the Attorney General, the Procurator General and the Judiciary in matters related to the protection of human rights. However, the State has not submitted to the Court any specific evidence of the existence and operation of such training programs.

231. In light of the facts of this case, the Court considers it important to strengthen the institutional capacity of the personnel of the National Civil Police and of the Office of the Attorney General as guarantees of non-repetition. Accordingly, the Court orders the State to implement, within a reasonable time and with the respective budgetary allocation, compulsory and permanent programs or courses on the principles and standards for the protection of human rights, and particularly of the international norms established for the effective investigation and documentation of torture and other cruel, inhuman, or degrading treatment or punishment, as part of the general and continuous training provided to State officials. These programs or courses should include the study of this Judgment, the case law of the Inter-American Court on personal integrity and the prohibition of torture, and the international human rights obligations stemming from the treaties to which El Salvador is a Party.

232. In their final written arguments, the representatives also asked the Court to order the State to "extend the [human rights] training to society in general, and to include it as a mandatory course or subject at the level of middle school education, as well as through information "capsules" in the mass media." With regard to that request, the Court observes that it was not presented at the proper procedural moment, that is, in the pleadings, motions and evidence brief submitted to this Court; therefore, it is time-barred and will not be considered.

C.4.b Strengthening the institutional capacity of the Office of the Public Defender of El Salvador

Arguments of the parties

²⁹³ See also, *Case of Gutiérrez Soler v. Colombia. Merits, reparations and costs*. Judgment of September 12, 2005. Series C No. 132; *Case of Blanco Romero et al. v. Venezuela. Merits, reparations and costs*. Judgment of November 28, 2005. Series C No. 138; *Case of Bayarri v. Argentina. Preliminary objection, merits, reparations and costs*. Judgment of October 30, 2008. Series C No. 187; *Case of Vélez Loor v. Panama, supra*; *Case of Cabrera García and Montiel Flores v. Mexico, supra*.

²⁹⁴ Cf. *Case of the Massacres of El Mozote and nearby places v. El Salvador. Merits, reparations and costs*. Judgment of October 25, 2012. Series C No. 252, para. 369 and operative paragraph 12.

²⁹⁵ Cf. *Case of Rochac Hernández et al. v. El Salvador. Merits, reparations and costs*. Judgment of October 14, 2014. Series C No. 285, para. 244 and operative paragraph 15.

233. The **representatives** asked the Court to require the State to “review the actions of the public criminal defense system of El Salvador and to order the necessary measures to avoid repetition.” Neither the **Commission** nor the **State** commented on this point.

Considerations of the Court

234. In consideration of the violations established in this case and the need for public defenders to be able to provide a high-quality legal assistance service in order to avoid a repetition of the facts of this case, the Court considers it pertinent to require the State to reinforce, within a reasonable time, its systems for the selection of public defenders to ensure the appointment of persons who meet the requirements of suitability and proven technical capacity, and to implement controls through protocols to ensure efficacy in the administration of the public defense in criminal matters.

235. In addition, the Court considers it important to strengthen the State’s institutional capacity through the training of public defenders, in order to prevent the repetition of facts such as those analyzed in this Judgment. Therefore, the Court orders the State to implement, within a reasonable time, training programs, if these do not exist already, or to strengthen existing programs, in order to establish a continuous training system for public defenders. These programs should include, among other aspects, courses or modules on international human rights standards, focusing particularly on guarantees of due process and the right of defense and including the case law of the Inter-American Court. These programs must be supported with adequate budget allocations.

C.4.c Other measures requested

Arguments of the parties

236. The **representatives** asked the Court to order the State to carry out “a public act of acknowledgment of responsibility and redress for the victims.” Neither the **Commission** nor the **State** commented on this point.

Considerations of the Court

237. The Court considers that this Judgment and the reparations ordered therein are sufficient and adequate to provide reparation for the violations suffered by the victims in this case;²⁹⁶ therefore it does not deem it necessary to order the aforesaid measure requested by the representatives.

