

**INTER-AMERICAN COURT OF HUMAN RIGHTS<sup>1</sup>**  
**CASE OF RUIZ FUENTES *ET AL.* V. GUATEMALA<sup>\*\*</sup>**  
**JUDGMENT OF OCTOBER 10, 2019**  
***(Preliminary objection, merits, reparations and costs)***

In the case of *Ruiz Fuentes et al.*,

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

Eduardo Ferrer Mac-Gregor Poisot, President,  
Eduardo Vio Grossi, Vice President,  
Humberto Antonio Sierra Porto,  
Elizabeth Odio Benito,  
L. Patricio Pazmiño Freire, and  
Ricardo Pérez Manrique,

also present,

Pablo Saavedra Alessandri, 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, 62, 65 and 67 of the Rules of Procedure of the Court (hereinafter “the Rules of Procedure” or “the Court’s Rules of Procedure”), delivers this judgment structured as follows.

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<sup>1</sup> Judge Eugenio Raúl Zaffaroni excused himself from taking part in this case, pursuant to Article 21 of the Court’s Rules of Procedure, and this was accepted by the full Court..

<sup>\*\*</sup> At the request of the presumed victims’ representatives, and by decision of the full Court meeting during its 131<sup>st</sup> regular session, the identity of the members of Hugo Humberto Ruiz Fuentes’ family has been kept confidential.

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**I**  
**INTRODUCTION OF THE CASE AND CAUSE OF ACTION**

1. *The case submitted to the Court.* On November 30, 2017, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or “the Commission”) submitted to the jurisdiction of the Inter-American Court the case of “Hugo Humberto Ruiz Fuentes and family members” against the Republic of Guatemala (hereinafter “the State of Guatemala,” “the Guatemalan State,” “the State” or “Guatemala”). According to the Commission the case relates to an alleged series of violations of due process committed in the context of the criminal proceedings instituted against Mr. Ruiz Fuentes for the crime of kidnapping that culminated in the imposition of the death penalty, as well as to the alleged torture inflicted during his arrest, and the alleged extrajudicial execution of Mr. Ruiz Fuentes following his escape from prison in 2005. The Commission also concluded that the State had violated his right to life by imposing the death sentence in proceedings that failed to respect due process and because it had expanded the conducts punishable by the death penalty in a way that was contrary to Article 4(2) of the American Convention. In addition, the Commission concluded that the State had treated the victim in a cruel, inhuman and degrading manner because he had remained on “death row” for more than 6 years and 5 months awaiting the execution of his sentence. Furthermore, the Commission determined that, despite the complaints that were filed, the Guatemalan State had not conducted an investigation into the alleged torture of Mr. Ruiz Fuentes. It also concluded that the criminal investigation into the victim’s death had been neither diligent nor effective to clarify the facts within a reasonable time.

2. *Procedure before the Commission.* The procedure before the Commission was as follows:

- a) *Petition.* On January 2, 2003, the representatives (acting as the petitioners) presented the initial petition before the Commission.
- b) *Provisional measures.* At the Commission’s request, on August 30, 2004, the Court decided to require the State of Guatemala to “adopt, forthwith, the necessary measures to protect the life of Ronald Ernesto Raxcacó Reyes, Hugo Humberto Ruiz Fuentes, Bernardino Rodríguez Lara and Pablo Arturo Ruiz Almengor in order not to obstruct the processing of their cases before the inter-American system for the protection of human rights.”<sup>2</sup> On November 8, 2005, the State informed the Court that, in October 2005, nineteen prisoners, including Mr. Ruiz Fuentes, had escaped from the high security prison in Escuintla. On November 16, 2005, the petitioners reported that, during his capture, Mr. Ruiz Fuentes had been executed. Therefore, on July 4, 2006, the Court decided to lift the provisional measures adopted in his favor.<sup>3</sup>
- c) *Admissibility Report.* On March 5, 2008, the Commission adopted Admissibility Report No. 14/08, in which it concluded that the petition was admissible.<sup>4</sup>
- d) *Merits Report.* On July 30, 2017, the Commission adopted Merits Report No. 94/17, pursuant to Article 50 of the Convention (hereinafter also “the Merits Report” or “Report No. 94/17”), in which it reached a series of conclusions,<sup>5</sup> and made several recommendations to the State.

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<sup>2</sup> *Cf. Case of Raxcacó Reyes and others with regard to Guatemala. Provisional measures.* Order of the Inter-American Court of Human Rights of August 30, 2004, first operative paragraph.

<sup>3</sup> *Cf. Case of Raxcacó Reyes and others with regard to Guatemala. Provisional measures.* Order of the Inter-American Court of Human Rights of July 4, 2006.

<sup>4</sup> This was notified to the parties on March 24, 2008. In the report, the Commission decided that the petition was admissible with regard to the alleged violation of the rights recognized in Articles 4, 5, 8(1), 11(1) and 25 of the American Convention, all in relation to Article 1(1) of this instrument, and Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, to the detriment of Hugo Humberto Ruiz Fuentes. *Cf. Admissibility Report No. 14/07, Case of Hugo Humberto Ruiz Fuentes v. Guatemala*, of March 5, 2008 (evidence file, folios 2269 to 2284).

<sup>5</sup> The Commission concluded that the State of Guatemala was responsible for “the violation of the rights to life, personal integrity, judicial guarantees and judicial protection established in Articles 4(1), 4(2), 4(6), 5(1), 5(2), 8(1), 8(2)(c), (f), (g) and (h), and 25(1) of the American Convention in relation to the obligations established in Articles 1(1) and 2 of this

e) *Notification to the State.* The Merits Report was notified to the State on August 30, 2017. The Guatemalan State failed to present a response within the time frame indicated by the Commission.

3. *Submission to the Court.* On November 30, 2017, the Commission submitted to the jurisdiction of the Inter-American Court all the facts and human rights violations described in the Merits Report "owing to the need to obtain justice and reparation."<sup>6</sup>

4. *The Inter-American Commission's requests.* Based on the foregoing, the Commission asked the Court to declare the international responsibility of the State for the violations indicated in its Merits Report. The Commission also asked the Court to order the State to adopt measures of reparation and these are described and analyzed in Chapter IX of this judgment.

## II PROCEEDINGS BEFORE THE COURT

5. *Notification to the representatives and to the State.* The Court notified the Commission's submission of the case to the presumed victims' representatives<sup>7</sup> (hereinafter "the representatives") and to the State on February 12, 2018.

6. *Brief with pleadings, motions and evidence.* On April 13, 2018, the representatives submitted to the Court their brief with pleadings, motions and evidence (hereinafter "the pleadings and motions brief"). The representatives were in substantial agreement with the allegations made by the Commission and asked the Court to declare the international responsibility of the State for the violation of the same articles that the Commission alleged had been violated and, also, Article 7(1), 7(2), 7(3), 7(4) and 7(5), in relation to Article 1(1) of the American Convention, to the detriment of Hugo Humberto Ruiz Fuentes. In addition, through their representatives, the alleged victims requested access to the Victims' Legal Assistance Fund of the Inter-American Court (hereinafter "the Court's Legal Assistance Fund" or "the Fund"). Lastly, the representatives asked the Court to order the State to adopt diverse measures of reparation and to reimburse certain costs and expenses.

7. *Answering brief.* On August 14, 2018, the State submitted to the Court its brief answering the Inter-American Commission's submission of the case and its Merits Report and the representatives' brief with pleadings, motions and evidence (hereinafter "the answering brief"). In this brief, the State filed a preliminary objection of *res judicata* and contested the alleged violations and the requests for measures of reparation.

8. *Observations on the preliminary objection.* On October 4, 2018, the Commission presented its observations on the preliminary objection filed by the State. On October 18, 2018, the representatives submitted their respective observations.

9. *Victims' Legal Assistance Fund.* In a communication of the Court's Secretariat of October 12, 2018, the alleged victims' request, through their representatives, to access the Court's Legal Assistance Fund was declared admissible.

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instrument, to the detriment of Hugo Humberto Ruiz Fuentes." The Commission also concluded that the State had violated "the right to personal integrity, judicial guarantees and judicial protection established in Articles 5(1), 8(1) and 25(1) of the American Convention in relation to the obligations established in Article 1(1) of this instrument, to the detriment of the family members of Hugo Humberto Ruiz Fuentes." Lastly, the Commission concluded that the State had violated "Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture."

<sup>6</sup> The Commission appointed Commissioner Luis Ernesto Vargas Silva and Executive Secretary Paulo Abrão as its delegates before the Court. In addition, it appointed Elizabeth Abi-Mershed, Deputy Executive Secretary at the time, and also Silvia Serrano Guzmán, Executive Secretariat lawyer, as legal advisers.

<sup>7</sup> The Center for Justice and International Law (CEJIL) and the *Instituto de Estudios Comparados en Ciencias Penales de Guatemala* (ICCPG) represented the alleged victims in this case.

10. *Public hearing.* In an order of February 14, 2019,<sup>8</sup> the President called the State, the representatives and the Inter-American Commission to a public hearing to receive their final oral arguments and observations on the preliminary objection and possible merits, reparations and costs, and also to receive the statements of one deponent and one witness proposed by the representatives and the opinions of three expert witnesses proposed by the representatives and by the Commission. The public hearing took place on March 5 and 6, 2019, during the 130<sup>th</sup> regular session of the Court held at its seat.<sup>9</sup>

11. *Amicus curiae.* On March 22, 2019, the Court received an *amicus curiae* brief submitted by the Human Rights Clinic of the Law Faculty at the Universidad de Santa Clara.<sup>10</sup>

12. *Final written arguments and observations.* On April 5, 2019, the representatives and the State forwarded their respective final written arguments, together with several annexes, and the Commission presented its final written observations.

13. *Deliberation of the case.* The Court began deliberating on this judgment on October 9, 2019.

### III JURISDICTION

14. The Court has jurisdiction to hear this case, pursuant to Article 62(3) of the Convention, because Guatemala has been a State Party to the American Convention since May 25, 1978, and accepted the contentious jurisdiction of the Court on March 9, 1987.

### IV PRELIMINARY OBJECTION

#### A. *Arguments of the parties and of the Commission*

15. The **State** argued that the circumstances described in this case were in conformity with domestic laws in force at the time of the events. It added that the criminal proceedings against Mr. Ruiz Fuentes constituted *res judicata*, because the representatives of the alleged victim had exhausted all the remedies under domestic law in force at the time of the events, which had been heard and decided promptly by the corresponding judicial organs. It also indicated that it had never executed the death penalty imposed on Mr. Ruiz Fuentes, because this had been commuted to the maximum term of imprisonment.

16. The **Commission** considered that the State's position did not constitute a preliminary objection but, fundamentally, related to an issue corresponding to the merits of the matter.

17. The **representatives** endorsed the Commission's opinion.

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<sup>8</sup> Cf. *Case of Ruiz Fuentes v. Guatemala. Call to a hearing.* Order of the President of the Inter-American Court of February 14, 2017. Available at: [http://www.corteidh.or.cr/docs/asuntos/ruiz\\_fuentes\\_14\\_02\\_19.pdf](http://www.corteidh.or.cr/docs/asuntos/ruiz_fuentes_14_02_19.pdf)

<sup>9</sup> There appeared at this hearing: (a) for the Inter-American Commission: Commissioner Luis Ernesto Vargas Ilva and legal adviser Silvia Serrano Guzmán; (b) for the representatives of the presumed victims: for the *Instituto de Estudios Comparados en Ciencias Penales de Guatemala* (ICCPG), Alejandro Rodríguez, and for the Center for Justice and International Law (CEJIL), Marcela Martino, Gisela de León, Paola Limón, Luisa Gómez and Camila Ormar, and (c) for the State of Guatemala: the President of COPREDEH Jorge Luis Borrayo Reyes, the Executive Director of COPREDEH, Felipe Sánchez González, the Director of Public Defenders, Carla Gabriela Morales, the legal advisers of the Directorate for Monitoring International Cases, Steffany Rebeca Vásquez and Rafael Eduardo Bran and the prosecutor from the Public Prosecution Service, Carlos Alberto de León Moreno.

<sup>10</sup> The brief, signed by Francisco J. Rivera Juaristi, as Director of the Clinic, related to the death row phenomenon and the right to personal integrity.

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

18. The Court recalls that preliminary objections are acts by which a State seeks to prevent the analysis of the merits of a contested matter in a preliminary manner. To this end, it may file an objection to the admissibility of a case or to the jurisdiction of the Court to hear a specific case of any of its aspects, due either to the person, the matter, the time or the place, provided that its arguments are of a preliminary nature.<sup>11</sup> If those arguments cannot be considered without first examining the merits of a case, they cannot be examined by means of a preliminary objection.<sup>12</sup>

19. The Court considers that the arguments presented do not constitute a preliminary objection, because they do not explain why the case submitted would be inadmissible or the Court without jurisdiction to hear it. Consequently, the Court declares the preliminary objection filed by the State inadmissible.

## **V PRELIMINARY CONSIDERATIONS**

### **A. The victims in this case**

#### *a.1 Arguments of the State and observations of the representatives*

20. The **State** contested the inclusion of certain family members of Mr. Ruiz Fuentes as presumed victims in this case. In particular, the State indicated that the Commission had identified Mr. Ruiz Fuentes' sister as the only family member and as a victim in this case and, according to the Court's Rules of Procedure and its case law, this disqualified others from being considered an injured party and, consequently, from being considered beneficiaries of possible measures of reparation.

21. The **representatives** indicated that the members of Mr. Ruiz Fuentes' family who should be considered victims in this case are his sister, W.E.R.V (Mr. Ruiz Fuentes' daughter) and A.M.V. (his partner). They indicated that the Commission had expressly recognized Mr. Ruiz Fuentes' sister in its Merits Report. Regarding the other two family members, they argued that they had been able to locate them after the case had been submitted to the Court, and had obtained the corresponding powers of attorney. In their final written arguments, the representatives indicated that the failure to identify them previously was due to their fears for their safety if they took part in the process to seek justice and the proceedings before the Court. The representatives considered that the said circumstances warranted the Court adopting a more flexible position in relation to the determination of the victims in this case.

22. The **Commission** did not present observations in this regard.

#### *a.2 Considerations of the Court*

23. Regarding the identification of presumed victims, the Court recalls that Article 35(1) of the Court's Rules of Procedure establishes that the case will be submitted by the presentation of the Merits Report, which must identify the alleged victims. Thus, it corresponds to the Commission to identify the alleged victims in a case before the Court precisely and at the proper procedural moment,<sup>13</sup> subject to the exceptional circumstances established in Article 35(2) of the Court's Rules

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<sup>11</sup> Cf. *Case of Las Palmeras v. Colombia. Preliminary objections*. Judgment of February 4, 2000. Series C No. 67, para. 34, and *Case of Muelle Flores v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of March 6, 2019. Series C No. 375, para. 20.

<sup>12</sup> Cf. *Case of Castañeda Gutman v. Mexico. Preliminary objections, merits, reparations and costs*. Judgment of August 6, 2008. Series C No. 184, para. 39, and *Case of Muelle Flores v. Peru, supra*, para. 20.

<sup>13</sup> Cf. *Case of the Ituango Massacres v. Colombia. Preliminary objection, merits, reparations and costs*. Judgment of July 1, 2006. Series C No. 148, para. 98 and *Case of Gorioitía v. Argentina. Preliminary objection, merits, reparations and costs*.

of Procedure, according to which when it can be justified that it had not been possible to identify them, in cases of massive or collective violations, the Court will decide whether to consider such individuals as victims based on the nature of the violation.<sup>14</sup>

24. The Court notes that none of the exceptions established in Article 35(2) of the Court's Rules of Procedure are constituted in the instant case. Consequently, owing to the provisions of Article 35(1) of the Rules of Procedure and the precedents in which this Court has ruled in this regard,<sup>15</sup> the Court concludes that it will only consider Hugo Humberto Ruiz Fuentes and his sister as alleged victims in this case, and it is not appropriate to admit the other family members as alleged victims.

### **B. Determination of the factual framework**

25. The Court notes that, in their pleadings and motions brief, the representatives referred to numerous facts<sup>16</sup> that allegedly violated Article 7(1), 7(2), 7(3), 7(4) and 7(5) of the Convention, in relation to Article 1(1) of this instrument.<sup>17</sup> They also alleged that Article 5(1) and (2) had been violated owing to the absence of adequate medical care and the prison conditions to which Mr. Ruiz Fuentes was subjected.<sup>18</sup>

26. The Court has established that the factual framework of the proceedings before it consists of the facts contained in the Merits Report submitted to its consideration.<sup>19</sup> Therefore, it is not admissible to allege new facts that differ from those described in the said report, without prejudice to describing facts that explain, clarify or reject those mentioned in the application, or that respond to the claims of the applicant (also called "supplementary facts"). The exception to this principle are those facts that are classified as supervening, and these can be submitted to the Court at any stage of the proceedings prior to the delivery of the judgment.<sup>20</sup>

27. In the instant case, the Court notes that the Commission did not include the facts alleged by the representatives in relation to the alleged violation of Article 7 and Article 5 (regarding the alleged inadequate medical care provided to Mr. Ruiz Fuentes) within the factual framework or as a substantial consideration. Therefore, the Court determines that it will not rule on the said facts alleged by the representatives. Furthermore, the Court will not refer to the legal arguments made

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Judgment of September 2, 2019. Series C No. 382, para. 25.

<sup>14</sup> 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. 48, and *Case of Martínez Coronado v. Guatemala. Merits, reparations and costs*. Judgment of May 10, 2019. Series C No. 376, para. 18.

<sup>15</sup> Cf. *Case of Omeara Carrascal et al. v. Colombia. Merits, reparations and costs*. Judgment of November 21, 2018. Series C No. 368, paras. 55 and 56, and *Case of Martínez Coronado v. Guatemala, supra*, para. 19.

<sup>16</sup> In general, these facts refer to the alleged unlawful and arbitrary detention of Mr. Ruiz Fuentes that failed to respect the guarantees contained in Article 7(4) and (5) of the American Convention (violation of Articles 7(1), 7(2), 7(3), 7(4) and 7(5) of the American Convention, in relation to Article 1(1) of this instrument).

<sup>17</sup> The representatives argued that: (i) the detention of Mr. Ruiz Fuentes was unlawful and arbitrary; (ii) he was not informed of the reasons for his detention and the charges against him, and (iii) his detention was not subject to judicial control.

<sup>18</sup> The representatives indicated that the State of Guatemala had not provided adequate medical care to Mr. Ruiz Fuentes while he was deprived of liberty. They indicated that the second intervention required by Mr. Ruiz Fuentes to close his colostomy bag and re-establish his intestinal transmit had been delayed several weeks. They added that all the unjustified delays in providing Mr. Ruiz Fuentes with the postoperative care he needed caused the victim to develop an infection in the wound that resulted in health problems that required additional medical treatment in Roosevelt Hospital. The representatives also indicated that the prison conditions to which Mr. Ruiz Fuentes was subject were extremely severe and contrary to human dignity, and highlighted, among others: overcrowding, poor nutrition, serious deficiencies in the basic hygiene infrastructure, absence of an acceptable medical and psychological service to counteract the anguish and stress from which he suffered, very few education and work opportunities and, also, severe restrictions on visits.

<sup>19</sup> That is: (1) the detention of Mr. Ruiz Fuentes and the alleged acts of torture; (2) the alleged flaws in the context of the criminal proceedings; (3) the imposition of the death sentence; (4) the subsequent death of Mr. Ruiz Fuentes, and (5) the alleged violations of the personal integrity of Mr. Ruiz Fuentes' sister.

<sup>20</sup> Cf. *Case of Vera Vera et al. v. Ecuador. Preliminary objection, merits, reparations and costs*. Judgment of May 19, 2011. Series C No. 226, para. 32, and *Case of Villamizar Durán et al. v. Colombia. Preliminary objection, merits, reparations and costs*. Judgment of November 20, 2018. Series C No. 364, para. 49.



by the representatives based on those facts and, therefore, the supposed violations of Articles 1(1), 5(1), 5(2), 7(1), 7(2), 7(3), 7(4) and 7(5) that the representatives indicated in this regard.

## VI EVIDENCE

### A. *Admissibility of the documentary evidence*

28. The Court received diverse documents presented as evidence by the Commission, the representatives and the State, as well as those requested by the Court or its President as helpful evidence and, as in other cases, it admits them in the understanding that they were presented at the appropriate procedural moment (Article 57 of the Rules of Procedure)<sup>21</sup> and that their admissibility was neither contested nor challenged.

29. On February 27, 2019, following the submission of their pleadings and motions brief, the representatives forwarded as supervening evidence, probative material on alleged facts that occurred after their pleadings and motions brief had been submitted. The said documents were not contested by the State. The Court notes that they refer to supervening facts and therefore accepts them pursuant to Article 57(2) of the Rules of Procedure.

30. In addition, the representatives forwarded additional documentation together with their final written arguments.<sup>22</sup> The Court notes that the representatives failed to justify, pursuant to Article 57(2) of the Court's Rules of Procedure, why they presented annex 5 together with their final written arguments because the appropriate procedural moment to present this was with their pleadings and motions brief. Regarding the other annexes provided by the representatives, the Court notes that they refer to supervening facts and, therefore, admits them pursuant to Article 57(2) of the Rules of Procedure.

31. For its part, the State provided the report entitled "*Orden de servicio tipo misión No. 116-2005, 'Operación Gavilán'*" together with its final arguments. The Court notes that this document was already included in the case file;<sup>23</sup> consequently, it does not find it necessary to make a separate ruling on its admissibility.

32. The Court notes, however, that the State failed to present specific helpful evidence that it had requested during the public hearing. In a communication of May 3, 2019, the Court asked the State to present "documents relating to the arrest warrant [for the victim] and all the measures that support it." The Court notes that the State failed to present any document in response to this request.

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<sup>21</sup> In general and pursuant to Article 57(2) of the Rules of Procedure, the documentary evidence may be presented together with the brief submitting the case, the pleadings and motions brief, or the answering brief, as applicable, and evidence forwarded outside these procedural opportunities is not admissible, subject to the exceptions established in the said Article 57(2) of the Rules of Procedure (namely, *force majeure* or grave impediment) or if it relates to a supervening fact; that is, one that occurred after the said procedural moments. Cf. *Case of the Barrios Family v. Venezuela. Merits, reparations and costs*. Judgment of November 24, 2011. Series C No. 237, paras. 17 and 18, and *Case of Muelle Flores v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of March 6, 2019. Series C No. 375, para. 38.

<sup>22</sup> Namely: (i) Indictment of March 6, 2019, of the Public Prosecution Service for the crime of extrajudicial execution under case file MP:M3542-2005-4338; (ii) Concluding observations on the seventh periodic report of Guatemala by the Committee against Torture, CAT/C/GTM/CO/7, of November 23, 2018; (iii) "*Informe Anual circunstanciado de actividades y de la situación de los Derechos Humanos de 2018*" [Detailed annual report on the situation of human rights, 2018], prepared by the Guatemalan Ombudsman; (iv) documents supporting expenses and costs incurred by CEJIL, and (v) birth certificates of Herbert Ruiz Marroquín, Jenyfer Ruiz Marroquín and Hugo Ruiz Marroquín.

<sup>23</sup> Cf. Annex No. 18 to the Merits Report of the Commission (evidence file, folios 225 to 230).

## **B. Admissibility of the testimonial and expert evidence**

33. The Court finds it pertinent to admit the statements and expert opinions provided during the public hearing<sup>24</sup> and by affidavit,<sup>25</sup> insofar as they are in keeping with the purpose defined by the President in the order requiring them.<sup>26</sup>

34. In addition, the Court notes that, in its final written arguments, the State questioned the probative value of the expert opinion provided by expert witness Guillermo Austreberto Carranza Izquierdo, and the joint expert opinion provided by Parvais Jabbar and Edward Fitzgerald. In particular, regarding the expert opinion of Mr. Carranza Izquierdo, it indicated that this professional had had no contact with Mr. Ruiz Fuentes, and had merely examined the documents contained in the case file. It added that Mr. Carranza Izquierdo did not have the “necessary qualifications to provide this type of expert opinion” because he had made assertions that could only be made by criminalistics experts, while this expert witness only had a diploma in forensic medicine. Regarding the joint expert opinion provided by Parvais Jabbar and Edward Fitzgerald, in addition to refuting some of their assertions, the State indicated that these expert witnesses failed to refer to certain facts it considered relevant.<sup>27</sup> The Court will take these arguments into account and will make the clarifications required to decide this case when addressing the contested facts.

## **VII FACTS**

35. In this chapter, the Court will establish the facts of the case based on the factual framework submitted to its consideration by the Inter-American Commission in relation to: (a) the legal framework for the death penalty; (b) the detention of Mr. Ruiz Fuentes and the arguments concerning torture; (c) the criminal proceedings against Mr. Ruiz Fuentes; (d) the escape from “*El Infiernito*” prison and subsequent death of Mr. Ruiz Fuentes, and (e) the investigation conducted as a result of his death.

### **A. The Guatemalan legal framework for the death penalty**

36. The death penalty is established in both the Constitution and the criminal laws of Guatemala. Article 18 of the Guatemalan Constitution establishes the possibility of imposing the death penalty.<sup>28</sup> Also, article 43 of the Criminal Code in force in 1997 stipulated:

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<sup>24</sup> During the public hearing the Court received the statements of A.M.V. and Jorge Santos, and the expert opinion of Guillermo Austreberto Carranza.

<sup>25</sup> The Court received the affidavits made by: Mr. Ruiz Fuentes’ sister, W.E.R.V. and Benedicto Tenas, proposed by the representatives; expert witnesses Juan Cristóbal Aldana, Leonel González and Edgar René Celada Quezada, proposed by the representatives, and expert witnesses Parvais Jabbar and Edward Fitzgerald, proposed by the Commission.

