

INTER-AMERICAN COURT OF HUMAN RIGHTS

CASE OF DÍAZ LORETO ET AL. V. VENEZUELA

JUDGMENT OF NOVEMBER 19, 2019

(Preliminary objections, merits, reparations and costs)

In the *Case of Díaz Loreto et al. v. Venezuela*,

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

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

also present,

Pablo Saavedra Alessandri, Secretary,

pursuant to Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter, “the American Convention” or “the Convention”) and Articles 31, 32, 65 and 67 of the Rules of Procedure of the Court (hereinafter also “the Rules of Procedure”), delivers this judgment.

CASE OF DÍAZ LORETO ET AL. V. VENEZUELA

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I
INTRODUCTION OF THE CASE AND SUBJECT OF THE DISPUTE

1. *The case submitted to the Court.* On December 6, 2017, in accordance with Articles 51 and 61 of the American Convention, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or “the Commission”) submitted to the jurisdiction of the Inter-American Court the case of “Robert Ignacio Díaz Loreto, David Octavio Díaz Loreto, Octavio Ignacio Díaz Álvarez and family members” against the Bolivarian Republic of Venezuela (hereinafter “the State,” “the Venezuelan State” or “Venezuela”). The dispute relates to the presumed international responsibility of the State for the deaths of Robert Ignacio Díaz Loreto, David Octavio Díaz Loreto and Octavio Ignacio Díaz Álvarez on January 6, 2003, at the hands of police officers of the Aragua State Security and Public Order Force (hereinafter “CSOPEA”) in Venezuela. The case also concerns the alleged violations of judicial guarantees and protection during the investigation and criminal proceedings conducted as a result of these events. Lastly, the Commission determined that the State was responsible for violating the integrity of the members of the alleged victims’ family¹ owing to the pain and suffering inherent in the circumstances in which three of its members lost their life, as well as due to the alleged absence of a response to the legal actions filed, in particular in a context in which complaints of threats and harassment against members of the family were filed owing to their actions to expedite the proceedings.

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

Petition. On March 14, 2007, the Commission received a petition lodged by Luis Aguilera in his capacity as Secretary General of the Aragua state Commission for Human Rights, Justice and Peace and by Juana Emilia Díaz Loreto (hereinafter “the petitioners”) with regard to Venezuela.

a. *Admissibility Report.* On July 24, 2008, the Commission adopted Admissibility Report No. 51/08.

b. *Merits Report.* On July 5, 2017, the Commission issued Merits Report No. 80/17, pursuant to Article 50 of the Convention (hereinafter “the Merits Report” or “Report No. 80/17”), in which it reached a series of conclusions² and made several recommendations to the State.

c. *Notification to the State.* The Merits Report was notified to the State on September 6, 2017, granting it two months to report on compliance with the recommendations. The

¹ The family member who appear as alleged victims in the Merits Report are: Juana Emilia Loreto Pérez (wife of Octavio Ignacio Díaz Álvarez and mother of Robert Ignacio and David Octavio Díaz Loreto); Miguel Ángel Díaz Loreto, Dinorah María Díaz Loreto, Jairo Alex Díaz Loreto, Bladimir Lenin Díaz Loreto and Octavio Antonio Díaz Loreto (siblings of David Octavio and Robert Ignacio and children of Octavio Ignacio Díaz); Alexandra Gualdrón de Díaz (wife of Jairo Alex Díaz Loreto); Arianna Leaneth Díaz Doubain (daughter of David Octavio Díaz Loreto); José Ocopio (brother-in-law of David Octavio and Robert Ignacio Díaz Loreto); Luz Marina Ledesma de Díaz (sister-in-law of David Octavio and Robert Ignacio Díaz Loreto), and José Rafael Ocopio (nephew of David Octavio and Robert Ignacio Díaz Loreto and grandson of Octavio Ignacio Díaz Álvarez). However, based on a clarification by the alleged victims’ representatives in their brief with pleadings, motions and evidence, and on the wedding and birth certificates attached thereto, the following will be considered the correct identification of the family members: Juana Emilia Loreto Pérez, Miguel Ángel Díaz Loreto, Dinorah María Díaz Loreto, Jairo Alexis Díaz Loreto, Bladimir Lenin Díaz Loreto, Octavio Antonio Díaz Loreto, Alexandra Teresa Gualdrón Pernía, Arianna Leaneth Díaz Doubain (daughter of David Octavio Díaz Loreto), José Ocopio (husband of Dinorah María Díaz Loreto), Luz Marina Ledesma de Díaz (wife of Bladimir Lenin Díaz Loreto) and José Rafael Ocopio (son of Dinorah María Díaz Loreto).

² The Commission concluded that Venezuela was responsible for the violation of the rights to life, personal integrity, personal liberty, judicial guarantees and judicial protection established in Articles 4(1), 5(1), 7(1), 8(1) and 25(1) of the Convention in relation to the obligations established in Article 1(1) of this instrument.

Commission advised that when Report No. 80/17 was adopted [*sic*] the State had not presented its comments on compliance with the recommendations.

3. *Submission to the Court.* On December 6, 2017, the Commission submitted to the jurisdiction of the Inter-American Court all the facts and alleged human rights violations described in the Merits Report “owing to the need to obtain justice for the direct victims and their family members.” It asked the Court to declare the international responsibility of Venezuela for violating the rights indicated in the conclusions to the said report. In addition, it asked that the Court order certain measures of reparation (*infra* Chapter VIII).

II PROCEEDINGS BEFORE THE COURT

4. *Notification to the State and to the representatives.*³ The submission of the case was notified to the representatives and to the State on February 9, 2018.

5. *Brief with pleadings, motions and evidence.* On April 16, 2018, the representatives presented their brief with pleadings, motions and evidence (hereinafter “pleadings and motions brief”), under Articles 25 and 40 of the Court’s Rules of Procedure.

6. *Answering brief.*⁴ On July 16, 2018, the State presented its brief answering the submission of the case and the pleadings and motions brief (hereinafter “answering brief”), in which it filed a preliminary objection under Article 41 of the Court’s Rules of Procedure.

7. *Observations on the preliminary objection.* On September 14, 2018, the Commission presented its observations on the preliminary objection. The representatives presented their brief with observations on the preliminary objection belatedly; consequently, the full Court decided that the brief was time-barred and, therefore, inadmissible, and that it would not be forwarded to the State and to the Commission.

8. *Public hearing.* In an order of December 7, 2018, the President of the Court called the parties and the Commission to a public hearing. This took place on January 31, 2019, during the Court’s 129th regular session, which was held at the seat of the Court in San José, Costa Rica.⁵

9. *Amicus curiae.* On February 14, 2019, the *Instituto Interamericano de Responsabilidad Social y Derechos Humanos* presented an *amicus curiae* brief.⁶

10. *Final written arguments and observations.* On March 4, 2019, the State and the representatives presented their briefs with final written arguments and the Commission submitted its final written observations.

11. *Disbursements from the Legal Assistance Fund.* On July 22, 2019, on the instructions of the President of the Court, the Secretariat forwarded the State a report on the disbursements made in application of the Victims’ Legal Assistance Fund in this case, granting

³ The representatives of the alleged victims are: Luis Manuel Aguilera, Secretary General of the Commission for Human Rights, Justice and Peace of Aragua state and José Gregorio Guarenas, representative of the *Vicaría de Derechos Humanos de Caracas*.

⁴ The State appointed Larry Devoe Márquez as its Agent for this case.

⁵ At this hearing, there appeared: (a) for the Inter-American Commission: Francisco Eguiguren Praeli, Silvia Serrano Guzmán and Piero Vásquez Agüero; (b) for the representatives: José Gregorio Guarenas, María Daniela Rivero, Santiago Medina and Julio Puerta, and (c) for the State of Venezuela: Larry Devoe Márquez and Cristóbal Cornieles Perret-Gentil.

⁶ The brief relates to: (a) intent in international human rights law; (b) extrajudicial execution in the Court’s case law over the last three years, and (c) the Court’s case law in cases involving extrajudicial executions committed in Aragua state, Venezuela.

it until July 31, 2019, to present any observations it deemed pertinent. The State did not present any observations.

12. *Deliberation of the case.* The Court began to deliberate this judgment on November 19, 2019.

III JURISDICTION

13. Venezuela was a State Party to the American Convention as of August 9, 1977, and accepted the contentious jurisdiction of the Court on June 24, 1981. Subsequently, on September 10, 2012, the State denounced the American Convention. This denunciation came into effect on September 10, 2013, According to Article 78(2) of the Convention,⁷ the Court has jurisdiction to hear this case because the facts examined occurred prior to the moment at which the denunciation of the Convention could produce effects.

IV PRELIMINARY OBJECTIONS

A. Arguments of the State and observations of the Commission

14. The **State** filed an objection of failure to exhaust domestic remedies and indicated that “the analysis of compliance with the requirement of prior exhaustion of domestic remedies should be made based on the moment at which the petition is lodged before the Commission and not on the moment at which the Commission adopts its Admissibility Report.” The State also underlined that the petition had been submitted when the criminal proceedings were still being processed and that the Commission had argued a supposed unjustified delay – which had not been invoked by the alleged victims – that had violated its right of defense and due process. In addition, it argued that the Commission and the representatives were seeking to convert the Court into a fourth instance to examine and rule on an incident that had already been the subject of two criminal proceedings under domestic law that had both concluded with acquittal of the police officers based on an assessment of the available evidence, in keeping with the rules of the accusatory system. It added that they were even attempting to get the Court to assess the evidence gathered in the criminal proceedings because they disagreed with the decisions taken by the judges of the domestic jurisdiction.

15. The **Commission** recalled that analysis of the exhaustion of domestic remedies was made in relation to the situation that prevailed when it ruled on the admissibility of a petition and in light of the information provided by the parties at that stage. It also reiterated that the State had incurred in an unjustified delay and that, to reach this conclusions, it had considered the time that had elapsed since the deaths, and the absence of sufficient arguments to justify the delay, taking into account the periods of inactivity that had been recorded, as well as the failure to comply with the time limits established in domestic law which were long expired. Lastly, it indicated that the petitioners had requested the application of Article 46(2)(c) and that, in any case, it was not necessary to expressly argue an exception to the exhaustion of domestic remedies at the admissibility stage, because this was analyzed, *ex officio*, even if the State did not invoke a cause of inadmissibility or the petitioner a specific exception. Regarding the fourth instance argument, it referred to the decision taken by the Court in the case of *Cabrera García and Montiel Flores v. Mexico* and recalled that the Court had clarified the situation in which that objection was admissible and, also, that “if it is claimed that a

⁷ Article 78(2) of the Convention establishes that: “[s]uch a denunciation shall not have the effect of releasing the State Party concerned from the obligations contained in this Convention with respect to any act that may constitute a violation of those obligations and that has been taken by that State prior to the effective date of denunciation.”

judgment has been incorrect due to a violation of due process, the Court is unable to address this claim as a preliminary objection, because it will need to consider the merits of the matter and determine whether or not this conventional right was violated.” The representatives’ brief with observations on the preliminary objection was time-barred; accordingly, the full Court decided that it was inadmissible and would not be forwarded to the State and the Commission (*supra* para. 7).

B. Considerations of the Court

16. Article 46(1)(a) of the Convention establishes that, admission by the Commission of a petition or communication shall be subject to domestic remedies having been filed and exhausted, pursuant to the generally recognized principles of international law.⁸ In this regard, the Court has maintained that an objection to the exercise of its jurisdiction based on the supposed failure to exhaust domestic remedies must be presented at the property procedural moment; that is, during the admissibility procedure before the Commission.⁹

17. The file of the procedure before the Commission in this case reveals that the State submitted the objection of failure to exhaust domestic remedies at the appropriate moment during the admissibility stage.¹⁰ In addition, the Court notes that the State’s arguments to support its preliminary objection are that: (i) when the initial petition was submitted, the domestic remedies had not been exhausted, and (ii) there had not been an unwarranted delay that justified an exemption to the requirement of exhaustion of domestic remedies.

18. On the first point, the Court notes that the initial petition was lodged before the Commission on March 14, 2007. The Commission issued the Admissibility Report on July 24, 2008, and, in this case, it considered applicable Article 46(2)(c) of the Convention, which establishes the exception to the exhaustion of domestic remedies when “there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.” In this regard, the Court considers that, by requiring that this exhaustion has occurred for a petition or communication to be admitted by the Commission, Article 46 of the American Convention should be interpreted in the sense that it requires the exhaustion of remedies when a decision is taken on the admissibility of the petition and not when it is submitted.¹¹

19. Regarding the second point, the Court considers that the decision on the alleged unwarranted delay established in Article 46(2)(c) of the Convention calls for an assessment of elements that are closely linked to the merits of the dispute. The Court has established that “regardless of whether the State has defined a claim as a preliminary objection, if it is necessary to first consider the merits of the case when analyzing the arguments, it ceases to be preliminary.”¹² Therefore, the Court refers to its considerations concerning the principle of the reasonable time in the chapter on the merits where it will determine whether there had

⁸ Cf. *Case of Velásquez Rodríguez v. Honduras. Preliminary objections*. Judgment of June 26, 1987. Series C No. 01, para. 85, and *Case of Muelle Flores v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of March 6, 2019. Series C No. 375, para. 25.

⁹ Cf. *Case of Velásquez Rodríguez v. Honduras. Preliminary objections*, para. 85, 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. 39.

¹⁰ Cf. The Venezuelan State’s brief of February 28, 2008, with observations on the initial petition (evidence file, folio 325 to 327).

¹¹ Cf. *Case of Wong Ho Wing v. Peru. Preliminary objection, merits, reparations and costs*. Judgment of June 30, 2015. Series C No. 297, para. 25, and *Case of Amrhein et al. v. Costa Rica*, para. 41.

¹² Cf. *Case of Castañeda Gutman v. Mexico. Preliminary objections, merits, reparations and costs*. Judgment of August 6, 2008. Series C No. 184, para. 39, and *Case of Gorigoitia v. Argentina. Preliminary objection, merits, reparations and costs*. Judgment of August 30, 2019. Series C No. 382, para. 19.

truly been an unwarranted delay in the exhaustion of domestic remedies by the State authorities when the Admissibility Report was issued in 2008 (*infra* para. 121).

20. Regarding the fourth instance argument presented by the State, in other cases this Court has indicated that it takes its decisions based on international law and, in particular, based on the Convention, and that the international jurisdiction is of a complementary and reinforcing nature. Consequently, it does not perform the functions of a court of “fourth instance,” or of a higher or appellate court, to resolve any discrepancies that the parties may have with any effects of the assessment of the evidence or the application of domestic law on aspects that are not directly related to compliance with international human rights obligations. Moreover, for this argument to be admissible, the applicant would need to require the Court to review the ruling of a domestic law based on its incorrect assessment of the evidence, the facts or domestic law without, also, arguing that this ruling violated international treaties for which the Court has jurisdiction.¹³

21. However, this Court has established that when assessing compliance with certain international obligations there may be an intrinsic connection between the analysis of international law and domestic law. Therefore, determination of whether or not the actions of judicial organs constitute a violation of the State’s international obligations may require the Court to examine the respective domestic proceedings to establish their compatibility with the American Convention.¹⁴ The Court has also established that it does not have jurisdiction to rule on domestic judicial decisions that have not been proved to have violated due process or to be manifestly arbitrary or unreasonable. Nevertheless, although the Court is not a fourth instance for judicial review and does not examine the assessment of the evidence made by the domestic judges, it does have jurisdiction, exceptionally, to decide on the content of judicial decisions that clearly and arbitrarily violate the American Convention.¹⁵

22. In the instant case, the Court notes that the Commission and the representatives have asked the Court to review the decisions of the domestic courts because they relate to the right to judicial guarantees and judicial protection, Articles 8(1) and 25 of the Convention respectively. Therefore, to determine whether such violations occurred, this Court will analyze the domestic investigations and judicial proceedings and will verify whether due diligence was observed in the investigation.¹⁶

V EVIDENCE

23. The Court admits those document presented by the parties and the Commission at the appropriate procedural moment (Article 57 of the Rules of Procedure), whose admissibility was not contested or opposed and whose authenticity was not questioned.¹⁷

¹³ Cf. *Case of Cabrera García and Montiel Flores v. Mexico*. Preliminary objection, merits, reparations and costs. Judgment of November 26, 2010, Series C No. 220, para. 18, 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. 30.

¹⁴ Cf. *Case of the “Street Children” (Villagrán Morales et al.) v. Guatemala*. Merits. Judgment of November 19, 1999. Series C No. 63, para. 222, *Case of Favela Nova Brasília v. Brazil*. Preliminary objections, merits, reparations and costs. Judgment of February 16, 2017. Series C No. 333, paras. 55 and 56, and *Case of Villamizar Durán et al. v. Colombia*, para. 30.

¹⁵ Cf. *Case of Rico v. Argentina*. Preliminary objection and merits. Judgment of September 2, 2019. Series C No. 383, para. 82, and *Case of Romero Feris v. Argentina*. Merits, reparations and costs. Judgment of October 15, 2019, para. 114.

¹⁶ Cf. *Case of Villamizar Durán et al. v. Colombia*, para. 31.

¹⁷ Cf. *Case of Velásquez Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988. Series C No. 4, para. 140, and *Case of Rico v. Argentina*, para. 21.

24. The Court notes that the Commission indicated that two attachments to the Merits Report,¹⁸ Annexes 2 and 3, formed part of the documentary evidence in the files before the Court in the cases of the *Landaeta Mejías Brothers* and the *Barrios Family*, both against Venezuela, and asked that this evidence be incorporated into the file in the instant case. Also, regarding another attachment, Annex 42,¹⁹ the Commission indicated that access to the website of the Venezuelan Supreme Court of Justice was unavailable and, therefore, asked the Court to request the Venezuelan State to provide the judgment in question.

25. Regarding Annexes 2 and 3 to the Merits Report, the Court proceeded to extract a copy of the documents referred to, which were located in the files of the cases of the *Landaeta Mejías Brothers* and of the *Barrios Family v. Venezuela*. However, it was unable to locate any document concerning the "Presentation by the Prosecutor General on the occasion of the issue of his 2005 Annual Report" indicated in Annex 2 and, therefore, it is declared inadmissible. Also, with regard to Annex 42, the State was asked to present a copy of the judgment in question together with its answering brief. The Court notes that the State forwarded the requested document and, therefore, it is declared admissible and incorporated into the file of this case.

26. Additionally, the representatives asked that the State forward copies of 13 documents that constitute "fundamental evidence," because they were unable to access the domestic case file.²⁰ Considering that the State forwarded the requested documents and that none of the parties contested their incorporation, the Court admits them and incorporates them into the body of evidence.

27. The Court also finds it pertinent to admit the statements made during the public hearing and before notary public,²¹ insofar as they are in keeping with the purpose defined in the order requiring them and the purpose of this case.²² The Court also admits the representatives' request to incorporate the expert opinions provided by Calixto Ávila²³ and

¹⁸ Cf. Annex 2: The Venezuelan Ombudsman. Report: Forced disappearances and executions. Annual Report 2001; 2002 Annual Report of the Ombudsman of the Bolivarian Republic of Venezuela; 2003 Annual Report of the Ombudsman of the Bolivarian Republic of Venezuela; 2003 [sic] Annual Report of the Ombudsman; 2006 Annual Report of the Ombudsman; Presentation by the Prosecutor General on the occasion of the issue of his 2005 Annual Report, April 25, 2006; National Commission for Police Reform (CONAREPOL). Characteristics of the Venezuelan Police; 2007 Annual Report of the Prosecutor General, annex 3: Assessment of the human rights situation in Aragua state between July 1996 and March 2003, prepared by the Aragua State Commission for Human Rights, Justice and Peace

¹⁹ Supreme Court of Justice. Criminal Cassation Chamber. File No. C09-318. Judgment No. 134 of May 11, 2010.

²⁰ Those documents are as follow: (1) Autopsy reports Nos. 0147, 0177 and 0146; (2) Order to open the investigation; (3) Complaint filed on August 6, 2003, by Juana Emilia Loreto; (4) Record of admission of the complaint dated August 7, 2003; (5) Decision of January 18, 2007, issued by the Fifth Trial Court of the Criminal Judicial Circuit of Aragua state; (6) Appeal filed on July 19, 2007, by the Public Prosecution Service; (7) Decision of April 1, 2009, Contingent Chamber No. 34 of the Appellate Court of the Criminal Judicial Circumscription of Aragua state; (8) Judgment of Contingent Chamber No. 66 of the Appellate Court, of December 14, 2011; (9) Order on admission and scheduling of hearing of February 24, 2012; (10) Order on postponement to June 13, 2012; (11) Order to open the oral public trial of July 11, 2012; (12) Judgment delivered on September 4, 2014, and (13) Order of October 28, 2018.

²¹ Affidavits were received from four alleged victims, two witnesses, and five expert witnesses proposed by the representatives, the Commission and the State.

²² They were submitted by: Sara Mier y Terán, Pablo Fernández Blanco, Gregoria Josefina Medina, Juan Carlos Castro Villalobos and Ana Cristina Bracho, proposed by the State; Dinorah María Díaz Loreto, Lisandro Raúl Cubas, Miguel Ángel Díaz Loreto, Bladimir Lenin Díaz Loreto, Jairo Alexis Díaz Loreto, Fernando Fernández and Claudia Carillo, proposed by the representatives, and Camilo Ernesto Bernal Sarmiento, proposed by the Commission. The purpose of the statements was established in the order of the President of the Court of December 7, 2018.

²³ Human rights researcher. In the case of the *Landaeta Mejías Brothers et al. v. Venezuela*, he provided an opinion on the context of violence committed by national and state law enforcement forces in Venezuela; in particular, on the phenomenon of extrajudicial executions committed by police officers and the extent of the impunity that

José Pablo Baraybar²⁴ in the case of the *Landaeta Mejías Brothers et al. v. Venezuela*, insofar as they are in keeping with the purpose defined by the President in the order requiring them, and the purpose of this case.

VI FACTS

28. In this chapter, the Court will establish the facts that it will consider proven in this case, based on the body of evidence that has been admitted and the factual framework established in the Merits Report. It will also include the facts described by the parties that explain, clarify or refute that factual framework.²⁵ The facts will be described in the following order: (a) context; (b) the deaths of Octavio Ignacio Díaz Álvarez, David Octavio Díaz Álvarez and Robert Ignacio Díaz Loreto; (c) the investigations and judicial proceedings undertaken owing to the death of the Díaz Loreto brothers and their father, Octavio Ignacio Díaz Álvarez, and (d) the alleged threats and harassment by police officers against family members and friends of Octavio Ignacio Díaz Álvarez and the brothers, David Octavio and Robert Ignacio Díaz.

A. Context

29. The Commission and the representatives referred to a context of extrajudicial executions that existed in Venezuela at the time of the facts of this case. The State did not contest the existence of that context, but affirmed that the facts of the case could not be situated within this context because their characteristics were different. In this section, the Court will describe this context, and in the corresponding chapter on the merits (*infra* Chapter VII.1), it will assess whether the facts of this case are situated within it.

30. Regarding the context, it should be recalled that in the case of *Uzcátegui v. Venezuela*, concerning events that took place in Falcón state starting in 2001, the Court indicated that “[i]t is not disputed that, at the time when the alleged violations of the Convention took place, extrajudicial killings and other abuses were committed in the state by the police, particularly by [the] state and local police forces,” and, in that case, the State itself recognized that “extrajudicial executions took place in the country.”²⁶ In the case of the *Landaeta Mejías Brothers et al. v. Venezuela*, the Court noted that “in Venezuela, at the time of the facts of this case, there was an acute problem of police abuse in various states, including the state of Aragua.”²⁷ Finally, in the case of the *Barrios Family v. Venezuela*, concerning the arbitrary deprivation of the life of members of a single family in Aragua state, the Court determined that “the series of incidents reveals a pattern of concealment that begins with the perpetrators’ distortion of the events, continues with the lack of judicial elucidation, and

prevailed in relation to such crimes, as well as the measures that the Venezuelan State should take to avoid events such as those of that case being repeated.

²⁴ Forensic anthropologist and Executive Director of the Peruvian Anthropology Team. In the case of the *Landaeta Mejías Brothers et al. v. Venezuela*, he provided an opinion on international standards for forensic appraisals, and due diligence in the investigation of extrajudicial executions and gross human rights violations, as well as the application of such standards in the investigation of that case.

²⁵ Cf. *Case of the “Five Pensioners” v. Peru. Merits, reparations and costs*. Judgment of February 28, 2003. Series C No. 98, para. 153, and *Case of Rico v. Argentina*, para. 25.

²⁶ Cf. *Case of Uzcátegui et al. v. Venezuela. Merits and reparations*. Judgment of September 3, 2012. Series C No. 249, paras. 35 and 36.

²⁷ Cf. *Case of the Landaeta Mejías Brothers et al. v. Venezuela. Preliminary objections, merits, reparations and costs*. Judgment of August 27, 2014. Series C No. 281, para. 55.

includes the implementation of various types of threats and harassment designed to prevent the determination of the truth and the identification of those responsible."²⁸

31. As a result of the gravity of this situation, on April 10, 2006, the Venezuelan State created a National Commission for Police Reform (hereinafter "CONAREPOL"), in order to design a new model for the police. CONAREPOL made a comprehensive evaluation of the situation of the security forces, their characteristics and functions. Its most important findings were that: (a) the police forces retained a deep-seated military component, which translated into a use of aggressive policing tactics that entailed greater probabilities of abuse; greater readiness to use physical force, and aggressive operating strategies that were ineffective to combat crime; (b) there were a large number of command units or groups (also known as "paramilitaries") who had broad autonomy and considerable fire-power, and who used commando tactics; (c) control mechanisms were frequently left to the superior officer, and not to explicit, formal procedures of oversight and accountability, so that they were ambiguous and arbitrary and, therefore, ineffective as measures of dissuasion, and (d) the disciplinary regime that existed in the police forces was characterized by the dispersion, heterogeneity, discretionality and arbitrariness of actions, contradiction with basic legal principles such as those of legality, due process, effective protection and proportionality, and use of unconstitutional sanctions.²⁹

32. Furthermore, since 2001, the Ombudsman has reported the "permanent existence of unlawful police practices" in the form of extrajudicial executions. Also, in his 2002 report, the Ombudsman warned that extrajudicial executions had "become violence of an endemic nature," perpetrated by state agents who try and justify their actions by the excuse that it was impossible to obtain justice using the ordinary channels.³⁰ Meanwhile, expert witness Lisandro Raúl Cubas stated that, in Venezuela, the extrajudicial executions were related to a "cultural problem of the violence used by the police forces, their lack of professional training is evident, and also the issue of impunity [...] and the lack of control over police officers."³¹

33. Additionally, the United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions and the Human Rights Committee have repeatedly expressed their concern owing to the proliferation of reports of cases of extrajudicial executions in Venezuela.³² In this regard, in its concluding observations on Venezuela of April 26, 2001, the

²⁸ Cf. *Case of Barrios Family v. Venezuela. Merits, reparations and costs*. Judgment of November 24, 2011. Series C No. 237, para. 38.

²⁹ Regarding accountability mechanisms for police actions, it indicated that "only about 16% of the security forces require reports of officers involved in the death or injury of civilians, and less than 20% open investigations in such cases." National Commission for Police Reform, Evaluation [...], p. 60. Among other matters, the CONAREPOL report concluded that "in a context in which the oversight mechanisms are clearly insufficient, and in which police officers lack clear and standardized action protocols, resorting to the use of force – far from being an exceptional action – has gradually become a means of exerting their authority." Cf. *Case of Uzcátegui et al. v. Venezuela*, para. 36. Also, National Commission for Police Reform, Evaluation (evidence file, folio 184(b) to 220).

³⁰ Cf. Venezuelan Ombudsman, 2002 annual report (evidence file, folio 184(b) to 334). In addition, in his 2007 annual report, the Prosecutor General stated that, between 2000 and February 2007, the Public Prosecution Service had recorded 6,405 cases in the country of the so-called "executions or confrontations" between civilians and law enforcement personnel. At that time, the Prosecutor General identified 6,885 state officials involved in such acts; it was calculated that only about one-third of those cases (2,132) had really been investigated. This document is in the file of the case of the *Landaeta Mejías Brothers et al. v. Venezuela* (evidence file, folio 6512).

³¹ He added that the existence of unlawful police practices as a method of control involving excessive use of force was a reflection of the abuse by police officers. Cf. Public hearing in this case of January 31, 2019.

³² These concerns were included in various reports starting in 1994 and repeated in 1999, 2001, 2003 and 2004, the period covered by the factual framework of the facts of this case. In addition, in several of his reports, the Special Rapporteur called attention to reports of extrajudicial executions by members of the security forces in Venezuela and on the threats received by family members to prevent them from reporting the facts. Cf. United Nations, Special Rapporteur on extrajudicial, summary or arbitrary executions. Reports to the Commission on Human Rights: E/CN.4/1994/7 of December 7, 1993 (para. 638); E/CN.4/1998/68/Add.1 of December 19, 1997 (para. 420); E/CN.4/1999/39/Add.1 of January 6, 1999 (para. 258); E/CN.4/2001/9/Add.1 of January 17, 2001 (para. 420);

Human Rights Committee expressed its grave concern at "the many reports of extrajudicial executions and the failure of the State party to react to them."³³

B. The deaths of Octavio Ignacio Díaz Álvarez and the brothers, David Octavio and Robert Ignacio Díaz Loreto, on January 6, 2003

34. According to the evidence provided by the parties and by the Commission, the Court has verified that Robert Ignacio Díaz Loreto, David Octavio Díaz Loreto and Octavio Ignacio Díaz Álvarez died on January 6, 2003, in La Segundera, Cagua, Aragua state. However, there are two contradictory versions of the circumstances in which the events took place.

B.1. Facts that are not disputed

35. David Octavio Díaz Loreto, 23 years of age, and Robert Ignacio Díaz Loreto, 22 years of age, were sons of Octavio Ignacio Díaz Álvarez, aged 53 years at the time of the facts, and Juana Emilia Loreto Pérez. The family resided in sector 01, street 40, No. 05, La Segundera residential area, Cagua, Aragua state.

36. On the afternoon of January 6, 2003, officers of the Aragua State Security and Public Order Force (CSOPEA) went to La Segundera, Cagua, Aragua state. Thereafter, a series of events occurred as a result of which Robert Ignacio Díaz Loreto was shot by those officers. He was subsequently transferred to the Corinsa Social Security clinic in Cagua. Later, following events that are disputed by the parties, David Octavio Díaz Loreto and Octavio Ignacio Díaz Álvarez were shot by the police officers. They were then taken to the José María Vargas Hospital in Cagua. The three alleged victims were left in the respective health centers by police officers and died on the day of these incidents.³⁴

37. The autopsy report for Robert Ignacio Díaz Loreto indicated that he had: "[...] finely granulated black inorganic material in ocular conjunctiva, oral mucosa, respiratory tract, lungs and digestive system, without signs of asphyxiation, and three single-bullet wounds, with the mortal wound penetrating the thorax and perforating the heart from side to side, producing massive hemothorax. Cause of death: cardiac wound from a single bullet."³⁵ The autopsy report for David Octavio Díaz Loreto indicted that he had: "[...] three single-bullet wounds, penetrating the thorax, two of them caused severe cardiac injury with passive hemothorax leading to death. Cause of death: massive hemopneumothorax from single bullet wound."³⁶ Lastly, the autopsy report for Octavio Ignacio Díaz Álvarez indicated that he had: "[...] a bullet wound penetrating the thorax causing cardiac injury which led to death from hypovolemic shock. Cause of death: hypovolemic shock due to bullet wound."³⁷

E/CN.4/2003/3/Add.1 of February 12, 2003, and E/CN.4/2004/7/Add.1 of March 24, 2004. In addition, United Nations, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions to the United Nations General Assembly, A/55/288 of August 11, 2000, and Concluding observations of the Human Rights Committee: Venezuela, CCPR/CO/71/VEN, April 26, 2001, para. 7.

³³ United Nations, Human Rights Committee, Consideration of reports submitted by States Parties under Article 40 of the Covenant, April 26, 2001, CCPR/CO/71/VEN, para. 7.

³⁴ Cf. Indictment by the Ninth Prosecutor of the Judicial Circumscription of Aragua state of June 13, 2003 (evidence file, folios 11 and 12).

³⁵ Autopsy report No. 0147 of January 8, 2003 (evidence file, folio 6416).

³⁶ Autopsy report No. 0177 of January 9, 2003 (evidence file, folio 6417).

