

**INTER-AMERICAN COURT OF HUMAN RIGHTS**  
**CASE OF MOVILLA GALARCIO ET. AL. V. COLOMBIA**

**JUDGMENT OF JUNE 22, 2022**  
***(Merits, reparations and costs)***

In the case of *Movilla Galarcio et. al. v. Colombia*,

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

Ricardo C. Pérez Manrique, President  
Eduardo Ferrer Mac-Gregor Poisot  
Nancy Hernández López  
Patricia Pérez Goldberg  
Rodrigo Mudrovitsch,

also present,

Pablo Saavedra Alessandri, Registrar  
Romina I. Sijniensky, Deputy Registrar,

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

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\* The Vice President of the Court, Judge Humberto Antonio Sierra Porto, a citizen of Colombia, did not take part in the deliberation and signing of this judgment, pursuant to Article 19(2) of the Court’s Statute and Article 19(1) of the Court’s Rules of Procedure. Similarly, Judge Verónica Gómez recused herself from taking part in this case, pursuant to Article 19(2) of the Court’s Statute and Article 21 of the Court’s Rules of Procedure, which was accepted by the President. Therefore, she did not take part in the processing of this case, nor in the deliberation and signing of this judgment.

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## I INTRODUCTION OF THE CASE AND CAUSE OF ACTION

1. *The case submitted to the Court.* – On August 8, 2020, the Inter-American Commission on Human Rights (hereinafter also “the Inter-American Commission” or “the Commission”) submitted to the jurisdiction of the Court the case of “Pedro Julio Movilla Galarcio and Relatives” against the Republic of Colombia (hereinafter “the Colombian State”, “the State”, or “Colombia”). As explained by the Commission, the case concerns the alleged international responsibility of the State for the forced disappearance of Pedro Julio Movilla Galarcio, a Colombian union leader, member of a leftist political party (the Marxist-Leninist Communist Party of Colombia - PCC-ML), and social activist, on May 13, 1993. As explained in its Merits Report, the Commission concluded that the State is responsible for the violation of the rights to recognition of juridical personality, to life, to personal integrity, to personal liberty, to judicial guarantees, to freedom of association and to judicial protection, enshrined in Articles 3, 4(1), 5(1), 7(1), 8(1), 16 and 25(1) of the American Convention on Human Rights, in relation to Articles 1(1) and 2 of the Convention. It also concluded that the State is responsible for the violation of Articles I a) and I b) of the Inter-American Convention on the Forced Disappearance of Persons (hereinafter also “IACFDP”). It established that the alleged violations had been committed, as appropriate, to the detriment of Mr. Movilla and his relatives.

2. *Proceedings before the Commission.* – The proceedings before the Commission were as follows:

a) *Petition.* – On June 17, 1996, the Commission received the initial petition, which was submitted by the José Alvear Restrepo Lawyers’ Association (*Corporación Colectivo de Abogados “José Alvear Restrepo,”* hereinafter also “the representatives” o “CCAJAR”).

b) *Admissibility and Merits Reports.* – On July 24, 2014, and December 7, 2018, the Commission approved Admissibility Report No. 48/14, in which it concluded that the petition was admissible, and Merits Report No. 149/18 (hereinafter “Merits Report” or “Report No. 149/18”), in which it reached specific conclusions and made recommendations to the State.

c) *Notification to the State.* – In a communication dated February 8, 2019, the Commission informed the State that it had approved its Report No. 149/18, and offered to assist the parties in reaching a friendly settlement, granting the statutory periods for submitting observations.

3. *Submission to the Court.* – On August 8, 2020, having granted the State five extensions to allow it to comply with its recommendations, the Commission submitted its Merits Report to the Court setting out all the evidence and alleged human rights violations, based on the wishes of the petitioning party and the need to obtain justice for Mr. Movilla and his relatives.

4. *Request made by the Commission.* – The Commission asked the Court to determine and declare the State’s international responsibility for the rights violations described in the Merits Report (*supra* para. 2), and to order the State to grant the measures of reparation also specified in the report (*infra* Chapter IX). The Court notes, with concern, that more than 24 years elapsed between the presentation of the initial petition before the Commission and the submission of the case to the Court.

## II

### PROCEEDINGS BEFORE THE COURT

5. *Notifications to the State and the representatives.*<sup>1</sup> On October 29, 2020, the State and the representatives were notified in writing that the case had been submitted to the Court.

6. *Brief with pleadings, motions and evidence.* – On January 4, 2021, the representatives presented a brief containing pleadings, motions and evidence (hereinafter “pleadings and motions brief”), pursuant to the terms of Articles 25 and 40 of the Court’s Rules of Procedure. They substantially agreed with the Commission’s arguments, but also alleged the violation of Articles 5(2), 13, 17 and 19 of the American Convention and I d) and XIV of the Inter-American Convention on the Forced Disappearance of Persons. They asked that Colombia be ordered to adopt various measures of reparation.

7. *Answering brief.* – On May 17, 2021, the State submitted its answering brief regarding the Commission’s presentation of the case, and the pleadings and motions brief (hereinafter “answering brief” or “answer”). Colombia partially acknowledged its international responsibility, in the terms described below (*infra* Chapter IV). It also submitted an argument it referred to as a “preliminary objection,” claiming the Court’s lack of jurisdiction over the person, and a prior question, asking that some of the alleged victims be excluded (*infra* Chapter V).

8. *Observations on the objection and the acknowledgement of responsibility.* – On July 22, 2021, the Commission and the representatives presented their observations regarding the preliminary objection and the State’s acknowledgement of responsibility.

9. *Public hearing.* – On December 8, 2021,<sup>2</sup> the President of the Court issued an order calling the parties and the Commission to a public hearing on the preliminary objection and possible merits, reparations and costs, which was held in person at the Court’s headquarters in Costa Rica on February 15, 2022, during the Court’s 146<sup>th</sup> Regular Session.<sup>3</sup>

10. *Amicus Curiae.* – the Court received three *amicus curiae* briefs from: a) Diana Marcela Álvarez Camayo, Lina Marcela Lozano Zúñiga and Aris Gurrute Gracietty; b) Lina Marcela Blanco Cuero, Pedro Iván Ferreira Escobar, Mario Fabián Libreros Castro, Alejandro Perlaza Gómez and Norvey Andrés Hernández; and c) Fundación Hasta Encontrarlos.<sup>4</sup>

11. *Final written arguments and observations.* – On March 17, 2022, the State presented its final written arguments and supporting documentation. The Commission presented its final written observations on the same day. On March 18, 2022, the representatives presented their final written arguments and supporting documentation, which were declared inadmissible

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<sup>1</sup> The alleged victims are represented by the José Alvear Restrepo Lawyers’ Association (CCAJAR). The State designated as its agent Camilo Gómez Alzate, Director of the National Agency for the Legal Defense of the State.

<sup>2</sup> Cf. *Case of Movilla Galarcio et al. v. Colombia*. Call to a public hearing. Order of the President of the Inter-American Court of Human Rights of December 8, 2021. Available in Spanish at: [https://www.corteidh.or.cr/docs/asuntos/movilla\\_galarcio\\_08\\_12\\_2021.pdf](https://www.corteidh.or.cr/docs/asuntos/movilla_galarcio_08_12_2021.pdf).

<sup>3</sup> The following persons attended the hearing: a) for the Inter-American Commission: Jorge Meza Flores, advisor, and Carla Leiva, advisor; for the representatives: Yessika Hoyos Morales, attorney; Álvaro Sebastián Saavedra Eslava, attorney; María Alejandra Escobar Cortázar, attorney, and José Antonio Movilla Vergara, alleged victim, and c) for the State: Ana María Ordóñez Puentes; attorney; Susana Arango Haupt, attorney, and Leonardo Andrés Romero Mora, advisor.

<sup>4</sup> The first brief deals with freedom of association, the events prior to the disappearance of Pedro Julio Movilla Galarcio, and the measures taken for the investigation and assessment of his disappearance. The second brief deals with the facts related to Mr. Movilla’s disappearance, the rights established in the Colombian Constitution and the State’s correlative obligations to protect them, and possible reparation mechanisms for the victims. The third and last brief, signed by Pablo Cala, deals with the reparation measures requested by the representatives and the Commission.

because they arrived after the deadline. On March 29, 2022, the representatives submitted their observations regarding the supporting documentation attached to the State's final written arguments.

12. *Deliberation of the case.* – The Court began deliberation of this judgment on June 17, 2022.

### **III JURISDICTION**

13. The Inter-American Court has jurisdiction to hear the instant case pursuant to Article 62(3) of the American Convention, as Colombia has been a State Party to the Convention since July 31, 1973, and recognized the contentious jurisdiction of the Court on June 21, 1985. On April 12, 2005, the State deposited the instrument of ratification of the Inter-American Convention on the Forced Disappearance of Persons, which entered into force for Colombia 30 days later, pursuant to Article 20 of the treaty.

### **IV PARTIAL ACKNOWLEDGMENT OF RESPONSIBILITY**

#### ***A) The State's partial acknowledgement of responsibility, and the observations of the representatives and the Commission***

14. In its answering brief, the **State** acknowledged that "until 2019 it failed to diligently investigate the case and identify and, if applicable, punish the individuals responsible for Pedro Julio Movilla's disappearance." It pointed out that the drafting of a plan to search for the victim did not get under way until the end of 2020.<sup>5</sup> It accepted that the failure to act had violated the right to the truth<sup>6</sup> and "caused [the] nuclear family" of the disappeared person to suffer, for which it asked for "the victims' forgiveness and expresse[d] absolute respect and consideration for them." It also said it hoped that acknowledging responsibility and offering an apology would help restore part of the trust in the State and its institutions that had been lost.

15. In its answering brief, Colombia also limited its acknowledgment "only to the victims established [...] in the Merits Report." However, and as explained below (*infra* Chapter V), in the same document Colombia challenged the inclusion of some of the individuals named in the Merits Report.

16. Moreover, Colombia emphasized that its acknowledgment "refers only to [...] the factual framework defined in the Merits Report." Therefore, in order to "define and specify" this factual framework, it referred the Court to the "Facts" section of its answering brief, in which it "responded" to the facts set forth in paragraphs 23 to 31 of the Merits Report concerning Pedro Movilla's disappearance and the circumstances prior to the incident.

17. The State acknowledged: a) "pursuant to Articles 8 and 25, in relation to Article 1(1) of the [American] Convention and the obligation to guarantee," it was "responsible for not having instituted the necessary proceedings early in the criminal investigation, until 2019"; b) an omission, i.e., its lack of due diligence in the investigations, given its obligation to guarantee the rights to recognition of juridical personality, to life, to personal integrity and to personal liberty

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<sup>5</sup> The State expressly excluded, as grounds for its acknowledgement of responsibility, "(i) the administrative proceedings, and (ii) the disciplinary investigation by the Inspector General's Office." It claimed that "the State has no international responsibility" for the actions in question.

<sup>6</sup> Nonetheless, the State said its acknowledgment of the violation of the right to truth was only "partial" (*infra*, footnote 17 and para. 153).

(Articles 3, 4, 5, and 7 of the Convention), and c) its responsibility for the violation of the personal integrity of Pedro Julio Movilla's relatives (Articles 5(1) and 5(2) of the American Convention, in relation to Article 1(1)), "inasmuch as the 28-year delay in the criminal investigation [...] has led to his loved ones suffering and experiencing pain and uncertainty."<sup>7</sup>

18. The State stressed that "it is fully committed to continuing the investigations," "and seeking to help guarantee that the same does not happen again," "to ascertain the reasons why and how Pedro Julio Movilla disappeared." It also affirmed its commitment to "continue the search efforts and, if the whereabouts of [Mr. Movilla's] body are discovered, to hand his remains over to his family," and to "ensure the victims receive comprehensive reparation." It expressed its willingness to undertake certain measures of satisfaction (*infra* para. 222).

19. Colombia specified the limits of its acknowledgment, stating that: a) it is limited in time until 2019, in relation to the criminal investigation and search actions, and not with respect to other proceedings, since that year "the case was reassigned to the 190th Specialized Public Prosecutor's Office and important investigative actions were carried out";<sup>8</sup> b) "under no circumstances does it imply international acknowledgment of the forced disappearance of Pedro Julio Movilla"; c) "[it does not] imply any acceptance of a State policy or pattern of persecution and harassment against leftist political parties or trade unionists," and d) should not be understood as acceptance of the "possibility that the failure to investigate was a deliberate act of omission."

20. The **representatives** observed that there were positive aspects to the acknowledgment, insofar as it recognizes, "for the first time ever" that the State was "directly involved" in part of the human rights violations committed in this case. However, they added that "it is far from being sufficient, consistent, and substantial" with respect to all the violations, and asked the Court to study the case in its entirety.

21. The representatives regarded the State's acknowledgment of the violation of the rights recognized in Articles 3, 4, 5 and 7 of the American Convention (recognition of rights to juridical personality, life, personal integrity, and personal freedom) as "meaningless" and "revictimizing," as it is contradictory, inasmuch as the State does not acknowledge that the facts of the case involved a forced disappearance. They also noted that the State's recognition did not include the violation of Articles I b) and I d) of the IACFDP, and maintained that those provisions could not be excluded from the acknowledgment, since, for material purposes, it refers to the obligations established therein.

22. With regard to the acknowledgment of the violation of the personal integrity of Mr. Movilla's relatives, the representatives were of the opinion that the violation of Article 5(2) of the Convention (which prohibits torture and cruel, inhuman or degrading treatment or punishment), which the State acknowledged, was due not only to shortcomings in the investigation, which is the only thing that the State accepted, but also to the fact of the forced disappearance itself. For that reason, and as it failed to uphold Articles 17 and 19 of the

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<sup>7</sup> The State pointed out that it was making this acknowledgment considering a presumption *juris tantum* regarding the harm done to the personal integrity of certain relatives of victims of serious human rights violations.

<sup>8</sup> The State observed that "since 2019 the legal proceedings have gathered great momentum due to a change in the investigative strategy, and significant steps have been taken," including: 1) the opening of an investigation linking P.J.P.D.; 2) the appointment of a Prosecutor with Special Powers; 3) the ordering of a judicial inspection of the Central Archive of the Army's Department of Military Intelligence and Counterintelligence; 4) the issuing of a telephone intercept order; 5) the transfer of the case to the 190th Specialized Public Prosecutor's Office; 6) the issuing of an order to take statements from agents with whom P.J.P.D. maintained contact as an informant, and other agents involved in the capture of H.J.C.R.; and 7) official authorization for the Search Unit for Disappeared Persons to draw up a joint plan to search for, identify, and hand over the remains of Pedro Julio Movilla. It should be pointed out that in this judgment acronyms are used to refer to individuals who are not parties to the international proceedings and have not taken part in them.

Convention (the right to protection of the family and the rights of the child), they held the acknowledgment to be "insufficient". They also stated that, for the acknowledgement to be "acceptable," it would have been "important for the State to have explicitly acknowledged the failure to uphold Articles 5(1) and 5(2) with a differential approach to gender," in relation to Candelaria Nuris Vergara Carriazo, Mr. Movilla's wife. They also argued that the acknowledgment of responsibility regarding the right to the truth was not clear. They asked the Court to "study the autonomous violations of the rights to the truth, and to search for and find disappeared persons."

23. In relation to the investigative actions, the representatives maintained that the State's acknowledgment of responsibility was "generic," since it failed to explain "the specific causes of the delays." Furthermore, contrary to the State's position, they affirmed that there were investigative failures on the part of the Inspector General's Office (and not only the Prosecutor's Office), and that "there was a deliberate omission by the institutions that carried out the investigations that persists to this day," as reflected in different facts of the case.<sup>9</sup>

24. With respect to the limited nature of Colombia's acknowledgment of responsibility (*supra* paras. 15 and 19), the representatives went on to say, firstly, that the acknowledgment should cover all the alleged victims identified in the Merits Report and the pleadings and motions brief. They also took the view that the State's attempt to limit the acknowledgment to the years before 2019 was not appropriate, since "although progress has been made with the investigations since then, it did not occur because the State complied with its international obligations, but rather because of the Inter-American Commission's decision, set out in the Merits Report." Moreover, they affirmed that "despite the investigative work carried out, no palpable results have been achieved in the nearly 30 years that have elapsed since the forced disappearance of Pedro Julio Movilla."

25. Lastly, the representatives noted that, although the State had declared its commitment to full reparation for the victims, "it failed to play an active part in the measures to be implemented" and did not propose "appropriate reparation formulas."

26. The **Commission** regarded the State's acknowledgement of responsibility as a positive development. It noted that it was partial, and observed that it implied "acceptance of the facts related to the obligation to guarantee [the protection of rights]," and therefore asked the Court to consider the facts proven.

## **B) Considerations of the Court**

27. In accordance with Articles 62 and 64 of its Rules of Procedure, and in exercise of its authority for the international judicial protection of human rights, a matter of international public order, this Court must ensure that acts of acknowledgement of responsibility are acceptable for the purposes of the inter-American system.<sup>10</sup> The Court will now examine the situation in this specific case.

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<sup>9</sup> They highlighted the following: the FGN's suspension of the investigation on at least two occasions, the disqualification of the representatives for several years from participating in the criminal proceedings as a civil party, the "non-existence of a search plan after 30 years" and the "failure to respond and carry out evidentiary activities in accordance with the requests made by the [...] representatives"; situations, they claimed, that "ensured impunity."

<sup>10</sup> Cf. *Case of Manuel Cepeda Vargas v. Colombia. Preliminary objections, merits, reparations and costs*. Judgment of May 26, 2010. Series C No. 213, para. 17; and *Case of Digna Ochoa and family members v. Mexico. Preliminary objections, merits, reparations and costs*. Judgment of November 25, 2021. Series C No. 447, para. 18.



### B.1 The facts

28. From the terms of the State's acknowledgment of responsibility, it appears that the State has accepted: a) that Pedro Movilla has been missing since May 13, 1993, in the terms referred to in the Merits Report, as described below (*infra* 76);<sup>11</sup> b) the facts of the case as set out in the Merits Report with respect to judicial and administrative proceedings related to Pedro Movilla's disappearance, without prejudice to the presentation of additional information; and c) that "the specific circumstances of Mr. Movilla's disappearance have yet to be determined, his whereabouts or the location of his remains are unknown," and neither the motives nor the perpetrators have been established.

29. Furthermore, Colombia has accepted the rest of the factual framework of the case outlined by the Commission in the Merits Report, with the objections or nuances specified below:

a) While the State's acceptance of the facts does not explicitly exclude any of the factual circumstances that the Commission described, Colombia did make reference to the broader context, stating that it did not accept that there was a "State policy" or "pattern" related to the persecution and harassment of left-wing political parties and trade unionists. The Court understands this to mean that the State rejects the references in the Merits Report to the "national security doctrine" and the application of the concept of "the enemy within."

b) The State did not accept the entire description of the facts contained in the Merits Report in relation to circumstances leading up to Pedro Movilla's disappearance.<sup>12</sup>

30. The State has also accepted acts of omission: a) "that it was not until 2019 that it diligently carried out<sup>13</sup> the necessary investigations to identify and, if applicable, punish those responsible for Pedro Julio Movilla's disappearance"; and b) its failure to draw up a search plan until the end of 2020.

31. The Court finds that, with the objections already noted (*supra* para. 29), the facts of the case are no longer in dispute.

### B.2 The legal claims

32. Bearing in mind the human rights violations acknowledged by the State, and its position regarding the group of victims (*supra* para. 15), as well as the observations of the representatives and the Commission, the State's responsibility for the violation of the provisions of the American Convention on Human Rights set out below, to the detriment of the persons mentioned, is no longer in dispute:

a) Articles 8 and 25 (the rights to judicial guarantees and to judicial protection), in relation to Article 1(1) (obligation to respect human rights), to the detriment of Pedro Movilla, and his following relatives: Candelaria Nuris Vergara Carriazo (wife); Carlos Julio Movilla Vergara (son), José Antonio Movilla Vergara (son), Jenny del Carmen Movilla Vergara (daughter) and Leonor María Movilla de Sierra (sister).

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<sup>11</sup> The State "responded" to the account of what took place contained in paragraphs 23 to 31 of the Merits Report. In its brief, Colombia accepted that this specific event *had* indeed occurred.

<sup>12</sup> These are the facts set out in paragraphs 23 to 31 of the Merits Report, to which the State, in its brief, "responded" specifically. In doing so, Colombia expressly accepted some circumstances as true and commented on the account presented by the Commission. With respect to the circumstances on the day that Mr. Movilla disappeared, which are described below (*infra* paras. 77-79), the State, in some cases, did not dispute them or say they were true, without prejudice to its own assessment of the implications.