<sup>26</sup> The purpose of all these statements was established in the order of the President of the Inter-American Court of February 14, 2019. Available at: [http://www.corteidh.or.cr/docs/asuntos/ruiz\\_fuentes\\_14\\_02\\_19.pdf](http://www.corteidh.or.cr/docs/asuntos/ruiz_fuentes_14_02_19.pdf)

<sup>27</sup> In particular, the State indicated that the expert witnesses “failed to mention that this sentence was commuted for imprisonment. They also failed to mention the fact that, after several attempts, Mr. Ruiz Fuentes was finally able to escape from the prison; consequently, he was not in the custody of the State. Furthermore, they did not refer to the true facts of the case: the crimes against a child committed by Mr. Ruiz Fuentes. Consequently, the expert opinions is intentionally biased.”

<sup>28</sup> Constitution of the Republic of Guatemala decreed by the Constituent Assembly, May 31, 1985, amended by referendum, Legislative Decision 18-93.

Article 18. Death penalty. The death penalty may not be imposed in the following cases.

- a. Based on presumptions;
- b. On women
- c. On those over sixty years of age;
- d. On those convicted of political crimes and common crimes related to political crimes, and
- e. On those convicted and whose extradition has been granted under this condition.

All pertinent legal remedies, including cassation, shall be admissible against a sentence imposing the death penalty; the remedy of cassation shall always be admitted for processing. The sentence shall be executed after all remedies have been exhausted.

The Congress of the Republic may abolish the death penalty.

The death penalty is exceptional in nature and may only be imposed in the cases expressly established by law and shall only be executed after all legal remedies have been exhausted.

The death penalty may not be imposed:

1. For political crimes.
2. When the conviction is based on presumptions.
3. On women.
4. On men over seventy years of age.
5. On those whose extradition has been granted under this condition.

In such cases, and provided the death penalty has been commuted to deprivation of liberty, the maximum term of imprisonment shall be applied.<sup>29</sup>

37. On May 25, 1978, Guatemala deposited the instrument ratifying the American Convention. At that time, Legislative Decree No. 17/73 (Criminal Code) was in force and its article 201 established the death penalty as a punishment for the crime of abduction or kidnapping when the person abducted died at the time of, or owing to, this unlawful act. The same crimes, which did not result in death, were punished with eight to fifteen years' imprisonment:

The abduction or kidnapping of a person in order to obtain a ransom, an exchange for third persons or other unlawful purpose of the same or similar nature, shall be punished by eight to fifteen years' imprisonment.

The death penalty shall be imposed on the perpetrator when the person concerned dies during or owing to the abduction or kidnapping.<sup>30</sup>

38. As relevant to this case, the said article 201 of the Guatemalan Criminal Code has been amended three times. The first amendment was introduced on April 26, 1994, by Legislative Decree No. 38/94, which prescribed the death penalty for cases in which the person kidnapped was under twelve or over sixty years of age, and when the person kidnapped died or suffered serious or very serious injuries or permanent mental or psychological trauma as a result of the abduction. If the perpetrator of the crime showed remorse, the law established the benefit of mitigation of the punishment:

The abduction or kidnapping of a person in order to obtain a ransom, a payment, an exchange for third persons or for any other unlawful or lucrative purpose of the same or similar characteristics and import shall be punished with twenty-five to thirty years' imprisonment.

The death penalty shall be imposed on the perpetrator in the following cases:

- a) if the victims are under twelve or over sixty years of age;
- b) when, owing to or during the abduction or kidnapping, the person abducted suffers serious or very serious injuries, permanent mental or psychological trauma, or dies.

The corresponding punishment may be mitigated if the perpetrator of this crime shows remorse at any stage or provides information that results in a satisfactory outcome to the abduction or kidnapping.<sup>31</sup>

39. The second amendment was introduced on March 16, 1995, by Legislative Decree No. 14/95, which punished anyone guilty of the crime of kidnapping with the death penalty. The amendment excluded all grounds for mitigation of the punishment:

The death penalty shall be imposed on the perpetrators of the crime of abduction or kidnapping of one or more persons in order to obtain a ransom, an exchange of persons, or the taking of any

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<sup>29</sup> Legislative Decree No. 17/73 (Criminal Code) issued by the Congress of the Republic of Guatemala on July 5, 1973.

<sup>30</sup> Legislative Decree No. 17/73 (Criminal Code) issued by the Congress of the Republic of Guatemala on July 5, 1973.

<sup>31</sup> Legislative Decree No. 38/94 issued by the Congress of the Republic of Guatemala on April 26, 1994.

decision against the will of the person kidnapped or for any similar or the same purpose. In such cases, no mitigating circumstance shall apply [...].<sup>32</sup>

40. The third amendment of the said article 201 of the Criminal Code was introduced on September 19, 1996, by Legislative Decree No. 81/96, in force in Guatemala from October 21, 1996, to date. This amendment established the death penalty as the sole punishment applicable to the perpetrators or masterminds of the crime of kidnapping:

The death penalty shall be imposed on the perpetrators or masterminds of the crime of abduction or kidnapping of one or more persons in order to obtain a ransom, an exchange of persons, or the taking of any decision against the will of the person kidnapped or with any other similar or the same purpose and, when this cannot be imposed, twenty-five to fifty years' imprisonment shall be imposed. In this case, no mitigating circumstance shall apply.

Accomplices or accessories after the fact shall be punished with twenty to forty years' imprisonment.

Those sentenced to imprisonment for the crime of abduction or kidnapping may not be granted a reduction of the punishment for any reason.<sup>33</sup>

41. On October 31, 2000, the Constitutional Court of the Republic of Guatemala (hereinafter "the Constitutional Court"), acting as a special court of amparo, issued a ruling in which it questioned the expansion of the application of the death penalty for the crime of kidnapping under the last amendment of the Criminal Code. That court considered:

[...] That the crime punished by the death penalty in article 201 of the Criminal Code before the Pact of San José came into force was a complex crime and its definition included two punishable conducts: (a) the kidnapping of a person, and (b) the death of the victim. That the one crime (kidnapping plus the death of the victim) is a different crime from the other one (simple kidnapping), even though the name has not changed, because the former relates to the protection of the supreme right: to life. In contrast, in the case of the latter, the right protected is individual freedom [...]. Article 201 of the Criminal Code in force when the American Convention on Human Rights became legally binding for the State of Guatemala did not include the death penalty for the crime of abduction or kidnapping that was not followed by the death of the victim.<sup>34</sup>

42. On July 4, 2001, the Constitutional Court changed its opinion in the judgment delivered on the application for amparo filed by Mr. Ruiz Fuentes.<sup>35</sup> At that time, the court indicated, *inter alia*, that "what the legislator has done by the amendments [...] is to extend the application of the punishment – in this case, that of death – based on the criterion of the authorship of those who commit the crime of kidnapping, an extension that is not prohibited by the [American] Convention in its Article 4(2) because it relates to the same crime and does not extend the application of this punishment to other crimes for which this punishment was not established at the date the said Convention came into force."<sup>36</sup>

43. On October 24, 2017, the Constitutional Court, based, *inter alia*, on the considerations of the Court in the case of *Raxcacó Reyes v. Guatemala*,<sup>37</sup> declared the said article 201 unconstitutional

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<sup>32</sup> Legislative Decree No. 14/95 issued by the Congress of the Republic of Guatemala on March 16, 1995.

<sup>33</sup> Legislative Decree No. 81/96 issued by the Congress of the Republic of Guatemala on September 19, 1996.

<sup>34</sup> Cf. Judgment of the Constitutional Court of the Republic of Guatemala, acting as a special court of amparo, of October 31, 2000, File No. 30-2000 (evidence file, folio 1365).

<sup>35</sup> Cf. Application for amparo filed by Hugo Humberto Ruiz Fuentes and J.M.M.R. (evidence file, folios 1339 to 1345), and Judgment of the Constitutional Court of the Republic of Guatemala in File 889-2000 of July 4, 2001 (evidence file, folios 1351 to 1367). See also, *Case of Raxcacó Reyes v. Guatemala. Merits, reparations and costs*. Judgment of September 15, 2005. Series C No. 133, para. 43.6.

<sup>36</sup> Cf. Judgment of the Constitutional Court of the Republic of Guatemala of July 4, 2001, File 889-2000 (evidence file, folio 1365).

<sup>37</sup> Cf. *Case of Raxcacó Reyes v. Guatemala. Merits, reparations and costs*. Judgment of September 15, 2005. Series C No. 133.

considering that it constituted an evident violation of Article 4(2) of the American Convention on Human Rights.<sup>38</sup>

44. Moreover, on June 1, 2000, the Guatemalan Congress replaced Decree No. 159 of 1892 by Legislative Decree No. 32/00,<sup>39</sup> which established the power of the Executive to grant a pardon or commutation of the punishment and regulated the procedure to make this right effective.<sup>40</sup>

### **B. Detention of Mr. Ruiz Fuentes and arguments concerning torture**

45. On August 6, 1997, police superintendent V.S.D. and other officers from the Anti-kidnapping and Extortion Section of the National Civil Police (hereinafter "the National Police" or "the PNC") and from the Rapid Response Force (FRI) arrested Mr. Ruiz Fuentes together with four other individuals during an operation to rescue a child who had been abducted the previous day.<sup>41</sup> The place, manner and time of the arrest are disputed.

46. According to Communication No. 4325-97 of the Criminal Investigations Department, the arrest occurred as a result of several telephone calls it had received indicating that the said individuals were possibly holding a ten-year old child who had been abducted.<sup>42</sup> The communication also indicated that, at 8.30 p.m., members of the Anti-kidnapping and Extortion Section of the National Police and of the Rapid Response Force went to the house and, as they proceeded to surround the house, Ronald Ernesto Raxcacó Reyes and Hugo Humberto Ruiz Fuentes yelled out "the police are coming" and scaled a wall that was around eight meters high, while Mr. Raxcacó Reyes was holding the child.<sup>43</sup> After climbing the wall, they leapt down into a vacant lot, and were then arrested.

47. The communication also indicated that, following his arrest, Mr. Ruiz Fuentes "had numerous injuries," and was therefore taken to Roosevelt Hospital where he was diagnosed with having suffered "polytrauma."<sup>44</sup> The judgment sentencing Mr. Ruiz Fuentes and another four co-defendants for the kidnapping of the child indicated that the injuries suffered by Mr. Ruiz Fuentes resulted from his jumping down from a wall, and stressed that Messrs. Raxcacó Reyes and Ruiz Fuentes, "on noting the presence of the National Civil Police, tried to escape jumping from the wall behind the house where they were caught, and arrested by officers of the National Civil Police who had cordoned off the area."<sup>45</sup>

48. According to the medical report of December 9, 1997, prepared by Roosevelt Hospital specialists, Mr. Ruiz Fuentes was admitted to that hospital on August 6, 1997, due to "acute abdomen."<sup>46</sup> An exploratory laparotomy found signs of "hemoperitoneum" (that is, presence of blood in the peritoneal cavity), "multiple contusions and erosions of the mesentery of the small intestine," "laceration of transverse mesocolon leaving the splenic flexure without a segment of more or less 15

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<sup>38</sup> Cf. Judgment of the Constitutional Court of the Republic of Guatemala of October 24, 2018, File 5986-2016.

<sup>39</sup> Legislative Decree No. 159 issued by the National Legislative Assembly of the Republic of Guatemala, on April 20, 1892.

<sup>40</sup> For further details, see *Case of Raxcacó Reyes v. Guatemala*, *supra*, para. 43.17.

<sup>41</sup> Cf. Communication No. 4325-97 issued by the Criminal Investigations Department of the National Police, of August 6, 1997 (evidence file, folio 5).

<sup>42</sup> Cf. Communication No. 4325-97 issued by the Criminal Investigations Department of the National Police, of August 6, 1997 (evidence file, folio 5).

<sup>43</sup> Cf. Communication No. 4325-97 issued by the Criminal Investigations Department of the National Police, of August 6, 1997 (evidence file, folio 5). See also, Judgment delivered by Guatemala's Sixth Sentencing Court for Drug-trafficking and Environmental Crimes on May 14, 1999 (evidence file, folio 7341).

<sup>44</sup> Cf. Communication No. 4325-97 issued by the Criminal Investigations Department of the National Police, of August 6, 1997 (evidence file, folio 5).

<sup>45</sup> Cf. Judgment delivered by Guatemala's Sixth Sentencing Court for Drug-trafficking and Environmental Crimes on May 14, 1999 (evidence file, folio 7341).

<sup>46</sup> Acute abdomen refers to a serious medical emergency, characterized by signs and symptoms located in the abdominal cavity. See, Medical report No. 492-484 issued by Roosevelt Hospital on December 9, 1997 (evidence file, folio 15).

centimeters," "bleeding greater omentum vessels," and "hepatic trauma G-1 in segment VI."<sup>47</sup> According to another medical report of December 11, 2000, prepared by Roosevelt Hospital's Surgical Unit, Mr. Ruiz Fuentes was "brought in by firemen with a story of having been beaten" and had "numerous abdominal injuries and contusions, abdomen swollen and painful to the touch."<sup>48</sup>

49. Owing to his injuries, Mr. Ruiz Fuentes had to undergo emergency surgery to perform a "resection of a segment of the transverse colon and loop colostomy,"<sup>49</sup> and he remained in hospital for 13 days.<sup>50</sup> On August 18, 1997, the patient was discharged and given an appointment on January 8, 1998, for the colostomy to be closed.<sup>51</sup> However, Mr. Ruiz Fuentes did not attend this appointment.<sup>52</sup> Finally, in February 1998, he was operated on to close the colostomy.<sup>53</sup>

50. The State's version of the facts relating to the injuries suffered by Mr. Ruiz Fuentes is contradictory to his version. On April 29, 1998, he made a statement before the Eighth Criminal Trial Judge<sup>54</sup> in which he indicated that, on the day he was captured, around 4 p.m., he was driving a car with his co-defendant, J.M.M.R., in an area known as Bosques de San Nicolás, when they were intercepted by three vehicles. Mr. Ruiz Fuentes indicated that, at the moment of their capture, unknown individuals "began to beat [his] stomach and ribs and put [him] in a car and hit [him] with a stick that had something like a sponge because [he] only felt pain inside and as a result of this they burst [his] intestine so that [he] had to wear a colostomy bag for seven months."<sup>55</sup> Consequently, during the said procedure, Mr. Ruiz Fuentes' lawyer asked "that an investigation be conducted by the corresponding authority into the reported acts that constitute a crime of torture under article 201(b) of the Criminal Code."<sup>56</sup> During the oral trial held on April 20, 1999, Mr. Ruiz Fuentes reiterated his statement<sup>57</sup> and provided a series of x-rays to prove the injuries he had suffered.<sup>58</sup> Also, his co-defendant, J.M.M.R., stated before the judicial authorities that, on the day of the capture, he was in a car with Mr. Ruiz Fuentes returning from the Bosques de San Nicolás, when they "were intercepted by a car from which two armed men descended and suddenly another vehicle stopped behind [them] and made [them] get out of the car."<sup>59</sup>

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<sup>47</sup> Cf. Medical report No. 492-484 issued by Roosevelt Hospital on December 9, 1997 (evidence file, folio 15). See also, Report of the resident doctor of the Surgical Unit of Roosevelt Hospital of January 20, 1998 (evidence file, folio 17).

<sup>48</sup> Cf. Medical report of the Surgical Unit of Roosevelt Hospital of December 11, 2000 (evidence file, folio 21).

<sup>49</sup> Cf. Report of the resident doctor of the Surgical Unit of Roosevelt Hospital of January 20, 1998 (evidence file, folio 17).

<sup>50</sup> That is, from the time he was admitted on August 6, 1997, until he was discharge on August 18, 1997. Cf. Report of the resident doctor of the Surgical Unit of Roosevelt Hospital of January 20, 1998 (evidence file, folio 17).

<sup>51</sup> Cf. Report of the resident doctor of the Surgical Unit of Roosevelt Hospital of January 20, 1998 (evidence file, folio 17).

<sup>52</sup> Cf. Report of the resident doctor of the Surgical Unit of Roosevelt Hospital of January 20, 1998 (evidence file, folio 17). See also, Report of the Forensic Medicine Department addressed to the Eighth Trial Court for Drug-trafficking and Environmental Crimes of Guatemala of February 13, 1998 (evidence file, folio 19).

<sup>53</sup> Cf. Medical report of the Surgical Unit of Roosevelt Hospital of December 11, 2000 (evidence file, folio 21).

<sup>54</sup> Cf. Statement made by Mr. Ruiz Fuentes before the Eighth Trial Judge for Drug-trafficking and Environmental Crimes on April 29, 1998 (evidence file, folios 8 to 13).

<sup>55</sup> Cf. Statement made by Mr. Ruiz Fuentes before the Eighth Trial Judge for Drug-trafficking and Environmental Crimes on April 29, 1998 (evidence file, folio 11).

<sup>56</sup> Cf. Statement made by Mr. Ruiz Fuentes before the Eighth Trial Judge for Drug-trafficking and Environmental Crimes on April 29, 1998 (evidence file, folio 12).

<sup>57</sup> Cf. Record of hearing C-4-98. Statement made by Hugo Humberto Ruiz Fuentes during the oral and public trial hearings before the Sixth Sentencing Court for Drug-trafficking and Environmental Crimes on April 21, 1999 (evidence file, folios 1142 and 1143).

<sup>58</sup> Cf. Record of hearing C-4-98. Statement made by Hugo Humberto Ruiz Fuentes during the oral and public trial hearings before the Sixth Sentencing Court for Drug-trafficking and Environmental Crimes on April 21, 1999 (evidence file, folio 1143).

<sup>59</sup> J.M.M.R. stated the following: "They were taken to the vehicle behind them [...] the men put them in it; the men did not identify themselves or say why they were being arrested, and only said that it was they who were now being kidnapped; there were other individuals in the van, and they were made to lie face down on the floor and their eyes were covered with grey adhesive tape and also their hands; they were beaten and asked where those who had been kidnapped were. Some time later, they were taken to an unknown destination; they arrived and someone came and took off the tape and said that he was one of the kidnappers. Then they brought in Hugo Humberto Ruiz, who was unconscious, and they said it would be better to take him away because otherwise, he might die there." Cf. Record of hearing C-4-98. Statement made by J.M.M.R. during the oral and public trial hearings before the Sixth Sentencing Court for Drug-trafficking and Environmental Crimes on April 21, 1999 (evidence file, folio 1141).

51. Mr. Ruiz Fuentes also stated that, three days after he was admitted to the hospital, "some men" came and told him that he "should not say that [he] had been beaten, but to say that [his] injuries were the result of having fallen from an eight meter-high wall and that they would help [him] get out in two or three months."<sup>60</sup>

### **C. Criminal proceedings against Mr. Ruiz Fuentes**

#### *c.1 Facts that resulted in the sentence convicting him*

52. On August 5, 1997, at 6.50 a.m., the child, P.A.L.W., was kidnapped by three armed men. In repeated telephone calls, the kidnappers demanded that the child's father pay them one million quetzals for his freedom. On August 6, 1997, the child was found and freed unharmed as the result of an operation carried out by investigators attached to the Anti-kidnapping and Extortion Section of the National Police. During this operation Mr. Ruiz Fuentes and four other individuals were captured and brought before the second criminal magistrate of the municipality of Mixco, Department of Guatemala.<sup>61</sup>

53. Based on those facts, the prosecutor of the Public Prosecution Service charged Mr. Ruiz Fuentes and others with the perpetration of the crime of kidnapping or abduction defined by article 201 of the Criminal Code of Guatemala in force at the time of the events and this initiated the proceedings.<sup>62</sup>

54. The oral and public hearing was scheduled for April 20, 1999. That day, Mr. Ruiz Fuentes' private lawyer abandoned his client. The court appointed another lawyer as Mr. Ruiz Fuentes' defense counsel and postponed the hearing to the following day, giving the latter one day to prepare Mr. Ruiz Fuentes' legal defense.<sup>63</sup>

55. On May 14, 1999, the Sixth Sentencing Court for Drug-trafficking and Environmental Crimes of Guatemala (hereinafter "the Sixth Criminal Sentencing Court") handed down its judgment convicting Mr. Ruiz Fuentes and the other defendants for the kidnapping of the child, P.A.L.W. Mr. Ruiz Fuentes, together with two other defendants (J.M.M.R. and Mr. Raxcacó Reyes) were sentenced to death because they were found responsible as direct perpetrators of the crime of abduction or kidnapping. The other two defendants were convicted of committing the crime of abduction or kidnapping and sentenced to forty and twenty years of "non-commutable imprisonment," respectively.<sup>64</sup>

#### *c.2 Remedies filed*

56. Mr. Ruiz Fuentes and the other two men sentenced to death filed a "special remedy of appeal based on form and substance," against the judgment delivered by the Sixth Criminal Sentencing Court on May 14, 1999.<sup>65</sup> Mr. Ruiz Fuentes founded his appeal by arguing that the sentencing court had found proved facts that differed from those described in the indictment, thus affecting his right of defense.<sup>66</sup> He also indicated that he had been deprived of his right to offer and provide evidence

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<sup>60</sup> Cf. Record of hearing C-4-98. Statement made by Hugo Humberto Ruiz Fuentes during the oral and public trial hearings before the Sixth Sentencing Court for Drug-trafficking and Environmental Crimes on April 21, 1999 (evidence file, folio 1143).

<sup>61</sup> Cf. Judgment delivered by the Sixth Sentencing Court for Drug-trafficking and Environmental Crimes of Guatemala on May 14, 1999 (evidence file, folios 7339 to 7341 and 7334). Mr. Ruiz Fuentes was brought before the courts on August 8, 1997, following a surgical intervention on August 6, 1997. Cf. Interview of Hugo Humberto Ruiz Fuentes at the Zone 18 Detention Center by Alejandro Rodríguez, undated (evidence file, folio 521).

<sup>62</sup> Cf. Judgment delivered by the Sixth Sentencing Court for Drug-trafficking and Environmental Crimes of Guatemala on May 14, 1999 (evidence file, folio 7334).

<sup>63</sup> Cf. Record of hearing C-4-98, Sixth Sentencing Court for Drug-trafficking and Environmental Crimes on April 21, 1999 (evidence file, folios 1135 and 1136).

<sup>64</sup> Cf. Judgment delivered by the Sixth Sentencing Court for Drug-trafficking and Environmental Crimes on May 14, 1999 (evidence file, folio 7203).

<sup>65</sup> Cf. Judgment delivered by the Fourth Chamber of the Appellate Court of Guatemala on September 13, 1999 (evidence file, folio 100).

<sup>66</sup> Cf. Judgment delivered by the Fourth Chamber of the Appellate Court of Guatemala on September 13, 1999 (evidence

during the hearing because, at that stage, the court had notified the parties that they had eight days in which to offer evidence and, owing to an omission of the defense counsel at that time, who had failed to sign and seal the corresponding memorandum, the sentencing court did not process it and, consequently, he was prevented from offering any evidence during the trial.<sup>67</sup> In addition, Mr. Ruiz Fuentes contested the trial court's assessment of the evidence, which allegedly violated the rules of sound legal judgment.<sup>68</sup> Lastly, he argued that the court had unduly applied article 201 of the Criminal Code failing to take into account article 46 of the Constitution and Article 4 of the American Convention, because, when Guatemala ratified the Convention, the death penalty was not established for kidnapping if the victim did not die.<sup>69</sup> On September 13, 1999, the Fourth Chamber of the Appellate Court (hereinafter "the Appellate Court") declared that the special remedy of appeal filed by Mr. Ruiz Fuentes and the other men who had been convicted was inadmissible.<sup>70</sup>

57. On October 12 and November 4, 1999, Mr. Ruiz Fuentes and J.M.M.R. filed a remedy of cassation before the Criminal Chamber of the Supreme Court of Justice (hereinafter "the Supreme Court of Justice") against the judgment of September 13, 1999, handed down by the Appellate Court, arguing flaws of form and substance.<sup>71</sup> On July 20, 2000, the Supreme Court of Justice declared the remedies of cassation filed by Messrs. Ruiz Fuentes, Murga Rodríguez and Raxcacó Reyes inadmissible.<sup>72</sup>

58. On August 29, 2000, Mr. Ruiz Fuentes, together with J.M.M.R., filed an application for amparo against the decision of the Supreme Court of Justice before the Constitutional Court, reiterating the reasons why he considered that the death penalty was inapplicable in his case.<sup>73</sup> On July 4, 2001, the Constitutional Court declared the application for amparo inadmissible.

59. On December 16, 2002, Mr. Ruiz Fuentes filed an application for judicial review before the Criminal Chamber of the Supreme Court of Justice against the final criminal judgment, owing to the imposition of the death penalty "even though the victim did not die."<sup>74</sup> He added that the death penalty was imposed "in violation of several precepts of the American Convention on Human Rights."<sup>75</sup> On December 1, 2003, the Criminal Chamber of the Supreme Court of Justice declared the application for review inadmissible, indicating that "on examining the probative elements provided by the defendant, it finds that they do not comply with the provisions of article 455 of the Code of Criminal Procedure because they do not constitute new probative elements that would be appropriate to substantiate a lesser sentence."<sup>76</sup>

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file, folios 105 and 106).

<sup>67</sup> Cf. Special remedy of appeal filed by Hugo Humberto Ruiz Fuentes ante the Fourth Chamber of the Appellate Court (evidence file, folio 762).

<sup>68</sup> Cf. Special remedy of appeal filed by Hugo Humberto Ruiz Fuentes ante the Fourth Chamber of the Appellate Court (evidence file, folios 768 to 771).

<sup>69</sup> Cf. Judgment delivered by the Fourth Chamber of the Appellate Court of Guatemala on September 13, 1999 (evidence file, folio 108).

<sup>70</sup> Cf. Judgment delivered by the Fourth Chamber of the Appellate Court of Guatemala on September 13, 1999 (evidence file, folios 120 and 121).

<sup>71</sup> Cf. Remedy of cassation file don November 4, 1999 (evidence file, folios 123 to 133).

<sup>72</sup> Regarding the application of Article 4(2) of the Convention, the Supreme Court of Justice indicated that: "At the time the American Convention on Human Rights came into force, the law already established the death penalty, and even with the amendments contained in Decrees 14-95 and 81-96 of the Congress of the Republic, the definition of the crime has not changed because it continues identifying the same conducts that it prohibited previously, and the death penalty was already applicable in certain circumstances. Consequently, the application of the death penalty was not extended to another crime, as prohibited by the said Convention; therefore, there has not been an extensive interpretation of the norm, but rather a literal interpretation. Therefore, the appeal filed in this case is inadmissible." Cf. Judgment of the Supreme Court of Justice of July 20, 2000 (evidence file, folios 135 a 156).