D. Compensation

D.1 Pecuniary damage

Arguments of the parties and of the Commission

238. The **Commission** asked the Court to order the State to “[p]rovide the victims in this case with integral reparation, including both the material and non-material aspects.”

239. With regard to consequential damages the **representatives** requested the following: a) the costs and expenses incurred owing to the wrongful deprivation of liberty, and b) expenses incurred in processing the case in the domestic courts and the proceeding before the Commission. As to “miscellaneous expenses, including visits, per diems, materials, travel fares and accommodation” this was calculated at US\$ 1,920 annually, based on 48 visits per year, making a total of US\$ 17,280

²⁹⁶ Cf. *Case of Radilla Pacheco v. Mexico. Preliminary objections, merits, reparations and costs*. Judgment of November 23, 2009. Series C No. 209, para. 359, and *Case of Omar Humberto Maldonado Vargas et al. v. Chile, supra*, para. 165.

as it covers a period of nine years. The representatives also specified the payment of three colones for each Sunday, which is mandatory to attend fiestas authorized by the Prison Administration; expenses for outings from prison during the "trust" phase; expenses for visits by the father of Mr. Ruano Torres; monthly visits of his wife and children. In relation to "future medical and psychological treatment" the representatives specified the following amounts: for basic "medical care" for the family members the sum of US\$ 23,040 for three years for four people, and for "extensive treatments" totaling US\$ 23,000. They also presented a calculation of the salaries that Pedro Torres Hércules did not receive over a period of 13 years, "during the time he followed up on the procedures related to the legal proceedings" against Mr. José Agapito Ruano Torres, for a total of US\$ 107,634.48. In relation to loss of income, the representatives provided a calculation of the wages that José Agapito Ruano Torres did not receive between 2000 and 2013 for a total of US\$ 36,615.99. Finally, they indicated the amounts of the expenses for processing the case in the domestic courts and the proceeding before the Commission, as follows: US\$ 3,847 annually; US\$ 457.14 for legal fees paid to a private attorney at the public hearing; US\$ 3,500 for filing the motion to review; US\$ 600 for the court hearing on application for parole; US\$ 572 for the fine paid for civil liability; and US\$ 25,000 for expenses incurred in formal procedures.

240. The **State** pointed out that Mr. Ruano Torres had engaged in remunerated construction work since 2010 during the phases of "trust" and "day release" from prison. It added that, in El Salvador, the minimum wage in the construction industry is regulated by a collective work contract and provided information on the salaries of skilled workers and assistants between 2011 and 2013. It also stressed that construction work is not a job of a permanent nature.

Considerations of the Court

241. In its case law, the Court has developed the concept of pecuniary damage and has established the situations in which compensation must be provided. The Court has determined that pecuniary damage involves "the loss of or detriment to the victims' income, the expenses incurred as a result of the facts and the consequences of a pecuniary nature that have a casual nexus with the facts of the case."²⁹⁷

242. With regard to this aspect, the Court notes that the damages specified by the representatives included the loss of income of José Agapito Ruano Torres, the loss of income of Pedro Torres Hércules, expenses for medical and psychological treatment up to the present date, expenses associated with per diem allowances, travel and accommodation expenses to visit Mr. Ruano Torres while he was in prison and the expenses incurred in the domestic proceedings and before the Inter-American Commission. However, the Court does not have sufficient evidence to determine, precisely, the extent of the pecuniary damage caused in the instant case.