³⁷ Autopsy report No. 0146 of January 8, 2003 (evidence file, folio 6415).

B.2. Disputed facts

38. Regarding the other specific facts surrounding the death of the Díaz Loreto brothers and their father, Octavio Ignacio Díaz Álvarez, the Court notes that the evidence and the arguments provided reveal that there are two versions of what took place.³⁸

39. On the one hand, the version of several witnesses and also family members of the alleged victims³⁹ according to which, on January 6, 2003, after warning the neighbors to go back into their homes, several police officers broke into the home of the Díaz Loreto family, "pulled Robert out," and one of them, "without any explanation, shot him twice."⁴⁰ According to this version, after they shot him, the police prevented the members of his family from giving Robert any type of assistance while he lay on the ground, despite his pleas for help. The police officers allegedly told the neighbors and the family that they would take him to the nearest health facility. However, when placing him in the patrol car, they allegedly shot him again and then delayed taking him to the facility. In this regard, a neighbor saw the police patrol car that was transporting Robert drive past "the street several times with its siren blaring."⁴¹

40. According to these statements, Octavio Díaz and David Díaz, respectively Robert's father and brother, asked a neighbor to drive them in his car to look for Robert. On the way, they were intercepted by a police detail that fired a bullet into one of the car's tires in order to stop them. When they got out of the car, the police allegedly shot David Octavio Díaz Loreto and Octavio Ignacio Díaz Álvarez. The police then took them to the hospital where they were pronounced dead on arrival.

41. On the other hand, a second version, revealed by the police records and interviews with CSOPEA officials,⁴² indicates that, on January 6, 2003, at around 6.30 p.m. a police

³⁸ For example, see indictment of the Ninth Prosecutor of the Judicial Circumscription of Aragua state of June 13, 2003 (evidence file, folios 12 to 49) and Judgment of the Criminal Trial Court of the Aragua state Criminal Judicial Circuit of September 4, 2014 (evidence file, folios 6538 to 6582).

³⁹ Cf. Statement by M.T.C.P. before the CICPC of Cagua, in relation to the indictment of the Ninth Prosecutor of the Judicial Circumscription of Aragua state on June 13, 2003 (evidence file, folio 19); Statement by V.A.L.P. before the CICPC on February 28, 2003 (evidence file, folios 112 and 113); Statement by E.J.U.M. before the CICPC of February 3, 2003 (evidence file, folio 115); Statement by M.S.Z. in relation to the indictment of the Ninth Prosecutor of the Judicial Circumscription of Aragua state on June 13, 2003 (evidence file, folio 18); Statement by D.N.S.J. in relation to the indictment of the Ninth Prosecutor of the Judicial Circumscription of Aragua state on June 13, 2003 (evidence file folio 19); Statement by D.J.R. in relation to the indictment of the Ninth Prosecutor of the Judicial Circumscription of Aragua state on June 13, 2003 (evidence file, folio 20); Statement by C.R.S.D. before the CICPC on February 3, 2003 (evidence file, folios 117 and 118); Statement by N.M., doctor, at the José María Vargas Hospital in Cagua, before the CICPC on February 2003 (evidence file, folios 120 and 121); Statement by Bladimir Lenin Díaz Loreto and Dinora María Díaz Loreto in relation to the indictment of the Ninth Prosecutor of the Judicial Circumscription of Aragua state on June 13, 2003 (evidence file, folio 20); Statement by A.T.G.P. in relation to the indictment of the Ninth Prosecutor of the Judicial Circumscription of Aragua state on June 13, 2003 (evidence file, folio 23); Statement by Jairo Alexis Díaz Loreto in relation to the indictment of the Ninth Prosecutor of the Judicial Circumscription of Aragua state on June 13, 2003 (evidence file, folios 24 and 25), and Statement by Enmarya Dayana Cava Orozco before the CICPC on January 24, 2003 (evidence file, folios 123 and 124).

⁴⁰ Cf. Statement by M.T.C.P. in relation to the indictment of the Ninth Prosecutor of the Judicial Circumscription of Aragua state on June 13, 2003 (evidence file, folio 19).

⁴¹ Statement by M.T.C.P. in relation to the indictment of the Ninth Prosecutor of the Judicial Circumscription of Aragua state on June 13, 2003 (evidence file, folio 19).

⁴² Cf. Police record of interview of officer S.R.R.M, CICPC, of March 14, 2003 (evidence file, folios 57 to 60); Police record of interview of officer L.D.C., CICPC, of March 14, 2003, (evidence file, folios 209 and 210); Statement by T.A.V, CICPC, of February 27, 2003 (evidence file, folios 66 and 67); Statement by officer S.R.R.M, CICPC, of May 28, 2003, (evidence file, folios 69 to 72); Statement by officer J.L.A.H., of May 28, 2003. Cf. Ministry of the Interior and Justice. CICPC. Aragua Region, Cagua Branch. Statement by officer J.F.M., CICPC, of May 28, 2003, (evidence file, folios 78 and 79); Statement by officer R.A.A., CICPC, of May 28, 2003 (evidence file, folios 81 and 82); Statement by officer R.A.B.A., CICPC, of March 11, 2003 (evidence file, folios 84 and 85); Statement by officer L.D.C., CICPC, of May 28, 2003 (evidence file, folios 87 to 89); Statement by officer J.L.A.H., CICPC, of March 11,

operation was conducted in response to a report of an armed robbery in sector 01 of La Segundera, Cagua. On arriving at the scene of the incident – and the person who had reported the robbery having identified the presumed authors of the offense – the police officers had proceeded to order those present not to move. In response the presumed offenders had fired on the officers and their vehicle; consequently, the latter were faced with the “absolute necessity of repelling this action and an exchange of gunfire ensued.” As a result, “two of the men were able to escape by nearby streets,” while “one of them fell to the ground seriously wounded”;⁴³ it had therefore been necessary to take him to the nearest health clinic.

42. According to this version, the operation had continued in order to capture the other two alleged authors of the offense who had confronted the police detail and who had escaped in a car. The statements indicated that one of them fired his gun at the police detail through the car window, until the police were able to hit the car’s back tire. The driver of the car then got out, while the two passengers again offered armed resistance, firing at the police officers and their vehicles; they were both severely wounded and then taken to the hospital. Also, according to this version, following this incident, three firearms were found near where the events took place and, as stated by one of the officers, these allegedly corresponded to those used in the confrontation.

C. Investigations and judicial proceedings conducted into the death of the Díaz Loreto brothers and their father, Octavio Ignacio Díaz Álvarez

43. During the investigation into the facts of the case, a series of evidentiary procedures were ordered,⁴⁴ and statements were taken from several police officers, neighbors, witnesses

2003 (evidence file, folios 91 and 92); Statement by officer J.R.M.F., CICPC, of March 11, 2003 (evidence file, folios 94 and 95); Statement by officer J.M.A., CICPC, of May 28, 2003 (evidence file, folios 97 and 98); Statement by officer E.T.U., CICPC, of May 28, 2003 (evidence file, folios 100 and 101); Statement by officer E.G.T.U, CICPC, of March 14, 2003 (evidence file, folios 103 and 104); Statement by officer G.J.C., Police chief and Head of Central Aragua Region, CICPC, of June 6, 2003 (evidence file, folios 106 and 107), and Statement by officer F.J.P.L., Corporal attached to Police Chief R.U. of the Aragua State Security and Public Order Corps, CICPC, of June 6, 2003 (evidence file, folios 109 and 110).

⁴³ Police record of interview of officer S.R.R.M, CICPC, of March 14, 2003, (evidence file, folios 57 to 60).

⁴⁴ These were: (i) forensic identification, recovery of serial numbers and ballistic comparison of three firearms, two bullets, thirteen shotgun shells, one spent shotgun cartridge, and one unused shotgun cartridge. Cf. CICPC. Forensic Laboratory, Aragua Region, of February 15, 2003 (evidence file folios 129 to 132); (ii) planimetric mapping of the Cagua-La Segundera highway, Cagua, Aragua state. Cf. Memorandum CICPC. Forensic Laboratory, of February 26, 2003 (evidence file, folio 135); Memorandum CICPC, Forensic Laboratory, of February 26, 2003 (evidence file, folios 137 and 138); (iii) expert appraisal of the bullet flight path at the scene of the incident identified as “La Segundera, public street.” Cf. Report on the bullet trajectory, CICPC, of February 4, 2003 (evidence file, folios 140 to 143); (iv) On January 14, 2003, forensic identification and ballistic comparison of four bullets was requested. Cf. Ballistics appraisal, CICPC. Forensic Laboratory of February 22, 2003 (evidence file, folios 147 and 148); (v) On February 20, 2003, the CICPC requested an expert appraisal for the forensic identification, mechanics and design, and recovery of serial numbers of seven firearms and three magazines related to the investigation. Cf. CICPC expert appraisal, Toxicology and Forensic Laboratory, of February 27, 2003 (evidence file, folios 151 to 156); (vi) On the following February 25, the planimetric mapping of white vehicles belonging to the Aragua state police was requested and of any bullet flight paths. Cf. CICPC, February 26, 2003 (evidence file, folio 158), and CICPC, Forensic Laboratory, February 25, 2003 (evidence file, folios 160 to 164); (vii) A technical inspection was conducted of Sector 1, street 40, Rafael Urdaneta residential area. Cf. Indictment of the Ninth Prosecutor of the Judicial Circumscription of Aragua state of June 13, 2003 (evidence file, folio 17); (viii) Also, another technical inspection was conducted “on the highway between Cagua and Rafael Urdaneta residential area, Cagua, Aragua state.” Cf. Indictment of the Ninth Prosecutor of the Judicial Circumscription of Aragua state of June 13, 2003 (evidence file, folio 17). The purpose of these procedures was: (i) to determine the firearm that shot the bullet extracted from Robert Ignacio Díaz Loreto’s corpse; (ii) to determine to which officer who had taken part in the operation the firearm belonged, and (iii) to summon and interview a doctor from the Cagua Medical Center, two officers of the Aragua Police and the sister of the person who had reported the respective robbery. Cf. Investigation record, CICPC of June 3, 2003 (evidence file, folios 166 and 167).

and family members of the alleged victims.⁴⁵ In addition, autopsies were performed on the three deceased alleged victims.⁴⁶ For their part, the alleged victims' family members took a series of steps to clarify the facts and, also, with regard to the threats and harassment they reported having received.⁴⁷

C.1. First judicial proceedings

44. On June 13, 2003, the Ninth Prosecutor of the Public Prosecution Service of the Judicial Circumscription of Aragua state filed an indictment before the Fifth Supervisory Judge of the Aragua state Criminal Circuit against seven officers of the Aragua State Security and Public Order Force for the crime of the intentional homicide of the alleged victims.⁴⁸ He asked that measures should be ordered to deprive them of liberty, to prohibit them from leaving the country, and to separate them from their policing functions.⁴⁹

45. On August 6, 2003, Juana Emilia Loreto, wife of Octavio Ignacio Díaz Álvarez and mother of Robert and David Díaz Loreto, filed a complaint before the Fifth Supervisory Court of the Criminal Judicial Circuit of Aragua state (hereinafter "the Fifth Supervisory Court") against the CSOPEA officers identified by the prosecutor, and asked that a series of evidentiary

⁴⁵ Cf. Indictment of the Ninth Prosecutor of the Judicial Circumscription of Aragua state of June 13, 2003 (evidence file, folios 9 to 59).

⁴⁶ Cf. Autopsy reports Nos. 0146 and 0147 of January 8, 2003, and No. 0177 of January 9, 2003 (evidence file, folios 6415 to 6417).

⁴⁷ These consisted, above all, in complaints filed before the Ninth Prosecutor of the Public Prosecution Service of Aragua state requesting clarification of the events that occurred on January 6, 2003, and that a series of investigation measures be taken. They also referred to other alleged acts of persecution and harassment that were committed subsequently against other members of the family. Specifically, the initial petition referred, among other matters, to a complaint filed on May 2, 2003, by Alexandra Gualdrón and Enmary Dahiana Cava owing to "the constant persecution and harassment to which they were subject" by the police force involved, and the events that occurred on April 26, 2003, when their homes were invaded, and they were subjected to verbal aggression, threatened with a firearm, and Miguel Ángel Díaz Loreto was unlawfully deprived of his liberty. Also, the complaints of May 5, 2003, by Dinorah María Díaz Loreto, Bladimir Lenin, Miguel Ángel, Jairo Alexis, Alexandra Gualdrón and Enmary Cava reporting the events of January 6, 2003, and that they had not been able to access the case file; and, on May 16, 2003, filed by Luis Aguilera, requesting that several measures be taken, including reconstruction of the events, taking statements from witness and experts who were aware of the case, and regarding the failure to investigate the events that occurred on April 26, 2003. Cf. Initial petition before the Commission dated March 14, 2007 (evidence file, folios 255 to 266).

⁴⁸ In this regard, the indictment describes the following accusations: (1) S.R.R.M., Chief Inspector of the Police Station of La Segundera, Cagua, for the crime of the intentional homicide of Robert Díaz Loreto, "which is proved by the result of the expert ballistic comparison appraisal, which concluded that the bullet provided as incriminating evidence and which was extracted from the dead man's corpse [...] was fired by the weapon: Glock 9 mm caliber pistol, serial number EMS616, which [...] is the service firearm assigned [to the officer] and with which he acted on the day of the events. And also the crime of complicity in the intentional homicide" of David Octavio Díaz Loreto and Octavio Díaz Álvarez; (2) R.A.B.A., Chief Inspector assigned to the Motorized Brigade, for the crime of "immediate collaborator in the intentional homicide" of Robert Ignacio Díaz Loreto, and the crime of "complicity in the intentional homicide" of David Octavio Díaz Loreto and Octavio Díaz Álvarez; (3) L.D.C., Second Corporal of the Cagua Police Station, for the crime of "immediate collaboration in the intentional homicide" of Robert Ignacio Díaz Loreto, and the crime of "complicity in intentional homicide" of David Octavio Díaz Loreto and Octavio Díaz Álvarez; (4) J.F.M.A., first class corporal of the Security and Public Order Force detailed to the Cagua Police Station, for the crime of "immediate collaboration in the intentional homicide" of Robert Ignacio Díaz Loreto, and the crime of "complicity in the intentional homicide" of David Octavio Díaz Loreto and Octavio Díaz Álvarez; (5) J.L.A.H., First Corporal assigned to the Cagua Motorized Brigade, for the crime of "immediate collaboration in the intentional homicide" of Robert Ignacio Díaz Loreto, and the crime of "complicity in the intentional homicide" of David Octavio Díaz Loreto and Octavio Díaz Álvarez; (6) E.G.T.U., First Corporal, for the crime of "immediate collaboration in the intentional homicide" of Robert Ignacio Díaz Loreto, and the crime of "complicity in the intentional homicide" of David Octavio Díaz Loreto and Octavio Díaz Álvarez; and (7) J.R.F.M., Deputy Inspector assigned to the La Segundera Police Station, for the crime of "immediate collaboration in the intentional homicide" of Robert Ignacio Díaz Loreto, and the crime of "complicity in the intentional homicide" of David Octavio Díaz Loreto and Octavio Díaz Álvarez. Cf. Indictment of the Ninth Prosecutor of the Judicial Circumscription of Aragua state of June 13, 2003 (evidence file, folios 9 to 59).

⁴⁹ Cf. Indictment of the Ninth Prosecutor of the Judicial Circumscription of Aragua state of June 13, 2003 (evidence file, folio 49).

measures be taken, as well as ratification of the measure of deprivation of liberty against the accused.⁵⁰

46. On August 7, 2003, the Fifth Supervisory Court admitted the indictment filed by the Public Prosecution Service in its entirety and ordered a preventive measure of deprivation of liberty against the accused officers, and the opening of an oral, public trial.⁵¹

47. On January 18, 2007, the trial began before the Fifth Trial Court of the Criminal Judicial Circuit of Aragua state (hereinafter "the Fifth Trial Court").⁵² The oral public debate ended on April 25, 2007, and a judgment was delivered acquitting all the accused.⁵³ The Public Prosecution Service filed an appeal against this decision on July 19, 2007.⁵⁴ On April 1, 2009, Contingent Chamber No. 34 of the Appellate Court of the Criminal Judicial Circumscription of Aragua state, declared the appeal inadmissible and confirmed the judgment of acquittal.⁵⁵

48. On May 6, 2009, the Public Prosecution Service filed a remedy of cassation before the Criminal Cassation Chamber of the Supreme Court of Justice.⁵⁶ On May 11, 2010, the Criminal Cassation Chamber declared the remedy of cassation admissible and ordered that the case file be forwarded to another chamber of the Appellate Court of that circuit.⁵⁷ On January 12, 2011, Contingent Chamber No. 66 of the Appellate Court was installed in order to hear the appeal pursuant to the decision of the Criminal Cassation Chamber.⁵⁸ On December 14, 2011, the appeal was declared admissible and an order was issued to hold a new oral trial.⁵⁹ This decision determined that "the judge who issued the contested judgment did not take all necessary steps to evaluate the evidence provided by the parties"; failed to analyze "all the probative elements incorporated into the oral trial," and did not place on record the reasons why some probative elements, "although provided opportunely, were not assessed."

⁵⁰ Specifically, she asked that the doctor on call at the José María Vargas Hospital be summoned to testify during the hearing of the oral and public trial with regard to the day and time at which the bodies of Octavio Díaz Álvarez and David Octavio Díaz Loreto had been admitted; that a forensic chemical examination be made of Robert Ignacio's clothes; this "forensic physical inspection in order to determine the origin of the continuum," and "a sweep to collect adherences"; and the incorporation as evidence of a certified copy of the log book for January 6, 2003, of the Corinsa Social Security Hospital, Cagua. *Cf.* Initial petition lodged before the Commission on March 14, 2007 (evidence file, folios 255 to 266).

⁵¹ *Cf.* The State's brief before the Commission of February 28, 2008 (evidence file, folio 326).

⁵² Although, in its brief, the State indicated that the date was January 18, 2006, based on the available information in the case file, the Commission understood that this was a typographical error and the correct date was 2007. *Cf.* The State's brief before the Commission of February 28, 2008 (evidence file, folio 326).

⁵³ *Cf.* Supreme Court of Justice. Criminal Cassation Chamber. File No. C09-318. Judgment No. 134 of May 11, 2010 (merits file, folio 26).

⁵⁴ *Cf.* Appeal by the Ninth Prosecutor of the Judicial Circumscription of Aragua state dated July 19, 2007 (evidence file, folios 6474 to 6497).

⁵⁵ *Cf.* Judgment of the Appellate Court of the Criminal Judicial Circuit of Aragua state of April 1, 2009 (evidence file, folios 6498 to 6511).

⁵⁶ *Cf.* Supreme Court of Justice. Criminal Cassation Chamber. File No. C09-318. Judgment No. 134 of May 11, 2010 (merits file, folio 26).

⁵⁷ Specifically, the decision determined that the contested judgment "did not provide a statement of reasons for the decision considering that the Trial Court had correctly established the exonerating circumstances of legitimate defense and fulfilment of duty, and because the Appellate Court did not indicate the evidence that proved each of these assumptions, merely stating the facts established by the judge *a quo* that constituted the reasons for this justification." *Cf.* Judgment of the Supreme Court of Justice, Criminal Cassation Chamber of May 11, 2010 (evidence file, folios 6585 to 6618). It also established that, furthermore, the Appellate Court had not examined an argument concerning the Trial Court's failure to summon an official from the CICPC Forensic Laboratory to testify.

⁵⁸ *Cf.* Communication of the Appellate Court of the Criminal Judicial Circuit of Aragua state of October 2012 (evidence file, folios 169 and 170).

⁵⁹ *Cf.* Decision of Contingent Chamber No. 66 of the Appellate Court of the Criminal Judicial Circuit of Aragua state of December 14, 2011 (evidence file, folios 172 to 184).

Consequently, it determined that the judgment therefore suffered from the “defect of a failure to provide a statement of reasons.”⁶⁰

C.2. Second judicial proceedings

49. On July 11, 2012, an order was issued for the Second Trial Court to open an oral public trial on August 1, 2014. On September 4, 2014, the first instance judgment was delivered in which the Court acquitted the accused of the deaths of the alleged victims. It based its decision, above all, on the statements made by the accused and on the criterion, “pursuant to sound judgment based on the rule of logic, scientific expertise and the dictums of experience, [...] there was no express indication or element of evidence to determine that the accused [...] acted intentionally and, in particular, with malice; and this court considers that they acted in fulfillment of their duty as police officers.”⁶¹

50. On October 28, 2018, the Second Trial Court issued an order recording that the Public Prosecution Service had not filed an appeal and, therefore, required that the judicial file be archived.⁶²

D. The alleged threats and harassment by police officers of the friends and family members of Octavio Ignacio Díaz Álvarez and the brothers, David Octavio and Robert Ignacio Díaz

51. On May 2, 2003, Alexandra Gualdrón and Enmary Dahiana Cava filed a complaint based on “the constant persecution and harassment that they were being subjected to” by the police force involved, and the events of April 26, 2003, when they had been subjected to violation of their home, verbal aggression, threats with a firearm and unlawful deprivation of liberty of Miguel Ángel Díaz Loreto. Regarding these events, the State advised that the Public Prosecution Service had investigated the corresponding complaints. The representatives indicated that they also had been subject to threats, harassment and persecution as a result of which, on May 20, 2003, they had needed to request measures of protection⁶³ and these were granted by the Trial Court of the Criminal Judicial Circuit of Aragua state.⁶⁴

VII MERITS

52. In this case, the Court must examine the international responsibility of the State for the alleged violation of various rights of the Convention in relation to the deaths of Robert Ignacio Díaz Loreto, David Octavio Díaz Loreto and Octavio Ignacio Díaz Álvarez. It has been argued that these deaths occurred at the hands of agents of the state Police Force, and took place in a context of extrajudicial executions that existed in Venezuela at the time the events occurred. The Court will now examine the arguments on the merits in the following order: (a)

⁶⁰ Decision of Contingent Chamber No. 66 of the Appellate Court of the Criminal Judicial Circuit of Aragua state of December 14, 2011 (evidence file, folios 172 to 184).

⁶¹ Judgment of the Criminal Trial Court of the Criminal Judicial Circuit of Aragua state of September 4, 2014 (evidence file, folio 6579).

⁶² Paragraphs 14 and 15 of article 111 of the Organic Criminal Procedural Code (COPP) in force stipulate that: “During criminal proceedings, the obligations of the Public Prosecution Service are: 14. To file remedies against decisions taken in the cases in which it intervenes. 15. To protect the interests of the victims in the proceedings [...].” Thus, since the Court does not have access to the order of October 28, 2018, it is unaware of whether the Public Prosecution Service failed to present an appeal because, based on the powers conferred by this article, this is one of its powers.

⁶³ Cf. Communication of the Aragua state superior prosecutor of May 20, 2003 (evidence file, folios 832 and 833).

⁶⁴ Cf. Decision of the First Supervisory Trial Court of the Aragua state Judicial Circuit of July 2, 2003 (evidence file, folios 3890 to 3892).

Rights to life, personal liberty and personal integrity; (b) Rights to judicial guarantees and judicial protection, and (c) Rights to personal integrity of the family members of Robert Ignacio Díaz Loreto, David Octavio Díaz Loreto and Octavio Ignacio Díaz Álvarez.

VII.1

RIGHTS TO LIFE, PERSONAL INTEGRITY AND PERSONAL LIBERTY (ARTICLES 1(1), 2, 4, 5 AND 7 OF THE AMERICAN CONVENTION AND 1, 6 AND 8 OF THE INTER-AMERICAN CONVENTION TO PREVENT AND PUNISH TORTURE)

A. Arguments of the parties and of the Commission

A.1. The right to life (Article 4 of the American Convention)

53. The **Commission** alleged that the State was responsible for violating the right to life of Robert Ignacio Díaz Loreto, David Octavio Díaz Loreto and Octavio Ignacio Díaz Álvarez. It argued that the State had failed to provide a satisfactory and convincing explanation of how the deaths of these three individuals occurred and, in particular, regarding how the use of lethal force was justified in light of the principles of legitimate purpose, and strict necessity and proportionality. It added that there were many probative elements that were mutually reinforcing, as well as consistent with the specific context and *modus operandi* in force at the time of the events, which accord credibility to the version that there were no confrontations and that what occurred were extrajudicial executions.

54. The **representatives** added that: (i) the police officers who used lethal force were not faced with any of the legal situations for the detention to be considered lawful (arrest warrant or *in flagrancia*); (ii) the facts did not fall within the situation of preventing escape and/or repelling an attack, and (iii) regarding the proportionality, the measures used to repel an attack should have contemplated a differentiated and progressive use of force.

55. The **State** argued that the police officers acted in the presence of *in flagrante delicto*. It argued that an imminent threat and, in general, compliance with the principle of strict necessity was present when the alleged victims were the first to point their firearms at the officers, who responded with their service arms and ammunition, which were similar in power and scope, in keeping with the principle of proportionality. It also argued that the duly proved facts indicated that the deaths of the alleged victims did not conform to the regional patterns of extrajudicial executions and had not occurred in similar contexts and, above all, clearly differed from other cases against Venezuela submitted to this Court.⁶⁵

⁶⁵ Among other matters, the State argued that the facts that set the instant case apart from the characteristic circumstances of extrajudicial executions are that the police officers acted wearing their service uniform, fully identified and with their faces uncovered, in service vehicles, using their service firearms. In addition, the deaths occurred on a public street, in the presence of witnesses, in a situation of *in flagrante delicto*, and the scene of the incidents had been duly preserved and safeguarded. In addition, all the shots were fired from afar; the police vehicle showed signs of shots fired from a distance with a trajectory confirming the existence of a confrontation. It added that the alleged victims were transferred to the nearest public health centers by the police officers involved. It recalled that the Public Prosecution Service opened and led the actions to prove the presumed responsibility of the police officers; the relevant State medical and forensic science agencies conducted all the expert appraisals and tests requested to clarify the facts; the Criminal Court admitted the indictment that was filed and ordered the deprivation of liberty of the police officers prior to the proceedings; the state police force provided all necessary collaboration to the criminal investigation; the police officers themselves voluntarily submitted to the criminal proceedings against them, without any coercion and without trying to escape. It added that it had been the family members and friends of one of the alleged victims who stigmatized the police or indicated that they had violated criminal law or were guilty of "misconduct."

A.2. The rights to personal integrity and personal liberty of Robert Ignacio Díaz Loreto (Article 7(2) of the Convention)

56. The **Commission** indicated that, in the case of Robert Ignacio Díaz Loreto, the police officers did not have a court order and no situation of *in flagrancia* existed that would have justified an arrest; thus, according to the Convention, the arrest was unlawful. It added that the State had made a very *sui generis* reading of the meaning of *flagrancia*, according to which, under its domestic law, it would be possible that the officer would be empowered to make an arrest without a court order, even in situations in which he had not witnessed the perpetration of the offense. The Commission considered that this rule should be analyzed in light of the Convention because that type of *in flagrancia* could give rise to arbitrary arrests and other potential human rights violations. It also argued that it was reasonable to presume that, in the moments before the deprivation of Robert Ignacio Díaz Loreto's life, he suffered profound fear owing to the real and imminent danger that the incident would end with his death, as effectively occurred. It also recalled that, when wounded, he was put in a patrol car and not taken immediately to a health center. Moreover, it argued that the State had not provided any kind of explanation of why the autopsy of Robert Ignacio Díaz Loreto's corpse concluded that he was covered with sewage, including in his eyes, respiratory tract and even his digestive system. Based on the foregoing, it concluded that the State was responsible for the violation of the rights to personal integrity contained in Article 5(1) of the Convention to the detriment of Robert Ignacio Díaz Loreto.

57. The **representatives** agreed with the Commission and added that, after being shot and arrested, Robert Ignacio Díaz Loreto was taken to a canal where a leather tannery discharged its wastewater, and submerged until his lungs were full of contaminated water.⁶⁶ They indicated that he was in the custody of the police at the time of his death, so that the State, in its capacity as guarantor of the right to personal integrity, was presumed to be responsible. They also recalled that even though Robert's lifeless body showed signs of violence that could not be attributed to the use of force described, the authorities failed to conduct an effective investigation into the facts.⁶⁷ Consequently, they concluded that the State was responsible for the violation of Article 5(2) of the American Convention and Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture to the detriment of Robert Ignacio Díaz Loreto.

58. The **State** argued that the Commission had not weighed the facts to determine whether there had been a situation of *in flagrancia*, and that a statement of reasons for its conclusions was totally and absolutely absent. It indicated that, according to article 248 of the Organic Criminal Procedural Code in force at the time, the police officers acted in response to an offense that was being committed.⁶⁸ It added that the Commission had failed to mention

⁶⁶ The representatives indicated that it is presumed that Robert Ignacio Díaz Loreto was tortured and submerged in a place where there was wastewater because the evidence provided by the forensic physician indicated the presence of foreign matter in his respiratory tract and lungs. They indicated that the only way that this inorganic matter would reach those places in the body was through aspiration, and the person would have to have been alive at the time; this is why they considered that the victim, Robert Ignacio, had been tortured. In addition, when the corpse was examined "a large cerebral edema with compression grooves [was found], because the brain was extremely bruised and the lobes were affected." They noted that, apparently, the presumed victim had not suffered any shot to the head so that these were signs of extreme violence and torture suffered by the victim while in the custody of the police officers who were acting under their authority as guarantors of his life.

⁶⁷ The representatives indicated that the police authorities concealed the whereabouts of Robert for two hours, when the hospital nearest to where the facts occurred was only 15 minutes away. Robert was dead when he was admitted to the medical center as indicated by the autopsy and the testimony of the doctors who worked in the hospital.

⁶⁸ The State recalled that the said article establishes that: "[...] an offense that is being committed or that has just been committed shall be considered *flagrante delicto*. In addition, the offense based on which the suspect is pursued by the police authority, by the victim or by the public, or in which he is surprised shortly after having committed the offense, in the place or near the place where it was committed, with weapons, instruments or other

and assess the statements of two witnesses who indicated that Robert Ignacio Díaz Loreto was already covered in mud and that he was taken to a hospital immediately.⁶⁹ It argued that the Commission had not mentioned or assessed a series of statements by Robert's family members and friends according to which, on the day of the confrontation, he was "hunting iguanas in the hills near a canal in La Segundera."

A.3. Article 2 of the American Convention

59. The **representatives** argued that Article 2 of the Convention had also been violated. In the case of the *Landaeta Mejías Brothers et al. v. Venezuela*, the Court had noted that, at the time of those facts, Venezuela did not have laws establishing the parameters for the use of force by State agents. Therefore, the State was allegedly responsible for a violation of Article 2 of the American Convention insofar as, at the time of the events, it had not adapted its domestic laws to the relevant international standards.

60. The **Commission** did not present arguments on this point.

61. The **State** indicated that, the Regulations to the Code of Conduct of Members of the Police Forces that regulated the legitimate use of police force had been in effect since October 14, 1993.

B. Considerations of the Court

62. The Court will now examine the arguments of the parties and of the Commission in the following order: (a) Right to life of Robert Ignacio Díaz Loreto, David Octavio Díaz Loreto and Octavio Ignacio Díaz Álvarez; (b) Rights to personal integrity and personal liberty of Robert Ignacio Díaz Loreto, and (c) Obligation to adopt domestic legal provisions.

B.1. Right to life of Robert Ignacio Díaz Loreto, David Octavio Díaz Loreto and Octavio Ignacio Díaz Álvarez

63. The Court has recognized that States are obliged to guarantee security and maintain public order within their territory and, therefore, they have the legitimate right to use force to re-establish these if necessary. However, although state agents may resort to the use of force and, in some circumstances, even lethal force, the State does not have unlimited power to achieve its objectives, regardless of the seriousness of certain acts and the culpability of the perpetrators.⁷⁰ The Court has had recourse to various relevant international instruments and, in particular, to the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials,⁷¹ and the Code of Conduct for Law Enforcement Officials,⁷² to provide content to the

objects that, in some way justifiably suggest that he is the perpetrator, shall also be considered *flagrante delicto* [...]."

⁶⁹ It added that R.D.P. (victim of the alleged robbery), who accompanied the police officers, was an eyewitness to the confrontation, and also to Robert's transfer to the health center. This witness stated that Robert was taken directly from the scene of the confrontation to the health center; that he was with him during the whole trajectory and that, during this, he was not taken to any place other than the health center. The Commission had not mentioned or assessed the statements of T.A., an eyewitness, who stated that there had been a confrontation initiated by the alleged victims and that Robert Díaz Loreto was covered in mud when he entered the police vehicle.