<sup>73</sup> Cf. Application for amparo filed on August 29, 2000 (evidence file, folio 159).

<sup>74</sup> Cf. Application for review No. 23-2002, decision of the Criminal Chamber of the Supreme Court of Justice of December 1, 2003 (evidence file, folio 185).

<sup>75</sup> Cf. Application for review No. 23-2002, decision of the Criminal Chamber of the Supreme Court of Justice of December 1, 2003 (evidence file, folio 197).

<sup>76</sup> Cf. Application for review No. 23-2002, decision of the Criminal Chamber of the Supreme Court of Justice, of December



60. On December 16, 2003, Mr. Ruiz Fuentes filed an appeal for clemency before the Minister of the Interior requesting commutation of the death penalty for the penalty immediately below this of 50 years' imprisonment.<sup>77</sup> There is no record that this appeal was processed or decided.<sup>78</sup>

#### **F. Escape from "El Infiernito" prison and subsequent death of Mr. Ruiz Fuentes**

61. On October 22, 2005, 19 inmates escaped from Annex A of the maximum security prison, Granja Penal Canadá, known as "El Infiernito" [The Little Hell]. With the complicity of prison guards and authorities, they had dug a tunnel of approximately 120 meters in length to the electric fence protecting the perimeter of the premises.<sup>79</sup>

62. The State launched "Operation Gavilán" to recapture the 19 escaped prisoners.<sup>80</sup> The operation was headed by PNC police superintendent V.S.D., with the participation of 16 police officers, divided into eight search teams. Among other matters, the plan of action established that, if any of the prisoners were recaptured, they should be taken "to a secure place with double custody" in order to bring them before the competent authority within the pertinent time frame.<sup>81</sup>

63. On November 14, 2005, Mr. Ruiz Fuentes' body was found on Avenue 0, 5<sup>th</sup> Street, Colonia Monja Blanca de Barberena, Santa Rosa. According to the police record of that date, Mr. Ruiz Fuentes' corpse was lying on the ground on its back with arms and legs outstretched and eyes closed. Twelve members of the PNC Anti-kidnapping Command, headed by police superintendent V.S.D., arrived and took charge of safeguarding the crime scene.<sup>82</sup>

64. Regarding the circumstances surrounding his death, according to the police record of November 14, 2005, "neighbors who refused to give their names for fear of being killed," indicated that Mr. Ruiz Fuentes "was pursued by several unknown individuals with whom he exchanged gunshots" and as a result of this he was "hit by several bullets" which caused his death.<sup>83</sup>

65. According to the autopsy performed on November 15, 2005, the cause of death was "cerebral and pulmonary perforation by puncture wounds from firearm bullets."<sup>84</sup>

#### **E. Investigation and judicial proceedings owing to the death of Mr. Ruiz Fuentes**

66. The investigation into the death of Hugo Humberto was initiated by the Public Prosecution Service of the Santa Rosa district in November 2005 under file No. MP332/2005/4338.<sup>85</sup> The procedures conducted by the State included: (i) taking Mr. Ruiz Fuentes' fingerprints; (ii) taking witness statements; (iii) receiving reports from the Crime Scene Experts Unit, and the Ballistics Section of the Scientific and Technical Department.<sup>86</sup>

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1, 2003 (evidence file, folios 212 and 213).

<sup>77</sup> Cf. Appeal for clemency filed by Mr. Ruiz Fuentes before the Minister of the Interior on December 16, 2003 (evidence file, folios 224).

<sup>78</sup> See, *Case of Raxcacó Reyes v. Guatemala Merits, reparations and costs, supra*, para. 43.18, which indicates that owing to the absence of legal regulation, the appeal for clemency filed by co-convicted Mr. Raxcacó Reyes on May 19, 2004, had not been processed.

<sup>79</sup> Cf. Internal plan of action No. 002-2005, "Operation Gavilán," of October 24, 2005 (evidence file, folio 228).

<sup>80</sup> Cf. Internal plan of action No. 002-2005, "Operation Gavilán," of October 24, 2005 (evidence file, folio 228).

<sup>81</sup> Cf. Internal plan of action No. 002-2005, "Operation Gavilán," of October 24, 2005 (evidence file, folios 227 and 228).

<sup>82</sup> Cf. Police record of November 14, 2005, Procedure No. 1709-2005 (evidence file, folio 233).

<sup>83</sup> Cf. Police record of November 14, 2005, Procedure No. 1709-2005 (evidence file, folio 233).

<sup>84</sup> Cf. Autopsy performed by Dr. Edgar Ricardo Arriola Barrios, Departmental Forensic Physician of the Cuilapa Judicial Body, Santa Rosa, on November 15, 2005 (evidence file, folio 231).

<sup>85</sup> Cf. File of the investigation by the Public Prosecution Service, No. 332/2005/4338 (evidence file, folio 1609).

<sup>86</sup> Cf. Report of the State of Guatemala to the Inter-American Commission on Human Rights with regard to case P652-04-Hugo Humberto Ruiz Fuentes, dated July 24, 2007 (evidence file, folio 1120).

67. The Ballistics Section of the Public Prosecution Service conducted an appraisal to establish the full identification of the firearm that Mr. Ruiz Fuentes was holding in his hand. The appraisal report indicated that "the registration number [of the firearm] had been erased and, therefore, the Fry test had been performed allowing the recovery of the identification number 97321527."<sup>87</sup> According to information provided by a PNC Officer, the weapon belonged to officer E.R.C.C.<sup>88</sup> The Finance and Logistics General Subdirectorate of the PNC General Directorate opened an administrative file against this officer.<sup>89</sup> The case file contains no record of the final result of the investigation.

68. On October 27, 2016, during the procedure before the Commission, the State presented a report with information on the status of the investigations into the death of Mr. Ruiz Fuentes, indicating that, according to the information provided by the Public Prosecution Service's Special Prosecution Office against Impunity (hereinafter "the FECI"), Mr. Ruiz Fuentes had been executed by members of the PNC "simulating an armed confrontation."<sup>90</sup>

69. The State advised that the process was at the "investigation stage" by the FECI.<sup>91</sup>

## **VIII MERITS**

70. In the instant case, the Court must examine the international responsibility of the State for the alleged violation of several rights of the Convention related to the imposition of the death penalty on Mr. Ruiz Fuentes, the alleged torture and cruel and inhuman treated he suffered, the subsequent death of Mr. Ruiz Fuentes, and the alleged violations of due process and the right to judicial protection in the criminal proceedings against him. The Court will now consider and decide on the merits of the dispute. To this end, it will examine: (i) the imposition of the death penalty on Mr. Ruiz Fuentes; (ii) the subsequent death of Mr. Ruiz Fuentes; (iii) the alleged torture suffered by Mr. Ruiz Fuentes at the time of his arrest on August 6, 1997; (iv) the alleged cruel, inhuman and degrading treatment because he was subjected to the phenomenon of the "death row"; (v) the alleged violation of the rights to judicial guarantees and judicial protection and, finally, (vi) the alleged violation of the right to personal integrity of Mr. Ruiz Fuentes' sister.

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<sup>87</sup> Cf. Report of the Ballistics Section of the Public Prosecution Service dated March 28, 2006 (evidence file, folio 335).

<sup>88</sup> Cf. Record No. 80-2005 prepared in police station No. 11 of the National Civil Police, dated November 7, 2005 (evidence file, folio 343).

<sup>89</sup> Cf. Decision of the Finance and Logistics General Subdirectorate of the General Directorate of the National Civil Police of July 10, 2006 (evidence file, folio 343).

<sup>90</sup> In particular, this report indicated: "Mr. H. Ruiz was captured on November 14, 2005, in the municipality of Mixco, Department of Guatemala, and as a result, one of those possibly implicated in the unlawful act, the Director General of the National Police [E.S.V.] was made aware of his recapture. Subsequently, Mr. H. Ruiz was transferred to the municipality of Barberena, Department of Santa Rosa, where he was executed that same day, simulating an armed confrontation with unknown persons. According to the official PNC report on the death of Mr. H. Ruiz, there was information that the deceased had been pursued by unknown individuals, with whom he had an armed confrontation which resulted in his death. However, [...] the Ministry of the Interior paid the reward offered indicating that this was granted for information provided by several individuals that led to the discovery of Mr. H. Ruiz who, when the law enforcement agents tried to capture him, put up opposition and was gunned down [...], a version that contradicts the police report. It should be noted that, according to witnesses, [V.S.D.] and the PNC Director General at the time, [E.S.V.,] were seen at the scene of the crime. [...] In a ruling of August 14, 2008, issued by the Trial Court for Drug-trafficking and Environmental Crimes of the Department of Santa Rosa, Cuilapa, the arrest was ordered of [E.R.C.C.], accused of the crime of extrajudicial execution; however, to date this has not been carried out." Cf. Report of the State of Guatemala to the Inter-American Commission on Human Rights in case 12,650 Hugo Humberto Ruiz Fuentes dated October 27, 2016 (evidence file, folios 2568 to 2570).

<sup>91</sup> Cf. Report of the State of Guatemala to the Inter-American Commission on Human Rights in case 12,650 Hugo Humberto Ruiz Fuentes dated October 27, 2016 (evidence file, folio 2569). See also, the State's response to a question posed by Judge Pérez Manrique concerning the information that the State had on the actual status of the investigation into the death of Mr. Ruiz Fuentes; it stated that "the process is at an intermediate stage and, therefore, it is not appropriate that the Court examine that case because the investigation has not yet concluded" (Cf. Statement provided by the State during the public hearing before the Inter-American Court on March 5, 2019). See also, newspaper article in "La Hora" entitled "Ejecuciones y Tortura: Jueza autoriza a sindicatos presenciar entrevista a las víctimas" [Executions and torture; judge authorizes accused to be present at interviews with the victims] of December 11, 2018, available at: <https://lahora.gt/ejecuciones-y-tortura-jueza-autoriza-a-sindicados-presenciar-entrevista-a-las-victimas/>

**VIII-1**  
**RIGHT TO LIFE DUE TO THE IMPOSITION OF THE DEATH PENALTY ON MR. RUIZ**  
**FUENTES<sup>92</sup>**

71. In this chapter, the Court will examine the arguments concerning the imposition of the death penalty, as well as the access to a pardon or an appeal for clemency that would permit commutation of the sentence.

**A. Arguments of the parties and of the Commission**

72. With regard to the imposition of the death penalty, the **Commission** stressed that article 201 of the Guatemalan Criminal Code was applied and the Court has already examined this in previous cases. Accordingly, it concluded that the State was responsible for imposing the death penalty on Mr. Ruiz Fuentes for a conduct that was not established as warranting the death penalty when the State ratified the American Convention. The Commission also considered that the domestic courts had failed to examine the problem of the automatic application of the death penalty. Lastly, the Commission recalled that Mr. Ruiz Fuentes presented an appeal for clemency before the Ministry of the Interior and that, at the time the case was submitted, the State failed to provide any information indicating that the appeal had been decided, merely indicating that, when the petition was lodged before the Commission, this procedure was in progress and, therefore, this remedy needed to be exhausted.

73. Regarding the death sentence, the **representatives** argued that this sentence was delivered in contravention of the provisions of the Convention because it was imposed based on the provisions of article 201 of the Guatemalan Criminal Code. They indicated that the Court had already referred to the application of this article in the case of *Raxcacó Reyes v. Guatemala* in which it established that article 201 was applied “disregarding the limitation imposed by Article 4(2) of the American Convention that the death penalty may be imposed only for the most serious crimes.” The representatives concluded that, since the instant case refers to the same facts as those of the case of *Raxcacó Reyes v. Guatemala*, and that the same rules were applied in both cases and the two men were convicted for the same crime, the Court should rule similarly.

74. Lastly, with regard to the appeal for clemency made by Mr. Ruiz Fuentes, they mentioned that this was not processed due to the lack of appropriate regulations. In their final written arguments, the representatives underlined that the State had argued that, in the case of Mr. Ruiz Fuentes, his sentence had been commuted to the maximum term of imprisonment, offering as evidence that, at this date, Mr. Raxcacó Reyes remains in prison. In this regard, they stressed that the death penalty imposed on Mr. Raxcacó Reyes was commuted in 2007 as a result of the judgment delivered by this Court in the case of *Raxcacó Reyes v. Guatemala*; in other words, two years after Mr. Ruiz Fuentes was presumably extrajudicially executed.

75. Regarding the imposition of the death penalty on Mr. Ruiz Fuentes, the **State** argued that this punishment was “modified and/or commuted for the maximum term of imprisonment” in compliance with the provisions of the American Convention. Additionally, it mentioned that this modification was also applied to Ronald Ernesto Raxcacó Reyes, co-perpetrator of the crime committed by Mr. Ruiz Fuentes.

76. Regarding the appeal for clemency, the State indicated that this had not been decided owing to the inexistence of a relevant procedure. It indicated that, following the escape and death of Mr. Ruiz Fuentes, the appeal ceased to have a purpose. It added that it had not been necessary to decide the appeal for clemency presented by Mr. Ruiz Fuentes because the punishment had already been commuted to imprisonment.

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<sup>92</sup> Article 4 of the American Convention.

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

77. The Court will examine the alleged violations of the right to life based on the proceedings that culminated in the imposition of the death penalty on Mr. Ruiz Fuentes, as well as the alleged inexistence of an appeal for clemency that would have allowed him to request an amnesty, pardon or commutation of the sentence. The Court will make its analysis as follows:

### *b.1 Imposition of the death penalty*

78. In order to examine the alleged violation of the right to life of Hugo Humberto Ruiz Fuentes owing to the imposition of the death penalty, it should be recalled that, recently, in the case of *Martínez Coronado v. Guatemala*,<sup>93</sup> the Court emphasized that in the exceptional cases in which States are permitted to apply the death penalty, this possibility is subject to a series of strict limitations.<sup>94</sup> On the one hand, it has been established that the death penalty may only be imposed for the most serious crimes (Article 4(2)) and, on the other, it is absolutely excluded in the case of political offenses or related common crimes (Article 4(4)). The fact that the American Convention reduces the possible sphere of application of the death penalty to the most serious crimes reveals its purpose of considering this punishment applicable only in exceptional circumstances.<sup>95</sup>

79. The Court notes that article 201 of the Criminal Code of Guatemala in force at the time was applied in the instant case and, on this basis, Mr. Ruiz Fuentes was convicted of the crime of abduction or kidnapping. In the case of *Raxcacó Reyes v. Guatemala*, this Court has already had the opportunity to make a specific ruling on the application of the said article 201 of the Criminal Code, as well as on its content and the amendments that were introduced. In this regard, the Court notes that, in the judgment handed down by the Sixth Criminal Sentencing Court on May 14, 1999, that sentenced Mr. Ruiz Fuentes to the death penalty, Mr. Raxcacó Reyes was also convicted of exactly the same acts.<sup>96</sup> Therefore, the Court can reiterate the analysis it made in the case of *Raxcacó Reyes*, insofar as the factual framework and legal analysis that resulted in the imposition of the death penalty were the same.<sup>97</sup>

#### *b.1.1) Expansion of the list of crimes punished with the death penalty*

80. The Court underlines that Article 4 of the Convention incorporates an abolitionist trend towards the death penalty which is reflected in its second paragraph which prohibits its extension "to crimes to which it does not presently apply" and, according to its paragraph 3, "[t]he death penalty shall not be reestablished in States that have abolished it." The objective sought is to advance towards a definitive prohibition of this type of criminal punishment by means of a gradual and irreversible process to be undertaken by the States that have signed the American Convention. Thus, the decision of a State Party to the American Convention to abolish the death penalty, whenever this is adopted, becomes, *ipso jure*, a final and irrevocable decision. In this regard, the Convention aims at its gradual elimination, by adopting the necessary safeguards to definitively restrict its application and its scope, so that these are gradually reduced until this punishment is totally eliminated.<sup>98</sup>

81. This abolitionist trend is reflected in the Protocol to the American Convention on Human Rights

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<sup>93</sup> Cf. *Case of Martínez Coronado v. Guatemala. Merits, reparations and costs*. Judgment of May 10, 2019. Series C No. 376.

<sup>94</sup> Cf. *Case of Martínez Coronado v. Guatemala, supra*, para. 62.

<sup>95</sup> Cf. *Case of Martínez Coronado v. Guatemala, supra*, para. 62.

<sup>96</sup> Cf. Judgment delivered by the Sixth Sentencing Court for Drug-trafficking and Environmental Crimes of Guatemala on May 14, 1999 (evidence file, folios 7138 to 7204).

<sup>97</sup> Cf. Judgment delivered by the Sixth Sentencing Court for Drug-trafficking and Environmental Crimes of Guatemala on May 14, 1999 (evidence file, folios 7138 to 7204).

<sup>98</sup> Cf. *Case of Martínez Coronado v. Guatemala, supra*, para. 63.

to Abolish the Death Penalty.<sup>99</sup> The Court notes that thirteen States<sup>100</sup> have signed the Protocol to the American Convention on Human Rights to Abolish the Death Penalty, and have accepted its jurisdiction and abolished the death penalty. This Court urges those States that have not yet done so, to sign the Protocol and to proscribe this type of criminal sanction.

82. The Court notes that, when Guatemala ratified the American Convention, Decree No. 17/73 (Criminal Code) was in force and its article 201 sanctioned kidnapping followed by the death of the victim with the death penalty:

The abduction or kidnapping of a person in order to obtain a ransom, an exchange for third persons or other unlawful purpose of the same or similar nature, shall be punished by eight to fifteen years' imprisonment.

The death penalty shall be imposed on the perpetrator when the person concerned dies during or owing to the abduction or kidnapping

83. The article was amended on several occasions and, finally, it was the provision established by Legislative Decree No. 81/96 of September 25, 1996, that was applied to the alleged victim. This established the imposition of the death penalty for the perpetrators and masterminds of the crime of abduction or kidnapping, thus eliminating the stipulation of the subsequent death of the victim:

The death penalty shall be imposed on the perpetrators or masterminds of the crime of abduction or kidnapping of one or more persons in order to obtain a ransom, an exchange of persons, or the taking of any decision against the will of the person kidnapped or with any other similar or the same purpose and, when this cannot be imposed, twenty-five to fifty years' imprisonment shall be imposed. In this case, no mitigating circumstance shall apply.

Accomplices or accessories after the fact shall be punished with twenty to forty years' imprisonment.

Those sentenced to imprisonment for the crime of abduction or kidnapping may not be granted a reduction of the punishment for any reason.<sup>101</sup>

84. To establish whether the amendment introduced into the definition of the crime of abduction or kidnapping by Legislative Decree No. 81/96 entailed an "extension" of the application of the death penalty, prohibited by Article 4(2) of the American Convention, it should be recalled that the definition of the crime limits the scope of the criminal prosecution, delimiting the juridical conduct.<sup>102</sup>

85. The Court notes that the action described in the first paragraph of Article 201 of Legislative Decree No. 17/73 (Criminal Code) corresponded to the abduction or fraudulent detention of a person for a specific purpose (obtaining a ransom, an exchange for third persons, or other unlawful purpose). Thus, this crime basically protects individual freedom. The act mentioned in the second paragraph of the article included a further element: in addition to abduction or detention, the death, in any circumstances, of the victim; this protected the right to life. Consequently, a distinction is made

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<sup>99</sup> Cf. Protocol to the American Convention on Human Rights to Abolish the Death Penalty. Signatories and ratifications. Available at: <http://www.oas.org/juridico/english/sigs/a-53.html>.

<sup>100</sup> The thirteen States that have signed and ratified the Protocol to the American Convention on Human Rights to Abolish the Death Penalty under the inter-American system are: Argentina, Costa Rica, Dominican Republic, Ecuador, Honduras, Mexico, Nicaragua, Panama, Paraguay, Uruguay and Venezuela, together with another two that have ratified the Protocol with a reservation on the application of the death penalty in wartime and for extremely serious crimes of a military nature: Brazil and Chile. Cf. Protocol to the American Convention on Human Rights to Abolish the Death Penalty. Signatories and ratifications.

<sup>101</sup> The phrase "and, when this cannot be imposed," refers to article 43 of the same Criminal Code, which establishes that:  
The death penalty may not be imposed:  
1. For political crimes.  
2. When the conviction is based on presumptions.  
3. On women.  
4. On men over seventy years of age.

<sup>102</sup> Cf. *Case of Raxcacó Reyes v. Guatemala*, *supra*, para. 63.

between simple kidnapping and kidnapping aggravated by the victim's death. In the former, the punishment of deprivation of liberty was applied; in the latter, the death penalty.<sup>103</sup>

86. The Court also notes that article 201 of Legislative Decree No. 81/96, which was applied in the sentencing of Mr. Ruiz Fuentes, defines a single conduct at the time the crime was committed: the abduction or detention of a person for a specific purpose. The act of killing the person is not included in the definition of this crime, which protects individual freedom, not life, and provides for the imposition of the death penalty on the kidnapper. Although the *nomen iuris* of kidnapping or abduction remained unaltered from the time Guatemala ratified the Convention, the factual assumptions contained in the corresponding crime definitions changed substantially, until it made it possible to apply the death penalty for actions that were not punishable by this sanction previously. This involved the violation of Article 4(2) of the American Convention, because if a different interpretation were accepted, this would allow a crime to be substituted or altered with the inclusion of new factual assumptions, despite the express prohibition to extend the death penalty contained in Article 4(2).<sup>104</sup> This has been corroborated by the Constitutional Court of Guatemala which, on October 24, 2017, handed down a judgment in which, *inter alia*, it declared the said article 201 unconstitutional, considering that it signified an evident violation of Article 4(2) of the American Convention on Human Rights.<sup>105</sup>

*b.1.2) Mandatory and automatic imposition of the death penalty*

87. The Court also notes that, in the Guatemalan Criminal Code, the provisions concerning the crime of abduction or kidnapping require the application of the death penalty automatically and in general to the perpetrators of this unlawful act. In this regard, it is pertinent to recall that the United Nations Human Rights Committee has considered that the "system of mandatory capital punishment would deprive the accused of his right to life without considering whether, in the particular circumstances of the case, this exceptional form of punishment is compatible with the provisions of the International Covenant on Civil and Political Rights."<sup>106</sup>

88. As in the case of *Raxcacó Reyes v. Guatemala*, the Court notes that, as it was written, the said article 201 of the Criminal Code had the effect of subjecting those accused of the crime of abduction or kidnapping to criminal proceedings in which the particular circumstances of the crime and of the accused, such as the criminal record of the accused and of the victim, the motive, the extent and intensity of the harm caused, the possible mitigating or aggravating circumstances, were not considered – by any court. The Court concludes that, when certain laws make it mandatory to impose the death penalty automatically, this does not permit distinctions to be made between degrees of seriousness and individual circumstances of the particular crime for which the penalty is imposed, which is incompatible with the limitation of capital punishment to the most serious crimes, as established in Article 4(2) of the Convention.<sup>107</sup>

89. Based on the foregoing, the Court concludes that the application of article 201 of the

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<sup>103</sup> Cf. *Case of Raxcacó Reyes v. Guatemala*, *supra*, para. 64.

<sup>104</sup> Cf. *Case of Raxcacó Reyes v. Guatemala*, *supra*, paras. 65 and 66.

<sup>105</sup> Cf. Judgment of the Constitutional Court of the Republic of Guatemala, of October 24, 2018, File 5986-2016.

<sup>106</sup> Cf. UN, Human Rights Committee, *Kennedy v. Trinidad and Tobago* (Communication No. 845/1999), UN Doc. CCPR/C/74/D/845/1998 of March 28, 2002, para. 7.3; UN, Human Rights Committee, *Thompson v. Saint Vincent and the Grenadines* (Communication No. 806/1998), UN Doc. CCPR/C/70/D/806/1998 of December 5, 2000, para. 8.2; UN, Human Rights Committee, *Pagdayawon Rolando v. The Philippines* (Communication 1110/2002), UN Doc. CCPR/C/82/D/1110/2002, para. 5.2.

<sup>107</sup> Cf. *Case of Boyce et al. v. Barbados. Preliminary objection, merits, reparations and costs*. Judgment of November 20, 2007. Series C No. 16, paras. 54 and 55 and 108. See also, United Nations, Human Rights Council, Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and of the Secretary-General, of September 14, 2018, A/HRC/39/19, para. 24, and United Nations, Economic and Social Council, Report of the Secretary-General, "Capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty," E/2015/49, para. 63.

Guatemalan Criminal Code under which Mr. Ruiz Fuentes was sentenced violated Article 4(2) of the Convention in relation to Article 1(1) of this instrument.<sup>108</sup> Regarding the alleged violation of Article 4(1) of the Convention in relation to the imposition of the death penalty, the Court notes that this was never executed, because the alleged victim died due to circumstances other than the eventual execution of the death sentence. Therefore, it considers that the State did not violate Article 4(1) of the Convention, in relation to Article 1(1) of this instrument, without prejudice to the Court making the corresponding analysis and determinations in the following chapter on the right to life.

*b.2 Right to appeal for clemency, a pardon or commutation of sentence*

90. On December 16, 2003, Mr. Ruiz Fuentes filed an appeal for clemency before the Guatemalan Minister of the Interior requesting commutation of the death penalty that had been imposed for the penalty immediately below this of fifty-years' imprisonment. Both the file before the Court and the evidence provided by the parties and the Commission reveal that the Ministry of the Interior failed to process this appeal. Moreover, although in its final written arguments the State indicated that it had commuted Mr. Ruíz Fuentes' punishment for the maximum term of imprisonment, it did not provide the necessary evidence for the Court to be able to verify this assertion.

