

INTER-AMERICAN COURT OF HUMAN RIGHTS*
CASE OF RODRÍGUEZ REVOLORIO ET AL. VS. GUATEMALA
JUDGMENT OF OCTOBER 14, 2019
(Preliminary Objection, Merits, Reparations and Costs)

In the case of *Rodríguez Revolorio et al*,

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

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

also present,

Pablo Saavedra Alessandri, Registrar,

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 Rules of Court"), delivers the present Judgment, which is structured in the following order:

* Judge Eugenio Raúl Zaffaroni excused himself from participating in the case, pursuant to Article 21 of Rules of Procedure of the Court, which was accepted by the Plenary of the Court.

I INTRODUCTION OF THE CASE AND CAUSE OF ACTION.....	4
II PROCEEDINGS BEFORE THE COURT	5
III JURISDICTION.....	6
IV PRELIMINARY OBJECTION.....	6
A. Arguments of the parties and the Commission	6
B. Considerations of the Court	6
V PRELIMINARY CONSIDERATIONS	7
A. Victims in the present case	7
B. Determination of the factual framework	8
VI EVIDENCE.....	8
A. Admissibility of documentary evidence.....	8
B. Admissibility of testimonial and expert evidence	9
VII FACTS.....	9
A. Normative framework in Guatemala with respect to the death penalty.....	9
B. The criminal proceedings against Miguel Ángel Rodríguez Revolorio, Miguel Ángel López Calo and Aníbal Archila Pérez	12
b.1 Investigation, prosecution, trial and conviction	12
b.2 Appeals.....	13
VIII MERITS.....	15
VIII-1 RIGHT TO LIFE AND THE PRINCIPLES OF LEGALITY AND NON-RETROACTIVITY .	16
A. Arguments of the parties and the Commission	16
B. Considerations of the Court	17
VIII-2 RIGHT TO HUMANE TREATMENT	20
A. Arguments of the parties and the Commission	20
B. Considerations of the Court	21
b.1 Prison conditions	21
b.2 Death row	28
VIII-3 THE RIGHTS TO A FAIR TRIAL AND TO JUDICIAL PROTECTION.....	30
A. Arguments of the parties and the Commission	30
B. Considerations of the Court	31
b.1 Right to an impartial judge and the principle of presumption of innocence	31
b.2 The right of defense, the duty of sufficient justification and the principle of presumption of innocence.....	34
b.3 Right to appeal against the judgment to a higher court.....	36
IX REPARATIONS	39
A. Injured party	40
B. Rehabilitation and satisfaction measures	40
b.1 Rehabilitation measures	40
b.2 Measures of satisfaction	40
b.3 Guarantees of non-repetition	41
C. Other measures requested	42
D. Compensation	42
d.1 Pecuniary damage	42
d.2 Non-pecuniary damage	43

G. Costs and Expenses 44
H. Reimbursement of expenses to the Inter-American Court's Victims' Legal Assistance Fund .. 45
I. Method of compliance with the payments ordered 46
X OPERATIVE PARAGRAPHS 47

I
INTRODUCTION OF THE CASE AND CAUSE OF ACTION

1. *The case submitted to the Court.* - On January 26, 2018, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") submitted the case of "Miguel Ángel Rodríguez Revolorio, Miguel Ángel López Calo and Aníbal Archila Pérez" v. the Republic of Guatemala (hereinafter "the State of Guatemala," "the Guatemalan State," "the State," or "Guatemala") to the jurisdiction of the Inter-American Court. According to the Commission, the case relates to a series of violations of due process and freedom from ex post facto laws committed against Mr. Rodríguez Revolorio, Mr. López Calo and Mr. Archila Pérez in the context of criminal proceedings against them for the crime of murder and attempted murder, as well as prison conditions during their confinement. Rodríguez Revolorio, López Calo and Archila Pérez were sentenced to death on May 23, 1996.
2. *Proceedings before the Commission.* - The procedure before the Commission was as follows:
 - a) *Petition.* - On July 17 and August 11, 1997,¹ the Center for Human Rights Legal Action (hereinafter "the Petitioners") filed the initial petition with the Commission.
 - b) *Admissibility Report.* - On December 18, 2002, the Commission informed the parties that pursuant to Article 37(3) of the Rules of Procedure then in force, it had decided to defer the admissibility analysis until the debate on the merits.
 - c) *Merits Report.* - On 5 September 2017, the Commission adopted Admissibility and Merits Report No. 99/17 pursuant to Article 50 of the Convention (hereinafter also "the Admissibility and Merits Report" or "Report No. 99/17"), in which it reached several conclusions,² and made a number of recommendations to the State.
 - d) *Notification to the State.* - The Report on Admissibility and Merits was notified to the State on October 27, 2017, granting it a period of two months to report on compliance with the recommendations. The Guatemalan State submitted a brief in which it indicated its willingness to initiate a "friendly settlement". However, the State did not submit any proposal for compliance or any other information indicating that it had made contact with the victims or their representatives. In addition, the State did not request an extension to suspend the time limit of Article 51 of the Convention, as required by Article 46 of the Commission's Rules of Procedure.
3. *Submission to the Court.* - On January 26, 2018, the Commission submitted to the jurisdiction of the Inter-American Court all the facts and human rights violations described in Report No. 99/17 "due to the need to obtain justice and reparation".³

¹ On July 17, 1997, the petition was filed in English, and on August 11, 1997, in Spanish.

² The Commission concluded that the State of Guatemala was responsible for "the violation of the rights to life, to humane treatment, to the freedom from ex post facto laws, to a fair trial and to judicial protection, established in Articles 4(1), 4(2), 5, 8(1), 8(2)(c), 8(2)(h), 9 and 25(1) of the American Convention in relation to the obligations established in Articles 1(1) and 2 of the same instrument, to the detriment of Miguel Ángel Rodríguez Revolorio, Miguel Ángel López Calo and Aníbal Archila Pérez. Likewise, the State failed to comply with the obligations established in Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture.

³ The Commission appointed Commissioner Esmeralda Arosemena de Troitiño and Executive Secretary Paulo Abrão as delegates before the Court. It also appointed as legal advisers Ms. Elizabeth Abi-Mershed, then Deputy Executive Secretary, as well as Ms. Silvia Serrano Guzmán and Mr. Christian González Chacón, attorneys of the Executive Secretariat.

4. *Requests of the Inter-American Commission.* - Based on the foregoing, the Commission asked the Court to declare the international responsibility of the State for the same violations included in its Merits Report (*supra* para. 2.c). The Commission asked the Court to order the State to implement reparation measures, which are detailed and analyzed in Chapter IX of this Judgment.

II PROCEEDINGS BEFORE THE COURT

5. *Appointment of Inter-American Public Defenders* - By means of a note of March 9, 2018, the Registrar requested the General Coordinator of the Inter-American Association of Public Defender's (AIDEF) to appoint an inter-American public defender to represent the alleged victims. On March 20, 2018, the General Coordinator of said Association informed the Inter-American Court of the appointment of two inter-American public defenders, Dr. Rivana Barreto Ricarte de Oliveira and Dr. Yanela Romero de Pimentel (hereinafter, in indistinct reference to the persons who acted in such capacity, "inter-American public defenders" or "the representatives").

6. *Notification to the representatives and the State.* - The submission of the case by the Commission was notified by the Court to the representatives of the alleged victims on April 26, 2018, and to the State on April 4, 2018.

7. *Brief with pleadings, motions and evidence.* - On June 25, 2018, the representatives of the alleged victims submitted to the Court their brief of pleadings, motions and evidence (hereinafter "pleadings and motions brief" or "ESAP"). The representatives substantially concurred 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 alleged by the Commission and, additionally, the violation of Article 8(2)(b), in relation to Article 1(1) of the American Convention to the detriment of Miguel Ángel Rodríguez Revolorio, Miguel Ángel López Calo and Aníbal Archila Pérez. In addition, the alleged victims requested, through their representatives, to avail themselves of the Inter-American Court's Victims' Legal Assistance Fund (hereinafter "the Court's Assistance Fund" or the "Fund"). Finally, they requested the Court to order the State to adopt various measures of reparation and to reimburse costs and expenses.

8. *Answering brief.* - On September 27, 2018, the State filed before the Court its brief in response to the submission and report on admissibility and merits of the Inter-American Commission and to the brief of pleadings, motions and evidence of the representatives (hereinafter "answering brief"). In this brief, the State filed a preliminary objection of *res judicata*, objected to the alleged violations and to the requests for reparation measures.

9. *Victims' Legal Assistance Fund.* - A communication from the Registrar of the Court dated January 11, 2019, informed that the Court's Victims' Legal Assistance Fund would be implemented.

10. *Public hearing.* - By Order of February 15, 2019,⁴ the President summoned 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, as well as to receive the testimony of one alleged victim proposed by the representatives. The President also ordered the incorporation into the case file of the expert opinion rendered by Parvais Jabbar and Edward Fitzgerald, in the *Martínez Coronado, Girón et al.* and *Ruiz Fuentes et al. v.*

⁴ *Case of Rodríguez Revolorio et al. v. Guatemala. Summons to Hearing.* Order of the President of the Inter-American Court of February 15, 2019. Available at: http://www.corteidh.or.cr/docs/asuntos/rodriguez_revolorio_15_02_19.pdf

Guatemala cases, to the instant case. The public hearing was held on March 8, 2019, during the 130th Regular Period of Session of the Court, held at its headquarters.⁵

11. *Final written arguments and observations.* - On April 8, 2019, the representatives and the State submitted their respective final written arguments, together with certain annexes, and the Commission submitted its final written observations.

12. *Deliberation of the present case.* - The Court began deliberating the present Judgment on October 11, 2019.

III JURISDICTION

13. The Court is competent to hear the instant case, pursuant to Article 62(3) of the Convention, since 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 the Commission

14. The **State** argued that the circumstances in the instant case were in keeping with the domestic legal provisions in force at the time of the facts. It added that the criminal proceedings against Mr. Rodríguez Revolorio, Mr. López Calo, and Mr. Archila Pérez constituted *res judicata*, inasmuch as the representatives of the alleged victims exhausted all the remedies under domestic law in force at the time of the facts and that those remedies were heard and resolved at the appropriate procedural moment by the corresponding judicial bodies. It also indicated that at no time did it carry out the death sentence imposed on Mr. Rodríguez Revolorio, Mr. López Calo, and Mr. Archila Pérez, since it was commuted to the maximum sentence of deprivation of liberty. Finally, the State emphasized that, despite the fact that the crime for which they were convicted was not eligible for alternative measures, in good faith, the convicted persons have enjoyed the benefit of early release since 2016.

15. The **Commission** considered that the State's approach did not constitute a preliminary objection, but was essentially a matter of substance.

16. The **representatives** expressed themselves in the same sense as the Commission, indicating that the State's allegations were matters related to the merits of the case.

B. Considerations of the Court

17. The Court recalls that preliminary objections are acts by which a State seeks, in advance, to prevent the analysis of the merits of a contested matter, for which purpose it may raise an objection

⁵ The following persons appeared at this hearing:
a) for the Inter-American Commission: Commissioner Luis Ernesto Vargas Silva and attorney Christian González Chacón;
b) for the representatives of the alleged victims: Inter-American Public Defenders Rivana Barreto Ricarte de Oliveira and Yanela Romero de Pimental, and
c) for the State of Guatemala: President of COPREDEH Jorge Luis Borrayo Reyes, Executive Director of COPREDEH Felipe Sánchez González, Director of Defenders Carla Gabriela Morales, Advisors of the Directorate of International Cases Monitoring Steffany Rebeca Vásquez and Rafael Eduardo Bran, and Public Prosecutor Milton Tereso García Secayda.

to the admissibility of a case or to the jurisdiction of the Court to hear a particular case or any of its aspects, whether by reason of the person, subject matter, time or place, provided that such objections are of a preliminary nature.⁶ If these issues cannot be considered without first analyzing the merits of a case, they cannot be analyzed through of a preliminary objection.⁷

18. The Court considers that the pleading presented does not constitute a preliminary objection, since it does not state reasons why the case submitted would be inadmissible or why the Court lacks jurisdiction to hear it. In view of the foregoing, the Court dismisses the preliminary objection filed by the State.

V PRELIMINARY CONSIDERATIONS

A. *Victims in the present case*

19. The **representatives** affirmed in the brief of pleadings and motions that the State was responsible for the autonomous violation of the right to humane treatment of several of Mr. Rodríguez Revolorio, Mr. López Calo and Mr. Archila Pérez family members.⁸

20. Neither the **State** nor the **Commission** submitted observations in this regard.

21. With regard to the identification of the alleged victims, the **Court** recalls that Article 35(1) of the Court's Rules of Procedure provides that the filing of the case shall be presented to it through the submission of the Merits Report, which must identify the alleged victims. It is therefore incumbent upon the Commission to identify the alleged victims in a case before the Court with precision and within due procedural time,⁹ except in the exceptional circumstances contemplated in Article 35(2) of the Court's Rules of Procedure, according to which, when it is justified that it has not been possible to identify them, in cases concerning massive or collective violations, the Court shall decide in due course whether to consider them victims in accordance with the nature of the violation.¹⁰

22. In the instant case, the Court finds that none of the exceptions provided for in Article 35(2) of the Rules of Procedure of the Court are met. Consequently, in view of the provisions of Article 35(1) of the Rules of Procedure and the precedents on which this Court has ruled in this regard,¹¹ the Court concludes that only Mr. Rodríguez Revolorio, Mr. López Calo and Mr. Archila Pérez will be

⁶ *Case of Las Palmeras v. Colombia. Preliminary Objections.* Judgment of February 4, 2000. Series C No. 67, para. 34, and *Case of Mendoza et al. v. Argentina. Preliminary Objections, Merits and Reparations.* Judgment of May 14, 2013. Series C No. 260, para. 25.

⁷ *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 Artavia Murillo et al (In Vitro Fertilization) v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs.* Judgment of November 28, 2012. Series C No. 257, para. 40.

⁸ The representatives referred to Olga Marina Recinos, Manfred G. Rodríguez Recino, Karla Maidé Rodríguez Recinos and Olga Janeth Rodríguez Recinos; Mirian Floridalma Osorio García de López, Jeennley Yannira López Osorio, Alex Fernando López Osorio and Yazmi Lisbeth López Osorio; Irma Morales Morataya de Archila, Sendy Mabelly Archila Morales de Archila, Yoselin Edith Archila Morales, Aníbal Estuardo Archila Morales, Irma Yazmin Archila Morales and Yeremi Yanira Archila González.

⁹ *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 Omeara Carrascal et al. v. Colombia. Merits, Reparations and Costs.* Judgment of November 21, 2018. Series C No. 368, para. 55.

¹⁰ *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 Cuscul Pivaral et al. v. Guatemala. Preliminary Objection, Merits, Reparations and Costs.* Judgment of August 23, 2018. Series C No. 359, para. 27.

¹¹ *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. Merits, Reparations and Costs.* Judgment of May 10, 2019. Series C No. 376, para. 19.

considered as alleged victims in the instant case, and that it is not appropriate to admit the other next of kin as alleged victims.

B. Determination of the factual framework

23. The Court observes that the representatives argued in the pleadings and motions brief that the death of Mr. Archila Pérez while he was deprived of liberty was a direct consequence of the lack of health care that should have been provided to him, specifying that he contracted diabetes in prison. They stated that Mr. Archila Pérez did not die of natural causes, but because of the poor prison conditions, which constituted a violation of Articles 4(1) and 4(2) of the American Convention, in relation to Article 1(1) of the same instrument. They also alleged that Mr. Rodríguez Revolorio, Mr. López Calo and Mr. Archila Pérez were not informed of the charges made at the time of their arrest, in violation of Article 8(2)(b) of the American Convention.

24. This Court has established that the factual framework of the proceeding before it is constituted by the facts contained in the Merits Report submitted for consideration by the Commission,¹² for which reason no new facts are admissible other than those set forth in said brief, without prejudice to the submission of facts that may explain, clarify or dismiss those that have been mentioned in the application, or respond to the claims of the plaintiff (also called "complementary facts"). The exception to this principle are the facts qualified as supervening, which may be referred to the Court at any stage of the proceedings before the issuance of the judgment.¹³

25. In the instant case, the Court finds that the Commission did not include within the factual framework, nor as a substantive consideration, (i) the facts alleged by the representatives in relation to the alleged violation of Article 4 due to the death of Mr. Archila Pérez, nor (ii) the facts relating to the time of detention of Mr. Rodríguez Revolorio, Mr. López Calo and Mr. Archila Pérez. Therefore, the Court clarifies that it will not rule on such facts or on the legal arguments made by the representatives in this regard.

VI EVIDENCE

A. Admissibility of documentary evidence

26. The Court received various documents submitted as evidence by the Commission, the representatives and the State, which, as in other cases, it admits on the understanding that they were submitted in due time (Article 57 of the Rules of Procedure)¹⁴ and their admissibility was not contested or objected to.

¹² These are (i) the imposition of the death penalty on Rodríguez Revolorio, López Calo and Archila Pérez, (ii) prison conditions, and (iii) the alleged shortcomings in the criminal proceedings.

¹³ 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 I.V. v. Bolivia. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 30, 2016. Series C No. 329, para. 45.

¹⁴ Documentary evidence may be submitted, in general and in accordance with Article 57(2) of the Rules of Procedure, together with the brief submitting the case, the pleadings and motions or the reply briefs, as appropriate. Evidence submitted outside those procedural opportunities is not admissible, except in the circumstances established in the aforementioned Article 57(2) of the Rules of Procedure (namely, force majeure, serious impediment) or unless it is a supervening event, that is, one that occurred after the aforementioned procedural moments. *Case of the Barrios Family v. Venezuela. Merits, Reparations and Costs*. Judgment of November 24, 2011. Series C No. 237, para. 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.

27. On the other hand, the Court notes that during the public hearing, the State was asked to submit the criminal procedural legislation in force at the time of the facts. In this regard, the Court observes that the State did not submit any document in response to the aforementioned request.

B. Admissibility of testimonial and expert evidence

28. The Court considers it appropriate to admit the statements and opinions given at the public hearing¹⁵ and statements rendered before a notary public¹⁶ insofar as they comply with the purpose defined by the President in the Order ordering them to be received.¹⁷

29. On the other hand, the Court notes that the State, in its final written arguments, questioned the probative value of the joint expert opinion offered by Mr. Parvais Jabbar and Mr. Edward Fitzgerald. In particular, in addition to refuting some of the assertions made by them, it indicated that said experts failed to refer to certain facts that, according to the State, were relevant.¹⁸ In its final written arguments, the State also questioned the probative value of the statements of Miriam Floridalma Osorio García and Irma Morales Morataya. Furthermore, with respect to the affidavit of Mrs. Irma Morales Morataya, the State indicated in its final written arguments that neither her signature nor that of the notary coincided with their signatures. With regard to the latter, the Court observes that the State has not carried out any type of evidentiary activity to rebut the presumption of veracity that all public documents enjoy. With respect to the remaining allegations, as well as the allegations relating to the joint expert opinion offered by Mr. Parvais Jabbar and Mr. Edward Fitzgerald, the Court will take these arguments into account and will establish the considerations conducive to the resolution of the instant case when addressing the disputed facts.

VII FACTS

30. In this chapter, the Court will establish the facts of the case based on the factual framework submitted to the Court by the Inter-American Commission, in relation to: (i) the normative context in Guatemala with respect to the death penalty, and (ii) the criminal proceedings against Mr. Rodríguez Revolorio, Mr. López Calo and Mr. Archila Pérez.

A. Normative framework in Guatemala with respect to the death penalty

31. The death penalty is provided for both in the Constitution and in Guatemala's criminal legislation. Article 18 of the Guatemalan Constitution recognizes the possibility of applying the death penalty.¹⁹ Likewise, article 43 of the Criminal Code in force in 1997 stipulated the following:

¹⁵ In the public hearing, the Court received the testimony of Miguel Ángel Rodríguez Revolorio.

¹⁶ The Court received the testimonies rendered before a notary public (affidavit) of Miriam Floridalma Osorio García de López, Irma Morales Morata, Víctor Hugo Cano and Roberto Enrique Quiñónez Días, as well as of the expert witnesses Alberto Bovino and Juan José Hernández Mejía, proposed by the representatives.

¹⁷ The objects of all these declarations are set forth in the Order of the President of the Inter-American Court issued on February 15, 2019. Available at: http://www.corteidh.or.cr/docs/asuntos/rodriguez_revolorio_15_02_19.pdf

¹⁸ The State indicated in particular that the experts "[...] failed to explain that said judgment was converted to deprivation of liberty and that Mr. Rodríguez Revolorio enjoyed the benefit of early release. They also failed to state that said persons were members of the State security forces and were sentenced for the crimes of murder and attempted murder [...]"