⁷⁰ Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*, para. 154, and *Case of Women Victims of Sexual Torture in Atenco v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of November 28, 2018. Series C No. 371, para. 159.

⁷¹ Cf. Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (hereinafter, "Basic Principles on the Use of Force"), adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, August 27 to September 7, 1990.

⁷² Cf. Code of Conduct for Law Enforcement Officials. Adopted by the United Nations General Assembly by Resolution 34/169 of December 17, 1979.

obligations relating to the use of force by the State.⁷³ Taking the foregoing into account, the Court has established that, in order to ensure the appropriate measures if the use of force becomes essential, this must be used in keeping with the principles of legality, absolute necessity, and proportionality.⁷⁴ The assessment of the conventionality of the use of force should be made in relation to the context and all the circumstances of the events,⁷⁵ taking the foregoing criteria into account. In the instant case, this Court must determine whether the actions of the State agents conformed to the American Convention in relation to the deprivation of life of Robert Ignacio Díaz Loreto, David Octavio Díaz Loreto and Octavio Ignacio Díaz Álvarez, which occurred at the hands of CSOPEA officials. To this end, it will assess the evidence presented by the parties and by the Commission in order to determine whether the use of force by the CSOPEA was lawful and legitimate and, if applicable, necessary and strictly proportionate.

64. As indicated in the chapter on the facts (*supra* para. 28), there are two versions of the circumstances surrounding the deaths of Robert Ignacio Díaz Loreto, David Octavio Díaz Loreto and Octavio Ignacio Díaz Álvarez. According to one of these versions, it is affirmed that, on January 6, 2003, several CSOPEA officers burst into the home of the Díaz Loreto family, obliged Robert Ignacio Díaz Loreto to exit the house and shot him without any reason. In addition, they shot him again when placing him in the patrol vehicle and delayed going to the health center where he could have been cared for in time (*supra* para. 39). Subsequently, Octavio Díaz and David Díaz, respectively Robert's father and brother, got into a car to search for Robert and, on the way, they were allegedly intercepted by a police detail that obliged them to stop. When they descended from the car, the police allegedly shot David Octavio Díaz Loreto and Octavio Ignacio Díaz Álvarez, and took them to the hospital where they were pronounced dead on arrival. This version is revealed by several statements by witnesses and members of the alleged victims' family as well as by the autopsy performed on the corpse of Robert Ignacio Díaz Loreto (*supra* para. 43).

65. Meanwhile, a second version asserts that between 6 and 6.30 p.m. a police operation was conducted in response to a report of a robbery by R.D.P., that same day; that when the police reached the scene of the incident, and the person who had reported the robbery having identified the presumed authors of the offense, the police officers had proceeded to order those present not to move. In response the presumed offenders had fired on the officers and the latter had responded resulting in an exchange of gunfire. As a result, "two of the men were able to escape by nearby streets," while Robert Ignacio Díaz Loreto fell to the ground seriously wounded; therefore, it had been necessary to take him to the nearest health facility.

⁷³ Cf. *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, paras. 68 and 69, and *Case of Women Victims of Sexual Torture in Atenco v. Mexico*, para. 160.

⁷⁴ These consist in: (a) *Legality*. The exceptional use of force must be established by law and a regulatory framework for its use must exist; (b) *Legitimate purpose*. The use of force must be addressed at achieving a legitimate purpose that is not contrary to the American Convention; (c) *Necessity*. The use of force must be limited to the inexistence or unavailability of other measures to protect the life and integrity of the person or situation that it is sought to protect, in keeping with the circumstances of the case, and (d) *Proportionality*: The measures and method used must be in keeping with the level of resistance offered and the danger that exists. Thus, agents must apply the criteria of differentiated and progressive use of force, determining the degree of cooperation, resistance or violence of the subject against whom the intervention is intended and, on this basis, employ negotiating tactics, control or use of force, as required. Cf. *Case of Nadege Dorzema et al. v. Dominican Republic. Merits, reparations and costs*. Judgment of October 24, 2012. Series C No. 251, para. 85, and *Women Victims of Sexual Torture in Atenco v. Mexico*, para. 162. See also, Basic Principles on the Use of Force, Principles Nos. 1, 4, 5, 7, 8, 9 and 11.

⁷⁵ Cf. *Case of Montero Aranguren et al. (Retén de Catia) v. Venezuela*, para. 82, and *Case of Cruz Sánchez et al. v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of April 17, 2015. Series C No. 292, para. 266.

According to this version, the operation had continued to try and capture the two individuals who had fled and who escaped in a car. Statements indicated that one of them fired his gun through the car window at the police detail that was pursuing them until the officers were able to hit the back tire of the vehicle. At that time, the driver of the car had been able to get out of the vehicle, while the two passengers again offered armed resistance. As a result, they were severely wounded and therefore taken to the nearest hospital where they were pronounced dead on arrival. Moreover, according to this version, following this incident, two firearms had been found near the place where the events took place, which allegedly corresponded to those used in the confrontation. This version is revealed by the police records and interviews with CSOPEA officials and witnesses, and ballistic and forensic evidence (*supra* para. 41).

a) The context

66. Both the Commission and the representatives recalled that, at the time these events took place, a context of extrajudicial executions by police officers existed in Venezuela and, in particular, in Aragua state (*supra* para. 29). Thus, as indicated in the 2003 Ombudsman's Report that context could be identified by "certain patterns of police conduct" with the following characteristics: (a) the official version of the police forces generally referred to the death of the victims during an alleged confrontation; (b) generally, the victims were intercepted and killed in or near their homes, or during police operations or raids; (c) the incident occurred in the presence of witnesses who state that the victim was alive when arrested; (d) in numerous cases, the victims are injured when placed in vehicles; (e) in many cases, among other matters, the scene where the execution took place is altered, the victim is taken to a different place from where the incident occurred, and weapons and psychotropic substances are planted; (f) balaclava helmets are used to hide the identity of the officers and, in some cases, vehicles without license plates or taxis are used for official patrols and individuals subsequently appear dead in the hospital or the morgue; (g) in most cases the victims have been shot numerous times while, in some cases, there are evident signs of torture, and (h) the family members and witnesses are generally threatened and harassed by the police after reporting the facts.⁷⁶ As mentioned, the State has not contested the existence of this contextual framework, but indicated that this case does not comply with several of its characteristic elements (*supra* para. 55).

67. In this regard, it is worth recalling, first, that despite the foregoing and the general situation that might exist in that region and in others in Venezuela, it is not sufficient that, in the region, there is a general situation or context of violations of human rights by state officials in order to prove State responsibility for breaching the obligation to ensure rights in relation to the actions of its agents. It is also necessary that the State's obligation to respect rights has been violated in the particular circumstances of the specific case.⁷⁷

68. In this regard, the Court recalls that a State's responsibility for the acts of state agents or private individuals must be determined based on the particularities and circumstances of each case.⁷⁸ Also, as regards the circumstantial evidence, indications and presumptions on which the context of human rights violations similar to those present in the case is based,

⁷⁶ Cf. Report of the Ombudsman, 2003 (evidence file, folios 184-bis-59 and 184-bis-60). See also, Opinion provided by expert witness Lisandro Raúl Cubas during the public hearing of this case on January 31, 2019.

⁷⁷ Cf. *Case of Yarce et al. v. Colombia. Preliminary objection, merits, reparations and costs*. Judgment of November 22, 2016. Series C No. 325, para. 180, and *Case of López Soto et al. v. Venezuela. Merits, reparations and costs*. Judgment of September 26, 2018. Series C No. 362, para. 148.

⁷⁸ Cf. *Case of the "Mapiripán Massacre" v. Colombia. Merits, reparations and costs*. Judgment of September 15, 2005. Series C No. 134, para. 113, and *Case of Osorio Rivera and family members v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of November 26, 2013. Series C No. 274, para. 150.

these can be used, provided they lead to conclusions consistent with the facts.⁷⁹ Similarly, there does not have to be an absolute concordance between the different element of the contexts and the facts of the case for them to be taken into account when analyzing a specific case. A case-by-case assessment should be made concerning the extent to which those patterns or contexts may be used as indications, presumptions or circumstantial evidence together with the rest of the body of evidence.

b) The analysis of the specific case

69. With regard to the two versions of the facts of the case, first, the Court notes that it is difficult to determine whether there was a confrontation between the police officers owing to a report of a robbery or whether, to the contrary, the events occurred as indicated by the representatives and the Commission. Material and testimonial evidence exists that supports both versions and allows contradicting conclusions to be reached. Also, on two occasions, the Venezuelan criminal courts have considered that the police officers had resorted to a legitimate use of force and delivered acquittal judgments (*supra* para. 49). In this regard, it should be recalled that this Court has repeatedly indicated that it is not a criminal court in which the criminal responsibility of an individual can be determined.⁸⁰ Thus, under Article 1(1) of the Convention,⁸¹ in order to establish that a violation of the rights recognized in the Convention has occurred, it is not necessary to determine the guilt of the perpetrators or their intentions, as under domestic criminal law, nor it is necessary to prove this beyond any reasonable doubt, or identify individually the agents to whom the violations are attributed.⁸² For the purposes of this Court, it must be convinced that acts or omissions have occurred that can be attributed to the State and that the State had an international obligation it has failed to meet.⁸³

70. Regarding the alleged robbery suffered by R.D.P. (*supra* para. 41) that, according to the version argued by the State, gave rise to the series of events that culminated in the death of the three direct alleged victims, this Court lacks evidence to determine whether or not it actually occurred. In addition, neither the representatives nor the Commission presented specific evidence that could call into question the credibility of the testimony of R.D.P. that he had been the victim of a robbery prior to the first alleged confrontation.

71. Similarly, the Court notes that it has been alleged that the use of force in this case was illegitimate taking into account, among other matters, that the police officers did not have a court order and that there was no situation of *flagrante delicto* that could have justified them trying to arrest the three alleged victims – and this, assuming the version of the authorities with regard to the robbery that had occurred some minutes before this event.

72. In this regard, the Court has already indicated that it was unreasonable to completely reject the version according to which a robbery may have taken place that justified the attempt by the police to arrest the alleged victims some minutes later. This situation could possibly have been in keeping with the provisions of Venezuela's domestic law on *flagrante*

⁷⁹ Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*, para. 130, and *Case of Osorio Rivera and family members v. Peru*, para. 150.

⁸⁰ Cf. *Case of Suárez Rosero v. Ecuador. Merits*. Judgment of November 12, 1997. Series C No. 35, para. 37, and *Case of Isaza Uribe et al. v. Colombia. Merits, reparations and costs*. Judgment of November 20, 2018. Series C No. 363, para. 83.

⁸¹ Cf. *inter alia*, *Case of the "Five Pensioners" v. Peru*, para. 163; *Juridical Status and Rights of Undocumented Migrants*. Advisory Opinion OC-18/03 of September 17, 2003. Series A No. 18, para. 76, and *Case of Isaza Uribe et al. v. Colombia*, para. 83.

⁸² Cf. *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits*. Judgment of November 19, 1999. Series C No. 63, para. 75, and *Case of Isaza Uribe et al. v. Colombia*, para. 83.

⁸³ Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*, paras. 127 and 128, and *Case of Isaza Uribe et al. v. Colombia*, para. 83.

delicto. Indeed, article 248 of the Organic Criminal Procedural Code in force at the time of the events refers to the situation of *flagrante delicto* identified by the Commission, and includes surprising the suspect or suspects in the execution of the unlawful act or shortly after, although it also includes other situations such as those in which “the suspect is pursued by the police authority, by the victim or by the public, or in which he is surprised shortly after having committed the offense, in the place or near the place where it was committed, with weapons, instruments or other objects that, in some way justifiably suggest that he was the perpetrator.” In the region’s comparative criminal procedural law, *in flagrante delicto* is also defined in the understanding that this offense is not limited exclusively to the person surprised or identified during the perpetration of the offense, which the Commission appears to consider is the only admissible hypothesis for including a situation within this offense.

73. The Court also recalls that the analysis of the use of force necessarily involves determining whether this sought a legitimate purpose. In this regard, it should be reiterated that the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement indicate clearly that law enforcement officials shall not use their firearms against anyone, unless: (a) in self-defense or defense of others against the imminent threat of death or serious injury; (b) to prevent the perpetration of a particularly serious crime involving grave threat to life; (c) to arrest a person presenting such a danger and resisting their authority, and (d) to prevent his or her escape, and only when less extreme means are insufficient to achieve these objective.⁸⁴

74. In the instant case, the State’s version of the facts refers to a situation in which the police officers used their firearms in a confrontation that had supposedly been initiated by the alleged victims (*supra* para. 41). Accordingly, in this hypothesis, the purpose of the use of force was self-defense. Therefore, here, it is irrelevant to determine whether the action of the police took place under the hypothesis of *in flagrante delicto* to arrest the perpetrator of an offense who, at that time, did not represent grave threat to life. The only relevant matter is to determine whether this use of force occurred in the course of a confrontation and, if applicable, whether it respected the principles of necessity and strict proportionality. Consequently, in this case, the legitimacy of the use of force by the police officers corresponds to an analysis unrelated to the one concerning the legitimacy of proceeding to arrest or detain the alleged victims.

i. The factual elements of the events that led to the deaths of Robert Díaz Loreto, David Octavio Díaz Loreto and Octavio Ignacio Díaz Álvarez

75. With regard to the initial occasion on which the police officers resorted to the use of force, culminating in Robert Díaz Loreto being shot three times, the different statements reveal that this occurred between 6 and 6.30 p.m. Even though the witness statements provided in the domestic sphere do not indicate the exact time, several police officers,⁸⁵ J.L.B.M., a neighbor,⁸⁶ T.A.V., a taxi driver who was present,⁸⁷ the mother of Robert and David Díaz Loreto and wife of Octavio Díaz,⁸⁸ Jairo Alexis Diaz Loreto, Robert’s brother,⁸⁹

⁸⁴ Cf. Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Principle 9.

⁸⁵ Cf. Indictment of the Ninth Prosecutor of the Judicial Circumscription of Aragua state of June 13, 2003 (evidence file, folios 10 and ff.).

⁸⁶ Cf. Indictment of the Ninth Prosecutor of the Judicial Circumscription of Aragua state of June 13, 2003 (evidence file, folio 23).

⁸⁷ Cf. Indictment of the Ninth Prosecutor of the Judicial Circumscription of Aragua state of June 13, 2003 (evidence file, folio 66).

⁸⁸ Cf. Indictment of the Ninth Prosecutor of the Judicial Circumscription of Aragua state of June 13, 2003 (evidence file, folios 10 and ff.).

⁸⁹ Cf. Indictment of the Ninth Prosecutor of the Judicial Circumscription of Aragua state of June 13, 2003 (evidence file, folio 24).

C.R.S.D., a neighbor,⁹⁰ S.J.D.N., a neighbor,⁹¹ and E.J.U.M., a neighbor,⁹² all agree on this approximate time.

76. Regarding this incident in which Robert Díaz Loreto was shot three times by the police officers, it is on record that: (a) he had a wound in his left shoulder, with exit orifice on his right side, in the sixth intercostal space with anterior axillary line; another wound in the epigastric region, 2 cm. from the center with an exit orifice in the right lumbar region, and a wound in the left lumbar region, with no exit orifice;⁹³ (b) according to the forensic appraisals, the shots were fired "from a distance,"⁹⁴ and not point blank as the representatives have argued, and (c) a .38 caliber revolver was gathered at the scene of the incident, near a bloodstain, with five percussed shells in the barrel.⁹⁵ During the autopsy performed on Robert Díaz Loreto, it was found that he had "finely granulated black inorganic material in ocular conjunctiva, oral mucosa, respiratory tract, lungs and digestive system."⁹⁶ Finally, two statements by individuals who went to the Corinsa Social Security clinic indicated that Robert Díaz Loreto's body was "wet from wastewater and there was mud in his eyes and ears."⁹⁷

77. In addition, according to all the statements, the events happened very rapidly and Robert Díaz Loreto, wounded, was placed in the police vehicle to be taken immediately to the Corinsa Social Security clinic for attention. According to the representatives, and the State has not disputed this, that health center was a mere 15-minute drive from the scene of the incident.⁹⁸ However, according to the statement of Juan Rene Rios Ochoa, guard on duty at the health center, the lifeless body of Robert Díaz Loreto was admitted at approximately 7.30 p.m.⁹⁹

78. On the second occasion that the police officers resorted to the use of force, culminating in the death of David Octavio Díaz Loreto and Octavio Ignacio Díaz Álvarez, the different statements reveal that this occurred after the first incident at a time that has not been clearly defined. These two persons were intercepted when they were driving in a neighbor's car (*supra* para. 36); they had exited the vehicle and died due to gunshot wounds. According to the police version, they had escaped in a vehicle following the first confrontation and, on being obliged to halt, opened fire and were shot (*supra* para. 42). According to the representatives' version, after Robert Díaz Loreto had been wounded, they asked a neighbor to take them to the health center in his vehicle and, on the way, they were intercepted and gunned down by the police (*supra* para. 40).

79. Regarding this incident in which David Octavio Díaz Loreto and Octavio Ignacio Díaz Álvarez were shot by the police officers, it is on record that: (a) Octavio Díaz died from

⁹⁰ Cf. Indictment of the Ninth Prosecutor of the Judicial Circumscription of Aragua state of June 13, 2003 (evidence file, folio 25).

⁹¹ Cf. Indictment of the Ninth Prosecutor of the Judicial Circumscription of Aragua state of June 13, 2003 (evidence file, folio 19).

⁹² Cf. Indictment of the Ninth Prosecutor of the Judicial Circumscription of Aragua state of June 13, 2003 (evidence file, folio 25).

⁹³ Cf. Autopsy report No. 0147 of January 8, 2003 (evidence file, folio 6416).

⁹⁴ Cf. Statement by expert witness Teraza Sergio Rodolfo, cited in the judgment of the Criminal Trial Court of the Judicial Criminal Circuit of Aragua state of September 4, 2004 (evidence file, folio 6549).

⁹⁵ Cf. Statement by expert Oviedo Seijas Joel Jose, cited in the judgment of the Criminal Trial Court of the Judicial Criminal Circuit of Aragua state of September 4, 2004 (evidence file, folio 6548).

⁹⁶ Indictment of the Ninth Prosecutor of the Judicial Circumscription of Aragua state of June 13, 2003 (evidence file, folio 21).

⁹⁷ Statements by Alexandra Gualdrón and Jairo Díaz Loreto, cited in relation to the indictment of the Ninth Prosecutor of the Judicial Circumscription of Aragua state of June 13, 2003 (evidence file, folios 23 and 24).

⁹⁸ Cf. Final oral arguments of the representatives during the public hearing of this case on January 31, 2019.

⁹⁹ Cf. Indictment of the Ninth Prosecutor of the Judicial Circumscription of Aragua state of June 13, 2003 (evidence file, folio 10).

hypovolemic shock from a single bullet wound with an asymmetric contusion halo on the right of the right pectoral region, 3rd right intercostal space with parasternal line, exit orifice in the 7th left intercostal space with posterior axillar line;¹⁰⁰ (b) David Díaz Loreto had three gunshot wounds that penetrated his thorax, two of them caused severe cardiac injury with passive hemothorax leading to death; the cause of death was massive hemopneumothorax due to gunshot wound;¹⁰¹ (c) according to the forensic appraisals, the shots were fired from a "distance"¹⁰² and not point blank as the representatives have argued, and (d) a .380 caliber pistol, FEG Mark II, was gathered at the scene of the incident, near a bloodstain, with two non-percussed bullets, three shells of .380 bullets, and one silver shotgun, Renegade .12 caliber with a percussed shotgun shell and another non-percussed cartridge in the pockets of David Díaz Loreto.¹⁰³

ii. Analysis of the evidence related to the alleged confrontations

80. The Court notes that, as already indicated, it is difficult to determine whether or not a confrontation took place with the police officers. Nevertheless, the Court also notes that there are a series of contradictions and inconsistencies in the version of the facts concerning the existence of a confrontation. First, there is the testimony of several family members and neighbors that contradicts this version (*supra* para. 39). Second, according to the statements of the witnesses who support the hypothesis of the confrontation, during the supposed first exchange of fire, the three alleged victims had fired at the police officers (*supra* para. 41). However, only one .38 caliber revolver with 5 used shells in the barrel was found, and some shells from 9 mm. weapons that were used by the police. Apart from these findings that are precisely described in the inspection reports, no shell was found that corresponded to the .380 caliber pistol, which was found at the scene of the second exchange of fire during which Octavio Díaz and David Díaz Loreto lost their life (*supra* para. 42). If, these three individuals had fired against the police detail, as indicated by the State and the different statements that support this version of the facts, shells should have been found that corresponded to the latter weapon (in weapons of that type, the shells are expelled once a shot has been fired).

81. Third, it is unclear how long the police patrol car took to reach the Corinsa Social Security facility so that Robert Díaz Loreto could receive attention, because it has been indicated that Robert Díaz Loreto's body was left off at the facility at 7.30 p.m. and he had been shot between 6 and 6.30 p.m. at a location that was, at most, a 15-minute drive from the medical center (*supra* para. 75). All the statements, including those supporting the hypothesis of the confrontation, are unanimous in indicating that Robert Díaz Loreto was placed in the police patrol vehicle, which – according to the police officers – drove directly to the Corinsa Social Security facility (*supra* para. 77). Based on this timeline, Mr. Díaz Loreto should have arrived between 6.15 and 6.45 p.m. at the latest, especially considering that he was being transported in a police patrol car that was able to drive much faster than a private vehicle. None of Venezuela's domestic authorities examined these discrepancies in the times and, during the processing of the instant case, neither did the State offer any kind of explanation concerning that delay or those temporal inconsistencies. Furthermore, it should be recalled that some statements by family members and neighbors indicate that they had

¹⁰⁰ Cf. Statement by expert Mendoza Goicochea Solangela, cited in the judgment of the Criminal Trial Court of the Criminal Judicial Circuit of Aragua state of September 4, 2004 (evidence file, folio 6564).

¹⁰¹ Cf. Statement by the expert Mendoza Goicochea Solangela, cited in the judgment of the Criminal Trial Court of the Criminal Judicial Circuit of Aragua state of September 4, 2004 (evidence file, folio 6564).

¹⁰² Cf. Statement by expert witness Teraza Sergio Rodolfo, cited in the judgment of the Criminal Trial Court of the Criminal Judicial Circuit of Aragua state of September 4, 2004 (evidence file, folio 6549).

¹⁰³ Cf. Statement by expert Oviedo Seijas Joel Jose, cited in the judgment of the Criminal Trial Court of the Criminal Judicial Circuit of Aragua state of September 4, 2004 (evidence file, folio 6548).

seen the police vehicle patrolling the neighborhood with Robert Díaz Loreto inside instead of taking him directly to a medical center.¹⁰⁴

82. Fourth, the Court notes that the Venezuelan authorities have not investigated or conducted any inquiries into the autopsy findings concerning the black inorganic material found in Robert Díaz Loreto's ocular conjunctiva, oral mucosa, respiratory tract, lungs and digestive system. As already mentioned, these findings could indicate that he was subjected to physical abuse that would constitute ill-treatment or torture. The State merely indicated that several witnesses had stated that Robert Díaz Loreto was covered in mud before being in the custody of the police authorities and that he had been hunting iguanas with other people during the day (*supra* para. 58). Even though this explanation provided by the State could possibly partly explain the presence of mud on Robert Díaz Loreto's clothes, it does not explain the specific findings of the autopsy or how he could have ingested and breathed in the inorganic material. Moreover, the family members and neighbors who gave statements regarding the events did not mention the presence of mud on his clothes before he was placed in the police patrol car. It should be noted that nor did R.D.P. indicate that one of the individuals who assaulted him was covered in mud when that act was perpetrated; he only referred to this in relation to the events that followed the alleged confrontation (*supra* para. 70), and this is not consistent with the line of argument according to which it was while hunting iguanas that he had muddied his clothes; in other words, prior to the alleged robbery. Consequently, R.D.P. should have noticed the muddied clothes at the time of the robbery and not merely after the alleged confrontation had occurred.

83. Additionally, the Court notes that the seven gunshots that impacted the bodies of Robert Díaz Loreto, David Díaz Loreto and Octavio Díaz, were concentrated on their thorax or, more generally, on their "bodies" and that none of them was shot on their extremities or other parts of the body that would have had less lethal results, and that would be more consistent with the type of injuries more typical of confrontations in which the wounds are mainly located in the "extremities of the body."¹⁰⁵

84. Furthermore, during the two alleged confrontations, no member of the police detail was injured even though, according to the State, it was the three alleged victims who had the advantage of the element of surprise, and who opened fire first. In this regard, it is useful to recall that the CONAREPOL report indicated that "the large number of injuries and deaths in confrontations with the police, as well as the disproportion between police and civilian casualties, would indicate the extremely lethal nature of the police activity, while suggesting the concealment of executions by invoking confrontations."¹⁰⁶ Here, it should be recalled that, according to forensic appraisals 982-03 and 19 of 2003,¹⁰⁷ the shots were fired from "a distance," and that this should be understood to mean from around 30 or 45 cms [*sic*].¹⁰⁸ At that distance, it could be logical and reasonable to understand that: (a) the shots fired by the police officers could have been more easily fired at non-lethal areas, and (b) casualties or injuries would have been caused on both sides.

¹⁰⁴ Cf. Indictment of the Ninth Prosecutor of the Judicial Circumscription of Aragua state of June 13, 2003 (evidence file, folios 10 and ff.).

¹⁰⁵ For example, in its manual on War Surgery, the International Committee of the Red Cross (ICRC) explains that the anatomic distribution of wounds in international and non-international armed conflict varies enormously according to the bibliography consulted and the methodology used although, according to a table of historical examples, wounds to the limbs predominate (from 50% to 79%). CICR, War Surgery, Chapter 5.

¹⁰⁶ CONAREPOL Report, 2006 (evidence file, folio 184-bis-226).

¹⁰⁷ Cf. Appeal by the Ninth Prosecutor of the Judicial Circumscription of Aragua state of July 19, 2007 (evidence file, folios 6480 and 6548).

¹⁰⁸ Cf. Statement by expert witness Teraza Sergio Rodolfo, cited in the judgment of the Criminal Trial Court of the Criminal Judicial Circuit of Aragua state of September 4, 2004 (evidence file, folio 6549) and Expert opinion of José Pablo Baraybar in the *Case of Landaeta Mejías Brothers et al. v. Venezuela* (evidence file, folios 6620 and ff.).

85. Furthermore, and as indicated in the preceding paragraph, the CONREPOL report noted that “an indicator of police lethality is the disproportion between civilians and police officers injured or killed.”¹⁰⁹ Thus, “in 2005, in confrontations with the police, for every civilian wounded three civilians die. This means that the police force kills more people than in injures, and the number of those killed is three times that of those injured.”¹¹⁰ The report also notes that “[i]n general, the information reveals that for a civilian victimized in a confrontation with police officers, the probability of dying is 72.5%, and the probability of being injured is 27.5%.”¹¹¹

86. Additionally, as the Court will indicate in the chapter on Articles 8 and 25 of the Convention (*infra* Chapter VIII.2), the body of evidence reveals that the authorities did not take measures that would have been decisive to confirm or reject the line of investigation regarding the confrontation, such as taking fingerprints from the firearms or cartridges, or testing for gunpowder residue on hands to prove that the weapons were effectively fired by the direct alleged victims in this case. Also, no ballistic tests were performed to prove that the bullets collected from the police patrol vehicles came from the firearms seized. It should be added that no record of the ownership of the firearms found at the scene of the incidents was presented, or a forensic appraisal of the bullets that shot the alleged victims. Such appraisals that were not conducted and probative elements that were not submitted could have provided better-quality evidence that would have been of great importance to verify one or other hypothesis of what happened. This Court finds that, in the instant case, it is not reasonable to consider that the absence of such decisive investigation procedures – procedures that the Venezuela authorities should have undertaken and that did not depend on a request by the family members of those who died – could prove a hypothesis of the facts unfavorable to the alleged victims, especially in the case of evidence that could have been decisive to prove that the events constituted executions rather than confrontations.

iii. Conclusion

87. Based on the foregoing, the Court finds that there are several inconsistencies in the version of the facts presented by the State and although they do not allow the Court to determine whether there really was a confrontation between the police officers and the alleged victims they do allow it to conclude that the State did not provide it with a credible and satisfactory explanation of the way in which Robert Ignacio Díaz Loreto, David Octavio Díaz Loreto and Octavio Ignacio Díaz Álvarez met their deaths.

88. In this regard, it should be recalled that, in other cases, this Court has indicated that it is incumbent on the domestic authorities to elucidate the facts and to determine individual responsibilities. Indeed, in any case of the use of force by State agents that results in the death of, or injuries to, one or more persons, the State has the obligation to provide a satisfactory and convincing explanation of what happened and to disprove the arguments concerning its responsibility with appropriate evidence.¹¹² This has not occurred in the instant case, given the contradictions that have not been clarified and the deficiencies in the forensic appraisals mentioned above.

89. On this basis, the Court finds that the State is responsible for the violation of the right to life contained in Article 4 of the American Convention to the detriment of Robert Ignacio Díaz Loreto, David Octavio Díaz Loreto and Octavio Ignacio Díaz Álvarez.

¹⁰⁹ CONAREPOL Report, 2006 (evidence file, folio 184-bis-225).

¹¹⁰ CONAREPOL Report, 2006 (evidence file, folio 184-bis-225).

¹¹¹ CONAREPOL Report, 2006 (evidence file, folio 184-bis-224).

¹¹² *Cf. Case of Montero Aranguren et al. (Retén de Catia) v. Venezuela*, para. 80 and *Case of Isaza Uribe et al. v. Colombia*, para. 88.

B.2. Rights to personal liberty and personal integrity of Robert Ignacio Díaz Loreto

90. The Court has indicated that the essential content of Article 7 of the American Convention is the protection of the liberty of the individual against any arbitrary or unlawful interference by the State.¹¹³ The Convention has recognized that the principal guarantee of individual liberty and safety is the prohibition of unlawful or arbitrary detention or imprisonment. In relation to unlawful detention, the Court has indicated that “although [the State] has the right and the obligation to ensure state security and maintain public order, its powers are not unlimited, because it has the duty, at all times, to apply procedures that are in keeping with the law and that respect the fundamental rights of all those who are subject to its jurisdiction.”¹¹⁴

91. In addition, the Court recalls that the Convention explicitly recognizes the right to personal integrity, which is a right the protection of which encapsulates the main purpose of the peremptory prohibition of torture and of cruel, inhuman or degrading treatment or punishment.¹¹⁵ The Court has also indicated that any use of force that is not strictly necessary due to the conduct of the person detained constitutes an attack on human dignity in violation of Article 5 of the American Convention.¹¹⁶

92. Furthermore, the Court notes that, pursuant to its case law, it should be recalled that “in any case of the use of force [by State agents] that has resulted in the death or injury of one or more persons, the State has the obligation to provide a satisfactory and convincing explanation of what happened and to disprove the allegations concerning its responsibility with adequate probative elements.”¹¹⁷ Similarly, this Court’s consistent case law recognizes that a presumption exists that the State is responsible for the injuries revealed by anyone who has been in the custody of State agents.¹¹⁸

93. In the instant case, as already mentioned, Robert Díaz Loreto was already dead when he was admitted to the Corinsa Social Security clinic, at least one hour after having been injured by police officers of Aragua state. According to the autopsy, his body was full of mud and “sewage,” he had a “moderate cerebral edema with compression grooves in [...] the hippocampus and orbital lobes,” and the “oral cavity with the presence on the gums of a black granular substance” also within the thorax, the respiratory tract, in the teeth, the esophagus, the trachea and, according to the forensic evidence, “it was already entering the lungs” (*supra* para. 37). This evidence indicates that Robert Díaz Loreto was subjected to physical abuse, probably while in the custody of the police (*supra* para. 82). Also, as indicated, the authorities failed to investigate those findings in Robert’s body, and did not provide a satisfactory explanation about them. Consequently, this Court finds that the State is responsible for a

¹¹³ Cf. *Case of the “Juvenile Re-education Institute” v. Paraguay. Preliminary objections, merits, reparations and costs.* Judgment of September 2, 2004. Series C No. 112, para. 223, and *Case of Romero Feris v. Argentina*, para. 76.

¹¹⁴ *Case of Bulacio v. Argentina. Merits, reparations and costs.* Judgment of September 18, 2003. Series C No. 100, para. 124, and *Case of Espinoza González v. Peru.* Preliminary objections, merits, reparations and costs. Judgment of November 20, 2014. Series C No. 288, para. 117.