91. That said, the Court recalls that it has already ruled in this regard in the cases of *Fermín Ramírez v. Guatemala* and *Raxcacó Reyes v. Guatemala*, and indicated that the abrogation of Decree No. 159 of 1892 (*supra* para. 44) resulted in the elimination of the power granted to a State organ to hear and decide the right to clemency stipulated in Article 4(6) of the Convention,<sup>109</sup> a right that also forms part of the international *corpus juris*.<sup>110</sup> Therefore, the Court considered that the State had failed to comply with the obligation derived from Article 4(6) of the Convention, in relation to Articles 1(1) and 2 of this instrument.<sup>111</sup> In the instant case, the Court reaches a similar conclusion.

*b.3 Violation of Article 2 of the American Convention*

92. In relation to the preceding considerations, the Court recalls that Article 2 of the American Convention obliges the States Parties to adopt, in accordance with their constitutional processes and the provisions of the Convention, such legislative or other measures as may be necessary to give effect to the rights or freedoms protected by the Convention. It must be reaffirmed that the obligation to adapt domestic law is only met when the necessary and appropriate reforms have been made.<sup>112</sup>

93. In this case, the Court finds that the State failed to comply with Article 2 of the Convention because article 201 of the Guatemalan Criminal Code, which punished any form of abduction or kidnapping with the mandatory death penalty and expanded the number of crimes sanctioned with this punishment, violated this provision of the Convention.<sup>113</sup> Also, and as previously indicated (*supra* para. 91), the lack of domestic legislation to give effect to the right to apply for amnesty, pardon or commutation of sentence, pursuant to Article 4(6) of the American Convention, constituted a further failure to comply with its Article 2.

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<sup>108</sup> Cf. *Mutatis mutandis*, *Case of Raxcacó Reyes v. Guatemala*, *supra*, paras. 81 and 82.

<sup>109</sup> Cf. *Case of Fermín Ramírez v. Guatemala. Merits, reparations and costs*, *supra*, para. 107, and *Case of Raxcacó Reyes v. Guatemala*, *supra*, para. 85.

<sup>110</sup> Cf. *Case of Fermín Ramírez v. Guatemala*, *supra*, para. 109.

<sup>111</sup> Cf. *Case of Fermín Ramírez v. Guatemala*, *supra*, para. 110, and *Case of Raxcacó Reyes v. Guatemala*, *supra*, para. 90.

<sup>112</sup> Cf. *Case of Raxcacó Reyes v. Guatemala*, *supra*, para. 89 and *Case of Palamara Iribarne v. Chile. Merits, reparations and costs*. Judgment of November 22, 2005. Series C No. 135, para. 89.

<sup>113</sup> Cf. *Case of Fermín Ramírez v. Guatemala*, *supra*, para. 110, and *Case of Raxcacó Reyes v. Guatemala*, *supra*, para. 88.

*b.4 Conclusion*

94. Based on the analysis and the determinations made in this chapter, the Court concludes that the State is internationally responsible for the violation of the rights recognized in Article 4(2) and 4(6) of the American Convention, in relation to Articles 1(1) and 2 of this instrument, to the detriment of Hugo Humberto Ruiz Fuentes. In addition, the State is not responsible for the violation of Article 4(1) of the American Convention, in relation to Article 1(1) of this instrument.

**VIII-2  
RIGHT TO LIFE OWING TO THE DEATH OF MR. RUIZ FUENTES<sup>114</sup>**

**A. Arguments of the parties and of the Commission**

95. The **Commission** argued that Mr. Ruiz Fuentes died a violent death by firearms on December 14, 2005, almost two months after his escape from prison. It underscored that there were indications of a cover-up by state agents. The Commission noted that: (i) the internal investigation was able to identify that the gun Mr. Ruiz Fuentes was allegedly holding in his hand belonged to the Ministry of the Interior and, specifically, to an officer who indicated that he had lost his firearm, but had not reported this; (ii) the administrative investigation into this situation failed to yield any results, and (iii) there is no record that the State conducted expert appraisals to prove that Mr. Ruiz Fuentes was the person who fired the gun. Furthermore, it pointed out that the expert evidence indicated that the shot that hit Mr. Ruiz Fuentes in the right eye had tattooing around it, which indicates that it was fired at a short distance. According to the Commission, this was another indication that no confrontation was involved. The Commission added that the State had held contradictory positions during the processing of the case before the inter-American system, and also in the domestic proceedings in relation to the death of Mr. Ruiz Fuentes. The Commission also emphasized that seven of the escaped prisoners died during the execution of "Plan Gavilán" and that, in the domestic sphere, several state agents had been convicted of perpetrating extrajudicial executions in the context of this plan. Consequently, the Commission concluded that Mr. Ruiz Fuentes was extrajudicially executed and, therefore, Guatemala had violated Article 4(1) of the American Convention in relation to Article 1(1) of this instrument.

96. Like the Commission, the **representatives** indicated that the State had provided contradictory versions concerning the death of Mr. Ruiz Fuentes. They also pointed out that, according to the findings of the autopsy and the expert appraisal of the latter, neither of the two bullets that hit the victim was fired in order to capture him or to stave off an attack. The representatives also argued that, as indicated by a forensic medical report of June 3, 2008,<sup>115</sup> the crime scene was deliberately altered and the body of Mr. Ruiz Fuentes was moved from its original position. Regarding the gun found in Mr. Ruiz Fuentes' right hand, they noted that, based on the contents of the said expert appraisal, it was "very difficult, or almost impossible" that Mr. Ruiz Fuente could have continued to hold a weapon. The representatives also pointed out that the gun found in his hand was the property of the Ministry of the Interior, and no explanation had been given to justify finding it in Mr. Ruiz Fuentes' possession.

97. The **State** contested the attribution of responsibility for the death of Mr. Ruiz Fuentes, indicating that no reliable evidence had ever been presented that would allow this conclusion to be reached. It added that it was based on mere presumptions without any factual elements and that neither the Commission nor the representatives of the alleged victims could prove that Mr. Ruiz Fuentes had been deprived of his right to life intentionally.

98. The State also indicated that "Plan Gavilán" (or "Operation Gavilán") had been designed

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<sup>114</sup> Article 4 of the American Convention.

<sup>115</sup> Cf. Expert report of Dr. Guillermo Austreberto Carranza Izquierdo, of June 3, 2008 (evidence file, folios 238 to 249).



exclusively to recapture the individuals who had escaped from the maximum security prison, “*El Infiernito*,” and it included a whole process of guarantees and respect for the human rights established in both domestic and international law. The State denied that this plan had been created in order to kill any of the fugitives.

99. Furthermore, during the public hearing the State argued that it did not contest the fact that Mr. Ruiz Fuentes died a violent death, although that death had not been clarified in the domestic sphere and, therefore, it was not legally viable to define a crime merely on the basis of “assertions concerning the context and conjectures derived from the reports presented by the Commission and the petitioners’ representatives.”

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

100. This Court has established that observance of Article 4, in relation to Article 1(1) of the American Convention, not only supposes that no one will be deprived of their life arbitrarily (negative obligation), but also requires States to adopt all appropriate measures to protect and preserve the right to life (positive obligation), in keeping with the duty to ensure the free and full exercise of human rights to all persons subject to their jurisdiction.<sup>116</sup> Consequently, States have the obligation to guarantee the conditions required to ensure that this inalienable right is not violated and, in particular, the duty to prevent its agents from violating it. This active protection of the right to life by the State involves not only its legislators, but also every state institution and those who should safeguard its security, whether law enforcement agents or the armed forces.<sup>117</sup>

101. The evidence in the case file reveals that Mr. Ruiz Fuentes was found dead from bullet wounds on November 14, 2005, between Avenue 0 and 5<sup>th</sup> Street of Colonia Monja Blanca de Barberena, Santa Rosa.<sup>118</sup> According to the police record of that date, the body of Mr. Ruiz Fuentes was lying on its back with arms and legs outstretched and eyes closed.<sup>119</sup> Mr. Ruiz Fuentes had a gunshot wound in the “right mammary or nipple area” and a gunshot wound in “the region of the right eye socket.”<sup>120</sup> The record also indicated that Mr. Ruiz Fuentes was holding a 6 mm caliber pistol and that 20 shells of unknown caliber and a destroyed bullet of an unknown caliber were found in a doorway of a house located at the crime scene.<sup>121</sup> The record indicates that, according to neighbors who did not wish to identify themselves, Mr. Ruiz Fuentes had been pursued by “several unknown individuals, with whom he exchanged shots” as a result of which he was hit by “several bullets” which killed him.<sup>122</sup> According to the autopsy report of November 15, 2005, the cause of death was “cerebral and pulmonary perforation by puncture wounds from firearm bullets.”<sup>123</sup>

102. However, the circumstances in which Mr. Ruiz Fuentes’ death occurred and whether this can be attributed to the State are contested matters. Consequently, the Court will now examine the plausibility of the hypotheses presented by the Commission and the representatives of the alleged victims, on the one hand, and by the State, on the other, in light of the evidence in the case file.

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<sup>116</sup> Cf. *Case of the “Street Children” (Villagrán Morales et al.) v. Guatemala. Merits*. Judgment of November 19, 1999. Series C No. 63, para. 144, and *Case of Omeara Carrascal et al. v. Colombia. Merits, reparations and costs*. Judgment of November 21, 2018. Series C No. 368, para. 175.

<sup>117</sup> Cf. *Case of the “Street Children” (Villagrán Morales et al.) v. Guatemala, supra*, paras. 144 and 145, and *Case of Omeara Carrascal et al. v. Colombia. Merits, reparations and costs, supra*, para. 175.

<sup>118</sup> Cf. Police record of November 14, 2005, Procedure No. 1709-2005 (evidence file, folio 233), and Autopsy performed by Dr. Edgar Ricardo Arriola Barrios, Departmental Forensic Physician of the Cuilapa Judiciary, Santa Rosa, on November 15, 2005 (evidence file, folio 231).

<sup>119</sup> Cf. Police record of November 14, 2005, Procedure No. 1709-2005 (evidence file, folio 233).

<sup>120</sup> Cf. Police record of November 14, 2005, Procedure No. 1709-2005 (evidence file, folio 233).

<sup>121</sup> Cf. Police record of November 14, 2005, Procedure No. 1709-2005 (evidence file, folio 233).

<sup>122</sup> Cf. Police record of November 14, 2005, Procedure No. 1709-2005 (evidence file, folio 233).

<sup>123</sup> Cf. Autopsy performed by Dr. Edgar Ricardo Arriola Barrios, Departmental Forensic Physician of the Cuilapa Judiciary, Santa Rosa, on November 15, 2005 (evidence file, folio 231).

103. The Court notes, first, that, when Mr. Ruiz Fuentes was found dead he had two wounds caused by firearm bullets. It is pertinent to highlight the autopsy performed in the early morning hours of November 15, 2005, which indicated that the first bullet wound had an entry orifice in the right eye with "a tattooed area around it."<sup>124</sup> The Court notes that this first bullet that hit Mr. Ruiz Fuentes was fired from a short distance and this is due precisely to the presence of a tattooed area around the entry orifice. It is difficult to reconcile this short distance (no more than 15 centimeters<sup>125</sup>) with the State's version that Mr. Ruiz Fuentes died due to an armed confrontation if either the first version of the State (confrontation with unknown persons) or the second version (confrontation with members of the State's law enforcement agencies) is accepted.<sup>126</sup> The Court also underscores the statement by Mr. Ruiz Fuentes' sister who indicated that when she went to pray at the place where her brother died, one of the neighbors told her that:

"He saw a patrol vehicle that stopped and that they let a man get out of it and told him 'get going and if you're lucky, you will escape.' Then Hugo began to walk and turned round to look. But that street has a U shape and when he reached the bend, there were other police officers, another patrol vehicle, and they began to fire at him."<sup>127</sup>

104. The Court also notes that shortly after the shots were fired and Mr. Ruiz Fuentes died, 12 members of the PNC Anti-kidnapping Command led by police superintendent V.S.D. arrived on the scene.<sup>128</sup> The Court observes that if Mr. Ruiz Fuentes' death had resulted from a confrontation with private individuals it would have been, at the very least, improbable that members of the command charged with his recapture were present at the crime scene only a few minutes after his death.

105. This is in addition to the fact that, according to the body of evidence, the crime scene was altered. This was corroborated by the expert appraisal made by expert witness Guillermo Carranza who, in his expert report and also during the public hearing, indicated that "the sweater and shirt were pulled upwards and the jeans were pulled downwards, due to [the body] being dragged," and this indicated that the body of Mr. Ruiz Fuentes "was moved from its original position."<sup>129</sup> During the public hearing held before this Court, expert witness Guillermo Carranza also stressed that the act of taking the soot out of the entry orifice in the right eye "changed the shot distance" because it lengthened it from a short-distance shot to "a medium- to long-distance shot."<sup>130</sup> The Court also points out the observation

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<sup>124</sup> Cf. Autopsy performed by Dr. Edgar Ricardo Arriola Barrios, Departmental Forensic Physician of the Cuilapa Judiciary, Santa Rosa, on November 15, 2005 (evidence file, folio 231). See also, Expert report of Dr. Guillermo Austreberto Carranza Izquierdo of June 3, 2008 (evidence file, folio 243).

<sup>125</sup> Cf. Expert report of Dr. Guillermo Austreberto Carranza Izquierdo of June 3, 2008 (evidence file, folio 243). See also, Expert opinion provided by Guillermo Austreberto Carranza Izquierdo during the public hearing before the Inter-American Court on March 5, 2019.

<sup>126</sup> In his expert report of June 3, 2008, expert witness Guillermo Carranza concluded: "Hugo Humberto Ruiz Fuentes received the first and the mortal wound caused by a firearm bullet in the internal angle of the upper eyelid of his right eye with exit in the left occipital area of the cranium, and it was fired at short distance. [...] The position of the perpetrator in relation to the victim was on foot, face-to-face, pointing the barrel of the gun at a 90 degree angle, at a distance of 15 centimeters from the victim, which is why the victim blinked as a reflex and the wound is on the eyelid, with the findings of the residue of the shot consisting in smokiness and tattooing around the wound." Cf. Expert opinion provided by Guillermo Austreberto Carranza Izquierdo during the public hearing before the Inter-American Court on March 5, 2019.

<sup>127</sup> Cf. Affidavit made by the sister of Mr. Ruiz Fuentes, on February 28, 2019 (evidence file, folio 8480).

<sup>128</sup> According to the statement made by the officer of the National Civil Police, Meregildo Cermeño Cabrera, "at around 8 p.m., he was having dinner, when he heard several shots." "Several minutes" later Mr. Cermeño went to the scene of the incident, where he "saw that there were several men in plain clothes, with balaclava helmets, carrying firearms, handguns and rifles, who were under the command of police superintendent V.S.D." Cf. Statement of Meregildo Cermeño Cabrera before the Public Prosecution Service on November 7, 2007 (evidence file, folios 316 and 317). See also, Report of the State of Guatemala to the Inter-American Commission on Human Rights in case 12,650 Hugo Humberto Ruiz Fuentes, dated October 27, 2016 (evidence file, folio 2568) which indicates that "according to witnesses, V.S.D., and the PNC Director General at the time, E.S.V., were seen at the scene of the crime," and Police record of November 14, 2005, Procedure No. 1709-2005 (evidence file, folio 233).

<sup>129</sup> Cf. Expert report of Dr. Guillermo Austreberto Carranza Izquierdo of June 3, 2008 (evidence file, folios 242 and 243). See also, Expert opinion provided by Guillermo Austreberto Carranza Izquierdo during the public hearing before the Inter-American Court on March 5, 2019.

<sup>130</sup> Cf. Expert opinion provided by Guillermo Austreberto Carranza Izquierdo during the public hearing before the Inter-

of this expert witness that the door behind the corpse had been hit by numerous bullets, and this “suggest[ed] that there was no confrontation,” but rather shots against him and an effort to “make it look like random shots”;<sup>131</sup> in other words, to simulate a confrontation.

106. Regarding the weapon that was found in Mr. Ruiz Fuentes’ right hand, the Court notes that it belonged to a state agent without any plausible explanation having been provided to date about how Mr. Ruiz Fuentes could have obtained it. The Court also notes that there were no blood stains on the weapon, while there were blood stains on the right hand that held it.<sup>132</sup> Moreover, the Court notes the observation made by expert witness Carranza Izquierdo that, since he received a shot in the face, it was “very difficult or impossible that he could hold the weapon in his right hand, because [...] at the moment he was hit in the face he lost consciousness.”<sup>133</sup> Lastly, the Court notes that the team that handled the crime scene failed to perform any type of test to find gunpowder residue on Mr. Ruiz Fuentes’ hands and, in theory, this should have been found owing to the shots he had allegedly fired.<sup>134</sup>

107. On another note, the Court cannot overlook the fact that the State has presented contradictory versions of the events at both the domestic level and before the Commission and the Court. On the one hand, at the time of the events, several state authorities gave statements to the press in which they indicated that Mr. Ruiz Fuentes had died as the result of a confrontation with the State’s law enforcement agents. In particular, the Vice Minister of the Interior indicated that Mr. Ruiz Fuentes “was shot dead last night by agents of Plan Gavilán of the Criminal Investigation Service (SIC), after being tracked down in Barberena, Santa Rosa [...]; [h]e exchanged shots with SIC agents who shot him several times and he died.”<sup>135</sup> Despite this, the Court notes that, subsequently, several officials stated before the prosecutor of the Public Prosecution Service that Mr. Ruiz Fuentes’ death occurred as a result of a confrontation between private individuals.<sup>136</sup> Also, in his June 8, 2007, report, the prosecutor of the Public Prosecution Service considered that the cause of death was because “this person was involved in common criminal acts” and could be due to “unknown persons killing him to avoid being victims of his unlawful acts.”<sup>137</sup>

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American Court on March 5, 2019.

<sup>131</sup> In this regard, expert witness Carranza Izquierdo indicated that, owing to the injury that Mr. Ruiz Fuentes received to the face, “it was not possible that the firearm was not stained with his blood, contrary to what can be seen on his right hand where they are traces of blood in the nail bed” (that is, the area under the nail). *Cf.* Expert opinion provided by Guillermo Austreberto Carranza Izquierdo during the public hearing before the Inter-American Court on March 5, 2019.

<sup>132</sup> *Cf.* Expert report of Dr. Guillermo Austreberto Carranza Izquierdo, of June 3, 2008 (evidence file, folio 243).

<sup>133</sup> *Cf.* Expert report of Dr. Guillermo Austreberto Carranza Izquierdo, of June 3, 2008 (evidence file, folio 243 and 247). See also, Expert opinion provided by Guillermo Austreberto Carranza Izquierdo during the public hearing before the Inter-American Court on March 5, 2019.

<sup>134</sup> *Cf.* On this point, expert witness Guillermo Carranza indicated that: “[a]t any crime scene, the protocol is that, if there is evidence of a gunfight, in which a firearm is found, as in this case, an atomic absorption test must be performed”; that is, a test to analyze the residue produced by a possible shot, and this was not done in the instant case.” *Cf.* Expert report of Dr. Guillermo Austreberto Carranza Izquierdo, of June 3, 2008 (evidence file, folio 243 and 247). See also, Expert opinion provided by Guillermo Austreberto Carranza Izquierdo during the public hearing before the Inter-American Court on March 5, 2019.

<sup>135</sup> *Cf.* Newspaper article in “*El Periódico*” entitled “*Abaten a tiros a uno de los reos prófugos,*” [One of the escaped prisoners shot dead] on November 15, 2005 (evidence file, file of the procedure before the Commission, volume II, folio 436). Police superintendent and head of the SIC [V.S.D.], also indicated this and confirmed to the media that “they had been following the fugitive for four days and were able to locate him last night, and when asking him to stop, he took out a gun, with the aforementioned result.” *Cf.* Newspaper article in “*La Hora*” entitled “*Catorce siguen fugados*” [14 still on the run], on November 15, 2005 (evidence file, folio 438). According to another newspaper, referring to the confrontation with SIC agents, police superintendent V.S.D. indicated “[w]hen the detective asked [Mr. Ruiz Fuentes] to identify himself, he took out a gun and began to fire at them. During the exchange of fire, the fugitive fell to the ground.” *Cf.* Newspaper article in “*Nuestro Diario*” entitled “*Prófugo abatido en enfrentamiento*” [Fugitive killed in confrontation], on November 15, 2005 (evidence file, folio 440).

<sup>136</sup> Mr. Marroquín Solís, an official of the Criminal Investigation Directorate of the National Civil Police of Cuilapa, Santa Rosa, made a statement in this sense, indicating that “it was not possible to establish the identity of the individuals responsible for this act; it was only established that they were unknown persons who were pursuing the deceased and who killed him.” *Cf.* Statement by Juan José Marroquín Solís before the district prosecutor of the Public Prosecution Service, Cuilapa, Santa Rosa, on March 21, 2006 (evidence file, folio 313). In his statement before the prosecutor of the Public Prosecution Service on November 7, 2007, Mr. Meregildo Cermeño Cabrera made the same assertion. *Cf.* Statement of Meregildo Cermeño Cabrera before the prosecutor of the Public Prosecution Service on November 7, 2007 (evidence file, folios 316 and 317).

<sup>137</sup> *Cf.* Report of the district prosecutor addressed to the Coordinator of the Technical Secretariat of the Public Prosecution

108. The Court also notes that, during the procedure before the Commission, a State report of February 21, 2006, indicated that the hypothesis established on the basis of “the interviews and investigations” was that “a number of armed men, without saying a word, fired on him several times and killed him.”<sup>138</sup> However, in a subsequent communication of July 22, 2009, the State indicated that Mr. Ruiz Fuentes “presumably opposed his recapture.”<sup>139</sup>

109. During the proceedings before this Court, in the context of the provisional measures granted on August 30, 2004, the Court notes that, in a brief of November 22, 2005, the State indicated that Mr. Ruiz Fuentes, “during his recapture, opposed his detention drawing a gun; the [SIC] agents therefore fired at him and this resulted in his death.”<sup>140</sup> In addition, and contrary to what it had indicated previously, in its answering brief presented on April 5, 2019, the State denied that an extrajudicial execution had occurred.<sup>141</sup> However, during the hearing before the Court, the State indicated that “the death of Mr. Ruiz Fuentes has not been resolved by the domestic authorities” because “it is being examined by the competent Guatemalan authorities.”

110. Lastly, the Court notes that the Special Prosecution Office against Impunity (FECI) of the Public Prosecution Service considered it proved that Mr. Ruiz Fuentes was extrajudicially executed. In particular, recently, in the context of the internal proceedings in relation to the death of Mr. Ruiz Fuentes, the FECI indicated that:

“On November 14, 2005, [...], at around 11.30 a.m., members of the parallel structure and National Civil Police officers, wearing dark clothes, some with their faces covered by balaclava helmets, and with badges of that institution, [...] carrying high-caliber weapons and without the corresponding court order, violently entered the house located at Section RR 106 of Colonia El Milagro Zone 2 of Mixco, where they arrested and subjected Hugo Humberto Ruiz Fuentes, who [...] was transferred to Colonia Monja Blanca de Barberena, Santa Rosa, to be extrajudicially executed, and this act was executed in that place at approximately 6 p.m. [...] by members of the criminal group, [...] including police superintendent [V.S.D.], [V.M.R.G] and other persons who are being identified, [...] who, prior to the execution, removed his shackles and allowed him to walk away a few meters [...], in order to simulate that the fugitive had been found in that place and that, due to his discovery by law enforcement agents, an armed confrontation occurred.”<sup>142</sup>

111. The FECI also asserted that the crime scene had been altered, and a firearm was placed that belonged to a member of the National Civil Police, Ervin Rolando Choto Casimiro, who had been missing from October 31, 2005, up until the date of that document.<sup>143</sup> The FECI added that “false statements” had been made to the media indicating that the death of Mr. Ruiz Fuentes had resulted from an armed confrontation and those responsible for preparing the police reports were instructed to record the alternative version provided by the police.<sup>144</sup> The foregoing leads this Court to conclude that the versions provided by the State, in addition to being contradictory, are not supported by the evidence in the case file.

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Service, dated June 8, 2007 (evidence file, folio 322).

<sup>138</sup> Cf. Report of the State of Guatemala to the Inter-American Commission on Human Rights concerning the case of Hugo Humberto Ruiz Fuentes of February 21, 2006 (evidence file, folio 934).

<sup>139</sup> Cf. Report of the State of Guatemala to the Inter-American Commission on Human Rights concerning the case of Hugo Humberto Ruiz Fuentes (Case 12,650), of July 22, 2009 (evidence file, folio 2121).

<sup>140</sup> Cf. *Case of Raxcacó Reyes and others with regard to Guatemala. Provisional measures*. Order of the Inter-American Court of Human Rights of July 4, 2006, para. 20.

<sup>141</sup> Cf. The State’s answering brief of August 14, 2018 (merits file, folio 368).

<sup>142</sup> Cf. Remedy of appeal filed by the Special Prosecution Office against Impunity (FECI) of the Public Prosecution Service on November 29, 2018 (evidence file, folios 8405 and 8406). See also, CICIG press release “*Ejecuciones extrajudiciales y torturas 2004-2007*,” of October 29, 2019, available at: <https://www.cicig.org/casos/ejecuciones-extrajudiciales-y-torturas-2004-2007/>

<sup>143</sup> Cf. Remedy of appeal filed by Special Prosecution Office against Impunity (FECI) of the Public Prosecution Service on November 29, 2018 (evidence file, folios 8406 and 8407).

<sup>144</sup> Cf. Remedy of appeal filed by the Special Prosecution Office against Impunity (FECI) of the Public Prosecution Service on November 29, 2018 (evidence file, folio 8407).

112. Based on the above, and because: (i) the expert evidence indicates that the bullet that Mr. Ruiz Fuentes received in his right eye was fired from a short distance; (ii) the members of the PNC Anti-kidnapping Command arrived at the scene of the crime shortly after Mr. Ruiz Fuentes' death; (iii) the crime scene was altered; (iv) of the contradictory versions provided by the State in the domestic sphere, and before the Commission and this Court, and (v) of the version of the facts resulting from the investigations conducted by the FECCI, the state organ responsible for the criminal investigation into the death of Mr. Ruiz Fuentes, the Court considers that state agents were responsible for the death of Mr. Ruiz Fuentes.