<sup>13</sup> The State's acknowledgment in this regard covers: 1) "omissions in the initial stages of the investigation", 2) "delay in instituting various proceedings of investigation," and 3) "periods of inactivity".

b) Articles 5(1) and 5(2) (the right to physical, mental and moral integrity, and the prohibition of torture and cruel, inhuman or degrading punishment or treatment), in relation to Article 1(1) (obligation to respect rights), to the detriment of Candelaria Nuris Vergara Carriazo, Carlos Julio Movilla Vergara, José Antonio Movilla Vergara, Jenny del Carmen Movilla Vergara and Leonor María Movilla de Sierra.<sup>14</sup>

33. The State also acknowledged that it had violated Articles 3, 4, 5, and 7, in relation to Article 1(1) (rights to the recognition of juridical personality, to life, to personal integrity and to personal liberty, in relation to the obligation to respect human rights), to the detriment of Pedro Movilla, because of its failure to investigate his disappearance.

34. Based on the State's acknowledgment of international responsibility, the Court adjudges the human rights violations referred to in the two preceding paragraphs to have been established, to the detriment of the persons mentioned. In accordance with the terms of the State's acknowledgment, the factual basis for the violations is the State's failure to undertake diligent investigative actions in the period between Pedro Movilla's disappearance and 2019.

35. Still in dispute are the allegations of the Commission and/or the representatives regarding the State's responsibility for the violation of the following provisions, to the detriment of the persons indicated:

a) Articles 3, 4, 5 and 7 of the American Convention, in relation to Articles 1(1) and 2 of the treaty (obligations to respect the rights established in the Convention, and to adopt domestic legal effects), and Articles I a) and I d) of the IACFDP (obligations not to practice, permit, or tolerate the forced disappearance of persons, and to take the measures necessary to comply with the commitments of the treaty), to the detriment of Pedro Movilla.

b) Articles 13 and 16 of the American Convention (the rights to freedom of expression and association), in relation to the obligations contained in Articles 1(1) and 2, to the detriment of Pedro Movilla.

c) Articles I b) (obligation to punish those responsible for the crime of forced disappearance) and I d) of the IACFDP, regarding the investigation of the facts, to the detriment of Pedro Movilla and his relatives.<sup>15</sup>

d) Articles 17 (right to protection of the family) and 19 (rights of the child) of the American Convention, in relation to its Article 1(1), to the detriment of Mr. Movilla's relatives, in the first case, and his two sons and one daughter, in the second.<sup>16</sup>

e) Articles 5, 8(1), 13 and 25 of the American Convention, in relation to its Article 1(1), to the detriment of Pedro Movilla's relatives, regarding the "autonomous right to know the truth".<sup>17</sup>

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<sup>14</sup> It should be pointed out that the State did not expressly exclude Nery del Carmen Movilla Galarcio, Mr. Movilla's sister, from its acknowledgment of responsibility. However, as explained below (*infra*, para. 43), it did ask that deceased persons be excluded as alleged victims, which is the case of Ms. Movilla. The Court therefore accepts that the State's acknowledgement of responsibility does not include her.

<sup>15</sup> In other words, all the relatives of Pedro Movilla mentioned in the Merits Report, subject to the clarifications and decisions that follow (*infra* Chapter V). The "relatives" mentioned in the following subparagraphs are this group of people. The representatives mentioned Article 2 of the Convention in their pleadings and motions brief. However, in the specific section of that brief in which they argued that the obligation to investigate had been violated, they did not make specific allegations regarding Article 2, concluding that the State had violated other norms, but without referring to it by name. The Court finds that there are no grounds for including Article 2 of the Convention in the dispute in relation to the obligation to investigate and Articles 8 and 25 of the treaty.

<sup>16</sup> The representatives alleged this violation together with the violation, accepted by the State, of Articles 5(1) and 5(2) of the Convention. They did not specify whether the alleged violation of Article 1(1) of the Convention is related to the obligation to respect, to guarantee, or to both.

<sup>17</sup> Although the State "partially" acknowledged the violation of the right to the truth, it asked the Court not to declare the violation of the provisions in question, alleged by the representatives, with respect to that right.

f) Articles 5, 8(1) and 25 of the American Convention and Articles I a), I d) and XIV (obligation to inform the Inter-American Commission in the event of an alleged forced disappearance) of the IACFD, to the detriment of Pedro Movilla's relatives, regarding the alleged "right to search for and locate disappeared persons."

g) Articles 5(1) and 5(2) of the American Convention, in relation to Article 1(1) of the treaty, to the detriment of the relatives of Pedro Movilla not included in the acknowledgement of responsibility for the violation of the provisions in question (*supra* paras. 15 and 32).

### B.3 The reparations

36. The Court notes that, since the State has declared its commitment to "contributing to the comprehensive reparation of the victims" (*supra* para. 18), the State's obligation to adopt reparation measures in this case is no longer in dispute, inasmuch as it has acknowledged its responsibility.

37. Furthermore, the State has expressly stated its commitment and readiness to continue the investigations and search for Pedro Movilla, and to undertake certain measures of satisfaction (*supra* para. 18), so the appropriateness of such measures is no longer in dispute. Still in dispute are the other reparation measures requested by the Commission and the representatives, notwithstanding the State's acceptance of the admissibility of measures to achieve comprehensive reparation.

### B.4 Conclusions: assessment of the partial acknowledgement of responsibility

38. The Court emphasizes that the State's acknowledgment of responsibility is partial, inasmuch as it does not cover all the facts of the case and alleged human rights violations, and refers only to some of the persons identified by the Commission and the representatives as victims. The acknowledgment applies only to shortcomings in the internal investigations. Among the alleged human rights violations not acknowledged by the State is the characterization of what happened to Pedro Movilla as an act of forced disappearance for which the State of Colombia is directly responsible.

39. Nonetheless, as in previous cases,<sup>18</sup> the Court holds that the acknowledgment of responsibility produces full legal effects, pursuant to Articles 62 and 64 of the Rules of Procedure. The Court notes that most of the facts of the case, several legal arguments, and the need to adopt measures of reparation are no longer in dispute. In particular, the Court will not examine the violations of Articles 8(1) and 25(1) of the Convention with respect to the shortcomings of the investigations and search actions through the end of 2019, since the State's acknowledgement was clear in this regard, and this Court already has extensive, established case law on the obligation to investigate possible acts of forced disappearance. Therefore, the fact that the violations did take place is established based on the acknowledgment of responsibility itself, without prejudice to the specific implications and consequences of the violations that are also addressed in this judgment (*infra* paras. 143-148). All the persons whose rights are assessed by the Court in this judgment are victims of those violations, as explained in the next section.<sup>19</sup>

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<sup>18</sup> Cf. *Case of Benavides Cevallos v. Ecuador. Merits, reparations and costs*. Judgment of June 19, 1998. Serie C No. 38, para. 57, and *Case of Digna Ochoa and family members v. Mexico, supra*, para. 24.

<sup>19</sup> The reasons why the State limited its acknowledgment of responsibility under Articles 8 and 25 of the Convention to only some of the persons mentioned as victims in the Merits Report have to do with the State's argument regarding persons who should not be considered victims. In other words, it is not a question of substantive arguments about the rights to judicial guarantees and judicial protection. Therefore, this Court holds that the violation of Articles 8(1) and 25(1) of the American Convention, acknowledged by the State, harmed all the persons whose status as victims is determined in this judgment (*infra*, para. 54). It should be noted that, although the State did not specify which subparagraphs of Articles 8 and 25 of the Convention were included in its acknowledgement, the representatives and

40. Furthermore, bearing in mind the violations that the State did not acknowledge, and the requests made by the representatives and the Commission, the Court will issue a judgment determining the events that occurred based on the evidence collected in these proceedings and in light of the acknowledgment of international responsibility, and examining the alleged human rights violations that have not been established. This helps ensure that reparation is made to the victims and similar events do not occur in the future; in other words, it helps attain the objectives of the inter-American human rights jurisdiction.<sup>20</sup> The Court will also rule on the reparation measures, taking the State's declarations into account.

## V PRIOR CONSIDERATION REGARDING THE DETERMINATION OF THE ALLEGED VICTIMS

41. In its answering brief, the **State** raised two issues that, it affirmed, make up a "set of closely interrelated arguments": "a preliminary objection based on this Court's lack of jurisdiction over the person, with respect to the alleged victims whose status as such has not been [duly] determined, [and] a prior question requesting the exclusion of those alleged victims."<sup>21</sup>

42. The **Court** accepts that the arguments that Colombia presented as a preliminary objection and as a prior question are substantively the same, and do not refer to aspects of this Court's jurisdiction, nor to the fulfilment of the relevant admissibility requirements. The Court has pointed out that the arguments related to the exclusion of certain persons from the group of alleged victims, even though they have been put forth in the form of a preliminary objection, are not substantively relevant, since the State "does not explain the reasons why the case submitted would not be admissible or why the Court would not have jurisdiction to hear it,"<sup>22</sup> and the Court has repeatedly addressed the identification of the alleged victims as a prior question.<sup>23</sup> Therefore, Colombia's arguments will be examined below as a prior consideration.

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

43. The **State** argued that 15 people should not be considered alleged victims, because one or more of the following situations apply in every case:

- a) They are not identified in the Merits Report, or are not identified correctly:
  - i.-according to a document annexed to the pleadings and motions brief (Annex 1), it appears that the representatives include "Cindy Paola de la Barrera Simanca" as an alleged victim, but she is not mentioned in the Merits Report;

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the Commission only presented arguments concerning specific violations of the first subparagraph of each of those articles.

<sup>20</sup> *Case of Tiu Tojin v. Guatemala. Merits, reparations and costs.* Judgment of November 26, 2008. Series C No. 190, para. 26 and *Case of Digna Ochoa and family members v. Mexico, supra*, para. 25.

<sup>21</sup> The State, also as a "prior question," made "observations [...] regarding the proceedings before the Inter-American Commission on Human Rights." In submitting its observations, it did not make any requests to the Court. Therefore, there is no need to address them.

<sup>22</sup> *Case of Noguera et al. v. Paraguay. Merits, reparations and costs.* Judgment of March 9, 2020. Series C No. 401, para. 12.

<sup>23</sup> *Cf.*, among others, *Case of VRP, VPC and others v. Nicaragua. Preliminary objections, merits, reparations and costs.* Judgment of March 8, 2018. Series C No. 350, paras. 44-49; *Case of Casa Nina v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of November 24, 2020. Series C No. 419, paras. 28-31; *Case of Guachalá Chimbo et al. v. Ecuador. Merits, reparations and costs.* Judgment of March 26, 2021. Series C No. 423, paras. 22-25, and *Case of the National Federation of Maritime and Port Workers (FEMAPOR) v. Peru. Preliminary objections, merits and reparations.* Judgment of February 1, 2022. Series C No. 448, paras. 27-34.

ii.-in paragraph 22 of the Merits Report, a direct victim and her relatives are identified as victims in the case, including, among others, the “three children of Nery Del Carmen,” but no information is provided that would make it possible to identify them;<sup>24</sup>  
iii.- in the Merits Report, the Commission mentioned two people called “Erasmus,” one without a surname and another with the surname “Movilla,” but the representatives later explained that this was one and the same person, and,  
iv.- the Merits Report mentions an alleged victim called “Marta” Movilla, but in the pleadings and motions brief, the representatives point out that, although she was known by that name, her identity document states that she is “Florescia” Movilla Galarcio;

b) They are not covered by the presumption of *juris tantum*, established by the Court in its case law, which states that certain relatives of direct victims may also be considered victims.<sup>25</sup> This would apply to Erasmo de la Barrera Movilla (nephew); Iván Darío Vega Movilla (nephew); Nery del Carmen Vega Movilla (niece); Ana Karina Vega Movilla (niece); Raúl Rafael Ramos Movilla (nephew), Ricardo Adolfo Ramos Movilla (nephew); Franklin Hander Movilla (nephew); Dominga Josefa Movilla Galarcio (niece); María Isabel Carriazo de Román, (mother-in-law), and José de Jesús Vergara Román (father-in-law); or,

c) They are deceased: this is the case of María de Jesús Movilla Barrera and Rita Candelaria Movilla Galarcio, sisters of Pedro Julio Movilla Galarcio, in addition to other persons whom the State also asked be excluded as alleged victims for other reasons: Florescia Movilla Galarcio, María Isabel Carriazo de Román and José de Jesús Vergara Román. Colombia asserted that this was also the case of Erasmo de la Barrera Movilla, Ricardo Adolfo Ramos Movilla and Franklin Hander Movilla, as well as Raúl Rafael Ramos Movilla, who passed away after the answering brief had been submitted, whom it asked not be regarded as alleged victims, but for other reasons; and Nery del Carmen Movilla Galarcio, whom the State did not expressly ask be excluded from the alleged victims.<sup>26</sup>

44. The **representatives** explained that neither they nor the Commission had presented Cindy Paola de la Barrera Simanca as a victim, so there was no reason to exclude her.<sup>27</sup> They also argued that: a) for someone to be considered an alleged victim, they only need to be identifiable based on the information provided in the Merits Report; b) the presumption that the State mentioned, in relation to the relatives of direct victims being regarded as victims, is not a rule for the exclusion of alleged victims, but rather is applied in examining the merits of the alleged violations in a given case; and c) there is no support in case law for excluding certain individuals from the category of alleged victims because they have died.

45. The **Commission** agreed with the representatives regarding the presumption mentioned by Colombia with respect to relatives of direct victims, and referred to some of the State’s other arguments: it maintained that the reference to the “three children of Nery del Carmen” in the Merits Report fulfills the purpose of the rule established in Article 35(1) of the Rules of Procedure regarding the identification of alleged victims; and pointed out that, in the proceedings before

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<sup>24</sup> The State added that the representatives’ subsequent identification of these three individuals has no legal or regulatory basis, and that the inclusion of alleged victims after the Merits Report has been issued constitutes a violation of legal certainty. The three persons mentioned, according to the State, are: Iván Vega Movilla, Nerys del Carmen Vega Movilla, and Ana Karina Vega Movilla.

<sup>25</sup> Colombia recalled that the Court, through its case law, has developed a “juridical foundation for the widening of the notion of victim,” in which a presumption of *juris tantum* applies with respect to “parents, children, spouses and permanent companions, and siblings.” Therefore, the State maintained that persons who do not fall within any of the categories of kinship mentioned with respect to Pedro Movilla should be excluded as alleged victims.

<sup>26</sup> However, the Court assumes that Colombia did not acknowledge the status of Nery del Carmen Movilla Galarcio as a victim or alleged victim because it asked for deceased persons to be excluded.

<sup>27</sup> They explained that her identity document had been attached to the pleadings and motions brief, in Annex 1, as proof of her existence as a beneficiary of Erasmo de la Barrera Movilla.

the Commission, the representatives had indicated that Erasmo Movilla “grew up emotionally and economically dependent on Pedro Julio Movilla.”

### **B) Considerations of the Court**

46. The Court has affirmed that, pursuant to Article 35(1) of the Rules of Procedure, it is the Commission’s responsibility to identify the alleged victims precisely when submitting a case to the Court by means of a merits report.<sup>28</sup> It has stated that “legal certainty requires, as a general rule, that each of the alleged victims is duly identified in the Report [...] except in the exceptional circumstance set out in Article 35(2) of the Rules, which refers to massive or collective violations,”<sup>29</sup> which does not apply in this case.

47. However, the Court notes, firstly, that neither the representatives nor the Commission named Cindy Paola de la Barrera Simanca as an alleged victim. Therefore, the State’s request that she not be acknowledged as such is irrelevant. The person in question is not an alleged victim in this case.

48. Secondly, this Court emphasizes the importance of alleged victims being clearly identified in the Merits Report. Nonetheless, depending on the circumstances in each case, possible inaccuracies in the identification of alleged victims in the Merits Report may not prevent the persons in question from being regarded as such in the proceedings before the Court. This is so provided that the inaccuracies do not prevent the person from being identified, do not affect the State’s right of defense, nor lead to other persons being added to those included in the Merits Report. On previous occasions, taking into account the subject matter of different cases, this Court has accepted as alleged victims persons identified inaccurately in the Merits Report.<sup>30</sup>

49. In this case, the Merits Report refers to the “three children of Nery del Carmen,” who is one of Pedro Movilla’s sisters. The representatives specified that they are Iván Darío Vega Movilla, Nery del Carmen Vega Movilla, and Ana Karina Vega Movilla. Although they stated that “they are the children of Rita Movilla,” according to their birth certificates<sup>31</sup> they are in fact the children of Nery del Carmen Movilla Galarcio. Therefore, the Commission’s reference to these persons makes it possible to identify them. Consequently, Iván Darío Vega Movilla, Nerys del Carmen Vega Movilla, and Ana Karina Vega Movilla will be regarded as alleged victims.

50. Nor do the other inaccuracies that the State mentioned rule out the identification of the persons in question, or affect Colombia’s right of defense. For example, the Merits Report mentioned a person called “Erasmo Movilla” as Pedro Movilla’s nephew, and, as the representatives observed, the person in question, Erasmo de la Barrera Movilla, actually exists and is related to him. Moreover, the inaccuracy regarding the name of Florencia Movilla Galarcio, mistakenly called “Marta Movilla” in the Merits Report, has not prevented her from being

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<sup>28</sup> Cf. *Case of the Ituango Massacres v. Colombia. Preliminary objection, merits, reparations and costs*. Judgment of July 1, 2006. Series C No. 148, para. 98, and *Case of Maidanik et al. v. Uruguay. Merits and reparations*. Judgment of November 15, 2021. Series C No. 444, para. 15.

<sup>29</sup> *Case of Los Josefinos Village Massacre v. Guatemala. Preliminary objection, merits, reparations and costs*. Judgment of November 3, 2021. Series C No. 442, para. 23, and *Case of Maidanik et al. v. Uruguay, supra*, para. 15. Similarly, *Case of the Río Negro Massacres v. Guatemala. Preliminary objection, merits, reparations and costs*. Judgment of September 4, 2012. Series C No. 250, para. 48.

<sup>30</sup> Cf., for example, *Case of Chitay Nech et al. v. Guatemala. Preliminary objections, merits, reparations and costs*. Judgment of May 25, 2010. Series C No. 212, paras. 43-45; *Case of Díaz Loreto et al. v. Venezuela. Preliminary objections, merits, reparations and costs*. Judgment of November 19, 2019. Series C No. 392, footnote 1; and *Case of López et al. v. Argentina. Preliminary objections, merits, reparations and costs*. Judgment of November 25, 2019. Series C No. 396, paras. 32-34 and 163, and Merits Report No. 1/17, of January 26, 2017, para. 74 (available at: <https://www.oas.org/es/cidh/decisiones/corte/2018/12804FondoEs.pdf>).

<sup>31</sup> Cf., birth certificates of Iván Darío Vega Movilla, Nery del Carmen Vega Movilla, and Ana Karina Vega Movilla (evidence file, Annex 1 to the pleadings and motions brief, folios 2734, 2735 and 2737, respectively).

identified correctly. Therefore, Erasmo de la Barrera Movilla and Florencia Movilla Galarcio are considered alleged victims.

51. Thirdly, on many occasions the Court has used the presumption that certain relatives of direct victims of serious human rights violations are themselves victims as a result of the violations concerned, but as part of the analysis of merits,<sup>32</sup> and not as a preliminary question intended to include or exclude people from the group of alleged victims. Therefore, people may not be denied the status of alleged victims for that reason.

52. Lastly, on the question of people who have died, the Court has held that it is not necessary that a person be alive at the time the case is brought before the Court for them to be considered an alleged victim and, furthermore, it has determined that deceased relatives of victims who were alive at the time of the disappearance were also victims.<sup>33</sup> Therefore, a person may not be denied the status of alleged victim simply because they have died. The Court notes, however, that Pedro Movilla's father-in-law, José de Jesús Vergara Román, died in 1990,<sup>34</sup> that is, before Mr. Movilla's disappearance in 1993 (*infra* para. 76). Therefore, given that he could not have been affected by the facts of the case, he will not be considered an alleged victim.

53. As a result, the Court finds that there are 19 alleged victims in the case, some of whom were already considered victims following the State's acknowledgment of responsibility. These are all the individuals mentioned in the Merits Report as victims, except for Pedro Movilla's non-existent brother called Erasmo Movilla, and Mr. Movilla's father-in-law, José de Jesús Vergara Román.