¹¹⁵ Cf. *Case of Ximenes Lopes v. Brazil. Merits, reparations and costs.* Judgment of July 4, 2006. Series C No. 149, para. 126, and *Case of Ruíz Fuentes et al. v. Guatemala. Preliminary objection, merits, reparations and costs.* Judgment of October 10, 2019. Series C No. 384, para. 120

¹¹⁶ Cf. *Case of Loayza Tamayo v. Peru. Merits.* Judgment of September 17, 1997. Series C No. 33, para. 57, and *Case of Omeara Carrascal et al. v. Colombia. Merits, reparations and costs.* Judgment of November 21, 2018. Series C No. 368, para. 193.

¹¹⁷ Cf. *Case of Cabrera García and Montiel Flores v. Mexico. Preliminary objection, merits, reparations and costs.* Judgment of November 26, 2010. Series C No. 220, para. 134 and *Case of Isaza Uribe et al. v. Colombia*, para. 88.

¹¹⁸ Cf. *Case of the Miguel Castro Castro Prison v. Peru. Merits, reparations and costs.* Judgment of November 25, 2006. Series C No. 160, para. 311, and *Case of Munárriz Escobar et al. v. Peru. Preliminary objection, merits, reparations and costs.* Judgment of August 20, 2018. Series C No. 355, para. 73.

violation of the right to personal integrity contained in Article 5(1) of the American Convention to the detriment of Robert Díaz Loreto.

94. In addition, this Court has already referred to the inconsistencies in the calculation of the time it would have taken the police patrol car to reach the Corinsa Social Security clinic, and the State did not provide a reasonable and satisfactory explanation (*supra* para. 81). During that time, which was at least 45 minutes more than the time required to drive from the scene of the incident to the health center, Robert Díaz Loreto was in police custody. Therefore, the Court finds that the State is responsible for violating the right to personal liberty contained in Article 7 of the American Convention to the detriment of Robert Díaz Loreto.

95. Consequently, the State is responsible for a violation of the right to personal integrity contained in Article 5(1) of the American Convention and the right to personal liberty contained in Article 7 of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of Robert Díaz Loreto.

B.3. Obligation to adopt domestic legal provisions

96. The Court has indicated that States must create an adequate legislative framework that dissuades any threat to the right to life. Consequently, domestic laws must establish parameters that are sufficiently clear concerning the use of lethal force and firearms by state agents.¹¹⁹ In the instant case, it has been verified that the Venezuelan State has had a Code of Conduct for Members of the Police Forces since October 14, 1993.¹²⁰ The regulations expressly include the Code of Conduct for Law Enforcement Officials and the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. The representatives failed to explain how these regulations did not comply with the international standards in force at the time of the facts of this case.

97. Consequently, the Court does not have sufficient evidence to rule on the State's responsibility for a violation of the obligation to adopt domestic legal provisions contained in Article 2 of the American Convention.

VII.2

RIGHTS TO JUDICIAL GUARANTEES AND JUDICIAL PROTECTION (ARTICLES 1(1), 8(1) AND 25 OF THE AMERICAN CONVENTION)

A. Arguments of the parties and of the Commission

98. The **Commission** indicated that: (a) the measures undertaken to investigate the deaths of Robert Ignacio Díaz Loreto, David Octavio Díaz Loreto and Octavio Ignacio Díaz Álvarez were neither adequate nor sufficient to satisfy the State's obligation to conduct an exhaustive and diligent investigation; (b) the case file of the initial investigation before the CICPC reveals that the basic assumption used was the version of the confrontations; (c) in view of the existence of two versions, the competent authorities failed to address both lines of investigation seriously and impartially, or to require all the necessary and relevant evidence to elucidate the facts; (d) there is no record that they followed up on a line of investigation related to the possible connection of the facts to the context of extrajudicial executions in

¹¹⁹ Cf. *Case of Montero Aranguren et al. (Retén de Catia) v. Venezuela*, para. 75, and *Case of Valencia Hinojosa et al. v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of November 29, 2016. Series C No. 327, para. 136.

¹²⁰ Cf. Regulations for the Coordination of Police Services and Code of Conduct for Members of the Police Forces, Official Gazette, No. 35,317 of October 14, 1993 (evidence file, folios 6372 to 6403).

Venezuela, especially in Aragua state, and (e) the Public Prosecution Service let the time expire for appealing the first instance judgment of September 4, 2014.

99. The **representatives** agreed with the Commission's allegations and added that the investigation revealed flaws: (a) in gathering evidence from the autopsies performed on the victims, and (b) in the assessment of the evidence and the impossibility of gaining access to the expert appraisals and probative elements in the case file. Lastly, they referred to the failure to investigate the harassment of the family members during the proceedings and the murder of a witness during the investigations.

100. For its part, the **State** indicated that the investigation stage was conducted diligently and within the time frame established by law, and this was revealed by the fact that the Public Prosecution Service filed an indictment five months after the events occurred. Similarly, it noted that the Public Prosecution Service did investigate the violation of the right to life of the alleged victims and took numerous measures, including the provision of 87 probative elements. It also indicated that the Commission's argument that the Criminal Cassation Chamber and the Appellate Court had recognized that relevant evidence had not been required during the investigation and that the assessment of the evidence was not duly justified was not correct. In addition, it asserted that the family members of the alleged victims had played an active role with the Public Prosecution Service in the investigation and had filed a complaint before the Supervisory Court, which they later withdrew. Therefore, the State considered that the argument that they had had difficulties to access the case file and to be taken into account in the proceedings was unfounded. Regarding the reports of the family that they had suffered threats, harassment and other arbitrary acts throughout the investigation, the State argued that it had provided measures of protection in favor of Dinora Díaz Loreto, Jairo Alexis Díaz Loreto, Alexandra Gualdrón and Enmary Dahina Cava, following a request made by the Public Prosecution Service.

B. Considerations of the Court

101. Article 8(1) of the Convention recognizes that everyone has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent and impartial judge or court, previously established by law, in the substantiation of any accusation of a criminal nature made against them or for the determination of their rights, all under the general obligation of the States to ensure to all persons subject to their jurisdiction the free and full exercise of the rights recognized in the Convention (Article 1(1)).¹²¹ In addition, the Court has indicated that the obligation to investigate is an obligation of means rather than of results that must be assumed by the State as its own legal duty and not as a mere formality preordained to be ineffective, or as a step taken by private interests that depends upon the initiative of the victims or their families or upon their offer of evidence.¹²²

102. The Court will now refer to the arguments on the violation of the right to judicial guarantees in the following order: B.1. The alleged lack of due diligence in the investigation and in the criminal proceedings for the death of Robert Ignacio Díaz Loreto, David Octavio Díaz Loreto and Octavio Ignacio Díaz Álvarez; B.2. The reasonable time for the investigation and criminal proceedings; B.3. Alleged lack of investigation and adoption of measures of protection for the family members of the alleged victims, and B.4. Conclusion.

¹²¹ Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*, para. 62, and *Case of Carvajal Carvajal et al. v. Colombia. Merits, reparations and costs. Judgment of March 13, 2018. Series C No. 352*, para. 101.

¹²² Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*, para. 177, and *Case of Ruíz Fuente et al. v. Guatemala*, para. 175.

B.1. Due diligence in the investigation

103. Regarding the gathering and conservation of probative elements, the Court has indicated that “the procedures conducted to investigate the facts must be assessed as a whole and, in principle, it is not for the Court to decide on the satisfactory nature of the investigation measures.”¹²³ Indeed, it is not incumbent on the Court “to substitute for the domestic jurisdiction establishing the specific methods to investigate and prosecute a particular case in order to obtain a better or more effective result; rather, it verifies whether the international obligations of the State derived [...] from the Convention have been violated by the measures taken in the domestic sphere.”¹²⁴ Moreover, this analysis is only required when there has been an evident or flagrant absence of the basic procedures established in domestic law that should be conducted in this type of situation that violates the duty of due diligence.¹²⁵ The Court is also able, under its complementary and reinforcing jurisdiction, to examine domestic investigation procedures,¹²⁶ and this may lead it to determine that there have been flaws in due diligence.¹²⁷ Nevertheless, this will only be appropriate when it is clear that the alleged flaws could have affected the investigation as a whole.¹²⁸ Thus, it should not be assumed that flaws in isolated investigation measures have had a negative impact on the whole proceedings if, despite them, the investigation was effective in determining the facts.¹²⁹

104. The Court also recalls that, under the obligation to investigate a death, a genuine effort to determine the facts must be evident starting with the diligence shown in the initial measures. When investigating a violent death, the early stages of the investigation are crucially important, as is the negative impact that omissions and irregularities at such stages may have on the real and effective possibility of elucidating the facts.¹³⁰ In this regard, the Court has specified the guiding principles that must be observed in an investigation into a violence death, as in this case. The minimum steps that the state authorities who conduct an investigation of this type must take include: (i) identification of the victim; (ii) collection and preservation of probative elements related to the death in order to contribute to any potential investigation of those responsible; (iii) identification of possible witnesses, obtaining their statements concerning the death that is being investigated; (iv) determination of the cause, manner, place and time of death, as well as any pattern or practice that could have caused the death, and (v) distinguishing between natural death, accidental death, suicide and homicide. The autopsies and analysis of human remains must be performed rigorously, by competent professionals, using the most appropriate procedures.¹³¹

¹²³ Cf. *Case of Castillo González et al. v. Venezuela. Merits*. Judgment of November 27, 2012. Series C No. 256, para. 153, and *Case of Alvarado Espinoza et al. v. Mexico. Merits, reparations and costs*. Judgment of November 28, 2018. Series C No. 370, para. 213.

¹²⁴ Cf. *Case of Nogueira de Carvalho et al. v. Brazil. Preliminary objections and merits*. Judgment of November 28, 2006. Series C No. 161, para. 80, and *Case of Alvarado Espinoza et al. v. Mexico*, para. 213.

¹²⁵ Cf. *Case of Carvajal Carvajal et al. v. Colombia*, para. 124, and *Case of Villamizar Durán et al. v. Colombia*, para. 178.

¹²⁶ Cf. *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala*, para. 222, and *Case of Carvajal Carvajal et al. v. Colombia*, para. 117.

¹²⁷ Cf. *Case of Yarce et al. v. Colombia*, para. 282, and *Case of Arrom Suhurt et al. v. Paraguay. Merits*. Judgment of May 13, 2019. Series C No. 377, para. 143.

¹²⁸ Cf. *Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia. Merits, reparations and costs*. Judgment of September 1, 2010. Series C No. 217, para. 172, and *Case of Arrom Suhurt et al. v. Paraguay*, para. 143.

¹²⁹ Cf. *Case of Luna López v. Honduras. Merits, reparations and costs*. Judgment of October 10, 2013. Series C No. 269, para. 167, and *Case of Arrom Suhurt et al. v. Paraguay*, para. 143.

¹³⁰ Cf. *Case of Servellón García et al. v. Honduras*, Judgment of September 21, 2006. Series C No. 152, para. 120, and *Case of Carvajal Carvajal et al. v. Colombia*, para. 117.

¹³¹ Cf. *Case of Juan Humberto Sánchez v. Honduras, Preliminary objection, merits, reparations and costs*. Judgment of June 7, 2003. Series C No. 99, para. 127, and *Case of Ruíz Fuentes et al. v. Guatemala*, para. 178.

105. In addition, throughout its case law and with regard to the scene of the crime, the Court has indicated that the investigators must, at the very least: (i) photograph the scene, any other physical evidence and the body as it was found and after it has been moved; (ii) gather and conserve the samples of blood, hair, fibers, threads and other clues; (iii) examine the area to look for footprints or any other trace that could be used as evidence, and (iv) prepare a detailed report with any observations regarding the scene, the measures taken by the investigators, and the storage assigned for all the evidence collected.¹³² The Court has also established that, when investigating a crime scene, this must be preserved in order to protect all the evidence.¹³³

106. In this case, the Court observes that no steps were taken to verify different aspects of the version of the family members and other witnesses, such as reconstruction of the events, expert appraisals of the victims' clothes, and evidence regarding the mud found in the victim's mucous membrane, lungs and digestive system. Above all, there were flaws in the autopsies and in the police forensic inspections, because no photographs were taken of the corpses; the outlines of the corpses were not marked, and a detailed description of the autopsy procedure was not made that revealed the clothes worn. In addition, it was not proved that the victims had fired the weapons that were found at the scene of the crime because no tests were carried out on fingerprints or to verify if there was gunpowder residue on their hands. The State has not contested this in its arguments.

107. With regard to the measures taken to obtain evidence during the investigation, the State merely indicated that an extensive investigation was conducted supported by 87 probative elements, including expert appraisals and statements of family members and neighbors of the alleged victims. The Court considers that the mere number of probative elements presented in the proceedings was not sufficient to comply with the standard of due diligence. To the contrary, the failure to take important steps and obtain significant evidence, in particular in relation to the scene of the crime and the examination of the bodies, resulted in a breach of the due diligence required in an investigation. The Court finds that this conduct by the State violated the obligation of due diligence in the investigation.

108. Regarding the lines of investigation, the Court notes that statements by family members and other witnesses reveal, consistently, that Robert Ignacio Díaz Loreto's body was full of mud and "sewage." Similarly, the autopsy performed by Ligia García Mejía revealed that the corpse had a "moderate cerebral edema with compression grooves in [...] the hippocampus and orbital lobes," and "oral cavity with the presence on the gums of a black granular substance"¹³⁴ which was also within the thorax, the respiratory tract, the teeth, the esophagus, the trachea and, according to the expert's statement, "it was already entering the lungs."¹³⁵ Despite this, there is record that the authorities took any measures to analyze those findings or that they were taken into account in their lines of investigation when conducting inquiries into the facts of the case.

109. Similarly, in the cassation judgment of May 11, 2010, the Venezuelan Supreme Court of Justice established that the Appellate Court had not provided sufficient reasons for the hypothesis of legitimate defense or that the police officers were complying with their duty.¹³⁶

¹³² Cf. *Case of González et al. ("Cotton Field") v. Mexico. Preliminary objection, merits, reparations and costs.* Judgment of November 16, 2009. Series C No. 205, para. 301, and *Case of Villamizar Durán et al. v. Colombia*, para. 176.

¹³³ Cf. *Case of the Landaeta Mejías Brothers et al. v. Venezuela*, para. 254, and *Case of Villamizar Durán et al. v. Colombia*, para. 176.

¹³⁴ Autopsy report No. 0146 of January 8, 2003 (evidence file, folio 6415)

¹³⁵ Record of the oral, public and unipersonal trial by the Fifth Trial Court of January 25, 2007 (evidence file, folios 860 to 866).

¹³⁶ Cf. Judgment of the Supreme Court of Justice, Criminal Cassation Chamber of May 11, 2010 (evidence file, folios 6585 to 6618).

Moreover, in its judgment of December 14, 2011, the Appellate Court acknowledged that important evidence had not been obtained during the investigation, without any reasonable justification.¹³⁷ Even though some of these omissions were rectified during the second judicial proceedings, the lack of diligence during the initial moments of the investigation had a negative impact on the possibility of clarifying the facts.

110. Taking all the above into consideration, the Court concludes that all existing lines of investigation were not investigated, or at least not thoroughly, despite the existence of reasonable indications. Also, given the context of extrajudicial executions in Venezuela, especially in Aragua state, it concludes that the State failed to take this context into account in the investigation even though patterns of extrajudicial executions were identified, such as: irregular actions by Aragua law enforcement officers, the justification of public safety and the profile of the victims, confrontations simulated by altering the crime scene or planting evidence, and the situation of impunity that persisted after the events took place. For these reasons, the Court considers that the State incurred in a violation of due diligence in the investigation.

111. Lastly, regarding the representatives' allegation that the Public Prosecution Service failed to file an appeal against the judgment of the Second Trial Court of September 4, 2014, that acquitted the accused for the second time, they indicated that that were unable to access the judgment owing to the impossibility of obtaining copies of the case file in the domestic sphere, and this has not been contested by the State. This Court considers that, in this case, it is unclear whether the Public Prosecution Service was legally obliged to appeal the acquittal and the representatives failed to explain how this constituted an international obligation under the American Convention.

B.2. The reasonable time for the investigation and criminal proceedings

112. Article 8(1) of the Convention requires that events investigated during criminal proceedings be decided within a reasonable time because, in certain cases, a prolonged delay may, in itself, constitute a violation of judicial guarantees.¹³⁸ Similarly, this Court's case law has considered four elements to determine whether the judicial guarantee of a reasonable time has been respected, namely: (a) the complexity of the matter; (b) the procedural activity of the interested party; (c) the conduct of the judicial authorities, and (d) the effects on the legal situation of the person involved in the proceedings. Also, based on these criteria, the State must provide the reasons why it has required the time that has passed to conclude the case.¹³⁹ On this basis, the Court will analyze whether the State complied with a reasonable time in the investigations and proceedings relating to the deaths of Robert Ignacio Díaz Loreto, David Octavio Díaz Loreto and Octavio Ignacio Díaz Álvarez and, to this end, it will examine each of the four above-mentioned elements.

a) The complexity of the case

113. Regarding this first element, the Court has taken different criteria into account to determine the complexity of a matter, including: (i) the complexity of the evidence;¹⁴⁰ (ii) the

¹³⁷ Cf. Decision of Contingent Chamber No. 66 of the Appellate Court of the Criminal Judicial Circuit of Aragua state of December 14, 2011 (evidence file, folios 172 to 184).

¹³⁸ Cf. *Case of Hilaire Constantine and Benjamin et al. v. Trinidad and Tobago. Merits, reparations and costs.* Judgment of June 21, 2002. Series C No. 94, para. 145, and *Case of Villamizar Durán et al. v. Colombia*, para. 165.

¹³⁹ Cf. *Case of Anzualdo Castro v. Peru. Preliminary objection, merits, reparations and costs.* Judgment of September 22, 2009. Series C No. 202, para. 156, and *Case of Muelle Flores v. Peru*, para. 155.

¹⁴⁰ Cf. *Case of Genie Lacayo v. Nicaragua. Merits, reparations and costs.* Judgment of January 29, 1997. Series C No. 30, para. 78, and *Case of Villamizar Durán et al. v. Colombia*, para. 166

diversity of procedural subjects¹⁴¹ or the number of victims;¹⁴² (iii) the time that has elapsed since the State became aware of the alleged offense;¹⁴³ (iv) the characteristics of the remedy under domestic law,¹⁴⁴ and (v) the context in which the facts occurred.¹⁴⁵

114. In this case, the Court notes that: (a) the events that occurred relate to three victims who were fully identified from the outset; (b) the facts could allegedly be attributed to a group of police officers, also identified from the outset, and (c) from the start, the authorities had access to all the elements of interest for an appropriate criminal investigation. Added to this, the events took place in a context of extrajudicial executions in Venezuela, and especially in Aragua state, of which the State was aware.

115. That said, the State argued that this was a complex case because two different incidents were investigated, with several victims and alleged perpetrators, and the alleged perpetrators were police officers. However, none of these elements is directly related to the complexity of the proceedings. Nor is the State's argument regarding the mixed composition of the courts in the context of a reform of criminal procedure because any delays resulting from the adaption to the new legislation is the responsibility of the State and should not have negative impact on the respect and guarantee of the right to judicial guarantees.

116. Therefore, the Court considers that, in this case, there is sufficient evidence to conclude that the investigation of the facts was not complex.

b) The procedural activity of the interested party

117. Regarding this second element, the Court must assess whether the interested parties carried out the interventions that were reasonably required at the different procedural stages.¹⁴⁶ The State argued that the alleged victims contributed to the duration of the criminal proceedings. However, the Court considers that preliminary absence from a judicial procedure or the fact of filing a recusal against a judge, as the State has alleged, are interventions that could reasonably be required by the interested parties.

c) The conduct of the judicial authorities

118. Regarding the conduct of the judicial authorities, the Court has understood that, as leaders of the process, they have the obligation to guide and prosecute the judicial proceedings in order not to sacrifice justice and due process to formalities.¹⁴⁷ In the instant case, the Court notes that: (a) after the Public Prosecution Service had filed the indictment

¹⁴¹ Cf. *Case of Acosta Calderón v. Ecuador*. Merits, reparations and costs. Judgment of June 24, 2005. Series C No. 129, para. 106, and *Case of Villamizar Durán et al. v. Colombia*, para. 166.

¹⁴² Cf. *Case of Furlan and family members v. Argentina*. Preliminary objections, merits, reparations and costs. Judgment of August 31, 2012. Series C No. 246, para. 156, and *Case of Carvajal Carvajal et al. v. Colombia*, para. 107. Similarly, see *Case of Baldeón García v. Peru*. Merits, reparations and costs. Judgment of April 6, 2006. Series C No. 147, para. 152, and *Case of Vargas Areco v. Paraguay*. Merits, reparations and costs. Judgment of September 26, 2006. Series C No. 155, para. 103, and *Case of Villamizar Durán et al. v. Colombia*, para. 166.

¹⁴³ *Mutatis mutandis*, Cf. *Case of Heliodoro Portugal v. Panama*. Preliminary objections, merits, reparations and costs. Judgment of August 12, 2008. Series C No. 186, para. 150, and *Case of Villamizar Durán et al. v. Colombia*, para. 107.

¹⁴⁴ Cf. *Case of Salvador Chiriboga v. Ecuador*. Preliminary objection and merits. Judgment of May 6, 2008. Series C No. 179, para. 83, and *Case of Villamizar Durán et al. v. Colombia*, para. 166.

¹⁴⁵ Cf. *Case of Furlan and family members v. Argentina*, para. 156, and *Case of Villamizar Durán et al. v. Colombia*, para. 166.

¹⁴⁶ Cf. *Case of Fornerón and daughter v. Argentina*. Merits, reparations and costs. Judgment of April 27, 2012. Series C No. 242, para. 69, and *Case of Villamizar Durán et al. v. Colombia*, para. 166.

¹⁴⁷ Cf. *Case of Myrna Mack Chang v. Guatemala*. Merits, reparations and costs. Judgment of November 25, 2003. Series C No. 101, para. 211, and *Case of Villamizar Durán et al. v. Colombia*, para. 166.

on June 13, 2003,¹⁴⁸ the proceedings were admitted to the oral and public stage on January 18, 2007, almost four years later;¹⁴⁹ (b) during the processing of the appeal filed by the Public Prosecution Service on July 19, 2007,¹⁵⁰ the proceedings were suspended for at least seven months due to the recusal of the president of the Appellate Court,¹⁵¹ and the final decision on that remedy was finally adopted almost two years later, on April 1, 2009;¹⁵² (c) after the remedy of cassation was filed, the processing lasted approximately two more years until the decision of December 14, 2011;¹⁵³ (d) Lastly, the new judicial proceedings concluding with an acquittal on September 4, 2014¹⁵⁴ and, as indicated in the order issued by the competent court, it was not appealed by the Public Prosecution Service.¹⁵⁵

119. The foregoing reveals that there were diverse periods of inactivity during the investigations and proceedings that have not been justified by the Venezuelan authorities, and that these caused an undue delay in the process. The State has not proved that it could not have acted in another way that would have resulted in a more expeditious conduct of the investigations and proceedings.

d) The effects on the legal situation of the person involved in the proceedings

120. Regarding the effects of the duration of the proceedings on the legal situation of the persons involved, the Court considers that it has insufficient evidence to rule on this point.

¹⁴⁸ Cf. Indictment of the Ninth Prosecutor of the Judicial Circumscription of Aragua state of June 13, 2003 (evidence file, folio 10 to 48).

¹⁴⁹ Cf. Record of the oral, public and unipersonal trial (continuation) of the Fifth Trial Court of January 25, 2007 (evidence file, folios 860 a 866).

¹⁵⁰ Cf. Appeal by the Ninth Prosecutor of the Judicial Circumscription of Aragua state of July 19, 2007 (evidence file, folios 6480 and 6548).

¹⁵¹ Cf. Appellate Court of the Criminal Judicial Circuit of Aragua state. Recusal of Justice Fabiola Colmenarez of April 29, 2008 (evidence file, folio 4431). During the process, there were eight recusals that suspended the proceedings over the following periods: (a) the first period lasted one year and four months due to the recusal of Justice Fabiola Colmenarez, followed by excuses from three substitutes between March 16, 2004, and March 10, 2005, the matter being resolved on July 26, 2005. Cf. Appellate Court of the Criminal Judicial Circuit of Aragua state. Recusal of Justice Fabiola Colmenarez of March 16, 2004 (evidence file, folio 1010), and Appellate Court of the Criminal Judicial Circuit of Aragua state. Recusal of the lawyer, Attaway Diego Marcano Ruiz of September 24, 2004 (evidence file, folio 1024). Puerto Cabello Criminal Trial Court. Recusal of Judge Anna María Del Giaccio Celli of March 9, 2005 (evidence file, folio 1032), and First Trial Court of the Criminal Judicial Circuit of Carabobo state. Recusal of Judge Carina Zacchei Manganilla of March 10, 2005 (evidence file, folio 1034); (b) The decision on the appeal filed by the Ninth Prosecutor of the Public Prosecution Service of Aragua state of July 19, 2007, was suspended for at least seven months, Justice Fabiola Colmenarez once again disqualified herself from hearing case on April 29, 2008. Cf. Appellate Court of the Criminal Judicial Circuit of Aragua state. Recusal of Justice Fabiola Colmenarez on April 29, 2008 (evidence file, folio 4431); (c) Finally, regarding the remedy of cassation of May 6, 2009, Justice Alejandro Perrillo recused himself from hearing the remedy on June 16, 2010, and subsequently two substitutes recused themselves, the first on June 23, 2010, and the second on December 3, 2010; as a result, the remedy of cassation was decided two years later on December 14, 2011. Cf. Appellate Court of the Criminal Judicial Circuit of Aragua state. Recusal of Justice Alejandro Jose Perrillo Silva of June 16, 2010 (evidence file, folio 4837); Appellate Court of the Criminal Judicial Circuit of Aragua state. Recusal of Justice Iris Brito Rausseo of June 23, 2010 (evidence file, folio 4848), and Trial Court of the Criminal Judicial Circuit of Carabobo state. Recusal of Judge Jalaxi Sandoval de Sánchez of December 3, 2010 (evidence file, folio 4890).

¹⁵² Cf. Judgment of the Appellate Court of the Criminal Judicial Circuit of Aragua state of April 1, 2009 (evidence file, folios 6498 to 6511).

¹⁵³ Cf. Decision of Contingent Chamber No. 66 of the Appellate Court of the Criminal Judicial Circuit of Aragua state of December 14, 2011 (evidence file, folios 172 to 184).

¹⁵⁴ Cf. Judgment of the First Criminal Trial Court of the Criminal Judicial Circuit of Aragua state, acting as the Second Trial Court, of September 4, 2014 (evidence file, folios 6538 to 6582).

¹⁵⁵ Cf. Order of the First Supervisory Trial Court of the Judicial Circuit of Aragua state, acting as the Second Trial Court, of October 28, 2014 (evidence file, folio 6584).

e) Conclusion

121. The delay in the investigation and proceedings of more than 12 years from the date of the events until the final judicial decision in 2014 cannot be explained by the complexity of the proceedings or the conduct of the alleged victims, but rather by dilatory conduct that can be attributed to the State. Sixteen years after the death of Robert Ignacio Díaz Loreto, David Octavio Díaz Loreto and Octavio Ignacio Díaz Álvarez it has not been possible for the courts to determine those responsible for the facts of the case. Therefore, the Court finds grounds to conclude that there has been a violation of the principle of a reasonable time contained in Article 8(1) of the Convention to the detriment of the family of Robert Ignacio Díaz Loreto, David Octavio Díaz Loreto and Octavio Ignacio Díaz Álvarez, owing to the excessive duration of the investigation and proceedings in relation to their deaths. Moreover, when the Admissibility Report was issued, on July 24, 2008, the judicial proceedings had already been inactive for three and a half years (*supra* para. 118.a), and this also justifies the fact that, at that time, it was possible to conclude that there had been an unjustified delay in violation of the principle of the reasonable time.

B.3. Alleged lack of investigation and adoption of measures of protection for the family members of the alleged victims

122. The Court recalls that, to guarantee due process, the State must facilitate all necessary means to protect the agents of justice, investigators, witnesses and family members of victims from harassment and threats designed to hinder the proceedings, avoid the clarification of the facts or conceal those responsible for the latter; if not, this would have a threatening and intimidating effect on investigators and potential witnesses, seriously compromising the effectiveness of the investigation.¹⁵⁶

123. The Commission and the representatives have argued that, during the investigation, the alleged victims' family members suffered repeated threats and acts of intimidation that the State failed to conduct a diligent investigation into. According to the representatives, on May 2, 2003, the Díaz Loreto family reported to the authorities that Aragua state police had threatened to shoot and kill Dinorah María Díaz Loreto, Bladimir Díaz Loreto, Miguel Ángel Díaz Loreto, Octavio Díaz, Jairo Alexis Díaz Loreto, Alexandra Gualdrón, Enmary Cava and Miguel Ángel Díaz Loreto.¹⁵⁷

124. In this regard, the State indicated that, on July 2, 2003, measures of protection had been adopted in favor of Dinorah Díaz Loreto, Octavio Díaz, Jairo Alexis Díaz Loreto, Alexandra Gualdrón and Enmary Dahina Cava, by order of the Trial Court of the Judicial Circuit of Aragua state, acting as the Tenth Supervisory Court.¹⁵⁸ Therefore, Miguel Ángel Díaz Loreto, Bladimir Díaz Loreto and Jairo Alexis Díaz Loreto were excluded from the measures of protection without the State having provided a reasonable justification for that decision.

125. This Court notes that, on May 27, 2003, the Trial Court of the Criminal Judicial Circuit of Aragua state adopted measures of protection in favor of the following family members: Dinorah María Díaz Loreto, Octavio Díaz, Jairo Alexis Díaz Loreto, Alexandra Gualdrón and Enmary Dahina Cava.¹⁵⁹ Despite this, according to the representatives, on June 4, 2003, Jairo

¹⁵⁶ Cf. *Case of Myrna Mack Chang v. Guatemala*, para. 199, and *Case of Omeara Carrascal et al. v. Colombia*, para. 253.

¹⁵⁷ Cf. Report of the family members filed before the sixteenth prosecutor of the Public Prosecution Service on May 2, 2003 (evidence file, folios 3881 to 3887).

¹⁵⁸ Cf. Decision of the First Supervisory Trial Court of the Judicial Circuit of Aragua state of July 2, 2003 (evidence file, folios 3890 to 3892).

¹⁵⁹ Cf. Decision of the First Supervisory Trial Court of the Judicial Circuit of Aragua state of May 27, 2003 (evidence file, folios 835 to 837).

Alexis Díaz Loreto was intercepted by police officers and retained for approximately one hour and, on July 4, 2003, Bladimir Lenin Díaz Loreto was detained by police officers without a court order and released one day later. Neither of these allegations was disputed by the State.

126. In the case of Miguel Ángel Díaz Loreto, the State argued that a measure of protection was not pertinent because he had not made a statement in relation to the events, so that it was difficult to relate the threats and harassment to his participation in the proceedings as a witness. The Court considers that this justification is not satisfactory because threats and harassment against one or more members of the direct family may have a negative effect on the investigations, whether or not they participate as witnesses in the judicial proceedings.

127. Regarding the measures of protection, these consisted in officials of the 21st Detachment of the National Guard providing protection to the five beneficiary family members. However, the State has not explained precisely how these measures of protection were executed, what the role of the National Guard was, and what preventive measures were taken. This omission in the arguments is fundamental because, following the issue of the measures of protection, on July 4, 2003, Bladimir Lenin Díaz Loreto was detained by the police without a court order and released one day later. The Court finds the State responsible because it failed to prove that the measures of protection taken were appropriate to prevent the repetition of threats and harassment against the family group.

128. Furthermore, the Court has already referred to the context of extrajudicial executions in Venezuela, particularly in Aragua state, in which witnesses and plaintiffs have been murdered, threatened and harassed in order to obstruct the action of justice. The authorities were aware of this context and failed to take effective measures of protection or to conduct serious and diligent investigations to avoid the persistence of this situation.

129. Based on the above, this Court finds that the lack of measures of protection for the participants in the proceedings has been proved, and this translates into the State's violation of the guarantees contained in Article 8(1) of the Convention to the detriment of the family members of the three alleged victims.