¹⁹ Political Constitution of the Republic of Guatemala decreed by the Constituent Assembly, May 31, 1985, Reformed by the Popular Consultation Legislative Agreement 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

"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 sixty 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."²⁰

32. Article 132 of the Criminal Code in force in 1995 criminalized murder in the following terms:

"Murder will be committed by whoever kills a person:

- 1) With premeditation;
- 2) For a price, reward, promise, with a profit motive;
- 3) Through or on the occasion of a flood, fire, poison, explosion, collapsing of a building or any other affectation that may cause great damage;
- 4) With known premeditation;
- 5) With cruelty;
- 6) With the impulse of brutal perversity;
- 7) To prepare, facilitate, commit and hide another crime or to guarantee its results or immunity for themselves or their coparticipants or for not having obtained the result proposed when attempting the other punishable act;

A prison sentence of 20 to 30 years will be imposed on the offender convicted of murder, however, the death penalty will be imposed instead of the maximum prison time, if due to the circumstance of the acts and of the occasion, the way it was carried out and the determining motives, a greater dangerousness of the agent is revealed."²¹

33. The death penalty was occasionally applied in Guatemala until the 1990s. However, from 1996 onwards the State resumed its use, first by firing squad, in accordance with Decree No. 234 of the Congress of the Republic,²² and then by lethal injection, after Decree No. 234 was repealed by Decree No. 100-96 of November 1996, which established this new method of execution.²³

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 will always be admitted for its processing. The sentence shall be executed after all remedies have been exhausted. The Congress of the Republic may abolish the death penalty".

²⁰ Legislative Decree No. 17/73 (Criminal Code) issued by the Congress of the Republic of Guatemala on July 5, 1973.

²¹ Legislative Decree No. 17-73 (Criminal Code) issued by the Congress of the Republic of Guatemala on July 5, 1973. Article 5 of Decree No. 20-96 of May 9, 1996, amended the term of imprisonment for this type of offence to 25 to 50 years (Decree No. 20-96 of the Congress of the Republic of Guatemala of May 9, 1996).

²² Decree No. 234 of the Congress of the Republic of Guatemala, May 21, 1946.

²³ Law establishing the procedure for the execution of the death penalty. Decree No. 100-96 of the Congress of the Republic of Guatemala of 28 November 1996. Article 7 provides: "After the decisions referred to in the preceding article have been read, the death penalty shall be executed by the procedure of lethal injection [...]".

34. On June 1, 2000, Guatemala's Congress repealed Decree No. 159 of 1892 with the adoption of Legislative Decree No. 32/00,²⁴ which gave the Executive the power to grant pardon or commutation of sentence and regulated the procedure to make this right effective.²⁵

35. On February 11, 2016, the Constitutional Court of Guatemala declared unconstitutional the second paragraph of article 132 of the Criminal Code, relating to the dangerousness of the accused as a criterion for applying the death penalty, establishing that this precept would cease to have effect from the day following the publication of the ruling in the *Diario de Centro América*".²⁶

36. Subsequently, in the order of the Inter-American Court of February 6, 2019, on monitoring compliance with judgment in the case of *Fermín Ramírez v. Guatemala*, the Court, referring to the judgment of the Constitutional Court of February 11, 2016, said that:

"It would appear that said judgment of the Constitutional Court declared the unconstitutionality of the only phrase of article 132 of the Criminal Code that established the possibility of applying the death penalty. It is not clear from that judgment whether any possibility of applying the death penalty for the crime of murder in Guatemala has been eliminated, or whether it merely eliminated the possibility of applying it based on the dangerousness of the agent. However, based on the representatives' assertion that a new legislative bill exists that would again apply the death penalty eliminating the phrase concerning the type of crime [...], it would appear that it did eliminate the possibility of applying the death penalty for that crime from the country's laws. In this regard, in the hypothesis that, according to the laws of Guatemala, it is understood that the death penalty has been annulled for the crime of murder, the Court finds it necessary to recall that Article 4 of the American Convention reflects a "progressive and irreversible process" that "absolutely prohibits the re-establishment of capital punishment for any crime, so that the decision of a State Party to the Convention, whensoever it was adopted, to abolish the death penalty becomes, ipso jure, final and irrevocable." The Convention "is clearly of a progressive nature; thus, without going so far as to decide on the abolition of the death penalty, it adopts the necessary provisions to definitively limit its application and its scope, so that its use is gradually reduced until it is finally eliminated." In this way, if the death penalty was eliminated from the law for the crime of murder, it cannot be reinstated for that crime".²⁷

²⁴ Legislative Decree No. 159 issued by the National Legislative Assembly of the Republic of Guatemala, April 20, 1892.

²⁵ For further development, see *Case of Raxcacó Reyes v. Guatemala. Merits, Reparations and Costs*. Judgment of September 15, 2005. Series C No. 133, para. 43.17.

²⁶ Judgment of the Constitutional Court of Guatemala of February 11, 2016, Case 1097-2015. The judgment ruled as follows:

"This Court considers that the word "dangerousness" contained in the contested phrase as a decisive element for the imposition of a punishment is detrimental to the freedom from ex post facto laws, because only those actions classified as a crime or offense and punished by the law prior to their perpetration are punishable. Given that dangerousness is an endogenous characteristic whose inherent nature prevents determining precisely the protected right that could be harmed, the punishment imposed would be linked to a hypothetical conduct [...].

It is even more serious that a psychobiological situation is relevant to impose a punishment of the magnitude of the death penalty, which would merely reflect a significant step backwards in the humanization of the old repressive system, whose rigorous retributive theories saw capital punishment as an absolute solution to the problem of crime [...].

The Constitutional Court [...] declares: I. Admissible the action of partial general unconstitutionality [...] against the penultimate paragraph of article 132 of the Criminal Code, the phrase – "however, the death penalty shall be applied instead of the maximum prison sentence if the circumstances of the act and of the occasion, the way it was carried out and the determinant motives reveal a particular dangerousness of the agent. Those to whom the death penalty is not applied for this crime may not be granted a reduction in the punishment for any reason" – is declared unconstitutional. II. Consequently, it will cease to have effect the day after the publication of this ruling in the *Diario de Centro América*."

²⁷ *Case of Fermín Ramírez v. Guatemala. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of February 6, 2019, para. 13.

37. In addition, the Court found that at that date in time, "there were no prisoners sentenced to death [in Guatemala], and capital punishment had not been applied since 2002 [...] [, and it took] note [...] [of the] general suspension of the application of this punishment linked to compliance with the measure of reparation [established in the judgment in this case] related to the obligation to regulate commutations of sentence in [its] jurisdiction."²⁸

B. The criminal proceedings against Miguel Ángel Rodríguez Revolorio, Miguel Ángel López Calo and Aníbal Archila Pérez

b.1 Investigation, prosecution, trial and conviction

38. Rodríguez Revolorio, López Calo and Archila Pérez were arrested on February 11, 1995, and brought before the judicial authorities, accused of committing one count of murder and one count of attempted murder.²⁹

39. The investigation stage of the case was conducted by Judge H.S.H.³⁰ On March 10, 1995, the Public Prosecutor's Office charged them with the crime of murder and attempted murder under Article 132 of the Criminal Code.³¹

40. The criminal proceedings were heard by the Fourth Criminal Sentencing Court for Drug Trafficking and Crimes against the Environment (hereinafter, "Criminal Sentencing Court"), composed of Mr. H.S.H., Presiding Judge (who had also been in charge of the investigation stage of the case), Mrs. T.F.A. and A.R.R.R., Judges.³² In the context of these proceedings, the alleged victims filed a motion for recusal and an action of unconstitutionality against Judge H.S.H.³³ With respect to the first challenge, the appellants' defense attorneys argued that Judge H.S.H. had issued an opinion stating that "he did not care about the results of the expert opinion, since for him the only thing that mattered was the witness's recognition of the defendants".³⁴ The Criminal Sentencing Court rejected the challenge.³⁵ In addition, the alleged victims filed an action of unconstitutionality in which they alleged that Judge H.S.H. "did not meet the requirements established in the Constitution to be a judge of a collegiate court, since he had not been a judge of first instance nor had he practiced law for more than five years".³⁶ On May 28, 1997, the Constitutional Court dismissed the unconstitutionality challenge.³⁷

41. On May 23, 1996, the Criminal Sentencing Court handed down a conviction against Mr. Rodríguez Revolorio, Mr. López Calo, and Mr. Archila Pérez for the crimes of murder and attempted murder, sentencing them to the death penalty. To determine their sentence, the Criminal Sentencing

²⁸ *Case of Fermín Ramírez v. Guatemala. Monitoring Compliance with Judgment, supra*, Whereas 8.

²⁹ *Cf.* Communication from the Secretary General of the Presidency of the Judiciary of June 28, 2018 (evidence file, folio 2392).

³⁰ *Cf.* Communication from the Supreme Court of Justice to the Minister of Foreign Affairs, October 3, 1997 (evidence file, folios 310 and 311).

³¹ Indictment of the Public Prosecutor's Office addressed to the Seventh Judge of First Criminal Instance, Drug Trafficking and Crimes against the Environment, dated March 10, 1995 (evidence file, folios 3 to 11).

³² *Cf.* Record of the debate before the Fourth Criminal Sentencing Court for Drug Trafficking and Crimes against the Environment, April 22, 1996 (evidence file, folio 13).

³³ *Cf.* Communication from the Supreme Court of Justice to the Minister of Foreign Affairs, October 3, 1997 (evidence file, folio 310).

³⁴ *Cf.* Record of the debate before the Fourth Criminal Sentencing Court for Drug Trafficking and Crimes against the Environment, April 22, 1996 (evidence file, folio 62).

³⁵ *Cf.* Record of the debate before the Fourth Criminal Sentencing Court for Drug Trafficking and Crimes against the Environment, April 22, 1996 (evidence file, folio 62).

³⁶ *Cf.* Judgment of the Constitutional Court, file no. 25-97, May 28, 1997 (evidence file, folio 2133).

³⁷ *Cf.* Judgment of the Constitutional Court, file no. 25-97, May 28, 1997 (evidence file, folio 2136).

Court applied article 132 of the Guatemalan Criminal Code in force at the time, which provided that if a person is convicted of murder, the death penalty shall be imposed instead of the maximum term of imprisonment "if the circumstances of the act and of the occasion, the way it was carried out and the determinant motives reveal a particular dangerousness of the agent." In reaching this conclusion, the Criminal Sentencing Court stated the following:

"In this case, the existence of an impulse of brutal perversity is also evident, inasmuch as this aggravating or qualifying circumstance consists in the fact that since the offender acts in a manner totally devoid of any apparent motive, the danger of being the victim of his aggressions causes alarm among all citizens, since no one is protected from that risk. The doctrine points out that this rare figure, revealing the extraordinary general dangerousness of the subject, comes from the lack of conscious concrete motives to act, the attack is not directed against a specific individual and acts for the barbaric pleasure of spilling blood".³⁸

b.2 Appeals

(i) Special appeal

42. Rodríguez Revolorio, López Calo and Archila Pérez filed a special appeal against the conviction, alleging a series of formal and substantive defects in the decision.³⁹ They argued, among other issues, that: (i) the Court omitted to duly individualize the accused; (ii) there was a lack of an enunciation of the facts and circumstances that were the object of the accusation; (iii) there was no precise and circumstantial determination of the facts; (iv) lack of sufficient justification; (v) erroneous evaluation of the evidence; (vi) the operative part of the sentence contained formal defects, and (vii) failure to observe substantive law in relation to aggravating circumstances, fixing of the sentence, and of the death penalty.⁴⁰

43. On September 2, 1996, the Tenth Chamber of the Court of Criminal Appeals, Drug Trafficking and Crimes against the Environment (hereinafter "Court of Appeals") dismissed the special appeal filed.⁴¹ With regard to the substantive defects pointed out in the special appeal,⁴² the Court of Appeals indicated that these arguments could not be accepted on the grounds that:

"a) the way in which the generic and specific aggravating circumstances of the crime were applied is not within the remit of a special appeal, because its application stems from the sentencing court's decisions on the evidence presented and gathered during the hearing: a factual examination that is beyond the control of this Court due to the exclusively revisory nature of the appeal that concerns us in terms of the law. Only the determination of aggravating or mitigating circumstances is subject to review in order to verify whether the sentencing court complied with the legal norm that confers it that power;

b) All the matters related to the fixing of the sentence is not susceptible of being heard by means of a special appeal, because it comes from a discretionary power that the law confers on the Judges so that, based on Article 65 of the Criminal Code, they may reach conclusions of legal

³⁸ Judgment of the Fourth Criminal Sentencing Court for Drug Trafficking and Crimes against the Environment of Guatemala of May 23, 1996 (evidence file, folio 110).

³⁹ Special appeal filed by Miguel Ángel Rodríguez Revolorio before the Fourth Criminal Sentencing, Drug Trafficking and Environmental Crimes Court of Guatemala, June 20, 1996 (evidence file, folios 114 to 200).

⁴⁰ Special appeal filed by Miguel Ángel Rodríguez Revolorio before the Fourth Criminal Sentencing, Drug Trafficking and Environmental Crimes Court of Guatemala, on June 20, 1996 (evidence file, folio 114).

⁴¹ Judgment of the Tenth Chamber of the Court of Criminal Appeals, Drug Trafficking and Crimes against the Environment, September 2, 1996 (evidence file, folios 202 to 222).

⁴² That is, the failure to comply with substantive law in relation to (i) the generic and specific aggravating circumstances of the crime, (ii) sentencing, and (iii) partial non-compliance with the content of substantive law for the establishment of the death penalty.

certainty as to its determination: determination that obviously starts from the facts evaluated as evidence by the sentencing court: control of said facts that, as already stated, cannot be reviewed by this court. It is only possible to be reviewed by means of this appeal, when the Court has not respected the norm that grants it this discretionary power;

c) The sentencing court did set the death penalty within the legal assumptions prescribed by the law on the matter. The way in which it reached that punitive conclusion cannot be established by this Court of Appeals, given that the sentencing court made its analysis based on the evidence that it directly assessed, given that it was examined during the oral proceedings. Consequently, the articles of the Criminal Code cited by the appellant were not violated."⁴³

(ii) Cassation

44. Rodríguez Revolorio, López Calo, and Archila Pérez filed an appeal in cassation against the judgment issued by the Tenth Chamber of the Court of Appeals, alleging that the judgment issued by the Court of Appeals was defective in form and substance.⁴⁴ On February 10, 1997, the Criminal Chamber of the Supreme Court of Justice (hereinafter "Supreme Court") declared the appeals in cassation inadmissible.⁴⁵

(iii) Writ of amparo

45. On March 14, 1997, Messrs. Rodríguez Revolorio, López Calo, and Archila Pérez filed a writ of amparo before the Constitutional Court against the judgment that denied the appeals in cassation, alleging violation of the right to defense and the right to due process and petition.⁴⁶ On June 18, 1997, the Constitutional Court denied the appeal,⁴⁷ arguing that the Supreme Court "did not violate the applicants' alleged rights and ruled in accordance with its legal powers".⁴⁸

(iv) Appeals for review and subsequent commutation of sentence

⁴³ Judgment of the Tenth Chamber of the Court of Criminal Appeals, Drug Trafficking and Crimes against the Environment, September 2, 1996 (evidence file, folios 219 and 220).

⁴⁴ Cf. Judgment of the Criminal Chamber of the Supreme Court of Justice of February 10, 1997, joined cassation appeals no. 116-96, 117-96 and 118-96 (evidence file, folios 225 to 240).

⁴⁵ With respect to the appellants' argument that the appealed judgment did not conclusively state the facts that the judge considered proven and the grounds of sound judicial discretion, the Supreme Court indicated that "the appealed judgment merely upheld the judgment handed down in the first instance, without making any pronouncement on the facts considered proven, nor on the grounds of sound judicial discretion that were taken into account in that decision. With respect to the alleged contradiction of facts, the Supreme Court argued that such a situation could not arise in the second instance, since the court "did not analyze or rule on the facts that had been considered proven. Likewise, in response to the appellants' argument on the merits that the appealed judgment considered a decisive fact to have been proven without that fact having been proven, the Supreme Court considered that "upon examining the second instance judgment, it can be seen that the Chamber fully respected the facts that the sentencing court considered proven" and that "it did not consider any other decisive fact to have been proven, nor did it prove any other decisive fact other than those that the sentencing court considered proven and that would have served to acquit, convict, mitigate, or aggravate the sentence imposed on the three convicted persons, so it could not have committed the error referred to in this section of the law." Cf. Judgment of the Criminal Chamber of the Supreme Court of Justice of February 10, 1997, joined cassation appeals Nos. 116-96, 117-96, and 118-96 (evidence file, folios 235, 236, and 238).

⁴⁶ Cf. Judgment of the Constitutional Court sitting as Extraordinary Court of Amparo of June 18, 1997 (evidence file, folio 242).

⁴⁷ Cf. Judgment of the Constitutional Court sitting as Extraordinary Court of Amparo of June 18, 1997 (evidence file, folios 242 to 250). The Court notes that, although the appellants filed the amparo action out of time, it was admitted because it dealt with the execution of the death penalty. Cf. Judgment of the Constitutional Court sitting as Extraordinary Court of Amparo of June 18, 1997 (evidence file, folios 248 and 249).

⁴⁸ Cf. Judgment of the Constitutional Court sitting as Extraordinary Court of Amparo of June 18, 1997 (evidence file, folio 249).

46. On July 30, 1997, Messrs. Rodríguez Revolorio, López Calo, and Archila Pérez filed an appeal for review of the judgment handed down by the Criminal Sentencing Court. On February 18, 1998, the Criminal Chamber of the Supreme Court of Justice dismissed the appeal for review.⁴⁹ Rodríguez Revolorio, Lopez Calo, and Archila Perez filed an appeal for reconsideration against that decision, which was dismissed on March 3, 1998.⁵⁰

47. On April 15, 1998, Mr. López Calo filed an application for amparo against the decision of February 18, 1998, which dismissed the appeal for review and the decision of March 3, 1998, which dismissed the appeals for reconsideration filed against the previous decision of February 18, 1998.⁵¹ On June 18, 1998, the Constitutional Court dismissed the amparo requested by Mr. López Calo.⁵²

48. Mr. Archila Pérez died on July 16, 1999.⁵³ Years later, Mr. Rodríguez Revolorio and Mr. López Calo filed a new appeal for review of the aforementioned judgment of the Criminal Sentencing Court, arguing that the facts on which their conviction was based were inconsistent with a judgment of the Inter-American Court of Human Rights of 2005⁵⁴ and a judgment of the Supreme Court of Justice.⁵⁵ On July 2, 2012, the Supreme Court upheld the appeal and decided to partially annul the judgment with regard to the imposition of the death penalty, imposing instead "the immediate superior penalty to the death penalty, in force at the time of the commission of the crime, which was 30 years of non-commutable imprisonment".⁵⁶

49. On November 15, 2013, the First Pluripersonal Criminal Enforcement Court established that the alleged victims would serve their full sentence on February 10, 2025, would be entitled to the benefit of good conduct, and would be eligible to apply for parole on August 12, 2017.⁵⁷ Mr. Rodríguez Revolorio and Mr. López Calo were finally released on April 14 and August 23, 2016, respectively, under the benefit of remission of sentence for work and good conduct.⁵⁸ Mr. López Calo died on January 11, 2017, of a heart attack.⁵⁹

VIII MERITS

50. In the instant case, the Commission and the representatives contend that the death sentence imposed on Mr. Rodríguez Revolorio, Mr. López Calo, and Mr. Archila Pérez was carried out after considering that they would be dangerous in the future and in the context of a criminal proceeding in which there were serious violations of the right to due process. They also considered that the right

⁴⁹ Cf. Appeal for review no. B-97, Criminal Chamber of the Supreme Court of Justice, February 18, 1998. B-97, Criminal Chamber of the Supreme Court of Justice, February 18, 1998 (evidence file, folios 2352 to 2357).

⁵⁰ Cf. Amparo Judgment in Sole Instance before the Constitutional Court, in its capacity as Extraordinary Court of Amparo, of June 18, 1998 (evidence file, folio 2359).

⁵¹ Cf. Amparo Judgment in Sole Instance before the Constitutional Court, in its capacity as Extraordinary Court of Amparo, of June 18, 1998 (evidence file, folio 2359).

⁵² Cf. Amparo Judgment in Sole Instance before the Constitutional Court, in its capacity as Extraordinary Court of Amparo, of June 18, 1998 (evidence file, folios 2359 to 2365).

⁵³ Death certificate of Aníbal Archila Pérez issued by the Civil Registry of the Municipality of Escuintla, dated June 21, 2000 (evidence file, folio 1329).