54. Those 19 people, with their correct names, are Pedro Julio Movilla Galarcio and the following members of his family: Candelaria Nuris Vergara Carriazo (wife), Carlos Julio Movilla Vergara (son), José Antonio Movilla Vergara (son), Jenny del Carmen Movilla Vergara (daughter), Leonor María Movilla de Sierra (sister), María de Jesús Movilla Barrera (sister), Florencia Movilla Galarcio (sister), Rita Candelaria Movilla Galarcio (sister), Nery del Carmen Movilla Galarcio (sister), Erasmo de la Barrera Movilla (nephew), Raúl Rafael Ramos Movilla (nephew), Ricardo Adolfo Ramos Movilla (nephew), Franklin Hander Movilla (nephew), Dominga Josefa Movilla Galarcio (niece), Iván Darío Vega Movilla (nephew), Nery del Carmen Vega Movilla (niece), Ana Karina Vega Movilla (niece), and María Isabel Carriazo de Román (mother-in-law).

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<sup>32</sup> *Case of Blake v. Guatemala. Merits.* Judgment of January 24, 1998. Series C No. 36, para. 114, and *Case of Maidanik et al. v. Uruguay, supra*, para. 185.

<sup>33</sup> *Cf. Case of 19 Merchants v. Colombia. Merits, reparations and costs.* Judgment of July 5, 2004. Series C No. 109., paras. 229, 231 and 235, and *Case of Maidanik et al. v. Uruguay, supra*, paras. 195 and 196.

<sup>34</sup> *Cf.* Death certificate of José de Jesús Vergara Román, issued on November 1, 1990 (evidence file, Annex 1 to the pleadings and motions brief, f. 2731).

## VI EVIDENCE

### A) *Documentary evidence*

55. The Court received various documents submitted as evidence by the Commission, the representatives, and the State, which, as in other cases, are admitted as long as they are submitted at the appropriate procedural moment (Article 57 of the Rules of Procedure).<sup>35</sup> Moreover, as stated in the Resolution of December 8, 2021 (*supra* para. 9), expert statements from other proceedings were incorporated into the case file as documentary evidence.<sup>36</sup> On February 13, 2022, the Court also received documentation from the representatives concerning the criminal investigation in Colombia, related to matters that occurred after the pleadings and motions brief had been submitted. Since it refers to evidence of supervening facts, the documentation was accepted, pursuant to Article 57(2) of the Rules of Procedure.<sup>37</sup>

56. The Court also received two documents attached to the State's final written arguments. On March 29, 2022, the representatives submitted comments on the documents, stating that they should be incorporated. The Court admitted one of the documents, because it provides complementary information about the expert opinion of Mr. Yepes Palacio, but saw no need to determine the admissibility of the other, since it already forms part of the body of evidence.<sup>38</sup> Pursuant to Article 58(a) of its Rules of Procedure, the Court incorporated the document *Hasta encontrarlos. El drama de la desaparición en Colombia*, published in 2016 by the National Center for Historical Memory, which is a national public entity in Colombia.

57. In operative paragraph 16 of the Resolution of December 8, 2021 (*supra* para. 9), the Court asked the State to provide a number of documents. On February 9, 2022, the State rejected the Court's request to furnish the documentation, citing domestic reasons. Specifically, the Ministry of National Defense had stated that it could not agree to the request, because the documentation contained information on military operations that were a question of national defense and security. The State also pointed out that one of the documents mentioned in the Resolution "does not exist" and that others had been revoked, two of them since May 1993, namely: the "Manual de Inteligencia de Combate (MIC), EJC 2-3 de 1978" and the "Reglamento de Combate de Contraguerrilla, EJC-3-10, del Comando General de las Fuerzas Militares de 1987 – Disposición 036 del 12 de noviembre de 1987." The Court takes note of the State's comments; nonetheless, its refusal to provide documentation requested by the Court has consequences in relation to the proof of the facts. The State's failure to furnish evidence that it has in its possession for the proceedings cannot prevent the Court from making determinations in this regard and reach conclusions based on the evidence actually provided.

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<sup>35</sup> Documentary evidence may be presented, in general and pursuant to Article 57(2) of the Rules, together with the case referral, pleadings and motions, or answering briefs, but evidence submitted outside of these procedural moments is not admissible, apart from the exceptions established in Article 57(2) of the Rule of Procedure (namely, force majeure or serious impediment), or in the case of an event that occurred after the established procedural moments. Cf. *Case of the Barrios Family v. Venezuela. Merits, reparations and costs*. Judgment of November 24, 2011. Series C No. 237, paras. 17 and 18; *Case of the National Federation of Maritime and Port Workers (FEMAPOR) v. Peru, supra*, para. 35 and footnote 33, and *Case of Pavez Pavez v. Chile. Merits, reparations and costs*. Judgment of February 4, 2022. Series C No. 449, para. 14.

<sup>36</sup> These are the expert statements presented in the *Case of Isaza Uribe v. Colombia* by Messrs. Michael Reed Hurtado, Jorge Mauricio Cardona Angarita, and Carlos Enrique Arévalo Narváez.

<sup>37</sup> The two documents forwarded by the representatives are: a) Brief of May 17, 2021, presented by General (Ret.) Fredy Padilla de León, expanding on the statement of April 21 and May 10, 2021; and b) Report No. 0-458141 and 9-458143 of August 18, 2021, prepared by the Judicial Police's Support Group for the Investigation and Analysis of Organized Crime.

<sup>38</sup> The documents forwarded by the State are as follows: a) a decision of the Council of State of May 15, 2018, and b) a decision of the Council of State of February 5, 2009. The latter had already been presented as evidence by the representatives, as Annex 3 to the pleadings and motions brief.



## **B) Admissibility of testimonial and expert evidence**

58. The Court deems it pertinent to admit the testimony given at the public hearing<sup>39</sup> and before notary publics,<sup>40</sup> because the President issued a resolution on the subject for that purpose (*supra* para. 9).

59. At the request of the President of the Court, at the hearing on March 16, 2022, expert Yepes presented the written version of his expert opinion. The State challenged its admissibility, arguing that: a) it was time-barred, because when the President requested a written version he stated that it should be submitted within approximately 15 days, and it was received several days after that time had elapsed; b) it referred to additional arguments that were not put forward at the hearing; and c) it went beyond the purpose for which the expert opinion was requested. The Court admits the written version of Mr. Yepes' expert opinion, since it complements his oral statement, was expressly requested by the President of the Court, and is useful, and the State was given the opportunity to comment on the expert opinion. It will assess only those aspects of the written version that relate to the expert's oral testimony and to the purpose for which the expert opinion was requested.

## **VII FACTS**

60. In this chapter, the Court will establish the facts considered proven in this case, based on the State's acknowledgment of responsibility and the factual framework and body of evidence that has been admitted,<sup>41</sup> in the following order: a) the context; b) the disappearance of Pedro Julio Movilla Galarcio; and c) administrative and judicial actions.

### **A) Context**

#### *A.1 Political violence in Colombia, the national security doctrine and the concept of "the enemy within"*

61. It is a well-known public fact that, at the time of the facts of this case, there was an internal armed conflict in Colombia.<sup>42</sup> By 1993, there were also acts of political violence orchestrated by the State, which were not directly related to the armed conflict, but rather to the persecution of social sectors engaged in acts of dissent, complaints, or social mobilization.<sup>43</sup>

62. On a previous occasion, the Court found that it had been documented that the violence in Colombia was related to the fact that trade unionists had been identified as part of the concept

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<sup>39</sup> In the public hearing, the Court heard the testimony of alleged victim Candelaria Nuris Vergara Carriazo, proposed by the representatives; witness Elsa María Moyano, proposed by the State; and expert Alberto Yepes Palacio, proposed by the Commission.

<sup>40</sup> The Court received the statements rendered by alleged victims Carlos Julio Movilla Vergara, José Antonio Movilla Vergara, and Jenny del Carmen Movilla Vergara, proposed by the representatives; witnesses Gloria Luz Gómez Cortés, César Julio Carrillo and Yanette Bautista Montañéz, proposed by the representatives; witness Alejandro Cepeda Pérez, proposed by the State; and experts Gina Paola Camacho Cortés, Álvaro Villagra Sarmiento, Yeimy Carolina Torres Bocachica, and Michael Reed Hurtado, proposed by the representatives.

<sup>41</sup> It should be pointed out that, in cases in which the description of facts is not accompanied by supporting evidence, the facts are held to have been established if they are not disputed by any of the parties.

<sup>42</sup> Cf. *Case of the Afro-descendant Communities displaced from the Cacarica River Basin (Operation Genesis) v. Colombia. Preliminary objections, merits, reparations and costs*. Judgment of November 20, 2013. Series C No. 270, para. 221. And *Case of Bedoya Lima et al. v. Colombia. Merits, reparations and costs*. Judgment of August 26, 2021. Series C No. 431, para. 39 (as well as paragraphs, 40 and 41, which refer to the internal armed conflict during the 1990s).

<sup>43</sup> Oral testimony of expert Alberto Yepes Palacio during the public hearing on February 15, 2022.

of “the enemy within,” fostered by the so-called “national security doctrine” endorsed in Decree 3398 of 1965 and adopted by the Armed Forces since the early 1960s, and set out in a number of counterinsurgency military regulations and manuals.<sup>44</sup> At least some of these regulatory provisions were in force in May 1993.<sup>45</sup> In the *Isaza Uribe et al. v. Colombia* case, the Court was made aware of information indicating that different governments, and especially the Armed Forces, perceived the trade union movement as a manifestation of “international communism” and an integral part of “the enemy within.”<sup>46</sup> In a 1994 Joint Report of two United Nations Special Rapporteurs on Colombia, it was documented that, since the establishment of a confederation of a wide variety of unions in 1986, more than 1700 of its members had been murdered and/or had been victims of threats or attacks.<sup>47</sup>

63. The doctrine of national security was implemented from the 1960s onwards in a number of Latin American countries. It entailed the repression of sectors labelled as “the enemy within” and justified as part of the fight against the communist threat and subversion. Then, during the 1990s, Colombia applied the military doctrine on the political “enemy within,” which condoned the use of irregular practices and targeted social dissidents” and “leftist political parties,”<sup>48</sup> including PCC-ML militants. The National Center for Historical Memory affirmed that “the concept of ‘the enemy within’ under the National Security Doctrine employed by the Colombian Armed Forces went far beyond the spectrum of guerrilla groups and extended to all forms of political or social opposition and dissidence, including the trade union movement.”<sup>49</sup>

64. According to information highlighted by United Nations rapporteurs, between July 1993 and June 1994 more than 4000 people were killed for political or ideological reasons. They also

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<sup>44</sup> *Case of Isaza Uribe et al. v. Colombia. Merits, reparations and costs.* Judgment of November 20, 2018. Series C No. 363, paras. 124, 127 and 128. The documentation referred to by the Court on that occasion (cited in footnote 129, paragraph 127), was as follows: Joint Report of the Special Rapporteur on the question of torture, Mr. Nigel S. Rodley, and the Special Rapporteur on the question of extrajudicial, summary or arbitrary executions, Mr. Bacre Waly Ndiaye. E/CN.4/1995/111 of January 16, 1995. In the *Case of Rodríguez Vera et al. (Disappeared from the Palace of Justice) v. Colombia*, the Court took note that, according to a judgment of the Superior Court of Bogotá, before and after 1985 the so-called “national security doctrine” was still in force in Colombia, under which the military took action against leftist citizens, who were to be eliminated because they were regarded as “the enemy within” (cf. *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, footnote 568). In the *Villamizar Durán et al. v. Colombia* case, the Court noted the figures that confirmed, for 1992, the practice of homicides and massacres against civilians, because, according to the Inspector General’s Office, the Armed Forces regarded them as “enemies or allies of the enemy” (cf. *Case of Villamizar Durán et al. v. Colombia. Preliminary objection, merits, reparations and costs.* Judgment of November 20, 2018. Series C No. 364, para. 59). Furthermore, in the case of *Cepeda Vargas v. Colombia*, acts of violence were shown to have been committed against members of a political group simply because they were members of the group. This occurred over a number of years, including 1993 (cf. *Case of Cepeda Vargas v. Colombia, supra*, paras. 74 to 87).

<sup>45</sup> This emerged from a communication from the State received during the proceedings (*supra* para. 57). And from the oral testimony of expert Alberto Yepes Palacio during the public hearing on February 15, 2022.

<sup>46</sup> Cf. *Case of Isaza Uribe et al. v. Colombia, supra*, para. 125 and footnote 123.

<sup>47</sup> United Nations Economic and Social Council. Human Rights Commission. Report of the Special Rapporteur on the question of torture, Mr. Nigel S. Rodley, and the Special Rapporteur on extrajudicial, summary or arbitrary executions, Mr. Bacre Waly Ndiaye, of January 19, 1995. Doc E/CN.4/1995/111 (evidence file, Annex 11 to the pleadings and motions brief, folios 3046 to 3091).

<sup>48</sup> Oral testimony of expert Alberto Yepes Palacio during the public hearing on February 15, 2022. According to the expert, the “irregular practices” included the objectives and methods, so that “civil organizations (including political parties, trade unions and social organizations were identified as agents of the insurgent movement and, therefore, the target of military operations,” and attacks even involving the use of “clandestine and secret methods.” He affirmed that “counterinsurgency” actions were also “noted for the emphasis on intelligence as essential to confront the enemy,” with the involvement of the “intelligence sector,” which was poorly regulated and controlled, in “offensive” actions, including clandestine and “dirty” ones. He also pointed out that “since the mid-1980s, and particularly since the failure of the peace process under the government of Belisario Betancur, which culminated in the events of the violent taking and retaking of the Palace of Justice, Colombia has seen an increase in the growing practice of eliminating political militants and activists from leftist organizations.”

<sup>49</sup> National Center for Historical Memory. *Desaparición forzada Tomo II: Huellas y rostros de la desaparición forzada (1970-2010)*. Bogotá: Imprenta Nacional, 2013 (evidence file, Annex 32 to the answering brief, folios 8635 to 9081).

mentioned data suggesting that, between January 1993 and March 1994, members of the State security forces (50.28 per cent) and paramilitary groups (18.98 per cent) together accounted for nearly 70 per cent of the alleged extrajudicial, summary or arbitrary executions.<sup>50</sup> In 1994, in its Third Report on Human Rights, the Inspector General's Office pointed out that the violations had been so numerous, frequent and serious in recent years that they could not be treated as if they were merely isolated or individual cases of misconduct by middle or lower ranking police officers, without attributing any political responsibility to the civil and military hierarchy.<sup>51</sup>

### A.2 Forced disappearances

65. As part of the application of the doctrine of national security, forced disappearance was used as a means of repression against sectors targeted as "the enemy within," since it was a repressive method designed to leave no traces, even making it appear that there were no victims.<sup>52</sup>

66. The Observatory of Memory and Conflict of the National Center for Historical Memory has estimated that 60,630 people disappeared in Colombia between 1970 and 2015.<sup>53</sup> In 1988, the Working Group on Forced or Involuntary Disappearances announced that it had informed the Government that it had received regular reports from non-governmental sources asserting that forced disappearances continued to occur in the country.<sup>54</sup>

67. Those singled out for particular attention included members of the Marxist-Leninist Communist Party of Colombia (PCC-ML) and a guerrilla group with links to it, the Popular Liberation Army (EPL).<sup>55</sup> Although the EPL reached a peace agreement with the government in 1991, during the 1990s many former combatants were victims of human rights violations, including forced disappearance. In addition to State agents and paramilitary groups, the guerrillas themselves, especially the FARC, committed acts of deprivation of liberty or disappearance.<sup>56</sup> In 1993, insurgent organizations remained active that were responsible for acts of various kinds, including "disappearances," during the armed conflict.<sup>57</sup>

### A.3 Situation of impunity

68. The Commission pointed out that in its 1996 Annual Report it had warned that, despite the fact that more than 60,000 disappearances had been reported in Colombia since 1970, there

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<sup>50</sup> United Nations. Economic and Social Council. Human Rights Commission. Report of the Special Rapporteur on the question of torture, Mr. Nigel S. Rodley, and the Special Rapporteur on extrajudicial, summary or arbitrary executions, Mr. Bacre Waly Ndiaye, of January 19, 1995. Doc E/CN.4/1995/111 (evidence file, Annex 11 to the pleadings and motions brief, folios 3046 a 3091).

<sup>51</sup> Cf. *Case of Villamizar Durán et al. v. Colombia, supra*, para. 59.

<sup>52</sup> Oral testimony of expert Alberto Yepes Palacio during the public hearing on February 15, 2022.

<sup>53</sup> National Center for Historical Memory (2016), *Hasta encontrarlos. El drama de la desaparición en Colombia* (documentary evidence incorporated ex officio, *supra* para. 56). Expert Yepes, citing data from a 2013 publication of the National Center for Historical Memory, pointed out that "information on the alleged perpetrators is hard to come by, but [...] of the cases in which it has been possible to document the alleged perpetrator, 42.1 per cent are police officers, 41.8 per cent paramilitaries, 19.9 per cent other armed groups and 2.3 per cent guerrillas" (written version of the expert testimony of Alberto Yepes Palacio (evidence file, folios 10506 to 10553).

<sup>54</sup> United Nations. Economic and Social Council. Commission on Human Rights. Report of the Working Group on Enforced or Involuntary Disappearances. January 12, 1998. Doc. E/CN.4/1998/43 (evidence file, Annex 15 to the pleadings and motions brief, folios 3369 to 3471).

<sup>55</sup> The parties commented that "the Popular Liberation Army (EPL) guerrilla group emerged [from the PCC-ML]," but clarified that that did not mean that the members of the political party and the guerrilla group were one and the same.

<sup>56</sup> Cf. Written statement rendered by expert Álvaro Villagra Sarmiento (evidence file, folios 10703 to 10732).

<sup>57</sup> Cf. Oral testimony of expert Alberto Yepes Palacio during the public hearing of February 15, 2022.

had been no real, effective and lasting response by the State designed to combat impunity.<sup>58</sup> According to the National Center for Historical Memory, 99.51 per cent of the documented cases between 1958 and 2018 remained unpunished.<sup>59</sup> Thus, the failure to effectively investigate each case and punish those responsible facilitated the context of political violence described and the practice of forced disappearances.

#### A.4 Conclusion regarding the context

69. Based on the evidence presented, the Court finds that a situation of political violence existed in Colombia in 1993 and, in that context, that numerous human rights violations occurred, including forced disappearances, perpetrated by the State and by non-State agents with the State's acquiescence, as part of the so-called "national security doctrine" in effect at the time, under which individuals were identified as "the enemy within" based on their activities or ideology, including militants of leftist political parties and trade unionists. The situation was facilitated by a context of impunity.

#### **B) Disappearance of Pedro Julio Movilla Galarcio**

70. Pedro Julio Movilla Galarcio was a trade unionist and political militant of the Marxist-Leninist Communist Party of Colombia and the Popular Front. During his youth, he participated in the Colombian student movement. When he worked for the Colombian Agrarian Reform Institute (INCORA), in Montería, before 1977, he was a member of the organization's union, holding positions on its board of directors.<sup>60</sup> In 1987, he moved to Bogotá with his family, where he was self-employed.<sup>61</sup> As a young man, he entered into a relationship with Candelaria Nuris Vergara Carriazo, to whom he was married at the time of his disappearance. They had three children together: Jenny del Carmen Movilla Vergara, José Antonio Movilla Vergara and Carlos Julio Movilla Vergara. A number of other people also formed part of their family (including those mentioned *supra*, in paragraph 54).

#### B.1 Facts prior to the disappearance of Pedro Julio Movilla Galarcio

71. Candelaria Nuris Vergara Carriazo stated that she and her husband were harassed when they lived in Montería.<sup>62</sup> She said that when he worked for INCORA and began his union activities, he was detained for two months after attending a meeting, and subsequently they noticed different vehicles parked in front of the family residence.<sup>63</sup> She added that the harassment

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<sup>58</sup> Annual Report of the Inter-American Commission on Human Rights for 2016. Chapter V. OEA/Ser.L/V/11, March 2017, para. 47. Document cited by the Commission in its Merits Report (paragraph 16, footnote 12).

<sup>59</sup> Human Rights Everywhere (HREV) (2019). *Cartografía de la desaparición forzada en Colombia. Relato (siempre) incompleto de lo invisibilizado* (evidence files, Annex 7 to the pleadings and motions brief, folios 2903 to 2987).

<sup>60</sup> The representatives also pointed out that Pedro Movilla "was a member of the Popular Workers' Committee of the Department of Córdoba and worked with the Association of Teachers and Education Workers of Córdoba (ADEMACOR)." Candelaria Vergara also confirmed the facts in her oral testimony during the public hearing on February 15, 2022, as well as in written statements given in Colombia (*cf.* Prosecutor General's Office. Additional statement given by Ms. Vergara on June 7, 2012 (evidence file, Annex 1 to the Merits Report, folios 9-12)).