243. The Court confirms that, prior to the facts of the case, José Agapito Ruano Torres worked as a bricklayer or construction worker (*supra* para. 57). In this case, in order to determine the compensation due for loss of income, it is necessary to calculate the amount based on the period of time that the victim did not work because he was deprived of his liberty, and on the amount of the minimum wage indicated by the State for the activities in which he was engaged at the time of the facts. It is also necessary to take into account the observations presented, since the case file does not contain sufficient evidentiary elements to calculate exactly the amount of his monthly income. Accordingly, the Court decides to establish, in equity, the sum of US\$ 40,000.00 (forty thousand United States dollars) in favor of Mr. Agapito Ruano Torres, as compensation for the income that he did not receive during the time he was deprived of his liberty in violation of Articles 7 and 8(2) of the American Convention.

²⁹⁷ *Case of Bámaca Velásquez v. Guatemala. Reparations and Costs.* Judgment of February 22, 2002. Series C No. 91, para. 43, and *Case of Omar Humberto Maldonado Vargas et al. v. Chile, supra*, para. 174.

244. Furthermore, this Court considers that the disbursements related to the financial efforts made by Mr. Ruano Torres, his wife María Maribel Guevara de Ruano and his cousin Pedro Hércules Torres as a result of the deprivation of the liberty and the need to obtain justice must be compensated as part of consequential damages. Therefore, as part of this item, the Court will take into account the arguments related to the loss of income of Pedro Torres Hércules.

245. In view of this, and bearing in mind the time elapsed, the Court sets in equity the following amounts for consequential damages: a) US\$ 10,000.00 (ten thousand United States dollars) in favor of José Agapito Ruano Torres; b) US\$ 10,000.00 (ten thousand United States dollars) in favor of María Maribel Guevara de Ruano, and c) US\$ 20,000.00 (twenty thousand United States dollars) in favor of Pedro Torres Hércules.

D.2 Non-pecuniary damage

Arguments of the parties and of the Commission

246. The **Commission** asked the Court to order the State to “[p]rovide comprehensive reparation to the victims in this case, including the pecuniary and non-pecuniary aspects”.

247. The **representatives** indicated that “the Inter-American Court should assess not only the harm caused to the mental and moral integrity of each of [the beneficiaries], but also the impact this had on their social relationships, their civic and work life and the disruption it caused to the dynamics of the family group, which was never able to return to the living conditions existing prior to the facts.” As to the reparation corresponding to personal integrity, the representatives calculated the sum of US\$ 100,000 per year; thus, considering that the victim served twelve years, six months and twenty-two days in prison, the total for this item was estimated at US\$ 1,250,000. With regard to moral reparations, they calculated US\$ 100,000 per year, also amounting to a total of US\$ 1,250,000 for this item. Furthermore, the representatives requested an amount for damage to the life project and the right to leisure, which they calculated at US\$ 20,000 per year, the total for twelve years being US\$ 240,000.

248. The **State** did not comment on this matter.

Considerations of the Court

249. International case law has repeatedly established that the Judgment constitutes *per se* a form of reparation.²⁹⁸ However, in its case law, the Court has developed the concept of non-pecuniary damage and has established that this “may include both the suffering and distress caused to the direct victim and his next of kin, the impairment of values that are highly significant to them, as well as suffering of a non-pecuniary nature that affects the living conditions of the victim or his family.”²⁹⁹ Considering the circumstances of the case *sub judice*, the Court deems it pertinent to set an amount, in equity, as compensation for non-pecuniary damage.

250. In order to assess the reparations for non-pecuniary damage in this case, the Court has taken into consideration the different types of non-pecuniary damage mentioned by the representatives, including damage to the life project. In setting compensation for non-pecuniary damage, it considers

²⁹⁸ Cf. *Case the Amparo v. Venezuela. Reparations and costs*. Judgment of September 14, 1996. Series C No. 28, para. 35, and *Case of Omar Humberto Maldonado Vargas et al. v. Chile, supra*, para. 157.