⁵⁴ Cf. *Case of Fermín Ramírez v. Guatemala*, *supra*.

⁵⁵ Review judgment handed down in the case of Juan Pablo Rafael Eduardo Ocampo Alcalá, in which the review was declared admissible and the death sentence was commuted to a prison sentence. Judgment of the Criminal Chamber of the Supreme Court of Justice of July 2, 2012 (evidence file, folio 2369).

⁵⁶ Cf. Judgment of the Criminal Chamber of the Supreme Court of Justice of July 2, 2012 (evidence file, folios 2376, 2377 and 2379).

⁵⁷ Cf. Communication from the General Secretariat of the Presidency of June 28, 2018 (evidence file, folio 2392).

⁵⁸ Cf. Communication from the General Secretariat of the Presidency of June 28, 2018 (evidence file, folio 2392).

⁵⁹ Death certificate of Miguel Ángel López Calo issued by the Civil Registry of the Municipality of Guatemala, Department of Guatemala, death no. 162576 (evidence file, folio 1322).

to humane treatment of Mr. Rodríguez Revolorio, Mr. López Calo, and Mr. Archila Pérez was violated because of the prison conditions to which they were subjected, in addition to having experienced the "death row" phenomenon.

51. In light of the foregoing, in the instant case the Court will examine the alleged responsibility of the State for (i) the death sentence imposed on Rodríguez Revolorio, López Calo and Archila Pérez, (ii) the prison conditions to which they were subjected, and, finally, (iii) the alleged violation of the rights to a fair trial and to judicial protection.

VIII-1 RIGHT TO LIFE AND THE PRINCIPLES OF FREEDOM FROM EX POST FACTO LAWS AND NON-RETROACTIVITY⁶⁰

52. In this section, the Court will examine the allegations relating to the violation of the right to life and the principle of legality (*freedom from ex post facto laws*) derived from Articles 4 and 9 of the American Convention, in relation to Articles 1(1) and 2, as a result of the imposition of the death penalty on Mr. Rodríguez Revolorio, Mr. López Calo and Mr. Archila Pérez.

A. Arguments of the parties and the Commission

53. The **Commission** noted that the instant case involves the application of Article 132 of the Guatemalan Criminal Code, which established the element of dangerousness as a criterion for the imposition of the death penalty in the case of murder. The Commission underscored that speculation regarding possible future behavior derived from the circumstances of the commission of the crimes for which they were convicted. The Commission also indicated that the criterion of dangerousness in the criminal definition constituted a direct violation of the right to freedom from ex post facto laws (principle of legality), especially if that criterion was used to apply an irreversible and irremediable sentence such as the death penalty. The Commission concluded that the State of Guatemala is responsible for the violation of the freedom from ex post facto laws established in Article 9 of the American Convention in relation to the obligations established in Articles 1(1) and 2 of the same instrument, to the detriment of Mr. Archila Pérez, Mr. López Calo and Mr. Rodríguez Revolorio.

54. On the other hand, the Commission argued that the imposition of the death penalty occurred in the context of a process that was arbitrary and violated the right to a fair trial. Therefore, it violated Articles 4(1) and 4(2) of the American Convention, in relation to the obligations established in Articles 1(1) and 2 of the same instrument.

55. The **representatives** agreed with the Commission's arguments with respect to the application of the criterion of dangerousness in the framework of the criminal proceedings against the alleged victims, as well as with respect to the alleged violation of Articles 4(1) and 4(2) of the Convention, in relation to Articles 1(1) and 2 of the same instrument.

56. The **State**, for its part, stated that the penalty imposed for the crime of murder and attempted murder was regulated in domestic legislation according to the time of the commission of the crime. In addition, the law most favorable to the convicted persons was applied. Proof of this would be that, according to the calculation of the total term of the sentence, it would expire in the year 2025, and yet the alleged victims enjoyed the benefit of early release, which became effective in 2016. In view of the foregoing, the State concluded that it is not internationally responsible for the violation of the right enshrined in Article 9 of the American Convention.

⁶⁰ Articles 4 and 9 of the American Convention.

B. Considerations of the Court

57. As a preliminary consideration, it should be recalled that this Court has affirmed that the Inter-American human rights system consists of a domestic level, through which each State must guarantee the rights and freedoms provided for in the Convention and investigate and, if necessary, prosecute and punish any violations committed; and that if a specific case is not resolved at the local or national level, the Convention provides an international tier where the principal bodies are the Commission and this Court. This Court also indicated that when a matter has been settled under domestic law, according to the provisions of the Convention, the matter need not be brought to the Inter-American Court for approval or confirmation. This is based in the principle of complementarity (or subsidiarity) that informs the Inter-American System of Human Rights, which is, as expressed in the Preamble to the American Convention, "reinforcing and complementary to the protection offered by the domestic order of the American States."⁶¹

58. This subsidiary nature of the international jurisdiction means that the system of protection established by the American Convention on Human Rights is not a substitute for the national jurisdictions, but rather it complements them.⁶² Thus, the State is the principal guarantor of human rights and that, as a consequence, if a violation of said rights occurs, the State must resolve the issue in the domestic system and provide redress to the victim before resorting to international forums.⁶³ In this sense, recent case law has recognized that all authorities of a State Party to the Convention have the obligation to exercise "conventionality control",⁶⁴ so that the interpretation and application of national law is consistent with the State's international human rights obligations.

59. The above means that a dynamic and complementary control of the States' treaty-based obligations to respect and ensure human rights has been established between the domestic authorities (who have the primary obligation) and the international instance (complementarily), so that their decision criteria can be established.⁶⁵ Thus, the Court's case law includes cases in which decisions of domestic courts have been examined in order to establish violations of the Convention in the specific case;⁶⁶ have settled the alleged violation;⁶⁷ ordered reasonable reparations,⁶⁸ or exercised an adequate control of conventionality.⁶⁹ In this sense, the Court has pointed out that

⁶¹ Cf. *Case of Las Palmeras v. Colombia*, *supra*, para. 33, and *Case of Colindres Schonenberg v. El Salvador. Merits, Reparations and Costs*. Judgment of February 4, 2019. Series C No. 373, para. 73.

⁶² *Case of Tarazona Arrieta et al. v. Peru. Preliminary Objection, Merits, Reparations and Costs*. Judgment of October 15, 2014. Series C No. 286, para. 137, and *Case of Colindres Schonenberg v. El Salvador*, *supra*, para. 74.

⁶³ Cf. *Case of Acevedo Jaramillo et al. v. Peru. Interpretation of the Judgment on Preliminary Objections, Merits, Reparations and Costs*, para. 66, and *Case of Colindres Schonenberg v. El Salvador*, *supra*, para. 74.

⁶⁴ When a State has ratified an international treaty such as the American Convention, its judges, as part of the State, are also bound by such Convention. This forces them to see that all the effects of the provisions embodied in the Convention are not adversely affected by the enforcement of laws which are contrary to its purpose and that have not had any legal effects since their inception. In other words, the Judiciary must exercise a sort of "conventionality control" between the domestic legal provisions which are applied to specific cases and the American Convention on Human Rights. To perform this task, the Judiciary has to take into account not only the treaty, but also the interpretation thereof made by the Inter-American Court. Cf. *Case of Almonacid Arellano et al. v. Chile. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 26, 2006. Series C No. 154, para. 124, and *Case of Andrade Salmón v. Bolivia. Merits, Reparations and Costs*. Judgment of December 1, 2016. Series C No. 330, para. 93.

⁶⁵ *Case of the Santo Domingo Massacre v. Colombia. Preliminary Objections, Merits and Reparations*. Judgment of November 30, 2012. Series C No. 259, para. 143, and *Case of Colindres Schonenberg v. El Salvador*, *supra*, para. 75.

⁶⁶ *Case of Tarazona Arrieta et al. v. Peru*, *supra*, paras. 139-141. See also, *Case of Las Palmeras v. Colombia*, *supra*, paras. 32-24 and operative paragraph 1.

⁶⁷ See, for example, *Case of Amrhein et al. v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of April 25, 2018. Series C No. 354, paras. 97-115.

⁶⁸ See, for example, *Case of the Santo Domingo Massacre v. Colombia*, *supra*, paras. 334-336.

⁶⁹ See, for example, *Case of Gelman v. Uruguay. Merits and Reparations*. Judgment of February 24, 2011. Series C No. 221, para. 239, and *Case of Tenorio Roca et al. v. Peru. Preliminary Objections, Merits, Reparations and Costs*. Judgment of

State responsibility under the Convention can only be debated at the international level after the State has had the opportunity to recognize, if applicable, a violation of a right, and to repair the damage caused by its own means.⁷⁰

60. In the instant case, the Court notes that the alleged violations that would eventually result from the imposition of the death penalty with respect to Mr. Rodríguez Revolorio and Mr. López Calo were recognized and remedied on July 2, 2012, the date in which the Supreme Court partially annulled the sentence imposed on them, converting the death penalty to a custodial sentence. The Court notes that, indeed, on July 2, 2012, the Supreme Court declared the appeal for review filed by Mr. Rodríguez Revolorio and Mr. López Calo admissible and decided to partially annul the sentence with respect to the death penalty, imposing on them "the immediate superior penalty to the death penalty, in force at the time of the commission of the crime, which was 30 years of non-commutable imprisonment".⁷¹ The Court further notes that the Supreme Court argued, *inter alia*, that, following the judgment of the Inter-American Court in the *Fermín Ramírez v. Guatemala* case -which declared the criterion of dangerousness established in Article 132 of the Guatemalan Criminal Code to be unconstitutional-, it was obliged "by mandate of the Political Constitution of the Republic and the American Convention on Human Rights" to declare the requested review admissible.⁷² Therefore, the Court observes that, by virtue of the aforementioned judgment of the Supreme Court of Justice of July 2, 2012, the violations caused by the imposition of the death penalty were recognized and the damage was adequately redressed insofar as the sentence imposed was modified, which in turn constituted a timely and adequate control of conventionality. In view of the foregoing, and in accordance with the principle of subsidiarity, the Court considers that the State is not responsible for the alleged violations of the Convention that would result from the imposition of the death penalty on Mr. Rodríguez Revolorio and Mr. López Calo.⁷³

June 22, 2016. Series C No. 31, para. 230 et seq.

⁷⁰ Cf. *Case of the Santo Domingo Massacre v. Colombia*, *supra*, para. 143, and *Case of Amrhein et al. v. Costa Rica*, *supra*, para. 99.

⁷¹ Cf. Judgment of the Criminal Chamber of the Supreme Court of Justice of July 2, 2012 (evidence file, folios 2376, 2377 and 2379).

⁷² In particular, the aforementioned judgment affirmed the following:

"Article 68 of the Pact of San José of Costa Rica stipulates in paragraph 1 that the States Parties to the Convention undertake to comply with the decisions of the Inter-American Court of Human Rights in all cases to which they are parties. A norm that in its jurisprudential and doctrinal development has been recognized as binding and self-executing norm for every State. Regardless of the compliance of the Guatemalan Legislative Power to repeal the fragment of article 132 of the Penal Code ordered by the Inter-American Court of Human Rights, the Guatemalan judiciary is not allowed to apply the death penalty based on the dangerousness of the perpetrator of the crime of murder. And this mandate, due to the constitutional principle of retroactivity, not only includes proceedings after the date of the *Fermín Ramírez* case, June of 2005, but also those previous cases in which death sentences have not yet been carried out, based on the oft-cited Article 132 of the Guatemalan criminal legislation, which would not be possible in judgments that have the authority of *res judicata*, but by means of the action for review, suitable for correcting a judicial error that affects public order or public interests. And this is how it must be resolved in law, and therefore the Criminal Chamber of the Supreme Court of Justice is obliged by mandate of the Political Constitution of the Republic and the American Convention on Human Rights to declare the present action for review admissible and to partially annul the judgment that is the subject of the action with respect to the death penalty [...]. [A]s the State of Guatemala ratified the American Convention on Human Rights, it submitted to an order based on internationally recognized principles, of inexcusable application [...] [F]rom the standpoint of the Pact of San José, Costa Rica, the criminal law of a democratic society, in which the life of each and every one of the persons who inhabit it is the principal subject, the death penalty is increasingly less justifiable, and thus obliges member countries not to impose it for new crimes and to examine each case carefully, thoroughly, efficiently, and in accordance with the rule of law. Cf. Judgment of the Criminal Chamber of the Supreme Court of Justice of July 2, 2012 (evidence file, folios 2375, 2376, 2377, and 2378).

⁷³Cf. *Case of Andrade Salmón v. Bolivia*, *supra*, para. 102, and *Case of Colindres Schonenberg v. El Salvador*, *supra*, para. 80.

61. Having established the foregoing, the Court will proceed to examine the alleged violation of the right to life through the imposition of the death penalty on Mr. Archila Pérez. In this regard, it should be recalled that the Court has recently emphasized in the case of *Martínez Coronado v. Guatemala* that in the exceptional cases in which States are allowed to apply the death penalty, such possibility is subject to a set of strict limitations.⁷⁴ On the one hand, it provides that the death penalty may be imposed only for the most serious crimes (Article 4(2)) and, on the other hand, it absolutely excludes its application for political crimes or for ordinary crimes related to political crimes (Article 4(4)). Likewise, for purposes of examining the alleged violation of the freedom from ex post facto laws (principle of legality), it should be recalled that the Court has repeatedly established that it is one of the central elements of criminal prosecution in a democratic society.⁷⁵

62. The Court highlights that in the instant case, the conviction of Mr. Rodríguez Revolorio, Mr. López Calo and Mr. Archila Pérez applied Article 132 of the Guatemalan Criminal Code, in force at that time, which regulated the criminal offense of murder (*supra* para. 32). Specifically, Mr. Rodríguez Revolorio, Mr. López Calo, and Mr. Archila Pérez were sentenced to death under the second paragraph of that provision, which provided for the application of that penalty " if the circumstances of the act and of the occasion, the way it was carried out and the determinant motives reveal a particular dangerousness of the agent".

63. This Court has already had the opportunity to rule specifically on the application of Article 132 of the Criminal Code and the concept of "future dangerousness" in the cases of *Martínez Coronado v. Guatemala* and *Fermín Ramírez v. Guatemala*. In those judgments, it was decided that the aforementioned provision was contrary to the American Convention, particularly insofar as it violated Article 9 of the Convention, and it was ordered to bring the provision into line with international human rights law. In particular, in the case of *Fermín Ramírez v. Guatemala*, the Court said:

"94. In the opinion of this Court, the problem presented by the citing of the dangerousness cannot only be analyzed in light of the guarantees of the due process, within Article 8 of the Convention. This citing has a greater scope and seriousness. In effect, it clearly constitutes an expression of the exercise of the state's *ius puniendi* over the basis of the personal characteristics of the agent and not the act committed, that is, it substitutes the Criminal System based on the crime committed, proper of the criminal system of a democratic society, for a Criminal System based on the situation of the perpetrator, which opens the door to authoritarianism precisely in a subject in which the juridical rights of greatest hierarchy are at stake.

95. The assessment of the agent's dangerousness implies the judge's appreciation with regard to the possibility that the defendant will commit criminal acts in the future, that is, it adds to the accusation for the acts committed, the prediction of future acts that will probably occur. [...]

96. Therefore, the introduction in the criminal text of the dangerousness of the agent as a criterion for the criminal classification of the acts and the application of certain sanctions is not compatible with the freedom from ex post facto law and, therefore, contrary to the Convention.

97. [...] [i]f the States, pursuant to Article 2 of the American Convention, have a positive obligation to adopt the legislative measures necessary to guarantee the exercise of the rights recognized in the Convention, it follows, then, that they also must refrain both from promulgating laws that disregard or impede the free exercise of these rights, and from suppressing or modifying the existing laws protecting them. These acts would likewise constitute a violation of Article 2 of the Convention.

⁷⁴ Cf. *Case of Martínez Coronado v. Guatemala*, *supra*, para. 62.

⁷⁵ Cf. *Case of Fermín Ramírez v. Guatemala*, *supra*, para. 90, and *Case of Martínez Coronado v. Guatemala*, *supra*, para. 60.

98. Based on all the above, the Court considers that the State has violated Article 9 of the Convention, in relation to Article 2 of the same, for having maintained in force the part of Article 132 of the Criminal Code that refers to the dangerousness of the agent, once the Convention was ratified by Guatemala."⁷⁶

64. With regard to the instant case, the Court notes that the use of the criterion of dangerousness of the agent, both in the classification of the facts of the offense and in the determination of the corresponding punishment, was incompatible with the freedom from ex post facto laws provided for in the American Convention. The examination of the dangerousness of the agent implied the evaluation by the judge of facts that had not occurred and, therefore, implied a punishment based on a judgement on the personality of the offender and not on the criminal acts charged in accordance with the applicable criminal definition.⁷⁷ Consequently, this Court considers that the State is responsible for the violation of Articles 4(2) and 9 of the American Convention, in relation to Articles 1(1) and 2 of the same instrument, to the detriment of Mr. Archila Pérez.

65. Regarding the violation of Article 4(1) of the Convention, the Court notes that the death sentence was never carried out, since Mr. Archila Pérez died on July 16, 1999, as a result of diabetic catoacidosis⁷⁸ (that is, an acute complication of diabetes). In view of the foregoing, the Court considers that the State has not violated the aforementioned Article 4(1) of the American Convention, in relation to the obligations established in Article 1(1) of the same instrument.

VIII-2 RIGHT TO HUMANE TREATMENT⁷⁹

66. In this chapter, the Court will examine the allegations relating to the prison conditions of Messrs. Rodríguez Revolorio, López Calo and Archila Pérez, all in alleged violation of Articles 5(1) and 5(2) of the American Convention, in relation to Article 1(1) of said instrument and Articles 1, 6 and 8 of the ICPPT.

A. Arguments of the parties and the Commission

67. The **Commission** maintained, first, that the alleged victims were detained in inadequate conditions, with an almost total absence of medical supplies, despite the fact that two of them suffered from diabetes (*i.e.*, Mr. López Calo and Mr. Archila Pérez), one of them eventually dying of the disease. It further indicated that the alleged victims had limited access to visitors, physical contact, and water.

68. The **Commission** specified that Mr. Aníbal Archila died on July 16, 1999, of complications related to diabetes, and therefore remained on death row for more than three years, while Mr. Rodríguez Revolorio and Mr. López Calo remained on death row until August 23, 2011, when the Supreme Court commuted their sentences, which means that they remained on death row for more than 14 years. The Commission concluded that the time and circumstances in which they remained on death row after the imposition of the death penalty, with the prolonged expectation that the sentence could be carried out, is serious enough to be considered cruel, inhuman and degrading

⁷⁶ Cf. *Case of Fermín Ramírez v. Guatemala, supra*, paras. 94-98.

⁷⁷ Cf. *Case of Fermín Ramírez v. Guatemala, supra*, para. 70.

⁷⁸ Death certificate of Aníbal Archila Pérez issued by the Civil Registry of the Municipality of Escuintla, death no. 6468 (evidence file, folio 1329).

⁷⁹ Article 5 of the American Convention.

treatment, in violation of Articles 5(1) and 5(2) of the American Convention in relation to Article 1(1) of the same instrument, as well as Articles 1, 6 and 8 of the ICPPT.

69. For their part, the **representatives** affirmed that Mr. Rodríguez Revolorio, Mr. López Calo and Mr. Archila Pérez were subjected to detention conditions that did not meet international standards, and that they had to endure a prolonged wait for execution. They said that the cells had no windows and no ventilation. They added that there was a risk of death and situations of mistreatment in general, that there was no separation between them and other inmates despite the fact that they were police officers and were incarcerated with other armed groups, rivals, under constant threat of death. The representatives also maintained that waiting for the execution generated in the death row inmates a permanent anguish.

70. The **State** maintained that at all times it respected and protected the personal integrity of Mr. Rodríguez Revolorio, Mr. López Calo and Mr. Archila Pérez. It asserted that the diabetes that affected the development of the convicted persons could not be considered the responsibility of the State. At the same time, it indicated that at no time did the State security forces that participated in their capture cause injuries or cruel, inhuman, or degrading treatment. By virtue of the foregoing, it concluded that at no time were the rights to humane treatment and freedom from torture, enshrined in Articles 5 of the American Convention, and Articles 1, 6, and 8 of the ICPPT, violated.