<sup>61</sup> Statement rendered by Candelaria Vergara on May 21, 1993, before the Inspector General's Office (evidence file, process before the Commission, folios 1248 to 1250).

<sup>62</sup> Statement rendered by Candelaria Vergara on May 21, 1993, before the Inspector General's Office (evidence file, process before the Commission, folios 1248 to 1250); and Ms. Vergara's oral testimony during the public hearing held on February 15, 2022.

<sup>63</sup> Oral testimony of Candelaria Vergara during the hearing on February 15, 2022. When asked to give the date or year in which Pedro Movilla worked as a trade unionist and experienced harassment, she explained that she was "talking about the year 1974 and the decades of the 1970s, 1980s, and 1990s." When asked about the last trade union of which Pedro Movilla was a member, she said he was "a member of INCORA, then the Popular Workers' Committee." She also explained that "in the different regional branches where we were, Bogotá, also Santander, he was no longer a union leader as such." She emphasized, in the same reply, that "Pedro's activity was political, he was a leader of the Marxist-

continued in Bogotá. According to Ms. Vergara, the persecution was for political reasons, since the conflicts they had were with the government and State agencies.<sup>64</sup> Candelaria Vergara also explained that, given the “context” of the harassment and the threats made against them, she could not file a written complaint because (as was evident from the way she spoke) she was afraid.

72. In addition to the facts recounted by Candelaria Vergara, in the course of the investigations carried out after Mr. Movilla disappeared, information about other events surfaced suggesting that Mr. Movilla was being spied on by the country’s intelligence agencies. The events in question are described below.

73. On June 22, 1993, H.J.C.R. rendered a statement. He said he had been a union leader, that he was detained in January of that year, and that he had met Pedro Julio Movilla during his union activities in Medellín. He stated that, after he was arrested, he was beaten and interrogated by people who “turned out” to be agents of the Judicial Police and Investigation Directorate (DIJIN), and possibly also “of the Army,” while they asked him where they could find “Milton” (Mr. Movilla’s pseudonym).<sup>65</sup>

74. Similarly, in a statement rendered on October 25, 2012, before the Inspector General’s Office (PGN), H.J.C.R. said he had been under surveillance and was aware of other PCC-ML militants who had been the object of surveillance by agents from the police and the armed forces. When asked about why the people who had detained him had asked him about Mr. Movilla, H.J.C.R. replied that “they must have been keen to find him because [...] the [PCC-ML] party was a clandestine party.” He also said that “many other comrades” had disappeared in similar circumstances.<sup>66</sup>

75. The National Army’s XIII Brigade has notes containing information about Pedro Julio Movilla. In documentation dated May 1993, Mr. Movilla is identified as a member of the PCC-ML’s Central Committee, the secretary of a union organization, “a member of an armed group” and “a criminal trainer” of the “dissident Popular Liberation Army.” The documentation in question refers to places that Mr. Movilla visited on various dates prior to his disappearance, contains a physical description, and mentions the alias “Milton” that he used and the names of several people known to be “contacts,” including H.J.C.R.<sup>67</sup> The PGN also confirmed the existence at the DIJIN of a notebook containing information about Mr. Movilla: his physical appearance, his wife’s name, his place of work, the vehicle in which he moved around, and the places he frequented.<sup>68</sup>

## *B.2. Facts relating to the disappearance of Pedro Julio Movilla Galarcio*

76. On May 13, 1993, Pedro Movilla left his home in the city of Bogotá, accompanied by his wife. After saying goodbye to her, at 08:00 hours he went to drop off his daughter Jenny at the

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Leninist Communist Party of Colombia. He was a regional leader in Córdoba, then he was a regional leader in Antioquia, Medellín.”

<sup>64</sup> Cf. FGN, Additional statement rendered by Candelaria Vergara on June 7, 2012 (evidence file, Annex 1 to the Merits Report, folios 9 to 12), and statement rendered by Ms. Vergara on May 21, 1993, before the Inspector General’s Office (evidence file, process before the Commission, folios 1248 to 1250).

<sup>65</sup> Statement rendered by H.J.C.R. on June 22, 1993 (evidence file, Annex 4 to the Merits Report, folios 17 and 18).

<sup>66</sup> Statement rendered by H.J.C.R. on October 25, 2012 (evidence file, Annex 5 to the Merits Report, folios 20 to 22).

<sup>67</sup> Military Intelligence Directorate. National Army notes containing general information about Pedro Julio Movilla, dated May 28, 1993 (evidence file, Annex 6 to the Merits Report, folios 24 and 25).

<sup>68</sup> Cf. PGN, Minutes of special visit to the DIJIN Office on June 28, 1993 (evidence file, Annex 7 to the Merits Report, folio 27).

entrance to the Colegio John F. Kennedy, promising to pick her up at 11:00 hours. His fate or whereabouts since then remain a mystery.

77. According to witness testimony,<sup>69</sup> and as mentioned again below (*infra* paras. 92 and 132), at least three motorcycles were observed in the vicinity of the school early that same morning whose riders' faces and license plate numbers were covered. According to the witness statements, the riders were dressed in black and carried weapons, specifically "automatic weapons." The then principal of the Colegio John F. Kennedy explained that a taxi was also seen in front of the institution, which was searched by the police when it arrived at the scene "at around [09:00 hours]."<sup>70</sup> Candelaria Vergara stated that a neighbor told her that he had seen a man who had been beaten being forced into a taxi.<sup>71</sup> According to two teachers (*infra* paras. 92 and 132), several pupils said they had witnessed someone being "kidnapped" and taken away "at gunpoint."

78. Near the school, at around 09:00 hours, a man dressed in brown, apparently under the influence, fired shots into the air.<sup>72</sup> He was detained by the police and identified as P.J.P.D. When the police investigated, it was discovered that the man had been an informant for the F-2, a police intelligence agency in Colombia that no longer existed, and also for the DIJIN.<sup>73</sup>

79. A firearm issued to Lieutenant R.B.N. (an active police officer at the time of the events) was seized from P.J.P.D.,<sup>74</sup> who, when asked, said he did not know R.B.N.<sup>75</sup> On December 15, 1993, Lieutenant R.B.N. said he had reported the loss of the weapon.<sup>76</sup> No record has been found of any such report, however. The FGN verified that there was no record of the weapon having been stolen between April 26 and August 9, 1993.<sup>77</sup> The FGN also carried out a judicial inspection at the legal affairs office of the Industria Militar, but no report of the theft of the weapon was found there either.<sup>78</sup>

### **C) Administrative and judicial proceedings**

80. On May 17, 1993, the Association of the Families of the Detained and Disappeared (hereinafter "ASFADDES") reported Mr. Movilla's disappearance to the PGN unit responsible for

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<sup>69</sup> Cf. PGN, statement by H.L.P. dated May 25, 1993 (evidence file, Annex 9 to the Merits Report, folios 32 and 33); PGN, statement by O.I.G. of June 18, 1993 (evidence file, Annex 11 to the Merits Report, folio 37). Another witness stated that on May 13, 1993, he had heard a woman on the street, near his shop, say that people on motorcycles, dressed in black and carrying weapons, "were going to do something." (Cf. PGN, statement by A.E.F. of May 26, 1993 (evidence file, Annex 10 to the Merits Report, folio 35)).

<sup>70</sup> PGN, statement by O.I.G. of June 18, 1993. The witness noted that by 08:00 hours the motorcyclists had left the scene, but that by that time the school had called the police, who arrived later.

<sup>71</sup> Association of the Families of the Detained and Disappeared. Complaint and Search Report. May 13, 1993 (evidence file, Annex 17 to the pleadings and motions brief, folios 3500 to 3503).

<sup>72</sup> Cf. PGN, statement by O.I.G. of June 18, 1993, and PGN, statement by H.L.P. of May 25, 1993. Another person, G.C.M., stated that he had heard shots and seen police officers take someone away (cf. PGN, statement by G.C.M. of 25 May 1993 (evidence file, Annex 8 to the Merits Report, folios 29 and 30)).

<sup>73</sup> Cf. FGN, statement by P.J.P.D. of March 18, 2013 (evidence file, Annex 19 to the pleadings and motions brief, folios 4128 to 4133).

<sup>74</sup> Cf. Minutes of special visit to the legal affairs office of the Department for the Control of Trade in Weapons, Ammunition and Explosives of Colombia's Armed Forces, of November 4, 1993 (evidence file, Annex 13 to the Merits Report, folio 48); and the National Police, Report of the Personnel Procedures Division (Officers Section), of November 8, 1993 (evidence file, Annex 15 to the Merits Report, folio 53).

<sup>75</sup> Cf. FGN, Additional statement by R.B.N., of January 28, 2013 (evidence file, Annex 19 to the pleadings and motions brief, folios 4068 to 4074).

<sup>76</sup> Cf. PGN, Free and spontaneous statement by R.B.N., of December 15, 1993 (evidence file, Annex 25 to the Merits Report, folios 92 to 94).

<sup>77</sup> Cf. FGN, UNPJ.DH.A. Report of April 17, 1997 (evidence file, Annex 79 to the Merits Report, folios 259 to 261).

<sup>78</sup> Cf. FGN, UNPJ.DH.A. Report of April 17, 1997.

human rights cases,<sup>79</sup> and the next day Ms. Vergara filed an official complaint with the FGN.<sup>80</sup> On May 18, a CCAJAR attorney filed a petition for a writ of habeas corpus,<sup>81</sup> followed by a claim for direct reparation on May 9, 1995 (*infra* para. 106). The legal proceedings triggered by these filings are described below.

### C.1 The disciplinary proceedings before the Inspector General's Office

81. On May 18, 1993, Ms. Vergara filed a formal complaint with the PGN's Office of Special Affairs (OAE), convinced that State agents were responsible for her husband's disappearance.<sup>82</sup> On May 20, 1993, the OAE ordered a preliminary investigation (Case No. 2471/93). The next day, Ms. Vergara gave a statement in which she described what occurred on May 13, 1993, based on what her daughter and the parents of other children attending the same school had told her, and named other people who could collaborate in the investigation.<sup>83</sup>

82. On May 25 and 26 and June 18, 1993, the PGN took statements from people who were in the vicinity of the Colegio John F. Kennedy on May 13 of that year.<sup>84</sup>

83. On May 26, 27 and 28, 1993, the PGN visited detention centers.<sup>85</sup> Other efforts were made to find Mr. Movilla that same month and in the three months that followed.<sup>86</sup>

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<sup>79</sup> Cf. PGN, Order of January 23, 2001 (evidence file, Annex 43 to the Merits Report, folios 136 to 152), and ASFADDES, complaint and search report of May 18, 1993 (evidence file, Annex 17 to the pleadings and motions brief, folios 3500 to 3503). The first document indicates that ASFADDES made a filing on May 17, 1993, and the second refers to the following day. Moreover, the second document notes, in addition to what was stated, that on May 17, 1993, an "urgent action at law" was presented to: "UN Working Group on Forced Disappearance," "Amnesty International," "OAS Inter-American Commission," "Fedefam," "Ombudsman" and "Presidential Council."

<sup>80</sup> Cf. ASFADDES, complaint and search report of May 18, 1993, and ruling of the Administrative Litigation Chamber of Cundinamarca, Third Section, of October 30, 2001 (evidence file, Annex 84 to the Merits Report, 294 to 310). In addition, as indicated in the Merits Report, before September 7, 1993, a complaint was filed with the Medellín Regional Prosecutor's Office. The complaint was rejected, with the Prosecutor's Office affirming that it had no jurisdiction (*cf.* Decision to remand the case due to the lack of jurisdiction of the Medellín Regional Prosecutor's Office, October 19, 1993 (evidence file, Annex 19 to the Merits Report, folio 63).

<sup>81</sup> Cf. ASFADDES, complaint and search report of May 18, 1993.

<sup>82</sup> Cf. PGN, formal complaint filed by Candelaria Vergara on May 18, 1993 (evidence file, Annex 20 to the Merits Report, folio 65).

<sup>83</sup> Cf. PGN, statement rendered by Ms. Vergara on May 21, 1993 (evidence file, proceedings before the Commission, folios 1248 to 1250).

<sup>84</sup> Cf. PGN, statements of G.C.M., H.L.P. of May 25, 1993, and A.E.F. and O.I.G. of May 26 and June 18, 1993 (evidence file, annexes 8, 9, 10 and 11 to the Merits Report, folios 29 and 30, 32 and 33, 35, 37 and 38).

<sup>85</sup> Although the Commission noted that "The State conducted three visits to detention centers to search [for Mr. Movilla] on May 20, 26, and 28, 1993," the document does not mention the visit carried out on May 20, 1993. Instead, it includes two visits made on May 27 the same year (to Station 14 of the National Police and the SININ's detention room), as well as visits on May 26 and 28 the same month to the command of Station 100 of the National Police and the Detention Room of the Administrative Security Department (DAS) (*cf.* Report on the evaluation of the proceedings of investigation of June 4, 1993 (evidence file, Annex 12 to the Merits Report, folio 41).

<sup>86</sup> These actions included a search for Pedro Movilla's fingerprint records at the National Civil Registry, the Criminalistics Division of the DIJIN, the DAS's Office of Specialized Archives, and the National N.N. and Disappeared Persons Section of the Criminalistics Division of the Technical Investigation Unit of the Inspector General's Office (*cf.* PGN: record of visit to the Information Office of the National Registry on July 12, 1993; record of special visit to the DIJIN's Post-mortem Fingerprinting Unit, Criminalistics Division, on August 4, 1993; record of visit to the DAS's specialized archive on August 5, 1993, and Report of the National N.N. and Disappeared Section of the Technical Investigation Unit of the Criminalistics Division of the Prosecutor General's Office, of August 26, 1993 (evidence file, annexes 31, 34, 33 and 35 to the Merits Report, folios 107 to 109, 115, 113 and 117 to 119)). Various other actions were carried out between May and July 1993 at the National Institute of Legal Medicine and Forensic Sciences, which consisted of examining the lists of corpses sent to mass graves, the corpse reception log, the album containing photographs of unidentified corpses, and the archive of morphological descriptions and dental charts. Ms. Vergara also made regular visits to the office to look at the photo album of unidentified corpses, also with negative results. (*cf.* PGN, Report of the Office for Identification and Disappeared Persons of the National Institute of Legal Medicine and Forensic Sciences of July 9, 1993 (evidence file, Annex 32 to the Merits Report, folio 111)).

84. On June 28, 1993, PGN representatives made a special visit to the National Army's Military Intelligence Directorate (hereinafter "Military Intelligence Directorate"). They were handed a notebook whose last entry was dated May 1993, containing information about Pedro Movilla that included a physical description, the name of his wife, and other personal data such as his whereabouts, work and movements.<sup>87</sup> According to the representatives, the Military Intelligence Directorate forwarded other files on Pedro Movilla to the PGN on July 3, 1993.<sup>88</sup>

85. Between May and November 1993, the PGN instituted various proceedings of investigation to ascertain details of the shots fired on the day of Mr. Movilla's disappearance (*supra* para. 78).<sup>89</sup>

86. On April 5, 1995, the PGN, based on procedural regulations, rejected Candelaria Vergara as a party in the proceedings.<sup>90</sup>

87. On February 17, 1998, the proceedings of investigation were suspended.<sup>91</sup> The CCAJAR appealed that decision on March 18, 1998.<sup>92</sup> On July 9 the same year, the PGN overturned the temporary suspension of the case and ordered, *ex officio*, the examination of the evidence that the representatives had requested regarding P.J.P.D.'s participation in the events and the weapon he used, and the intelligence activities surrounding Mr. Movilla, as well as a review of the proceedings instituted by the FGN and any others "deemed pertinent and necessary."<sup>93</sup>

88. On September 3, 1999, Lieutenant Colonel G.C.B. gave a statement. In 1993 he had been an analyst with the Directorate of Military Intelligence. He explained aspects of his duties and affirmed that he did not know Mr. Movilla.<sup>94</sup> Later, on October 1, 1999, Major General I.R.Q. rendered a statement in which he maintained that he knew nothing about Pedro Movilla or his disappearance, nor the orders to collect information about him, nor the people who provided it.<sup>95</sup>

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<sup>87</sup> Cf. PGN, record of the special visit to the Office of the DIJIN on June 28, 1993 (evidence file, Annex 7 to the Merits Report, folio 27).

<sup>88</sup> According to the representatives, this documentation consists of pages of notes from the National Army containing general data on Pedro Julio Movilla, issued on May 28, 1993, which are in the body of evidence (evidence file, Annex 6 to the Merits Report, folios 24 and 25).

<sup>89</sup> These included: a special visit to the legal office of the Department for the Control of Trade in Weapons, Ammunition and Explosives of Colombia's Armed Forces; a request for information sent to the officers section of the Personnel Procedures Division, from which a reply was received confirming that R.B.N. "appears as an active officer serving with the National Police." Other visits are detailed in the evaluation of the proceedings of investigation of June 4, 1993, including a visit to the Command of Battalion 100, on May 26, 1993, in which documentation was inspected referring to the confiscation, on May 13, 1993, of the weapon carried by P.J.P.D. (*cf.*, respectively, PGN: record of special visit to the Legal Advisory Office of the Department for the Control of Trade in Weapons on November 4, 1993 (evidence file, Annex 13 to the Merits Report, folio 48); Report of the Officers Section of the Personnel Procedures Division of November 8, 1993 (evidence file, Annex 15 to the Merits Report, folio 53), and Report on the evaluation of the proceedings of investigation of June 4, 1993 (evidence file, Annex 12 to the Merits Report, folios 40 to 46).

<sup>90</sup> Cf. PGN. Procedural decision taken by the Special Prosecutor for the Defense of Human Rights on April 5, 1995 (evidence file, Annex 22 to the Merits Report, folio 71). The rejection of Ms. Vergara as a party in the proceedings occurred after a request for measures of evidence not specified in the document.

<sup>91</sup> Cf. Judgment of the Third Section of the Administrative Litigation Chamber of Cundinamarca of October 30, 2001 (evidence file, Annex 84 to the Merits Report, folios 311 to 315).

<sup>92</sup> Cf. CCAJAR, appeal against the judicial decision of January 17, 1998 (evidence file, proceedings before the Commission, folios 2019 to 2023).

<sup>93</sup> It clarified that this did not mean that the complainants could be considered parties in the proceedings, pursuant to the pertinent procedural provisions (*cf.* PGN, Order of July 9, 1998, evidence file, proceedings before the Commission, folios 2024 and 2029.) The aspects dealt with in the evidence requested are specified in the appeal brief presented by CCAJAR mentioned in the previous footnote.

<sup>94</sup> Cf. Statement by Lieutenant Colonel G.C.B. of September 3, 1999 (evidence file, Annex 62-B to the Merits Report, folios 208 and 209).

<sup>95</sup> Cf. Statement by Major General I.R.Q. of October 1, 1999 (evidence file, Annex 63-B to the Merits Report, folios 214 to 216).



89. On January 23, 2001, the PGN suspended the investigation for the second time, due to lack of evidence of the participation of public officials in what occurred. It pointed out that "it is necessary to leave open the possibility that, if [the FGN] obtains proof or evidence," the disciplinary investigation could be resumed.<sup>96</sup>

### C.2 The criminal investigation before the Prosecutor General's Office

90. On May 21, 1993, Candelaria Vergara made a statement before the FGN, describing the circumstances of her husband's disappearance and previous facts, and maintaining that she presumed that state security agencies were responsible.<sup>97</sup>

91. In May 1993, investigators from the Prosecutor General's Office (hereinafter "FGN") visited the scene of the events, the "Forensic Medicine facilities" and "gave official written notice to units near Bogotá," as well as "the [Judicial Investigation Section of the] DIJIN, the [Administrative Security Department and] the Armed Forces."<sup>98</sup> Later, in 1994, other proceedings of investigation were ordered.<sup>99</sup>

92. On April 12, 1996, the FGN took statements from two teachers from the Colegio John F. Kennedy, the contents of which have already been referred to and/or are mentioned later (*supra* para. 77 and *infra* para. 132).<sup>100</sup>

93. On June 5, 1996, the investigation was suspended, due to insufficient evidence regarding those responsible.<sup>101</sup> On October 24, 1996, the suspension was overturned and, in that and subsequent decisions, the FGN ordered new proceedings of investigation.<sup>102</sup>

94. On April 15, 1997, R.B.N. (*supra*, para. 79) rendered a statement to the FGN.<sup>103</sup> On June 13, 1997, the FGN visited Kennedy District town hall and on April 28, 1998, it examined the files

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<sup>96</sup> PGN, Judicial decree ordering the case to be closed of January 23, 2001 (evidence file, Annex 43 to the Merits Report, folios 136 to 152).