²⁹⁹ *Case of the “Street Children” (Villagrán Morales et al.) v. Guatemala. Reparations and costs*. Judgment of May 26, 2001. Series C No. 77, para. 84, and *Case of Omar Humberto Maldonado Vargas et al. v. Chile, supra*, para. 174.

that the actions taken against Mr. Ruano Torres did not meet the requirements of due process, and that the lack of judicial guarantees resulted in an arbitrary deprivation of liberty (*supra* para. 142). Mr. Ruano Torres received a custodial sentence, and remained in prison separated from his family for 12 years, 6 months and 22 days. Naturally, a person subjected to arbitrary detention experiences profound suffering,³⁰⁰ which is further aggravated by the failure to investigate the acts of torture denounced. Consequently, this Court presumes that such violations cause non-pecuniary damage to the person who suffers them.³⁰¹ In addition, the Court has confirmed the pain and suffering endured by the family members as a result of the facts of this case, together with the impact on their financial situation and the disruption of their family life (*supra* Chapter VII-3).

251. Based on the criteria developed by the Court on the concept of non-pecuniary damage³⁰² and having regard to the circumstances of this case, the nature and gravity of the violations committed, as well as the physical, moral and psychological suffering caused to the victims, the Court establishes in equity the following amounts in compensation: a) US\$ 130,000.00 (one hundred and thirty thousand United States dollars) for the non-pecuniary damage suffered by José Agapito Ruano Torres; b) US\$ 35,000.00 (thirty-five thousand United States dollars) for the non-pecuniary damage suffered by María Maribel Guevara de Ruano; c) US\$ 20,000.00 (twenty thousand United States dollars) for the non-pecuniary damage suffered by Oscar Manuel Ruano Guevara; d) US\$ 20,000.00 (twenty thousand United States dollars) for the non-pecuniary damage suffered by Keily Lisbeth Ruano Guevara, and e) US\$ 10,000.00 (ten thousand United States dollars) for the non-pecuniary damage suffered by Pedro Torres Hércules.

E. Costs and expenses

Arguments of the parties

252. The **representatives** requested an amount for procedural costs incurred at the domestic level and for processing the case before the Inter-American Commission. The **Commission** did not comment on this matter.

253. The **State** recognized its obligation to pay the victim's costs and expenses "having [...] declared its international responsibility," and asked the Court to confirm that such expenses were "properly and sufficiently justified and proven."

Considerations of the Court

254. The Court will not order payment of costs and expenses in favor of the victims since the expenses for processing the case at the domestic level and before the Inter-American Commission were considered under the heading of consequential damages (*supra* paras. 244 and 245).

255. As it has done in other cases,³⁰³ in the stage of monitoring compliance with this Judgment, the Court may order the State to reimburse the victims or their representatives for subsequent expenses, provided these are reasonable and duly proven.

³⁰⁰ Cf. *Case of Bulacio v. Argentina. Merits, reparations and costs*. Judgment of September 18, 2003. Series C No. 100, para. 98, and *Case of Vélez Loor v. Panama, supra*, para. 313.

³⁰¹ Cf. *Case of Tibi v. Ecuador, supra*, para. 244, and *Case of Vélez Loor v. Panama, supra*, para. 313.

³⁰² Cf. *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Reparations and costs, supra*, para. 84, and *Case of Liakat Ali Alibux v. Suriname. Preliminary objections, merits, reparations and costs*. Judgment of January 30, 2014. Series C No. 276, para. 156.

³⁰³ Cf. *Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia. Merits, reparations and costs*. Judgment of September 1, 2010. Series C No. 217, para. 291, and *Case of Gonzales Lluy et al. v. Ecuador, supra*, para. 421.