B.4. Failure to investigate facts that could have constituted torture or cruel, inhuman or degrading treatment or punishment

130. Article 1 of the Inter-American Convention to Prevent and Punish Torture establishes that "[t]he State Parties undertake to prevent and punish torture in accordance with the terms of this Convention." Article 6 of the Convention stipulates that "[i]n accordance with the terms of Article 1, the States Parties shall take effective measures to prevent and punish torture [...] and other cruel, inhuman, or degrading treatment or punishment within their jurisdiction." Article 8 of the Convention stipulates that "if there is an accusation or well-grounded reason to believe that an act of torture has been committed within their jurisdiction, the States Parties shall guarantee that their respective authorities will proceed properly and immediately to conduct an investigation into the case and to initiate, whenever appropriate, the corresponding criminal process."

131. The Court notes that Robert Ignacio Díaz Loreto was wounded by a firearm and was allegedly driven to a hospital by the police; therefore, he was in the custody of state agents at the time of his death. Similarly, during the oral trial, forensic expert Ligia García Mejía stated that the body of Robert Díaz revealed a cerebral edema and a black granular substance on various external and internal organs. Despite the existence of several reasonable signs that could have indicated that Robert Díaz Loreto had been subject to acts of physical abuse, the State failed to comply with its obligation to conduct an investigation to clarify those facts and to determine those responsible.

132. Consequently, the Court finds that, in this case, the State is also responsible for a violation of Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture to the detriment of the family members of Robert Ignacio Díaz Loreto,¹⁶⁰ because it failed to open an investigation into facts that could have constituted ill-treatment or torture.

B.5. Conclusion

133. Based on the above, the Court finds that the State failed to comply with its obligation to conduct an investigation with due diligence into the deaths of Robert Ignacio Díaz Loreto, David Octavio Díaz Loreto and Octavio Ignacio Díaz Álvarez within a reasonable time, contained in Article 8(1) of the American Convention, to the detriment of the members of their family. The State is also responsible for a violation of Article 8(1) of the Convention because it omitted to investigate the threats made against their family members,¹⁶¹ and of Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture because it failed to investigate the reasonable indications of acts that could have constituted the ill-treatment or torture of Robert Díaz Loreto, all to the detriment of the family members of Robert Ignacio Díaz Loreto.¹⁶²

VII.3 RIGHTS TO PERSONAL INTEGRITY OF THE FAMILY MEMBERS (ARTICLE 5 OF THE CONVENTION)

A. Arguments of the parties and of the Commission

134. The **Commission** indicated that the circumstances of the extrajudicial executions of the three victims constituted, in and of themselves, a source of suffering and helplessness for the family members; moreover, there was no investigation conducted with due diligence, and this ran counter their right of access to justice. It stressed that in a context in which there were reports of threats and harassment against them owing to their efforts to expedite the proceedings, the fear of reprisals and for their life and personal safety had also aggravated the feelings of anguish they suffered. The **representatives** agreed with the Commission's allegations.

135. The **State** emphasized that, with the exception of Juana Loreto, none of the alleged victims' family members had filed actions to seek justice. It added that the family had relinquished the private prosecution and had not appeared at the hearings of the trial to testify. It argued that they had not taken part in the processing of the remedies of appeal and cassation either. The State again asserted that it had been proved that the deaths had occurred in the context of a police operation conducted in keeping with the principles of legitimate purpose, necessity and proportionality, which had been investigated in accordance with the provisions of the Convention. On this basis, the State asked the Court to declare that it had not violated the right to personal integrity of the family members.

B. Considerations of the Court

136. The Court recalls that, in its case law, it has consistently established that the next of kin of victims of human rights violations may, in turn, be victims.¹⁶³ In addition, it has indicated that it is possible to declare the violation of the right to integrity of next of kin of

¹⁶⁰ See footnote 1.

¹⁶¹ See footnote 1.

¹⁶² See footnote 1.

¹⁶³ Cf. *Case of Castillo Páez v. Peru. Merits*. Judgment of November 3, 1997. Series C No. 34, fourth operative paragraph, and *Case of Ruíz Fuentes et al. v. Guatemala*, para. 188.

the victims of certain human rights violations, applying a presumption *iuris tantum* in the case of mothers and fathers, daughters and sons, husbands and wives, and permanent companions, provided this responds to the particular circumstances of the case. In the case of the direct family members, it is for the State to disprove this presumption.¹⁶⁴ In addition, this presumption is also applicable to the victims' siblings, unless the contrary is established by the specific circumstances of the case.¹⁶⁵

137. Consequently, this Court considers that, as a direct result of the arbitrary deprivation of the life of Robert Ignacio Díaz Loreto, David Octavio Díaz Loreto and Octavio Ignacio Díaz Álvarez, the members of their family have suffered pain and anguish to the detriment of their mental and moral integrity. Furthermore, the Court has already referred in the chapter on judicial guarantees to the acts of harassment and threats against the family members of Robert Ignacio Díaz Loreto, David Octavio Díaz Loreto and Octavio Ignacio Díaz Álvarez during the judicial investigations into the facts of this case (*supra* Chapter VII.2.B.3).

138. Therefore, the Court concludes that the State is responsible for the violation of Article 5(1) of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of the family members of Robert Ignacio Díaz Loreto, David Octavio Díaz Loreto and Octavio Ignacio Díaz Álvarez.¹⁶⁶

VIII REPARATIONS (APPLICATION OF ARTICLE 63(1) OF THE AMERICAN CONVENTION)

139. Based on the provisions of Article 63(1) of the American Convention,¹⁶⁷ the Court has indicated that any violation of an international obligation that has caused harm entails the duty 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.¹⁶⁸ The Court has found it necessary to grant diverse measures of reparation in order to redress the harm comprehensively, so that in addition to pecuniary compensation, measures of restitution, rehabilitation and satisfaction, together with guarantees of non-repetition, have special relevance for the harm caused.¹⁶⁹ Similarly, the reparations must

¹⁶⁴ Cf. *Case of Valle Jaramillo et al. v. Colombia. Merits, reparations and costs*. Judgment of November 27, 2008. Series C No. 192, para. 119, and *Case of Women Victims of Sexual Torture in Atenco v. Mexico*, para. 320.

¹⁶⁵ Cf. *Case of Gudiel Álvarez et al. ("Diario Militar") v. Guatemala. Merits, reparations and costs*. Judgment of November 20, 2012. Series C No. 253, para. 253, and *Case of Women Victims of Sexual Torture in Atenco v. Mexico*, para. 320.

¹⁶⁶ They are: (1) Juana Emilia Loreto Pérez, wife and mother; (2) Miguel Ángel Díaz Loreto, brother and son; (3) Dinorah María Díaz Loreto, sister and daughter; (4) Jairo Alexis Díaz Loreto, brother and son; (5) Bladimir Lenin Díaz Loreto, brother and son; (6) Octavio Antonio Díaz Loreto, brother and son; (7) Alexandra Teresa Gualdrón Pernía, sister-in-law and daughter-in-law; (8) Arianna Leaneth Díaz Doubain, daughter of David Octavio Díaz Loreto; (9) José Ocopio, brother-in-law and son-in-law; (10) Luz Marina Ledesma de Díaz (sister-in-law and daughter-in-law), and (11) José Rafael Ocopio, nephew and grandson.

¹⁶⁷ Article 63(1) of the Convention establishes that: "If the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party."

¹⁶⁸ Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and costs*. Judgment of July 21, 1989. Series C No. 7, para. 26, and *Case of Ruíz Fuentes et al. v. Guatemala*, para. 192.

¹⁶⁹ Cf. *Case of the Las Dos Erres Massacre v. Guatemala, Preliminary objection, merits, reparations and costs*. Judgment of November 24, 2009. Series C No. 211, para. 226, and *Case of Ruíz Fuentes et al. v. Guatemala*, para. 193

have a causal nexus with the facts of the case, the violations that have been declared, the harm proved, and the measures requested to redress the respective harm.¹⁷⁰

140. Based on the violations declared in the preceding chapter, the Court will proceed to examine the claims presented by the Commission and the representatives, and also the arguments of the State, in light of the criteria established in its case law in relation to the nature and scope of the obligation to make reparation.¹⁷¹ International case law and, in particular, that of the Court, has established repeatedly that the judgment itself constitutes a form of reparation.¹⁷² Nevertheless, considering the circumstances of this case and the suffering that the violations committed caused the victims, the Court finds it pertinent to establish other measures.

A. Injured party

141. The Court reiterates that, pursuant to Article 63(1) of the Convention, anyone who has been declared the victim of the violation of any right recognized therein is considered an injured party. Therefore, based on the foregoing, this Court considers that David Octavio Díaz Loreto, Robert Ignacio Díaz Loreto and Octavio Ignacio Díaz Álvarez, together with their family members: Juana Emilia Loreto Pérez, Miguel Ángel Díaz Loreto, Dinorah María Díaz Loreto, Jairo Alexis Díaz Loreto, Bladimir Lenin Díaz Loreto, Octavio Antonio Díaz Loreto, Alexandra Teresa Gualdrón Pernía, Arianna Leaneth Díaz Doubain, José Ocopio, Luz Marina Ledesma de Díaz and José Rafael Ocopio are the "injured party."¹⁷³

B. Obligation to investigate the facts and identify and, as appropriate, prosecute and punish all those responsible

142. The **Commission** asked the Court to order the State "[t]o continue the criminal investigation diligently, effectively and within a reasonable time in order to elucidate the facts fully, identify all those potentially responsible, and impose the appropriate punishments [... as well as] investigate the other incidents alleged by the family members of the deceased victims and their possible interrelationship. The **representatives** added that the State should "ensure full access and capacity to act to the family members at all stages of the investigations." The **State** did not refer to this measure of reparation, although, with regard to the violation of Articles 8(1) and 25(1) of the Convention, it argued that it denied "expressly the existence of any kind of international responsibility for the supposed violation of the rights established in [those] articles," and asked that the Court "declare inadmissible the reparations requested by the Commission and the alleged victims' representatives."

143. Bearing in mind the conclusions to Chapter VIII.1. of this judgment, the Court establishes that, pursuant to the applicable domestic law and taking into account the flaws

¹⁷⁰ Cf. *Case of Ticona Estrada et al. v. Bolivia. Merits, reparations and costs*. Judgment of November 27, 2008. Series C No. 191, para. 110, and *Case of Ruíz Fuentes et al. v. Guatemala*, para. 194.

¹⁷¹ Cf. *Case of Andrade Salmón v. Bolivia. Merits, reparations and costs*. Judgment of December 1, 2016. Series C No. 330, para. 189, and *Case of Gorigoitia v. Argentina*, para. 62.

¹⁷² Cf. *Case of Neira Alegría et al. v. Peru. Reparations and costs*. Judgment of September 19, 1996. Series C No. 29, para. 56, and *Case of Gorigoitia v. Argentina*, para. 62.

¹⁷³ The representatives asked that the following be considered beneficiaries of the reparations: the wife of Robert Ignacio Díaz Loreto, Enmary Dahiana Cava, and also the wife and children of Octavio Antonio Díaz Loreto, namely: Vellanira Lovera, Yohan José Díaz Lovera, Milagros Vellanira Díaz Lovera, Joel Bladimir Díaz Lovera and Yohana Díaz Lovera. In this regard, the Court has indicated that the alleged victims must be identified in the Merits Report of the Inter-American Commission. The persons indicated by the representatives are not mentioned in the Commission's Merits Report so it is not admissible to consider them as an injured party in this case, without prejudice to the reparations that could apply to them in the domestic sphere. Cf. *Case of the Ituango Massacres v. Colombia*, para. 98, and *Case of Martínez Coronado v. Guatemala. Merits, reparations and costs*. Judgment of May 10, 2019. Series C No. 376, paras. 18 and 19.

previously indicated in this judgment (*supra* Chapter VII.2), the State must conduct the necessary investigations to determine the responsibility for the facts that occurred to the detriment of David Octavio Díaz Loreto, Robert Ignacio Díaz Loreto and Octavio Ignacio Díaz Álvarez, and of their family members.

C. Measures of satisfaction

C.1. Publication and dissemination of the judgment

144. The **representatives** asked that the Court require the publication of the sections on context and proven facts, together with the operative paragraphs of the judgment, in the Official Gazette and in a national newspaper. Neither the **Commission** nor the **State** referred to this request.

145. The Court establishes, as it has in other cases,¹⁷⁴ that the State must publish, within six months of notification of this judgment: (a) the official summary of this judgment prepared by the Court, once, in the Official Gazette and in a national newspaper with widespread circulation in the State of Venezuela, in an adequate and legible font, and (b) this judgment in its entirety, available for at least one year on a website of the Public Prosecution Service, in a way that is accessible to the public from the home page of this website.

146. The State must advise the Court immediately when it has made each of the said publications, regardless of the one-year time frame to present its first report established in the ninth operative paragraph of this judgment.

C.2. Public act to acknowledge international responsibility

147. The **representatives** asked that the Court order the holding of a public act in Aragua state to acknowledge international responsibility and make a public apology in relation to the facts of this case.

148. As it has in other cases,¹⁷⁵ this Court finds it necessary, in order to redress the harm caused to the victims, to avoid events such as those of this case being repeated, and in response to the request of the representatives, to require the State to organize a public act in Aragua state to acknowledge international responsibility in relation to the facts of this case. During this act, the State must refer to the facts and human rights violations declared in this judgment, and it must take place in a public ceremony that must be disseminated by the media and attended by senior state officials. In addition, the participation of those who have been declared victims in this judgment must be ensured. The place, date and other details of this public ceremony must be duly consulted with the victims or their representatives. The State must comply with this obligation within one year of notification of this judgment.

C.3. Other measures of satisfaction requested

149. In their brief with final arguments, the **representatives** asked that the State be ordered to take all necessary administrative or civil measures to facilitate the return to the living members Díaz Loreto family of the ownership and possession of the family home located in La Segundera, Cagua. They also asked that the Court order the State to grant a scholarship to Arianna Leaneth Díaz Doubain. The **State**, in its final written arguments, indicated that the factual framework of the proceedings was constituted by the facts contained in the Merits

¹⁷⁴ Cf. *Case of Cantoral Benavides v. Peru. Reparations and costs*. Judgment of December 3, 2001. Series C No. 88, para. 79, and *Case of Romero Feris v. Argentina*, para. 185.

¹⁷⁵ Cf. *Case of Cantoral Benavides v. Peru*, para. 81, and *Case of Women Victims of Sexual Torture in Atenco v. Mexico*, paras. 347 and 348.

Report and that, consequently, it was not admissible for the presumed victim to allege new facts that differed from those contained in that report, without prejudice to presenting those that would explain, clarify or reject facts that had been mentioned in the said report and submitted to the consideration of the Court.

150. The Court finds that the request made by the representatives with their final written arguments was time-barred¹⁷⁶ and, therefore, will not grant the measures requested.

D. Measures of rehabilitation

151. The **Commission** indicated that the State should adopt measures of rehabilitation for any family members who so wish. The **representatives** asked that the State be required to ensure voluntary, free and permanent medical and psychological treatment for the direct victims and their families.¹⁷⁷ The **State** did not present arguments with regard to this request.

152. The Court finds it appropriate to establish a measure of reparation that provides satisfactory care for the physical, psychological or psychiatric ailments suffered by the victims as a result of the violations established in this judgment. Therefore, it orders the State to provide, free of charge and on a priority basis, adequate health and psychological or psychiatric care to the victims who require this, after they have indicated their agreement, for the time necessary to treat the effects derived from the violations declared in this judgment.

153. In addition, the victims must have immediate, free and priority access to the health care services and the respective treatments must be provided for as long as necessary and in a place that is accessible for the victims in this case. When providing the medical, psychological or psychiatric treatment, the particular circumstances and needs of each victim must be considered, following an individual evaluation by a health professional.¹⁷⁸ The victims who request this measure of reparation, or their legal representatives, have six months from notification of this judgment to advise the State of their intention to receive medical, psychological or psychiatric treatment.¹⁷⁹

E. Guarantees of non-repetition

E.1. Training for public officials

154. The **Commission** asked the Court to order the State to provide training programs on international human rights standards in general, especially for the Police of Aragua state, and for agents of justice. The **representatives** did not refer to this request. The **State** indicated that, in recent years, it had implemented various training programs on human rights and, above all, on differentiated and progressive use of force, for police officers throughout national territory, including the police force of Aragua state. It added that most of these programs

¹⁷⁶ The Court's Rules of Procedure, Art. 40: "Brief with pleadings, motions and evidence. [...] 2. The brief with pleadings, motions and evidence shall contain: [...] d. all claims, including those relating to reparations and costs." Cf. *Case of Radilla Pacheco v. Mexico. Preliminary objections, merits, reparations and costs*. Judgment of November 23, 2009. Series C No. 209, para. 359, and *Case of Yarce et al. v. Colombia*, para. 362.

¹⁷⁷ They added that the services should be provided by competent professionals, include the provision of any medicines that were required, and that the State should also be responsible for other expenses arising from the provision of treatment such as transportation costs.

¹⁷⁸ Cf. *Case of the 19 Traders v. Colombia*. Merits, reparations and costs. Judgment of July 5, 2004. Series C No. 109, para. 278, and *Case of Villamizar Durán et al. v. Colombia*, para. 206.

¹⁷⁹ Cf. *Case of Rosendo Cantú et al. v. Mexico*. Preliminary objection, merits, reparations and costs. Judgment of August 31, 2010. Series C No. 216, para. 253, and *Case of Women Victims of Sexual Torture in Atenco v. Mexico*, para. 341.

were conducted and supervised by the Universidad Nacional Experimental de la Seguridad (UNES).

155. In this regard, the Court appreciates the creation of UNES and establishes that the State should continue the actions taken to date and implement, within a reasonable time, a compulsory program or course as part of the general and on-going training of all ranks of the Police of Aragua state. Among other aspects, this program should refer to the Inter-American Court's case law on the prohibition of torture, personal integrity and liberty, the use of force, and the international human rights obligations derived from the treaties to which Venezuela is a party.

E.2. Other measures of reparation requested

a) Measures to ensure the effective accountability of state agents

156. The **Commission** asked the Court to require the State to take measures to ensure effective accountability in the criminal, disciplinary or administrative jurisdiction, in cases of alleged abuse of power by the State's law enforcement agents. The **representatives** did not refer to this measure of reparation in their pleadings and motions brief. However, the Court takes notes that, in their final written arguments, they indicated the need to reiterate to the State the need to continue making an effort to monitor the actions of the police and the use of lethal force. The **State** indicated that, in recent years, it had also been taking measures to ensure the social auditing and accountability of police actions. It specified that it had adopted various regulatory instruments in this regard and supported the creation and functioning of community organizations for police control throughout national territory.

157. In this regard, the Court reiterates that, in the judgment in the case of the *Barrios Family v. Venezuela*, it had noted that the State had established principles for the use of force in the "Manual on differentiated and progressive use of force by the police"; that Venezuelan law regulated the control, storage and distribution of firearms, established a quarterly accountability procedure, and specified the circumstances in which police officers were authorized to carry such weapons. In addition, it noted that the State had created a reporting system entitled "Report to the immediate superior on use of force," to be prepared, *inter alia*, when a police officer fired a weapon at any individual or group of individuals and, in such cases, an immediate investigation by trained personnel had to be conducted, and the official concerned assigned to administrative tasks until the investigation has taken a decision on his responsibility. Lastly, it indicated that Venezuelan law had established the obligation of police accountability and, to implement this obligation, a special periodic reporting system on police activities had been created.¹⁸⁰ Consequently, as in the said case, the Court does not find it necessary to order a measure of reparation such as the one requested.

b) Measures to ensure due diligence in investigations, in keeping with the relevant international standards

158. The **Commission** asked that the Court order the State to adopt legislative, administrative and other measures to ensure that investigations on the need for and proportionality of the use of lethal force by police agents are conducted with due diligence and in keeping with the relevant international standards. The victims' **representatives** did not refer to this measure of reparation. The **State** found it pertinent to underscore that it had complied fully with the adoption of measures such as those contemplated by the Commission in its request.

¹⁸⁰ Cf. *Case of Barrios Family v. Venezuela*, para. 346.

159. As the State indicated, in the judgment in the case of the *Landaeta Mejías Brothers et al. v. Venezuela*, the Court took note of the progress made by the State in the process of reforming the Venezuelan policing model. Among other matters, the Court underlined the following: (1) the 2006 establishment of the National Commission for Police Reform (CONAREPOL) in order to make a diagnosis of the Venezuelan police forces; (2) the approval, in 2008, of the Organic Law of the Police Service and the Bolivarian National Police Force, establishing the progressive and differentiated use of force by the police as a tool for police officers in their interactions with the population; (3) the creation, in 2009, of the Police Council, with the functions of providing advice on and taking part in the definition, planning and coordination of public policies on policing; (4) the creation, in 2009, of the Universidad Nacional Experimental de Seguridad, with the task of training police officers in keeping with the new Venezuela policing model, and (5) the elaboration and distribution, starting in 2010, of a collection of self-instruction manuals called “Baquíás” [Skills Manuals] designed to establish institutional management indicators that allow each police force, autonomously, to evaluate the level of compliance with the reform processes.¹⁸¹ Based on the foregoing, the Court does not find it pertinent to order the measure of reparation requested, and reiterates to the State the need to comply with the pending points ordered in its judgments.

F. Compensation

160. The **Commission** asked the Court to order the State to adopt measures of financial compensation and measures of satisfaction for non-pecuniary damage. The **State** argued that the claims for pecuniary reparation were disproportionate and should be adapted to the Court’s case law in such cases.

F.1. Pecuniary damage

161. Based on the age of the victims at the time of their deaths (58, 23 and 21 years old), the life expectancy of a man in Venezuela in 2003 (72.94 years), and the minimum wage,¹⁸² the representatives calculated the loss of earnings of Octavio Ignacio Díaz Álvarez as US\$27,138.51 (twenty-seven thousand one hundred and thirty-eight United States dollars and fifty-one cents), that of David Octavio Díaz Loreto as US\$89,008.50 (eighty-nine thousand and eight United States dollars and fifty cents) and that of Robert Ignacio Díaz Loreto as US\$92,641.50 (ninety-two thousand six hundred and forty-one United States dollars and fifty cents). However, they asked the Court to determine compensation for loss of earnings, based on equity, in favor of David Octavio Díaz Loreto for the sum of US\$100.000 (one hundred thousand United States dollars) and in favor of Robert Ignacio Díaz Loreto for US\$110.000 (one hundred and ten thousand United States dollars). They also indicated that the death of the victims resulted in unexpected expenses that were all covered by the family. The representatives referred, first, to the need to give them a decent burial and then the expenses incurred in order to obtain justice. They noted that, as “the family members do not have vouchers for those expenses,” the Court should determine the amount of this reparation based on equity.

162. Regarding the funeral expenses incurred by the Díaz Loreto family, the Court notes that no vouchers have been provided; however, it presumes, as it has in previous cases,¹⁸³ that

¹⁸¹ Cf. *Case of Landaeta Mejías Brothers et al. v. Venezuela*, para. 310.

¹⁸² The methodology used by the representatives to calculate the loss of earning was as follows: they multiplied the probable life expectancy of each victim by US\$2,422 (average of 14 annual salaries of US\$173 each, corresponding to the minimum wage in Venezuela at the time of the events), and subtracted 25% from the result for personal expenses.

¹⁸³ Cf. *Case of the Gómez Paquiyauri Brothers v. Peru. Merits, reparations and costs*. Judgment of July 8, 2004. Series C No. 110, para. 207 and *Case of the Landaeta Mejías Brothers et al. v. Venezuela*, para. 322.

the family incurred diverse expenses due to the death of the Díaz Loreto brothers and their father. Regarding the expenditure incurred to obtain justice, the Court has no evidence that would prove the disbursements argued by the representatives. However, it considers that, in order to find out what happened to the victims, their family members took steps before state authorities, including preparing documents, providing testimonial statements, transportation and daily expenses. The Court finds that the State should provide compensation for such expenses because they have a direct causal nexus to the violations in this case.¹⁸⁴ Consequently, the Court finds it pertinent to establish, in equity, for pecuniary damage the sum of US\$50,000 (fifty thousand United States dollars with six cents [*sic*]), in favor of Octavio Ignacio Díaz Álvarez; the sum of US\$50,000 (fifty thousand United States dollars with six cents), in favor of David Octavio Díaz Loreto, and the sum of US\$50,000 (fifty thousand United States dollars with six cents), in favor of Robert Ignacio Díaz Loreto.

F.2. Non-pecuniary damage

163. The **representatives** asked that, for non-pecuniary damages owing to the murder of the victims Octavio Ignacio Díaz Álvarez, David Octavio Díaz Loreto and Robert Ignacio Díaz Loreto, the Court order the State to pay the sum of US\$100,000 (one hundred thousand United States dollars) for each victim. They indicated that this sum should be delivered as follows: in equal parts to their surviving children and siblings and, in the case of the deceased sons, this would correspond to their heirs. In addition, they asked that the Court determine compensation, based on equity, of US\$50,000 (fifty thousand United States dollars) for each of the direct members of the Díaz Loreto family or family group, and the heirs of the deceased.

164. The Court, based on its consistent case law,¹⁸⁵ and taking into account the circumstances of this case, establishes, in equity, the following amounts in favor of the victims as compensation for non-pecuniary damage: (a) David Octavio Díaz Loreto, Robert Ignacio Díaz Loreto and Octavio Ignacio Díaz Álvarez, US\$100,000 (one hundred thousand United States dollars) each; (b) Juana Emilia Loreto Pérez, US\$50,000 (fifty thousand United States dollars); (c) Miguel Ángel Díaz Loreto, Dinorah María Díaz Loreto, Jairo Alexis Díaz Loreto, Bladimir Lenin Díaz Loreto and Octavio Antonio Díaz Loreto, US\$50,000 (fifty thousand United States dollars) each; (d) Arianna Leaneth Díaz Doubain US\$25,000 (twenty-five thousand United States dollars), and (e) Alexandra Teresa Gualdrón Pernía, José Ocopio, Luz Marina Ledesma de Díaz, José Rafael Ocopio, US\$15,000 (fifteen thousand United States dollars) each..

165. The compensation established in this chapter in favor of David Octavio Díaz Loreto shall be shared equally among Juana Emilia Loreto Pérez (mother), Miguel Ángel Díaz Loreto (brother), Dinorah María Díaz Loreto (sister), Jairo Alexis Díaz Loreto (brother), Bladimir Lenin Díaz Loreto (brother), Octavio Antonio Díaz Loreto (brother) and Arianna Leaneth Díaz Doubain. In addition, the compensation established in this chapter in favor of Robert Ignacio Díaz Loreto and Octavio Ignacio Díaz Álvarez shall be shared equally among Juana Emilia Loreto Pérez, Miguel Ángel Díaz Loreto, Dinorah María Díaz Loreto, Jairo Alexis Díaz Loreto, Bladimir Lenin Díaz Loreto, Octavio Antonio Díaz Loreto and Arianna Leaneth Díaz Doubain.

G. Costs and expenses

¹⁸⁴ Cf. *Case of Castillo Páez v. Peru. Reparations and costs*. Judgment of November 27, 1998. Series C No. 43, para. 76, and *Case of Tenorio Roca et al. v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of June 22, 2016. Series C No. 314, para. 333.

¹⁸⁵ Cf. *Case of Neira Alegría et al. v. Peru. Reparations and costs*, para. 56. and *Case of Ruíz Fuentes et al. v. Guatemala*, para. 244.

166. The **representatives** indicated that the Díaz Loreto family had not kept the vouchers for the expenses incurred and, therefore, asked the Court to establish, in equity, the sum of US\$10,000 (ten thousand United States dollars). It also indicated that the Aragua state Human Rights Commission had incurred expenses throughout the proceedings before the organs of protection of the inter-American system. However, since it did not have vouchers for those expenses, they asked the Court to establish, in equity, the sum of US\$15,000 (fifteen thousand United State dollars). Additionally, they indicated that they had begun to work on this case in 2003 and, therefore, asked the Court to establish, in equity, the sum of US\$15,000 (fifteen thousand United State dollars) and that the same sum be reimbursed directly by the State to the Vicaría de Derechos Humanos. The **Commission** did not refer to this measure of reparation. The **State** indicated that it considered that the amounts requested by the Aragua state Human Rights Commission and the victims' representatives were disproportionate; first, because they were the same people and the same working group and, second, because, in 2007, the representatives relinquished their participation in the criminal proceedings.

167. The Court has indicated that, in the case of financial disbursements, the representatives must establish the items and their justification.¹⁸⁶ In this case, the evidence provided by the representatives and the corresponding arguments do not provide a complete justification of the sums requested. In addition, the Court notes that, in this judgment, it has already ordered a sum for the victims' family members in relation to the expenses incurred in order to obtain justice. Bearing this in mind, the Court establishes, in equity, the sum of US\$10,000 (ten thousand United State dollars) for the Aragua state Human Rights Commission and US\$10,000 (ten thousand United State dollars) for the Vicaría de Derechos Humanos for the expenses incurred in the processing of the case before the domestic jurisdiction and the inter-America system of human rights. These sums must be delivered as indicated within one year of notification of this judgment.

H. Reimbursement of expenses to the Victims' Legal Assistance Fund

168. In an order of September 18, 2018, the President of the Court declared admissible the request filed by the alleged victims through their representatives to access the Legal Assistance Fund, and approved the granting of the necessary financial assistance to present a maximum of two statements, by affidavit or during the public hearing. The Court's Secretariat forwarded the State a copy of the report on the disbursements made in application of this fund in the instant case, which amounted to US\$3,476,97 (three thousand four hundred and seventy-six United State dollars and ninety-seven cents). Venezuela did not present observations in this regard. In application of article 5 of the Rules for the Operation of the Fund, the Court must evaluate whether it is appropriate to order the respondent State to reimburse the disbursements from the Legal Assistance Fund.

169. Based on the violations declared in this judgment, the Court orders the State to reimburse this fund the sum of US\$3,476,97, for the expenses incurred. This sum must be reimbursed to the Inter-American Court within 90 days of notification of this judgment.

I. Method of complying with the payments ordered

170. The State must make the payment of the compensation for pecuniary and non-pecuniary damage and to reimburse costs and expenses established in this judgment directly to the individuals and organizations indicated herein within one year of notification of this judgment, in keeping with the following paragraphs.

¹⁸⁶ Cf. *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of November 21, 2007. Series C No. 170, para. 277 and *Case of Ruíz Fuentes et al. v. Guatemala*, para. 251.

171. If any of the beneficiaries should be deceased before they receive the respective compensation, this shall be delivered directly to their heirs in keeping with the applicable domestic law.

172. Regarding to the currency for the payment of compensation and reimbursement of costs and expenses, the State must comply with its monetary obligations by payment in United States dollars or, if this is not possible, in the equivalent in Venezuelan currency, using the highest and most beneficial rate for the victims permitted by domestic law at the time of the payment to make the respective calculation. At the stage of monitoring compliance with the judgment, the Court may make a prudent readjustment in the equivalent of these amounts in Venezuelan currency to avoid exchange fluctuations substantially affecting their purchasing power.

173. If, for causes that can be attributed to the beneficiaries of the compensation or their heirs, it were not possible to pay the sums established within the indicated time frame, the State shall deposit such sums in their favor in a deposit certificate or account in a solvent Venezuelan 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, after ten years the sums shall be returned to the State with the interest accrued.

174. The sums allocated in this judgment as compensation and reimbursement of costs and expenses shall be delivered to the individuals and organizations indicated in full, as established in this judgment, without any deductions derived from possible taxes or charges.

175. If the State should 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 banking interest on arrears in the Bolivarian Republic of Venezuela.

IX OPERATIVE PARAGRAPHS

176. Therefore,

THE COURT

DECIDES:

By six votes to one,

1. To reject the preliminary objection filed by the State concerning the failure to exhaust domestic remedies, pursuant to paragraphs 16 to 22 of this judgment.

Dissenting Judge Eduardo Vio Grossi

DECLARES:

By six votes to one that:

2. The State is responsible for the violation of the obligation to respect and ensure the right to life recognized in Article 4 of the American Convention on Human Rights, in relation to Article 1(1) of this instrument, to the detriment of David Octavio Díaz Loreto, Robert Ignacio Díaz Loreto and Octavio Ignacio Díaz Loreto, pursuant to paragraphs 63 to 89 of this judgment.

Dissenting Judge Eduardo Vio Grossi

By six votes to one that:

3. The State is responsible for the violation of the rights to personal liberty and to personal integrity recognized in Articles 7 and 5(1) of the American Convention on Human Rights, both in relation to Article 1(1) of this instrument, to the detriment of Robert Ignacio Díaz Loreto, pursuant to paragraphs 90 to 95 of this judgment.