<sup>97</sup> FGN, statement rendered by Candelaria Vergara of May 21, 1993 (evidence file, Annex 17 to the pleadings and motions brief, folios 3495 to 3497).

<sup>98</sup> Cf. FGN, Report on the investigation of May 31, 1993 (evidence file, files forwarded by the Commission, folios 3480 to 3482).

<sup>99</sup> These included a communication sent to ASFADDES, requesting information related to Pedro Movilla; a communication sent to the Laboratory and Identification Division, asking for information about Mr. Movilla's criminal and judicial records; an inspection at the National Civil Registry, to obtain Mr. Movilla's fingerprint records; and an additional statement by Candelaria Vergara (*cf.*, FGN: official letter to ASFADDES of February 17, 1994; communication to the Laboratory and Identification Division of March 29, 1994; judicial inspection at the National Civil Registry on April 7, 1994; and statement by Ms. Vergara of April 13, 1994 (evidence file, Annexes 45, 46, 81 and 3 to the Merits Report, folios 162, 164, 266, and 14 and 15)).

<sup>100</sup> Cf. FGN: Statement by M.Y.M.C. of April 12, 1996 (evidence file, Annex 59 to the Merits Report, folios 195 to 197). Prosecutor General. Testimony of C.O.G. of April 12, 1996 (evidence file, Annex 60 to the Merits Report, folios 199 and 200).

<sup>101</sup> Judgment of the Council of State - Subsection A of Section 3 of the Administrative Litigation Chamber, of June 23, 2011 (evidence file, Annex 85 to the Merits Report, folios 317 to 332).

<sup>102</sup> Cf. FGN, National Human Rights Prosecutors Unit, Order of October 24, 1996 (evidence file, Annex 47 to the Merits Report, folio 166); and FGN, communication to the Technical Investigation Unit from the Human Rights Unit of the National Directorate of Prosecutors' Offices, of April 8, 1997 (evidence file, Annex 47 to the Merits Report, files forwarded by the Commission, folio 168). The proceedings of investigation ordered included: an additional statement by Ms. Vergara; the ascertaining of the names of the pupils of the school who said they had seen the motorcyclists on May 13, 1993; the establishing of the relationship that existed between Pedro Movilla and P.J.P.D., and between Pedro Movilla and R.B.N.; an investigation to determine whether the loss of the latter's weapon had been reported; as well as other measures designed to discover P.J.P.D.'s whereabouts, since it had not been possible to locate him since the incident occurred.

<sup>103</sup> Cf. FGN, Statement by R.B.N. of April 15, 1997 (evidence file, Annex 76 to the Merits Report, folios 252 and 253).

of the “General Secretariat and Police Inspections” held there.<sup>104</sup> In the course of those procedures, the FGN was unable to corroborate that the loss of the weapon found in P.J.P.D.’s possession had been duly reported.

95. On December 11, 2001, the FGN suspended the preliminary investigation because it had been unable to establish who was responsible for what had occurred.<sup>105</sup>

96. On January 17, 2006, the 23rd Specialized Prosecutor’s Office of the National Human Rights and International Humanitarian Law Unit took up the case and ordered the taking of evidence. It requested information from the PGN on the disciplinary proceedings (*supra* paras. 80 to 89) and a copy of the documents in the file of the claim for reparation (*infra* para. 106), and efforts to locate P.J.P.D.<sup>106</sup>

97. On May 26, 2011, the 48th Specialized Prosecutor’s Office of the National Human Rights and International Humanitarian Law Unit, which had intervened in 2008, approved Candelaria Vergara’s request to take part as a civil party.<sup>107</sup> On September 13, 2011, it agreed to the civil party’s request to seek evidence by, among other things, requesting information from the Information System on Cadavers and Disappeared Persons and the Single Virtual Information Center (CUVI) on the exhumations of bodies that might be Mr. Movilla’s. It also ordered that samples be taken from his relatives, and that Messrs. H.J.C.R., Bohórquez and P.J.P.D. be located in order to take statements from them.<sup>108</sup>

98. On June 8, 2012, the FGN asked the Intelligence Directorate of the National Police and the Military Intelligence Directorate, as a matter of urgency, to inform it if there was any record of a person identifying himself with the number 88 and using the alias “Milton,” between 1992 and 1994.<sup>109</sup> On July 11, 2012, the Judicial Police reported that neither entity had replied.<sup>110</sup> On August 4, 2012, the Military Intelligence Directorate reported that it had no such notes.<sup>111</sup>

99. Between March 2013 and February 2014, following requests from the civil party,<sup>112</sup> the FGN ordered the taking of certain evidence. The Ministry of National Defense was asked to send it “a copy of all reports, notes and, in general, any data” on Pedro Movilla, and to “physically locate” various “legal proceedings” brought against P.J.P.D. for different crimes.<sup>113</sup> Moreover, on March 6 and April 16, 2013, both P.J.P.B. and retired General I.R.Q. rendered statements.<sup>114</sup>

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<sup>104</sup> Cf. FGN: Report on the visit made to Kennedy District town hall on June 13, 1997, and communication from the Head of Archives of the Secretariat of the Government of Bogotá of April 28, 1998 (evidence file, Annexes 77 and 78 to the Merits Report, folios 255 and 257, respectively).

<sup>105</sup> Cf. FGN, Order of the U.D.H. Specialized Prosecutor of December 11, 2001 (evidence file, Annex 49 to the Merits Report, folio 171).

<sup>106</sup> Cf. FGN, the 23rd Specialized Prosecutor, Order of January 17, 2006 (evidence file, Annex 50 to the Merits Report, folios 173 and 174).

<sup>107</sup> Cf. FGN, Order from the Head of the National Prosecutors Unit for Human Rights and International Humanitarian Law of August 8, 2008; communication from the assistant of UNDH-DIH Prosecutor II of September 8, 2008; and Order from the UDH’s 48th Specialized Prosecutor of May 26, 2011 (evidence file, Annex 17 to the pleadings and motions brief, folios 3831 to 3833, and 3830, and Annex 57 to the Merits Report, folios 188 to 190).

<sup>108</sup> Cf. FGN, Order for the taking of evidence of September 13, 2011 (evidence file, Annex 58 to the Merits Report, folios 192 and 193).

<sup>109</sup> Cf. FGN, Official letters to the Intelligence Directorate of the National Police and the Military Intelligence Directorate of June 8, 2012 (evidence file, Annexes 65 and 66 to the Merits Report, folios 221 and 223).

<sup>110</sup> Cf. FGN, Judicial Police Report of July 11, 2012 (evidence file, Annex 73 to the Merits Report, folios 242 to 246).

<sup>111</sup> Communication from the Military Intelligence Directorate of August 4, 2012 (evidence file, Annex 68 to the Merits Report, folio 227).

<sup>112</sup> Cf. CCAJAR, documents from February 2013 (no exact dates), June 4, 2013, and January 31, 2014 (evidence file, Annex 20 to the pleadings and motions brief, folios 4256, 4245 and 4311 to 4313).

<sup>113</sup> FGN. Official letters of August 22, 2013, and February 13 and 14, 2014 (evidence file, Annex 20 to the pleadings and motions brief, folios 4258 and 4259 and 4314 to 4322).

<sup>114</sup> FGN. Statements rendered by P.J.P.B. and I.R.Q. on March 6 and April 16, 2013 (evidence file, annexes 19 and 20 to the pleadings and motions brief, folios 4121 to 4123 and 4200 to 4205).

The former answered questions about his father, P.J.P.D., while the latter was asked about his duties as Director of Military Intelligence between 1992 and 1994. The General said he did not recall the alias "Milton," but other files should exist besides those of the Directorate of Military Intelligence. Other actions aimed at collecting information about Pedro Movilla held by state agencies are mentioned below (*infra* para. 165).

100. The civil party asked for an arrest warrant to be issued against P.J.P.D. and the Prosecutor's Office ordered that he be questioned. The questioning took place on June 27, 2019.<sup>115</sup> P.J.P.D. said he had been a police informant, and that on the day of Mr. Movilla's disappearance he was drinking at a friend's house and ran outside, frightened and firing shots into the air after a woman appeared who said someone was going to be killed.

101. On June 20, 2019, a Judicial Police report was added to the case file, which described a series of actions that had been taken, including a review of documentation from the Army's General Archive and National Police records; and a formal request for information sent to the National Legal Medicine Institute.<sup>116</sup>

102. On November 20, 2019, the investigation was assigned to the 190<sup>th</sup> Specialized Prosecutor' Office, whose first action, on January 15, 2020, was to order the taking of evidence previously requested by the representatives.<sup>117</sup> It then instituted a series of proceedings of investigation. These included, in addition to several measures aimed at ascertaining Mr. Movilla's whereabouts (*infra* para. 103), the following:

- a) On January 21 and from February 5 to 7, 2020, inspections were carried out at the facilities of the Central Archive of the Ministry of National Defense<sup>118</sup> and records were found containing references to Mr. Movilla.<sup>119</sup>
- b) On June 4, 2020, in response to a request from the civil party made in a letter dated May 28 of that year, the Prosecutor ordered, among other investigative actions, that an official letter be sent to the National Legal Medicine Institute to ascertain whether it had a copy of the blood alcohol test performed on P.J.P.D. on May 13, 1993; that a statement be taken from a former National Police officer; and that efforts made to find out who, in 1993, was the owner of the taxi whose his license plate number had been reported.<sup>120</sup>
- c) On May 20 and 21, 2021, a statement was taken from P.J.P.D.<sup>121</sup> On January 12, 2022, the State reported that further questioning would take place on February 3 that same year.
- d) According to information presented by the State, another judicial inspection was ordered on January 20, 2022, this time of the records of the Directorate of Criminal Investigation and Interpol. The inspection was carried out on February 8, 2022, in the presence of the civil party.

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<sup>115</sup> FGN. Communication of June 19, 2019, and questioning of P.J.P.D. on June 27, 2019 (evidence file, annexes 22 and 21 to the pleadings and motions brief, folios 5061 and 4483 to 4491).

<sup>116</sup> Cf. FGN, Judicial Police Report of June 20, 2019 (evidence file, Annex 22 to the pleadings and motions brief, folios 5063 to 5067).

<sup>117</sup> Cf. FGN, Orders of November 20, 2019, and January 15, 2020 (evidence files, Annex 23 to the pleadings and motions brief, folios 5184 to 5199 and 5200).

<sup>118</sup> Cf. FGN: Communication of January 21, 2020, addressed to the Central Archive of the Ministry of Defense; judicial inspection carried out on January 21, 2020; communication from Prosecutor 190 of January 28, 2020; judicial inspection carried out on February 5, 2020; and judicial inspection carried out on February 7, 2020 (evidence file, Annex 23 to the pleadings and motions brief, folios 5202, 5206 to 5210, 5213, 5224 and 5231).

<sup>119</sup> According to the representatives, during this visit a document was found that mentions that, following the arrest of a person supposedly linked to the "PC-ML-EPL," his place might be taken by "Milton," or two other people. The document, issued by the "National Army," which the representatives stated was found during the judicial inspection, is included in the body of evidence (evidence file, Annex 23 to the pleadings and motions brief, folios 5226 to 5228).

<sup>120</sup> Cf. Brief from the civil party to the 190<sup>th</sup> Specialized Prosecutor of May 28, 2020, and the FGN, Procedural Decision of the 190<sup>th</sup> Specialized Prosecutor of June 4, 2020 (evidence file, Annex 23 to the pleadings and motions brief, folios 5261 to 5263 and 5264).

<sup>121</sup> FGN, Communication of April 13, 2021 (evidence files, Annex 31 to the answering brief, folio 8616).

103. With regard to search actions, on May 12, 2020, the 190th Specialized Prosecutor officially asked the Group for the Search, Identification and Handover of Disappeared Persons (GRUBE) and the Unit for the Search for Missing Persons (UBPD) to “draw up a joint plan for the search, identification and handover of Pedro Julio Movilla Delgado” (*sic*).<sup>122</sup> On May 29, 2020, the UBPD reported that the case of Pedro Movilla was already registered with it. It asked the Prosecutor’s Office for its files so it could study all the available information.<sup>123</sup> On July 16, 2020, the FGN ordered an inspection of the facilities of the Institute of Legal Medicine and Forensic Sciences to study the albums of unidentified bodies and determine whether Pedro Movilla might be among them.<sup>124</sup> On July 23, 2020, the GRUBE was asked to carry out a biological comparison of the samples taken from Mr. Movilla’s relatives and the unidentified corpses being held at the laboratories of the Institute of Legal Medicine and Forensic Sciences and the CTI.<sup>125</sup> The State reported that in September 2020 the UBPD had spoken to Candelaria Vergara and one of her children. On November 20, 2020, an inter-institutional meeting was held, with the participation of the civil party, to agree on a search plan for Pedro Movilla.<sup>126</sup> The State reported that other actions were carried out. On October 10, 2020, the genetic data of Mr. Movilla’s relatives was cross-referenced against the records of the Bank of Genetic Profiles of Disappeared Persons, but no match was found. A database search was also carried out, including the Information System of the Network on Disappeared Persons and Corpses (SIRDEC). Colombia also reported that Pedro Movilla had also been included in the “Regional Plan for the Search for Persons Disappeared by Political Leaders in the city of Bogotá.”<sup>127</sup>

104. Based on everything described above and the information available to this Court, the investigation remains at a preliminary stage. It appears that a person was “linked” to the case who made a statement during the preliminary investigation, without his status in the proceedings being defined. Furthermore, since 2020 search actions have been carried out that have failed to discover Pedro Movilla’s whereabouts or, were it to be the case, to identify his remains.

### *C.3 The petition for a writ of habeas corpus before the criminal court judge*

105. On May 18, 1993, a lawyer for CCAJAR filed a petition for a writ of habeas corpus with the judge of Bogotá’s 54<sup>th</sup> Circuit Criminal Court on Mr. Movilla’s behalf, which was declared inadmissible the following day because it did not indicate the place where the disappeared person was detained, and the authorities from whom the Court requested information had no report to the effect that he had been detained.<sup>128</sup>

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<sup>122</sup> Cf. FGN, Procedural Decision of the 190<sup>th</sup> Specialized Prosecutor of May 12, 2020 (evidence file, Annex 23 to the pleadings and motions brief, folio 5247).

<sup>123</sup> Cf. UBPD, Communication of May 28, 2020 (evidence file, Annex 23 to the pleadings and motions brief, folios 5255 to 5257).

<sup>124</sup> Cf. FGN, Procedural Decision of July 16, 2020 (evidence file, Annex 23 to the pleadings and motions brief, folio 5265).

<sup>125</sup> FGN, Procedural Decision of the 190<sup>th</sup> Specialized Prosecutor of July 23, 2020 (evidence file, Annex 23 to the pleadings and motions brief, folio 5267).

<sup>126</sup> The 190<sup>th</sup> Specialized Prosecutor, the Prosecutor responsible for Coordinating GRUBE, a GRUBE investigator, the Coordinator of the Information Group on Deceased and Disappeared Persons and Unidentified Corpses - Bogotá Regional Directorate of the Legal Medicine Institute, the Criminal Judicial Prosecutor II, and the representative of the civil party. Various actions were agreed aimed at “drawing up the search plan.” (Cf. FGN, document entitled “Inter-institutional proceedings of investigation. Search plan. Pedro Julio Movilla Galarcio” (evidence file, Annex 23 to the pleadings and motions brief, folio 5356).

<sup>127</sup> It explained that “this plan aims to ascertain the whereabouts of persons who disappeared within the framework of political persecution in the city of Bogotá during the 1980s and 1990s.”

<sup>128</sup> Cf. Decision of the Fifty-fourth Circuit Criminal Court of May 19, 1993 (evidence file, Annex 16 to the Merits Report, files forwarded by the representatives, folios 3473 to 3475).

#### C.4 The administrative proceedings

106. On May 9, 1995, Candelaria Vergara filed a claim for direct reparation against the Nation, the Ministry of Defense and the National Army, before the Third Section of the Administrative Litigation Chamber of Cundinamarca.<sup>129</sup> The court of first instance rejected the claim on October 30, 2001, on the grounds that forced disappearance by the authorities had not been proven. The plaintiff lodged an appeal, and, on June 23, 2011, the Council of State confirmed the judgment of the court of first instance, holding that there was insufficient evidence to establish that State agents working for the public institutions against which the lawsuit was brought were responsible for Mr. Movilla's disappearance.<sup>130</sup>

### **VIII MERITS**

107. In the instant case, the Court must examine the international responsibility of the State of Colombia regarding the alleged forced disappearance of Pedro Julio Movilla Galarcio, beginning on May 13, 1993, and the State's subsequent actions to investigate the facts of the case, in relation to both the search for Mr. Movilla and the determination of responsibilities for what occurred. Based on the circumstances described, it is alleged that the human rights of Pedro Movilla and members of his family were violated. The State has acknowledged some of the violations, which have been established (*supra* paras. 32 to 34 and 39).

108. Based on the American Convention on Human Rights and the Inter-American Convention on the Forced Disappearance of Persons, and taking into account, where pertinent, the partial acknowledgment of responsibility made by the State, this Court will now consider the alleged violations of: a) the rights to recognition of juridical personality, personal integrity, life, personal liberty, freedom of thought and expression, and freedom of association, against Mr. Movilla due to his disappearance; b) the rights to judicial guarantees and judicial protection of Mr. Movilla and his relatives, as well as his relatives' right to the truth, due to the State's actions following Mr. Movilla's disappearance; and c) the right to personal integrity of Mr. Movilla's relatives, due to Pedro Movilla's disappearance and the State's subsequent actions. As has been pointed out (*supra* para. 39), the Court will not examine the violations of Articles 8(1) and 25(1) of the Convention due to the failure to investigate Mr. Movilla's disappearance, which have been established based on the acknowledgment of responsibility, but, in the second section of this chapter, it will assess and elaborate on certain implications and consequences of those violations.

#### **VIII.1 RIGHTS TO RECOGNITION OF JURIDICAL PERSONALITY, TO LIFE, TO PERSONAL INTEGRITY, TO PERSONAL LIBERTY, TO FREEDOM OF THOUGHT AND EXPRESSION, AND TO FREEDOM OF ASSOCIATION, IN RELATION TO THE OBLIGATIONS TO RESPECT AND GUARANTEE RIGHTS AND TO ADOPT DOMESTIC LEGAL EFFECTS<sup>131</sup>**

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

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<sup>129</sup> Cf. Judgment of Section 3 of the Administrative Litigation Chamber of Cundinamarca of October 30, 2001 (evidence file, Annex 84 to the Merits Report, folios 311 to 315).

<sup>130</sup> Cf. Judgment of the Council of State - Subsection A of Section 3 of the Administrative Litigation Chamber, of June 23, 2011.

<sup>131</sup> Articles 3, 4, 5, 7, 13, 16, 1(1) and 2 of the American Convention on Human Rights. Allegations regarding the obligations contained in Articles I a), I b), and I d) of the IACFDP are also examined.

109. The **Commission** maintained that Pedro Movilla had been the victim of forced disappearance, and that, although there is no direct evidence that State agents deprived him of his liberty, certain circumstantial and contextual elements point to that conclusion, and the State has offered no other hypothesis based on diligent investigation:

- a) There were “three relevant contexts”: i.- “the identification of trade unionists as part of ‘the enemy within’ in state intelligence and counter-guerrilla manuals”; ii.- “the political violence in Colombia, which led to alarming numbers of executions and disappearances of people linked to certain political parties like the PCC-ML”; and iii.- “the high incidence of forced disappearance in the context of the armed conflict in Colombia.”
- b) Pedro Julio Movilla was an active trade unionist and political militant of the PCC-ML.
- c) Mr. Movilla’s wife made consistent statements about the surveillance to which they were subject before the disappearance, which she associated with State security forces. This is consistent and is explained by the intelligence work carried out against Mr. Movilla.
- d) The intelligence activities of State security forces prior to Mr. Movilla’s disappearance identified the alleged victim, detailing both his union work and his political militancy.
- e) H.J.C.R., in his statement rendered at the Prosecutor General’s Office, said that while detained he was beaten and interrogated about Mr. Movilla’s activities.
- f) At the moment of Mr. Movilla’s disappearance, P.J.P.D., who had been an informant for State security agencies, fired shots into the air using a weapon belonging to a police officer.

110. The Commission held that the “hasty” rejection of the petition for habeas corpus (*supra* para. 105) with no diligent search actions carried out, combined with the State’s failure to clarify the nature of the intelligence actions, amounted to a refusal to acknowledge that the victim had been detained and to account for his whereabouts. It also warned that the “motive and nature” of Mr. Movilla’s disappearance were “selective,” since it had to do with his alleged links to a “subversive organization,” which was inferred from his leadership and participation in social and political organizations with leftist ideologies.