113. Consequently, the Guatemalan State is internationally responsible for this death in violation of the right to life, pursuant to Article 4(1) of the American Convention in relation to the provisions of Article 1(1) of this instrument.

114. Finally, the Court indicates that the representatives' arguments concerning the violation of Article 4 of the American Convention, as well as Article 1(1) of this instrument, because the State had not investigated the facts related to the death of Mr. Ruiz Fuentes seriously and effectively, will be examined *infra*, in light of the treaty-based obligations arising from Articles 8 and 25 of the American Convention (Chapter VIII-4).

### **VIII-3 RIGHT TO PERSONAL INTEGRITY, AND PROHIBITION OF TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT<sup>145</sup>**

#### **A. Arguments of the parties and of the Commission**

115. The **Commission** argued, first, that Mr. Ruiz Fuentes' right to personal integrity was violated during the time he was kept on "death row." The Commission clarified that Mr. Ruiz Fuentes had "remained there awaiting his execution for more than 6 years and 5 months," which constituted cruel, inhuman and degrading treatment. The Commission concluded that the Guatemalan State had violated Article 5(1) and (2) of the American Convention, in relation to Article 1(1) of this instrument, as well as Articles 1 and 6 of the ICPPT. In its final written observations, the Commission noted that, even though the State had argued in its answering brief that Mr. Ruiz Fuentes' death sentence had been commuted, it failed to indicate the date on which this occurred or to provide any documentary evidence to support this assertion.

116. Second, the Commission argued that Mr. Ruiz Fuentes had been subjected to acts of torture by police officers at the time of his arrest on August 6, 1997. The Commission considered that, based on the medical reports provided as evidence, and on the statement made by Mr. Ruiz Fuentes on April 29, 1999,<sup>146</sup> it is evident that he was injured in the context of his arrest. Mr. Ruiz Fuentes was in the State's custody; therefore, the standard was applicable of the State's obligation to provide a credible explanation of the sources of the violations of personal integrity.

117. Regarding Mr. Ruiz Fuentes being kept on death row and the alleged acts of torture, the **representatives** agreed with the Commission's arguments.

118. In relation to Mr. Ruiz Fuentes being kept on death row, the **State** argued that the death sentence had been commuted to the maximum term of imprisonment.

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<sup>145</sup> Article 5 of the American Convention and Articles 1 and 6 of the Inter-American Convention to Prevent and Punish Torture (ICPPT).

<sup>146</sup> *Cf.* Statement made by Mr. Ruiz Fuentes before the Eighth Trial Judge for Drug-trafficking and Environmental Crimes on April 29, 1998 (evidence file, folios 8 to 13).

119. With regard to the injuries suffered by Mr. Ruiz Fuentes at the time of his arrest on August 6, 1997, the State argued that they occurred when the victim tried to evade justice and escape, jumping down into a ditch. The State added that it had never been proved that his injuries had been produced by actions of the State's law enforcement agents. The State stressed that Mr. Ruiz Fuentes opposed his capture, trying to escape, and as a result of this he suffered various injuries. It also indicated that the case file did not contain any application for *habeas corpus* that would prove the supposed violations caused by the State's law enforcement agents.

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

120. The Court recalls that Article 5(1) of the Convention establishes in general terms the right to both physical and also mental and moral integrity. Meanwhile, Article 5(2) establishes, more specifically, the absolute prohibition of subjecting anyone to torture or to cruel, inhuman or degrading punishment or treatment. Moreover, it has been acknowledged that, nowadays, the absolute prohibition of torture, either physical or psychological, belongs to the realm of international *jus cogens*.<sup>147</sup>

121. The Court has also indicated that the violation of the right to physical and mental integrity has diverse connotations of degree that range from torture to other types of ill-treatment or cruel, inhuman or degrading treatment, the physical and mental aftereffects of which vary in intensity based on endogenous and exogenous factors relating to the person (such as, duration of the treatment, age, sex, health, context and vulnerability), which must be examined in each concrete situation.<sup>148</sup> In other words, the personal characteristics of an alleged victim of torture or cruel, inhuman or degrading treatment must be taken into account when determining whether their personal integrity was violated, because these characteristics may change an individual's perception of the reality and, consequently, increase the suffering and the feeling of humiliation when subjected to certain types of treatment.<sup>149</sup>

122. The Court will now examine: (i) the alleged international responsibility of the Guatemalan State for the alleged torture to which Mr. Ruiz Fuentes was subjected following his arrest on August 6, 1997, and then (ii) the subjection of Mr. Ruiz Fuentes to the death row phenomenon and its compatibility with inter-American standards.

#### *b.1 The arrest of Mr. Ruiz Fuentes*

123. The Court recalls that Mr. Ruiz Fuentes was arrested together with four other individuals on August 6, 1997.<sup>150</sup> Regarding this arrest, the Court notes, first, the statement made by Mr. Ruiz Fuentes himself before the Eighth Trial Judge for Drug-trafficking and Environmental Crimes on April 29, 1998, where he indicated:

"Some unknown individuals got out of a vehicle and made me and the mechanic get out of our car [...]; they put me in a beige van and I did not see where they put the mechanic; [...] then they blindfolded me and shackled me with plastic handcuffs, they drove me all over the place, they beat my intestines, my ribs, and asked me about several kidnappings; as I did not tell them anything, they hit me; then, in the afternoon, I don't remember but it was after about three hours, they took me to an unknown house where they threw me out of the van with my trousers and pants around my ankles; there was a tall man there, I believe he is Mr. Conte Cojulun [Director of the PNC] and

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<sup>147</sup> Cf. *Case of Maritza Urrutia v. Guatemala. Merits, reparations and costs*. Judgment of November 27, 2003. Series C No. 103, para. 92, and *Case of Women Victims of Sexual Torture in Atenco v. Mexico. Merits, reparations and costs*. Judgment of November 28, 2018. Series C No. 371, paras. 177 and 178.

<sup>148</sup> Cf. *Case of Loayza Tamayo v. Peru. Merits, supra*, para. 57, and *Case of Women Victims of Sexual Torture in Atenco v. Mexico, supra*, para. 177.

<sup>149</sup> Cf. *Case of Ximenes Lopes v. Brazil*. Judgment of July 4, 2006. Series C No. 149, para. 127, and *Case of Omeara Carrascal et al. v. Colombia, supra*, para. 193.

<sup>150</sup> Cf. Communication No. 4325-97 issued by the Criminal Investigations Department of the National Police, dated August 6, 1997 (evidence file, folio 5).

he told them to get me up because I could die; he brought me a glass of water; they took me away from there because someone had called the newspapers and they would be arriving; they took me to the hospital in a Ciprosi pick-up; about half an hour after being admitted to the hospital Mr. Conte Cojulun arrived to beg the doctors to save my life; after about three days of being in the hospital a man came who claimed to be police superintendent Soto [...] and they came about three times, then came another three in plain clothes and brought me some juices telling me not to say anything about what had happened to me; that I should say that I had fallen from a house from which I had jumped [...].”<sup>151</sup>

124. The Court also notes that, during the public hearing before the Court, A.M.V., Mr. Ruiz Fuentes’ partner, indicated that Mr. Ruiz Fuentes “was captured and put in a van; he was taken away, that was where he was tortured, very severely,”<sup>152</sup> and that he had told her that “after they had beaten him they took him to a house, seriously injured owing to all the kicks and everything, and he was unconscious and perhaps this frightened the police and they took him to the hospital urgently.”<sup>153</sup> Similarly, Mr. Ruiz Fuentes told his sister that, at the time of his arrest, they took him to several places and beat him; they mentioned names of people who had been kidnapped, ordering him to tell them the names of the kidnappers.<sup>154</sup>

125. The Court also considers that these statements are compatible with the injuries verified by the different medical reports and the expert opinion provided before this Court. Thus, the Court underscores, first, the medical report of December 9, 1997, indicating that Mr. Ruiz Fuentes entered Roosevelt Hospital on August 6, 1997, due to “acute abdomen.”<sup>155</sup> Also, according to a report of December 11, 2000, prepared by the Roosevelt Hospital Surgical Department, Mr. Ruiz Fuentes was “brought by firemen with a story of having been beaten.” This report also indicated that, when admitted, Mr. Ruiz Fuentes had “numerous abdominal injuries and contusions, abdomen swollen and painful to the touch.”<sup>156</sup>

126. The Court notes that the type of injuries suffered by Mr. Ruiz Fuentes were more compatible with his version of the facts than the version of the facts given by the State. Thus, in his report of May 21, 2008, Dr. Alejandro Moreno expressly indicated that “[t]he intra-abdominal injuries suffered by Mr. Ruiz Fuentes [were] consistent with injuries caused by a blunt object as described by the medical reports and the statements of the witnesses,” and that forensic evidence existed, such as the absence of cranio-cerebral injury and fractures of the extremities, that gave credence to “the version of the facts given by Mr. Ruiz Fuentes that he was beaten repeatedly on the abdomen, rather than the description given by the police that Mr. Ruiz Fuentes fell from a height of 5 to 8 meters.”<sup>157</sup>

127. Added to this is the evidence in the case file regarding the threats made to Mr. Ruiz Fuentes by members of the police to prevent him from reporting the facts,<sup>158</sup> and this has also been

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<sup>151</sup> Cf. Statement made by Mr. Ruiz Fuentes before the Eighth Trial Judge for Drug-trafficking and Environmental Crimes on April 29, 1998 (evidence file, folios 9 and 10). See also, Record of hearing C-4-98. Statement made by Hugo Humberto Ruiz Fuentes during the oral and public trial hearings before the Sixth Sentencing Court for Drug-trafficking and Environmental Crimes on April 21, 1999 (evidence file, folios 1142 and 1143), and interview of Hugo Humberto Ruiz Fuentes in the Zone 18 Detention Center by Alejandro Rodríguez, undated (evidence file, folio 521).

<sup>152</sup> Cf. Private statement made by A.M.V. during the public hearing before the Inter-American Court on March 5, 2019.

<sup>153</sup> Cf. Private statement made by A.M.V. during the public hearing before the Inter-American Court on March 5, 2019.

<sup>154</sup> Cf. Affidavit made by Mr. Ruiz Fuentes’ sister on February 28, 2019 (evidence file, folio 8476).

<sup>155</sup> Acute abdomen refers to a serious medical emergency, characterized by signs and symptoms located in the abdominal cavity. See, Medical report No. 492-484 issued by Roosevelt Hospital on December 9, 1997 (evidence file, folio 15).

<sup>156</sup> Cf. Medical report of the Surgical Unit of Roosevelt Hospital of December 11, 2000 (evidence file, folio 21).

<sup>157</sup> Cf. Report of Dr. Alejandro Moreno of May 21, 2008 (evidence file, folios 23 and 24).

<sup>158</sup> Mr. Ruiz Fuentes also stated that three days after he had been admitted to the hospital, “some men” came and told him that he “should not say that [he] had been beaten, but to say that [his] injuries were the result of having fallen from an eight meter-high wall and that they would help him get out in two or three months.” Cf. Record of hearing C-4-98. Statement made by Hugo Humberto Ruiz Fuentes during the oral and public trial hearings before the Sixth Sentencing Court for Drug-trafficking and Environmental Crimes on April 21, 1999 (evidence file, folio 1143). Added to this, in a letter that Mr. Ruiz Fuentes wrote to his sister, he indicated that he was “too afraid to report the acts of torture because police superintendent Soto had come and threatened [him].” Cf. Affidavit made by Mr. Ruiz Fuentes’ sister on February 28, 2019 (evidence file,

corroborated by the statement by Mr. Ruiz Fuentes' sister who indicated that, when Mr. Ruiz Fuentes was in the hospital "the police told us not to file a report because they would not do anything; to the contrary, worse things would happen to my brother in the prison."<sup>159</sup>

128. Consequently, the Court finds it proved that Mr. Ruiz Fuentes suffered serious injuries in the context of his arrest; that is, while he was in the State's custody.

129. That said, the Court must now determine whether the said acts constituted torture. In light of Article 5(2) of the American Convention and in keeping with the case law of this Court, an act constitutes torture when the ill-treatment: (i) is intentional; (ii) causes severe physical or mental suffering, and (iii) is committed with an objective or purpose.<sup>160</sup>

130. In the instant case, it has been established that Mr. Ruiz Fuentes was subjected to numerous beatings over several hours in order to obtain information about other kidnappings. This has been corroborated both by the statement of Mr. Ruiz Fuentes himself,<sup>161</sup> and by the detailed and coherent account provided by his sister.<sup>162</sup> In other words, the blows inflicted on Mr. Ruiz Fuentes were perpetrated intentionally and continued over time in order to obtain specific information.

131. In addition, based on the evidence provided, the Court finds that the seriousness and intensity of the severe physical ill-treatment suffered by Mr. Ruiz Fuentes has been proved. Owing to the severity of his injuries, Mr. Ruiz Fuentes had to undergo emergency surgery to perform a "resection of a segment of the transverse colon and loop colostomy."<sup>163</sup> The Court also notes that he remained in hospital for thirteen days,<sup>164</sup> and had to use a colostomy bag for seven months.<sup>165</sup> Furthermore, the Court has received the statement of A.M.V., Mr. Ruiz Fuentes' partner, who stated, during the public hearing held before the Court in this case, that the day she went to visit him in hospital, she noted:

"He was in a very bad state, he had been badly beaten, so badly beaten that he had a big operation in his stomach; he had his intestines outside; his whole body had been badly beaten; his testicles were swollen; his shins were – he said that they tied him up with wire which cut into his skin – you could see the bone; he was in such a state that he didn't speak, couldn't talk. He was in a very bad state. I had to take care of him for twelve days, bathing him, feeding him, because he was in such a bad condition."<sup>166</sup>

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folios 8477 to 8480).

<sup>159</sup> Cf. Affidavit made by Mr. Ruiz Fuentes' sister on February 28, 2019 (evidence file, folio 8477).

<sup>160</sup> 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 Women Victims of Sexual Torture in Atenco v. Mexico, supra*, para. 191.

<sup>161</sup> Cf. Statement made by Mr. Ruiz Fuentes before the Eighth Trial Judge for Drug-trafficking and Environmental Crimes on April 29, 1998 (evidence file, folios 9 and 10).

<sup>162</sup> According to her statement, following his arrest he was subjected to numerous beatings, "he lost consciousness, they hit him, and as he had no knowledge of what they were asking him, they continued to beat and torture him so that he would speak. Several hours later, they took him to a house [...] so that he would identify someone who lived there, but as he did not know anyone they continued to beat him and they tied his feet and hands; they blindfolded him. Cf. Affidavit made by Mr. Ruiz Fuentes' sister on February 28, 2019 (evidence file, folio 8476).

<sup>163</sup> Cf. Report of the resident doctor of the Roosevelt Hospital Surgical Unit of January 20, 1998 (evidence file, folio 17).

<sup>164</sup> That is, from his admittance on August 6, 1997, until he was discharged on August 18, 1997. Cf. Report of the resident doctor of the Roosevelt Hospital Surgical Unit of January 20, 1998 (evidence file, folio 17).

<sup>165</sup> Cf. Statement made by Mr. Ruiz Fuentes before the Eighth Trial Judge for Drug-trafficking and Environmental Crimes on April 29, 1998 (evidence file, folio 11).

<sup>166</sup> Cf. Private statement made by A.M.V. during the public hearing before the Inter-American Court on March 5, 2019. In this regard, Mr. Ruiz Fuentes's sister stated that, in the context of his arrest, and having been subjected to an interrogation during which he was beaten many times, "a man surnamed Cojulun arrived and told [police superintendent] Soto that he should be taken to the hospital because he was dying." She also indicated that "they took him to the hospital and the doctors told him that they would have to perform an emergency operation and when he woke up he felt very ill and his whole body hurt from all the blows the police had inflicted and all the kicks had ruptured his intestine and he defecated in the bags that had been attached to him in the hospital." Cf. Affidavit made by Mr. Ruiz Fuentes' sister, on February 28, 2019 (evidence file, folio 8476). In this regard, expert witness Carranza Izquierdo stated during the hearing held before this Court that the injuries were "mortal, according to the Istanbul Protocol." Cf. Expert opinion provided by Guillermo Austreberto Carranza Izquierdo during the public hearing before the Inter-American Court on March 5, 2019.



132. Therefore, given the series of precise and concordant probative elements examined, the Court has reached the conviction that, following his arrest on August 6, 1997, Mr. Ruiz Fuentes was subjected to acts of physical torture that met the three requirements listed by the Court in violation of Article 5(1) and (2) of the American Convention, in relation to Article 1(1) of this instrument, which also constituted the violation of Articles 1 and 6 of the Inter-American Convention to Prevent and Punish Torture.

#### *b.2 Death row*

133. As a preliminary consideration in relation to the State's argument that the death sentence was commuted to the maximum term of imprisonment, the Court recalls that, as it has indicated above, the State has not provided any evidence to prove this point. However, the State did advise that, based on a decision of this Court during the processing of provisional measures,<sup>167</sup> it had ordered the provisional suspension of the death penalty on February 15, 2005.<sup>168</sup> In this regard, the Court notes that although the imposition of the death penalty was suspended owing to the said provisional measure, this did not result in the certainty that it would not be executed in the future and, therefore, the convicted person would continue in the expectation that there was a real possibility of this occurring.

134. The Court must now determine whether, in this specific case, the acts suffered by Mr. Ruiz Fuentes, following his death sentence, constituted cruel, inhuman and degrading treatment in light of Article 5(1) and (2) of the Convention.

135. This Court has had the occasion to rule on the so-called "death row phenomenon" in the cases of *Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago*<sup>169</sup> and *Raxcacó Reyes v. Guatemala*.<sup>170</sup> In addition, the European Court of Human Rights,<sup>171</sup> the universal system of human rights,<sup>172</sup> and several domestic courts<sup>173</sup> have noted that the so-called "death row" violates the right to personal integrity owing to the anguish endured by those who have been condemned to death, a situation that gives rise to psychological trauma owing to the ever-present and mounting anguish of awaiting execution of the death penalty;<sup>174</sup> consequently, it is considered cruel, inhuman and degrading treatment. The Court notes that, in both the case of *Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago* and the case of *Raxcacó Reyes v. Guatemala*, it assessed the expert opinions provided concerning the specific detention conditions of those sentenced to death and victims in the said cases, as well as concerning the specific impact on them, which led to a violation

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<sup>167</sup> Cf. *Case of Raxcacó Reyes and others with regard to Guatemala. Provisional measures*. Order of the Inter-American Court of Human Rights of August 30, 2004.

<sup>168</sup> Cf. Merits Report of the Commission of July 30, 2017, para. 161 (merits file, folio 39).

<sup>169</sup> Cf. *Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago. Merits, reparations and costs*. Judgment of June 21, 2002. Series C No. 94.

<sup>170</sup> Cf. *Case of Raxcacó Reyes v. Guatemala, supra*, paras. 100 to 102.

<sup>171</sup> Cf. ECHR, *Case of Öcalan v. Turkey* [GC], no. 46221/99, Judgment of May 12, 2005, paras. 166 to 169, and *Case of Bader and Kanbor v. Sweden*, no. 13284/04, Judgment of November 8, 2005, paras. 42 to 48.

<sup>172</sup> Cf. United Nations. Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/67/279 (2012), para. 42. The death row phenomenon is defined as follows: "It consists of a combination of circumstances that produce severe mental trauma and physical deterioration in prisoners under sentence of death. Those circumstances include the lengthy and anxiety-ridden wait for uncertain outcomes, isolation, drastically reduced human contact and even the physical conditions in which some inmates are held. Death row conditions are often worse than those for the rest of the prison population, and prisoners on death row are denied many basic human necessities." See also, Human Rights Committee, *Larrañaga v. Philippines*, CCPR/C/87/D/1421/2005 (2006), para. 7.11, and *Mwamba v. Zambia*, CCPR/C/98/D/1520/2006 (2010), para. 6.8.

<sup>173</sup> Cf. Judgment of the Supreme Court of Zimbabwe of June 24, 1993, in *Catholic Commissioner for Justice and Peace in Zimbabwe v. Attorney General* (4) SA 239 (ZS); Supreme Court of Uganda in *Attorney General v. Susan Kigula and 417 others* (Constitutional Appeal No. 3 of 2006), 2009; Supreme Court of Zimbabwe, *Catholic Commission for Justice and Peace in Zimbabwe v the Attorney General and Others*, (1993), 2LRC 277, and Court of Appeal of Kenya, *Godfrey Mutiso v. Republic* (2010). See also, Supreme Court of Canada, *United States v. Burns*, 2001 SCC 7, paras. 118 to 123.

<sup>174</sup> Cf. ECHR. *Case of Soering v. The United Kingdom*, no. 14038/88, Judgment of July 7, 1989, paras. 56, 81 and 111.

of Article 5(1) and (2) of the American Convention, in relation to Article 1(1) of this instrument.<sup>175</sup> Therefore, to determine the existence of a violation of personal integrity derived from imprisonment on death row, it is necessary to examine the personal circumstances of the individual and the particularities of the case in order to assess whether a certain treatment or punishment reaches the minimum level of severity to be categorized as cruel, inhuman or degrading.<sup>176</sup>

136. The Court notes, first, that, for 6 years and 5 months, Mr. Ruiz Fuentes remained under a constant threat that at any moment he could be executed. During that time, he had to consider the perspective of his life being extinguished as a result of his sentence.<sup>177</sup> The Court also underscores that the way in which a death sentence is imposed may constitute a factor that determines its incompatibility with the provisions of Article 5 of the American Convention.<sup>178</sup> The Court notes that Mr. Ruiz Fuentes was sentenced to death in criminal proceedings during which clear violations of Article 4(2) and (6) of the Convention occurred, and in violation of several principles related to due process of law in the context of criminal proceedings (see *infra* paras. 146 to 168). The Court considers that the criminal proceedings to which Mr. Ruiz Fuentes was subjected, which also resulted in the imposition of the death penalty, could have caused him profound suffering, anguish, anxiety, frustration and stress, which could even derive in some type of post-traumatic stress disorder, as has happened in other cases of individuals sentenced to death.<sup>179</sup>

137. Consequently, the Court concludes that Mr. Ruiz Fuentes endured severe mental suffering due to the anguish of being held on death row following proceedings that had numerous flaws, and this violated his right to physical, mental and moral integrity recognized in Article 5(1) of the American Convention and constituted cruel, inhuman and degrading treatment contrary to Article 5(2) thereof, all in relation to Article 1(1) of this instrument.

#### **VIII-4 RIGHTS TO JUDICIAL GUARANTEES AND JUDICIAL PROTECTION<sup>180</sup>**

##### **A. Arguments of the parties and of the Commission**

138. Regarding the criminal proceedings against Mr. Ruiz Fuentes, the **Commission** argued that Mr. Ruiz Fuentes was prevented from presenting exculpatory evidence because the person defending him omitted a formality that resulted in the court failing to process the memorandum offering evidence. Therefore, the Commission concluded that the omission and inaction of the state judicial authority engaged the international responsibility of the State because judges are obliged to exercise a control of proceedings ensuring that anyone subject to a criminal trial may exercise their right of defense. Second, the Commission indicated that the special remedy of appeal filed by Mr. Ruiz Fuentes against the judgment sentencing him to death did not meet inter-American standards under Article 8(2)(h). Lastly, the Commission considered that none of the remedies filed by Mr. Ruiz Fuentes were effective because the merits of the issues he raised concerning due process were not examined.

139. In relation to the investigation of the acts of torture suffered by Mr. Ruiz Fuentes at the time of his arrest on August 6, 1997, the Commission indicated that, at that date, the Guatemalan State

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<sup>175</sup> Cf. *Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago*, *supra*, paras. 167 to 172, and *Case of Raxcacó Reyes v. Guatemala*, *supra*, paras. 100 to 102.

<sup>176</sup> Cf. *Case of Vera Vera et al. v. Ecuador. Preliminary objection, merits, reparations and costs*. Judgment of May 19, 2011. Series C No. 226, para. 76. See also, ECHR, *Case of Ireland v. the United Kingdom*, no. 5310/71, Judgment of January 18, 1978, para. 162; *Case of Jalloh v. Germany* [GS], no. 54810/00, Judgment of July 11, 2006, para. 67, and *Case of Bouyid v. Belgium* [GS], no. 23380/09, Judgment of September 28, 2015, para. 86.

<sup>177</sup> Cf. Expert opinion of Aída Castro Conde of May 18, 2005 (evidence file, folio 7531). See also, *Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago*, *supra*, para. 168.

<sup>178</sup> Cf. ECHR, *Case of Soering v. the United Kingdom* [GS], *supra*, para. 106, and *Case of Shamayev and Others v. Georgia and Russia*, no. 36378/02, Judgment of April 12, 2005, para. 333.

<sup>179</sup> Cf. Expert opinion of Aída Castro Conde of May 18, 2005 (evidence file, folio 7528).

<sup>180</sup> Articles 8 and 25 of the American Convention.

had not opened any investigation into those facts. Consequently, the Commission concluded that the State of Guatemala had violated the rights established in Articles 8(1) and 25(1) of the American Convention in relation to the obligations established Article 1(1) of this instrument, and also the obligations established in Articles 1, 6 and 8 of the ICPPT.

140. In addition, the Commission noted that almost 12 years had passed since the death of Mr. Ruiz Fuentes and yet the State had not made use of all the means available to it to develop and follow up on lines of investigation. It also noted that, according to the State's own description of the investigation, some fundamental measures to elucidate the facts had not been taken. Furthermore, the Commission argued that the indications of a possible cover-up had not been investigated. On this basis, the Commission concluded that the State was responsible for the violation of the rights established in Articles 8(1) and 25(1) of the Convention, in relation to Article 1(1) of this instrument, to the detriment of Mr. Ruiz Fuentes.

141. Regarding the criminal proceedings against Mr. Ruiz Fuentes, the **representatives** argued that the State had violated the alleged victim's right of defense because: (i) it failed to exercise adequate judicial control over the negligent actions of his lawyer,<sup>181</sup> and (ii) it failed to take the necessary measures to ensure that the alleged victim had sufficient time for the presentation of his defense.