Dissenting Judge Eduardo Vio Grossi

By six votes to one that:

4. The State is responsible for the violation of the rights to judicial guarantees and to judicial protection, recognized in Articles 8(1) and 25(1) of the American Convention on Human Rights, to the detriment of the family members of David Octavio Díaz Loreto, Robert Ignacio Díaz Loreto and Octavio Ignacio Díaz Loreto, and Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture to the detriment of the family members of Robert Ignacio Díaz Loreto, pursuant to paragraphs 101 to 133 of this judgment.

Dissenting Judge Eduardo Vio Grossi

By six votes to one that:

5. The State is responsible for the violation of the right to personal integrity, recognized in Article 5(1) of the American Convention on Human Rights, in relation to Article 1(1) of this instrument, to the detriment of the family members of David Octavio Díaz Loreto, Robert Ignacio Díaz Loreto and Octavio Ignacio Díaz Loreto pursuant to paragraphs 136 to 138 of this judgment.

Dissenting Judge Eduardo Vio Grossi

By six votes to one that:

6. It has insufficient evidence to rule on the violation of the obligation to adopt domestic legal provisions contained in Article 2 of the American Convention pursuant to paragraphs 96 and 97 of this judgment.

Dissenting Judge Eduardo Vio Grossi

AND ESTABLISHES:

By six votes to one that:

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

Dissenting Judge Eduardo Vio Grossi

By six votes to one that:

8. The State shall conduct, in keeping with the applicable domestic law and taking into account the defects indicated in this judgment, all necessary investigations to determine the

responsibilities for the facts that occurred to the detriment of David Octavio Díaz Loreto, Robert Ignacio Díaz Loreto and Octavio Ignacio Díaz Álvarez, and also their family members, pursuant to paragraph 143 of this judgment.

Dissenting Judge Eduardo Vio Grossi

By six votes to one that:

9. The State shall make the publications indicated in paragraphs 145 and 146 of this judgment, within six months of its notification.

Dissenting Judge Eduardo Vio Grossi

By six votes to one that:

10. The State shall hold a public act to acknowledge international responsibility for the facts of this case, pursuant to paragraph 148 of this judgment.

Dissenting Judge Eduardo Vio Grossi

By six votes to one that:

11. The State shall provide, free of charge and immediately, the medical and psychological or psychiatric treatment, as appropriate, to the victims in this case who so request, pursuant to paragraphs 152 and 153 of this judgment.

Dissenting Judge Eduardo Vio Grossi

By six votes to one that:

12. The State shall offer training programs on international human rights standards in general and, in particular, to the Police of Aragua state, pursuant to paragraph 155 of this judgment.

Dissenting Judge Eduardo Vio Grossi

By six votes to one that:

13. The State shall pay the sums established in paragraphs 162, 164 and 165 of this judgment as compensation for pecuniary and non-pecuniary damage and to reimburse costs and expenses, pursuant to paragraph 167.

Dissenting Judge Eduardo Vio Grossi

Unanimously that:

14. The State shall reimburse the Victims' Legal Assistance Fund of the Inter-American Court of Human Rights the sum disbursed during the processing of this case, pursuant to paragraph 169 of this judgment.

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

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

DONE, at San José, on November 19, 2019, in the Spanish language.

Judge Eduardo Vio Grossi informed the Court of his dissenting opinion; Judge Eduardo Ferrer Mac-Gregor Poisot and Judge Elizabeth Odio Benito advised the Court of their joint concurring opinion, and Judge Eugenio Raúl Zaffaroni informed the Court of his concurring opinion.

Case of Díaz Loreto et al. v. Venezuela, Preliminary objections, merits, reparations and costs.
Judgment of November 19, 2019.

Eduardo Ferrer Mac-Gregor Poisot
President

Eduardo Vio Grossi

Humberto A. Sierra Porto

Elizabeth Odio Benito

Eugenio Raúl Zaffaroni

L. Patricio Pazmiño Freire

Ricardo C. Pérez Manrique

Pablo Saavedra Alessandri
Secretary

So ordered,

Eduardo Ferrer Mac-Gregor Poisot
President

Pablo Saavedra Alessandri
Secretary

**CONCURRING OPINION OF
JUDGE EDUARDO FERRER MAC-GREGOR POISOT
AND JUDGE ELIZABETH ODIO BENITO**

CASE OF DÍAZ LORETO ET AL. V. VENEZUELA

**JUDGMENT OF NOVEMBER 19, 2019
(Preliminary objections, merits, reparations and costs)**

INTRODUCTION

1. Starting with its first contentious case, the Inter-American Court of Human Rights (hereinafter “the IACtHR” or “the Inter-American Court”) has used the “context” as a fundamental element to assess the facts submitted to its consideration and eventually determine the international responsibility of a State.¹ In this specific case, both the Inter-American Commission on Human Rights (in the Merits Report) and the victims’ representatives (in their brief with pleadings, motions and evidence), have referred extensively to the context of “extrajudicial executions” in Venezuela and, above all, in Aragua state, at the time of the deaths of the victims in this case. The State did not contest this context.

2. In the judgment in the *Case of Díaz Loreto et al. v. Venezuela* (hereinafter “the judgment”),² the Inter-American Court addresses this “context” twice. First, in the chapter on “Facts,”³ and then in a special section when examining the “Merits” of the case.⁴ The judgment concludes, *inter alia*, that “the State is responsible for the violation of the right to life contained in Article 4 of the American Convention to the detriment of Robert Ignacio Díaz Loreto, David Octavio Díaz Loreto, and Octavio Ignacio Díaz Álvarez.”⁵

3. We, the undersigned, are in full agreement with this. However, we consider that the deaths of the three members of the Díaz family constitute “extrajudicial executions” and, therefore, this situation should have been explicitly concluded in the judgment. This is because special consideration should have been given to the fact that the factual framework in which the events of this case took place, coincides, essentially, with the proven context and *modus operandi* of the state agents, which – in our opinion – should have been assessed together with the other indications and presumptions (see *infra*, para. 30), especially when the State’s version of the supposed “confrontation” between the victims and the agents contains a “series of contradictions and inconsistencies,” as extensively emphasized in the judgment.⁶

¹ Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*. Judgment of July 29, 1988. Series C No. 4.

² Cf. *Case of Díaz Loreto et al. v. Venezuela. Preliminary objections, merits, reparations and costs*. Judgment of November 19, 2019. Series C No. 392.

³ Paras. 29 to 33 of the judgment.

⁴ Paras. 63 to 65 of the judgment.

⁵ Cf. *Case of Díaz Loreto et al. v. Venezuela. Preliminary objections, merits, reparations and costs*. Judgment of November 19, 2019, para. 87. See also, the second operative paragraph of the judgment: “2. The State is responsible for the violation of the obligation to respect and ensure the right to life recognized in Article 4 of the American Convention on Human Rights [...]”

⁶ In this regard, see the section entitled “Analysis of the evidence related to the alleged confrontations” in which numerous inconsistencies in the State’s version of the supposed “confrontation” are described. *Case*

4. Thus, this does not contradict the Inter-American Court's conclusions because the judgment declares that the State violated the right to life of these three individuals and describes the factual circumstances in which this occurred. In turn, the Court expressed its doubts with regard to the version of the supposed "confrontation" that was referred to by the domestic courts. Consequently, the IACtHR does not rule out that this violation of the right to life occurred as the result of an extrajudicial execution.

5. This is supported by the fact that the Court makes a clear reference to the "context" of extrajudicial executions in Venezuela at the time of the deaths of these three individuals by the State's law enforcement agents. This reference to the "context" in both the chapter on Facts and the chapter on Merits would make no sense if the Inter-American Court did not consider that this fact formed part of a situation of extrajudicial executions and, precisely because of this, when analyzed together with all the other indications and presumptions, the IACtHR should have ruled concluding that, in this case, the violation of the right to life was the result of the extrajudicial execution of the three victims.

6. Therefore, in this concurring opinion, we will explain the reasons why we consider that the IACtHR should have concluded that the violation of the right to life of the three members of the Díaz family constituted an "extrajudicial execution" that was inserted in a national (Venezuela) and regional (Aragua state) context that existed at the time of the facts of this case. Moreover, it should be pointed out that the "context" and the geographical region were mentioned in the judgment because these have been the subject of rulings in previous judgments of the Inter-American Court establishing the State's responsibility.⁷

7. Accordingly, this opinion contains the following sections: I. The proven context in Venezuela and in Aragua State of extrajudicial executions at the time of the facts of this case (paras. 8-16); II. The judgment's conclusions on the deaths of the three victims in this case (paras. 17-21); III. The facts of the case constitute "extrajudicial executions" (paras. 22-38); and IV. Conclusion (paras. 39-40).

I. THE PROVEN CONTEXT IN VENEZUELA AND IN ARAGUA STATE OF EXTRAJUDICIAL EXECUTIONS AT THE TIME OF THE FACTS OF THIS CASE

8. The IACtHR noted that, at the time of the events related to the deaths of the three members of the Díaz family, victims in this case, there was a context of extrajudicial executions by police officers in Venezuela and, in particular, in Aragua state, the place where the events of this case occurred.

9. In the judgment, the Inter-American Court noted that the Ombudsman had identified "certain patterns of police conduct," with the following characteristics:⁸

a) The official version of the police generally refers to the death of the victims in an alleged confrontation;

of Díaz Loreto et al. v. Venezuela. Preliminary objections, merits, reparations and costs. Judgment of November 19, 2019, paras. 80 to 86.

⁷ Cf. *Case of the Landaeta Mejías Brothers et al. v. Venezuela*. Preliminary objections, merits, reparations and costs. Judgment of August 27, 2014. Series C No. 281; *Case of Uzcátegui et al. v. Venezuela. Merits and reparations*. Judgment of September 3, 2012. Series C No. 249, and *Case of the Barrios Family v. Venezuela*. Merits, reparations and costs. Judgment of November 24, 2011. Series C No. 237.

⁸ Cf. *Case of Díaz Loreto et al. v. Venezuela. Preliminary objections, merits, reparations and costs*. Judgment of November 19, 2019, para. 66. The IACtHR took into consideration the Ombudsman's 2003 report, as well as the opinion provided by expert witness Lisandro Raúl Cubas during the public hearing in this case.

b) in general, the victims are intercepted and murdered near or inside their homes, or during police operations or raids;

c) the incidents occur in the presence of witnesses, who indicate that the victim was alive when detained;

d) in many cases, the victims are placed in vehicles, either with or without injuries, and subsequently appear dead on arrival at the hospital or morgue;

e) in many cases, the scene of the murder is altered: for example, the victim is moved to a place other than where the incident occurred, and weapons and drugs are planted;

f) the officials use balaclava helmets to hide their identity and, in some cases, they use vehicles without license plates, taxis, or official patrol cars;

g) in most cases, the victims have been shot numerous times and sometimes there are evident signs of torture, and

h) the family members and witnesses are generally threatened and harassed by the police after reporting the events.

10. Indeed, as the judgment emphasizes, starting in 2001, the Ombudsman's Office:⁹

"reported the 'permanent existence of unlawful police practices' in the form of extrajudicial executions. Also, in his 2002 report, the Ombudsman warned that extrajudicial executions had 'become violence of an endemic nature,' perpetrated by state agents who try and justify their actions by the excuse that it was impossible to obtain justice using the ordinary channels."¹⁰

11. The IACtHR also clarified that the said "context" had not been disputed and, to the contrary, was acknowledged by the State during this international litigation.¹¹

12. That acknowledgement of a pattern of extrajudicial executions was also recognized by the Prosecutor General in 2007, who "stated that, between 2000 and February 2007, the Public Prosecution Service had recorded 6,405 cases in the country of the so-called 'executions or confrontations' between civilians and law enforcement personnel."¹²

13. The judgment specified that the said "context" had also been acknowledged by international bodies such as the United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions, and the Human Rights Committee,¹³ which had repeatedly expressed their concern owing to the proliferation of reports of cases of extrajudicial executions in Venezuela.¹⁴

⁹ Cf. *Case of Díaz Loreto et al. v. Venezuela. Preliminary objections, merits, reparations and costs.* Judgment of November 19, 2019, para. 32.

¹⁰ Annex 2 of the Merits Report: The Venezuelan Ombudsman. Annual Report, 2002, p. 22.

¹¹ Cf. *Case of Díaz Loreto et al. v. Venezuela. Preliminary objections, merits, reparations and costs.* Judgment of November 19, 2019, paras. 31, 32, 55 and 66.

¹² Cf. *Case of Díaz Loreto et al. v. Venezuela. Preliminary objections, merits, reparations and costs.* Judgment of November 19, 2019, para. 32, footnote 30.

¹³ Cf. Special Rapporteur on extrajudicial, summary or arbitrary executions. Reports to the Commission on Human Rights: E/CN.4/1994/7 (para. 638); E/CN.4/1998/68/Add.1 (para. 420); E/CN.4/1999/39/Add.1 (para. 258); E/CN.4/2001/9/Add.1 (para. 420); E/CN.4/2003/3/Add.1, and E/CN.4/2004/7/Add.1.

¹⁴ Cf. *Case of Díaz Loreto et al. v. Venezuela. Preliminary objections, merits, reparations and costs.* Judgment of November 19, 2019, para. 33.

14. Similarly, in the judgment, the Inter-American Court underlined that it had already identified the existence of this “context” in other cases it had heard concerning executions in the states of Aragua and Falcón (cases of *Uzcátegui et al. v. Venezuela*, *the Landaeta Mejías Brothers et al. v. Venezuela*, and the *Barrios Family v. Venezuela*).¹⁵ It is worth stressing the words of the IACtHR in the judgment in the case of the *Barrios Family*, which was precisely related to arbitrary deprivations of the life of members of one and the same family in Aragua state:¹⁶

“... the series of incidents reveals a pattern of concealment that begins with the perpetrators’ distortion of the events, continues with the lack of judicial elucidation, and includes the implementation of various types of threats and harassment designed to prevent the determination of the truth and the identification of those responsible.”¹⁷

15. All the preceding elements concerning the context of extrajudicial executions by police officers in Venezuela, particularly in Aragua state, explicitly indicated in the judgment, are also supported by the Merits Report submitted by the Inter-American Commission in this case. When describing the factual framework of the case, the Commission indicated that, during its on-site visit to Venezuela in 2002, it had verified the existence of a problem of “extrajudicial executions” committed by state police agents, and analyzed their characteristics in its 2003 country report, as well as in its 2004 and 2005 Annual Reports. In this regard, in the chapter on “The context of extrajudicial executions in Venezuela” in its Merits Report in this case, the Inter-American Commission indicated that:¹⁸

“As for the *modus operandi*, the IACHR has identified that, in some instances, deaths are “staged as confrontations” during routine procedures, in the course of arrests or raids. In those cases, the victim is killed at the site of the operation and under the pretext of a confrontation with the offender.¹⁹ In other cases, the executions take place when the victims have been detained unlawfully and/or arbitrarily and are in state custody” (underlining added).

16. In our opinion, all the above, has fully proved a “context of extrajudicial executions” in Venezuela, and particularly in Aragua state, at the time of the facts of this case. As will be seen below, we consider that the “context” described coincides, essentially, with the geographical and factual circumstances in which the deaths of the victims in this case occurred (see *infra*, paras. 27 and 28). This was even acknowledged by the expert witness offered by the State when testifying during the public hearing, in response to the express question by a judge of the Inter-American Court of whether the

¹⁵ Cf. *Case of the Landaeta Mejías Brothers et al. v. Venezuela*. Preliminary objections, merits, reparations and costs. Judgment of August 27, 2014. Series C No. 281; *Case of Uzcátegui et al. v. Venezuela. Merits and reparations*. Judgment of September 3, 2012. Series C No. 249, and *Case of the Barrios Family v. Venezuela*. Merits, reparations and costs. Judgment of November 24, 2011. Series C No. 237.

¹⁶ Cf. *Case of Díaz Loreto et al. v. Venezuela. Preliminary objections, merits, reparations and costs*. Judgment of November 19, 2019, para. 30.

¹⁷ Cf. *Case of the Barrios Family v. Venezuela*. Merits, reparations and costs. Judgment of November 24, 2011. Series C No. 237, para. 38.

¹⁸ IACHR, Merits Report, No. 80/17, Case 12,662, Robert Ignacio Díaz Loreto, David Octavio Díaz Loreto, Octavio Ignacio Díaz Álvarez and family members. Venezuela, section on “The context of extrajudicial executions in Venezuela,” para. 24. Cf. *Case of Díaz Loreto et al. v. Venezuela. Preliminary objections, merits, reparations and costs*. Judgment of November 19, 2019, para. 30.

¹⁹ IACHR. *Report on the Situation of Human Rights in Venezuela*, October 24, 2003, para. 333. Citing: COFAVIC/Venezuela, Democracy and Human Rights, Mid-Year Report: January–August 2002. Also see: Provea, Annual Report No. 14, Caracas, Venezuela; COFAVIC/Parapolice groups in Venezuela, 2005, pp. 29 to 33; Human Rights Watch, Annual Reports 1998 and 1999.

deaths of the three members of the Díaz family could be situated within the general problem of abuse by police authorities and extrajudicial executions.²⁰

II. THE JUDGMENT'S CONCLUSIONS ON THE DEATHS OF THE THREE VICTIMS IN THIS CASE

17. Regarding the facts of this case, in relation to the deaths of Robert Ignacio Díaz Loreto, David Octavio Díaz Loreto and Octavio Díaz Álvarez, the Inter-American Court concluded that the State was responsible for violating the right to life contained in Article 4 of the American Convention.²¹ The IACtHR indicated, as it had in other cases, that "in any case of the use of force by State agents that results in the death of, or injuries to, one or more persons, the State has the obligation to provide a satisfactory and convincing explanation of what happened and to disprove the arguments concerning its responsibility with appropriate evidence."²² And, precisely in this case, it verified that the State had not provided a satisfactory explanation, "given the contradictions that have not been clarified and the deficiencies in the forensic appraisals mentioned above."²³

18. Regarding the facts of the case, the Inter-American Court noted that there were two versions. On the one hand, the version supported by the Inter-American Commission and the victims' representatives according to which these three individuals were extrajudicially executed; on the other hand, the version defended by the State according to which the three individuals died in the course of two "confrontations" with the State's law enforcement agents.²⁴ The IACtHR analyzed the evidence related to the events of the case and verified that a series of contradictions and inconsistencies existed in the version of the facts concerning the existence of such confrontations.²⁵

19. Regarding the contradictions and inconsistencies in the version of the supposed "confrontation," the IACtHR indicated that:

a) The testimony of several family members and neighbors contradicts the version of the confrontation;

b) No shells were collected from one of the firearms that had allegedly been used by the three victims in the confrontation;

c) There are inconsistencies regarding how long the police patrol car took to reach the Corinsa Social Security facility so that Robert Díaz Loreto could receive attention;

²⁰ Cf. Statement by Sara del Carmen Mier y Terán Ojera during the public hearing in this case. It should also be underlined that, during the same public hearing, expert witness Lisandro Raúl Cubas stated that, in Venezuela, extrajudicial executions "are related to a cultural problem of the violence used by the police forces; their lack of professional training is evident, also the issue of impunity [...] and the lack of control of police officers." Cf. *Case of Díaz Loreto et al. v. Venezuela. Preliminary objections, merits, reparations and costs.* Judgment of November 19, 2019, para. 32.

²¹ Cf. *Case of Díaz Loreto et al. v. Venezuela. Preliminary objections, merits, reparations and costs.* Judgment of November 19, 2019, para. 89.

²² *Case of Díaz Loreto et al. v. Venezuela. Preliminary objections, merits, reparations and costs.* Judgment of November 19, 2019, para. 88.

²³ *Case of Díaz Loreto et al. v. Venezuela. Preliminary objections, merits, reparations and costs.* Judgment of November 19, 2019, para. 88.

²⁴ *Case of Díaz Loreto et al. v. Venezuela. Preliminary objections, merits, reparations and costs.* Judgment of November 19, 2019, para. 80.

²⁵ *Case of Díaz Loreto et al. v. Venezuela. Preliminary objections, merits, reparations and costs.* Judgment of November 19, 2019, para. 87.

d) The Venezuelan authorities failed to investigate or conduct inquiries into the autopsy findings concerning the black inorganic material found in Robert Díaz Loreto's ocular conjunctiva, oral mucosa, respiratory tract, lungs and digestive system;

e) The characteristics of the victims' injuries in this case reveals a concentration of shots in their thorax or, more generally, on their "bodies";

f) During the two alleged confrontations, no member of the police detail was injured;

g) The authorities did not take measures that would have been decisive to confirm or reject the line of investigation regarding the confrontations, such as taking fingerprints from the firearms or cartridges or testing for gunpowder residue on hands to prove that the weapons were effectively fired by the direct alleged victims in this case.²⁶

20. Despite the above and the abundant references to a context of extrajudicial executions in both the chapter on Facts and the chapter on Merits,²⁷ the IACtHR indicated that it was difficult to determine whether or not there had been a confrontation with the police officers²⁸ and did not clarify whether this specific case concerned extrajudicial executions.

21. It is our opinion that, if the IACtHR had wished to make a more thorough analysis of the State's version that the events related to a "confrontation" between the police and the victims in this case, it should have examined the legitimate, necessary and proportionate use of force by the state agents, in order to determine the State's responsibility.

III. THE FACTS OF THE CASE CONSTITUTE EXTRAJUDICIAL EXECUTIONS

A. Definition

22. Before continuing with the analysis of the facts of the case that motivate this opinion, it is illustrative to recall the elements that constitute an extrajudicial execution in the context of the use of force by the State's law enforcement agents.

23. The United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions indicates that, "in many countries throughout the world, extra-legal, arbitrary and summary executions take place undocumented and undetected." These executions include: (a) political assassinations; (b) deaths resulting from torture or ill-treatment in prison or detention; (c) deaths resulting from enforced "disappearances"; (d) deaths resulting from the excessive use of force by law-enforcement personnel; (e) executions without due process, and (f) acts of genocide.²⁹

24. Furthermore, the United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions has indicated that it can be considered that an extrajudicial execution exists when "individuals whose actions engage the international responsibility of the State kill someone in an act that has the characteristics of an unlawful deprivation of life. Therefore, strictly speaking, in order to entail this international crime, the victim's

²⁶ Cf. *Case of Díaz Loreto et al. v. Venezuela. Preliminary objections, merits, reparations and costs.* Judgment of November 19, 2019, paras. 80 to 86.

²⁷ Cf. *Case of Díaz Loreto et al. v. Venezuela. Preliminary objections, merits, reparations and costs.* Judgment of November 19, 2019, paras. 29 to 33 and 66.

²⁸ Cf. *Case of Díaz Loreto et al. v. Venezuela. Preliminary objections, merits, reparations and costs.* Judgment of November 19, 2019, para. 80.

²⁹ United Nations, *United Nations Manual on the Prevention and Effective Investigation of Extra-Legal, Arbitrary and Summary Executions* ("Minnesota Protocol"), UN Doc. E/ST/CSDHA/.12 (1991).

death must be deliberate and unjustified.” The Special Rapporteur added that extrajudicial execution should be distinguished from murders committed by public servants who kill: (a) due to recklessness, inexperience, negligence or breach of regulations; (b) in legitimate defense; (c) in combat during an armed conflict, and (d) by the rational, necessary and proportionate use of force, in their capacity as those responsible for law enforcement.³⁰

25. Although the case law of the IACtHR has not defined clearly the content of this action, case by case it has defined its characteristics, when declaring that an extrajudicial execution has been committed.³¹

B. The facts of the case correspond to a hypothesis of extrajudicial execution

26. Even though, in this judgment, the IACtHR has not ruled specifically on the existence of extrajudicial executions, we consider that there are sufficient probative elements that clearly support this conclusion.

27. First, several elements of the context of extrajudicial executions in Venezuela at the time of the facts form part of the factual circumstances of this case. Thus:

a) The official version of the police forces refers to the deaths of the victims in an alleged “confrontation”;³²

b) The incidents took place near the home of one of them, or during police operations or raids;³³

c) The facts occurred in the presence of witnesses who stated that one of the victims was wounded and arrested after having been shot several times;³⁴

d) One of the victims, Robert Díaz Loreto, had been wounded before he was placed in the police vehicle;³⁵

e) The scene of the incident could have been altered – the victim was moved from the scene where the incident took place; firearms and shell cases were found;³⁶

³⁰ Office in Colombia of the United Nations High Commissioner for Human Rights, discussion on military criminal justice organized by the Antioquia Interinstitutional Committee on Human Rights and Humanitarian Law. Considerations on the investigation and prosecution of punishable conducts that constitute gross human rights violations or war crimes, September 13, 2005. Available, on December 13, at: <https://www.hchr.org.co/index.php/informacion-publica/pronunciamentos/intervenciones-de-la-direccion/407-ano-2005/294-considerations-sobre-la-investigacion-y-el-juzgamiento-de-conductas-punibles-constitutivas-de-graves-violaciones-de-los-derechos-humanos-o-de-crimes-de-guerra>

³¹ See, among others: *Case of Valenzuela Ávila v. Guatemala. Merits, reparations and costs*. Judgment of October 11, 2019. Series C No. 386; *Case of Omeara Carrascal et al. v. Colombia. Merits, reparations and costs*. Judgment of November 21, 2018. Series C No. 368; *Case of Villamizar Durán et al. v. Colombia. Preliminary objection, merits, reparations and costs*. Judgment of November 20, 2018. Series C No. 364; *Case of Cruz Sánchez et al. v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of April 17, 2015. Series C No. 292, and *Case of Rodríguez Vera et al. (Disappeared from the Palace of Justice) v. Colombia. Preliminary objections, merits, reparations and costs*. Judgment of November 14, 2014. Series C No. 287.

³² Cf. *Case of Díaz Loreto et al. v. Venezuela. Preliminary objections, merits, reparations and costs*. Judgment of November 19, 2019, paras. 41 and 42.

³³ Cf. *Case of Díaz Loreto et al. v. Venezuela. Preliminary objections, merits, reparations and costs*. Judgment of November 19, 2019, paras. 36, 39 and 41.

³⁴ Cf. *Case of Díaz Loreto et al. v. Venezuela. Preliminary objections, merits, reparations and costs*. Judgment of November 19, 2019, para. 39.

³⁵ Cf. *Case of Díaz Loreto et al. v. Venezuela. Preliminary objections, merits, reparations and costs*. Judgment of November 19, 2019, para. 77.

³⁶ Cf. *Case of Díaz Loreto et al. v. Venezuela. Preliminary objections, merits, reparations and costs*. Judgment of November 19, 2019, paras. 76 and 79.

f) The victims were shot numerous times³⁷ and there were signs that acts of torture had been perpetrated against one of them (the case of Robert Díaz Loreto), and

g) The family members were threatened and harassed by police officers after reporting the events.³⁸

28. Essentially, all these facts of the case conform to the systematic pattern and “the context” of extrajudicial executions in Venezuela at the time at which the deaths of the victims occurred. Here, it is important to stress, as the judgment does, that “there does not have to be an absolute concordance between the different element of the contexts and the facts of the case for them to be taken into account when analyzing a specific case. A case-by-case assessment should be made concerning the extent to which those patterns or contexts may be used as indications, presumptions or circumstantial evidence together with the rest of the body of evidence.”³⁹

29. This conformity between the facts of the case and the context of extrajudicial executions in Venezuela was recognized by the expert witness proposed by the State itself to provide an opinion during the hearing who acknowledged that this case was one of those that could be situated within the general problem of abuse of police authority and extrajudicial executions.⁴⁰

30. In addition, the IACtHR referred explicitly to other indications and presumptions which analyzed together with the context of the case, in our opinion, clearly infer that an extrajudicial execution took place. These included:

a) The testimony of several family members and neighbors contested the State’s version of the supposed “confrontation”;⁴¹

b) The unexplained delay of the police patrol car that took Robert Díaz Loreto, who was wounded, to the medical center to be attended;⁴²

c) The presence of “sewage” in Robert Díaz Loreto’s digestive system and respiratory tract was not explained;⁴³

³⁷ Cf. *Case of Díaz Loreto et al. v. Venezuela. Preliminary objections, merits, reparations and costs.* Judgment of November 19, 2019, paras. 76 and 79.

³⁸ Cf. *Case of Díaz Loreto et al. v. Venezuela. Preliminary objections, merits, reparations and costs.* Judgment of November 19, 2019, paras. 122 to 129.

³⁹ Cf. *Case of Díaz Loreto et al. v. Venezuela. Preliminary objections, merits, reparations and costs.* Judgment of November 19, 2019, para. 68.

⁴⁰ Cf. Statement by Sara del Carmen Mier y Terán Ojera during the public hearing in the case; she acknowledge this fact on being questioned on this point by a judge of the IACtHR.

⁴¹ Cf. *Case of Díaz Loreto et al. v. Venezuela. Preliminary objections, merits, reparations and costs.* Judgment of November 19, 2019, paras. 39, 40 and 77.

⁴² Cf. *Case of Díaz Loreto et al. v. Venezuela. Preliminary objections, merits, reparations and costs.* Judgment of November 19, 2019, para. 81. In this regard, the IACtHR indicated that it was unclear how long the police patrol car took to reach the Corinsa Social Security facility so that Robert Díaz Loreto could receive attention, because it was indicated that Robert Díaz Loreto’s body was left off at the facility at 7.30 p.m. and that he had been shot between 6 and 6.30 p.m. at a location that was a 15-minute drive at the most from the medical center. The IACtHR added that, based on this timeline, Mr. Díaz Loreto should have arrived between 6.15 and 6.45 p.m. at the latest, especially considering that he was being transported in a police patrol car that was able to drive much faster than a private vehicle. None of Venezuela’s domestic authorities examined this discrepancy in the times and, during the processing of this case, neither did the State offer any kind of explanation in relation to that delay or the inconsistencies in the timelines. Furthermore, it should be recalled that some statements by family members and neighbors mention that they had seen the police vehicle patrolling the neighborhood with Robert Díaz Loreto inside instead of taking him directly to a medical center.

⁴³ Cf. *Case of Díaz Loreto et al. v. Venezuela. Preliminary objections, merits, reparations and costs.* Judgment of November 19, 2019, para. 82.

d) No shell casing were found that could have allowed it to be proved that, as the State argued, all the victims had fired their weapons first against the police detail;⁴⁴

e) No law enforcement agents were injured during these two alleged "confrontations," even though, according to the State, the three victims had the advantage of the element of surprise, since they had fired first,⁴⁵ and

f) The seven gunshots that wounded the three victims were concentrated on their thorax or, more generally, on their "bodies" and none of them were shot on their extremities or other parts of the body that would have had less lethal results, and that would be more consistent with the location of injuries more typical of confrontations in which the wounds are mainly situated in the "extremities of the body."⁴⁶

31. Hence, when analyzing the evidence related to the facts of the case, the Inter-American Court noted that there were a series of "contradictions" and "inconsistencies" in the State's version of the facts related to the existence of "confrontations."⁴⁷

32. The Inter-American Court also noted that the domestic authorities had not analyzed or fully investigated the hypothesis of extrajudicial execution. In particular, the IACtHR indicated that the authorities did not take measures that would have been decisive to confirm or reject the line of investigation regarding the confrontation, such as taking fingerprints from the firearms or cartridges or testing for gunpowder residue on hands to prove that the weapons were effectively fired by the direct alleged victims in this case. Also, no ballistic tests were performed to prove that the bullets collected from the police patrol vehicles came from the firearms seized. It should be added that no record of the ownership of the firearms found at the scene of the incidents was presented, nor a forensic appraisal of the bullets that shot the alleged victims.⁴⁸

33. The Inter-American Court noted that such appraisals that were not conducted, and probative elements that were not submitted could have provided better evidence of great importance to verify one or other hypothesis of what happened. Therefore, it was not reasonable to consider that the absence of such decisive investigation procedures – procedures that the Venezuela authorities should have undertaken and that did not depend on a request by the family members of those who died – could prove a hypothesis of the facts that would be unfavorable to the alleged victims, especially in the case of evidence that could have been decisive to prove that the events constituted executions rather than confrontations.⁴⁹

34. In light of the foregoing, the undersigned consider that the explanations provided by the State to consider that these events did not form part of a context of extrajudicial executions is fairly unconvincing. Indeed, the State limited its arguments to considerations on matters relating to the fourth instance,⁵⁰ argued that not all the

⁴⁴ Cf. *Case of Díaz Loreto et al. v. Venezuela. Preliminary objections, merits, reparations and costs.* Judgment of November 19, 2019, para. 80.