111. The Commission therefore concluded that the State had failed to protect Pedro Movilla’s rights to recognition of juridical personality, life, personal integrity, personal liberty and freedom of association. Consequently, it found that Colombia had failed to comply with Articles 3, 4(1), 5(1), 7(1) and 16 of the American Convention, in relation to its Articles 1(1) and 2, as well as Article I a) of the IACFDP.

112. The **representatives** argued that, in addition to the violations specified by the Commission, Colombia had violated Articles 13(1) of the American Convention and I d) of the IACFDP.<sup>132</sup> They agreed substantially with the Commission’s arguments. They also pointed out, in relation to the circumstances in which the disappearance occurred, that various statements suggested that, on the morning of May 13, 1992, at the Colegio John F. Kennedy, the place where Mr. Movilla was seen for the last time, there were armed men, “who were not seen again

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<sup>132</sup> In the case of Article 16, they cited the first subparagraph as grounds for the alleged violation. With regard to the right to personal integrity (Article 5 of the Convention), the representatives failed to specify which subparagraphs they believed to have been violated. They did so in the “list of legal claims” in their pleadings and motions brief, and again in the same document when they stated their “conclusion” with respect to the alleged forced disappearance. Nonetheless, in the same brief they cited the first two subparagraphs of Article 5, as well as the relevant case law of the Court. The Court has a responsibility to examine rights or provisions alleged by the representatives, but not by the Commission. According to this Court’s settled case law, the representatives may do this as long as their additional arguments are related to the factual framework of the case, which is based on the determination on facts made in the Merits Report (cf. *Case of the “Five Pensioners” v. Peru, Merits, reparations and costs*, Judgment of February 28, 2003, Series C No. 98, paragraph 155. The same point is addressed in the *Case of Digna Ochoa and family members v. Mexico, supra*, paras. 1, 6 and 87).

after the events". They also noted that several witnesses had observed the presence of a taxi "that could have been involved in the disappearance."<sup>133</sup>

113. They emphasized that the intelligence activities against Pedro Movilla stemmed from the application of the doctrine of "the enemy within," "which was in effect" in military manuals, in violation of the obligation to adopt domestic legal effects to comply with the mandates of the Convention. The representatives also added to the Commission's remarks regarding the State's refusal to acknowledge the detention: the military claimed to have no record of Mr. Movilla, while the notes and documents found suggest otherwise;<sup>134</sup> and to date, no logical explanation has emerged other than that of forced disappearance, nor have any serious, diligent investigations been carried out that would make it possible to draw any another conclusion. As for the motive behind the disappearance, they went further than the Commission and claimed it was politically motivated, affecting not only the right to freedom of association but also freedom of expression.

114. The **State** denied responsibility for the alleged forced disappearance. It stated that "there is no proof that Mr. Movilla has been deprived of his liberty." It argued that there were no records showing that Mr. Movilla had either entered or been released from detention facilities. It also denied there was evidence that State agents were involved in his disappearance. It argued that the circumstantial evidence highlighted by the Commission and the representatives were insufficient. The State's arguments were as follows:

- a) The presentation of an alleged "general context" is "insufficient" and, furthermore, the context that the Commission and the representatives wish to use to support their argument is "incomplete," since it ignores the large number of actors involved in the country's armed conflict. Furthermore, there are no grounds for relating the case to that context. It argued that 1974 was the last year in which Mr. Movilla was a member of a union and that by 1993 the PCC-LM was no longer being persecuted by State authorities.<sup>135</sup>
- b) The harassment described by Mr. Movilla's wife was not reported and could not be corroborated.
- c) Although the Army targeted Mr. Movilla with its intelligence activities, it has not been proven that the plan was to make an attempt on his life, but rather "these were actions related to a possible link with EPL dissidents."
- d) H.J.C.R.'s statements to the effect that he was interrogated about Pedro Movilla before the latter's disappearance are inaccurate, do not have supporting evidence, and are not conclusive.<sup>136</sup>
- e) There is no witness testimony to indicate that on May 13, 1993, Pedro Julio Movilla was seen being detained by police officers and, in fact, given the incident that occurred involving P.J.P.D., who was connected with the police at the time of the events, "it is impossible to say for certain that Mr. Movilla was there at that time."<sup>137</sup>

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<sup>133</sup> The representatives also pointed out that P.J.P.D., the man who fired shots in the air at the time of the events, was not the person who was put in a taxi, because he stated that he was taken to the police station in a police vehicle.

<sup>134</sup> In the pleadings and motions brief, the representatives did not specify exactly how or when the military had denied having any record of Pedro Movilla, nor did they mention in detail the documents to which they were referring.

<sup>135</sup> The State also pointed out that, at the time of the events, the EPL guerrilla group had signed a peace agreement with the national government, and that, according to expert Villagra, ex-combatants covered by the peace agreement were victims of homicides and disappearances, but this was not due to a single type of persecution or group responsible.

<sup>136</sup> The State affirmed that: 1) the alleged interrogation of H.J.C.R. regarding Mr. Movilla's militancy in the PCC is only a mere assumption by H.J.C.R., and there is no supporting evidence; 2) H.J.C.R. said he believed they were asking about Pedro Movilla because of his involvement in a "clandestine" political party, but the PCC-ML was no longer clandestine; 3) it is not clear that it was State agents who interrogated H.J.C.R., since he stated that he was questioned by the group of people who detained him, which he said was made up of "civilians who turned out to be from the DIJIN and supposedly from the Army, I don't know."

<sup>137</sup> It also argued that the State agent to whom the weapon that was found had been issued claimed he had lost it. It added that although the Prosecutor's Office had linked P.J.P.D. to the criminal proceedings, which did not mean

f) "The national authorities and judges have found that the evidence contained in the file does not demonstrate the alleged participation of State agents in the disappearance."<sup>138</sup>

115. Colombia also explained that, although various proceedings were instituted in the early stages of the investigation in order to find Mr. Movilla, and all proved unsuccessful, "in no case was there a refusal to reveal his whereabouts."

116. Lastly, the State denied responsibility for the alleged violation of the rights to freedom of association and expression. It held that: a) there was no measure restricting Mr. Movilla's exercise of those freedoms; b) "there is no evidence establishing that Pedro Movilla's trade union and political activity was of a sufficiently high profile to make it possible to infer that it might have been a motive for the commission of a crime against him;" and c) there is no proof that State agents were involved in what occurred.

### **B) Considerations of the Court**

117. The Court notes that it is an undisputed fact that Pedro Movilla has been missing since May 13, 1993. The State has accepted that, due to a lack of diligence in domestic investigative actions, it failed to guarantee Mr. Movilla's rights to recognition of his juridical personality, life, personal integrity and personal liberty (*supra* paras. 17, 33, 34 and 39). The violation of the obligation to guarantee those rights has been established based on the State's acknowledgment of responsibility. The Court must decide whether it is possible to determine that Colombia has failed to comply with its obligation to respect those same rights, in other words, whether it is possible to attribute Mr. Movilla's disappearance directly to the State.

118. This Court will now: a) present some general considerations regarding forced disappearance and the rules of evidence that must be borne in mind in relation to the human rights violation in question; b) assess the existing evidence in the case of the disappearance of Pedro Movilla and the alleged involvement of State agents; and c) set forth its conclusion.

#### **B.1 General considerations regarding evidence of forced disappearance**

119. The Court holds that for the forced disappearance of persons to be a serious violation of human rights, it must include the following concurring elements: a) the deprivation of liberty; b) the direct intervention of State agents or their authorization, support or acquiescence; and, c) the refusal to acknowledge the detention and to reveal the fate or whereabouts of the person concerned.<sup>139</sup> It is "a continuing or permanent act that extends until the whereabouts of the victims are known or until their remains have been found and clearly identified."<sup>140</sup>

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that State agents had taken part in the disappearance, but rather showed a "commitment" to exhausting all possible lines of investigation.

<sup>138</sup> The State referred to the decisions of a) the Delegate Inspector for the Defense of Human Rights, of February 17, 1998; b) the Administrative Litigation Chamber of Cundinamarca, of October 30, 2001; and c) the Council of State, of June 23, 2011.

<sup>139</sup> Cf. *Case of Gómez Palomino v. Peru. Merits, reparations and costs*. Judgment of November 22, 2005. Series C No. 136, para. 97, and *Case of Maidanik et al. v. Uruguay, supra*, para. 112. The constituent elements of forced disappearance as stated are in accordance with the provisions of Article II of the IACFDP. In relation to the acknowledgement of forced disappearance as a serious human rights violation, see also *Case of Goiburú et al. v. Paraguay. Merits, reparations and costs*. Judgment of September 22, 2006. Series C No. 153, para. 84.

<sup>140</sup> *Case of Maidanik et al. v. Uruguay, supra*, para. 112. Cf., also, in the same regard, *Case of Velásquez Rodríguez v. Honduras. Merits*. Judgment of July 29, 1988. Series C No. 4, paras. 155 to 157. Article III of the IACFDP indicates that the "offense" of forced disappearance of persons "shall be deemed continuous or permanent as long as the fate or whereabouts of the victim has not been determined."



120. Forced disappearance places the victim in a state of complete defenselessness.<sup>141</sup> It is a complex, multiple violation, because of its many strands merging toward one objective that jointly and continuously infringe various legal rights protected by the American Convention, especially those safeguarded by the rights to juridical personality, to life, to personal integrity and to personal liberty, set out in Articles 3, 4, 5 and 7 of the Convention.<sup>142</sup> An act of forced disappearance can also constitute a violation of other rights. A case in point is when its purpose is to prevent the legitimate exercise of a right protected in the Convention other than those referred to above. In particular, when the violation is linked to the exercise of freedom of association or political rights, it can also strike fear into the organizations, reducing their capacity to defend their interests as a group, which can be aggravated in contexts of impunity.<sup>143</sup> Similarly, depending on the circumstances of the case and given the uncertainty it creates as to the fate of the disappeared person, an act of forced disappearance can have profound effects on family members (*infra* para. 173). Furthermore, if a State practices, tolerates or allows an act of forced disappearance, it is failing to comply with Article I. a) of the Inter-American Convention on the Forced Disappearance of Persons, which prohibits such conduct.

121. Forced disappearance is characterized by an attempt to suppress all information about the kidnapping, whereabouts and fate of the victims.<sup>144</sup> This characteristic may result in the difficulty or impossibility of obtaining direct evidence concerning the act of forced disappearance. However, this does not, of itself, prevent the Court from determining, if applicable, the responsibility of the State.

122. In this regard, it should be borne in mind that the Court, in order to establish a State's responsibility, does not need to establish the material attribution of an act to the State beyond any reasonable doubt, but to be convinced that conduct attributable to the State that entails the breach of an international obligation and impacts human rights has been verified.<sup>145</sup> To this end, the State cannot rely on the defense that the complainant has failed to present evidence when it cannot be obtained without the State's cooperation.<sup>146</sup> Moreover, given the nature of forced disappearance, which is committed with the intention of concealing what has occurred, circumstantial evidence, indicia, and presumptions of the commission of a crime are especially important, inasmuch as, taken as a whole, they make it possible to draw conclusions consistent with the facts.<sup>147</sup> As part of such a combination of evidence, and not in isolation, the confirmation of a context in which forced disappearances are known to have occurred may constitute an

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<sup>141</sup> Cf. *Case of Anzualdo Castro v. Peru. Preliminary objection, merits, reparations and costs*. Judgment of September 22, 2009. Series C No. 202, para. 59, and *Case of Maidanik et al. v. Uruguay, supra*, para. 115.

<sup>142</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits, supra*, paras. 150, 155 to 158, 186 and 187, and *Case of Maidanik et al. v. Uruguay, supra*, para. 114. It should be noted that the Court has ruled, in relation to the impact on personal integrity in cases of forced disappearance, that "prolonged isolation and deprivation of communication are in themselves cruel and inhuman treatment and, therefore, violate Articles 5(1) and 5(2) of the Convention" (*Case of Velásquez-Rodríguez v. Honduras. Merits, supra*, paras. 156 and 187, and *Case of Terrones Silva et al. v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of September 26, 2018. Series C No. 360, para. 172).

<sup>143</sup> Cf., also with respect to freedom of association, and *mutatis mutandi* with regard to political rights, *Case of Huilca Tecse v. Peru. Merits, reparations and costs*. Judgment of March 3, 2005. Series C No. 121, paras. 66 to 79, and *Case of Isaza Uribe et al. v. Colombia, supra*, para. 145.

<sup>144</sup> Cf. *Case of Velásquez-Rodríguez v. Honduras, Merits, supra*, para. 131, and *Case of Alvarado Espinoza et al. v. Mexico. Merits, reparations and costs*. Judgment of November 28, 2018. Series C No. 370, para. 169.

<sup>145</sup> Cf. *Case of Velásquez-Rodríguez v. Honduras. Merits, supra*, paras. 128 to 135 and 173, and *Case of Alvarado Espinoza et al. v. Mexico, supra*, para. 168.

<sup>146</sup> Cf. *Case of Velásquez-Rodríguez v. Honduras. Merits, supra*, para. 135, and *Case of Arrom Suhurt et al. v. Paraguay. Merits*. Judgment of May 13, 2019. Series C No. 377, para. 95. In this regard, the State may not use the failure to carry out domestic actions, nor the shortcomings or lack of results of such actions, to its advantage; the fact that domestic investigations have not controverted the evidence of the State's participation in the events is a pertinent element that gives weight to the evidence (*cf.*, in this regard, *Case of Kawas Fernández v. Honduras. Merits, reparations and costs*. Judgment of April 3, 2009. Series C No. 196, paragraph 96, and *Case of Pacheco León et al. v. Honduras. Merits, reparations and costs*. Judgment of November 15, 2017. Series C No. 342, para. 149).

<sup>147</sup> Cf. *Case of Velásquez-Rodríguez v. Honduras. Merits, supra*, paras. 130 and 131, and case of *Arrom Suhurt et al. v. Paraguay, supra*, para. 95.

important element. On the other hand, State authorities' conclusions regarding the facts may be taken into account, but they do not affect the autonomous decision that the Inter-American Court may take based on its own jurisdiction and functions.<sup>148</sup>

B.2 Assessment of evidence regarding the involvement of State agents in the disappearance of Pedro Julio Movilla Galarcio

123. From the above arguments, it is clear that the parties and the Commission agree that no direct evidence exists to prove that the State was involved in Pedro Movilla's disappearance. Furthermore, the question of whether sufficient indirect evidence exists is disputed. The Court will assess whether the elements highlighted by the representatives and the Commission pointing to the State's responsibility, which the State denies, are sufficient. In conducting its assessment, the Court will take into account, as is explained below (*infra* paras. 127 and 140), that, although there is no information about Mr. Movilla's trade union activity at the time of his disappearance, evidence does exist for earlier periods, and his membership of the PCC-ML is not in dispute. These circumstances are important to frame Mr. Movilla's disappearance within the context of this case, and to assess the differentiated or particular impact that the fact of his disappearance had on his rights, on those of his relatives, and on those of society as a whole.

124. First of all, it should be noted that the Court has established that, at the time of Mr. Movilla's disappearance, there was a context of political violence, part of an internal armed conflict, which did lead to acts of forced disappearance. The political violence was carried out not only by the State, but also by non-state actors. In other words, it was a complex contextual framework, with acts of violence committed by both the State and non-State actors (*supra* paras. 67 and 69).

125. In this context, the existence of elements consistent with political violence practiced by the State and indicative of possible State involvement in the events has been alleged in this case. It should be remembered that, as has been established (*supra* para. 69), State authorities followed the so-called "doctrine of national security" that called for the identification of "the enemy within," including leftist political militants and trade unionists.

126. However, the State has denied that the political party of which Mr. Movilla was a member (the PCC-ML) was being persecuted in 1993. Nonetheless, the context as established (*supra* paras. 61 to 64 and 69), shows that the doctrine of national security and the concept of "the enemy within" were implemented during the 1990s, and involved the use of illegal practices. Therefore, the fact that by 1993 the PCC-ML had been legalized does not mean that its members may not have been illegally persecuted. Furthermore, as has been shown (*supra* para. 67), despite the peace agreement signed with the EPL—a guerrilla group linked to the PCC-ML—, several people who had formed part of that group were subjected to human rights violations.

127. There is no doubt that Mr. Movilla was a member of the PCC-ML in 1993, when he disappeared, and that, in previous years, he had been active as a militant and trade unionist. Regardless of how "visible" Mr. Movilla would have been within the framework of the PCC-ML's activities, and the precise moment when he was active as a trade unionist, in 1993 the XIII

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<sup>148</sup> In this regard, on various occasions, even in circumstances in which it did not determine that domestic institutions had acted negligently or contrary to the obligations established under the Convention, the Court has ruled that it may carry out its own assessment and analysis of the facts, considering, according to the circumstances of the case, aspects such as the existence of "additional elements" (elements not considered by the domestic jurisdiction), facts not included in the domestic judgments or the arguments of the parties in the international proceedings on the conclusions reached in those judgments (*cf. Case of the Santo Domingo Massacre v. Colombia. Preliminary objections, merits and reparations.* Judgment of November 30, 2012. Series C No. 259, paras. 171 and 172; *Case of Petro Urrego v. Colombia. Preliminary objections, merits, reparations and costs.* Judgment of July 8, 2020, Series C No. 406, paragraphs 108 and 109, and *Case of Arrom Suhurt et al. v. Paraguay, supra*, para. 131).

Brigade had notes referring to him as a member of the PCC-ML's Central Committee and the secretary of a trade union organization. They also labeled him a "member of an armed group" and a "trainer of criminals" (*supra* para. 75). This shows what the armed forces thought of Mr. Movilla. This is important for the present analysis, since it suggests that the State agencies' view of Mr. Movilla was consistent with the concept of "the enemy within."

128. It should also be noted that it has been proven (*supra* para. 75) and accepted by the State of Colombia (*supra* para. 114) that the intelligence activities of state security forces targeted Pedro Movilla. Although there is no direct evidence of the precise objective of those activities, they are an important indication of State involvement in what occurred. Therefore, although the State has maintained that there is no evidence to prove that the purpose of the intelligence activities was to make an attempt on Mr. Movilla's life, it is not reasonable to imagine that such evidence would exist: an act of forced disappearance is an illegal action in which the perpetrators endeavor to destroy any evidence that would make it possible to confirm what happened to the victim (*supra* para. 121). Moreover, the implementation of the doctrine of "the enemy within" made it likely that irregular or illegal actions would be carried out (*supra* paras. 63 and 126).<sup>149</sup> According to expert Yepes, "the intelligence notes on file in the investigation [of this case] provide enough evidence to reasonably infer the State's responsibility."<sup>150</sup> There are also other types of evidence pointing to the involvement of State agents.

129. For example, H.J.C.R., who said he had met Pedro Movilla in the context of his trades union activities, also stated that after being detained in January 1993, he was threatened with a weapon and then interrogated for four hours. He was tied up, hooded and beaten, and asked about various "colleagues," including Mr. Movilla. H.J.C.R. stated that the above acts were carried out by people who "turned out" to be State agents (of the DIJIN or the army).<sup>151</sup> Furthermore, Mr. Movilla's wife also spoke of surveillance and harassment prior to her husband's disappearance, which she attributed to conflicts with State agencies. It is understandable that, as can be seen from her testimony before the Court (*supra* para. 71), she was afraid to report those actions. Therefore, her testimony is no less credible, even though the State authorities could not verify the facts because she failed to report them.

130. The Court accepts that H.J.C.R.'s testimony points to State agents' monitoring or surveillance of Mr. Movilla, and that this is consistent with the circumstances referred to by Candelaria Vergara. All of this is also consistent with the intelligence activities carried out against Mr. Movilla.

131. It has also been proven that P.J.P.D. fired shots in the air in the vicinity of the school where Mr. Movilla dropped off his daughter on the day of his disappearance. P.J.P.D. had been an informant for state intelligence agencies (*supra* para. 78). The shots were fired from a weapon issued by the authorities and assigned to a lieutenant (R.B.N.), who claimed he had lost it. However, there is no record of a report to that effect prior to Mr. Movilla's disappearance (*supra* para. 79). P.J.P.D.'s behavior at the place where Pedro Movilla's disappearance began and at

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<sup>149</sup> In his expert opinion, Michael Reed Hurtado pointed out that the purpose in using clandestine methodologies was "to be able to deny what was happening, but to continue to get results against targets regarded as part of a variety of enemies" (written expert opinion of Michael Reed Hurtado, evidence file, folios 10688 to 10702).