F. Victims' Legal Assistance Fund

256. In 2008, the General Assembly of the Organization of American States created the Legal Assistance Fund of the Inter-American Human Rights System, in order to "facilitate access to the inter-American human rights system by persons who currently lack the resources needed to bring their cases before the system."³⁰⁴ In the instant case the Court granted the necessary financial assistance from the Fund to cover the costs of: i) travel to El Salvador by the inter-American Defender to interview the alleged victims, as appropriate, and provided that these costs have been duly proven; ii) travel and accommodation necessary for the two inter-American Defenders to attend the public hearing and represent the alleged victims; iii) travel and accommodation necessary for José Agapito Ruano Torres to appear at the hearing to give a statement; iv) formalization and sending of the affidavits of Pedro Torres Hércules and María Maribel Guevara de Ruano, as well as the affidavit of the expert witness Diana Lourdes Miranda Guerrero, and v) other reasonable and necessary expenses incurred, or that may be incurred, by the inter-American Defenders, for which they must forward to the Court both the justification of such expenses and the relevant receipts, at the latest with the presentation of the final written arguments, this being the last procedural opportunity to do so, unless the President or the Court grants another procedural opportunity.

257. The State was granted an opportunity to present its observations on the disbursements made in the instant case, which totaled US\$ 4,555.62 (four thousand, five hundred and fifty-five United States dollars and sixty-two cents). However, El Salvador did not present observations within the time granted for that purpose (*supra* para. 12).

Considerations of the Court

258. In application of Article 5 of the Rules of the Fund, the Court will now consider whether it is appropriate to order the respondent State to reimburse the Victims' Legal Assistance Fund of the Inter-American Court for the disbursements made in this case.

259. By virtue of the violations declared in this Judgment and given that the requirements to access the Fund have been met, the Court orders the State to reimburse the Fund in the amount of US\$ 4,555.62 (four thousand five hundred and fifty-five United States dollars and sixty-two cents) for the necessary expenses incurred to facilitate the appearance of the deponents and of the inter-American Defenders at the public hearing in this case, as well as for the formalization and sending of the affidavits. Said amount must be reimbursed within ninety days from notification of this Judgment.

G. Method of compliance with the payments ordered

260. The State must pay compensation for pecuniary and non-pecuniary damage as established in this Judgment directly to the individuals indicated therein, within one year of notification of this Judgment, in the terms specified in the corresponding paragraphs.

261. In the event that the beneficiaries die before the respective compensation has been received, payment must be made directly to their heirs, in accordance with applicable domestic law.

³⁰⁴ AG/RES. 2426 (XXXVIII-O/08), Resolution adopted by the OAS General Assembly during the XXXVIII Regular Session of the OAS, in the fourth plenary session, held on June 3, 2008, "Creation of the Legal Assistance Fund of the Inter-American System of Human Rights," Operative paragraph 2.a), and CP/RES. 963 (1728/09), Resolution adopted on November 11, 2009 by the Permanent Council of the OAS, "Rules for the Operation of the Legal Assistance Fund of the Inter-American System of Human Rights", Article 1(1).

262. The State must comply with its pecuniary obligations through payment in United States dollars.

263. If, for reasons that can be attributed to the beneficiaries of the compensation, it is not possible to pay the amounts established within the term indicated, the State must deposit said amounts in an account or certificate of deposit in a solvent Salvadorian financial institution, in United States dollars, and on the most favorable financial terms permitted by law and banking practice of the State. If, after ten years, the amount assigned has not been claimed, the amounts will be returned to the State with the accrued interest.

264. The amounts allocated in this Judgment as compensation must be paid in full to the persons indicated, as established in this Judgment, without any deductions derived from possible taxes or charges.

265. If the State should fall into arrears, including with the reimbursement of expenses to the Victims' Legal Assistance Fund, it must pay interest on the amount owed, corresponding to bank interest on arrears in the Republic of El Salvador.

IX OPERATIVE PARAGRAPHS

266. Therefore,

THE COURT

DECIDES,

Unanimously,

1. To accept the acknowledgment of responsibility made by the State, in the terms of paragraphs 15 to 37 of this Judgment.

DECLARES,

Unanimously, that:

2. The State is responsible for the violation of the right to personal integrity and the prohibition of torture, recognized in Article 5(1) and 5(2) of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of José Agapito Ruano Torres, pursuant to paragraphs 118 to 123 of this Judgment.