⁴⁵ Cf. *Case of Díaz Loreto et al. v. Venezuela. Preliminary objections, merits, reparations and costs.* Judgment of November 19, 2019, para. 84.

⁴⁶ Cf. *Case of Díaz Loreto et al. v. Venezuela. Preliminary objections, merits, reparations and costs.* Judgment of November 19, 2019, para. 83.

⁴⁷ *Case of Díaz Loreto et al. v. Venezuela. Preliminary objections, merits, reparations and costs.* Judgment of November 19, 2019, para. 87.

⁴⁸ Cf. *Case of Díaz Loreto et al. v. Venezuela. Preliminary objections, merits, reparations and costs.* Judgment of November 19, 2019, para. 86.

⁴⁹ Cf. *Case of Díaz Loreto et al. v. Venezuela. Preliminary objections, merits, reparations and costs.* Judgment of November 19, 2019, para. 86.

⁵⁰ Cf. *Case of Díaz Loreto et al. v. Venezuela. Preliminary objections, merits, reparations and costs.* Judgment of November 19, 2019, para. 14.

elements of the said context were present in the facts of this case,⁵¹ and referred to the fact that Robert Díaz Loreto had been “hunting iguanas” to explain the presence of “sewage” in his respiratory tract and digestive system. In this regard, the judgment indicates that this “does not explain the specific findings of the autopsy or how he could have ingested and breathed in that inorganic material”;⁵² which reinforces the hypothesis of the family members and the victims’ representatives, and also of the Inter-American Commission, that Robert Díaz Loreto was not taken directly to the Corinsa Social Security Clinic in Cagua, a matter that is also corroborated by the delay in the transfer of the victim to the medical center. Thus, as stated in the judgment, given the inconsistencies in the State’s version, “these findings could indicate that he was subjected to physical abuse that would constitute ill-treatment or torture.”⁵³

35. Besides this, the State did not provide any explanation on the reasons why the police patrol had taken so long to reach the health center with Robert Díaz Loreto;⁵⁴ nor did it explain why it had not conducted investigation measures that would have been definitive to elucidate the truth of what happened. Moreover, it failed to offer any explanation that allowed it to be understood why the context of extrajudicial executions that existed in Venezuela and in Aragua state was not taken into account when investigating the facts of this case.⁵⁵

36. On this last point, the IACTHR recalled its consistent case law according to which it is for the domestic authorities to clarify the facts and determine individual responsibilities. In any case involving the use of force by State agents that results in the death or injury of one or more persons, the State has the obligation to provide a satisfactory and convincing explanation of what happened and to disprove the arguments concerning its responsibility with appropriate evidence, and this has not occurred in the instant case, given the contradictions that have not been clarified and the aforementioned deficiencies in the forensic appraisals.⁵⁶

37. We understand that the coexistence of contradictory versions of what happened in this case is only substantiated owing the negligence of the authorities when conducting certain elementary forensic tests. In this regard, and as indicated in the judgment, it is not reasonable to consider that this negligence constitutes evidence that is contrary to the rights of the victims in this case. In particular, if it is considered that the decision to obtain that evidence did not depend on them, but rather on the domestic authorities.⁵⁷

38. In this regard, it is legitimate to wonder about the type of evidence required, and the way in which the extrajudicial execution of the three victims in this case could have been proved; especially when it is considered that the victims’ representatives could not, reasonably, have had other evidence than that produced in this contentious case. To the contrary, this would signify requiring evidence that it was impossible to produce to prove

⁵¹ Cf. *Case of Díaz Loreto et al. v. Venezuela. Preliminary objections, merits, reparations and costs.* Judgment of November 19, 2019, para. 55.

⁵² Cf. *Case of Díaz Loreto et al. v. Venezuela. Preliminary objections, merits, reparations and costs.* Judgment of November 19, 2019, para. 82.

⁵³ Cf. *Case of Díaz Loreto et al. v. Venezuela. Preliminary objections, merits, reparations and costs.* Judgment of November 19, 2019, para. 82.

⁵⁴ Cf. *Case of Díaz Loreto et al. v. Venezuela. Preliminary objections, merits, reparations and costs.* Judgment of November 19, 2019, para. 81.

⁵⁵ Cf. *Case of Díaz Loreto et al. v. Venezuela. Preliminary objections, merits, reparations and costs.* Judgment of November 19, 2019, para. 110.

⁵⁶ Cf. *Case of Díaz Loreto et al. v. Venezuela. Preliminary objections, merits, reparations and costs.* Judgment of November 19, 2019, para. 88.

⁵⁷ Cf. *Case of Díaz Loreto et al. v. Venezuela. Preliminary objections, merits, reparations and costs.* Judgment of November 19, 2019, para. 86.

these points. Hence, the need to assess the proven context together with the indications and presumptions arising from the probative elements.

IV. CONCLUSION

39. Based on the foregoing, in cases such as this one, where: (a) there is a fully proven context and *modus operandi* of extrajudicial executions by state agents in a country, particularly in the same geographical area where the facts of the case occurred; (b) that context has been acknowledged by the State; (c) the context conforms essentially to the specific facts that must be analyzed; (d) there is no dispute that it was agents of the State who deprived the victims of their life; (e) contradictory versions of what happened exist, with the State arguing that the facts occurred during a supposed "confrontation"; (f) elementary investigation measures were not conducted that could have confirmed or rejected one of the versions; (g) previous judgment of the IACtHR exist concerning the same context and geographical region that involved the State's responsibility, and (f) the version of the supposed confrontations argued by the State contained serious inconsistencies and was not plausible; therefore, the burden of proof should have been reversed to presume the existence of extrajudicial executions, unless there was reasonable evidence to the contrary. Bearing in mind the indications and presumptions noted in the specific case (see *supra*, paras. 30 to 38), all the above, analyzed together with the "context" (see *supra*, paras. 8 to 16) and its correspondence with the factual framework of the case (see *supra*, paras. 27 to 29), confirm that the facts constitute a hypothesis of extrajudicial executions.

40. For this reason, we consider that, in the instant case, the Inter-American Court should have concluded that the violation of the right to life of Robert Ignacio Díaz Loreto, David Octavio Díaz Loreto, and Octavio Ignacio Díaz Álvarez was due to circumstances in which these individuals were victims of "extrajudicial executions," and this is more in keeping with the second operative paragraph of the judgment which specifies that Article 4 of the American Convention was violated in relation to the State's obligations "to respect" and "to ensure" the victims' right to life.

Eduardo Ferrer Mac-Gregor Poisot
Judge

Elizabeth Odio Benito
Judge

Pablo Saavedra Alessandri
Secretary

**DISSENTING OPINION OF JUDGE EDUARDO VIO GROSSI,
INTER-AMERICAN COURT OF HUMAN RIGHTS
DÍAZ LORETO ET AL. V. VENEZUELA
JUDGMENT OF NOVEMBER 19, 2019
(Preliminary objections, merits, reparations and costs)**

I. INTRODUCTION

1. This dissenting opinion is issued in relation to the judgment in reference,¹ owing to the provisions in its first operative paragraph² with regard to the objection filed by the Bolivarian Republic of Venezuela³ concerning the prior exhaustion of domestic remedies established in the American Convention on Human Rights.⁴

2. For a better understanding of this discrepancy, it is necessary to reiterate and even expand what I have indicated in other separate opinions⁵ in relation to compliance with this requirement addressing, successively, some preliminary and general considerations concerning the reasons that support this dissent, the relevant articles of the Convention, the regulatory provisions on this same matter and, lastly, the consequences of adopting an opinion that differs from the one described in this document.

II. PRELIMINARY AND GENERAL CONSIDERATIONS

3. The preliminary and general considerations concerning this case related to the function of the Inter-American Court of Human Rights⁶ and the role of the separate opinion.

¹ Hereinafter, the judgment. Hereafter, each time that the footnotes indicate "para." or "paras." it should be understood that this refers to a paragraph or paragraphs of the judgment.

² "To reject the preliminary objection filed by the State of the failure to exhaust domestic remedies, pursuant to paragraphs 16 to 22 of this judgment."

³ Hereinafter, the State.

⁴ Hereinafter, the Convention. Hereafter, each time "Art." or "Arts." is indicated, it should be understood that this refers to an article or articles of the Convention.

⁵ Concurring opinion of Judge Eduardo Vio Grossi, Inter-American Court of Human Rights, *Case of Terrones Silva et al. v. Peru, Preliminary objections, merits, reparations and costs*. Judgment of September 26, 2018; Separate opinion of Judge Eduardo Vio Grossi, Inter-American Court of Human Rights, *Case of Amrhein et al. v. Costa Rica, Preliminary objections, merits, reparations and costs*. Judgment of April 25, 2018; Concurring opinion of Judge Eduardo Vio Grossi, Inter-American Court of Human Rights, *Case of Yarce et al. v. Colombia. Preliminary objection, merits, reparations and costs*. Judgment of November 22, 2016. Series C No. 325; Concurring opinion of Judge Eduardo Vio Grossi, Inter-American Court of Human Rights, *Case of Herrera Espinoza et al. v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of September 1, 2016. Series C No. 316; Concurring opinion of Judge Eduardo Vio Grossi, Inter-American Court of Human Rights, *Case of Velásquez Paiz et al. v. Guatemala. Preliminary objections, merits, reparations and costs*. Judgment of November 19, 2015. Series C No. 307; Dissenting opinion of Judge Eduardo Vio Grossi, Inter-American Court of Human Rights, *Case of the Campesino Community of Santa Bárbara v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of September 1, 2015. Series C No. 299; Dissenting opinion of Judge Eduardo Vio Grossi, Inter-American Court of Human Rights, *Case of Wong Ho Wing v. Peru. Preliminary objection, merits, reparations and costs*. Judgment of June 30, 2015. Series C No. 297; Dissenting opinion of Judge Eduardo Vio Grossi, Inter-American Court of Human Rights, *Case of Cruz Sánchez et al. v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of April 17, 2015. Series C No. 292; Dissenting opinion of Judge Eduardo Vio Grossi, Inter-American Court of Human Rights, *Case of Liakat Ali Alibux v. Suriname. Preliminary objections, merits, reparations and costs*. Judgment of January 30, 2014. Series C No. 276, and Dissenting opinion of Judge Eduardo Vio Grossi, Inter-American Court of Human Rights, *Case of Díaz Peña v. Venezuela. Preliminary objection, merits, reparations and costs*. Judgment of June 26, 2012. Series C No. 244.

⁶ Hereinafter, the IACtHR.

A. The function of the Court.

4. This opinion is based on the fact that the function of the Court⁷ is to impart justice in the area of human rights pursuant to law and, more specifically, pursuant to the Convention and, consequently, pursuant to both international human rights law of which it forms part and public international law⁸ of which, in turn, it forms part.

5. Therefore, strictly speaking, the Court does not have competence to promote and defend human rights because the Convention expressly assigns that function to the Commission,⁹ which could be classified as activist, understanding this word in the most positive sense possible.¹⁰ In contrast, the Court's function is to decide human rights disputes that arise between the States Parties to the Convention that are able to appear before the Court if necessary,¹¹ or in the case of an individual or a group of individuals or a non-governmental entity¹² that has lodged a petition against one or several States, the other States Parties are represented by the Commission,¹³ and they should even be aware of the cases in which the respondent State Party has failed to comply with the rulings made in the proceedings filed against it.¹⁴

⁷ Art. 62(3): "The jurisdiction of the Court shall comprise all cases concerning the interpretation and application of the provisions of this Convention that are submitted to it, provided that the States Parties to the case recognize or have recognized such jurisdiction, whether by special declaration pursuant to the preceding paragraphs, or by a special agreement."

⁸ Art. 31(3)(c) of the Vienna Convention on the Law of Treaties: General rule of interpretation.... There shall be taken into account, together with the context:... (c) any relevant rules of international law applicable in the relations between the parties."

⁹ Art. 41: "The main function of the Commission shall be to promote respect for and defense of human rights. In the exercise of its mandate, it shall have the following functions and powers

- a. to develop an awareness of human rights among the peoples of America;
- b. to make recommendations to the governments of the member states, when it considers such action advisable, for the adoption of progressive measures in favor of human rights within the framework of their domestic law and constitutional provisions as well as appropriate measures to further the observance of those rights;
- c. to prepare such studies or reports as it considers advisable in the performance of its duties;
- d. to request the governments of the member states to supply it with information on the measures adopted by them in matters of human rights;
- e. to respond, through the General Secretariat of the Organization of American States, to inquiries made by the member states on matters related to human rights and, within the limits of its possibilities, to provide those states with the advisory services they request;
- f. to take action on petitions and other communications pursuant to its authority under the provisions of Articles 44 through 51 of this Convention; and
- g. to submit an annual report to the General Assembly of the Organization of American States."

¹⁰ Diccionario de la Lengua Española, Real Academia Española, 2019: "*Activismo: 1. Tendencia a comportarse de un modo extremadamente dinámico. 2. Ejercicio del proselitismo y acción social de carácter público. Activista: 1. Perteneciente o relativo al activismo. 2. Seguidor del activismo.*"

¹¹ Art. 45(1): "Any State Party may, when it deposits its instrument of ratification of or adherence to this Convention, or at any later time, declare that it recognizes the competence of the Commission to receive and examine communications in which a State Party alleges that another State Party has committed a violation of a human right set forth in this Convention."

¹² Art. 44: "Any person or group of persons, or any nongovernmental entity legally recognized in one or more member states of the Organization, may lodge petitions with the Commission containing denunciations or complaints of violation of this Convention by a State Party."

¹³ Art. 61(1): "Only the States Parties and the Commission shall have the right to submit a case to the Court." Art. 35: "The Commission shall represent all the member countries of the Organization of American States." Art. 57: "The Commission shall appear in all cases before the Court."

¹⁴ Art. 65: "To each regular session of the General Assembly of the Organization of American States the Court shall submit, for the Assembly's consideration, a report on its work during the previous year. It shall specify, in particular, the cases in which a state has not complied with its judgments, making any pertinent recommendations."

6. The function of the Court is, let me repeat, to rule interpreting and applying the Convention; in other words, determining the meaning and scope of its provisions – that, since to some extent they may be perceived as obscure or uncertain, may be subject to several possible applications – and endeavoring to ensure that this results in the effective protection of human rights and, if these have been violated, their prompt restoration.¹⁵

7. Evidently, to fulfill this mission, the Court does not have the authority to adjudicate outside or disregarding the law expressed, as far as the Court is concerned, in the Convention. In this regard, it is necessary to respect the principle of public law that authorities may only act within the law, so that, whatever is not regulated, is governed by the internal, domestic and exclusive jurisdiction of the State in question.¹⁶

8. Also, and for the same reason, the Court must, on the one hand, proceed only in accordance with what the Convention effectively establishes and not what it would like it to establish and, on the other hand, avoid modifying it, a power assigned expressly to its States Parties.¹⁷ Consequently, if the Court does not agree with what a provision of the Convention establishes, it should not exercise the international normative function that falls within the competence of the States, but rather advise them of the need to amend the provision in question. Thus, the new provision that eventually arises from the exercise of the said function by the States would clearly enjoy a more solid and widespread democratic legitimacy.

9. In this regard, it should also be indicated that this opinion responds to the circumstance that the Court, as a judicial organ, enjoys extensive autonomy in its work, since there is no higher entity that is able to control its actions,¹⁸ a characteristic that imposes on it the imperative of being extremely rigorous in the exercise of its jurisdiction in order not to denature this and, consequently, so as not to weaken the inter-American system for the protection of human rights. This is why the thesis argued in this text seeks, among other purposes, the broadest possible recognition of the Court by all those who appear before it,

¹⁵ Art. 63(1): "If the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party."

¹⁶ "The question whether a certain matter is or is not solely within the jurisdiction of a State is an essentially relative question; it depends upon the development of international relations. Thus, in the present state of international law, questions of nationality are, in the opinion of the Court, in principle within this reserved domain." Permanent Court of International Justice, Advisory Opinion on Nationality Decrees issued in Tunisia and Morocco (French zone), Series B No. 4, p.24.

Protocol No. 15 amending the Convention for the Protection of Human Rights and Fundamental Freedoms, "Art.1: At the end of the preamble to the Convention, a new recital shall be added, which shall read as follows: "Affirming that the High Contracting Parties, in accordance with the principle of subsidiarity, have the primary responsibility to secure the rights and freedoms defined in this Convention and the Protocols thereto, and that in doing so they enjoy a margin of appreciation, subject to the supervisory jurisdiction of the European Court of Human Rights established by this Convention."

¹⁷ Art. 31: "Recognition of Other Rights. Other rights and freedoms recognized in accordance with the procedures established in Articles 76 and 77 may be included in the system of protection of this Convention."

Art. 76(1): "Proposals to amend this Convention may be submitted to the General Assembly for the action it deems appropriate by any State Party directly, and by the Commission or the Court through the Secretary General."

Art. 77(1): "In accordance with Article 31, any State Party and the Commission may submit proposed protocols to this Convention for consideration by the States Parties at the General Assembly with a view to gradually including other rights and freedoms within its system of protection."

¹⁸ Art. 67: "The judgment of the Court shall be final and not subject to appeal. In case of disagreement as to the meaning or scope of the judgment, the Court shall interpret it at the request of any of the parties, provided the request is made within ninety days from the date of notification of the judgment."

namely, the alleged victims of human rights violations,¹⁹ the Commission²⁰ and the States Parties to the Convention that have accepted its jurisdiction,²¹ thereby reinforcing the Court's status as a judicial organ and, consequently, the most significant entity of a continental scope that has been established to safeguard human rights. Moreover, for this reason it is necessary to persist in consolidating and improving it, without exposing it to risks that could negatively affect this effort.

10. All the above, also taking into consideration that the Court, on the one hand, should execute its functions abiding by the principles of impartiality, independence, objectivity, political independence, equanimity, full equality before the law and justice, non-discrimination and absence of prejudices, characteristics inherent in all jurisdictional organs and, on the other hand, that the ultimate purpose of its task is to duly and opportunely safeguard the human rights of the presumed victims of violations of those rights. In other words, it should proceed bearing in mind that its functions are similar to those exercised, for example, by juvenile courts and labor courts, which are based, the former on the best interests of the child, and the latter on the protection of the worker, all within the framework of the administration of justice.

11. Based on the foregoing, and because the Convention is a treaty between States²² and therefore establishes their obligations – but with regard to the persons subject to their respective jurisdictions²³ – it can be concluded that the Court's function is to fathom the intentions that they incorporated into the said treaty when signing it and, eventually, how those intentions should be understood *vis-à-vis* new situations.

12. This is why, in order to interpret the Convention, the Court has not only its text, but also other sources of public international law; that is, international custom, the general principles of law, and the unilateral legal acts of the States Parties and, if the States that appear before it have agreed, equity, and also, but as subsidiary means, case law, doctrine, and the legally binding resolutions of international organizations.²⁴

¹⁹ *Supra*, footnote 12.

²⁰ *Supra*, footnote 13.

Art. 25(1) of the Court's Rules of Procedure: "Participation of the Alleged Victims or their Representatives. Once notice of the brief submitting a case before the Court has been served, in accordance with Article 39 of the Rules of Procedure, the alleged victims or their representatives may submit their brief containing pleadings, motions, and evidence autonomously and shall continue to act autonomously throughout the proceedings.

²¹ *Supra*, footnote 7.

²² Art. 2(1)(a) of the Vienna Convention on the Law of Treaties: "Use of Terms. 1. For the purposes of the present Convention: (a) "treaty" means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation."

²³ Art. 1: "1. The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition. 2. For the purposes of this Convention, "person" means every human being."

²⁴ Art. 38 of the Statute of the International Court of Justice: "1. The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply: (a) international conventions, whether general or particular, establishing rules expressly recognized by the contesting states; (b) international custom, as evidence of a general practice accepted as law; (c) the general principles of law recognized by civilized nations; (d) subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

2. This provision shall not prejudice the power of the Court to decide a case *ex aequo* if the parties agree thereto." This is the only international treaty-based provision that refers to the sources of public international law. It does not include unilateral legal acts or the legally binding resolutions of international organizations.

13. That said, the principal rule for the interpretation of treaties contained in the Vienna Convention on the Law of Treaties²⁵ and ²⁶ is that:

“[a] treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.”

14. This provision includes four means of interpretation. One of the methods is based on good faith which signifies that what was agreed by the States Parties to the treaty in question should be understood in accordance with what they really intended to agree on, so that this is applied faithfully and has practical effects. The second is the textual or literal method, which relates to the analysis of the text of the treaty, the vocabulary used and the ordinary meaning of its terms. Another is the subjective method, which seeks to establish the intention of the States Parties to the treaty by also analyzing the *travaux préparatoires* and their impact on the treaty. And the fourth is the functional or teleological method that seeks to determine the object and purpose of the treaty. These four methods should be applied simultaneously and harmoniously in the interpretation of a treaty, without giving preference to any of them.²⁷

15. Ultimately, what underlines everything indicated above is, on the one hand, that the inter-American jurisdiction established in the Convention is the peaceful way to resolve the disputes that arise among its States Parties in relation to respect for the human rights of the persons subject to their respective jurisdictions and, on the other, that the Court, when proceeding in conformity with the provisions of the Convention, provides its rulings with the necessary corresponding legal certainty. And, all this considering that the law is the means to achieve justice and justice the means to achieve peace.

B. The role of the individual opinion

16. This partially dissenting opinion is issued with full and absolute respect for the decisions taken by the Court in this case that, consequently, must be complied with. This text cannot, therefore, be interpreted in any way or under any circumstance as detracting from the legitimacy of the decision adopted in this case.

17. Based on the foregoing consideration, I must, therefore, indicate expressly that the thesis set out in this opinion does not seek, in any way, to weaken or restrict the exercise of

²⁵ Hereinafter, the Vienna Convention.

²⁶ Art. 31: General rule of interpretation. 1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose. 2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes: (a) any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty; (b) any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty. 3. There shall be taken into account, together with the context: (a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions; (b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation; (c) any relevant rules of international law applicable in the relations between the parties. 4. A special meaning shall be given to a term if it is established that the parties so intended.”

Art. 32: “Supplementary means of interpretation. Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31: (a) leaves the meaning ambiguous or obscure; or (b) leads to a result which is manifestly absurd or unreasonable.”

²⁷ This is what differentiates the interpretation of a treaty from the interpretation of the law in which, in some countries, such as Chile – according to article 19 of its Civil Code – the literal interpretation prevails: “When the meaning of the law is clear, its literal meaning should not be disregarded, on the pretext of consulting its spirit. However, in order to interpret an obscure expression of the law, it is possible to have recourse to its intention or spirit, clearly expressed in the law, or in the authoritative history of its elaboration.”

human rights, but rather precisely the contrary. Indeed, what I have indicated here responds to a profound certainty that effective respect for human rights is achieved if the States Parties to the Convention are required to comply with what they truly, freely and sovereignly, undertook to fulfill.²⁸ In this regard, legal certainty plays a fundamental role and, consequently, cannot be understood to limit or restrict the development of human rights, but rather as an instrument that offers the best possible guarantee for their effective respect or, if they have been violated, for their earliest possible restoration by the corresponding State.²⁹ The purpose, therefore, is not only to deliver judgments that are solidly substantiated and that develop human rights, but above all, when those rights have been violated, to ensure that the State concerned re-establishes them as soon as possible.

18. Moreover, the issue of separate opinions – which may at times lead to misunderstandings and even differences or disapproval – not only constitutes the exercise of a right but, fundamentally, compliance with a duty, which is to contribute to a better understanding of the function assigned to the Court.³⁰ In addition, separate opinions may even relate to the exercise of the right to freedom of thought and expression recognized in the Convention.³¹

²⁸ *Supra*, footnotes 18 and 23.

Art. 33: "The following organs shall have competence with respect to matters relating to the fulfillment of the commitments made by the States Parties to this Convention:

- a. the Inter-American Commission on Human Rights, referred to as "The Commission;" and
- b. the Inter-American Court of Human Rights, referred to as "The Court."

²⁹ *Supra*, footnote 15.

³⁰ Art. 66(2): "If the judgment does not represent in whole or in part the unanimous opinion of the judges, any judge shall be entitled to have his dissenting or separate opinion attached to the judgment."

Art. 24(3) of the Statute of the Court: "The decisions, judgments and opinions of the Court shall be delivered in public session, and the parties shall be given written notification thereof. In addition, the decisions, judgments and opinions shall be published, along with judges' individual votes and opinions and with such other data or background information that the Court may deem appropriate."

Art. 32(1)(a) of the Rules of Procedure: The Court shall make public: its judgments, orders, opinions, and other decisions, including separate opinions, dissenting or concurring, whenever they fulfill the requirements set forth in Article 65(2) of these Rules."

Art. 65(2) of the Court's Rules of Procedure: "Any judge who has taken part in the consideration of a case is entitled to append a separate reasoned opinion to the judgment, concurring or dissenting. These opinions shall be submitted within a time limit to be fixed by the President so that the other Judges may take cognizance thereof before notice of the judgment is served. Said opinions shall only refer to the issues covered in the judgment."

³¹ Art. 13: "Freedom of Thought and Expression. 1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.

2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure:

- a. respect for the rights or reputations of others; or
- b. the protection of national security, public order, or public health or morals.

3. The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.

4. Notwithstanding the provisions of paragraph 2 above, public entertainments may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence.

5. Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law."

19. Furthermore, based on the foregoing, the mechanism of the separate opinion is also established in the international norms of the European Court of Human Rights,³² the African Court of Human and Peoples' Rights,³³ the International Court of Justice,³⁴ the International Criminal Court³⁵ and the International Tribunal for the Law of the Sea.³⁶

20. Consequently, this opinion is issued with the hope that, in future, its contents will be incorporated either in case law or in a new provision of international law. Regarding the former, since the Court's ruling is only binding for the State Party to the case in which it is delivered,³⁷ the Court – as a subsidiary source of international law that must, consequently, determine the “*rules of law*” established by an autonomous source of international law; in other words, a treaty, custom, general principle of law or unilateral legal act³⁸ – may in future change when adjudicating another case. And, regarding the latter, since the States have competence for the international normative function and, in the case of the Convention, its States Parties through an amendment to the Convention.³⁹

III. THE ARTICLES OF THE CONVENTION

A. Articles on the exhaustion of domestic remedies

21. The rule of the prior exhaustion of domestic remedies is contained in Article 46(1)(a) of the Convention, which indicates that:

Admission by the Commission of a petition or communication lodged in accordance with Articles 44 or 45 shall be subject to the following requirements:

- a. that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law.”

³² Art.74(2) of the Rules of Court: “Any judge who has taken part in the consideration of the case by a Chamber or by the Grand Chamber shall be entitled to annex to the judgment either a separate opinion, concurring with or dissenting from that judgment, or a bare statement of dissent.”

³³ Article 44 of its Statute: « If the judgment does not represent in whole or in part the unanimous opinion of the Judges, any Judge shall be entitled to deliver a separate or dissenting opinion.”

³⁴ Art. 57 of its Statute: “if the judgment does not represent in whole or in part the unanimous opinion of the judges, any judge shall be entitled to deliver a separate opinion.

³⁵ Art 74(5) of the Rome Statute of the International Criminal Court: “The decision shall be in writing and shall contain a full and reasoned statement of the Trial Chamber's findings on the evidence and conclusions. The Trial Chamber shall issue one decision. When there is no unanimity, the Trial Chamber's decision shall contain the views of the majority and the minority. The decision or a summary thereof shall be delivered in open court.”

³⁶ Art. 30(3) of its Statute: “If the judgment does not represent in whole or in part the unanimous opinion of the members of the Tribunal, any member shall be entitled to deliver a separate opinion.”

³⁷ *Supra*, footnote 18.

Art.68(1): “The States Parties to the Convention undertake to comply with the judgment of the Court in any case to which they are parties.”

Art. 46(1) of the European Convention on Human Rights: “ The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.”

Art. 46. and 3 of the Statute of the African Court of Justice and Human Rights: “Binding Force and Execution of Judgments. 1. The decision of the Court shall be binding on the parties. ... 3. The parties shall comply with the judgment made by the Court in any dispute to which they are parties within the time stipulated by the Court and shall guarantee its execution.”

Art. 59 of the Statute of the International Court of Justice: “The decision of the Court has no binding force except between the parties and in respect of that particular case.”

³⁸ *Supra*, footnote 24.

³⁹ *Supra*, footnote 17.

22. Meanwhile, Article 47(a) of the Convention adds that:

The Commission shall consider inadmissible any petition or communication submitted under Articles 44 or 45 if:

a. any of the requirements indicated in Article 46 has not been met.”

B. Grounds

23. The grounds for the rule of prior exhaustion of domestic remedies in the inter-American human rights system is to be found in the third paragraph of the Preamble to the Convention which indicates that:

“Recognizing that the essential rights of man are not derived from one's being a national of a certain state, but are based upon attributes of the human personality, and that they therefore justify international protection in the form of a convention reinforcing or complementing the protection provided by the domestic law of the American States.”

C. The complementary or reinforcing nature of the inter-American protection

24. Having set out the grounds and the applicable norms, it is necessary to insist on the said rule of the prior exhaustion of domestic remedies and, consequently, that, in this case, “the international protection” of the inter-American human rights system is contemplated in the Convention as “reinforcing or complementing the protection provided by the domestic law of the American States” and, logically, this implies that the former does not replace the latter, among other reasons because, in relation to compliance with what the inter-American system ordains – at least in disputes involving the Commission and the petitioners on the one hand, and the State concerned on the other – this must always be complied with or executed by the latter.⁴⁰

25. This means that the inter-American jurisdiction does not substitute or replace the domestic jurisdiction, it merely complements or reinforces the latter; that is, it contributes to or helps the latter re-establish, as soon as possible, the exercise of the human rights that are alleged to have been violated. In this regard, it should not be forgotten that it is the State that is obligated by the Convention⁴¹ and, therefore, it not only has the international obligation to respect and ensure respect for the rights recognized therein,⁴² but also, frequently, it can only do so through its courts of justice.

26. This is why, as the Court has indicated:

“The rule of the prior exhaustion of domestic remedies has been conceived in the interest of the State because it seeks to exempt it from responding before an international organ for acts attributed to it, before it has had the opportunity to rectify them using its own means.”⁴³

27. Ultimately, this rule allows the State to comply with its human rights obligations without waiting for the inter-American system to order it to do so, following litigation.⁴⁴ Hence, the said rule is intended to accord the State the possibility of ordering the effective respect for and exercise of the human rights that have been violated as soon as possible, which is the

⁴⁰ *Supra*, footnote 23.

⁴¹ *Idem*.

⁴² *Supra*, footnote 25.

⁴³ *Case of Velásquez Rodríguez v. Honduras. Merits*. Judgment of July 29, 1988. Series C No. 4, para. 61.

⁴⁴ *Supra*, footnote 15.

object and purpose of the Convention and, consequently, makes a subsequent intervention by the inter-American jurisdiction unnecessary.

28. The rule of the prior exhaustion of domestic remedies signifies that, in those situations in which it has been already been alleged in the relevant sphere of the domestic jurisdiction that the State has not complied with its commitment to respect and ensure the free and full exercise of human rights, it is possible to require the intervention of the international jurisdictional instance so that, if appropriate, the State is ordered to comply with the international obligations it has violated, provide a guarantee that it will not violate them again, and redress all the consequences of such violations.⁴⁵

29. From this perspective, it can be argued that although the practical effect of the said rule is that the State re-establish respect for the human rights violated as soon as possible – the object and purpose of the Convention – it is also true that this rule has been established (and perhaps, above all) to benefit the alleged victim of the human rights violation.

D. The holder of the obligation

30. It is also necessary to underline that the Convention conceives the said rule as an obligation that must be met prior to the “petition or communication lodged in accordance with Articles 44⁴⁶ or 45”⁴⁷ and this means that the responsibility for complying with this rule corresponds to the person lodging the petition before the Commission; that is, “[a]ny person or group of persons, or any non-governmental entity legally recognized in one or more member states of the Organization,” who may subsequently intervene in the corresponding proceedings.⁴⁸

31. Indeed, it can be argued, based on the said Article 46, that, for the pertinent petition or communication to be admitted, the remedies of the domestic jurisdiction must have previously been exhausted and, evidently, it is the alleged victim, his or her representative, or the petitioner who must exhaust those remedies. It is not logical or coherent to make the admissibility of a petition or communication based on a violation of human rights depend on the State against which it is addressed having exhausted the domestic remedies against its own actions – consisting in having violated human rights – because under this absurd hypothesis, it would never be possible to have recourse to the international instance.

⁴⁵ *Idem*.

⁴⁶ *Supra*, footnote 12.