B. Considerations of the Court

71. The American Convention expressly recognizes the right to personal, physical and psychological integrity, the violation of which "is a type of violation that has different connotations of degree and [...] the physical and mental effects of which vary in intensity based on factors that are endogenous and exogenous factors that must be analyzed in each specific situation."⁸⁰ Likewise, this Court has indicated that, in accordance with Articles 5(1) and 5(2) of the Convention, any person deprived of liberty has the right to live in detention conditions compatible with their personal dignity.⁸¹ As the entity responsible for places of detention, the State plays a special role as guarantor of the rights of all those who are in its custody.⁸² This entails the State's obligation to safeguard the health and welfare of prisoners, providing them, among other elements, with the required medical assistance, and ensuring that the manner and method of deprivation of liberty do not exceed the inevitable level of suffering inherent to detention.⁸³

72. The Court will now conduct an individualized and detailed analysis of the prison conditions of Mr. Rodríguez Revolorio, Mr. López Calo and Mr. Archila Pérez, as well as the consequences that these conditions had on them.

b.1 Prison conditions

(i) Mr. Rodriguez Revolorio's prison conditions

⁸⁰ *Case of Loayza Tamayo v. Peru. Merits.* Judgment of September 17, 1997. Series C No. 33, para. 57, and *Case of the Xucuru Indigenous People and its members v. Brazil.* Preliminary Objections, Merits, Reparations and Costs. Judgment of February 5, 2018. Series C No. 346, para. 171.

⁸¹ *Case of Díaz Peña v. Venezuela. Preliminary Objection, Merits, Reparations and Costs.* Judgment of June 26, 2012. Series C No. 244, para. 135.

⁸² *Case of Neira Alegría et al. v. Peru. Merits.* Judgment of January 19, 1995. Series C No. 20, para. 60, and *Case of Díaz Peña v. Venezuela, supra*, para. 135.

⁸³ *Case of "Juvenile Reeducation Institute" v. Paraguay. Preliminary Objections, Merits, Reparations and Costs.* Judgment of September 2, 2004. Series C No. 112, para. 159, and *Case of Díaz Peña v. Venezuela, supra*, para. 135.

73. During the first four and a half years of his imprisonment, Mr. Rodríguez Revolorio remained in the Zone 18 Preventive Prison. On May 29, 1999, he was transferred to the maximum-security prison, Annex to Granja Penal Canada, also known as "El Infiernito",⁸⁴ where he remained until April 14, 2016, the day he was released.⁸⁵

74. The Court highlights, first of all, the expert report of June 23, 2005, by Ms. Castro-Conde on the prison conditions of Mr. Rodríguez Revolorio and Mr. López Calo and the damage to their mental and physical health that these conditions allegedly caused them. The expert carried out five visits to "El Infiernito" between December 20, 2004 and May 18, 2005. In her expert report, Ms. Castro-Conde noted that the windows were located at the top of the walls, not allowing a view outside, preventing the entry of enough light and fresh air, which meant that "the air inside [was] very dense, there was no air flow and the heat was unbearable".⁸⁶ In relation to the cells, the expert report indicates the following:

"The dormitories are two rooms, each with two rows of cement slabs, the space on the slab is very small and is not suitable for inmates over 165 cm tall because when they lie down, half of their ankles remain outside the slab. They have minimal space to place their belongings. Regarding the lighting, it is not possible to read or write with natural light because of the position of the windows".⁸⁷

75. The Court further observes that, with respect to access to water, the inmates had to get up at 3 a.m. to queue up to collect water in two-liter containers, of which they used two for bathing in the morning and one for bathing at night. There was also an almost total absence of medical supplies, as well as a serious lack of trained staff.⁸⁸

76. Regarding the visiting regime, the Court notes that it was very restricted, since visits took place without physical contact and the inmates were handcuffed by one wrist to a tube while the family was on the other side, where they could only touch each other's fingers through the bars. Open visits were only allowed during Holy Week, Mother's Day, Father's Day, Valentine's Day, Christmas and New Year's Day, when the family could enter the center and spend time with the inmates for several hours.⁸⁹ According to what Mr. Rodríguez Revolorio stated at the hearing held before this Court, once they were transferred to the "El Infiernito" prison, they spent about two and a half months without visits.⁹⁰ In this regard, Mr. Rodríguez Revolorio indicated the following:

"We had no visitors, the food was really bad, it was not good food, we suffered there because we had no water, in short, we lived a terrible situation. When we had the opportunity to have our visit, we had it without physical contact with bars and sieves where we could not even touch the fingertips of our children who also suffered a lot seeing us in this situation"⁹¹ .

⁸⁴ Cf. Testimony of Miguel Ángel Rodríguez Revolorio given at the public hearing before the Inter-American Court held on March 8, 2019.

⁸⁵ Cf. Communication from the Secretary General of the Presidency of the Judiciary of June 28, 2018 (evidence file, folio 2392).

⁸⁶ Cf. Expert report of Aída Castro-Conde Barrios on the state of mental health of Miguel Ángel López Calo and Miguel Ángel Rodríguez Revolorio, of June 23, 2005 (evidence file, folio 265).

⁸⁷ Cf. Expert report of Aída Castro-Conde Barrios on the state of mental health of Miguel Ángel López Calo and Miguel Ángel Rodríguez Revolorio, of June 23, 2005 (evidence file, folio 265).

⁸⁸ Cf. Expert report of Aída Castro-Conde Barrios on the state of mental health of Miguel Ángel López Calo and Miguel Ángel Rodríguez Revolorio, of June 23, 2005 (evidence file, folio 267).

⁸⁹ Cf. Expert report of Aída Castro-Conde Barrios on the mental health of Miguel Ángel López Calo and Miguel Ángel Rodríguez Revolorio, of June 23, 2005 (evidence file, folio 268).

⁹⁰ Cf. Testimony of Miguel Ángel Rodríguez Revolorio given at the public hearing before the Inter-American Court held on March 8, 2019, in which he indicated that "it turns out that we were more or less for about two and a half months without a visit, we had no visitors".

⁹¹ Cf. Testimony of Miguel Ángel Rodríguez Revolorio given at the public hearing before the Inter-American Court held

77. With regard to the medical care provided to the inmates, the expert report indicated that the infirmary lacked "basic medical supplies," since it only had "acetaminophen, diclofenac, silicon gel," and further noted that the inmates were not given medical examinations "even when they requested them". There was "an almost total absence of medical supplies and a serious lack of trained personnel".⁹²

78. In addition, Mr. Rodríguez Revolorio pointed out at the public hearing held before this Court that he witnessed the execution of Mr. Martínez Coronado, which was broadcast on the prison television.⁹³ According to Ms. Castro-Conde's expert opinion, Mr. Rodríguez Revolorio suffered from a moderate level of anxiety and stress, mild depression, and that he suffered from post-traumatic stress disorder.⁹⁴ The Court notes that Mr. Rodríguez Revolorio remained under these conditions for approximately 6 years.⁹⁵

(ii) Mr. López Calo's prison conditions

79. During the first four and a half years of his imprisonment, Mr. López Calo remained in the Zone 18 Preventive Prison. On May 29, 1999, he was transferred to the maximum security prison "El Infiernito", Annex to the Granja Penal Canadá.⁹⁶ With respect to the limitations relating to the general conditions of the prison, the cells, access to medical care, food, medicine and water, the Court refers to what has already been stated in paragraphs 74 to 77 above.

80. With regard to the situation of Mr. López Calo in particular, the Court observes that, at least as of June 15, 2005, he was diagnosed with diabetes mellitus, secondary neuropathy and erectile dysfunction.⁹⁷ The doctor who issued the medical certificate attesting to this condition recommended, *inter alia*, that Mr. López Calo should follow a "hypocaloric diet prescribed by a nutritionist and/or this physician", prescribed medicine for him, and requested that he undergo certain medical exams.⁹⁸ According to Ms. Castro-Conde's expert opinion, "[t]here were no special diets for diabetics, hypertension patients or inmates with ulcers, such as Mr. López Calo, who should have had a special diet due to his diabetic condition. Since Mr. López Calo did not have a special diet nor did he receive the medical attention necessary for his diabetic condition, he had breathing difficulties, headaches, cramps, itching, eye pain and dizziness". The report also indicated that Mr. López Calo, due to his ailments, had to be "treated in a hospital, not in the clinic of the Escuintla High Security Prison, since they lack adequate equipment for specific exams; and thus give him the appropriate treatment". It also pointed out that Mr. López Calo had a "significant psychological disorder," suffered from anguish and a high level of anxiety, high levels of stress, social dysfunction, and depression. It further noted

on March 8, 2019.

⁹² Cf. Expert report of Aída Castro-Conde Barrios on the state of mental health of Miguel Ángel López Calo and Miguel Ángel Rodríguez Revolorio, of June 23, 2005 (evidence file, folio 267).

⁹³ Cf. Testimony of Miguel Ángel Rodríguez Revolorio given at the public hearing before the Inter-American Court held on March 8, 2019.

⁹⁴ Cf. Expert report of Aída Castro-Conde Barrios on the state of mental health of Miguel Ángel López Calo and Miguel Ángel Rodríguez Revolorio, of June 23, 2005 (evidence file, folios 271, 272, 273 and 274).

⁹⁵ Cf. Testimony of Miguel Ángel Rodríguez Revolorio given at the public hearing before the Inter-American Court held on March 8, 2019, in which Mr. Rodríguez Revolorio indicated that "[his children] could not [enter the prison] because in El Infiernito there was no physical contact and for all that time that I was there, which was 6 years, I could not hug them".

⁹⁶ Cf. Testimony of Miguel Ángel Rodríguez Revolorio given at the public hearing before the Inter-American Court held on March 8, 2019.

⁹⁷ Medical report issued by Dr. Ricardo Estrada Estrada on the state of health of Mr. Miguel Ángel López Calo, dated June 15, 2005 (evidence file, folio 1430).

⁹⁸ Such as evaluation by an ophthalmologist and the practice of the following clinical laboratory tests: (i) pre- and post-prandial glycemia and (ii) glycosylated hemoglobin. Medical report issued by Dr. Ricardo Estrada Estrada on the state of health of Mr. Miguel Ángel López Calo, dated June 15, 2005 (evidence file, folio 1430).

that the longer he was exposed to post-traumatic stress, the more difficult it would be for him to recover, which exacerbated the symptoms of diabetes.⁹⁹

81. With respect to visits and prison conditions, Mrs. Osorio García de López, Mr. López Caro's wife, stated the following:

"[I] visited her husband where he was imprisoned and this visit lasted approximately one hour, but at the end they only gave her 25 minutes of visitation and at the same time I noticed how poorly my husband was fed since the food looked like animal food, and they could not have adequate personal hygiene since the water came approximately every eight to 15 [...] when I took my children to see my husband on visiting days [...] my husband could not hug them because he had a shackle on his left hand and was tied to an iron bar. Only with his right hand could he show affection to his children".¹⁰⁰

82. Likewise, Mrs. Osorio García de López stated that she tried to bring him "what little medicine she could" for his illness and that it was difficult to get the medicine in, noting also that the diabetes suffered by Mr. López Calo affected his kidneys and caused partial loss of vision, all due to the lack of medical attention.¹⁰¹

83. Mr. López Calo obtained his freedom on August 23, 2016 via the benefit of redemption of sentence for work and good conduct.¹⁰² He died on January 11, 2017 of a heart attack.¹⁰³

(iii) Mr. Archila Pérez's prison conditions

84. Mr. Archila Pérez was held in the Zone 18 Prison in Guatemala City for five years, until May 29, 1999, when he was transferred to the "El Infiernito" prison.¹⁰⁴ With respect to the limitations relating to the general conditions of the prison, the cells, access to medical care, food, medicine and water, the Court refers to what has already been indicated in paragraphs 74 to 77 above.

85. On the other hand, according to what Mrs. Irma Morales Morata, wife of Mr. Archila Pérez, stated, he "suffered a lot" in prison, since he told her that "everything was difficult there, since there were no services or humane conditions, but that inside the prison conditions [were] precarious and for everything they had to pay or else they would beat him. With respect to visitation, Mrs. Morales indicated that "they never let her see him," despite the fact that she went with her children and asked to see him, to which she was told that she could not because he was ill.¹⁰⁵ According to Mrs.

⁹⁹ Expert report of Aída Castro-Conde Barrios on the mental health of Miguel Ángel López Calo and Miguel Ángel Rodríguez Revolorio, of June 23, 2005 (evidence file, folio 273).

¹⁰⁰ Cf. Statement rendered before a notary public by Miriam Floridalma Osorio García de López, of March 1, 2019 (evidence file, folios 2430 and 2432).

¹⁰¹ Cf. Statement rendered before a notary public by Miriam Floridalma Osorio García de López, of March 1, 2019 (evidence file, folio 2433).

¹⁰² Cf. Communication from the General Secretariat of the Presidency of June 28, 2018 (evidence file, folio 2392).

¹⁰³ Death certificate of Miguel Ángel López Calo issued by the Civil Registry of the Municipality of Guatemala, Department of Guatemala, death no. 162576 (evidence file, folio 1322).

¹⁰⁴ Cf. Statement rendered before a notary public by Irma Morales Moratava de Archilla, of March 1, 2019 (evidence file, folio 2438).

¹⁰⁵ In this regard, Ms. Morales expressly stated that:

"On 29 May, 1999 he was transferred to a maximum security prison which they called El INFIERNITO, located in the department of ESCUINTLA. From that date I began to suffer more because that place is much further away and for me it meant a lot of expenses and when I went there they didn't let me see him. Even when I took my children they never let me see him; I asked to see him and they refused to let me see him because they told me that he was sick, but he was not sick at the prison in zone 18 and they asked me for medicine and serums and they never gave them to him. I spoke, I asked to speak to the director of the prison and he told me that he was already better and I asked to see him and he denied me, I even told the director that if he could give him to me with an escort to take him to the doctor, because I had not seen

Morales, after the death of Mr. Archila Pérez, she learned that "they had him in a punishment cell better known as 'Bartolina'" and that in that cell "he did not know dawn or dusk, they had him handcuffed by one hand, he went 40 days without food, water, or medicine, which led to depression and aggravated his state of health, in addition to being without communication with the other inmates. She also indicated that he was not given adequate medicine for his diabetes.¹⁰⁶ The foregoing was also endorsed by Mr. Rodríguez Revolorio at the public hearing held before this Court, where she indicated that Mr. Archila Pérez "died 40 days after arriving at the Infiernito, he became depressed, he became ill with diabetes and was never given the proper medicine for the illness he had".¹⁰⁷ Mr. Archila Pérez died on July 16, 1999 as a result of diabetic ketoacidosis,¹⁰⁸ that is, an acute complication of diabetes.

(iv) Conclusions

86. The Court observes, first of all, that it had the opportunity to analyze the physical conditions of the "El Infiernito" prison during the period in which Mr. Rodríguez Revolorio and Mr. López Calo were also detained¹⁰⁹ in the case of *Fermín Ramírez v. Guatemala*, where it observed the following:

"The High Security Prison in Escuintla presents poor hygiene conditions and lacks water and ventilation, especially during the summer.⁷³ The sector in which Mr. Fermín Ramírez is located is of approximately 20 meters by 6 and 8 meters and has 40 cement beds. In the sector there are close to 40 prisoners, some of them facing the death penalty and others face sentences of 30 to 50 years in prison. There are no adequate educational or sports programs. Medical and psychological assistance is deficient".¹¹⁰

87. The Court further notes that Mr. Fermín Ramírez had been subjected to "grave prison conditions," which were part of a general context of serious prison deficiencies, as noted by international organizations.¹¹¹ For all of the above reasons, the Court considered that the State violated Articles 5(1) and 5(2) of the Convention, in relation to Article 1(1) of the Convention.¹¹²

88. Without prejudice to the foregoing, the Court also considers that from the body of evidence in the instant case, it can also be concluded that the "El Infiernito" prison where Mr. Rodríguez Revolorio, Mr. López Calo and Mr. Archila Pérez were held did indeed have deficient physical and sanitary conditions that in no way met international standards.¹¹³ In this sense, the Court has

him nor did I believe he was sick, that is why I wanted to see him and I did not want them to kill him in there [...]" (Statement rendered before a notary public by Irma Morales Moratava de Archilla, of March 1, 2019, evidence file, folio 2438).

¹⁰⁶ Cf. Statement rendered before a notary public by Irma Morales Moratava de Archilla, of March 1, 2019 (evidence file, folio 2439).

¹⁰⁷ Cf. Testimony of Miguel Ángel Rodríguez Revolorio given at the public hearing before the Inter-American Court held on March 8, 2019.

¹⁰⁸ Death certificate of Aníbal Archila Pérez issued by the Civil Registry of the Municipality of Escuintla, death no. 6468 (evidence file, folio 1329).

¹⁰⁹ Cf. *Case of Fermín Ramírez v. Guatemala, supra*, para. 54.55.

¹¹⁰ Cf. *Case of Fermín Ramírez v. Guatemala, supra*, para. 54.57.

¹¹¹ See also, Inter-American Commission on Human Rights, Fifth Report on the Situation of Human Rights in Guatemala, April 6, 2001, Chapter VIII; and MINUGUA, Verification Report, The Prison Situation in Guatemala, April 2000.

¹¹² Cf. *Case of Fermín Ramírez v. Guatemala, supra*, para. 119.

¹¹³ The Inter-American Court in numerous decisions has used the United Nations Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules) to interpret the content of the right of persons deprived of their liberty to humane and dignified treatment. These prescribe the basic standards for the accommodation, hygiene, medical treatment and exercise of prisoners deprived of their liberty. Cf. United Nations Standard Minimum Rules for the Treatment of Prisoners, adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Geneva in 1955, and approved by the Economic and Social Council in its resolutions 663C (XXIV) of 31 July 1957 and 2076 (LXVII) of 13 May 1977, *inter alia*:

"10. All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall

considered that the poor physical conditions and hygiene of places of detention, as well as the absence of adequate light and ventilation, may, in themselves, violate Article 5 of the American Convention, depending on their extent and duration and the personal characteristics of the person experiencing them, because they can cause sufferings of an intensity that exceeds the limit of inevitable suffering resulting from the detention, and because they result in feelings of humiliation and inferiority.¹¹⁴

89. Regarding the prison conditions specific to the present case, the Court notes, first, that the prison windows were located at the top of the walls, which prevented the entry of enough light and the circulation of air.¹¹⁵ The Court further notes that access to water was very restricted, limited to

meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation.

11. In all places where prisoners are required to live or work, (a) The windows shall be large enough to enable the prisoners to read or work by natural light, and shall be so constructed that they can allow the entrance of fresh air whether or not there is artificial ventilation; (b) Artificial light shall be provided sufficient for the prisoners to read or work without injury to eyesight.

12. The sanitary installations shall be adequate to enable every prisoner to comply with the needs of nature when necessary and in a clean and decent manner. [...]

14. All pans of an institution regularly used by prisoners shall be properly maintained and kept scrupulously clean at all times.

15. Prisoners shall be required to keep their persons clean, and to this end they shall be provided with water and with such toilet articles as are necessary for health and cleanliness. [...]

16. In order that prisoners may maintain a good appearance compatible with their self-respect, facilities shall be provided for the proper care of the hair and beard, and men shall be enabled to shave regularly. [...]

20. (1) Every prisoner shall be provided by the administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served. (2) Drinking water shall be available to every prisoner whenever he needs it. [...]

21. (1) Every prisoner who is not employed in outdoor work shall have at least one hour of suitable exercise in the open air daily if the weather permits. (2) Young prisoners, and others of suitable age and physique, shall receive physical and recreational training during the period of exercise. To this end space, installations and equipment should be provided.

22. (1) At every institution there shall be available the services of at least one qualified medical officer who should have some knowledge of psychiatry. [...]

24. The medical officer shall see and examine every prisoner as soon as possible after his admission and thereafter as necessary [...].

See also, Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, Adopted by the Inter-American Commission on Human Rights during the 131st regular session, held March 3-14, 2008, principles IX, X, XI and XII. *Case of Pacheco Teruel et al. v. Honduras. Merits, Reparations and Costs*. Judgment of April 27, 2012. Series C No. 241, para. 67 and *Case of the Pedrinhas Prison Complex v. Brazil. Provisional Measures*. Order of the Inter-American Court of Human Rights of March 14, 2018, para. 47, and *Case of the Curado Prison Complex regarding Brazil. Provisional Measures*. Order of the Inter-American Court of Human Rights of November 28, 2018, para. 31.

¹¹⁴ *Case of Díaz Peña v. Venezuela. Preliminary Objection, Merits, Reparations and Costs*. Judgment of June 26, 2012. Series C No. 244, para. 135, and *Case of J. v. Peru. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 27, 2013. Series C No. 275, para. 372.