3. The State is responsible for the failure to guarantee the right to personal integrity recognized in Article 5(1) and 5(2), in relation to Article 1(1) of the American Convention on Human Rights, with regard to the obligation to investigate acts of torture, to the detriment of José Agapito Ruano Torres, pursuant to paragraphs 124 to 125 of this Judgment.

4. The State is responsible for the violation of the right to the presumption of innocence, recognized in Article 8(2) of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of José Agapito Ruano Torres, pursuant to paragraphs 126 to 135 of this Judgment.

5. The State is responsible for the violation of the right to judicial protection, recognized in Article 25(1) of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of José Agapito Ruano Torres, pursuant to paragraphs 136 to 139 of this Judgment.

6. The State is responsible for the violation of the right to personal liberty, recognized in Article 7(1), 7(3) and 7(6) of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of José Agapito Ruano Torres, pursuant to paragraphs 140 to 146 of this Judgment.

7. The State is responsible for the violation of the right to defense and a hearing with guarantees of due process, recognized in Articles 8(1), 8(2)(d) and 8(2)(e) of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of José Agapito Ruano Torres, pursuant to paragraphs 150 to 175 of this Judgment.

8. The State is responsible for the violation of the right to personal integrity, recognized in Article 5(1) of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of María Maribel Guevara de Ruano, Oscar Manuel Ruano Guevara, Keily Lisbeth Ruano Guevara and Pedro Torres Hércules, pursuant to paragraphs 176 to 188 of this Judgment.

AND ORDERS

Unanimously, that:

9. This Judgment is, *per se*, a form of reparation.

10. The State must initiate and conduct, within a reasonable time, an effective investigation and prosecution of the acts committed in violation of Article 5(2) of the Convention against Mr. José Agapito Ruano Torres, to determine the possible criminal responsibilities and, where appropriate, apply the sanctions and consequences established by law, pursuant to paragraphs 197 to 199 of this Judgment.

11. The State must take steps to determine, within a reasonable time, through the competent public institutions, the possible responsibility of the officials of the Office of the Public Defender whose actions contributed to the violation of the rights of José Agapito Ruano Torres and, where appropriate, apply the penalties contemplated by law, pursuant to paragraphs 203 to 205 of this Judgment.

12. The State must take all the necessary steps to implement the measures established in paragraph 211 of this Judgment and, therefore, must proceed to annul all the consequences derived from the conviction handed down in criminal trial No. 77-2001-2 against José Agapito Ruano Torres, together with any judicial, administrative, criminal or police records related to that proceeding, in accordance with paragraphs 209 to 212 of this Judgment.

13. The State must provide immediately and free of charge, through its specialized health care institutions, adequate and effective psychological and/or psychiatric treatment, if requested, with prior informed consent, including the free supply of any medications that may eventually be required, pursuant to paragraphs 215 to 216 of this Judgment.

14. The State must award scholarships to José Agapito Ruano Torres and his family members, namely, María Maribel Guevara de Ruano, Oscar Manuel Ruano Guevara, Keily Lisbeth Ruano Guevara and Pedro Torres Hércules, to attend Salvadorian public institutions. The scholarships must cover all their educational costs until the conclusion of their advanced studies, whether these are of a technical or academic nature, pursuant to paragraph 219 of this Judgment.

15. The State must issue the publications indicated in paragraph 222 of this Judgment.

16. The State must display a plaque in a visible place at the Office of the Public Defender in order to raise institutional awareness and prevent the repetition of facts such as those that occurred in this case, pursuant to paragraph 225 of this Judgment.

17. The State must implement, within a reasonable time and with the respective budget allocation, compulsory and permanent programs or courses on the principles and standards for the protection of human rights, and particularly the international norms established regarding the effective investigation and documentation of torture and other cruel, inhuman, or degrading treatment, directed at personnel of the National Civil Police and of the Office of the Attorney General of the Republic, pursuant to paragraphs 229 to 231 of this Judgment.