<sup>150</sup> Oral testimony of expert Alberto Yepes Palacio during the public hearing on February 15, 2022. The expert added that "if they occur in a context of massive human rights violations, [...] of widespread practices of forced disappearance in which the State has been actively involved, those intelligence notes are usually a means to further action, which can generally lead to forced disappearance. In that sense, they create a very serious threat for the people who find themselves mentioned in notes of that kind, when there is no control by judicial bodies or control over such notes, and when the military enjoy excessive powers to operate autonomously in such contexts."

<sup>151</sup> Statement by H.J.C.R. of June 22, 1993. See also previous comments on H.J.C.R.'s testimony (*supra* paras. 73 and 74).

about the same time is striking, since it points to a specific, violent situation at the time of Mr. Movilla's disappearance or thereabouts.<sup>152</sup>

132. In their testimony, C.O.G., G.C.M, O.I.G., and M.Y.M.C. also mentioned the unusual circumstances near the Colegio John F. Kennedy on the morning of May 13, 1993. The first witness (*supra* para. 92) mentions that parents and students spoke of the presence of motorcyclists who had "taken [someone] away." The second (*supra* para. 82) refers to the arrest of a swarthy person of "average" build, approximately 1.60 m tall,<sup>153</sup> which, in general terms, coincides with the description of Mr. Movilla.<sup>154</sup> The third witness, who at the time was the Principal of the Colegio John F. Kennedy (*supra* para. 77), states that children and parents said that, before 08:00 hours, they had seen people dressed in black, with helmets and automatic weapons. M.Y.M.C.'s statement (*supra* para. 92) mentions that at least one person was seen dressed in black, with a helmet, armed and on a motorcycle, and that children told a teacher that they had witnessed a "kidnapping." The last two witnesses also mention that someone fired shots in the air, and M.Y.M.C.'s statement adds that the person in question was detained by police officers. There are other statements referring, in the same context, to a person "being kidnapped," and to the presence of a taxi, which someone was forced into against his will (*supra* para. 77). Although the various statements differ, taken together they confirm that anomalous circumstances occurred on the day that Mr. Movilla's disappearance began, in the vicinity of the place where he was last seen.

133. Of the aspects noted above, State intelligence agencies' surveillance of Mr. Movilla prior to his disappearance is especially important. Bearing in mind the context of political violence that even included acts of forced disappearance, and in which State authorities identified members of leftist political groups as "the enemy within," it is credible, under the rules of evidence referred to above (*supra* paras. 121 and 122), that Mr. Movilla's disappearance can be attributed to the State.

134. This assessment is reinforced by the internal actions. Firstly, because, nearly 29 years on, the investigations have not yielded an alternative hypothesis.<sup>155</sup> And, secondly, the authorities' most recent investigations have linked P.J.P.D. to the proceedings, who, as has been established, served as an informant for State intelligence agencies. This Court has considered "the State's failure to clarify the facts [as] a sufficient and reasonable element to lend weight to the evidence and belief that a forced disappearance was perpetrated."<sup>156</sup> Moreover, as has already been pointed out (*supra* para. 122), it is not necessary, in order to establish a violation of rights under the Convention, to prove the State's responsibility beyond any reasonable doubt, nor to identify the agents who committed the violations. Rather, it is sufficient to confirm that actions or omissions by the State have allowed the violation to be committed, or that the State has failed to fulfill its obligations.

135. All things considered, within the framework of its jurisdiction and functions and based on the evidence examined, the Court finds that it has been established, firstly, that Pedro Julio

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<sup>152</sup> The Court recalls what expert Yepes said in his oral testimony during the public hearing on February 15, 2022, to the effect that simulation or distraction techniques were used in Colombia in cases of disappearance linked to military intelligence officers.

<sup>153</sup> Cf. PGN, Statement by G.C.M. of May 25, 1993 (evidence file, Annex 8 to the Merits Report, folios 29 and 30).

<sup>154</sup> This emerges from the third statement, that of M.Y.M.C. (cf. PGN, Statement by M.Y.M.C. of April 12, 1996 (evidence file, Annex 59 to the Merits Report, folios 195 to 197). And from the intelligence notes on Mr. Movilla (cf. Directorate of Military Intelligence. Pages of National Army notes containing general information about Pedro Movilla, dated May 28, 1993 (evidence file, Annex 6 to the Merits Report, folios 25 and 25).

<sup>155</sup> With regard to the State's highlighting of acts of violence or disappearance committed by guerrilla groups (*supra* para. 114), the Court recalls what has already been stated (*supra* paras. 67, 124 and 125).

<sup>156</sup> Cf. *Case of González Medina and family members v. Dominican Republic. Preliminary objections, merits, reparations and costs*. Judgment of February 27, 2012. Series C No. 240, paras. 169 and 170; *Case of Isaza Uribe et al. v. Colombia, supra*, para. 93.

Movilla Galarcio was deprived of his liberty by agents of the State or by persons acting with its authorization, support or acquiescence.

136. Secondly, the disappearance was reported on May 17, 1993, and the next day a petition for a writ of habeas corpus was filed on behalf of Mr. Movilla, which was rejected two days later (*supra* paras. 80 and 81). The authorities made certain attempts to locate the victim at the end of May 1993 and in the ensuing months (*supra* para. 83), but then did not undertake further investigations until several years later. Indeed, the State has acknowledged that it did not make diligent efforts to find Mr. Movilla until 2019 (*supra* paras. 14, 17, 19, 30, 33, 34 and 39). The Court deems the State's failure to take sufficient action after Mr. Movilla's disappearance was reported and a petition for habeas corpus filed, constituted a refusal to investigate the report of his detention and possible disappearance, and to acknowledge the detention.

137. Based on what has been said so far, the Court finds that the State is responsible for the forced disappearance of Mr. Movilla for two reasons: because it failed to fulfill its obligation to respect rights,<sup>157</sup> and also to guarantee the rights affected by the human rights violation (*supra* paras. 117 and 120). Yet to be assessed is the alleged non-compliance with Article 2 of the American Convention and I d) of the IACFDP, which call for the adoption of domestic legal provisions or measures to comply with the commitments assumed under the Convention.<sup>158</sup>

138. Under Article 2 of the Convention, States are required to adapt their domestic legislation in order to guarantee the rights enshrined in the treaty. This obligation entails the development and/or suppression of both norms and practices, in such a way as to achieve the effective guarantee of rights.<sup>159</sup> It has been established (*supra* para. 69) that by May 1993 State security forces, based on the concept of "the enemy within" associated with the doctrine of national security, carried out attacks against persons linked to trade unions or the political left. These practices were supported by regulations that, at least in part, remained in effect during that period. Such was the case, as has been stated (*supra* para. 57), of the "1978 Combat Intelligence Manual (M.I.C.) EJC 2-3" and the "1987 Counter guerrilla Combat Regulations EJC-3-10, of the General Command of the Military Forces – Provision 036 of November 12, 1987." Although the State has refused to provide copies of these regulations (*supra* para. 57), which prevents the Court from examining and ruling directly on them, this Court can consider the State practice associated with the texts or the interpretation thereof.

139. As the Court has ruled on a previous occasion, the contents of regulations such as those examined here, "or their practical application," resulted in a breach of the State's obligation to adapt its domestic legal order to the American Convention. Specifically, in failing to comply with Article 2, the State in question "was in breach of its obligation to guarantee human rights in a

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<sup>157</sup> The Court has proceeded in a similar manner on previous occasions, holding an act of forced disappearance to be proven based on: (i) the context of the facts of the case, which pointed to the commission of forced disappearances against a certain group of people associated with certain political groups; (ii) the fact that the victim in question had been subject to investigation and surveillance by the State; (iii) the fact that the State did not offer a different hypothesis (other than that of the disappearance having been committed by state agents); and, iv) the fact that a long time had elapsed and the victim's whereabouts remained unknown. The Court has adjudged the criteria for a forced disappearance to have been met (*supra* para. 119) when, even though it was established that State agents detained the victim, for a long time the State authorities failed to provide information on his whereabouts or offer a "different hypothesis" of the facts. (*Cf. Case of Terrones Silva et al. v. Peru, supra, paras. 147 to 157.*)

<sup>158</sup> *Cf. Case of Castillo Petruzzi et al. v. Peru. Merits, reparations and costs.* Judgment of May 30, 1999. Series C No. 52, para. 207; *Case of Maidanik et al. v. Uruguay, supra, para. 146,* and *Case of the National Federation of Maritime and Port Workers (FEMAPOR) v. Peru, supra, para. 99.*

<sup>159</sup> The Court has affirmed, in effect, that the obligation to comply with Article 2 of the Convention implies the adoption of measures of two kinds, namely: (i) the elimination of any norms and practices that in any way violate the guarantees provided under the Convention; and (ii) the promulgation of norms and the development of practices conducive to effective observance of those guarantees. *Cf. Case of Castillo Petruzzi et al. v. Peru, supra, para. 207; Case of Isaza Uribe et al. v. Colombia, supra, footnote 141,* and *Case of the National Federation of Maritime and Port Workers (FEMAPOR) v. Peru, supra, para. 99.*

democratic society, particularly in relation to freedom of thought and expression and association, as well as the principle of non-discrimination for reasons of political opinion and social condition".<sup>160</sup> However, it is not possible to analyze the alleged breach of Article I d) of the IACFDP, which entered into force for Colombia in May 2005 (*supra* para. 13). This is because the State has reported that the military regulations or manuals in question were no longer in effect at that time, and also because in May 2005 the possible continued use of the practice had not been examined in this case.

140. What has already been said regarding the violation of Article 2 of the American Convention also explains the relationship between Mr. Movilla's forced disappearance and the violation of his right to freedom of association, which must be able to be exercised freely, without fear of violence; otherwise, the capacity of groups to organize to protect their interests could be undermined (*supra* para. 120). The Court has already indicated that an act of forced disappearance, when its purpose is to prevent the legitimate exercise of a right, may constitute a violation of that right (*supra* para. 120). In this case, given the context in which the disappearance took place, and since the military intelligence's notes on Mr. Movilla mention his trade union and political activities, it must be assumed that the intention was to punish or prevent those activities by means of the forced disappearance to which he was subjected. This adversely affected Pedro Movilla's right to freedom of association, and the right of people to form groups for ideological, political, social or other purposes, which include trade union activity. However, the Court does not find additional evidence of a specific violation of Mr. Movilla's freedom of expression. The material impediment to the exercise of that right is included in the ruling on the freedom of association and does not warrant additional examination.

### B.3 Conclusion

141. Therefore, this Court finds that Colombia violated the rights to recognition of juridical personality, to life, to personal integrity, to personal liberty, and to freedom of association, enshrined in Articles 3, 4(1), 5(1), 5(2), 7 and 16 of the American Convention on Human Rights, in relation to Articles 1(1) and 2 of that treaty and Article I a) of the Inter-American Convention on the Forced Disappearance of Persons, to the detriment of Mr Movilla.

## **VIII.2 RIGHTS TO JUDICIAL GUARANTEES,<sup>161</sup> TO JUDICIAL PROTECTION,<sup>162</sup> AND TO THE TRUTH<sup>163</sup>**

142. With the State's acknowledgment of responsibility, the violation of Articles 8(1) and 25(1) of the Convention has been established in relation to Article 1(1) of the treaty, to the detriment of Pedro Movilla and his relatives (*supra* paras. 32, 34 and 39). However, it is necessary for the Court to make the following determinations concerning the implications of the State's acknowledgment of responsibility. These are conclusions not expressly covered by that acknowledgement, but which this Court deems to be a direct consequence of the circumstances of the case and in accordance with the determinations already made regarding the forced disappearance of Pedro Movilla. The Court will then examine the remaining disputes related to the right to the truth. Lastly, the Court will set out its conclusion.

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<sup>160</sup> *Case of Isaza Uribe et al. v. Colombia, supra*, para. 144.

<sup>161</sup> Article 8(1) of the American Convention on Human Rights.

<sup>162</sup> Article 25(1) of the American Convention on Human Rights.

<sup>163</sup> The right to truth was alleged in this case based on Articles 5(1), 8(1), 13 and 25(1) of the American Convention. This section also addresses allegations regarding Articles I a), I b), I d) and XIV of the IACFDP.

### **A) Implications of the State's acknowledgement of responsibility**

143. The Court recalls that Colombia acknowledged its responsibility for the violation of the rights to judicial guarantees and judicial protection based on its failure, until 2019, to institute the necessary proceedings of investigation to identify and, if applicable, punish those responsible for Pedro Movilla's disappearance, and to draw up a plan to search for him.

144. The State limited its acknowledgment of responsibility for the violations of the rights to judicial guarantees and judicial protection, recognized in Articles 8 and 25 of the Convention, to the failure to observe the obligation to guarantee human rights established in Article 1(1) of the treaty (*supra* para. 17). This Court notes that, in cases of disappeared persons, investigative actions are important as a means to guarantee the substantive rights of the persons concerned,<sup>164</sup> as has already been established in this case (*supra* paras. 33, 34, 39, 117 and 141). However, the State's shortcomings in judicial and administrative proceedings are likely to directly harm the rights to judicial guarantees and judicial protection. Lack of due diligence and the failure to act within a reasonable period of time, which the State has acknowledged, therefore lead to a violation of the obligation to respect the rights in question. Given the State's acknowledgment of responsibility, this Court is bound to conclude that Colombia has violated, in relation to Articles 8 and 25 of the Convention, the obligations to guarantee and respect rights set forth in Article 1(1) of the treaty.

145. It should also be noted that the State, in acknowledging its responsibility for lack of diligence in the proceedings until 2019, did not expressly acknowledge its responsibility for failing to comply with the IACFDP. Since this Court has already established that Pedro Movilla must be considered a victim of an act of forced disappearance, the Court finds that the State's acknowledged lack of diligence in investigating what happened to Mr. Movilla entails non-compliance with Article I b) of the IACFDP, which establishes the obligation to adopt actions aimed at punishing persons responsible for acts of forced disappearance. On the other hand, although the representatives also argued, in relation to the investigative actions in the case, that Article I d) of the IACFDP had been violated, they did not present specific arguments regarding the alleged violation, and the Court does not find sufficient grounds for examining the matter.

146. Furthermore, the State denied that, since 2019, when the criminal investigation was assigned to the 190th Specialized Prosecutor, its actions had been insufficient. The Court finds that it is not necessary to undertake a separate assessment of what happened following the intervention of the 190th Specialized Prosecutor. This Court takes note of the State's information and the various actions undertaken by the Prosecutor's Office, but is it also bound to consider the investigation as a whole and notes that, after more than 29 years, the criminal proceedings are still at the pre-trial stage. Thus, overall, based on the State's acknowledgment of responsibility, the State's conduct has been unsatisfactory, and the actions of recent years have done nothing to remedy that fact.

147. The same is true of the actions undertaken to find the victim. The State asked the Court to "view positively" the proceedings of investigation instituted since 2019 by the FGN and the UBPD, as well as other entities.<sup>165</sup> This court appreciates the different institutional actions carried

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<sup>164</sup> Cf. *Case of Anzualdo Castro v. Peru*, *supra*, para. 134, and *Case of Maidanik et al. v. Uruguay*, *supra*, para. 151.

<sup>165</sup> The State highlighted "some of the mechanisms that are available to the victims to ascertain the truth, promote the search for their disappeared relatives, and gain access to complementary assistance." These include the Commission for the Search for Disappeared Persons, "responsible for promoting investigations of forced disappearance, the design of public policies on the subject and the coordination of inter-institutional support to deal with the issue"; and b) the National Registry of Disappeared Persons, "which is a central system for compiling background information supplied by the entities involved according to their functions, and which is used as a source of information for the Urgent Search Mechanism."

out from 2020 onwards to ascertain Pedro Movilla's whereabouts (*supra* paras. 102 and 103). However, it notes that the State accepts that it failed to draw up a plan to search for the victim until that year. Moreover, the facts do not suggest that a specific, comprehensive search plan has been implemented in the case, a measure deemed necessary by the State authorities themselves (*supra* para. 103).<sup>166</sup> Therefore, the Court finds that the State's responsibility for lack of diligence in undertaking search actions has not been rectified.

148. Lastly, the Court notes that the State pointed out that its acknowledgment of responsibility did not include the disciplinary proceedings initiated by the Inspector General's Office, nor the administrative proceedings (*supra* para. 19). In this regard, the Court recalls that it has observed, with specific reference to Colombia's Inspector General's Office, that disciplinary proceedings "may complement but not entirely replace the function of the criminal jurisdiction in cases of serious human rights violations."<sup>167</sup> Therefore, and since the State has acknowledged its responsibility for failing, until 2019, to undertake a diligent criminal investigation in order to punish those responsible for Pedro Movilla's disappearance, a specific or differentiated examination of the actions of the Inspector General's Office is not necessary.<sup>168</sup> As for the administrative proceedings, no arguments have been presented claiming that they have resulted in the violation of rights under the Convention, so an examination of those actions is not necessary either.

## **B) Right to the truth**

### ***B.1 Arguments of the Commission and the parties***

149. The **Commission** referred to the right to the truth in the context of its arguments regarding the violation of the personal integrity of Mr. Movilla's relatives, as well as those concerning the rights to judicial guarantees and judicial protection. It maintained that the right to the truth "requires the procedural determination of the most complex historical truth possible, which includes the judicial determination of the patterns of joint performance of action and of all the persons that took part in such violations and their respective responsibilities," and that the "absence of truth" affects the right to personal integrity. It also found that "the State did not make due efforts" to identify the connection of the disappearance of Pedro Julio Movilla Galarcio with his union and political activities, and with the intelligence notes. The Commission also observed "a lack of clarification of the grounds of such notes, and that few proceedings of investigation were carried out with this purpose."

150. The **representatives** maintained that the State "has failed to guarantee Pedro Julio Movilla's relatives access to any dimension of the truth having to do with protection."<sup>169</sup> They stressed that the investigation was initiated on the grounds of "kidnapping for ransom," and that

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<sup>166</sup> In this regard, expert Camacho observed that "parallel actions" were carried out by the Prosecutor's Office and the UBPD, without "interagency coordination" or evidence of agreements between the two entities regarding their role in the search. The expert suggested that "partial [institutional] coordination actions" were barely getting under way, "with no coordinated, comprehensive search in place" or, even a "structured, coordinated and efficient strategy."

<sup>167</sup> *Case of the Pueblo Bello Massacre v. Colombia. Merits, reparations and costs.* Judgment of January 31, 2006. Series C No. 140, para. 203 and *Case of the Displaced Afro-descendant Communities of the Cacarica River Basin (Operation Genesis) v. Colombia, supra*, para. 395.

<sup>168</sup> Furthermore, the Commission, and the representatives in their pleadings and motions brief, did not draw any distinction between the criminal and disciplinary proceedings in their arguments regarding the obligation to investigate, but instead focused on the State's actions as a whole, citing acts in relation to both proceedings. For example, at the public hearing the representatives affirmed that closing down the investigation showed the shortcomings in the disciplinary proceedings.

<sup>169</sup> The representatives argued that the right to the truth entails, firstly, the right of victims or their relatives to the clarification of the facts and the determination of responsibilities, and to the disclosure of the findings of the criminal and investigative proceedings; and, secondly, the right of victims' relatives to know their fate or, if applicable, the whereabouts of their remains.



constituted a “lack of truth” by the investigating body, which failed to consider the context of forced disappearances and the application of the doctrine of “the enemy within,” Mr. Movilla’s wife’s statements regarding surveillance activities, nor the interrogation of H.J.C.R. (*supra* paras. 73 and 74). They added that in 1997 the case was forwarded to the Regional Specialized Human Rights Unit of the Prosecutor General’s Office, but it was not until 2019 that P.J.P.D. was “linked to the case following an investigation.” They also stressed that there was still no news of Mr. Movilla’s whereabouts, and argued that Colombia had violated the “autonomous right to search for and, if possible, locate the victims of forced disappearance, as the State had an obligation to search for, identify, and hand over the victims of this crime.”<sup>170</sup>

151. The representatives also said that “Colombia has denied for years the existence of information about Pedro Movilla in intelligence agency records,” and that this was “proven to be untrue following the judicial inspection carried out in 2020.” They added that, “de facto restrictions have been encountered in attempting to access intelligence agency records.”

152. The representatives affirmed that Colombia had violated the “autonomous right to know the truth derived from Articles 8(1), 13 and 25 of the American Convention on Human Rights in relation to Article 1(1) of the same instrument.” They also claimed that the violation of the “autonomous right” to search for a victim (*supra* para. 150) was a violation of “Articles 5, 8(1) and 25 of the American Convention on Human Rights and Articles I a), I d) and XIV of the IACFDP.”