¹¹⁵ Cf. Expert report of Aída Castro-Conde Barrios on the state of mental health of Miguel Ángel López Calo and Miguel Ángel Rodríguez Revolorio, of June 23, 2005 (evidence file, folio 265). In this regard, Rule 10 of the United Nations Standard Minimum Rules for the Treatment of Prisoners establishes that "accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation. In relation to access to natural light and fresh air, rule 11 of the United Nations Standard Minimum Rules for the Treatment of Prisoners provides that "[i]n all premises where prisoners are required to live or work: (a) The windows shall be large enough to enable the prisoners to read or work by natural light, and shall be so constructed that they can allow the entrance of fresh air whether or not there is artificial ventilation; (b) Artificial light shall be provided sufficient for the prisoners to read or work without injury to eyesight." See also, Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, Adopted by the Inter-American Commission on Human Rights during the 131st regular session, held March 3-14, 2008, Principle XII. See also, *Case of Montero Aranguren et al (Retén de Catia) v. Venezuela. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 5, 2006*. Series C No. 150, para. 146, and *Case of Pacheco Teruel et al. v. Honduras. Merits, Reparations and Costs*. Judgment of April 27, 2012. Series C No. 241, paras. 65 and 67.

6 liters of water to be used each day.¹¹⁶ This also led to very poor hygiene conditions, as stated by expert witness Castro-Conde.¹¹⁷

90. With respect to health care, it was established that it was not only insufficient, but on many occasions non-existent. The Court recalls that personal integrity is directly and immediately linked to human health care.¹¹⁸ Indeed, the Court has pointed out on several occasions that the State has the duty to provide detainees with regular medical check-ups and adequate care and treatment when required¹¹⁹ and that the lack of adequate medical care to a person who is deprived of liberty and under the custody of the State may be considered a violation of Articles 5(1) and 5(2) of the Convention, depending on the specific circumstances of the specific person, such as their state of health or the type of ailment from which they suffer, the length of time elapsed without care, its cumulative physical and mental effects, and, in some cases, the person's sex and age, among others.¹²⁰ In the instant case, the Court notes that there was an almost total absence of medical supplies and trained medical personnel to care for the inmates, which also increased the incidence of physical and mental health problems.¹²¹ This is compounded in particular by the absence of mental health care, which precluded any possibility of alleviating the mental anguish suffered by death row inmates.¹²² Also linked to the above, with respect to food, the Court notes that there was no adequate diet to the medical conditions of inmates who suffered from diabetes, hypertension or ulcers (*supra* para. 85), which also worsened the effects of their illnesses.¹²³

¹¹⁶ Cf. Expert report of Aída Castro-Conde Barrios on the state of mental health of Miguel Ángel López Calo and Miguel Ángel Rodríguez Revolorio, June 23, 2005 (evidence file, folio 265). In relation to access to water, Rule 15 of the United Nations Standard Minimum Rules for the Treatment of Prisoners establishes that "[p]risoners shall be required to keep their persons clean, and to this end they shall be provided with water and with such toilet articles as are necessary for health and cleanliness. On the other hand, Rule 20.2 of the aforementioned legal document states that "[d]rinking water shall be available to every prisoner whenever he needs it." See also, Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, Adopted by the Inter-American Commission on Human Rights at its 131st regular session, held March 3-14, 2008, Principle XI. See also, *Case of Vélez Loor v. Panama. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 23, 2010. Series C No. 218, para. 216 and *Case of Pacheco Teruel et al. v. Honduras. Merits, Reparations and Costs*. Judgment of April 27, 2012. Series C No. 241, para. 67.

¹¹⁷ Cf. Expert report of Aída Castro-Conde Barrios on the state of mental health of Miguel Ángel López Calo and Miguel Ángel Rodríguez Revolorio, of June 23, 2005 (evidence file, folio 268). See also, *Case of Montero Aranguren et al (Retén de Catia) v. Venezuela. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 5, 2006*. Series C No. 150, para. 146, and *Case of Pacheco Teruel et al. v. Honduras. Merits, Reparations and Costs*. Judgment of April 27, 2012. Series C No. 241, paras. 65 and 67.

¹¹⁸ *Case of Albán Cornejo et al. v. Ecuador. Merits, Reparations and Costs*. Judgment of November 22, 2007. Series C No. 171, para. 117, and *Case of Poblete Vilches et al. v. Chile. Merits, Reparations and Costs*. Judgment of March 8, 2018. Series C No. 349, para. 152.

¹¹⁹ *Case of Tibi v. Ecuador. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 7, 2004. Series C No. 114, para. 156, and *Case of Díaz Peña v. Venezuela. Preliminary Objection, Merits, Reparations and Costs*. Judgment of June 26, 2012. See also, Rule 31 of the United Nations Standard Minimum Rules for the Treatment of Prisoners, *supra*, which provides that "[t]he physician or, where applicable, other qualified health-care professionals shall have daily access to all sick prisoners, all prisoners who complain of physical or mental health issues or injury and any prisoner to whom their attention is specially directed. All medical examinations shall be undertaken in full confidentiality", and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by the UN General Assembly in its resolution 43/173 of 9 December 1988, principle 24, which states that "[t]he physician shall examine every prisoner as soon as possible after admission and thereafter as often as necessary, in particular to determine the existence of physical or mental illness, to take appropriate measures if necessary; to ensure the isolation of prisoners suspected of infectious or contagious diseases; to identify physical and mental disabilities which may hinder rehabilitation; and to determine the physical fitness of each prisoner for work.

¹²⁰ *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits*. Judgment of November 19, 1999. Series C No. 63, para. 74, and *Case of Díaz Peña v. Venezuela, supra*, para. 137.

¹²¹ Cf. Expert report of Aída Castro-Conde Barrios on the state of mental health of Miguel Ángel López Calo and Miguel Ángel Rodríguez Revolorio, of June 23, 2005 (evidence file, folio 267).

¹²² Cf. Expert report of Aída Castro-Conde Barrios on the state of mental health of Miguel Ángel López Calo and Miguel Ángel Rodríguez Revolorio, of June 23, 2005 (evidence file, folio 267).

¹²³ Expert report on the state of mental health of Miguel Ángel Rodríguez Revolorio and Miguel Ángel López Calo, prepared by Aida Castro-Conde, of June 23, 2005 (evidence file, folio 278). Cf. *Case of Tibi v. Ecuador. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 7, 2004. Series C No. 114, para. 156, and *Case of Pacheco Teruel et*

91. Regarding the visiting regime, the Court recalls that visits must be guaranteed in penitentiary centers and that confinement under a restricted visiting regime may be contrary to the right to humane treatment in certain circumstances.¹²⁴ In the instant case, the Court notes that the visiting regime was very restricted, since most visits took place without physical contact,¹²⁵ and the inmates were handcuffed by the wrist to a tube while the family was on the other side, where they could only touch each other's fingers through the bars.¹²⁶ In addition to the foregoing, Mr. Rodríguez Revolorio made an allegation at the public hearing held before this Court, that he went for approximately two and a half months without visits,¹²⁷ and Mrs. Morataya de Archila, widow of Mr. Archila Pérez, stated that she was never allowed to see her then husband during the period he was held in the "El Infiernito" prison.¹²⁸

92. In view of the foregoing, the Court concludes that the prison conditions in which Messrs. Rodríguez Revolorio, López Calo and Archila Pérez were detained did not meet the minimum material requirements for humane treatment¹²⁹ and constituted cruel, inhuman and degrading treatment in violation of the provisions of Articles 5(1) and 5(2) of the American Convention, in relation to Article 1(1) thereof, as well as Article 6 of the IACPPT.

b.2 Death row

93. Next, the Court must determine whether the subjection of Mr. Rodríguez Revolorio, Mr. López Calo and Mr. Archila Pérez to the death row constituted, in this particular case, cruel, inhuman and degrading treatment in the light of Articles 5(1) and 5(2) of the Convention.

94. This Court has had the opportunity to rule on the so-called "death row phenomenon" in the case of *Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago*¹³⁰ and in the case of *Raxcacó Reyes v. Guatemala*. As this Court has pointed out, to determine the existence of a violation of

al. v. Honduras. Merits, Reparations and Costs. Judgment of April 27, 2012. Series C No. 241, para. 67.

¹²⁴ *Case of Loayza Tamayo v. Peru. Merits.* Judgment of September 17, 1997. Series C No. 33, para. 58, and *Case of Pacheco Teruel et al. v. Honduras, supra*, para. 67.

¹²⁵ Cf. Expert report of Aída Castro-Conde Barrios on the state of mental health of Miguel Ángel López Calo and Miguel Ángel Rodríguez Revolorio, of June 23, 2005 (evidence file, folio 268). See also, Testimony of Miguel Ángel Rodríguez Revolorio given at the public hearing before the Inter-American Court held on March 8, 2019.

¹²⁶ Expert report by Aída Castro-Conde Barrios on the mental health of Miguel Ángel López Calo and Miguel Ángel Rodríguez Revolorio, of June 23, 2005 (evidence file, folio 268). In this regard, Mr. Rodríguez Revolorio also indicated the following:

"We had no visitors, the food was really bad, it was not good food, we suffered there because we had no water, in short, we lived a terrible situation. When we had the opportunity to have our visit, we had it without physical contact with bars and sieves where we could not even touch the fingertips of our children who also suffered a lot seeing us in this situation." Cf. Testimony of Miguel Ángel Rodríguez Revolorio given at the public hearing before the Inter-American Court held on March 8, 2019.

¹²⁷ Cf. Testimony of Miguel Ángel Rodríguez Revolorio given at the public hearing before the Inter-American Court held on March 8, 2019.

¹²⁸ In this regard, Mrs. Morataya de Archila stated the following:

"On 29 May, 1999 he was transferred to a maximum security prison which they called El INFIERNITO, located in the department of ESCUINTLA [...] when I went there they didn't let me see him. Even when I took my children they never let me see him; I asked to see him and they refused to let me see him because they told me that he was sick [...] and they asked me for medicine and serums and they never gave them to him. I spoke, I asked to speak to the director of the prison and he told me that he was already better and I asked to see him and he denied me, I even told the director that if he could give him to me with an escort to take him to the doctor, because I had not seen him nor did I believe he was sick, that is why I wanted to see him [...]" (Statement rendered before a notary public by Irma Morales Moratava de Archilla, of March 1,

¹²⁹ Cf. *Case of Pacheco Teruel et al. v. Honduras, supra*, para. 69 and *Case of Díaz Peña v. Venezuela, supra*, para. 141.

¹³⁰ *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.

humane treatment derived from the phenomenon of death row, it is necessary to analyze the personal and particular circumstances of the case in order to assess whether a particular treatment or punishment reached the minimum level of severity to qualify as cruel, inhuman or degrading.¹³¹ Likewise, the European Court of Human Rights,¹³² the Universal Human Rights System¹³³ and some national courts¹³⁴ warn that the so-called "death row" causes a violation to the right to humane treatment due to the anguish in which the persons condemned to death find themselves, a situation that generates psychological trauma due to the present and increasing manifestation of the execution of the capital penalty,¹³⁵ therefore, it is considered as cruel, inhuman and degrading treatment.

95. The Court emphasizes that the manner 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.¹³⁶ The Court observes that Messrs. Rodríguez Revolorio, López Calo and Archila Pérez were sentenced to death in the context of a criminal proceeding in which there were clear violations of Articles 4(2) and 9 of the Convention, and in violation of the right to appeal the judgment provided for in Article 8(2)(h) of the American Convention (see *infra* section VIII.3.b.3). The Court considers that the criminal proceedings to which Mr. Rodríguez Revolorio, Mr. López Calo and Mr. Archila Pérez were subjected, which also resulted in the imposition of the death penalty, could have caused them profound suffering, anguish, anxiety, frustration and stress, which could even have led to some type of post-traumatic stress disorder, as has happened in other cases of persons sentenced to death.¹³⁷ In addition to the above, the Court has already indicated that the prison conditions to which they were subjected were incompatible with the standards referred to in the previous chapter.

96. For these reasons, the Court concludes that Messrs. Rodríguez Revolorio, López Calo and Archila Pérez underwent serious psychological suffering resulting from the anguish of remaining on "death row" after a procedure that was significantly flawed, in prison conditions incompatible with the standards of the Convention, which violated their right to physical, mental and moral integrity, contained in Article 5(1) of the American Convention, and constituted cruel, inhuman and degrading treatment, contrary to Article 5(2) of the American Convention, all in relation to Article 1(1) of the same instrument.

¹³¹ 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, ECtHR, *Case of Ireland v. the United Kingdom*, no. 5310/71, Judgment of January 18, 1978, para. 162; *Case of Jalloh v. Germany* [GC], no. 54810/00, Judgment of July 11, 2006, para. 67, and *Case of Bouyid v. Belgium* [GC], no. 23380/09/03, Judgment of September 28, 2015, para. 86.

¹³² Cf. ECtHR, *Case of Öcalan v. Turkey* [GC] no. 46221/99, paras. 166-169. 46221/99, paras. 166-169; *Case of Bader and Kanbor v. Sweden*, no. 13284/04, paras. 42-48.

¹³³ United Nations. Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. 9 August 2012. A/67/279, para. 42. The death row phenomenon is defined as: "(...) 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, HRC, *Larranaga v. Philippines*, UN Doc: CCPR/C/87/D/1421/2005 (2006), para. 7.11; *Mwamba v. Zambia*, UN Doc: CCPR/C/98/D/1520/2006 (2010), para. 6.8.

¹³⁴ *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. AG v. Susan Kigula & 417 others, Supreme Court of Uganda (2009); *Catholic Commission for Justice and Peace in Zimbabwe v the Attorney General & Others, Supreme Court of Zimbabwe* (1993), 2LRC 277; *Godfrey Mutiso v. Republic, Court of Appeal of Kenya* (2010). See also *US v Burns*, Supreme Court of Canada, 2001 SCC 7, paras 118-123.

¹³⁵ Cf. ECtHR, *Case of Soering v. the United Kingdom* [GC], no. 14038/88, Judgment of July 7, 1989, paras. 56, 81 and 111.

¹³⁶ Cf. ECtHR, *Case of Soering v. the United Kingdom* [GC], *supra*, para. 106, and *Case of Shamayev and others v. Georgia and Russia*, no. 36378/02, Judgment of April 12, 2005, para. 333.

¹³⁷ Cf. *Case of Raxcaco Reyes v. Guatemala, supra*, and *Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago, supra*.

VIII-3
THE RIGHTS TO A FAIR TRIAL AND TO JUDICIAL PROTECTION¹³⁸

A. Arguments of the parties and the Commission

97. The **Commission** concluded that, in accordance with rigorous scrutiny that States must observe in cases involving the application of the death penalty, the criminal proceedings to which the alleged victims were subjected violated the human rights to freedom from ex post facto laws, fair trial, and judicial protection established in Articles 8(1), 8(2)(h), 9 and 25(1), in relation to the obligations established in Articles 1(1) and 2 of the American Convention; as well as Articles 8(2) and 8(2)(c) in relation to the obligations derived from Article 1(1) of the same treaty. Likewise, given that the regulation of the judge's functions necessarily implied that they would be involved in the control and sentencing stages, the objective impartiality of the court was violated, since this implied that, prior to the decision, they would have reached a preconception about the criminal classification of the defendants' conduct; in the specific case, the State did not provide elements to demonstrate that this circumstance did not materialize. In addition, it considered that the guarantee of the right to a fair trial was tarnished by the fact that two pieces of evidence that were decisive in the imposition of the sentence were evaluated despite the fact that they did not comply with the formalities required in the applicable legislation; in addition, the judgment did not sufficiently and clearly explain the reasons why this fact did not violate the defense of the accused and their presumption of innocence, nor why the evidence offered by the defense was discarded. Finally, it considered that none of the remedies filed by the alleged victims were effective and in accordance with international human rights standards, since they were regulated with a margin of action limited to procedural errors, excluding the analysis of facts and evidence.

98. The **representatives** alleged that the sentence violated Articles 8, 8(1), 8(2)(c), 8(2)(h), and 25, in relation to Articles 1(1) and 2; as well as Articles 8(2) and 8(2)(b), in relation to Article 1(1) of the American Convention. In this regard, they asserted that there was a violation of the right to a fair trial and of the right to effective judicial protection, agreeing with the Commission's observations that two key elements of evidence did not meet the legal requirements, and that there was clear evidentiary bias. In addition, they stated that there was subjective impartiality, since the President of the Tribunal made statements that showed that, prior to the entire process, he had already adopted a position on the direction of his decision, and objective impartiality, due to the structure of the procedural system, in the terms referred to by the Commission. They also referred to the violation of the presumption of innocence and the right to be informed of the charges, since prior to the beginning of the trial, prejudgments were made about their guilt.

99. With regard to the right of defense, the representatives argued that the alleged victims were denied the possibility of challenging the evidence presented during the proceeding and of exercising an adequate technical defense. As to the lack of sufficient justification, they reiterated the arguments of the Commission and added that the requirements regarding the procedures and qualifications of the experts were not observed, and that the judicial body did not evaluate the prior or subsequent behavior of the accused as an extenuating circumstance to exclude the death penalty as a sanction.

100. Regarding the violation of the right to an effective remedy, they affirmed that the State is responsible for not guaranteeing that right because the various remedies filed were decided without legal justifications and, by their nature, were ineffective for the defense of the accused.

¹³⁸ Articles 8 and 25 of the American Convention.

101. The **State** requested a declaration of its absence of international responsibility with respect to the violation of Articles 8(1), 9 and 25(1) of the American Convention, arguing that the trial brought against the alleged victims complied with due process established in domestic law. Finally, it argued that, because of the subsidiary nature of the inter-American system, the Inter-American Court cannot act as an appeal instance for judgments handed down by domestic courts, and therefore it does not have the power to create or define new legal concepts in domestic legislation.

B. Considerations of the Court

102. In the instant case, the Court has been called upon to determine whether in the criminal proceedings against Mr. Rodríguez Revolorio, Mr. López Calo and Mr. Archila Pérez, which culminated in a death sentence, the guarantees of due process were observed, as required, in particular, by Article 8 of the Convention, and whether those persons had access to an effective remedy pursuant to Article 25 of the Convention, both in relation to Article 1(1) of that instrument.

103. The Court has said that the right to due process refers to the set of requirements that must be observed in procedural instances so that individuals are in a position to adequately defend their rights vis-à-vis any act of the State, adopted by any public authority, whether administrative, legislative or judicial, that may affect them.¹³⁹

104. In conventional terms, due process is translated into the "judicial guarantees" recognized in Article 8 of the American Convention. This provision of the Convention establishes a system of guarantees that condition the exercise of the *ius puniendi* of the State and that seek to ensure that the accused is not subjected to arbitrary decisions, because "the due guarantees" must be observed to ensure the right to due process in the proceedings in question.¹⁴⁰ From the beginning of the first steps taken in any proceedings, all procedural guarantees must be ensured in order to safeguard the right to defense.¹⁴¹ Likewise, all the required elements must concur to ensure the greatest possible balance between the parties, for the sake of the defense of the interests and rights thereof. This implies, among other aspects, that the adversarial principle must prevail.¹⁴²

b.1 Right to an impartial judge and the principle of presumption of innocence

105. In the instant case, the Commission and the representatives alleged that the State violated the guarantee of impartiality and the principle of presumption of innocence on two counts. The first is based on the fact that the president of the Fourth Sentencing Court, Mr. H. S. H., allegedly stated to one of the defense attorneys and an expert witness that "with or without an expert, they will be convicted". The second objection is based on the fact that Mr. H. S. H. served as supervisory judge during the investigation stage¹⁴³ of the case, and then served as president of the Fourth Criminal Sentencing Court for Drug Trafficking and Crimes against the Environment, which sentenced the alleged victims.¹⁴⁴

¹³⁹ *Case of the Constitutional Tribunal v. Peru. Merits, Reparations and Costs.* Judgment of January 31, 2001. Series C No. 71, para. 69, and *Case of Dominican and Haitian Expelled Persons v. Dominican Republic, supra*, para. 349.

¹⁴⁰ *Cf. Exceptions to the Exhaustion of Domestic Remedies (arts. 46.1, 46.2.a and 46.2.b, American Convention on Human Rights).* Advisory Opinion OC-11/90 of August 10, 1990. Series A No. 11, para. 28, and *Case J v. Peru, supra*, para. 258.

¹⁴¹ *Case of Palamara Iribarne v. Chile. Merits, Reparations and Costs.* Judgment of November 22, 2005. Series C No. 135, paras. 174 and 175.

¹⁴² *Cf. Juridical Condition and Human Rights of the Child.* Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, para. 132, and *Case of Palamara Iribarne v. Chile, supra*, para. 178.

¹⁴³ *Cf. Communication from the Supreme Court of Justice to the Minister of Foreign Affairs, October 3, 1997 (evidence file, folios 310 and 311).*

¹⁴⁴ Judgment of the Fourth Criminal Sentencing Court for Drug Trafficking and Crimes against the Environment of

106. In view of the foregoing, the Court must determine whether, in the instant case, the State incurred in an international violation of its obligations under Articles 8(1) and 8(2) of the American Convention.