18. The State must take steps to reinforce, within a reasonable time, systems for the selection of public defenders to ensure the appointment of persons who meet the requirements of suitability and proven technical capacity, and to implement controls through protocols to ensure efficacy in the administration of the public defense in criminal matters, pursuant to paragraph 234 of this Judgment.

19. The State must implement, within a reasonable time, training programs, if these do not already exist, or strengthen existing programs, in order to establish a continuous training system for public defenders, supported with the adequate budget allocations, pursuant to paragraph 235 of this Judgment.

20. The State must pay the amounts stipulated in paragraphs 243, 245 and 251 of this Judgment, as compensation for pecuniary and non-pecuniary damage, pursuant to paragraphs 260 to 265 of this Judgment.

21. The State must reimburse the Victims' Legal Assistance Fund of the Inter-American Court of Human Rights for the amount disbursed during the processing of this case, in accordance with paragraph 259 of this Judgment.

22. The State must submit to the Court, within one year of notification of this Judgment, a report on the steps taken to comply with this Judgment.

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

Judge Humberto Antonio Sierra Porto advised the Court of his concurring opinion, which accompanies this Judgment. Judge Eduardo Ferrer Mac-Gregor Poisot adhered to this concurring opinion.

Done in Spanish at San José, Costa Rica, on October 5, 2015.

Judgment of the Inter-American Court of Human rights, Case of Ruano Torres et al. v. El Salvador, Merits, Reparations and Costs.

Humberto Antonio Sierra Porto
President

Roberto F. Caldas

Manuel E. Ventura Robles

Diego García-Sayán

Alberto Pérez Pérez

Eduardo Vio Grossi

Eduardo Ferrer Mac-Gregor Poisot

Pablo Saavedra Alessandri
Secretary

So ordered,

Humberto Sierra Porto
President

Pablo Saavedra Alessandri
Secretary

CONCURRING OPINION OF JUDGE HUMBERTO ANTONIO SIERRA PORTO

**JUDGMENT OF OCTOBER 5, 2015
INTER-AMERICAN COURT OF HUMAN RIGHTS**

IN THE CASE OF RUANO TORRES ET AL. V. El Salvador

1. I concur with the legal arguments on which the Court has based its decision in this Judgment, and which accepts the State's partial acknowledgement of international responsibility and determines that it is responsible for the violation, to the detriment of José Agapito Ruano Torres, of the right to personal integrity and the prohibition of torture, to personal liberty and the presumption of innocence, the right to defense and to a hearing with due guarantees, and the right to judicial protection, as well as the failure to ensure the right to personal integrity in relation to the obligation to investigate the acts of torture, recognized in Articles 5(1), 5(2), 7(1), 7(3), 7(6), 8(1), 8(2), 8(2)(d), 8(2)(e) and 25(1) of the American Convention on Human Rights (hereinafter also "the American Convention" or "the Convention") in relation to Article 1(1) thereof.

2. However, I consider it appropriate to offer some additional thoughts regarding the Inter-American Court's decision to admit the acknowledgment of international responsibility by the State of El Salvador in this case. In this opinion, I wish to pose some questions: Can the Inter-American Court decline to accept the State's acknowledgment of responsibility based on certain legal claims? Even if the State has acknowledged that it violated a specific right, can the Inter-American Court decide that such violation was not configured? Can the State, through an acknowledgment of responsibility that contradicts a judicial ruling, persuade the Inter-American Court to revoke decisions taken without any type of evident or proven irregularity by the country's highest court? In order to clarify and reinforce my position on these questions, I offer this concurring opinion regarding the scope, the assessment and the legal effects that the State's acknowledgment of responsibility could have in this specific case.

3. In the instant case, the State's acquiescence was formulated in broad and general terms. In relation to the factual aspects, the State accepted all the facts included in the Merits Report of the Commission. As to the legal claims, the State specified that it also accepted the conclusions reached in the Merits Report.