142. The representatives also argued that no remedy was available to Mr. Ruiz Fuentes that would have permitted a comprehensive review of the judgment convicting him. They concluded that article 430 of the Code of Criminal Procedure, which establishes that "the judgment may never refer to the evidence or the facts that have been declared proven," limited the review of the appealed judgment *a priori*, excluding the possibility of reviewing factual and evidentiary matters and restricting the review merely to the law.

143. Regarding the investigation resulting from the death of Mr. Ruiz Fuentes, the representatives argued that, serious omissions, flaws and irregularities occurred during the first stages of the investigation, and these continued subsequently, because the authorities had not investigated the facts fully and thoroughly.

144. In the case of the investigation into the acts of torture suffered by Mr. Ruiz Fuentes at the time of his arrest on August 6, 1997, the representatives argued that the State of Guatemala had failed to investigate them, even though they had been reported on many occasions.

145. The **State** emphasized that Mr. Ruiz Fuentes enjoyed the rights established in domestic law in order to guarantee lawful and just legal proceedings. The State stressed that the Inter-American Court was not a body before which judgments handed down by the domestic judicial organs of the Member States of the Organization of American States could be appealed and that the organs of the inter-American human rights system constituted a subsidiary system exclusively authorized to interpret the American Convention on Human Rights. In addition, in its final written arguments, the State indicated that the errors committed by Mr. Ruiz Fuentes' defense lawyer could not and should not be attributed to the State. It also mentioned that recourse could be had to administrative and disciplinary procedures in situations such as the one that occurred, and that the alleged victim had not exercised this right. Lastly, the State reaffirmed that Mr. Ruiz Fuentes had had access to, and used, all the previously established procedural recourses and remedies, and that these had been guaranteed to him to provide him with judicial protection. For example, it mentioned that the death sentence had been amended and commuted to imprisonment.

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<sup>181</sup> The representatives indicated, first, that he was prevented from presenting exculpatory evidence during the hearing because the corresponding memorandum was rejected as it had not been signed and sealed by the defense lawyer despite the fact that this formality was not required by the Code of Criminal Procedure. Second, on the day the hearing was supposed to be held, the lawyer suddenly and without justification abandoned the victim at a crucial stage of the proceedings.

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

### *b.1 Criminal proceedings against Mr. Ruiz Fuentes*

146. In this case, the Court has been asked to determine whether, during the initial criminal proceedings instituted against Mr. Ruiz Fuentes that culminated in a death sentence, the guarantees of due process were observed as required, in particular, by Article 8 of the Convention, and whether he had access to an effective remedy in accordance with Article 25, both in relation to Article 1(1) of this instrument.

147. In the instant case, in which the measures taken during criminal proceedings are being questioned, the Court recalls that the organs of the inter-American human rights system do not function as an appellate court or a court for the review of judgments handed down in domestic proceedings. Their function is to determine the compatibility of the measures taken during such proceedings with the American Convention,<sup>182</sup> and the Court will restrict itself to that task in this judgment.

148. The Court stresses that States have a duty to protect all persons, avoiding crimes, punishing the perpetrators, and maintaining public order. And this is particularly true in the case of facts such as those that gave rise to the criminal proceedings against Mr. Ruiz Fuentes, which not only entail harm to individuals, but also to the whole of society, and warrant the strongest condemnation, especially when children are involved. However, State measures to combat crime must be implemented within limits and in keeping with procedures that preserve both public safety and full respect for the human rights of those subject to their jurisdiction.<sup>183</sup>

149. To establish whether the State violated the provisions of the Convention, the Court must decide two issues. On the one hand, it must determine whether Mr. Ruiz Fuentes' right of defense was violated owing to the impossibility of providing exculpatory evidence which, according to the Commission, involved a violation of Article 8(2)(c) and (f) of the American Convention and, according to the representatives, Article 8(2)(d) and (f) of the American Convention, all in relation to Article 1(1) of this instrument. On the other hand, the Court must determine whether the fact that the new lawyer appointed to defend Mr. Ruiz Fuentes was given only twenty-four hours to prepare his defense entailed, according to the representatives, a violation of Article 8(2)(c), (d) and (f) of the American Convention.

150. On the first issue, the Court notes that it is an uncontested fact that Mr. Ruiz Fuentes was unable to provide exculpatory evidence during the criminal proceedings because his defense counsel at the time failed to sign and seal the corresponding memorandum and, for this reason, the court did not process that document. Regarding the supposed violation of the right of defense owing to the impossibility of presenting evidence during the hearings, this Court notes that the Appellate Court indicated that "[...], the appellant's right of defense was never violated because, throughout the trial, he had his defense counsel, who laid claim to all his guarantees and if the evidence he proposed was rejected this was due to the unprofessional manner in which his lawyer offered the proposed evidence; however, despite this, the appellant was able to act during the processing of the corresponding proceedings in which the claimed failure to respect his guarantees did not occur."<sup>184</sup>

151. The Court recalls that the right to defend oneself is a central component of the due process

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<sup>182</sup> Cf. *Case of Castillo Petruzzi et al. v. Peru. Preliminary objections*. Judgment of September 4, 1998. Series C No. 41, para. 83, and *Case of Mémoli v. Argentina. Preliminary objections, merits, reparations and costs*. Judgment of August 22, 2013. Series C No. 265, para. 190.

<sup>183</sup> Cf. *Case of Hilaire, Constantine and Benjamin et al.*, *supra*, para. 101, and *Case of Fermín Ramírez v. Guatemala*, *supra*, para. 63.

<sup>184</sup> Cf. Judgment delivered by the Fourth Chamber of the Appellate Court of Guatemala on September 13, 1999 (evidence file, folio 113).

that obliges the State, at all times, to treat the individual as a real subject of the proceedings in the most extensive sense of this concept, and not merely as its object.<sup>185</sup> Evidently, it must be possible to exercise the right of defense from the moment a person is accused of being the possible perpetrator of, or participant in, a wrongful act and only culminates when the proceedings end, including, if applicable, the stage of execution of the sentence.<sup>186</sup>

152. That said, the Court underscores that it is the State's duty to ensure the free and full exercise of the right of defense, regardless of whether the defendant is represented by a public or a private defender. In this case, the Court notes that the evidence provided by Mr. Ruiz Fuentes was not admitted because the respective memorandum lacked the signature and seal of the defense lawyer, which meant that the document had no validity under the procedural law in force at that time.<sup>187</sup> Therefore, the Court notes that the proposed evidence was rejected owing to a clear and serious procedural error committed by the defense lawyer.<sup>188</sup> Consequently, the Court considers that the Guatemalan State cannot be considered responsible for the omission of a private defense counsel, especially when, in the instant case, the Court has neither pertinent arguments nor evidence that could possibly prove that the inaction of the private defense counsel was due to some type of undue obstruction or intervention by the State. Therefore, the Court considers that the State did not violate Article 8(2)(d) and (f) of the American Convention.

153. On the second issue, here again it is uncontested that, on the day of the oral and public hearing, prior to the delivery of the death sentence, due to the absence of Mr. Ruiz Fuentes' lawyer, the Criminal Sentencing Court declared that the latter had abandoned the case and appointed a new defense counsel who was already part of the case.<sup>189</sup> Mr. Ruiz Fuentes gave his consent to the new lawyer defending him in the trial.<sup>190</sup> Following this appointment, the lawyer asked that the hearing be suspended in order to be able to prepare his client's defense. Despite this, the Criminal Sentencing Court decided to postpone the hearing for only twenty-four hours because "the lawyer [...] was already acting as the defense counsel of another defendant" and, therefore, was familiar with the proceedings.<sup>191</sup>

154. The Court recalls that having "adequate time and means for the preparation of [the] defense" pursuant to Article 8(2)(c) of the treaty, is one of "the guarantees inherent in the right of defense."<sup>192</sup> If the State tries to limit this right, it must respect the principle of legality, indicate the legitimate purpose it wishes to achieve with the corresponding reasons, and prove that the means used to achieve that purpose is appropriate, necessary and strictly proportionate. To the contrary, the restriction of an individual's right of defense will be contrary to the Convention.<sup>193</sup>

155. In this case, the Court notes that the recently appointed lawyer had one day to prepare his

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<sup>185</sup> 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 Ruano Torres et al. v. El Salvador. Merits, reparations and costs*. Judgment of October 5, 2015. Series C No. 303, para. 153.

<sup>186</sup> Cf. *Case of Barreto Leiva v. Venezuela, supra*, para. 29, and *Case of Ruano Torres et al. v. El Salvador, supra*, para. 153.

<sup>187</sup> Cf. Judgment delivered by the Fourth Chamber of the Appellate Court of Guatemala on September 13, 1999 (evidence file, folio 113).

<sup>188</sup> Cf. Judgment delivered by the Fourth Chamber of the Appellate Court of Guatemala on September 13, 1999 (evidence file, folio 113).

<sup>189</sup> Cf. Record of hearing C-4-98. Statement made by Hugo Humberto Ruiz Fuentes during the oral and public trial hearings before the Sixth Sentencing Court for Drug-trafficking and Environmental Crimes on April 21, 1999 (evidence file, folio 1135).

<sup>190</sup> Cf. Record of hearing C-4-98. Statement made by Hugo Humberto Ruiz Fuentes during the oral and public trial hearings before the Sixth Sentencing Court for Drug-trafficking and Environmental Crimes on April 21, 1999 (evidence file, folio 1136).

<sup>191</sup> Cf. Record of hearing C-4-98. Statement made by Hugo Humberto Ruiz Fuentes during the oral and public trial hearings before the Sixth Sentencing Court for Drug-trafficking and Environmental Crimes on April 21, 1999 (evidence file, folio 1136).

<sup>192</sup> Cf. *Case of Palamara Iribarne vs. Chile, supra*, para. 170, and *Case of Cabrera García and Montiel Flores v. Mexico, supra*, para. 156.

<sup>193</sup> Cf. *Case of Barreto Leiva v. Venezuela, supra*, para. 55, and *Case of J. v. Peru. Preliminary objection, merits, reparations and costs*. Judgment of November 27, 2013. Series C No. 275, para. 206.

client's legal defense.<sup>194</sup> The Court also notes that the reason why he was only granted one day was because the trial court assumed that the lawyer was already familiar with the case. However, this Court considers that this argument was insufficient because the situation of each defendant had its own particular characteristics and complexities, and this warranted granting the lawyer sufficient time to be able to analyze the case thoroughly and, on this basis, to design an adequate defense strategy.<sup>195</sup> Therefore, in the instant case, the Court considers that the time granted was extremely limited, considering: the need to examine the case, the significance of the proceedings and the possible consequences, and the review of the body of evidence to which any defendant has a right.<sup>196</sup>

156. Consequently, the Court concludes that the State violated Article 8(2)(c) of the Convention, in relation to Article 1(1) thereof, to the detriment of Hugo Humberto Ruiz Fuentes.

*b.2 Right to appeal the judgment that convicted Mr. Ruiz Fuentes*

157. In its consistent case law, the Court has referred to the content and scope of Article 8(2)(h) of the Convention, as well as to the standards that must be observed to ensure the right to appeal the judgment before a higher judge or court. The Court has understood that this right consists in an essential and minimum guarantee that "must be respected within the framework of due process of law in order to permit an adverse judgment to be reviewed by a different and higher judge or court [...]."<sup>197</sup> Bearing in mind that the purpose of the judicial guarantees is to ensure that a defendant in judicial proceedings is not subject to arbitrary decisions, the Court has interpreted that the right to appeal a judgment cannot be effective if it is not guaranteed to anyone who has been sentenced and convicted,<sup>198</sup> because the sentence is a manifestation of the exercise of the State's punitive powers.<sup>199</sup> The Court has considered that the right to appeal the judgment is one of the minimum guarantees accorded to anyone subject to a criminal investigation and proceedings.<sup>200</sup>

158. The Court has also indicated that Article 8(2)(h) of the Convention refers to an ordinary, accessible and effective remedy; that is, it should not require great complexity that would render this right illusory. It should be understood that, regardless of the appeal system or regime adopted by the States Parties, and of the name given to the means of contesting the judgment, in order to be effective, it must constitute an adequate means of ensuring the rectification of an erroneous conviction. This means that it must be able to analyze the factual, evidentiary and legal matters on which the contested judgment was based because, in jurisdictional activities, the factual determinations and the application of the law are interdependent, so that an erroneous determination of the facts entails a flawed or undue application of the law. Consequently, the reasons for the admissibility of the appeal should make it possible to exercise a wide-ranging control of the contested

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<sup>194</sup> Cf. Record of hearing C-4-98. Statement made by Hugo Humberto Ruiz Fuentes during the oral and public trial hearings before the Sixth Sentencing Court for Drug-trafficking and Environmental Crimes on April 21, 1999 (evidence file, folios 1135 and 1136).

<sup>195</sup> Cf., *mutatis mutandis*, *Case of Castillo Petruzzi et al. v. Peru* in which the lawyers only had access to the case file the day before the delivery of the first instance judgment, owing to which the Court concluded that the presence and actions of the defense counsel were a mere formality and that the victims did not have an adequate defense. *Case of Castillo Petruzzi et al. v. Peru. Merits, reparations and costs*. Judgment of May 30, 1999. Series C No. 52, para. 141.

<sup>196</sup> Cf. *Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Merits*. Judgment of March 8, 1998. Series C No. 37, para. 152, and *Case of Barreto Leiva v. Venezuela, supra*, para. 54.

<sup>197</sup> 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 Amrhein et al. v. Costa Rica. Preliminary objections, merits, reparations and costs*. Judgment of April 25, 2018. Series C No. 354, para. 255.

<sup>198</sup> Cf. *Case of Mohamed v. Argentina. Preliminary objection, merits, reparations and costs*. Judgment of November 23, 2012. Series C No. 255, paras. 92 and 93, and *Case of Gorioitía v. Argentina. Preliminary objections, merits, reparations and costs*. Judgment of September 2, 2019. Series C No. 382, para. 47.

<sup>199</sup> Cf. *Case of Baena Ricardo et al. v. Panamá. Merits, reparations and costs*. Judgment of February 2, 2001. Series C No. 72, para. 107, and *Case of Gorioitía v. Argentina, supra*, para. 47.

<sup>200</sup> Cf. *Case of Zegarra Marín v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of February 15, 2017. Series C No. 331, para. 171, and *Case of Gorioitía v. Argentina, supra*, para. 47.

aspects of the judgment.<sup>201</sup>

159. That said, the Court notes that the Guatemalan Code of Criminal Procedure includes two remedies that are intended to comply with the right to appeal the judgment; the special remedy of appeal and the remedy of cassation. Regarding the remedy of appeal, article 430 of the Code of Criminal Procedure indicates:

"Article 430. The judgment may never refer to the evidence or the facts that have been declared proven pursuant to the rules of sound and reasoned judgment. It may only refer to them for application of the substantive law or when there is evident contradiction in the appealed judgment."

160. This reveals that the special remedy of appeal is limited to a certain extent, because it only permits a review of the facts "for application of the substantive law or when there is evident contradiction in the appealed judgment."

161. Meanwhile, the remedy of cassation is regulated as follows:

"Article 442. The court of cassation shall only examine the legal errors contained in the appealed ruling. It is subject to the facts that have been considered proven by the sentencing court, and only in cases in which it notes a violation of the constitutional or legal norm is it able to require the annulment and returning for the required corrections."

162. This article reveals that the remedy of cassation does not permit a review of the facts or the evidence, only of the law.

163. The Court recalls that Mr. Ruiz Fuentes and the other two individuals sentenced to death filed a special remedy of appeal based on the substance and form of the judgment delivered by the Sixth Criminal Sentencing Court on May 14, 1999.<sup>202</sup> Mr. Ruiz Fuentes substantiated his appeal by arguing that: (i) the sentencing court considered proven facts other than those described in the indictment, thereby affecting his right of defense; (ii) he was deprived of his right to offer and provide evidence during the hearing; (iii) there had been an erroneous assessment of the evidence by the judge *a quo*, and (iv) the court had applied article 201 of the Criminal Code unduly, failing to take into account article 46 of the Constitution and Article 4 of the Convention because, when the latter was ratified, the death penalty was not established for kidnapping when the victim did not die.<sup>203</sup>

164. On September 13, 1999, the Appellate Court declared the special remedy of appeal filed by Mr. Ruiz Fuentes and the other convicted men inadmissible.<sup>204</sup> As relevant for this section, this Court underlines that the Appellate Court indicated the following as regards the argument that it had considered proven facts other than those in the indictment:

"In its judgment, this Chamber may never refer to the evidence or facts that have been declared proven based on the rules of sound and reasoned judgment; the decision is correct. Therefore, it is concluded that the facts found proven by the court are true."<sup>205</sup>

165. Regarding the arguments concerning the erroneous assessment of the evidence according to the rules of sound judgment, the Appellate Court indicated:

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<sup>201</sup> Cf. *Case of Herrera Ulloa v. Costa Rica*, *supra*, paras. 161, 164 and 165, and *Case of Zegarra Marín v. Peru*, *supra*, para. 172.

<sup>202</sup> Cf. Judgment delivered by the Fourth Chamber of the Appellate Court of Guatemala on September 13, 1999 (evidence file, folio 100).

<sup>203</sup> Cf. *Judgment delivered by the Fourth Chamber of the Appellate Court of Guatemala on September 13, 1999* (evidence file, folios 105 to 108).

<sup>204</sup> Cf. Judgment delivered by the Fourth Chamber of the Appellate Court of Guatemala on September 13, 1999 (evidence file, folios 120 and 121).

<sup>205</sup> Cf. Judgment delivered by the Fourth Chamber of the Appellate Court of Guatemala on September 13, 1999 (evidence file, folios 112 and 113).

"The trial court adequately argued and justified the contested judgment, concatenating the act described in the indictment with the evidence provided, to reach the conclusion with legal certainty that the appellant is the author of the crime of abduction or kidnapping, based on the corresponding actions he carried out in the execution of the crime, and the causal nexus has been fully established."<sup>206</sup>

166. This Court notes that the response provided by the Appellate Court was limited to rejecting the appellant's allegations without conducting any type of review of factual and/or evidentiary matters or examining the specific and individualized grounds argued by Mr. Ruiz Fuentes in his remedy of appeal. Indeed, on the one hand, the Appellate Court argued the inviolability of the evidence established in article 430 of the Code of Criminal Procedure in order not to examine any of the arguments put forward by Mr. Ruiz Fuentes regarding the discrepancy between the indictment and the proven facts. In addition, and with regard to the numerous issues that Mr. Ruiz Fuentes described in his remedy of appeal in relation to the assessment of evidence made by the judge *a quo*, the Appellate Court merely gave an abstract and imprecise response, without specifically analyzing any of the reasons given by Mr. Ruiz Fuentes. Consequently, the Court considers that the refusal of the Fourth Chamber of the Appellate Court to review the issues raised by Mr. Ruiz Fuentes' defense counsel constituted, in this case, an internationally wrongful act because it resulted in a failure of the obligation to make a comprehensive review of the judgment established in Article 8(2)(h).

167. On the other hand, given that Article 8(2)(h) of the Convention has its own legal content and the principle of effectiveness (*effet utile*) crosscuts the satisfactory protection of all the rights recognized in this instrument, the Court finds it unnecessary to examine that provision in relation to Article 25 of the Convention.<sup>207</sup> Also, regarding the Commission's allegation that none of the other remedies filed by Mr. Ruiz Fuentes were effective, the Court notes that the Commission failed to provide any specific arguments or evidence. Consequently, the Court has no elements that could constitute the alleged violation.

168. Based on the above considerations, the Court concludes that the State violated the right to appeal the judgment established in Article 8(2)(h) of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of Hugo Humberto Ruiz Fuentes.

### *b.3 Investigation of the torture suffered by Mr. Ruiz Fuentes*

169. In this case, the Commission and the representatives argued that the State had not opened any investigation into the torture suffered by Mr. Ruiz Fuentes at the time of his arrest on August 6, 1997, in violation of Articles 8(1) and 25(1) of the American Convention in relation to the obligations established in Article 1(1) of this instrument and in Articles 1, 6 and 8 of the ICPPT.

170. The Court recalls that, in light of the general obligation of States Parties to respect and ensure the rights of every person subject to their jurisdiction contained in Article 1(1) of the American Convention, the State has the duty to initiate, *ex officio*, and immediately, an effective investigation that permits the identification, prosecution and punishment of those responsible when an accusation has been made or there is a justified reason to believe that an act of torture has been committed in violation of Article 5 of the American Convention.<sup>208</sup> In the instant case, the Court considers that the State of Guatemala did not act in accordance with these provisions.

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<sup>206</sup> Cf. Judgment delivered by the Fourth Chamber of the Appellate Court of Guatemala on September 13, 1999 (evidence file, folio 115).

<sup>207</sup> Cf. *Case of Anzualdo Castro v. Peru. Preliminary objection, merits, reparations and costs*. Judgment of September 22, 2009. Series C No. 202, para. 77, and *Case of Vélez Loor v. Panama. Preliminary objections, merits, reparations and costs*. Judgment of November 23, 2010. Series C No. 218, para. 123.

<sup>208</sup> Cf. *Case of Tibi v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of September 7, 2004. Series C No. 114, para. 159.



171. Indeed, the Court notes that, despite the severity of Mr. Ruiz Fuentes' injuries when he was admitted to Roosevelt Hospital after his arrest, the State did not open any type of investigation, *ex officio*, to determine their origin. Moreover, it did not open any type of investigation when, on April 29, 1998, Mr. Ruiz Fuentes reported the facts before the Eighth Criminal Trial Judge, describing in detail the ill-treatment to which he alleged he had been subjected.<sup>209</sup> The Court also notes that, in the context of this statement, the defense lawyer expressly asked the judge to require an investigation of the reported facts because they constituted torture.<sup>210</sup>

172. Furthermore, no investigation of any type was opened following the statements made by both Mr. Ruiz Fuentes and J.M.M.R on April 21, 1999, during the oral trial before the Sixth Criminal Sentencing Court,<sup>211</sup> at which time Mr. Ruiz Fuentes even provided a series of x-rays that verified the serious injuries he had suffered.<sup>212</sup> The Court notes that, based solely on the statements of the police officers who intervened in the capture of Mr. Ruiz Fuentes, the Sixth Criminal Sentencing Court considered that their version was the valid one.<sup>213</sup>

173. The Court also recalls that, in other cases, it has indicated that the obligation to investigate is increased by the provisions of Articles 1, 6 and 8 of the ICPPT that obligate the State "to take effective measures to prevent and punish torture within their jurisdiction," and also "to prevent and punish other cruel, inhuman, or degrading treatment or punishment." In addition, according to Article 8 of that convention, the States Parties "shall guarantee that any person making an accusation of having been subjected to torture within their jurisdiction shall have the right to an impartial examination of his case." Also, "if there is an accusation or well-grounded reason to believe that an act of torture has been committed within their jurisdiction, the States Parties shall guarantee that their respective authorities will proceed properly and immediately to conduct an investigation into the case and to initiate, whenever appropriate, the corresponding criminal process." Accordingly, on several occasions, the Court has considered that, when the duty to investigate acts of torture has not been complied with, this also entails a violation of those articles of the ICPPT.<sup>214</sup>

174. Consequently, the Court concludes that the lack of a prompt investigation into such serious facts reveals non-compliance with the State's obligation to guarantee the right to personal integrity, and also a denial of justice that constitutes a violation of Articles 8(1) and 25 of the Convention, in relation to Article 1(1) thereof, and a failure to comply with the obligations assumed under Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, to the detriment of Hugo Humberto Ruiz Fuentes.

#### *b.4 Investigation of the death of Mr. Ruiz Fuentes*

175. The Court has consistently indicated that the duty to investigate is an obligation of means rather than results that must be assumed by the State as its inherent legal obligation and not as a mere formality preordained to be ineffective, or as a mere measure taken by private interests that depends on the procedural initiative of the victims or their family members, or on their contribution of probative elements. In addition, the investigation must be serious, objective and effective and

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<sup>209</sup> Cf. Statement made by Mr. Ruiz Fuentes before the Eighth Trial Judge for Drug-trafficking and Environmental Crimes on April 29, 1998 (evidence file, folios 8 to 13).

<sup>210</sup> Cf. Statement made by Mr. Ruiz Fuentes before the Eighth Trial Judge for Drug-trafficking and Environmental Crimes on April 29, 1998 (evidence file, folio 12).

<sup>211</sup> Cf. Record of hearing C-4-98. Statement of J.M.M.R. during the oral and public trial hearings before the Sixth Sentencing Court for Drug-trafficking and Environmental Crimes on April 21, 1999 (evidence file, folios 1134 to 1208).

<sup>212</sup> Cf. Record of hearing C-4-98. Statement made by Hugo Humberto Ruiz Fuentes during the oral and public trial hearings before the Sixth Sentencing Court for Drug-trafficking and Environmental Crimes on April 21, 1999 (evidence file, folio 1143).

<sup>213</sup> Cf. Judgment delivered by the Sixth Sentencing Court for Drug-trafficking and Environmental Crimes of Guatemala on May 14, 1999 (evidence file, folios 7351 to 7363).

<sup>214</sup> Cf. *Case of Favela Nova Brasília v. Brazil*, *supra*, para. 252, and *Case of Villamizar Durán et al. v. Colombia*, *supra*, para. 185.

aimed at determining the truth, and at the pursuit, capture and eventual prosecution and punishment of the perpetrators of the acts.<sup>215</sup>

176. To be able to determine whether the investigation was conducted diligently, the Court will refer to diverse measures taken during the criminal proceedings relating to the handling of the crime scene, the autopsy, and other evidentiary elements.