107. The Court recalls that the right to be tried by an impartial judge or court is a fundamental guarantee of due process, and it must be ensured that the judge or court presiding over the case brings to it the utmost objectivity. This Court has established that impartiality requires that the judge who intervenes in a particular dispute must approach the facts of the case without subjective bias and must also offer sufficient guarantees of an objective nature to inspire the necessary confidence in the parties to the case, as well as in the citizens in a democratic society.¹⁴⁵ The impartiality of a court implies that its members have no direct interest in, a pre-established viewpoint on, or a preference for one of the parties, and that they are not involved in the controversy.¹⁴⁶ That is so because the judge must appear as acting without being subject to any influence, inducement, pressure, threat or interference, direct or indirect,¹⁴⁷ and only and exclusively in accordance with — and on the basis of— the Law.¹⁴⁸

108. Moreover, the Court reiterates that a judge's personal or subjective impartiality is to be presumed unless there is evidence to the contrary.¹⁴⁹ In an analysis of subjective impartiality, the Court should attempt to determine the personal interests or reasons of a judge in a particular case.¹⁵⁰ As to the type of evidence required to prove subjective impartiality, the European Court has indicated the need to ascertain whether the judge has displayed hostility or ill will if he has arranged to have a case assigned to himself for personal reasons.¹⁵¹ The so-called objective approach test consists in determining whether the judge in question offered sufficient elements of conviction to exclude any legitimate misgivings or well-grounded suspicion of partiality regarding his or her person.¹⁵²

109. Likewise, Article 8(2) of the Convention provides that "[e]very person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to

Guatemala, May 23, 1996 (file of annexes to the Merits Report, annex 3, folios 93 to 112).

¹⁴⁵ *Case of Herrera Ulloa v. Costa Rica, Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107, para. 171, and *Case of Amrhein et al. v. Costa Rica, supra*, para. 385.

¹⁴⁶ *Case of Palamara Iribarne v. Chile. Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 135, para. 146, and *Case of Amrhein et al. v. Costa Rica, supra*, para. 385.

¹⁴⁷ Cf. Principle 2 of the United Nations Basic Principles on the Independence of the Judiciary, 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. 385.

¹⁴⁸ Cf. *Case of Apitz Barbera et al ("Corte Primera de lo Contencioso Administrativo") v. Venezuela, Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 5, 2008. Series C No. 182, para. 56, and *Case of Amrhein et al. v. Costa Rica, supra*, para. 385.

¹⁴⁹ Cf. *Case of Apitz Barbera et al. ("Corte Primera de lo Contencioso Administrativo") v. Venezuela, supra*, para. 56, and *Case of Amrhein et al. v. Costa Rica, supra*, para. 386.

¹⁵⁰ *Case of Atala Riffo and girls v. Chile. Merits, Reparations and Costs*. Judgment of February 24, 2012. Series C No. 239, para. 234, and *Case of Amrhein et al. v. Costa Rica, supra*, para. 386.

¹⁵¹ Cf. *Case of Atala Riffo and Children v. Chile, supra*, para. 234, and *Case of Amrhein et al. v. Costa Rica, supra*, para. 386, citing: ECtHR, *Case of Kyprianou v. Cyprus*, no. 73797/01, Judgment of December 15, 2005, para. 119 ("As regards the type of proof required, the Court has, for example, sought to ascertain whether a judge has displayed hostility or ill will or has arranged to have a case assigned to himself for personal" reasons). See also ECtHR, *Case of Bellizzi v. Malta*, no. 46575/09, Judgment of June 21, 2011, para. 52 and final of 28 November 2011, para. 52, and *Case of De Cubber v. Belgium*, No. 9186/80, Judgment of October 26, 1996, para. 25. Furthermore, this Court noted that the subjective impartiality of a judge may be determined, depending on the specific circumstances of the case, on the basis of the judge's conduct during the proceedings, the content, arguments and language used in the decision, or the reasons for conducting the investigation, which indicate a lack of professional distance from the decision. Cf. ECtHR, *Case of Kyprianou v. Cyprus [GC]*, no. 73797/01, Judgment of December 15, 2005, paras. 130-133.

¹⁵² Cf. *Case of Apitz Barbera et al. ("Corte Primera de lo Contencioso Administrativo")*, *supra*, para. 56, and *Case of Amrhein et al. v. Costa Rica, supra*, para. 386.

law". Therefore, the Court has indicated that the principle of presumption of innocence constitutes a foundation of judicial guarantees.¹⁵³ The Court has also noted that the principle of the presumption of innocence implies that judges should not start a proceeding with a preconceived idea that the accused has committed the crime as charged.¹⁵⁴ In turn, it requires that the State should not convict an individual informally or emit an opinion in public that contributes to forming public opinion, while the criminal responsibility of that individual has not been proved.¹⁵⁵

110. With respect to the first question about the alleged statements made by Judge H.S.H., it is proven that in the record of the hearing before the Fourth Criminal Sentencing Court for Drug Trafficking and Crimes against the Environment of April 22, 1996, that the defense attorney R.E.Q.D. submitted an oral recusal appeal against Judge H.S.H., alleging that said judge stated that "he did not care about the results of the expert testimony, since for him the only thing that mattered was the identification that the witness had made of the defendants".¹⁵⁶ The appeal was filed on the grounds that these alleged assertions called into question his impartiality and showed prior judgement with respect to the case. Faced with this challenge, the president of the Criminal Sentencing Court denied the grounds for the challenge, pursuant to the provisions of article 131 of the Law of the Judiciary.¹⁵⁷ The court then requested the Supreme Court of Justice to appoint a third member to rule on the matter,¹⁵⁸ in accordance with article 129 of the same law.¹⁵⁹ Judge M.A.S.M. was appointed to hear the challenge, and considered that, in his opinion, there was insufficient evidence.

111. In light of the foregoing, this Court considers that the alleged lack of subjective impartiality of said judge due to the violation of the principle of presumption of innocence and impartiality has already been evaluated and resolved in the domestic jurisdiction, and the appeal was dismissed on the grounds that there was insufficient evidence for the challenge to succeed. No new elements were presented before this Court to depart from the criterion established by the national judge. Therefore, the Court concludes on this point that the principles of presumption of innocence and of impartial tribunal have not been violated.

112. With regard to the second question concerning the dual role of the judge in the criminal proceeding, it is a proven fact that Mr. H.S.H. participated as a judge in the investigation stage and was subsequently president of the sentencing court.

113. The Guatemalan Code of Criminal Procedure in force at the time of the facts contemplated in its articles 309 and following, the functions of the control judge, among which was that, at the request

¹⁵³ *Case of Suárez Rosero v. Ecuador. Merits.* Judgment of November 12, 1997, para. 77, and *Case of Amrhein et al. v. Costa Rica, supra*, para. 387.

¹⁵⁴ *Case of Cabrera García and Montiel Flores v. Mexico. Preliminary Objection, Merits, Reparations and Costs.* Judgment of November 26, 2010. Series C No. 220, para. 184, and *Case of Amrhein et al. v. Costa Rica, supra*, para. 387.

¹⁵⁵ *Case of Lori Berenson Mejía v. Peru. Merits, Reparations and Costs.* Judgment of November 25, 2004. Series C No. 119, para. 160, and *Case of Amrhein et al. v. Costa Rica, supra*, para. 388.

¹⁵⁶ *Cf.* Record of the debate before the Fourth Criminal Sentencing Court for Drug Trafficking and Crimes against the Environment, April 22, 1996 (evidence file, folio 62).

¹⁵⁷ Judicial Branch Act, Article 131: "Challenge in collegiate courts. When members of collegiate tribunals are challenged, the person challenged shall immediately state in the case file whether he or she recognizes or denies the grounds for the challenge. The court, when properly constituted, shall process the matter in the appropriate manner. No appeal shall be allowed against the decision as well as in the case provided for in article 127". Available at: <https://www.wipo.int/edocs/lexdocs/laws/es/gt/gt004es.pdf>.

¹⁵⁸ *Cf.* Record of the hearing before the Fourth Court of Criminal Sentencing for Drug Trafficking and Crimes against the Environment, April 22, 1996 (evidence file, folio 62).

¹⁵⁹ Judicial Branch Act, Article 129: "Processing of the challenge. If the judge considers that the grounds are not true or that there are no grounds for recusal, he shall so state in a reasoned decision, and in the first case he shall continue to hear the case without further proceedings, but in the case of recusal he shall refer the proceedings to the higher court, which shall process and resolve them as an incident". Available at: <https://www.wipo.int/edocs/lexdocs/laws/es/gt/gt004es.pdf>.

of the Public Prosecutor's Office, he could exercise the function of anticipating evidence,¹⁶⁰ in addition, he had the function of issuing the "indictment",¹⁶¹ which in turn should contain the "enunciation of the facts"¹⁶² and "the legal qualification of the crime" in a duly substantiated manner, among other aspects.

114. The Court appreciates that both the Commission and the representatives limited themselves to justifying the alleged unlawfulness of the judge's dual function based on the procedural regulation. Thus, the Commission argued that the dual function "is problematic with respect to the guarantee of impartiality," since the cited regulation itself "shows that the functions of the control judge necessarily implied that said authority formed, prior to the trial, an idea about the facts and the way in which they fit into a certain type of criminal offense. This Court notes that the Commission and the representatives did not refer to the specific control actions carried out by Judge H.S.H. in the instant case. Nor does the body of evidence before this Court contain specific actions that would allow the Court to examine the acts of the national judge and determine whether or not his impartiality was guaranteed. The Court warns that it is not enough for the parties to state the rules on which the alleged violations are based, but that they also have the duty to indicate and specify the actions or proceedings that the judge carried out specifically in the control stage that may have caused a violation of the rights of the alleged victims.

115. Consequently, the Court concludes that the State is not responsible for the violation of Articles 8(1) and 8(2) of the American Convention, in relation to Article 1(1) of the same instrument, to the detriment of Mr. Rodríguez Revolorio, Mr. López Calo and Mr. Archila Pérez.

b.2 The right of defense, the duty of sufficient justification and the principle of presumption of innocence

116. In this section, the Court will analyze the alleged responsibility of the State in relation to its obligations regarding the right of defense, the duty of sufficient justification and respect for the principle of presumption of innocence, since the representatives and the Commission alleged that the State failed to provide a reasoned and sufficient explanation of the motives and legal grounds taken into account through its judicial agents to impose the death penalty on the alleged victims. These argumentative deficiencies consisted of the improper admissibility and evaluation of the

¹⁶⁰ Code of Criminal Procedure, Congress of the Republic of Guatemala, Decree No. 51-92.
"(Jurisdictional acts: Anticipated evidence). When it is necessary to carry out a reconnaissance, reconstruction, expert opinion or inspection that by its nature and characteristics must be considered definitive acts that cannot be reproduced, or when a body of evidence must be produced because, due to some obstacle difficult to overcome, it is presumed that it will not be able to do so during the oral debate, the Public Prosecutor's Office or any of the parties shall request the judge in control of the investigation to carry it out.

The judge will carry out the act, if he considers it formally admissible, summoning all the parties, defense counsel or representatives, who will have the right to attend with the powers provided for with respect to their participation in the debate. The accused who is detained will be represented by his defense counsel, unless he requests to intervene in person.

If, due to the nature of the act, the anticipated summons leads to fear of loss of evidence, the judge will summon the parties in such a way as to avoid this danger, taking care not to affect the powers attributed to them".

¹⁶¹ Code of Criminal Procedure, Congress of the Republic of Guatemala, Decree No. 51-92.
"Article 320. (Indictment). Immediately upon the issuance of an arrest warrant or a substitute measure, the judge in control of the investigation shall issue an indictment against the person to whom it refers. An indictment may only be issued after the person against whom it is issued has been questioned. It may be reformed *ex officio* or at the request of a party only in preparatory proceedings, prior to indictment".

¹⁶² Code of Criminal Procedure, Congress of the Republic of Guatemala, Decree No. 51-92.

"Article 321. The indictment shall contain the following: [...].

(2) A brief statement of the fact or facts about which the inquiry was received.

identification and ballistics expert evidence that was fundamental to the conviction and the lack of reasoning to reject the defense evidence.

117. This Court considers it necessary to recall that the right of defense is a central component of due process.¹⁶³ In criminal proceedings, the right of defense is intended both to provide the accused with the necessary tools to demonstrate his innocence, and to take an active role in a rigorous control of the process in order to guarantee the validity and credibility of the evidence presented to demonstrate the guilt of the person on trial.¹⁶⁴

118. In principle, the duty of sufficient justification to which State authorities are subject represents an instrumental right of individuals to judicial guarantees and to fully exercise their right of defense, by imposing on them the obligation to externalize the reasons that justify their decisions.¹⁶⁵ In this way, the administration of justice allows persons whose human rights have been affected to know the reasons that led the judges to decide in a certain way, so that they can have the opportunity to refute the considerations that support the decision if they consider them to be unjust. Now, while this duty of sufficient justification does not require a detailed response to every argument, it does require that the decisions have a rational argumentation that takes into account the allegations and the body of evidence that has made up the process.¹⁶⁶

119. Criminal proceedings involving highly relevant sanctions, such as the deprivation of personal liberty or, more importantly, capital punishment, require judges to carry out the most scrupulous scrutiny at the time of their decisions, since otherwise they would cause irreversible harm to the convicted persons.¹⁶⁷ In this context, the principle of presumption of innocence is important as it demands the judicial authority to adopt its sentencing decisions based on a clear and evident reason regarding the criminal responsibility of the accused, obtained in a trial in which the formalities that guarantee the possibility of defense and the guarantees of due process of law have been respected.

120. This Court has described the content that must be satisfied in accordance with the duty of sufficient justification in relation to the presumption of innocence of the accused, holding that "[t]he Court underscores the relevance of the statement of reasons, in order to guarantee the principle of presumption of innocence, especially in a conviction, which must express the sufficiency of the evidence against the accused to confirm the accusatory hypothesis; the observance of the rules of sound judicial discretion in the assessment of the evidence, including those that could cast doubt on criminal responsibility; and the final judgment that derives from this assessment. If applicable, it must reflect the reasons why it was possible to obtain the conviction on the charge and criminal responsibility, as well as the evaluation of the evidence to disprove any hypothesis of innocence, and only then to confirm or refute the accusatory hypothesis. This would make it possible to rebut the presumption of innocence and determine criminal responsibility beyond reasonable doubt. In the face of doubt, the presumption of innocence and the principle of *in dubio pro reo*, operate as a decisive criterion at the time of issuing the ruling".¹⁶⁸

¹⁶³ *Case of Ruano Torres et al. v. El Salvador. Merits, Reparations and Costs.* Judgment of October 5, 2015. Series C No. 303, para. 153.

¹⁶⁴ *Case of Pollo Rivera et al. v. Peru. Merits, Reparations and Costs.* Judgment of October 21, 2016. Series C No. 319, para. 319.

¹⁶⁵ *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador. Preliminary Objections, Merits, Reparations and Costs.* Judgment of November 21, 2007, para. 107.

¹⁶⁶ *Cf. Case of Escher et al. v. Brazil. Preliminary Objections, Merits, Reparations and Costs.* Judgment of July 6, 2009. Series C No. 200, para. 196.

¹⁶⁷ *Cf. Case of Fermín Ramírez v. Guatemala, supra*, para. 85.

¹⁶⁸ *Case of Zegarra Marín v. Peru. Preliminary Objections, Merits, Reparations and Costs.* Judgment of February 15, 2017, para. 147.

121. In accordance with the principles of sound judicial discretion and unity of evidence, the judge may conduct a concatenated and rational study of the entire body of evidence at their disposal in the process, to generate conviction with respect to any fact, as long as this is in accordance with judicial guarantees such as the adversarial principle, the presumption of innocence, the right of defense, among others. Therefore, the requirement imposed on the judge when motivating the determinations that he/she adopts, is to substantiate the causes and reasons that support the appreciation of the evidentiary elements at their disposal.

122. First, with regard to the alleged irregularity of the evidence on the identification of the alleged perpetrators through the use of kardex cards with photographs, this Court notes from the content of the first instance judgment that the court affirmed that this evidence was considered "as the starting point of the investigation that led to the clarification of the criminal offense that was the subject of the trial".¹⁶⁹ It also added that "the investigators of the National Police Accountability Office agree with the same version, which leads the judges to believe that what they state is true".¹⁷⁰ Consequently, this Court appreciates that there was a pronouncement to accept the aforementioned means of conviction, not as identification evidence, but as part of the investigation carried out by the police force, supported by certain reasoning. The Court observes that the facts declared proven in the judgment were based on the conviction of the judging body through multiple evidence, so that the requirement of sufficient justification was met in this regard.

123. On the other hand, with regard to the ballistics expert evidence presented by expert witness M. X. X., the representatives argued that it lacked the legal formalities established by the applicable legislation. However, this Court notes that the domestic court considered that "the expert witness testified in the debate, thus satisfying the exception contained in Article 364(1)(1) of the Code of Criminal Procedure".¹⁷¹ Therefore, the Court considers that the determination adopted by referring to a case of exception and mentioning the article on which it was based, provided the required information to the parties involved in the proceedings of the reasons on which the judges admitted this evidence.

124. Finally, as regards the alleged lack of reasoning in the analysis of mitigating factors relating to the conduct of the accused that could prevent the application of the death penalty, the Court considers that this aspect is linked to the use of the criterion of dangerousness of the agent and the applicable criminal classification, which has already been examined by this Court (*supra* paras. 61 to 64), and therefore does not rule on the matter.

125. In sum of the foregoing, this Court finds that the State did not violate the duty of sufficient justification, the right of defense, or the principle of presumption of innocence of the alleged victims.

b.3 Right to appeal against the judgment to a higher court

126. The Court has referred in its case law to the scope and content of Article 8(2)(h) of the Convention, as well as to the standards that must be observed to ensure the right to appeal a judgment to a higher court. The Court has understood that this right consists of a minimum and essential guarantee that "must be respected as part of due process, so that a party may turn to a

¹⁶⁹ Cf. Judgment issued by the Fourth Criminal Sentencing Tribunal for Drug Trafficking and Crimes against the Environment of Guatemala, May 23, 1996 (evidence file, folio 102).

¹⁷⁰ Cf. Judgment issued by the Fourth Criminal Sentencing Tribunal for Drug Trafficking and Crimes against the Environment of Guatemala, May 23, 1996 (evidence file, folio 102).

¹⁷¹ Cf. Judgment issued by the Fourth Criminal Sentencing Tribunal for Drug Trafficking and Crimes against the Environment of Guatemala, May 23, 1996 (evidence file, folio 102).

higher court for revision of a judgment that was unfavorable [...]"¹⁷² Bearing in mind that judicial guarantees seek to ensure that anyone involved in a proceeding is not subject to arbitrary decisions, the Court interprets that the right to appeal a judgment cannot be effective unless it is guaranteed in respect of all those who are convicted,¹⁷³ since the judgment is the manifestation of the exercise of punitive power of the State.¹⁷⁴ The Court has considered the right to appeal a judgment as one of the minimum guarantees that every person who is subjected to a criminal investigation and trial has.¹⁷⁵

127. Furthermore, the Court has held that Article 8(2)(h) of the Convention refers to an ordinary, accessible, and effective remedy, that is, one that should not require complex formalities that would render this right illusory. In this sense, the formalities required for the remedy to be admitted should be minimal and should not constitute an obstacle for it to fulfill its purpose of examining and resolving the grievances sustained by the appellant, that is, it should seek results or responses to the purpose for which it was conceived. It must be understood that, regardless of the remedial regime or system adopted by the States Parties, and regardless of the label given to the means of challenging the conviction, for it to be effective it must constitute an adequate means to seek the correction of an erroneous conviction. The appeal must be appropriate to analyze the factual, evidentiary, and legal issues on which the contested judgment is based, since in jurisdictional activity there is an interdependence between the factual determinations and the application of the law, such that an erroneous determination of the facts implies an erroneous or improper application of the law. Consequently, the grounds on which an appeal is admissible must allow for a broad review of the contested aspects of the conviction.¹⁷⁶

128. In view of the foregoing, the Court notes that the Guatemalan Code of Criminal Procedure provides for two remedies that are intended to satisfy the right to appeal the judgment: the special appeal and the appeal in cassation. Article 430 of the Code of Criminal Procedure states the following with respect to the remedy of appeal:

"The judgment may in no case rule on the merits of the evidence or the facts that are declared proven in accordance with the rules of sound reasoned criticism. It may only refer to them for the application of the substantive law or when there is a manifest contradiction with the appealed judgment".

129. It is clear from the transcribed legislation that the special appeal is a remedy limited to the analysis of the law, since it does not allow the review of facts or of the evidence accredited by the court *a quo*.

130. The appeal in cassation is regulated, in what is relevant, as follows:

"The court of cassation shall hear only the legal errors contained in the decision appealed against. It is bound by the facts that were considered proven by the sentencing court, and only in cases in which it finds a violation of a constitutional or legal norm may it order the annulment and remand for due correction".