4. The regulatory provisions that govern acquiescence indicate that "[i]f the respondent informs the Court of its acceptance of the facts or its total or partial acquiescence to the claims stated in the presentation of the case or the brief submitted by the alleged victims or their representatives, the Court shall decide, having heard the opinions of all those participating in the proceedings and at the appropriate procedural moment, whether to accept that acquiescence, and shall rule upon its juridical effects."¹ Therefore, the actual wording of the provision indicates that the Court must decide both on the appropriateness of a State's acquiescence and on its juridical effects, "bearing in mind its responsibility to protect human rights."² Accordingly, it is possible to affirm that the Court is not constrained to accept an acknowledgment of responsibility, but must analyze the terms under which

¹ Article 62 of the Rules of the Court.

² Article 64 of the Rules of the Court.

it was offered from the perspective of the object and purpose of the treaty, which is “the protection of the fundamental rights of human beings”³ and fully assess its scope and juridical effects.

5. Indeed, the Court has emphasized that it is incumbent upon this Court to ensure that acts of acquiescence are acceptable for the purposes of the inter-American system, so that:

In this task, it is not restricted to merely confirming, recording or taking note of the State’s acquiescence, or to verifying the formal conditions of the said acts, but it must relate them to the nature and severity of the violations that have been alleged, the demands and interests of justice, the particular circumstances of the specific case, and the attitude and position of the parties, in order to clarify, to the extent possible and in the exercise of its jurisdiction, the truth of what happened.⁴

6. Therefore, it is clear that the basis for a judgment against a State that has made an acknowledgment of responsibility must be the veracity of the facts upon which it is based; in other words, the Court must verify the facts of the specific case.

7. In this regard, I wish to clarify that I start from the premise that when a State makes an acknowledgement of international responsibility it is acting in good faith. However, based on the situation raised in the case *sub judice*, I consider it important to offer some guidelines that should guide the decisions of the Court regarding the appropriateness of a State’s acknowledgment of responsibility and its effects on the specific case, when such a position implies, in practice, contradicting or opposing a judicial ruling issued by the domestic courts and could result in a decision by the Inter-American Court that would annul those taken at the domestic level:

a) The State’s acquiescence in the instant case is reasonable because, in principle, there is no evidence of any political connotation or intention other than to do justice in the case of a specific person who performed a function or activity that did not provoke any concern.

b) In the second place, there is no evidence of elements of a “covert pardon.”

c) The irregularities mentioned in this case do not generate concern in terms of veracity, given the specific connotations of the case.

d) It is not the task of the Court to overturn the decisions of the domestic courts, based solely and exclusively on the State’s acquiescence, since whenever there is an acknowledgement of responsibility it is essential that the Court analyze the facts on which the State’s action is based.

e) A judgment delivered at the domestic level may only be revoked or annulled when there are elements of conviction or certainty regarding the factual elements that determine the will of the State.

8. Based on the aforementioned considerations I express my agreement with the decision adopted by the Court in the instant case, inasmuch as it was appropriate to accept the acknowledgment of responsibility made by the State of El Salvador.

³ *The Effect of Reservations on the Entry into Force of the American Convention on Human Rights* (Arts. 74 and 75). Advisory Opinion OC-2/82 of September 24, 1982. Series A No. 2, para. 29, and ***Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection. Advisory Opinion OC-21/14 of August 19, 2014. Series A No. 21, para. 53.***

⁴ Paragraph 21 of the Judgment.

Humberto Antonio Sierra Porto

Judge

Pablo Saavedra Alessandri
Secretary

Judge Eduardo Ferrer Mac-Gregor Poisot adhered to the Opinion of Judge Humberto Antonio Sierra Porto.

Eduardo Ferrer Mac-Gregor Poisot

Judge

Pablo Saavedra Alessandri
Secretary