177. The Court notes that, on November 14, 2005, the corpse of Mr. Ruiz Fuentes was found on Avenue 0, 5<sup>th</sup> Street, of Colonia Monja Blanca de Barberena, Santa Rosa.<sup>216</sup> According to the police record drawn up that day, Mr. Ruiz Fuentes' body was lying on its back with arms and legs outstretched and eyes closed.<sup>217</sup>

178. The Court has established that the effective determination of the truth, within the framework of the obligation to investigate a death, should be revealed by the thoroughness of the initial procedures. The Court has indicated that the state authorities who conduct an investigation of this type must seek, as a minimum, *inter alia*: (i) to identify the victim; (ii) to recover and preserve evidentiary material related to the death to aid any potential prosecution of those responsible; (iii) to identify possible witnesses and obtain statements from them concerning the death; (iv) to determine the cause, manner, location and time of death, as well as any pattern or practice that may have brought about the death, and (v) to distinguish between natural death, accidental death, suicide and homicide. In addition, the scene of the crime must be investigated comprehensively, and autopsies and analyses of human remains must be performed conscientiously by qualified professionals using the most appropriate procedures.<sup>218</sup>

179. The Court notes, first, that the cordoning off, protection and preservation of the crime scene was deficient. In this regard, expert witness Carranza Izquierdo emphasized that, from the photographs taken by the experts at the scene of the crime, it was possible to see that there were "numerous members of the Public Prosecution Service, the National Civil Police, Fire Brigade and courts inside the cordon," which resulted in the contamination of the crime scene. Also, the video and the photographs taken by the experts, as well as the sketch made of the scene, were flawed because it was impossible to determine the exact location of the incident. In addition, the expert witness underscored the fact that the hands of Mr. Ruiz Fuentes' corpse had not been bagged, even though there was a firearm in the right hand. This would have been necessary to be able to perform atomic absorption tests to determine whether gunshot residue was present. When packing up Mr. Ruiz Fuentes' clothes, the state authorities' failure to conduct pertinent tests to determine the distance from which the shots were fired is also noticeable.<sup>219</sup> In this regard, and in light of Articles 8(1) and 25(1) of the American Convention, this Court has indicated that in order to guarantee the effectiveness of the investigation, omissions in the gathering of evidence and in following up on logical lines of investigation must be avoided. When the facts refer to the violent death of a person, the respective investigation must be conducted in such a way as to guarantee the proper analysis of all the possible hypotheses of authorship.<sup>220</sup>

180. In the case of the medico-legal autopsy performed on November 15, 2005,<sup>221</sup> the Court notes

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<sup>215</sup> Cf. *Case of Juan Humberto Sánchez v. Honduras. Preliminary objection, merits, reparations and costs*. Judgment of June 7, 2003. Series C No. 99, para. 127, and *Case of Arrom Suhurt et al. v. Paraguay. Merits*. Judgment of May 13, 2019, para. 142.

<sup>216</sup> Cf. Police record of November 14, 2005, Procedure No. 1709-2005 (evidence file, folio 233), and Autopsy performed by Dr. Edgar Ricardo Arriola Barrios, Departmental Forensic Physician of the Cuilapa Judiciary, Santa Rosa, on November 15, 2005 (evidence file, folio 231).

<sup>217</sup> Cf. Police record of November 14, 2005, Procedure No. 1709-2005 (evidence file, folio 233).

<sup>218</sup> Cf. *Case of Juan Humberto Sánchez v. Honduras, supra*, para. 127, and *Case of Pacheco León et al. v. Honduras, supra*, para. 79.

<sup>219</sup> Cf. Expert report of Dr. Guillermo Austreberto Carranza Izquierdo, of June 3, 2008 (evidence file, folio 242).

<sup>220</sup> Cf. *Case of Pacheco León et al. v. Honduras. Merits, reparations and costs*. Judgment of November 15, 2017, para. 89.

<sup>221</sup> Cf. Autopsy performed by Dr. Edgar Ricardo Arriola Barrios, Departmental Forensic Physician of the Cuilapa Judiciary,

that, in addition to being contained on a single page, the information in the report is insufficient. The Court recalls that the purpose of an autopsy is to collect, as a minimum, information to identify the deceased, and the time, date, cause and manner of death. Moreover, autopsies should respect certain basic formalities such as recording the date, starting and finishing times, and place of the autopsy, together with the name of the official who is performing it. In addition, it is necessary, *inter alia*, to take adequate photographs of the body; to radiograph the body before it is removed from its pouch or wrappings and after undressing the body, documenting any injuries.<sup>222</sup> In the instant case, the Court underlines that, during the said autopsy: (i) neither photographs nor videos were taken following the initial external examination of the body, or of the internal examination; (ii) the clothes were not examined; (iii) the clothes were not packed up to perform tests to detect gunshot residue on them, and (iv) there was no reference to the probable distance from which the shots were fired.<sup>223</sup> The Court also stresses that the United Nations "Minnesota Protocol" or Model Protocol for a Legal Investigation of Extra-legal, Arbitrary and Summary Executions was not followed.<sup>224</sup>

181. In addition, the Court's attention is drawn to the fact that the investigation into the firearm found in Mr. Ruiz Fuentes' right hand has still not been able to determine how this weapon came into his possession. Regarding the statements taken to clarify the circumstances surrounding the death of Mr. Ruiz Fuentes, the Court notes that the case file only contains the interrogation of three PNC officers who were present at the scene of the crime.<sup>225</sup> Moreover, there is no record that the judicial authorities took statements from possible eyewitnesses.

182. The Court also emphasizes that, more than 14 years after the death of Mr. Ruiz Fuentes, the investigation into the circumstances surrounding his death remains open.

183. Consequently, in the instant case, the Court considers that the State failed to conduct a series of appropriate and essential investigation procedures, and this deviated from "objective standards" for processing the crime. The Court considers that the omissions that occurred in the investigation of this case have meant that, from the day of Mr. Ruiz Fuentes' death and up to the present, it has not been possible to clarify the facts or to investigate diligently, prosecute and, as applicable, punish, those possibly responsible for the facts.

184. Based on the above, the Court concludes that the State failed to act with due diligence to investigate, prosecute and, as applicable, punish those possibly responsible for the violent death of Mr. Ruiz Fuentes within a reasonable time. Therefore, it finds that the State violated Articles 8(1) and 25(1) of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of Hugo Humberto Ruiz Fuentes and his sister.

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Santa Rosa, on November 15, 2005 (evidence file, folio 231).

<sup>222</sup> Cf. *Case of González et al. ("Cotton Field") v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of November 16, 2009. Series C No. 205, para. 310.

<sup>223</sup> Cf. Expert report of Dr. Guillermo Austreberto Carranza Izquierdo of June 3, 2008 (evidence file, folios 244 to 246). See also, Expert opinion provided by Guillermo Austreberto Carranza Izquierdo during the public hearing before the Inter-American Court on March 5, 2019.

<sup>224</sup> Cf. Expert report of Dr. Guillermo Austreberto Carranza Izquierdo of June 3, 2008 (evidence file, folio 245).

<sup>225</sup> Statement of José Marroquín Solís before the district prosecutor of the Public Prosecution Service, Cuilapa, Santa Rosa, on March 21, 2006 (evidence file, folios 314 and 314); Statement of Óscar Valero Lara before the district prosecutor of the Public Prosecution Service, Cuilapa, Santa Rosa, on March 27, 2006 (evidence file, folios 1691 to 1694), and Statement of César Augusto Argueta before the district prosecutor of the Public Prosecution Service, Cuilapa, Santa Rosa, on March 28, 2006 (evidence file, folios 1695 and 1696).

**VIII-5**  
**RIGHT TO PERSONAL INTEGRITY OF MR. RUIZ FUENTES' SISTER**<sup>226</sup>

**A. Arguments of the parties and of the Commission**

185. The **Commission** did not present any specific arguments in this regard.

186. The **representatives** referred to the harm suffered by Mr. Ruiz Fuentes's sister; W.E.R.F. (his daughter), and A.M.V., his permanent companion. They indicated that, when Mr. Ruiz Fuentes was admitted to hospital to undergo surgery, both his sister and his partner visited him and took care of him. They witnessed not only the severity of his injuries, but also how the PNC and even the Head of the SIC visited Mr. Ruiz Fuentes to try and convince him not to report the events. This caused them to suffer anguish and fear. The representatives also indicated that the members of Mr. Ruiz Fuentes' family underwent severe mental anguish knowing that Mr. Ruiz Fuentes was on death row and subject to extreme prison conditions owing to the uncertainty about his possible execution. In addition, the representatives indicated that the execution of Mr. Ruiz Fuentes caused them profound suffering and, added to this, to date the extrajudicial execution remains unpunished. Lastly, the representatives argued that, as a result of their involvement in expediting the domestic proceedings, the family members themselves were victims of threats and intimidation, and this even resulted in Mr. Ruiz Fuentes's sister having to leave Guatemala, which profoundly altered her life project.

187. The **State** indicated that, although it did not doubt the harm and suffering experienced by the members of Mr. Ruiz Fuentes' family, this suffering and/or affliction resulted from the unlawful acts committed by Mr. Ruiz Fuentes for which the State bore no responsibility. The State also denied that it had harassed the members of Mr. Ruiz Fuentes' family when they exercised their right to file the complaints they considered pertinent before the corresponding organs.

**B. Considerations of the Court**

188. On many occasions, the Court has affirmed that the next of kin of the victims of human rights violations may also become victims.<sup>227</sup> The Court has considered that it is possible to declare the violation of the right to mental and moral integrity of "direct family members" or other persons with close ties to the victims owing to the additional suffering they have experienced as a result of the particular circumstances of the violations perpetrated against their loved ones, and due to the subsequent acts or omissions of the state authorities in relation to the facts,<sup>228</sup> taking into account, among other factors, the steps taken to obtain justice and the existence of close family ties.<sup>229</sup>

189. The Court notes that Mr. Ruiz Fuentes's sister stated the following with regard to the moment when her brother was sentenced to death:

[...] When they sentenced my brother to death, I found it very hard [...] When I heard my brother's name in the judgment and that he was sentenced to death, I said they are going to kill my brother [...] and began to cry and I left in tears with [my daughter]. I remembered the execution of two people they had carried out in Pavón and that they had televised it, and I felt that I was on the edge of a nervous breakdown; I spent the whole night crying.<sup>230</sup>

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<sup>226</sup> Article 5 of the American Convention.

<sup>227</sup> Cf. *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala, supra*, para. 176, and *Case of Villaseñor Velarde et al. v. Guatemala. Merits, reparations and costs*. Judgment of February 5, 2019. Series C No. 374, para. 143.

<sup>228</sup> Cf. *Case of Blake v. Guatemala, supra*, para. 114, and *Case of Villaseñor Velarde et al. v. Guatemala, supra*, para. 143.

<sup>229</sup> Cf. *Case of Bámaca Velásquez v. Guatemala, supra*, para. 163, and *Case of Villaseñor Velarde et al. v. Guatemala, supra*, para. 143.

<sup>230</sup> Cf. Affidavit made by Mr. Ruiz Fuentes' sister on February 28, 2019 (evidence file, folio 8479).

190. Mr. Ruiz Fuentes's sister also indicated that the events led to her becoming ill "emotionally and with a nervous condition." She stated that, as indicated by a doctor, half her face became paralyzed due to the stress.<sup>231</sup> The Court also underscores the expert opinion provided by the psychologist, Juan Cristóbal Aldana, who indicated that Mr. Ruiz Fuentes's sister suffered "compassion fatigue," which occurs as a result of providing high levels of energy and compassion to those who suffer and, on not seeing any improvements in the suffering, this tends to express itself in psycho-social problems." Regarding the psycho-social effects of the death sentence imposed on her brother, the expert witness indicated that Mr. Ruiz Fuentes's sister suffered from a syndrome of "false hope, within a hopeless situation," which included "cognitive distortion where, on hearing the death sentence [... the person] becomes emotionally drained." Regarding the effects of the extrajudicial execution of her brother, the expert witness indicated that Mr. Ruiz Fuentes's sister experienced "vicarious trauma, manifesting a profound traumatism, because she had an inter-personal (emotional-affective), inter-subjective (identification with the suffering) and inter-emotional (high stress levels) relationship with what her brother experienced from the time of his arrest and until his death." The expert witness concluded that Mr. Ruiz Fuentes's sister suffered from "emotional exhaustion [...] that possibly triggered a depression during her life as an elderly person."<sup>232</sup>

191. Therefore, based on the evidence and information provided to the case file, the Court considers that, as a direct result of: (i) the torture suffered by her brother on the day of his arrest, August 6, 1997, and the aftereffects; (ii) the imposition of the death penalty; (iii) the subsequent extrajudicial execution, and (iv) the failure of the state authorities to investigate the facts, Mr. Ruiz Fuentes's sister experienced profound suffering and anguish that violated her mental and moral integrity. Consequently, the Court concludes that the State violated the right to personal integrity established in Article 5(1) of the American Convention, in relation to Article 1(1) of this instrument.

## **IX REPARATIONS**

192. Based on the provisions of Article 63() of the American Convention,<sup>233</sup> the Court has indicated that any violation of an international obligation that has caused harm entails the duty to repair it adequately, and that this provision reflects a customary norm that constitutes one of the fundamental principles of contemporary international law on State responsibility.<sup>234</sup>

193. The reparation of the harm caused by the violation of an international obligations requires, whenever possible, full restitution (*restitutio in integrum*), which consists in re-establishment of the previous situation. If this is not feasible, as in most cases of human rights violations, the Court will determine measures to guarantee the rights that have been violated and to redress the consequences of such violations.<sup>235</sup> Therefore, the Court has considered the need to grant diverse measures of reparation in order to redress the harm comprehensively, so that in addition to pecuniary compensation, measures of restitution, rehabilitation and satisfaction and guarantees of non-repetition have special relevance for the harm caused.<sup>236</sup>

194. The Court has established that the reparations must have a causal nexus with the facts of the

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<sup>231</sup> Cf. Affidavit made by Mr. Ruiz Fuentes' sister on February 28, 2019 (evidence file, folio 8479).

<sup>232</sup> Cf. Expert opinion provided by Dr. Juan Cristóbal Aldana Alfaro on February 28, 2019 (evidence file, folio 8508).

<sup>233</sup> Article 63(1) of the Convention stipulates that "[i]f the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party."

<sup>234</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and costs*. Judgment of July 21, 1989. Series C No. 7, para. 25, and *Case of Gorioitía v. Argentina, supra*, para. 59.

<sup>235</sup> Cf. *Case of Velásquez Rodríguez v. Honduras, supra*, paras. 25 and 26, and *Case of Coc Max et al. (Xamán Massacres) v. Guatemala, supra*, para. 144, and *Case of Gorioitía v. Argentina, supra*, para. 60.

<sup>236</sup> 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 Gorioitía v. Argentina, supra*, para. 60.

case, the violations declared, the harm proved, and the measures requested to redress the respective harm. Therefore, the Court must observe this concurrence in order to rule correctly and pursuant to law.<sup>237</sup> The Court also considers that the reparations must include an analysis that not only contemplates the right of the victim to obtain reparation, but also incorporates a gender perspective in both their formulation and implementation.<sup>238</sup>

195. Taking into account the violations of the American Convention declared in the preceding chapters, and in light of the criteria established in the Court's case law concerning the nature and scope of the obligation to make reparation,<sup>239</sup> the Court will now examine the claims presented by the Commission and the representatives, together with the corresponding arguments of the State, in order to establish measures tending to redress the said violations.

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

196. This Court considers that, pursuant to Article 63(1) of the Convention, those who have been declared victims of the violation of any of the rights recognized therein, are the injured party. Therefore, the Court considers that Hugo Humberto Ruiz Fuentes and his sister are the injured party and, as victims of the violations declared in Chapter VIII, they will be the beneficiaries of the reparations that the Court orders. Consequently, the Court will only refer to the arguments of the parties and the Commission that relate to the persons who have been declared victims.

#### **B. Investigation, identification, prosecution and punishment, as appropriate, of all those found responsible**

197. The **Commission** indicated that the State should investigate the acts of torture and the extrajudicial execution suffered by Mr. Ruiz Fuentes in a diligent and effective manner and within a reasonable time in order to elucidate the facts comprehensively, identify the perpetrators, and impose the appropriate punishments. The Commission also underlined that, in any future investigations, all the obstacles that had led to the current situation of impunity must be removed and the perpetrators and masterminds of the act identified, uncovering the criminal structures that allowed these acts to take place.

198. Similarly, the **representatives** asked the Court to order the State to conduct a serious and effective investigation, as described, of both the acts of torture perpetrated against Mr. Ruiz Fuentes at the time of his arrest, and his extrajudicial execution.

199. The **State** indicated that the petitioners and the Commission had never proved the existence of acts of torture or that the death of Mr. Ruiz Fuentes had been an extrajudicial execution and, in particular, the participation of the State's law enforcement agents in the perpetration of that act.

200. Bearing in mind that, currently, criminal proceedings are underway to clarify the facts related to the death of Mr. Ruiz Fuentes, the Court establishes that the State must continue with all the necessary investigations to identify, prosecute and punish, as appropriate, those responsible for his death. This obligation must be complied with based on the standards established by the case law of this Court;<sup>240</sup> that is, with due diligence and within a reasonable time.<sup>241</sup> To this end, the State must:

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<sup>237</sup> Cf. *Case of Ticona Estrada v. Bolivia. Merits, reparations and costs*. Judgment of November 27, 2008. Series C No. 191, para. 110, and *Case of Gorioitía v. Argentina, supra*, para. 61.

<sup>238</sup> Cf. *Case of I.V. v. Bolivia, supra*, para. 326, and *Case of López Soto et al. v. Venezuela, supra*, para. 270.

<sup>239</sup> Cf. *Case of Velásquez Rodríguez v. Honduras, supra*, paras. 25 to 27, and *Case of Gorioitía v. Argentina, supra*, para. 62.

<sup>240</sup> Cf. *Case of the Human Rights Defender et al. v. Guatemala. Preliminary objections, merits, reparations and costs*. Judgment of August 28, 2014. Series C No. 283, para. 252, and *Case of Munárriz Escobar et al. v. Peru, supra*, para. 122.

<sup>241</sup> Cf. *Case of the Human Rights Defender et al. v. Guatemala, supra*, and *Case of Munárriz Escobar et al. v. Peru, supra*, para. 122.

(i) ensure that the different organs of the system of justice involved in the case have the necessary human and material resources to perform their tasks in a satisfactory, independent and impartial manner, and that those who take part in the investigation, including victims, witnesses and agents of justice, have adequate guarantees for their safety,<sup>242</sup> and (ii) ensure full access and capacity to act to the members of Mr. Ruiz Fuentes' family at all stage of the investigations, pursuant to domestic law and the provisions of the American Convention.<sup>243</sup>

201. Also, in relation to the torture suffered by Mr. Ruiz Fuentes at the time of his arrest on August 6, 1997, the Court determines that the State, pursuant to its domestic law and within six months, must initiate the investigation to clarify the facts that have been alleged and conduct this with due diligence, enabling the victim's family members to participate directly or through their representatives, and have access to all the actions taken.

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

#### *c.1 Measures of satisfaction*

202. The **representatives** asked the Court to order the State to publish the judgment in a national newspaper and that access to the judgment be made available on the websites of the Guatemalan Ministry of Foreign Affairs, the Presidential Human Rights Commission (COPREDEH), the PNC, the Ministry of the Interior, and the prison system.

203. They also asked that the Court require the State to organize an act to acknowledge responsibility in the presence of the victim's family, during which it expressly accepted that Mr. Ruiz Fuentes was tortured and executed by agents of the State in the context of a criminal plan aimed at the so-called "selective social cleansing."

204. The **State** argued that, at all times, it had acted in keeping with the law and, consequently, rejected any attribution of responsibility by either the Commission or the representatives because they had never proved this responsibility; therefore it opposed publication of the judgment.

205. The **Commission** did not present any specific arguments in this regard.

206. The Court finds, as it has in other cases,<sup>244</sup> that, within six months of notification of this judgment, the State must publish: (a) the official summary of this judgment prepared by the Court, once, in the Official Gazette in an adequate and legible font; (b) the official summary of this judgment prepared by the Court, once, in a national newspaper with widespread coverage, in an adequate and legible font, and (c) this judgment, in its entirety, available for one year on an official website of the State. The State must inform this Court immediately when it has made each of the publications ordered, regardless of the one-year time frame for presenting its first report established in the seventeenth operative paragraph of the judgment.

207. Regarding the act to acknowledge responsibility requested by the representatives, the Court considers that the delivery of this judgment and the reparations ordered herein are sufficient and adequate.

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<sup>242</sup> Cf. *Case of the Los Dos Erres Massacre v. Guatemala*, *supra*, para. 231, and *Case of Omeara Carrascal et al. v. Colombia*, *supra*, para. 293.

<sup>243</sup> Cf. *Case of Montero Aranguren et al. (Retén de Catia) v. Venezuela. Merits, reparations and costs*. Judgment of July 5, 2006. Series C No. 150, para. 139, and *Case of Terrones Silva et al. v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of September 26, 2018. Series C No. 360, para. 246.

<sup>244</sup> Cf. *Case of the Yakye Axa Indigenous Community v. Paraguay. Merits, reparations and costs*. Judgment of June 17, 2005. Series C No. 125, para. 227, and *Case of Gorioitía v. Argentina*, *supra*, para. 68.

c.2 *Guarantees of non-repetition*

208. The **Commission** asked the Court, given that Mr. Ruiz Fuentes was unable to obtain a comprehensive review of his first instance judgment, to order the State to amend the remedy of appeal so that it complied with the standard of comprehensive reparation.

209. Regarding the legal framework regulating the death penalty, the Commission asked that the State of Guatemala adopt all necessary legislative, administrative and other measures to ensure that domestic legislation was consistent with its current practice [of not imposing the death penalty] and thus advance towards the abolition of the death penalty. It also asked the Court, pursuant to Article 4(2) of the Convention, to establish that the State was absolutely prohibited from re-establishing the death penalty in the future, taking into account the current situation.

210. With regard to the prohibition of torture, the Commission considered that the State must adopt administrative and other measures aimed at training law enforcement agents on the absolute prohibition of torture, and also conduct training on the use of force in keeping with international standards in the context of operations to capture persons deprived of liberty who have escaped from detention centers.

211. The **representatives** agreed with the requests made by the Commission. In addition, they asked the Court to order the State of Guatemala to amend its legislation on torture; thus, it should amend articles 201 *bis* and 425 of the Criminal Code in order to bring the criminal definition of torture into line with the relevant international standards.

212. The representatives also asked that the State implement a structural reform of the police institution so that the personnel selection procedures, the education and training processes for police officers, the structure, composition and operation of the institution, and also the internal organization and strict control of its activities, and the disciplinary regime applicable in relation to human rights violations committed by police officers, complied with international public safety standards and respect for policing functions. They also indicated that it was necessary to carry out a purge of the current personnel of the PNC and that officers who had been involved in the perpetration of serious offenses and misdemeanors and, in particular, those who had been involved in serious human rights violations should be removed from their functions.

213. Regarding proper judicial control, the representatives asked the Court to order the State to adopt measures to guarantee respect for the judicial guarantees of defendants and satisfactory action by defense lawyers.

214. In relation to the adoption of legislative measures to ensure access to an appropriate remedy of appeal, the **State** indicated that, although a formal requirement existed that appellate judgments should not rule on the assessment of the evidence in particular, the possibility exists for the higher courts to examine the way in which the evidence was analyzed and whether the rules of sound judicial criteria were respected in its assessment.

215. With regard to the legal framework regulating the death penalty, the State indicated that it had made every effort to avoid the application of this punishment, by implementing the mechanism of commutation to imprisonment, and the Commission had acknowledged that effort in Merits Report No. 94/17. Consequently, the respective measure of reparation should be declared unnecessary.

216. Regarding the prohibition of torture, the State indicated that the crime of torture was regulated in its domestic laws and, therefore, as soon as the body responsible for criminal prosecution was made aware of the perpetration of a crime, it activated its action protocol, *ex officio*.

217. On the matter of the reform and strengthening of the PNC, the State indicated that, for some



time it had been working on this and had made significant progress. An example of this was the PNC law currently in force, Decree No. 11-97, which established aspects such as: (a) the main functions; (b) the organizational structure; (c) the basic action principles; (d) the PNC career; (e) hierarchical levels, ranks and promotions; (f) appointments and dismissals; (g) administrative situations; (h) rights, obligations, prohibitions and assignments; (i) disciplinary regime; (j) criminal procedural regime; (k) financial system, and (l) educational system.

218. With regard to the measure requested relating to adequate judicial control, the State indicated that disciplinary regimes and mechanisms existed for all public servants and professionals established by the different professional associations, through the "honor court."<sup>245</sup>

c.2.1) Adaptation of domestic law to the American Convention

219. Regarding the legal framework regulating the death penalty, the Court notes that, in the case of *Raxcacó Reyes v. Guatemala*, it had already ordered the following:

[...] i. (i) Modification, within a reasonable period, of article 201 of the Criminal Code in force, in order to define various specific crime categories that distinguish the different forms of kidnapping or abduction based on their characteristics, the gravity of the facts, and the circumstances of the crime, with the corresponding provision of different punishments, proportionate to each category, and the empowerment of the courts to individualize punishments in keeping with the specifics of the crime and the perpetrator, within the maximum and minimum limits that each crime category should include. This modification should, under no circumstances, expand the list of crimes punishable with the death penalty established prior to ratification of the American Convention. While reforming this article, the State must abstain from applying the death penalty and executing those convicted exclusively of the crime of kidnapping or abduction.

(ii) Adoption, within a reasonable period, of a procedure that ensures that any person condemned to death has the right to apply for and, if applicable, obtain a pardon or commutation of sentence, in accordance with a regulation that establishes the authority empowered to grant this, the presumptions of admissibility and the respective procedure; in these cases, the sentence must not be executed while the decision on the pardon or commutation of sentence applied for is pending.<sup>246</sup>

220. Therefore, the Court considers that it is not necessary to reiterate to Guatemala measures of reparation on the adaptation of their domestic law to the American Convention in this regard because compliance with the said measures is currently being analyzed by the Court at the stage of monitoring compliance with the corresponding judgment.