¹⁷² Cf. *Case of Herrera Ulloa v. Costa Rica*, *supra*, para. 158, and *Case of Amrhein et al. v. Costa Rica*, *supra*, para. 255.

¹⁷³ 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 Amrhein et al. v. Costa Rica*, *supra*, para. 255.

¹⁷⁴ *Case of Baena Ricardo et al. v. Panama. Merits, Reparations and Costs*. Judgment of February 2, 2001. Series C No. 72, para. 107, and *Case of Amrhein et al. v. Costa Rica*, *supra*, para. 255.

¹⁷⁵ Cf. *Case of Zegarra Marín v. Peru*, *supra*, para. 171, and *Case of Amrhein et al. v. Costa Rica*, *supra*, para. 256.

¹⁷⁶ Cf. *Case of Herrera Ulloa v. Costa Rica*, *supra*, paras. 161, 164 and 165, and *Case of Zegarra Marín v. Peru*, *supra*, para. 172.

131. It is clear from the rules transcribed above that the appeal in cassation, like the special appeal in cassation, does not permit the review of facts or evidence, only of law.

132. The Court recalls that Mr. Rodríguez Revolorio, Mr. López Calo, and Mr. Archila Pérez, who were sentenced to death, filed a special appeal on grounds of substance and form against the judgment handed down on May 23, 1996, by the Fourth Criminal Sentencing Court for Drug Trafficking and Crimes against the Environment of Guatemala.¹⁷⁷ Mr. López Calo and Mr. Archila Pérez based their appeal alleging (i) that the sentencing court did not observe Article 370 of the Code of Criminal Procedure, and (ii) the erroneous application of the law by allowing a prosecutorial assistant to act in the debate; and Mr. Miguel Ángel Rodríguez Revolorio based his appeal; with respect to the substantive defects, he alleged that there was: (i) non-observance of the substantive law in relation to the fixing of the sentence, (ii) non-observance of the substantive law in relation to the generic and specific aggravating circumstances of the crime, and (iii) partial non-observance of the content of the substantive law for establishing the death sentence. With respect to the form, he alleged that: (i) there was insufficient individualization of the accused, (ii) absence of precise determination and circumstances of the fact, (iii) lack of sufficient justification in the deliberation and voting by the court, (v) lack of sufficient justification of the court that induced to convict, (vi) lack of sufficient justification of the Court that induced to convict, (vii) lack of sufficient justification in the voting (vii) absence of essential elements in the operative part of the sentence, and (viii) absence of the applicable legal provisions in the operative part of the sentence.

133. On September 2, 1996, the Court of Appeals dismissed the special appeals filed by Rodríguez Revolorio, López Calo, and Archila Pérez.¹⁷⁸ In what is relevant to the present section, the appellate court noted the following in relation to the allegations of non-observance of substantive law in relation to the fixing of the sentence, the generic and specific aggravating circumstances of the crime, and the partial non-observance of the content of the substantive law to order the death sentence:

"These reasons cannot be accepted by the Court of Appeals because: the way in which the generic and specific aggravating circumstances of the crime were applied is not reviewable through the special appeal, because their application derives from decisions of the sentencing Court on the evidence provided and diligently examined in the hearing: a factual examination that escapes the review of this Court due to the exclusively revisory nature in the legal field of the appeal that concerns us.¹⁷⁹

All aspects related to the fixing of the sentence are not susceptible of being heard by means of the special appeal, because it derives from a discretionary power that the law confers on the Judges so that, based on Article 65 of the Criminal Code, they may arrive at conclusions of legal certainty as to its fixing: fixing that obviously starts from the facts evaluated as evidence by the sentencing court: facts that have already been established cannot be reviewed by the Court that is resolving today. It can only be judicially reviewed by means of the appeal that concerns us, when the Court has not respected the regulations that grant it this discretionary power".¹⁸⁰

134. With respect to the numerous issues raised by the alleged victims in their appeals regarding the non-observance of the substantive law in relation to fixing of the sentence, the generic and specific aggravating circumstances of the crime, and the partial non-observance of the content of

¹⁷⁷ Cf. Judgment issued by the Tenth Chamber of the Court of Appeals, Drug Trafficking and Environmental Crimes of Guatemala, of September 2, 1996 (evidence file, folio 1988).

¹⁷⁸ Cf. Judgment issued by the Tenth Chamber of the Court of Appeals, Drug Trafficking and Environmental Crimes of Guatemala, of September 2, 1996 (evidence file, folio 1988).

¹⁷⁹ Cf. Judgment issued by the Tenth Chamber of the Court of Appeals, Drug Trafficking and Environmental Crimes of Guatemala, of September 2, 1996 (evidence file, folios 2005 and 2006).

¹⁸⁰ Cf. Judgment issued by the Tenth Chamber of the Court of Appeals, Drug Trafficking and Environmental Crimes of Guatemala, of September 2, 1996 (evidence file, folio 2006).

the substantive law to order the death sentence made by the judge *a quo*, the Court of Appeals limited itself to providing an abstract response, without going into the merits of the grounds raised by the alleged victims. In effect, this Court observes that the Court of Appeals rejected the appellants' allegations on the grounds that the legislation in force did not allow it to carry out any type of review in this regard, without analyzing the individual, specific arguments put forward by the appellants. Consequently, the Court considers that the refusal by the Tenth Chamber of the Court of Appeals, Drug Trafficking and Environmental Crimes to review the factual issues raised by the defense of Mr. Rodríguez Revolorio, Mr. López Calo and Mr. Aníbal Archila Pérez constituted an international wrongful act in that it resulted in a breach of the duty of integral review of the judgment established in Article 8(2)(h).

135. On the other hand, since Article 8(2)(h) of the Convention has its own legal content and the principle of effectiveness (*effet utile*) is transversal to the due protection of all the rights recognized in that instrument, the Court considers it unnecessary to analyze that provision in relation to Article 25(1) of the Convention.¹⁸¹ Likewise, with regard to the allegation of the Commission and the representatives that none of the other remedies filed by Messrs. Rodríguez Revolorio, López Calo, and Aníbal Archila Pérez were effective, the Court notes that in the instant case it will only analyze the special appeal because it is an ordinary remedy, and will not refer to the remedy of amparo or review because these are extraordinary remedies.

136. In view of the foregoing considerations, the Court concludes that the State violated the right to appeal the judgment, provided for in Article 8(2)(h) of the American Convention, in relation to Article 1(1) of the same instrument, to the detriment of Mr. Rodríguez Revolorio, Mr. López Calo and Mr. Aníbal Archila Pérez.

IX REPARATIONS

137. Based on the provisions of Article 63(1) of the American Convention,¹⁸² the Court has indicated that any violation of an international obligation that has caused harm entails the obligation to make adequate reparation and that this provision reflects a customary norm that constitutes one of the fundamental principles of contemporary international law on State responsibility.¹⁸³

138. Reparation of the harm caused by the violation of an international obligation requires, whenever possible, full restitution (*restitutio in integrum*), which consists in reestablishing of the previous situation. If this is not possible, as in most cases of human rights violations, this Court will determine measures to guarantee the rights that have been violated and to redress the consequences of such violations.¹⁸⁴ Therefore, the Court has considered it necessary to grant several measures of reparation in order to redress the harm comprehensively; thus, in addition to pecuniary

¹⁸¹ *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.

¹⁸² Article 63(1) of the Convention provides 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."

¹⁸³ *Case of Velásquez Rodríguez v. Honduras. Reparations and Costs.* Judgment of July 21, 1989. Series C No. 7, para. 25, and *Case of Coc Max et al (Xamán Massacre) v. Guatemala, supra*, para. 143.

¹⁸⁴ *Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and Costs, supra*, paras. 25 and 26, and *Case of Coc Max et al (Xamán Massacre) v. Guatemala, supra*, para. 144.

compensation, measures of restitution, rehabilitation and satisfaction, and guarantees of non-repetition, have special relevance for the harm caused.¹⁸⁵

139. This Court has established that the reparations must have a causal nexus with the facts of the case, the violations declared, the harm proved, and the measures requested to redress the respective harm. Consequently, the Court must observe these concurring factors in order to rule appropriately and in keeping with law.¹⁸⁶

140. Bearing in mind the violations declared in the previous chapters, in light of the criteria established in its case law concerning the nature and scope of the obligation to make reparation,¹⁸⁷ the Court will proceed to examine the claims presented by the Commission and the representatives, together with the arguments of the State, in order to then establish measures aimed at providing reparation for said violations.

A. Injured party

141. The Court reiterates that, pursuant to Article 63(1) of the Convention, anyone who has been declared a victim of the violation of any right recognized therein, is considered an injured party. Therefore, this Court considers Miguel Ángel Rodríguez Revolorio, Miguel Ángel López Calo and Aníbal Archila Pérez as "injured parties," who, as victims of the violations declared in Chapter VIII, shall be the beneficiaries of the reparations ordered by the Court.

B. Rehabilitation and satisfaction measures

b.1 Rehabilitation measures

142. The **Commission** requested that the reparation measures include rehabilitation for Mr. Rodríguez Revolorio and Mr. López Calo.

143. The **representatives** requested the Court to order the State of Guatemala to provide medical and psychological care in specialized centers at no additional cost and free of charge to the alleged surviving victims.

144. The **State** stated that it provides medical and psychological care through public health centers, which are at the service of all the country's inhabitants.

145. The **Court** establishes the obligation of the State to provide the medical and psychological treatment required by Mr. Rodríguez Revolorio in Guatemala, immediately and free of charge, with prior informed consent, and for as long as necessary, including the free provision of medication.

b.2 Measures of satisfaction

(i) Publication of the Judgment

¹⁸⁵ *Cantoral Benavides v. Peru. Reparations and Costs*. Judgment of December 3, 2001. Series C No. 88, paras. 79-81, and *Case of Ramírez Escobar et al. v. Guatemala, supra*, para. 371.

¹⁸⁶ *Case of Ticona Estrada v. Bolivia. Merits, Reparations and Costs*. Judgment of November 27, 2008. Series C No. 191, para. 110, and *Case of Coc Max et al (Xamán Massacre) v. Guatemala, supra*, para. 144.

¹⁸⁷ *Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and Costs, supra*, paras. 25-27, and *Case of Coc Max et al (Xamán Massacre) v. Guatemala, supra*, para. 145.

146. The **representatives** asked the Court to order the State to publish the Judgment in its entirety in three newspapers with wide circulation in the country, in the Official Gazette of Guatemala, and to prepare and publish a pamphlet summarizing the Court's decision, and to publish it on the State's official website for a period of one year.

147. The **State** argued that, if the Court were to sentence it, this would be a violation of the Convention, since it manifested its good faith in the negotiation for the signing of a friendly settlement agreement.

148. The **Commission** did not take a position on this allegation.

149. The **Court** orders, as it has done in other cases,¹⁸⁸ that the State publish, within six months of notification of this Judgment: a) the official summary of this Judgment prepared by the Court, once only, in a newspaper of wide national circulation and in the official gazette in a legible and appropriate font size, and b) this Judgment, in its entirety, available for at least one year, on an official website. The State shall immediately inform this Court once it proceeds with each of the ordered publications, regardless of the one-year period for submitting its first report provided for in operative paragraph 9 of this Judgment.

(ii) Public act of acknowledgement of international responsibility

150. The **representatives** requested that the State be ordered to carry out an act of acknowledgement of international responsibility and public apology through the Judicial Authority and the Ministry of Justice.

151. The **State** argued that it will not proceed with the public act or the placement of the plaque, since it has not incurred international responsibility.

152. The **Commission** did not take a position on this allegation.

153. The **Court** considers that the issuance of this Judgment and the reparations ordered therein are sufficient and adequate.

b.3 Guarantees of non-repetition

154. The **representatives** requested that the State be ordered to bring prison conditions into line with international human rights standards, guaranteeing medical and sanitary care, better health conditions, a visiting regime, adequate physical space to house individuals deprived of their liberty with sanitary services and showers in good working order, access to sunlight and fresh air.

155. The **State** alleged that it has made and continues to make its best efforts to the best of its ability to readapt prisons in compliance with international standards.

156. The **Commission** did not take a position on this allegation.

157. The **Court** observes that in the case of *Fermín Ramírez v. Guatemala*, the State was ordered to "adopt, within a reasonable period of time, the measures necessary so that the conditions of the prisons adjust to the international norms of human rights".¹⁸⁹ Notwithstanding the foregoing, the

¹⁸⁸ *Cantoral Benavides v. Peru. Reparations and Costs*. Judgment of December 3, 2001. Series C No. 88, para. 79, and *Case of Martínez Coronado v. Guatemala, supra*, para. 98.

¹⁸⁹ *Cf. Case of Fermín Ramírez v. Guatemala, supra*, operative paragraph 12.

Court considers it pertinent in the instant case to order the State to adopt, within a reasonable period of time, the necessary measures to bring the conditions of the "El Infiernito" prison into line with international human rights standards and, in particular, to eliminate the deficiencies detected in this Judgment with respect to: (i) sufficient entry of natural light; (ii) air circulation; (iii) access to water for daily use; (iv) health care, with respect to the insufficiency of medicines, trained personnel, and regular medical check-ups; (v) the absence of a diet appropriate to the medical conditions of each inmate; and (vi) the visiting regime, as specified in greater detail in paragraphs 86 to 92 above. The State shall submit a report within a period not exceeding one year, informing the Court of the status of compliance with this measure.

C. Other measures requested

158. The **Commission** requested that the Court order the State to adopt the necessary measures to annul the conviction handed down against Mr. Rodríguez Revolorio and to conduct a new trial in which the guarantees of due process are respected. In this regard, the **representatives** requested that the Court order the State to expunge the criminal record against Mr. Rodríguez Revolorio, Mr. López Caló and Mr. Archila Pérez for the criminal proceedings in which they were convicted. They also requested that the State be ordered to reinstate Mr. Rodríguez Revolorio to the position of police officer that he held, and if this is not possible, to order his retirement so that he may receive a pension with the benefits that it entails.

159. On the other hand, the Commission and the representatives requested the Court to order the State to adopt the necessary measures to bring domestic legislation into line with the minimum standards of the Convention, among others.

160. In addition, the representatives requested that the State be ordered (i) to provide public officials, judicial authorities, police, prosecutors, prison officials, and prison system authorities with comprehensive training on the principles and norms of human rights protection, international humanitarian law, and, in particular, respect for the importance of the protection and preservation of life, and (ii) that the human rights violations committed against Mr. Rodríguez Revolorio, Mr. López Caló and Mr. Archila Pérez be effectively investigated in proceedings in which all judicial guarantees are granted.

161. The **State** argued that (i) progress has been made in the application of international standards and the adaptation and harmonization of domestic legislation with international law in relation to the death penalty; (ii) the reinstatement of Mr. Rodríguez Revolorio would not be appropriate, given that there are new profiles and requirements established by the National Civil Police; (iii) it has complied with the training in compliance with the Court's orders in other cases, and (iv) it has carried out all the necessary actions to the best of its ability and in accordance with the law, and requested the Court to rule that it is not responsible for the alleged violations.

162. This **Court** considers that the issuance of this Judgment and the reparations ordered therein are sufficient and adequate and, therefore, the aforementioned measures shall not be granted.

D. Compensation

d.1 Pecuniary damage

163. The **representatives** requested the sum of US\$ 30,000 (thirty thousand United States dollars) in equity for consequential damages. They alleged that this amount corresponds to the expenses that the next of kin have had to incur, such as funeral expenses, expenses for the steps taken vis-à-vis government institutions, transfers to visit their relatives while they were detained, expenses for food, medicines, and clothing for their stays in prison. The representatives also indicated

that the rest of the receipts for the expenses incurred by the alleged victims were lost over the years. For loss of earnings, they requested that the Court determine in equity the payment of US\$ 132,000 (one hundred and thirty-two thousand United States dollars) in favor of Mr. Rodríguez Revolorio, and the same amount distributed to the next of kin of Mr. López Calo and Mr. Archila Pérez. The representatives requested that in the event that the Court did not agree with the amount of the reparation requested for non-pecuniary damage, it be determined in accordance with the principle of equity.

164. The **State** alleged that while they were incarcerated, the cost of food and medicines were covered by the State and by the public health care centers. Therefore, those costs were covered to the extent possible. With respect to the cost of transporting family members for visits, it was alleged that "the victim" (*sic*) stated that he had been abandoned. In addition, it recalled that at no time did the alleged victims, their representatives, or the Commission reliably demonstrate the expenses incurred during the litigation. The State further alleged that Mr. Rodríguez Revolorio, Mr. López Calo, and Mr. Archila Pérez were sentenced for the crime of murder and attempted murder, taking advantage of the investiture granted to them by the State when they were appointed agents of the National Police. The State paid them a salary for their work. Therefore, the State expressed its categorical rejection of this measure of reparation, and asks the Court to declare it inadmissible.

165. The **Commission** did not make specific submissions on this point.

166. The **Court** has developed in its jurisprudence the concept of pecuniary damage and the circumstances in which it should be compensated. This Court has established that pecuniary damage encompasses the loss of or detriment to the income of the victims, the expenses incurred owing to the facts, and the consequences of a pecuniary nature that have a causal nexus with the acts of the case.¹⁹⁰

167. In the instant case, in consideration of the particularities of the case and the causal link of the violations declared, the Court will rule only on the non-pecuniary damage.

d.2 Non-pecuniary damage

168. As regards non-pecuniary damage, the **representatives** requested the Court to pay US\$ 1,500,000 (one million five hundred thousand United States dollars), as compensation and for the purpose of full reparation. The representatives also requested that, should the Court not agree with the amount of the reparation requested for non-pecuniary damage, it be determined in accordance with the principle of equity.

169. The **State** alleged that it cannot conceive of having to make reparations and/or reward persons who violate the right to life of other persons, as in the domestic case of those who were killed; it also seriously damages the State's economy. Therefore, they totally reject the reparation and request that it be declared inadmissible.

170. The **Commission** made no specific submissions on this point.

171. The **Court** has established in its jurisprudence that non-pecuniary damage "has established that non-pecuniary damages may include the suffering and distress caused by the violation as well as the impairment of values that are highly significant to the victims, as well as non-monetary

¹⁹⁰ *Case of Bámaca Velásquez v. Guatemala. Reparations and Costs.* Judgment of February 22, 2002. Series C No. 91, para. 43, 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. 223.

alterations in their living conditions. On the other hand, since it is not possible to assign a precise monetary equivalent to non-pecuniary damages, the victims, to be integrally repaired, can only be compensated by a monetary payment or by the assignment of goods or services that can be assessed monetarily, as prudently determined by the Court, applying judicial discretion and the principle of equity".¹⁹¹

172. In consideration of the circumstances of the instant case, the violations committed, the suffering caused and experienced to different degrees, the time that has elapsed and the denial of justice, the Court fixes in equity the compensation for non-pecuniary damage in favor of the victims.

173. Accordingly, the Court orders, in equity, the payment of the sum of US\$ 10,000 (ten thousand United States dollars) to each of the victims in this case, that is, to Mr. Rodríguez Revolorio, Mr. López Calo and Mr. Archila Pérez.

174. With respect to the compensation for Mr. López Calo, the amount established by the Court shall be paid within one year of notification of this Judgment in accordance with the following criteria:

- a) Fifty percent (50%) of the compensation shall be paid to the Mr. López Calo's wife, Mrs. Mirian Floridalma Osorio García de López.
- b) The remaining fifty percent (50%) of the compensation shall be paid to the children Jeennley Yanira López Osorio, Alex Fernando López Osorio and Yazmi Lisbeth López Osorio.

175. With respect to the compensation for Mr. Archila Pérez, the amount established by the Court shall be paid within one year of notification of this Judgment in accordance with the following criteria:

- a) Fifty percent (50%) of the compensation shall be paid to Mr. Archila Pérez's wife, Mrs. Irma Morales Morataya de Archila.
- b) The remaining fifty percent (50%) of the compensation shall be paid in equal parts to the children Sendy Mabelly Archila Morales, Yoselin Edith Archila Morales, Aníbal Estuardo Archila Morales, Irma Yazmin Archila Morales and Yeremi Yanira Archila González.

G. Costs and Expenses

176. In their final arguments, the **representatives** requested the Court to order the State to reimburse the expenses incurred before the authorities of the domestic jurisdiction and those incurred before the Inter-American system based on the principle of equity.

177. The **State** alleges that the representatives have not reliably demonstrated the expenses incurred during the litigation, and therefore rejects these measures and requests that they be declared inadmissible.