⁴⁷ “1. Any State Party may, when it deposits its instrument of ratification of or adherence to this Convention, or at any later time, declare that it recognizes the competence of the Commission to receive and examine communications in which a State Party alleges that another State Party has committed a violation of a human right set forth in this Convention. 2. Communications presented by virtue of this article may be admitted and examined only if they are presented by a State Party that has made a declaration recognizing the aforementioned competence of the Commission. The Commission shall not admit any communication against a State Party that has not made such a declaration. 3. A declaration concerning recognition of competence may be made to be valid for an indefinite time, for a specified period, or for a specific case. 4. Declarations shall be deposited with the General Secretariat of the Organization of American States, which shall transmit copies thereof to the member states of that Organization

⁴⁸ The Court’s 1996 Rules of Procedure indicated that: “[a]t the reparations stage, the representatives of the victims or of their next of kin may independently submit their own arguments and evidence” (Art. 23). The Rules of Procedure adopted in 2000, 2003 and 2009 established that: “[w]hen the application has been admitted, the alleged victims, their next of kin or their duly accredited representatives may submit their requests, arguments and evidence, autonomously, throughout the proceeding” (Art. 23(1)). The current Rules of Procedure, adopted by the Court at its eighty-fifth regular session held from November 16 to 28, 2009, establish that: “[o]nce notice of the brief submitting a case before the Court has been served, in accordance with Article 39 of the Rules of Procedure, the alleged victims or their representatives may submit their brief containing pleadings, motions, and evidence autonomously and shall continue to act autonomously throughout the proceedings” (Art. 25(1)).

32. The foregoing appears evident and, if it is mentioned, it is to underscore – without leaving any room for doubt – that the reference that the Court’s case law has made to this rule being “conceived in the interests of the State” does not mean that the State is the holder of the obligation to prove that it has been complied with. Therefore, the one obliged to do so can only be the presumed victim, his or her representative, or the petitioner and it is compliance with that obligation that allows the State to answer the petition lodged before the Commission and, possibly, to present the objection of failure to exhaust domestic remedies.

E. Correct moment to lodge the petition

33. It should also be repeated that the rule of the prior exhaustion of domestic remedies logically constitutes a requirement that should be met before the petition is lodged before the Commission and that the latter record that such remedies have been exhausted or that it was impossible to do so.

34. Indeed, it should be recalled that the Articles 46(1)(a) and 47(b) of the Convention transcribed above refer to the “petition or communication lodged”; that is an instantaneous act that occurs at a determined moment and that does not extend over time. The same can be said of Article 48(1)(a) of the Convention, which establishes that:

“When the Commission receives a petition or communication alleging violation of any of the rights protected by this Convention, it shall proceed as follows: (a) If it considers the petition or communication admissible, it shall request information from the government of the State indicated as being responsible for the alleged violations and shall furnish that government a transcript of the pertinent portions of the petition or communication. This information shall be submitted within a reasonable period to be determined by the Commission in accordance with the circumstances of each case.”

35. Thus, the Convention indicates that the “petition or communication lodged,” the “pertinent portions” of which are forwarded to the State concerned, which means that it is the petition that should indicate compliance with the requirement of the prior exhaustion of domestic remedies or the impossibility of this due to any of the circumstances established in Article 46(2), also transcribed above, so that the State may respond and potentially file the corresponding objection, which means that it is when the petition is lodged that this should already have occurred.

36. This interpretation is supported by Article 46(1)(b) of the Convention, which indicates that the petition should have been:

“lodged within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment.”

37. Evidently, it should be understood that the said final judgment is the one delivered on the final remedy that was filed, without there being any other that could be filed. In other words, the time frame indicated to lodge the petition is calculated from the moment of notification of the final judgment of the domestic authorities or courts on the remedies filed before them, which are, consequently, those that may have given rise to the international responsibility of the State, which obviously means that, when the petition is “lodged,” they should have been exhausted.

38. The foregoing is reinforced by the content of the said Article 46(1)(a) indicating the requirement that “the remedies under domestic law have been pursued and exhausted”; in other words it alludes to something that has already happened before the lodging of the corresponding petition.

F. Peremptory rule

39. In accordance with the foregoing, it should also be recalled that Article 47(a) stipulates that:

"The Commission shall consider inadmissible any petition or communication submitted under Articles 44 or 45 if: (a) any of the requirements indicated in Article 46 has not been met."

40. This provision is peremptory. The Commission must declare inadmissible "any petition or communication submitted" regarding which the domestic remedies have not been exhausted or that does not comply with one of the situations established in Article 46(2).

41. Evidently, the Commission must comply with the Convention and cannot, for example, declare a petition or communication admissible even though, when it was "lodged," it had not met the requirement of the prior exhaustion of domestic remedies but rather had met this requirement at the time that it was "admitted," because if it does so, it would render it without any real or practical effects, beyond initiating a procedure, but not the litigation.

42. Indeed, if it is not required that domestic remedies have been exhausted before the petition is lodged, or that the petition be lodged within six months of notification of the final judgment, it would not be possible to require "that the subject of the petition or communication is not pending in another international proceeding for settlement," or "that the petition contains the name, nationality, profession, domicile, and signature of the person or persons or of the legal representative of the entity lodging the petition," requirements that are also established in Article 46 of the Convention, because all this could be remedied subsequently and, in any case, before the declaration of admissibility, and the provisions of this article evidently do not allow this.

G. Presentation and admissibility of the petition

43. Lastly, it should be noted that the said articles of the Convention do not indicate that the said requirements must be met when the Commission rules on the admissibility of the petition or communication. Rather, it can be argued that they make a distinction between two moments: one, at which the petition is "lodged" and another at which it is "admitted." This is also supported by the provisions of Article 48(1)(a) and in paragraphs (b) and (c) of the same article.⁴⁹

⁴⁹ "1. When the Commission receives a petition or communication alleging violation of any of the rights protected by this Convention, it shall proceed as follows:

a. If it considers the petition or communication admissible, it shall request information from the government of the state indicated as being responsible for the alleged violations and shall furnish that government a transcript of the pertinent portions of the petition or communication. This information shall be submitted within a reasonable period to be determined by the Commission in accordance with the circumstances of each case.

b. After the information has been received, or after the period established has elapsed and the information has not been received, the Commission shall ascertain whether the grounds for the petition or communication still exist. If they do not, the Commission shall order the record to be closed.

c. The Commission may also declare the petition or communication inadmissible or out of order on the basis of information or evidence subsequently received.

d. If the record has not been closed, the Commission shall, with the knowledge of the parties, examine the matter set forth in the petition or communication in order to verify the facts. If necessary and advisable, the Commission shall carry out an investigation, for the effective conduct of which it shall request, and the states concerned shall furnish to it, all necessary facilities.

e. The Commission may request the states concerned to furnish any pertinent information and, if so requested, shall hear oral statements or receive written statements from the parties concerned.

f. The Commission shall place itself at the disposal of the parties concerned with a view to reaching a friendly settlement of the matter on the basis of respect for the human rights recognized in this Convention.

44. These provisions establish that, once the petition or communication has been “lodged” before the Commission, the admissibility procedure begins during which it is necessary to decide whether or not, when it was “lodged,” it complied with the requirements stipulated in the said Article 46. If the decision is affirmative, the said petition should be declared “admissible,” and if the decision is negative, it should be declared “inadmissible.” It should be underscored that the said article of the Convention does not establish that it is sufficient that, when the Commission rules on its admissibility, the petition has met those requirements. It merely indicates that, for the “petition lodged” to be admitted, the remedies of the domestic jurisdiction should have been pursued and exhausted. Consequently, it is with regard to the petition or communication “lodged” that the Commission should rule on whether, at that instant and not later, it met the requirement of the prior exhaustion of the domestic remedies or that it has been argued that this was not possible.

H. Supplementary means of interpretation

45. Regarding the supplementary means of interpretation, it should be indicated that, based on the background material for the Convention, there is no record of the legal doctrine that inspired the provisions of its Article 46(1)(a), in particular the phrase “that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law.”

46. Therefore, it can be presumed that this was done – that is, this phrase was included without the need to justify the reference to the said principles – because it was already solidly incorporated in or recognized by public international law when the International Court of Justice decided the third preliminary objection filed by the United States of America in the *Case of Interhandel*, 1959. Thus, that Court indicated that:

“ The rule that local remedies must be exhausted before international proceedings may be instituted is a well-established rule of customary international law.”⁵⁰

47. Hence, since it was a principle of international law, founded on extremely well-established customary public international law, it was probably not found necessary to justify its incorporation into the Convention. In this way, the Convention not only consolidated it even more by establishing it in its text, but also did not limit it to the “national” of the respondent State. Indeed, it made it applicable “to all persons subject to [the] jurisdiction”⁵¹ of its States Parties, whether or not they were nationals of any of them.

48. That said, owing to the position taken in this opinion, the interesting point is that, according to the said decision of the International Court of Justice, which should be understood as the precedent for Article 46(1)(c) of the Convention, the exhaustion of

2. However, in serious and urgent cases, only the presentation of a petition or communication that fulfills all the formal requirements of admissibility shall be necessary in order for the Commission to conduct an investigation with the prior consent of the state in whose territory a violation has allegedly been committed.

⁵⁰ *Interhandel Case (Switzerland v. United States of America)*, Judgment of March 21, 1959 : “The rule that local remedies must be exhausted before international proceedings may be instituted is a well-established rule of customary international law; the rule has been generally observed in cases in which a State has adopted the cause of its national whose rights are claimed to have been disregarded in another State in violation of international law. Before resort may be had to an international court in such a situation, it has been considered necessary that the State where the violation occurred should have an opportunity to redress it by its own means, within the framework of its own domestic legal system. *A fortiori* the rule must be observed when domestic proceedings are pending, as in the case of *Interhandel*, and when the two actions, that of the Swiss Company in the United States courts and that of the Swiss Government in this Court, in its principal Submission, are designed to obtain the same result: the restitution of the assets of *Interhandel* vested in the United States.”

⁵¹ *Supra*, footnote 23.

domestic remedies must be accomplished prior to the claim made, which confirms the interpretation set out in this document.

49. Based on all the above, it is very evident that – pursuant to the provisions of the Convention and if the criteria is accepted according to which the requirement of prior exhaustion of domestic remedies may be met after the corresponding petition is lodged before the Commission – in this hypothesis, the petition could have no content whatsoever or be impossible to understand and, thus, this would allow the case to which it referred to be addressed simultaneously by the domestic jurisdiction and by international justice, an absurd situation and one that was obviously not established by the Convention.

I. Exceptions to the rule of prior exhaustion of domestic remedies

50. Article 46(2) stipulates:

The provisions of paragraphs 1(a) and 1(b) of this article shall not be applicable when:

- a. the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated;
- b. the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or
- c. there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

51. Accordingly compliance with the rule of the prior exhaustion of domestic remedies admits the three exceptions established in the above article, all factual matters in light of international law that must be weighed by the Commission or the Court, as and when appropriate.

52. However, regarding the moment to invoke them, it is also evident that this is in the petition, so that the processing of the said exceptions to the rule of the prior exhaustion of domestic remedies follows the course of the petition.

IV. THE REGULATIONS

53. The foregoing also includes the Rules of Procedure of the Commission itself when regulating the admissibility procedure of the petition lodged before the Commission and, therefore, reflects its interpretation of Article 46 of the Convention.⁵² This procedure differentiates between the lodging of the petition and its initial review, the forwarding of the petition to the State, the State's response, the observations of the parties and, lastly, the decision on its admissibility.

A. Initial review by the Commission

54. Therefore, the content of Article 26 of these Rules of Procedure must be considered and they establish:

"Initial Review. 1. The Executive Secretariat of the Commission shall be responsible for the study and initial processing of petitions lodged before the Commission that fulfill all the requirements set forth in the Statute and in Article 28 of these Rules of Procedure.

⁵² The Rules of Procedure in force at this time were adopted on March 18, 2013, and entered into force on August 1 that year. Since the 2006 Rules of Procedure were in force when the petition was lodged, the equivalent articles are indicated in footnotes to the corresponding articles of the Rules of Procedure currently in force.

2. If a petition or communication does not meet the requirements set for in these Rules of Procedure, the Executive Secretariat may request the petitioner or his or her representative to fulfill them.
3. If the Executive Secretariat has any doubt as to whether the requirements referred to have been met, it shall consult the Commission.⁵³

55. Meanwhile, Article 27 of this text establishes that:

"Condition for Considering the Petition. The Commission shall consider petitions regarding alleged violations of the human rights enshrined in the American Convention on Human Rights and other applicable instruments, with respect to the Member States of the OAS, only when the petitions fulfill the requirements set forth in those instruments, in the Statute, and in these Rules of Procedure."⁵⁴

56. Meanwhile, Article 28(8) of the said Rules of Procedure establishes that:

"Requirements for the Consideration of Petitions. Petitions addressed to the Commission shall contain the following information: ... any steps taken to exhaust domestic remedies, or the impossibility of doing so as provided in Article 31 of these Rules of Procedure."⁵⁵

57. Attention should be drawn to the fact that Article 29(1) and (3) of this instrument reiterates the content of Article 26(1) and (3):

"Initial Processing. 1. The Commission, acting initially through the Executive Secretariat, shall receive and carry out the initial processing of the petitions presented. Each petition shall be registered, the date of receipt shall be recorded on the petition itself and an acknowledgement of receipt shall be sent to the petitioner.

...

3. If the petition does not meet the requirements of these Rules of Procedure, the Commission may request that the petitioner or his or her representative complete them in accordance with Article 26.2 of these Rules."⁵⁶

58. This signifies that the information required to "process" or "consider" the pertinent petition must refer to the measures taken to exhaust the domestic remedies or the impossibility to do so. In other words, the petition must describe what has been done to exhaust the remedies in question or that it was impossible to exhaust them and, if it does not mention anything in this regard, the Commission should require the petitioner to do this, in keeping with the regulatory warning that, to the contrary, the petition will not be considered.

59. Accordingly, the Commission, acting through its Executive Secretariat, must undertake an initial control of conventionality of the petition; comparing it against the provisions of the Convention and the said Rules of Procedure. In other words, it must determine whether it meets the corresponding requirements at the time it is "lodged" and if it verifies that the petition does not meet them, it must require it to do so. To the contrary, the logic and need for the "initial processing" of the petition are incomprehensible as is the reason why the petitioner should be asked to complete the requirements indicating the measures taken to exhaust the domestic remedies or the impossibility of doing so.

60. Thus, it is the Commission's Rules of Procedure which establish that it is the petitions submitted to the Commission that must include the information on the measures taken –

⁵³ Art. 26.

⁵⁴ Art. 27.

⁵⁵ Art. 28.

⁵⁶ Art. 29(1) and 3.

evidently before their submission – to exhaust the remedies of the domestic jurisdiction or the impossibility of doing this, which must be duly substantiated. This regulatory requirement, which reflects the interpretation that the Commission itself makes of the articles of the Convention, is of the greatest relevance and it is compliance with this that permits litigation to be established subsequently on the specific case.

B. The forwarding of the petition to the State concerned

61. Also, regarding the forwarding of the petition to the State concerned, the Commission's Rules of Procedure confirm the said interpretation; that is, that the exhaustion of domestic remedies is a requirement that must be met before the petition is lodged before the Commission and must be reflected in the petition submitted to the Commission.

62. Indeed, Article 30(1) and (2) of the said Rules of Procedure establishes:

"Admissibility procedure. 1. The Commission, through its Executive Secretariat, shall process the petitions that meet the requirements set forth in Article 28 of these Rules of Procedure.

2. For this purpose, it shall forward the relevant parts of the petition to the State in question. The request for information made to the State shall not constitute a prejudgment with regard to any decision the Commission may adopt on the admissibility of the petition.⁵⁷

63. In this regard, it should be recalled that what is forwarded to the State in question, as decided by the Commission, should be the relevant part of the petition itself and this, provided it meets with, among others, the requirement for information on the measures taken to exhaust the remedies of the domestic jurisdiction or the impossibility of doing so. In other words, the forwarding of the petition is in order if it complies with the said requirement.

64. Consequently, this rule does not establish that this requirement must or may be met at a time following the submission of the petition. Also, it should be noted that the said forwarding should be of the petition as lodged and, therefore, it should include the reference to the said requirement. To the contrary, the State would be unable to file the respective objection.

C. The State's answer and the observations of the parties

65. That said, according to the Article 30(3), first phrase, and 30(5) of the said Rules of Procedure:

"3. The State shall submit its response within three months from the date the request is transmitted.

...

5. Prior to deciding upon the admissibility of the petition, the Commission may invite the parties to submit additional observations, either in writing or in a hearing, as provided for in Chapter VI of these Rules of Procedure."⁵⁸

66. Obviously, the State's response to the document forwarded and the additional observations of the parties in answer to the Commission's invitation, must refer to the pertinent petition, which – let me repeat – must meet all the established requirements, including that of providing information on the measures taken to exhaust the remedies of the domestic jurisdiction – prior to its submission. To this end, it should be underlined that this rule expressly mentions that "[p]rior to deciding upon the admissibility of the petition, the

⁵⁷ Art. 30(1) and (2).

⁵⁸ Art. 30(3) and (5).

Commission may invite the parties to submit additional observations,” and logically these may only refer to the contents of the petition “lodged.”

67. This is why Article 31(3) of the Commission’s Rules of Procedure stipulates that:

“When the petitioner contends that he or she is unable to prove compliance with the requirement indicated in this article, it shall be up to the State concerned to demonstrate to the Commission that the remedies under domestic law have not been previously exhausted, unless that is clearly evident from the record.”⁵⁹

68. However, it should also be recalled that if, in a case that is not expressly considered in the Commission’s Rules of Procedure, the petitioner should indicate in his petition that he has previously exhausted the domestic remedies – in other words, he has complied with the provisions of Article 46(1)(a) of the Convention – the State is able to file the objection that this has not occurred.

69. Consequently, it is apparent that the said response of the State must logically and necessarily be with regard to the petition “lodged” before the Commission, and that it is with regard to what has taken place at that time – and not subsequently – that the dispute or controversy is established as regards matters concerning the prior exhaustion of domestic remedies.

70. Thus, it is clear that compliance with the rule of the prior exhaustion of domestic remedies or the impossibility of complying with it, must be indicated in the petition because, otherwise, the State could not respond to this. In other words, only if the petition indicates that the said rule has been complied with or that it is impossible to do so, will the State be able to argue non-compliance and prove the availability, adequacy, suitability and effectiveness of the domestic remedies that have not been exhausted, all of which means – let me repeat – that this requirement must have been met previously or the impossibility of meeting it alleged, before lodging the petition the pertinent parts of which are forwarded to the State precisely for it to respond to them.

71. To the contrary, if the petition does not make any mention of the said requirement, the State need only indicate this situation; that is, that the petition does not meet the requirement. In this situation, imposing on the State the obligation to prove the existence of adequate, suitable and effective remedies that have not been exhausted means substituting the State for the petitioner as holder of the obligation established in the Convention and in the Commission’s Rules of Procedure to previously exhaust the domestic remedies and to provide the “information on the measures taken to exhaust the remedies of the domestic jurisdiction or the impossibility of doing so” and imposing on it a burden due to a third party obligation.

72. It should also be repeated that, for the same reason, it is at the time that the petition is submitted that the domestic remedies should have been exhausted or that it is indicated that it is impossible to do so because, if it is argued that these remedies could be exhausted following the “submission” of the petition and, consequently, its notification to the State, this would affect the essential procedural equilibrium and leave the latter defenseless, because it would be unable to file the pertinent preliminary objection in due time and manner.

73. It is within this framework that the words of the Court “that an objection to the exercise of its jurisdiction based on the supposed failure to exhaust domestic remedies should be filed

⁵⁹ Art. 31(3).

at the appropriate procedural moment; that is, during the admissibility procedure before the Commission⁶⁰ should be understood because, as described, this covers from the moment the petition is received and receives the initial processing by the Commission, through its Executive Secretariat, until the moment at which the Commission rules on its admissibility. However, this does not mean that it is only at this last moment that the said requirement should have been met, without regard to whether or not it had been met previously.

D. Decision on admissibility

74. Indeed, Article 31(1) of these Rules of Procedure, entitled "Exhaustion of Domestic Remedies," establishes that:

"In order to decide on the admissibility of a matter, the Commission shall verify whether the remedies of the domestic legal system have been pursued and exhausted in accordance with the generally recognized principles of international law."⁶¹

75. It should be noted that this article indicates that, in order to decide on the admissibility of a matter, the Commission must "verify" – in other words, confirm or validate⁶² – whether the remedies of the domestic legal system have been pursued and exhausted which, clearly, should have occurred at least before adopting the corresponding decision. This rule does not establish that this verification should be made in relation to remedies pursued and exhausted following the presentation of the petition.

76. Meanwhile, Article 32(1) of these Rules of Procedure, entitled "Statute of Limitations for Petitions," conforms to the above interpretation when indicating that:

"The Commission shall consider those petitions that are lodged within a period of six months following the date on which the alleged victim has been notified of the decision that exhausted the domestic remedies."⁶³

77. In other words, this provision establishes the petitions whose admissibility will be considered by the Commission and, to this end, reiterates the provisions of Article 46(1)(b) of the Convention; that is, that the time frame for submitting them is calculated from the date of notification of the final judgment of the domestic authorities or courts on the remedies that have been filed before them, which are, consequently, those that could have given rise to the international responsibility of the State, and this obviously means that, when the petition is "lodged," they must have been exhausted.

78. That said, according to Article 36 of these Rules of Procedure, entitled "Decision on Admissibility":

1. Once it has considered the positions of the parties, the Commission shall make a decision on the admissibility of the matter. The reports on admissibility and inadmissibility shall be public and the Commission shall include them in its Annual Report to the General Assembly of the OAS.

2. When an admissibility report is adopted, the petition shall be registered as a case and the proceedings on the merits shall be initiated. The adoption of an admissibility report does not constitute a prejudgment as to the merits of the matter.

3. In exceptional circumstances, and after having requested information from the parties in accordance with the provisions of Article 30 of these Rules of Procedure, the Commission may

⁶⁰ Para. 16.

⁶¹ Art. 31(1).

⁶² Diccionario de la Lengua Española, Real Academia Española, 2018 edition.

⁶³ Art. 32(1).

open a case but defer its treatment of admissibility until the debate and decision on the merits..⁶⁴

79. In this regard, it should be indicated that the said article does not establish that the remedies of the domestic jurisdiction necessarily should have been exhausted to be able to adopt the decision on admissibility because that decision may be not to admit the petition, precisely because it has not exhausted those remedies.

80. It should also be emphasized that neither does this article establish that it should be at the time the decision on admissibility is taken that the domestic remedies should be exhausted, even though they had not been previously; it merely establishes that, “[o]nce it has considered the positions of the parties, the Commission shall make a decision on the admissibility of the matter.” This article makes no specific reference because it is not the moment at which the requirement of the prior exhaustion of domestic remedies should have been met, but rather the moment when a decision must be adopted on the admissibility of the petition as “lodged.”

V. CONSEQUENCES

81. The first consequence derived from the position adopted by Commission and endorsed by the Court – that it suffices that the requirement of the prior exhaustion of domestic remedies has been met when the Commission rules on the admissibility of the petition – is that the same case may be processed simultaneously by the domestic jurisdiction and the international jurisdiction, which would evidently render the rule of the prior exhaustion of domestic remedies pointless and also its basis – that the inter-American jurisdiction complements and reinforces the domestic jurisdiction. Furthermore, if this should occur, the former would rather substitute for the latter or, at least, could be used as an element of pressure with regard to this, thus becoming an instrument that could affect the necessary independence of the international jurisdiction which, without doubt, was not what the Convention was seeking.

82. In addition, in this hypothesis, it could constitute a perverse incentive to lodge petitions with the Commission even when the said requirement had not been met in the expectation that it could be complied with prior to the Commission ruling on admissibility, which could not have been foreseen or desired by the Convention.

83. Furthermore, it should be noted that adhering to the criteria that this requirement is determined by the instant at which the Commission rules on the admissibility of the petition would result in situations of evident injustice or arbitrariness insofar as the moment to comply with the said requirement would depend, not on the victim or the petitioner or on a rule valid for all, but on the Commission’s decision when ruling on the admissibility or inadmissibility of a petition which it frequently takes years to adopt, so that the decision could be perceived to be arbitrary.

84. Moreover, it is also necessary to consider that, by diverging from the position outlined above, the rules of interpretation established by the Vienna Convention are not being applied. Indeed, it is clear that this would also occur in relation to the text of the Convention and the context of its terms concerning the exhaustion of domestic remedies, which would then be out of place. This would also occur with regard to the criteria regarding good faith and the object and purpose of the treaty. First, because the States evidently intended the rule on the exhaustion of domestic remedies to be met before the submission of the relevant petition

⁶⁴ Art. 36(1), (2) and (3).

and, second, because, rather than the intervention of the inter-American jurisdiction, this is intended to ensure the prompt re-establishment by the State concerned of the human rights violated, so that such intervention would be unnecessary.

85. Ultimately, since the rule of the prior exhaustion of domestic remedies is essential, substantial, intrinsic or “pivotal” in the inter-American system of human rights, if it is applied in a way other than the one substantiated in this opinion, it could render it senseless which, would doubtless affect the system as a whole.

VI. CONCLUSION

86. Based on all the foregoing, it may be concluded that, in order to lodge a petition before the Commission accusing a State Party to the Convention of violating any human right recognized therein, the petitioner must previously have exhausted the domestic remedies and then, in the petition, describe the measures taken to this end or the impossibility of exhausting such remedies. It is also my opinion that, it is with regard to this petition or the relevant parts thereof that the State in question should be notified so that, in its response, it can refute the petitioner’s assertion of having previously exhausted the domestic remedies or the impossibility of doing so, filing the corresponding objection. And, evidently, if the petition does not mention compliance with the requirement of the prior exhaustion of domestic remedies, the State is not obliged to take a stand in that regard.

87. It should also be indicated that, if the petition includes information on exhaustion of the domestic remedies or the impossibility of doing so, it is based on the submission of the petition and the response of the State that the relevant litigation is founded and, consequently, it is regarding whether at that time – and not subsequently – such remedies have been exhausted or that it was not compulsory to do so, that the Commission should rule in its admissibility report.

88. In addition, the instant case reveals that the facts relating to the requirement of the prior exhaustion of domestic remedies, are:

a) The petition lodged with the Commission on March 14, 2007, cites the exception established in Article 46(2)(c)) of the Convention – namely, the unjustified delay in deciding the criminal proceedings in reference – as grounds for non-application of the provisions of paragraph (1)(a) of this article; that is, the requirement of previous exhaustion of domestic remedies. In this regard, it indicates that, at that date, three years and eight months had elapsed since the events occurred and three years since the prosecutor filed an indictment and none of the perpetrators had been tried or punished.

b) The State, in its response to the forwarding of the petition dated January 26, 2008, filed the objection of failure to exhaust domestic remedies at that date indicating, in this regard, that the case that originated the petition had initiated on January 3, 2003; that on January 18, 2006, the corresponding trial had begun; that on April 25, 2007, an acquittal had been delivered; that on July 19, 2007, the Public Prosecution Service had filed an appeal; that the corresponding hearing was set for October 4, 2007, and that this was then postponed until February 14, 2008, and

c) On July 24, 2008, in its Admissibility Report, the Commission ruled rejecting the objection filed by the State on the basis that, at that time, the petition was admissible and, consequently, not considering the date the petition was lodged or that, when making this ruling, the respective domestic proceedings were pending an appeal.

89. Therefore, based on the foregoing, the undersigned voted against the first operative paragraph of the judgment rejecting the preliminary objection filed by the State concerning the failure to exhaust domestic remedies.⁶⁵

90. But, also, the undersigned considers that, consequently, he had to vote negatively on all the other operative paragraphs because he considers, on the one hand, that if the objection had been accepted, there would have been no reason to vote on them and, on the other hand, that despite this he should respect the provisions of Article 16(1) of the Rules of Procedure; in other words, he was not able to abstain.⁶⁶ It should be understood, therefore, that the votes against operative paragraphs 2 to 12 do not, in reality, entail a ruling on their content and that the votes in favor of operative paragraphs 13 to 15 respond to the fact that they are exclusively concerned with procedural aspects of the subsequent processing of the judgment, which as previously state, must be complied with.⁶⁷

Eduardo Vio Grossi
Judge

Pablo Saavedra Alessandri
Secretary

⁶⁵ *Supra*, footnote 2.

⁶⁶ "The President shall present, point by point, the matters to be voted upon. Each Judge shall vote either in the affirmative or the negative; there shall be no abstentions."

⁶⁷ *Supra* para. 16 of this opinion.

**CONCURRING OPINION OF
JUDGE EDUARDO RAÚL ZAFFARONI**

CASE OF DÍAZ LORETO ET AL. V. VENEZUELA

**JUDGMENT OF NOVEMBER 19, 2019
(*Preliminary objections, merits, reparations and costs*)**

I understand that the proven facts in the instant case also constitute a violation by the State of Venezuela of Article 4(2) and (3) of the American Convention on Human Rights (ACHR).

Following its abolition, the prohibition to re-establish the death penalty (Art. 4(3) ACHR) cannot be limited by enacting a law that establishes this punishment, which is then potentially imposed by a judge under the said law; in other words, the formal re-establishment of capital punishment. The ACHR prohibits the re-establishment of the death penalty both *de jure* and *de facto*; in other words, *a fortiori*, the reiterated practice of armed agents of the State executing individuals, without any judicial formalities because they consider that the latter are involved in offenses is also prohibited.

It would be absurd to consider that a State that enacts a law imposing the death penalty after having abolished this violates human rights, while the execution of that law or lawless execution is not considered similarly. In other words, the death penalty is re-established *de facto*, a situation that is much more serious because it leaves this to the arbitrary criteria of executive officials without any prior judicial intervention.

The genus "penalty" covers the violation of a right by state agents as a result of an alleged or proven offense. As series, this genus includes both lawful and unlawful penalties because, to the contrary, it would be absurd to refer to "prohibited penalties" or "illicit penalties." It is evident, consequently, that prohibited or illicit penalties are still penalties.

Recognizing the nature of "penalty" to unlawful penalties based on their genus has different consequences, such as the need to consider them penalties served in circumstances in which the victim has been convicted or is serving an unlawful sentence for the same act. Moreover, this is necessary – for example, in the case of torture, cruel treatment, bodily injury, etc. – because the contrary would lead to the absurd situation in which the State would only consider that lawful penalties are served and not the unlawful penalties that it executes, permits or does not prevent its officials from executing.

The facts of the instant case have not been clarified but, taking into account the proven context in the case, which has even been admitted by the State itself, it relates to a typical situation in which the execution of *de facto* death penalties (also called extrajudicial executions" and "executions without trial") is concealed. In view of the context, the State has an increased obligation to clarify the facts in this type of situation which is officially recorded as a confrontation between police and offenders. This obligation is increased when – as in the instant case – the offense in question is a minor theft or robbery and the final result is the death of three individuals. The contradictions among the witnesses, the flaws in the autopsies, the strange presence of sewage, etc. all of which remain in a cloud of doubts, reveals serious defects in forensic practices, in a case that called for extreme care in their execution.

The *de facto* re-establishment of the death penalty does not necessarily result only from active wilful misconduct by the highest authorities of a State, but also from their omissions or negligence. Since, owing to its nature, this re-establishment lacks any type of formality, because it arises from the events themselves, it can only be proved by the ordinary means for proving the facts, which include serious, precise and congruent presumptions.

In the instant case, the serious failure to clarify the facts and the proven context – even admitted by the State itself – create a serious presumption that – at least due to omission and negligence – the practice of extrajudicial executions or the *de facto* death penalty was widespread.

This *de facto* re-establishment of the death penalty resulted in a violation of the human right to life, but not only of the victims in this case since it also represents a general threat to this right for all inhabitants. The right to life, as any other right, is not violated merely due to its infringement – that is, when a killing is carried out – but also due to the danger involved – that is, when a threat hangs over the whole population of possible random death at the hands of any armed official of the State who claims, creates or invents the connection of the victim to an unlawful act, prescinding of any formal process – in other words, when the death penalty is re-established *de facto*.

Consequently and bearing in mind the context proven in the instant case, I conclude that it also constitutes a violation of paragraphs 2 and 3 of Article 4 of the ACHR because it relates to the *de facto* re-establishment of the death penalty which, due to the danger involved, violates the right to life of the whole population of the State.

Eduardo Raúl Zaffaroni
Judge

Pablo Saavedra Alessandri
Secretary