221. Regarding the adaptation of article 201 bis of the Guatemalan Criminal Code to international standards as regard the definition of the crime of torture, the Court notes that, currently, the said article indicates:

Anyone who by order or with the authorization, support or acquiescence of State authorities intentionally inflicts on another person severe pain or suffering, either physical or mental, in order to obtain from them or from a third party information or a confession of an act that they have committed or that they are suspected of having committed, or who seeks to intimidate a person or, by this means, other persons, commits the crime of torture. [...] The person or persons responsible for the crime of torture shall be sanctioned with twenty-five to thirty years' imprisonment.

222. The Court notes that, indeed, this article does not comply with the minimum requirements established in Article 2 of the Inter-American Convention to Prevent and Punish Torture, which

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<sup>245</sup> According to the State, the fundamental legal regime for the disciplinary procedure applied by the court of honor of the Guatemala Lawyers and Notaries Professional Association is based, *inter alia*, on articles 18 and 19 of the law on compulsory membership in a professional association, Decree No. 72-2001 of the Congress of the Republic, and the representatives of the alleged victims cannot argue their ignorance in this regard.

<sup>246</sup> Cf. *Case of Raxcacó Reyes v. Guatemala*, *supra*, para. 132.

stipulates that torture shall be understood to be:

[A]ny act intentionally performed whereby physical or mental pain or suffering is inflicted on a person for purposes of criminal investigation, as a means of intimidation, as personal punishment, as a preventive measure, as a penalty, or for any other purpose. Torture shall also be understood to be the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish.

223. This failure to adapt the law has also been stressed by the Constitutional Court of Guatemala in a judgment of July 17, 2012, in which it expressly indicated:

[...] the definition of the crime of torture contained in article 201 bis of the Criminal Code does not include all the elements described in the international treaties that regulate that unlawful conduct, because it omits: punishment, discrimination and any other purpose as part of the definition of the crime, as well as the application of methods intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish. Therefore, by excluding those objective elements from protection accorded to the right in question, there has been a failure to define as a crime acts that are extremely harmful to the moral and physical integrity of the individual, and that are necessary to supplement the crime established in article 201 of the Criminal Code, thus contravening Article 1 of the Inter-American Convention to Prevent and Punish Torture. [...] This court considers that, in order to comply with the necessary definition of the crime, and in application of the international human rights standards, the description of the conducts that constitute "torture" must be established specifically, so that it is necessary to introduce, by means of an amendment of the criminal norm contained in article 201 bis of the Criminal Code the phrases: "punishment," "any type of discrimination," "or any other purpose," as purposes of the crime of torture, and it should be expressly regulated that this crime is also constituted by "the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish."<sup>247</sup>

224. The Constitutional Court concluded, therefore, that article 201 bis of the Criminal Code should be amended by "legislative action with the additions found in the provisions of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and in the Inter-American Convention to Prevent and Punish Torture."<sup>248</sup> Based on the arguments presented by the State and the body of evidence in this case, the Court notes that, at the date of this judgment, this legislative adaptation and amendment have not taken place.

225. Consequently, the Court finds it pertinent to order the State, as a guarantee of non-repetition of the facts of this case, to adapt the definition of the crime of torture contained in article 201 bis of the current Criminal Code to international human rights standards within a reasonable time.

226. Regarding the request concerning the prohibition to adopt retrogressive legislation in relation to the death penalty, in section VIII-1 of this judgment, the Court referred to the very restrictive regime for the death penalty established in Article 4 of the American Convention and the abolitionist tendency reflected in the Protocol to the American Convention on Human Rights to Abolish the Death Penalty, which also prevails in the universal system, and therefore refers back to its previous considerations. In addition, the Court underscores the ruling of the Constitutional Court of Guatemala in its judgment of October 24, 2017, declaring that the said article 201 was unconstitutional because it considered that it constituted an evident violation of Article 4(2) of the American Convention on Human Rights.<sup>249</sup>

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<sup>247</sup> Cf. Judgment of the Constitutional Court of the Republic of Guatemala of July 17, 2012, file 1822-2011 (evidence file, folios 6855 and 6856).

<sup>248</sup> Cf. Judgment of the Constitutional Court of the Republic of Guatemala of July 17, 2012, file 1822-2011 (evidence file, folio 6858).

<sup>249</sup> Cf. Judgment of the Constitutional Court of the Republic of Guatemala, of October 24, 2018, File 5986-2016.

227. Regarding the other measures relating to the adaptation of the law, the Court notes that there is no causal nexus between the violations declared and the amendment requested.

c.2.2) Training measures

228. This Court has established that the training of public officials is an important measure to guarantee the non-repetition of the facts that gave rise to violations. Accordingly, as a system of ongoing personal development, the training should continue over a significant period of time in order to achieve its objectives.<sup>250</sup> Consequently, the State must include specific training sessions and permanent courses on the absolute prohibition of torture in the training programs for members of the police and law enforcement bodies.

c.2.3) Other measures of non-repetition requested

229. With regard to the other measures of non-repetition requested by the representatives, the Court considers that the delivery of this judgment and the reparations ordered herein are sufficient and adequate.

**D. Other measures requested**

230. The **representatives**, in their final written arguments, asked the Court to order the State of Guatemala to provide adequate care for the physical and psychological ailments suffered by Mr. Ruiz Fuentes's sister.

231. The representatives also asked the Court to order the transfer of the remains of Hugo Humberto to the Las Rosas cemetery, in Mixco.

232. Regarding the request for medical care for Mr. Ruiz Fuentes's sister, the **State** indicated that the suffering and/or affliction were a result of the unlawful acts committed by Mr. Ruiz Fuentes, for which the State bore no responsibility whatsoever.

233. The State also indicated its opposition to complying with the measure of transferring the remains of Mr. Ruiz Fuentes, based on the following arguments: (a) at the time of his death, the mortal remains of Mr. Ruiz Fuentes had been returned to the family who decided to place them in the general cemetery; (b) Mixco is a municipality in the Department of Guatemala; the distance is about 16 kilometers; it is part of the metropolitan area, totally urbanized, accessible and with sufficient available resources, including private and collective transport; (c) it should not be forgotten that the child abducted and kidnapped by Mr. Ruiz Fuentes and his accomplices was confined in a house located in the municipality of Mixco; therefore, the State found that this place cannot be considered the most appropriate one, especially for the transfer of the remains of the alleged victim; (d) the general cemetery is a public place where the State can place the mortal remains of members of the population, with no distinctions or privileges, and where thousands of people go to visit the graves of their family members.

234. The **Commission** did not comment on this aspect.

235. Regarding the request for medical care for Mr. Ruiz Fuentes's sister, the Court notes that the representatives requested this measure for the first time in their final written arguments. Consequently, the Court finds that this request was time-barred. And, regarding the request to transfer the remains of Hugo Humberto to the Las Rosas cemetery in Mixco, the Court considers that

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<sup>250</sup> Cf. *Case of Claude Reyes et al. v. Chile. Monitoring compliance with judgment*. Order of the Court of November 24, 2008, considering paragraph 19, and *Case of Alvarado Espinoza et al. v. Mexico. Merits, reparations and costs*. Judgment of November 28, 2018. Series C No. 370, para. 327.

the delivery of this judgment, together with the other measures ordered, are sufficient and adequate to redress the violations suffered by the victims and does not find it necessary to order additional measures.

## **E. Compensation**

### *e.1 Pecuniary damage*

236. The **Commission** asked that the State make full reparation to Mr. Ruiz Fuentes for the harm caused by measures of compensation and satisfaction, which included both pecuniary and non-pecuniary damages.

237. The **representatives** asked the Court to determine, in equity, an amount for pecuniary damage. The representatives explained that the victims in this case had assumed diverse expenses owing to the violations of their rights. First, Mr. Ruiz Fuentes had initially been assisted by a private lawyer, who acted negligently, so that he was then assigned another defense counsel. They added that his family had had to pay numerous expenses, including especially the transfers to visit him when he was detained. Following his death, they incurred expenses for his funeral and, subsequently, they were one of the main promoters of the search for justice. The representatives indicated that, owing to the passage time, the victims did not have vouchers for the said expenses; therefore, they asked the Court to determine, in equity, a sum for pecuniary damage that should be delivered to each of them.

238. The representatives also indicated that Mr. Ruiz Fuentes had been deprived of his liberty in an unlawful and arbitrary manner, tortured and sentenced to death following proceedings that violated his rights. In addition, he was subsequently executed by state agents. Accordingly, the violation of the victim's rights deprived his family of the income that he would have received if these violations had not occurred. The representatives indicated that, before his arrest in 1997, Hugo Humberto worked in a car repair shop. They considered that the State should reimburse the victim's unpaid wages from the time of his arrest to date. The representatives asked the Court to establish this sum, in equity.

239. The **State** indicated that Mr. Ruiz Fuentes was engaged in unlawful acts through which he sought to obtain an income illegally and to the detriment of other persons. Regarding the services provided by a private professional, the State considered that this person had the right and freedom to decide who he wished to defend. Neither the family members nor their representatives had ever provided reliable proof of the expenses incurred during the litigation of this case. Consequently, the State asked the Court to declare the request inadmissible. The State also indicated that abduction or kidnapping is a crime and not a job and, therefore, it could never engage itself to reimburse the sum of one million quetzals requested by Mr. Ruiz Fuentes as a "salary" for the rescue of the child. The State also indicated that no evidence had been provided to the case file that allowed it to be determined that Mr. Ruiz Fuentes had an income or earnings from some licit activity.

### *e.2 Non-pecuniary damage*

240. The **Commission** asked that Mr. Ruiz Fuentes receive full reparation including measures of satisfaction and monetary compensation for the pecuniary and non-pecuniary damage caused.

241. The **representatives** indicated that, owing to the facts of this case, the violations committed, the suffering caused, the effects on life projects, and the other non-pecuniary consequences suffered by the victims in this case, the Court should order the State of Guatemala to pay non-pecuniary damage based on the equity principle.

242. The **State** indicated that the parties who were prejudiced in this case were the kidnapped child

and his family group and the State had provided them with redress in compliance with its duty by applying criminal justice against Mr. Ruiz Fuentes and his accomplices for the unlawful act they had committed. The State rejected this measure of reparation and asked the Court to declare it inadmissible.

243. In its case law, the Court has developed the concept of pecuniary damage and the situations in which it should be compensated. The Court has established that pecuniary damage encompasses the loss of, or detriment to, the income of the victims, the expenses incurred as a result of the facts and the consequences of a pecuniary nature that have a causal nexus with the facts of the case.<sup>251</sup> In addition, the Court has established in its case law that non-pecuniary damage “may include both the suffering and afflictions caused by the violation and the impairment of values of great significance to the individual and any alteration, of a non-pecuniary nature, in the living conditions of the victims.” Furthermore, since it is not possible to allocate a precise monetary equivalent to the non-pecuniary damage, it can only be compensated, for the purposes of making full reparation to the victim, by the payment of a sum of money or the delivery of goods or services with a monetary value that the Court determines in reasonable application of judicial discretion and based on equity.<sup>252</sup>

244. In this case, the Court, taking into account the particularities of the case and the causal nexus of the violations that have been declared, will only rule on non-pecuniary damage. Based on the circumstances of the case, the violations committed, the different degrees of suffering caused and experienced, the time that has passed and the denial of justice, the Court will establish, in equity, compensation for non-pecuniary damage in favor of the victims.

245. Consequently, the Court orders, in equity, the payment of US\$60,000 (sixty thousand United States dollars), for non-pecuniary damage, in favor of Mr. Ruiz Fuentes. The amount established by the Court must be delivered within one year of notification of this judgment based on the following criteria:

- a) Twenty-five per cent (25%) of the compensation must be delivered to Mr. Ruiz Fuentes’s spouse, S.J.M.;
- b) Twenty-five per cent (25%) of the compensation must be delivered to Mr. Ruiz Fuentes’ permanent companion, A.M.V.;
- c) The remaining fifty per cent (50%) of the compensation must be shared in equal parts between his children. If one or several of the children are deceased, the part that would correspond to them will increase the part of the other children of the victim.

246. In addition, the Court orders, in equity, payment of US\$10,000 (ten thousand United States dollars), for non-pecuniary damage, to Mr. Ruiz Fuentes’s sister for the violations that have been proved to her detriment, and that resulted in violations of her physical, moral and mental integrity.

#### **F. Costs and expenses**

247. The **representatives** asked the Court to order the State to pay the costs and expenses related to the processing of the case in both the domestic sphere and before the inter-American system. Specifically, they indicated that the ICCPG had spearheaded the search for justice in this case, both at the domestic level where they acted as plaintiffs in representation of the victim’s family for several years, and at the international level, since 2003. In the exercise of this representation they had

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<sup>251</sup> Cf. *Case of Bámaca Velásquez v. Guatemala. Reparations and costs, supra*, para. 43, and *Case of Case of Gorioitía v. Argentina, supra*, para. 80.

<sup>252</sup> Cf. *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Reparations and costs, supra*, para. 84, and *Case of Gorioitía v. Argentina, supra*, para. 82.

incurred expenses including for travel and accommodation. They had also incurred administrative expenses and others corresponding to the legal work providing specific attention to the case, which included research, compilation and presentation of evidence, interviews, and preparation of briefs.

248. In addition, CEJIL had acted as the victims' representative in the international proceedings since August 2003. In the exercise of this representation it had incurred expenses that included travel and accommodation. It had also incurred expenses corresponding to the legal work providing specific attention to the case, which included research, compilation and presentation of evidence, interviews, and preparation of briefs. On this basis, they asked the Court to establish the sum of US\$23,084.77 for expenses. Furthermore, they asked the Court to add the sum of US\$9,838.00 (nine thousand eight hundred and thirty-eight United States dollars) to the sum indicated in their pleadings and motions brief, and to establish the sum of US\$32,922.00 (thirty-two thousand nine hundred and twenty-two United States dollars) for expenses and costs. They also asked the Court to order that this amount be reimbursed directly to CEJIL by the Guatemalan State. Lastly, they asked the Court to establish in its judgment the possibility of establishing future expenses resulting from the monitoring of compliance with the judgment it would deliver in this case.

249. The **State** indicated that the vouchers presented by the ICCPG lacked authenticity and legal certainty and, therefore, were not reliable. In addition, the ICCPG had presented the payroll for all its employees as a voucher as if the only source of income and the only work performed was the litigation of the case of Mr. Ruiz Fuentes. Added to this, according to the State, the date of some of the vouchers was incongruent. Consequently, the State rejected each and every one of the supposed expenses incurred by the ICCPG because they were not directly related to the instant case and, therefore, asked the Court to declare that they were inadmissible and to reject them. Similarly, the State asked the Court to require CEJIL to prove the supposed expenses incurred that were directly related to this case with the respective documents that supported the expenditure incurred. According to the State, the details and the amounts presented in the table in the pleadings and motions brief did not constitute any evidence or legal certainty about them and, therefore, the State indicated that it would not comment on them.

250. The **Commission** did not present specific arguments on this point.

251. The Court reiterates that, pursuant to its case law,<sup>253</sup> costs and expenses form part of the concept of reparation because the activity deployed by the victims in order to obtain justice, at both the national and the international level, entails expenditure that must be compensated when the international responsibility of the State has been declared in a judgment. Regarding the reimbursement of costs and expenses, it is for the Court to make a prudent assessment of their scope, which includes the expenses incurred before the authorities of the domestic jurisdiction, and also those generated during the process before the inter-American system, taking into account the circumstances of the particular case and the nature of the international jurisdiction for the protection of human rights. This assessment may be made based on the equity principle and taking into account the expenses indicated by the parties, provided their *quantum* is reasonable.<sup>254</sup> The Court has also indicated that "the claims of the victims or their representatives for costs and expenses, and the evidence that supports these, must be presented to the Court at the first procedural moment granted to them, that is, in the pleadings and motions brief, without prejudice to such claims being updated subsequently in keeping with the new costs and expenses incurred due to the proceedings before this Court."<sup>255</sup> In addition, the Court reiterates that it is not sufficient merely to forward probative documents; rather, the parties are required to include arguments that relate the evidence to the fact

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<sup>253</sup> Cf. *Case of Garrido and Baigorria v. Argentina. Reparations and costs*. Judgment of August 27, 1998. Series C No. 39, para. 79, and *Case of Gorioitía v. Argentina, supra*, para. 80.

<sup>254</sup> Cf. *Case of Garrido and Baigorria v. Argentina. Reparations and costs, supra*, para. 82, and *Case of Gorioitía v. Argentina, supra, supra*, para. 84.

<sup>255</sup> Cf. *Case of Garrido and Baigorria v. Argentina. Reparations and costs, supra*, paras. 79 and 82, and *Case of Gorioitía v. Argentina, supra, supra*, para. 85.

it is considered to represent and, in the case of alleged financial disbursements, the items and their justification must be clearly established.<sup>256</sup>

252. The Court notes that the representatives forwarded vouchers for the expenses incurred in the professional defense of this case and that these related to plane tickets, coordination of the litigation, legal assistance, research, compilation and presentation of evidence, interviews, and preparation of briefs. Taking this into account, the Court establishes, in equity, the sum of US\$30,000 (thirty thousand United States dollars) for the expenses incurred in the processing of the case before the inter-American system of human rights. This sum must be delivered, within one year of notification of this judgment, as follows: to the *Instituto de Estudios Comparados en Ciencias Penales de Guatemala* the sum of US\$20,000 (twenty thousand United States dollars) and to the Center for Justice and International Law the sum of US\$10,000 (ten thousand United States dollars). At the stage of monitoring compliance with judgment, the Court may require the State to reimburse the victims or their representatives for any reasonable expenses they incur at that procedural stage.

### **G. Reimbursement of expenses to the Victims' Legal Assistance Fund of the Inter-American Court**

253. During its 2008 General Assembly, the Organization of American States created the Legal Assistance Fund of the Inter-American System of Human Rights 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."<sup>257</sup>

254. In a note of the Court's Secretariat of July 17, 2019, a report was forwarded to the State on the disbursements made in application of the Victims' Legal Assistance Fund in this case, which amounted to US\$1,943.20 (one thousand nine hundred and forty-three United States dollars and twenty cents) and, pursuant to Article 5 of the Court's Rules for the Operation of the said Fund, Guatemala was granted a time frame for presenting any observations it deemed pertinent. The State presented its observations on July 14 [*sic*], 2019, reiterating the position outlined in its answering brief and considered that: (i) the sum to be paid was not covered by the Court, rather this responsibility was delegated to the State; (ii) both the Commission and the representatives of the alleged victims only identified Mr. Ruiz Fuentes' sister; (iii) the purpose of the statements made by the deponents proposed by the ICCPG was similar and, therefore, did not provide factual information that would have allowed the judges to elucidate the true facts of the case; therefore, the principle of procedural economy was violated, as the State had alleged at the appropriate moment; (iv) the State considered that the principal victims in this case were the family members of the child, P.A.L.W.; (v) the alleged victims, their representatives and the Inter-American Commission had substantiated their case on false facts, and the State had proved this at the appropriate moment, and (vi) the State had complied with its obligation to investigate, prosecute and punish those responsible for the facts that occurred to the detriment of the child, P.A.L.W., and the members of his family, who were the victims of a group of kidnappers, a situation based on which the Court should declare that the State did not have international responsibility in this case.

255. In light of Article 5 of the Rules for the Operation of the Fund, owing to the violations declared in this judgment and the fact that the requirements to access the Fund were met, the Court orders the State to reimburse the Fund the sum of US\$1,943.20 (one thousand nine hundred and forty-three United States dollars and twenty cents) for the necessary expenses paid. This sum must be

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<sup>256</sup> Cf. *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador*, *supra*, para. 277, and *Case of Gorioitía v. Argentina*, *supra*, para. 85.

<sup>257</sup> AG/RES. 2426 (XXXVIII-O/08), Resolution adopted at the fourth plenary session held on June 3, 2008, of the thirty-eighth General Assembly of the OAS, "Establishment of the Legal Assistance Fund of the Inter-American Human Rights System," operative paragraph 2(a), and CP/RES. 963 (1728/09), Resolution adopted on November 11, 2009, by the OAS permanent Council, "Rules of Procedure for the Operation of the Legal Assistance Fund of the Inter-American Human Rights System," article 1(1).

reimbursed within six months of notification of this judgment.

**H. Method of complying with the payments ordered**

256. The State shall make the payment of the compensation for pecuniary and non-pecuniary damage and to reimburse and expenses established in this judgment directly to the persons and organizations indicated herein, within one year of notification of this judgment, pursuant to the following paragraphs.

257. If the beneficiary is deceased or dies before they receive the respective compensation, this shall be delivered directly to their heirs, pursuant to the applicable domestic law.

258. Regarding the currency for the payment of the compensation and reimbursement of costs and expenses, the State shall comply with its monetary obligations by payment in United States dollars or, if this is not possible, the equivalent in Guatemalan currency, using the highest exchange rate and the one most beneficial to the victims permitted by domestic law in force at the time of payment. During the stage of monitoring compliance with judgment, the Court may make a prudent readjustment of the equivalent of the said amounts in Guatemalan currency in order to avoid exchange fluctuations substantially affecting the purchasing power of those amounts.

259. If, for reasons that can be attributed to the beneficiaries of the compensation or their heirs, it were not possible to pay the amount determined within the indicated time frame, the State shall deposit the said amount in their favor in a deposit account or certificate in a solvent Guatemalan financial institution, in United States dollars, and in the most favorable conditions permitted by banking law and practice. If the corresponding compensation is not claimed, after ten years the amount shall be returned to the State with the interest accrued.

260. The amounts allocated in this judgment as compensation and to reimburse costs and expenses shall be delivered to the persons and organisations indicated in full, as established in this judgment, without any deduction due to possible taxes or charges.

261. If the State should incur arrears, including in the reimbursement of expenses to the Victims' Legal Assistance Fund of the Court, it shall pay interest on the amount owed corresponding to banking interest on arrears in the Republic of Guatemala.

**X  
OPERATIVE PARAGRAPHS**

**THE COURT**

**DECIDES,**

Unanimously,

1. To reject the preliminary objection filed by the State, pursuant to paragraphs 18 and 19 of this judgment.

**DECLARES:**

Unanimously, that:

2. The State is responsible for the violation of the right to life established in Article 4(2) and (6) of the American Convention on Human Rights, in relation to the obligation to ensure the rights



established in Article 1(1) and 2 of the Convention, owing to the imposition of the death penalty, to the detriment of Hugo Humberto Ruiz Fuentes, pursuant to paragraphs 78 to 94 of this judgment.

3. The State is responsible for the violation of the right to life established in Article 4(1) of the American Convention on Human Rights, in relation the provisions of Article 1(1) of the Convention, owing to the death of Hugo Humberto Ruiz Fuentes, pursuant to paragraphs 100 to 113 of this judgment.

4. The State is responsible for the violation of the right to personal integrity and the prohibition of torture and other cruel, inhuman or degrading treatment, established in Article 5(1) and (2) of the American Convention on Human Rights, in relation to Article 1(1) of the Convention, and Articles 1 and 6 of the Inter-American Convention to Prevent and Punish Torture, to the detriment of Hugo Humberto Ruiz Fuentes, pursuant to paragraphs 123 to 137 of this judgment.

5. The State is responsible for the violation of the right to judicial guarantees established in Article 8(2)(c) and (h) of the American Convention on Human Rights, in relation to Article 1(1) of the Convention, to the detriment of Hugo Humberto Ruiz Fuentes, pursuant to paragraphs 146 to 168 of this judgment.

6. The State is responsible for the violation of the right to judicial guarantees and judicial protection established in Articles 8(1) and 25 of the American Convention on Human Rights, in relation to Article 1(1) of the Convention, and Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, to the detriment of Hugo Humberto Ruiz Fuentes, pursuant to paragraphs 169 to 174 of this judgment, and for the violation of the right to judicial guarantees and judicial protection established in Articles 8(1) and 25 of the American Convention on Human Rights, in relation to Article 1(1) of the Convention, to the detriment of Hugo Humberto Ruiz Fuentes and his sister, pursuant to paragraphs 175 to 184 of this judgment.

7. 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) of this instrument, to the detriment of the sister of Mr. Ruiz Fuentes, pursuant to paragraphs 188 to 191 of this judgment.

8. The State is not responsible for the violation of the right to life established in Article 4(1) of the American Convention on Human Rights, in relation to the obligation to ensure the rights established in Article 1(1) of the Convention, owing to the imposition of the death penalty, to the detriment of Hugo Humberto Ruiz Fuentes, pursuant to paragraph 89 of this judgment.

**AND ESTABLISHES:**

Unanimously, that:

9. This judgment constitutes, *per se*, a form of reparation.

10. The State shall continue all necessary investigations to identify, prosecute and punish, as appropriate, those responsible for the death of Hugo Humberto Ruiz Fuentes, pursuant to paragraph 200 of this judgment.

11. The State shall initiate, in keeping with the provisions of its domestic law and within six months, any necessary investigations to identify, prosecute and punish, as appropriate, those responsible for the torture suffered by Hugo Humberto Ruiz Fuentes, pursuant to paragraph 201 of this judgment.

12. The State shall make the publications indicated in paragraph 206 of this judgment.

13. The State shall include specific training and permanent courses on the absolute prohibition of

torture in the training programs for members of the police and law enforcement bodies.

14. The State shall pay the amounts established in paragraphs 245, 246 and 252 of this judgment as compensation for non-pecuniary damage, and costs.

15. The State shall reimburse the Victims' Legal Assistance Fund of the Inter-American Court of Human Rights the sum disbursed during the processing of this case, pursuant to paragraph 255 of this judgment.

16. The State, within one year of notification of this judgment, shall provide the Court with a report on the measures adopted to comply with it.

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

DONE, at San José, Costa Rica, on October 10, 2019, in the Spanish language.

IACtHR. *Case of Ruiz Fuentes et al. v. Guatemala. Preliminary objection, merits, reparations and costs.* Judgment of October 10, 2019.

Eduardo Ferrer Mac-Gregor Poisot  
President

Eduardo Vio Grossi

Humberto Antonio Sierra Porto

Elizabeth Odio Benito

L. Patricio Pazmiño Freire

Ricardo C. Pérez Manrique

Pablo Saavedra Alessandri  
Secretary

So ordered,

Eduardo Ferrer Mac-Gregor Poisot  
President

Pablo Saavedra Alessandri  
Secretary