178. The **Commission** did not take a position on the matter.

179. The **Court** reiterates that, in accordance with its case law,¹⁹² costs and expenses form part of the concept of reparation as long as the activities deployed by the victims to obtain justice, at both

¹⁹¹ Cf. *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Reparations and Costs*, *supra*, para. 84, and *Case of Coc Max et al (Xamán Massacre) v. Guatemala*, *supra*, para. 189.

¹⁹² *Case of Garrido and Baigorria v. Argentina. Reparations and Costs*. Judgment of August 27, 1998. Series C No. 39,

the domestic and international levels, entail disbursements that must be compensated when the international responsibility of the State has been declared in a judgment. The Court has said that "the claims of the victims or their representatives with respect to costs and expenses, and the evidence that sustains them, must be presented to the Court at the first procedural moment, in other words, in the brief with pleadings and motions, unless such claims are made current at a subsequent time, in accordance with new costs and expenses that have been incurred in the proceedings before the Court."¹⁹³ Likewise, the Court reiterates that that it is not sufficient to remit evidentiary documents, rather the parties must provide the rationale that relates the evidence to the fact under consideration and, in the case of alleged financial disbursements, the items and their justification must be described clearly.¹⁹⁴ The Court observes that in the instant case the representatives requested the reimbursement of the costs generated in their final written arguments. The request, therefore, is untimely and should be rejected.

H. Reimbursement of expenses to the Inter-American Court's Victims' Legal Assistance Fund

180. In 2008 the General Assembly of the Organization of American States created the Legal Assistance Fund of the Inter-American Human Rights System, with the "purpose to facilitate access to the inter-American system of human rights by persons who currently lack the resources needed to bring their cases before the system."¹⁹⁵

181. The representatives requested the make use of this assistance for the specific expenses of their defense in the international proceeding and for the expenses required for the intervention of the Inter-American Defenders.

182. By note from the Secretariat of the Court of July 17, 2019, a report was sent to the State on the expenditures made in application of the Victims' Legal Assistance Fund in the instant case, which amounted to the sum of USD\$ 1,943.20 (one thousand nine hundred and forty-three United States dollars and twenty cents) and, pursuant to the provisions of Article 5 of the Rules of Procedure of the Court on the operation of said Fund, a deadline was granted for Guatemala to submit any observations it deemed pertinent. The State submitted its observations on July 22, 2019, in which it "categorically opposed" the payment of the reimbursement to the Fund, arguing that (i) the true victims were the persons harmed by the crime committed by Messrs. Rodríguez Revolorio, López Calo and Archila Pérez and that (ii) despite the fact that Mr. Rodríguez Revolorio had private representation, the inter-American defenders were "arbitrarily" appointed to defend the alleged victim.

183. With respect to said observations, the Court notes that, once the case was submitted by the Commission before this Court, the Court requested the Centro de Acción Legal de Derechos Humanos (hereinafter, "CALDH") -the organization that had acted as petitioner throughout the proceedings before the Commission- to confirm their representation of the alleged victims. On March 6, 2018,

para. 79, and *Case of Coc Max et al (Xamán Massacre) v. Guatemala*, *supra*, para. 193.

¹⁹³ Cf. Article 40(d) of the Rules of Procedure of the Court. See also, *Case of Garrido and Baigorria v. Argentina. Reparations and Costs*, *supra*, paras. 79 and 82, and *Case of Coc Max et al (Xamán Massacre) v. Guatemala*, *supra*, para. 194.

¹⁹⁴ Cf. *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador*, *supra*, para. 277, and *Case of Coc Max et al (Xamán Massacre) v. Guatemala*, *supra*, para. 194.

¹⁹⁵ AG/RES. 2426 (XXXVIII-O/08), Resolution adopted by the OAS General Assembly during the thirty-eighth regular session of the OAS, at the fourth plenary session, held June 3, 2008, "*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 Permanent Council of the OAS, "*Rules of Procedure for the Functioning of the Legal Assistance Fund of the Inter-American Human Rights System*," Article 1.1.

CALDH informed this Court that it was "not in a position" to continue with the representation of the alleged victims or their next of kin. In consideration of the foregoing, and given the impossibility of contacting the alleged surviving victim (Mr. Rodríguez Revolorio), the Court requested the AIDEF to assign an inter-American defender to assume the legal representation of the alleged victims. On March 22, 2018, AIDEF reported on the appointment of two inter-American public defenders, who would exercise the legal representation of the alleged victims in the instant case. After finally being able to contact Mr. Rodríguez Revolorio, on April 13, 2018, he was sent a note from the Secretariat requesting him to ratify his agreement to be represented before this Court by the inter-American public defenders or, if not, to appoint a different legal representative. Mr. Rodríguez Revolorio provided a response to said request on May 16, 2018, in which he stated that he designated the inter-American defenders assigned to assume his representation before the Court. In view of the foregoing, it is clear that the appointment of the inter-American defenders was duly justified in the instant case.

184. In light of Article 5 of the Rules of the Fund, in view of the violations declared in this Judgment and the fact that the requirements for access to the Fund were met, the Court orders the State to reimburse the Fund the amount of USD\$ 1,943.20 (one thousand nine hundred and forty-three United States dollars and twenty cents) for the necessary expenses incurred. This amount must be reimbursed within six months of notification of this Judgment.

I. Method of compliance with the payments ordered

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

186. If any of the beneficiaries is deceased or dies before they receive the respective amount, this shall be delivered directly to their heirs, pursuant to the applicable domestic law.

187. As regards the currency of payment of compensation and reimbursement of costs and expenses, the State shall comply with its pecuniary obligations by payment in United States dollars or the equivalent in Guatemalan currency, using for the respective calculation the highest and most beneficial rate for the victims allowed by its domestic legislation, in force at the time of payment. During the stage of monitoring compliance with the judgment, the Court may prudently readjust the equivalent of these figures in Guatemalan currency, in order to prevent exchange rate variations from substantially affecting the purchasing value of these amounts.

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

189. The sums allocated in this judgment as compensation for non-pecuniary damage and to reimburse costs and expenses must be delivered to the persons indicated in full, as established in this judgment, without any deductions derived from possible taxes or charges.

190. In the event that the State incur in 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 the banking interest on arrears in the Republic of Guatemala.

X
OPERATIVE PARAGRAPHS

THE COURT

DECIDES,

Unanimously,

1. To dismiss the preliminary objection filed by the State, pursuant to paragraphs 17 and 18 of this Judgment.

DECLARES:

Unanimously, that:

2. The State is responsible for the violation of the rights to life and freedom from ex post facto laws, enshrined in Articles 4(2) and 9 of the American Convention, in relation to the obligation to guarantee rights, established in Article 1(1) and (2) of the same instrument, to the detriment of Aníbal Archila Pérez, pursuant to paragraphs 61 to 64 of this Judgment.

3. The State is responsible for the violation of the right to humane treatment enshrined in Articles 5(1) and 5(2) of the Convention, in relation to Article 1(1) of the same instrument, and in Article 6 of the Inter-American Convention to Prevent and Punish Torture, to the detriment of Miguel Ángel Rodríguez Revolorio, Miguel Ángel López Calo and Aníbal Archila Pérez, pursuant to paragraphs 71 to 96 of this Judgment.

4. The State is responsible for the violation of the right to appeal the judgment provided for in Article 8(2)(h) of the Convention, in relation to Article 1(1) of the same instrument, to the detriment of Miguel Ángel Rodríguez Revolorio, Miguel Ángel López Calo and Aníbal Archila Pérez pursuant to paragraphs 126 to 136 of this Judgment.

5. The State is not responsible for the violation of the rights to life and freedom from ex post facto laws enshrined in Articles 4(1), 4(2) and 9 of the American Convention on Human Rights, in relation to the obligation to guarantee rights established in Articles 1(1) and (2) of the same instrument, to the detriment of Miguel Ángel Rodríguez Revolorio and Miguel Ángel López Calo, pursuant to paragraphs 57 to 60 of this Judgment.

6. The State is not responsible for the violation of the right to a fair trial provided for in Articles 8(1) and 8(2) of the American Convention, in relation to Article 1(1) of the same instrument, to the detriment of Miguel Ángel Rodríguez Revolorio, Miguel Ángel López Calo and Aníbal Archila Pérez pursuant to paragraphs 105 to 125 of this Judgment.

AND ESTABLISHES:

Unanimously, that:

7. This Judgment constitutes, *per se*, a form of reparation.

8. The State shall, immediately and free of charge, provide the medical and psychological treatment required by Mr. Miguel Ángel Rodríguez Revolorio in Guatemala, with prior informed consent, and for as long as necessary, pursuant to paragraph 145 of this Judgment.

9. The State shall make the publications indicated in paragraph 149 of this Judgment.

10. The State shall adopt, within a reasonable period of time, the necessary measures to bring the conditions of the "El Infiernito" prison into line with international human rights standards and, in particular, to eliminate the deficiencies detected in this Judgment, pursuant to paragraph 157 of this Judgment.

11. The State shall pay the amounts set forth in paragraph 173 of this Judgment as compensation for non-pecuniary damage.

12. The State shall reimburse the Victims' Legal Assistance Fund of the Inter-American Court of Human Rights the amount spent during the processing of the instant case, pursuant to paragraph 184 of this Judgment.

13. The State shall, within one year of notification of this Judgment, submit to the Court a report on the measures adopted to comply with it.

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

Judge Humberto Sierra Porto submitted to the Court his individual concurring opinion, which accompanies this Judgment.

Done, at San José, Costa Rica, on October 14, 2019, in the Spanish language.

I/A Court H.R., *Case of Rodríguez Revolorio et al v. Guatemala*. Preliminary Objection, Merits, Reparations and Costs. Judgment of October 14, 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
Registrar

So ordered,

Eduardo Ferrer Mac-Gregor Poisot
President

Pablo Saavedra Alessandri
Registrar

**CONCURRING OPINION OF
JUDGE HUMBERTO ANTONIO SIERRA PORTO**

**JUDGMENT OF OCTOBER 14, 2019
OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS**

IN THE CASE OF RODRÍGUEZ REVOLORIO ET AL. VS. GUATEMALA

I. Introduction

1. With the customary respect for the decisions of the Inter-American Court of Human Rights (hereinafter "the Court" or "the Tribunal"), I submit this concurring opinion. The opinion relates to the discussion that exists in the Court on the analysis of cases involving violations of economic, social, cultural and environmental rights (hereinafter "ESCR") on the basis of Article 26 of the American Convention on Human Rights (hereinafter "the Convention"). In particular, with regard to the present case, I will briefly reflect on what I consider to be an inconsistent and inadequate use that the Court has made of the principle of *iura novit curia* in its recent judgments involving social rights. In this sense, my reflections complement what I have already expressed in my opinions in the cases of *Gonzales Lluy et al. v. Ecuador*,¹ *Lagos del Campo v. Peru*,² *Dismissed Workers of Petroperú v. Peru*,³ *San Miguel Sosa et al. v. Venezuela*,⁴ *Poblete Vilches et al. v. Chile*,⁵ *Cuscul Pivaral et al. v. Guatemala*,⁶ and *Muelle Flores v. Peru*⁷ regarding the multiple logical, legal and practical problems resulting from the trend initiated by the majority since the judgment in *Lagos del Campo v. Peru*.

II. Regarding the Court's inadequate use of the iura novit curia principle in recent judgments on ESCR issues

2. In my opinion in the case of *Lagos del Campo v. Peru*, I stated that it was imprudent to make use of the principle of *iura novit curia* to analyze the case and thus conclude that there was a violation of the right to job security on the basis of Article 26 of the Convention. My criterion was based on the fact that, although the inter-American judges can apply a norm that has not been alleged by the Commission or by the representatives, this principle cannot be invoked under any circumstance and without resorting to criteria of reasonableness and relevance. There will be cases in which a violation of a human right that was not alleged is manifest or in which the Commission and the representatives commit a serious oversight or error, so that it is necessary to resort to this principle in order to prevent a possible injustice. However, this principle should not be used to surprise a State with a violation that it did not foresee in the least and that it did not have the opportunity to remedy or

¹ *Case of Gonzales Lluy et al. v. Ecuador. Preliminary Objections, Merits, Reparations and Costs.* Judgment of September 1, 2015. Series C No. 298.

² *Case of Lagos del Campo v. Peru. Preliminary Objections, Merits, Reparations and Costs.* Judgment of August 31, 2017. Series C No. 340.

³ *Case of Dismissed Workers of Petroperú et al. v. Peru. Interpretation of the Judgment on Preliminary Objections, Merits, Reparations and Costs.* Judgment of August 22, 2018. Series C No. 358.

⁴ *Case of San Miguel Sosa et al. v. Venezuela. Merits, Reparations and Costs.* Judgment of February 8, 2018. Series C No. 348.

⁵ *Case of Poblete Vilches et al. v. Chile. Merits, Reparations and Costs.* Judgment of March 8, 2018. Series C No. 349.

⁶ *Cf. Case of Cuscul Pivaral et al. v. Guatemala. Preliminary Objection, Merits, Reparations and Costs.* Judgment of August 23, 2018. Series C No. 359.

⁷ *Case of Muelle Flores v. Peru. Preliminary Objections, Merits, Reparations and Costs.* Judgment of March 6, 2019. Series C No. 375.

dispute, not even on the facts. The *Lagos del Campo v. Peru* case is a very clear example of how this principle can be used without any reason to justify it, since its invocation seemed more the result of a decision inspired by the desire to establish a "novel" criterion than by a practical need to do justice to the victims in a case.

3. It is important to bear in mind that the lack of procedural opportunity for States to decide on questions of law collides with at least two fundamental issues of the protection regime of the Inter-American Human Rights System. The first is the State's right to defense. This right implies -at the very least- that the State has the possibility to dispute the allegations related to its international responsibility for the violation of a human right, even more so when dealing with issues related to a completely new approach in the Court's jurisprudence, such as the direct justiciability of ESCR. By analyzing violations of rights that were never debated at any stage of the proceedings, the Court affects the possibility of the State to present arguments and evidence to refute such violations. The second is the rule of exhaustion of domestic remedies, which implies the procedural opportunity for the State to provide a remedy through its domestic jurisdiction for the possible violations of rights that - if it does not do so - would later be analyzed in the international sphere. It is essential to remember that these rules exist and that they are part of the legal system to which the Court is a party and whose enforcement it is responsible for ensuring.⁸

4. Recent jurisprudential practice shows frequent use of the principle of *iura novit curia* with little regard for the aforementioned rules. The judgments in *Lagos del Campo*, *San Miguel Sosa*, *Cuscul Pivaral* and *Muelle Flores* proceeded to analyze the rights to job security, health, humane treatment and dignity, respectively, without providing sufficient justification for the invocation of the aforementioned principle. In *Muelle Flores*, the judgment only states that *iura novit curia* can be invoked because it is a general principle of law that has been repeatedly used in international jurisprudence. In *Cuscul Pivaral* the allegations of the representatives on the violation of the obligations of progressivity had little to do with the determination of international responsibility for the violation of Article 26. In *Lagos del Campo* and *San Miguel Sosa* an attempt was made to support the use of the principle of *iura novit curia*, but the Court simply limited itself to stating that the State has had the opportunity to express its respective positions in relation to the facts that support the declared violations, and reiterated that Article 29 allowed the case to be examined in light of the ESCR.

5. It would seem that the only reason that has been expressed for invoking the principle of *iura novit curia* -beyond its recognition as a general principle of law- is that the State was aware of the facts throughout the proceedings and therefore would have had the procedural opportunity to rule on possible violations. However, it is necessary to reflect on the extent to which it is reasonable for

⁸ The consideration that I make on the limitations to the principle of *iura novit curia* are not unprecedented or isolated criteria, but are part of the *corpus iuris* of International Law, which has been systematized through decisions of other international jurisdictional bodies. The International Court of Justice has determined that their application is restricted by a parameter of reasonableness, relevance and prohibition to decide beyond what the *dispute* and the framework of the case naturally allow (Cf. *International Court of Justice, Case concerning Fisheries Jurisdiction (United Kingdom v. Iceland)*, Judgment of 25 November 2003, Judgment of the International Court of Justice, *Case concerning Fisheries Jurisdiction (United Kingdom v. Iceland)*, Judgment of 25 July 1974, para. 17; ICJ, *Decision on Interpretation of Judgment of 10 November 1950 in the Political Asylum Case (Colombia v. Peru)*, para. 404; and ICJ, *Case concerning the "Arrest Warrant" (Democratic Republic of the Congo v. Belgium)*, Judgment of February 14, 2002, para. 43; For their part, both the International Criminal Court and the *Ad Hoc* Criminal Tribunal for the Former Yugoslavia have agreed that the consequences of a discretionary, indiscriminate, arbitrary or, at best, insufficiently reasoned invocation of the principle of *iura novit curia* can result in the defenselessness of the defendant Cf. *International Criminal Court, Case of the Prosecutor v. Thomas Lubanga Dyilo*, Judgment concerning Article 74 of the Rome Statute of 14 March 2012 (ICC-01/04-01/06-2842); *ad hoc* Criminal Tribunal for the Former Yugoslavia, *Case of the Prosecutor v. Kupreskic*, Judgment of 14 January 2000, paras. 733-738.

the State to "guess" the rights that the Court will use to analyze the facts of the case, since asking it to pronounce on every fact that could be relevant to a violation of an ESCR is a violation of the right to defense and also borders on the absurd. As I mentioned in my opinion in *Lagos del Campo*, the way in which the ESCR case law has developed -including the use of the principle of *iura novit curia*- has caused opacity in the debate on its justiciability because it has not allowed for a transparent discussion on an issue that would require the participation of States, the Commission and representatives through formal procedures. It has also weakened the case law itself, insofar as this principle has been used in an unobjective manner, to the extent that it seems more like an act of pure judicial activism than the action of a human rights court subject to the rule of law.

III. Non-application of the principle *iura novit curia* in the present case

6. It is precisely because of the recent desire for judicial activism demonstrated by the majority of the Court in the area of ESCR that it is so striking that in the instant case the Court did not analyze the violations that occurred to the detriment of the victims from the perspective of the right to health and the right to food, and instead did so from the perspective of the right to humane treatment. In this case, the Court reiterated its standards on the special position of guarantor of the State with respect to any person in its custody, which implies the duty of the State to safeguard the health and well-being of the inmates by providing them with the medical assistance they require and to ensure that the manner and method of deprivation of liberty does not exceed the level of suffering inherent to detention (para. 71). From this perspective, it analyzed the facts of the case related to the prison conditions of Mr. Rodríguez Revolorio, Mr. López Calo and Mr. Archila Pérez, as well as the deficiencies in terms of medical care, food and the visiting regime (paras. 71 to 92). In the instant case, the Court concluded that these conditions, as a whole, resulted in cruel, inhuman and degrading treatment in violation of Articles 5(1) and 5(2) of the Convention (para. 92).

7. Let my surprise with the majority's decision not be misunderstood. If it exists, it is because I fully agree with the result reached by the Court (unanimously), and it is for this reason that I voted in favor of the operative paragraphs of the Judgment (Operative Paragraph 3). As I have argued in my concurring and dissenting opinions on recent ESCR judgments, the analysis of violations of ESCR-related issues by connection generates the same practical result as the "autonomous" analysis proposed by the majority in recent judgments. Of course, the advantage of the connexity analysis is that it protects rights without generating the institutional wear and tear and the argumentative and evidentiary weakness that the contrary analysis generates. And this case proves the point: the Judgment addresses the issues related to the lack of adequate medical care and the lack of food for the victims under the spectrum of the duty to guarantee the right to humane treatment of persons deprived of liberty. The decision is reasonable and in accordance with the law, respects the case law developed by the Court in recent decades, and reflects a consensus vote among all the judges. All of this strengthens the Court's position and guarantees the rights involved in an adequate manner.

8. Nothing guarantees that in the future the Court will walk a prudent path in the area of ESCR. In fact, the opposite seems to be true, so that *Rodríguez Revolorio* may be an exception in what appears to be an expansive tendency that seems to have no other limit than the imagination and the will to declare the violation of more social rights (as many as possible), even when this implies ignoring basic rules and principles of procedural law, and also serves no practical purpose. To the same extent, perhaps the weak use of the principle of *iura novit curia* for the analysis of cases that have little to do with ESCR will also continue, as happened in *Lagos del Campo*, *Petroperu* and *San Miguel Sosa* (to mention three). However, as much in law, this is only a possibility. It could also happen that the Court makes a more circumscribed and reasoned use of this principle, in such a way that it is restricted by parameters of reasonableness, relevance to the concrete case and closeness to it. This is the practice of other international tribunals, and has been the practice of the Court in the past. Moving in this direction seems to be the most appropriate path for the Court, especially in this new jurisprudential trend in the area of ESCR, which continues to generate so many doubts.

Humberto Antonio Sierra Porto
Judge

Pablo Saavedra Alessandri
Registrar