153. The **State** asked the Court “to view positively the efforts it has implemented to guarantee the right of access to the truth” and to declare that it had not violated Articles 8(1), 13(1) and 25 of the American Convention. It argued that the right to the truth “is not a matter of unrestricted autonomy” and is not absolute. It added that, in this case, it is subsumed under the right to access justice, under Articles 8 and 25 of the American Convention. It maintained that it has implemented “legal-institutional strategies aimed at guaranteeing the right to the truth in its individual and collective dimensions,”<sup>171</sup> and that any ruling declaring it had violated that right would impose “disproportionate and unreasonable burdens” on the State. In relation to the specific case, the State “partially” acknowledged its responsibility for violating the right to truth, “because of the errors and/or omissions evidenced at the start of the criminal proceedings.” However, it maintained that any judgment that ruled it had violated the right in general would be “a serious disregard of the structural, institutional, and social efforts that Colombia [...] has made.”<sup>172</sup> Moreover, Colombia did not expressly accept the existence of an “autonomous right”

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<sup>170</sup> They argued that the alleged right was violated because of a lack of due diligence and a failure to carry out the investigations within a reasonable time, and the absence, until May 2020, of interagency coordination of search actions.

<sup>171</sup> Colombia maintained that it identified the collective dimension of the right to the truth with the “duty of historical memory,” and alluded to the fact that, within the framework of transitional justice in the country, the right to the truth had assumed vital importance. In this regard, it referred to various “judicial and extrajudicial measures adopted at the national level, to [...] guarantee the right to the truth,” and highlighted the following: (i) Law 975 of 2005 (Justice and Peace Act); (ii) Law 1448 of 2011 (Victims and Land Restitution Act); (iii) Final Agreement for the termination of the conflict and the construction of a stable and lasting peace, of November 24, 2016 (Final Agreement); (iv) case law of the Colombian Constitutional Court; and, (v) “Institutional framework of the right to the truth in Colombia.” It mentioned articles of the legislation in question that refer to the right to the truth; it referred to the creation, following the “Final Agreement,” of the “Comprehensive System of Truth, Justice, Reparation and Non-Repetition” (SIVJRNRR), “including the Special Jurisdiction for Peace”; it alluded to guidelines set forth by the Constitutional Court on the right to the truth, and drew attention to “institutions and procedures” designed to guarantee the right to the truth (it highlighted, in this regard, the National Center for Historical Memory and certain “developments” stemming from the Final Agreement: the Commission for the Clarification of Truth, Coexistence and Non-Repetition (CEV), the Special Unit for the Search for Disappeared Persons in the context and because of the armed conflict (UBPD) and the Special Jurisdiction for Peace (JEP),” which has a “Special Court for acknowledgement of the truth, responsibility and determination of facts and conduct.”

<sup>172</sup> It argued that recognizing the autonomy of the right would imply that it would be violated even if the State acts diligently in the investigations but does not achieve results.

regarding the search for disappeared persons, which was alleged by the representatives (*supra* paras. 150 and 152).

154. Colombia also argued that, during the proceedings, the judicial bodies had had access to all the information they required to carry out their work. It added that, specifically, within the framework of the disciplinary and criminal investigations, the authorities “have accessed the intelligence information of the National Army” and there had been no refusal to hand information over to a judicial authority.

### B.2 Considerations of the Court

155. This Court has ruled that “everyone, including the next of kin of the victims of serious human rights violations, has the right to know the truth.” Consequently, they “should be informed of everything that happened regarding such violations.”<sup>173</sup>

156. The autonomy and broad nature of the right to the truth has also been established in the case law of this Court. While this right is not recognized expressly in the American Convention, it is linked to various provisions of the treaty. Depending on the context and circumstances of a case, the violation of this right may be related to other rights expressly established in the Convention,<sup>174</sup> such as the rights to judicial guarantees and to judicial protection, recognized in Articles 8 and 25 of the treaty,<sup>175</sup> and the right to access to information, protected by Article 13 (*infra* para. 160).

157. The Court has pointed to the importance of the right to the truth regarding forced disappearances.<sup>176</sup> Satisfaction of this right is in the interest not only of the relatives of the victims of forced disappearance, but also of society as a whole, as it facilitates the prevention of this type of violation in the future.<sup>177</sup> The right to the truth is related, in a general way, to the State’s obligation to carry out actions aimed at clarifying violations and apportioning responsibility.<sup>178</sup> In its case law, the Court has also established that the right to know the whereabouts of disappeared victims is an essential component of the right to know the truth.<sup>179</sup>

158. Furthermore, the Court has referred to the obligation to search for disappeared persons, which is closely linked to the right to the truth.<sup>180</sup> The Court recalls that, in cases of forced disappearance, the right of access to justice, within the framework of Articles 8(1) and 25(1) of the American Convention, acquires special importance in guaranteeing the rights of disappeared persons, as well as their relatives. Based on provisions of this kind, this Court has already

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<sup>173</sup> Cf. *Case of Trujillo Oroza v. Bolivia. Reparations and costs*. Judgment of February 27, 2002. Series C No. 92, para. 100 and *Case of Maidanik et al. v. Uruguay, supra*, para. 176. Similarly, *Case of Barbosa de Souza et al. v. Brazil*, para. 134.

<sup>174</sup> Cf. *Case of Trujillo Oroza v. Bolivia, supra*, para. 100, and *Case of Maidanik et al. v. Uruguay, supra*, para. 176.

<sup>175</sup> *Case of Velasquez Rodriguez v. Honduras. Merits, supra*, para. 181; *Case of the Serrano-Cruz Sisters v. El Salvador. Merits, reparations and costs*. Judgment of March 1, 2005. Series C No. 120, para. 62 and *Case of Maidanik et al. v. Uruguay, supra*, para. 176.

<sup>176</sup> Cf. *Case of Goiburú et al. v. Paraguay, supra*, para. 84; *Case of the Peasant Community of Santa Bárbara v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of September 1, 2015. Series C No. 299, para. 176; *Case of Vereda La Esperanza v. Colombia. Preliminary objection, merits, reparations and costs*. Judgment of August 31, 2017. Series C No. 341, para. 149, and *Case of Terrones Silva et al. v. Peru, supra*, para. 215.

<sup>177</sup> Cf. *Case of Gómez Palomino v. Peru, supra*, para. 78.

<sup>178</sup> Cf. *Case of Gómez Palomino v. Peru, supra*, para. 80; *Case of Terrones Silva et al. v. Peru, supra*, para. 215, and *Case of Maidanik et al. v. Uruguay, supra*, para. 180.

<sup>179</sup> Cf. *Case of Ticona Estrada et al. v. Bolivia. Merits, reparations and costs*. Judgment of November 27, 2008. Series C No. 191, para. 80; *Case of Isaza Uribe et al. v. Colombia, supra*, para. 160, 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. 110.

<sup>180</sup> Cf. *Case of the Julien Grisonas Family v. Argentina. Preliminary objections, merits, reparations and costs*. Judgment of September 23, 2021. Series C No. 437, para. 214.

established that there is an “autonomous obligation” to “search for and locate missing persons,<sup>181</sup> whereby the State must seek to determine the fate or whereabouts of victims,<sup>182</sup> which is a reasonable expectation of their loved ones that entails, if applicable, locating their remains so that a positive identification can be made.<sup>183</sup> This is necessary because “only if all the circumstances relating to the [forced disappearance] are clarified, will the State have provided the victim and his next of kin with an effective remedy and complied with its general obligation to investigate [...], allowing the victim’s next of kin to learn the truth about the whereabouts of the mortal remains and also what happened to the victim.”<sup>184</sup> The Court has also established that “[t]he obligation to investigate the whereabouts continues until the person detained is found, until his or her remains appear or, in any case, until there is certainty about his or her fate,” and that these objectives and the apportioning of responsibilities are “correlated” aspects, which “must be present at any investigation” of acts of forced disappearance.<sup>185</sup>

159. The Court also recalls that, as it has stated on previous occasions, the various State authorities are “obliged to assist in gathering evidence to achieve the objectives of an investigation and refrain from carrying out acts that would obstruct the progress of the investigation.”<sup>186</sup> Moreover, “in cases of human rights violations, the State authorities cannot resort to mechanisms such as official secret or confidentiality of the information, or reasons of public interest or national security, to refuse to supply the information required by the judicial or administrative authorities in charge of the ongoing investigation or proceeding.”<sup>187</sup>

160. In relation to all of the above, it should be placed on record that, in the present case, this Court does not find grounds to examine Article 13 of the American Convention. This is because the circumstances of this case must be differentiated from others in which the right is related to actions specifically aimed at accessing certain information.<sup>188</sup> This aspect is not present in the case now being examined, in which the authorities in charge of investigating the facts have made requests for information. Nor does the Court accept that, in this case, the right to the truth should be examined in light of Article 5 of the Convention, without this precluding taking into account, separately (*infra* Chapter VIII.3), the effects of the failure to comply with the right to personal integrity of Pedro Movilla’s relatives. Nor does the Court deem it pertinent or necessary, in this case, to assess the State’s obligation to search for alleged victims under the alleged “autonomous” right mentioned by the representatives. Therefore, there is no need for an examination of the regulatory provisions they offer as proof of their allegation (*supra* para. 152).

161. Turning to the examination of the case, the Court notes the information highlighted by Colombia regarding the development of institutions and actions whose actions have a bearing on the “collective dimension” of the right to the truth (*supra* footnote 171). This Court

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<sup>181</sup> Cf. *Case of the Julien Grisonas Family v. Argentina*, *supra*, para. 214.

<sup>182</sup> Cf. *Case of Anzualdo Castro v. Peru*, *supra*, para. 124.

<sup>183</sup> Cf. *Case of Pacheco Teruel et al. v. Honduras. Merits, reparations and costs*. Judgment of April 27, 2012. Series C. No. 241, para. 73; *Case of the Peasant Community of Santa Bárbara v. Peru*, *supra*, para. 295. Similarly, *Case of the Dos Erres Massacre v. Guatemala. Preliminary objection, merits, reparations and costs*. Judgment of November 24, 2009. Series C No. 211, para. 245; *Case of Nadege Dorzema et al. v. Dominican Republic. Merits, reparations and costs*. Judgment of October 24, 2014. Series C. No. 251, paras. 115 and 252.

<sup>184</sup> *Case of Ticona Estrada v. Bolivia*, *supra*, para. 80.

<sup>185</sup> Cf. *Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia. Merits, reparations and costs*. Judgment of September 1, 2010, Series C No. 217, para. 215.

<sup>186</sup> *Case of García Prieto et al. v. El Salvador. Preliminary objections, merits, reparations and costs*. Judgment of November 20, 2007. Series C No. 168, para. 112, and *Case of the Los Josefinos Village Massacre v. Guatemala*, *supra*, para. 111.

<sup>187</sup> Cf. *Case of Myrna Mack Chang v. Guatemala*. Merits, reparations and costs. Judgment of November 25, 2003. Series C No. 101, para. 180, and *Case of the Massacre of Los Josefinos Village v. Guatemala*, *supra*, para. 111.

<sup>188</sup> Cf. *Case of Gomes Lund et al. (“Guerrilha do Araguaia”) v. Brazil. Preliminary objections, merits, reparations and costs*. Judgment of November 24, 2010. Series C No. 219, para. 201.

emphasizes the importance of policies designed to satisfy the right to the truth regarding serious human rights violations.

162. However, the observance of the right to the truth must be analyzed in this specific case. Colombia's position is contradictory. While it acknowledged that the right to the truth had been violated "in part," it argued that it was not appropriate for this Court to declare it had been violated (*supra* para. 153). The fact is that the State has accepted that, until 2019, it failed to conduct diligent investigation and search actions in relation to Pedro Movilla's disappearance. In this judgment, moreover, the Court has determined that the shortcomings in the search for the victim have not been rectified (*supra* para. 147). Therefore, the State's arguments are insufficient to exempt Colombia from its responsibility, in the specific case, with respect to the right to the truth. Indeed, apart from Colombia's general institutional efforts, which this Court does not deny, the State acknowledges, and it is clear from the facts, that it has not been possible to determine the truth of what happened.

163. Furthermore, the observations of expert Yepes in this case are important. He stated that, in contexts in which the doctrine of national security is applied, where social sectors such as members of trade unions and political militants are targeted and security agencies are prone to "highly irregular" actions, it is necessary to establish whether "intelligence surveillance" was carried out on a disappeared person who belonged to the persecuted social sector, because only in this way "is it possible establish a rational inference that the forced disappearance was related to the victim's political or trade union activity or position." The expert explained that a common weakness in the investigation of cases of possible forced disappearances is "trying to find direct evidence of the deprivation of liberty, something that [...] in contexts of mass disappearances, is unlikely to help arrive at the truth." He added that this means that prior acts, such as surveillance and intelligence actions, are not investigated, or result in merely formal requests to the entities possibly involved in the disappearance.

164. This means that the proper investigation of intelligence actions was an indicator of due diligence in internal investigations and that, for this purpose, the collaboration of the institutions involved was essential - particularly, but not exclusively, the National Army.

165. The facts of the case show that, on June 28 and July 3, 1993, the Directorate of Military Intelligence furnished the PGN with documents containing notes on Pedro Movilla (*supra* para. 84). Subsequently, on September 3 and October 1, 1999, an intelligence officer and a former intelligence officer answered PGN questionnaires about the notes found, providing general explanations of how the Military Intelligence Directorate collected information, but without giving the specific reason it had recorded information about Pedro Movilla (*supra* para. 88). On June 8, 2012, the intelligence directorates of the National Police and the Military Police were asked to report whether they had records of anyone identifying himself with the number 88 and the alias "Milton" between 1992 and 1994. The replies, from June 11 and August 4 of that year, were negative (*supra* para. 98). Between March 2013 and February 2014, the Ministry of National Defense was asked for a copy of any reports, notes or data concerning Pedro Movilla (*supra* para. 99). A statement was also taken from the person who was Director of Intelligence between 1993 and 1994. Among other things, he mentioned that the State agencies should have in their possession more documentation concerning "Alias 'Milton.'" On August 5, 2016, the Army was asked to hand over its intelligence reports on Pedro Movilla to the Prosecutor's Office.<sup>189</sup> Following another request on January 29, 2018<sup>190</sup>, on March 20 and April 3, 2018, the Military Intelligence Combat Support Command of the National Army reported that it had no information

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<sup>190</sup> Cf. FGN, Communication of January 29, 2018 (evidence file, Annex 22 to the pleadings and motions brief, folio 4863).

on Mr. Movilla.<sup>191</sup> Subsequently, however, during proceedings of investigation conducted on January 21 and February 5 and 7, 2020 (*supra* para. 102), documentation was found alluding to "Milton," the pseudonym used by Mr. Movilla.

166. This shows that the Army did possess information about Mr. Movilla, but had denied it. Therefore, while it may have responded to the requests it received, it hindered the investigative process by denying it had any information. This conclusion suggests lack of due diligence in the internal investigations, in addition to other instances that have already been established (*supra* paras. 32, 34, 39, 142 to 148 and 162). All this affects the right to the truth.

167. Therefore, although this Court views positively the actions that have been carried out by the State to ascertain Pedro Movilla's whereabouts and to establish who was responsible for his disappearance, the fact is that more than 29 years have elapsed and those purposes have not been achieved. The Court holds that the right to the truth of Pedro Movilla's relatives cannot be deemed to have been satisfied as long as this situation continues. Therefore, Colombia has violated their right to the truth.

### **C) Conclusion**

168. Therefore, based on the State's acknowledgment of responsibility and its implications, as well as the other assessments carried out, the Court concludes that the State has violated the rights to judicial guarantees and to judicial protection of Pedro Julio Movilla Galarcio, Candelaria Nuris Vergara Carriazo, Carlos Julio Movilla Vergara, José Antonio Movilla Vergara, Jenny del Carmen Movilla Vergara, Leonor María Movilla de Sierra, María de Jesús Movilla Barrera, Florencia Movilla Galarcio, Rita Candelaria Movilla Galarcio, Nery del Carmen Movilla Galarcio, Erasmo de la Barrera Movilla, Raúl Rafael Ramos Movilla, Ricardo Adolfo Ramos Movilla, Franklin Hander Movilla, Dominga Josefa Movilla Galarcio, Iván Darío Vega Movilla, Nery del Carmen Vega Movilla, Ana Karina Vega Movilla and María Isabel Carriazo de Román. Colombia violated, to their detriment, Articles 8(1) and 25(1) of the American Convention on Human Rights, in relation to Article 1(1), as well as Article I b) of the Inter-American Convention on the Forced Disappearance of Persons. The State also violated the right to the truth, to the detriment of these same relatives of Pedro Movilla, based on the violation of Articles 8(1) and 25(1) of the American Convention on Human Rights, in relation to its Article 1(1).

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<sup>191</sup> Cf. National Army, Military Intelligence Combat Support Command, Communication of March 20, 2018 (evidence file, Annex 22 to the pleadings and motions brief, folio 4978).

### VIII.3 RIGHTS TO PERSONAL INTEGRITY AND TO THE PROTECTION OF THE FAMILY,<sup>192</sup> AND THE RIGHTS OF THE CHILD<sup>193</sup>

169. In this section, the Court will set forth and examine the arguments on human rights violations that have to do exclusively with Mr. Movilla's relatives. These are the allegations regarding the rights to personal integrity and the protection of the family, and the rights of the child, based on Articles 5(1), 5(2), 17 and 19 of the American Convention.

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

170. The **Commission** argued that the forced disappearance of Pedro Julio Movilla Galarcio in unclear circumstances, which were not clarified or investigated with due diligence, constitutes an independent source of suffering and impotence to his family, which to this date have no certainty about the cause and circumstances of his whereabouts. It therefore found that the State, to the detriment of the relatives, had violated the right to mental and moral integrity established in Article 5(1) of the American Convention, in relation to Article 1(1) of the same instrument.

171. The **representatives** argued that Pedro Movilla's entire family had found it materially impossible to "heal the wounds" caused by the actions of the Colombian State, before and after Mr. Movilla's forced disappearance. They maintained that the Colombian State had failed to respect or guarantee the rights to personal integrity and the protection of the family and the rights of the child of Mr. Movilla's children. They also stated that this was equivalent to torture due to the total absence of State protection with regard to what occurred, in addition to the evidence pointing to the fact that the State that was behind the persecution and disappearance of their father. They said that "these effects also had a gender element, because Pedro Julio Movilla Galarcio's disappearance meant that his wife, Candelaria Vergara, was forced to assume sole responsibility for herself and her three children. The double burden of breadwinner and homemaker fell squarely on her shoulders." Therefore, they asked that the State be held responsible for breaching Articles 5(1), 5(2), 17 and 19 of the American Convention, in relation to its Article 1(1).

172. The **State** acknowledged the violation of Articles 5(1) and 5(2) of the Convention, since the right to personal integrity of some of Mr. Movilla's relatives was affected by omission as a result of the shortcomings of the criminal investigation until 2019 (*supra* paras. 14, 17, 32, 34 and 39).

#### **B) Considerations of the Court**

173. The Court has repeatedly noted that the relatives of victims of certain human rights violations may also be regarded as victims because of the suffering caused by the violations committed against their loved ones or due to later acts or omissions on the part of State authorities.<sup>194</sup> In cases of forced disappearance, the Court has observed that "uncertainty surrounding the whereabouts of loved ones is one of the main sources of psychological and moral suffering for the relatives of disappeared victims."<sup>195</sup> In addition, according to the Working Group on Enforced Disappearances, "Enforced disappearance can cause deep anguish, suffering and

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<sup>192</sup> Article 17 of the American Convention.

<sup>193</sup> Article 19 of the American Convention.

<sup>194</sup> *Case of Blake v. Guatemala. Merits, supra*, para. 114, and *Case of Maidanik et al. Uruguay, supra*, para. 185.

<sup>195</sup> *Case of Isaza Uribe et al. v. Colombia, supra*, para. 165.

harm to victims and their relatives,” to the point that, in the words of that group, “... not knowing the whereabouts of a family member can amount to torture.”<sup>196</sup>

174. This Court has ruled that the presumption of the violation of the right to personal integrity is established *juris tantum* with regard to mothers and fathers, daughters and sons, spouses and permanent companions, and sisters and brothers of victims of certain human rights violations, provided that this accords with the particular circumstances of the case.<sup>197</sup> In this case, moreover, Colombia has acknowledged the violation of the personal integrity of Mr. Movilla’s wife, Candelaria Nuris Vergara Carriazo; of his sons and daughter: Carlos Julio Movilla Vergara, José Antonio Movilla Vergara, and Jenny del Carmen Movilla Vergara; and of his sister Leonor Movilla Galarcio. The State maintained that Pedro Movilla’s other sisters should be excluded as alleged victims, but this argument has already been rejected (*supra* Chapter V). Therefore, Colombia’s substantive reasons for acknowledging the violation of the personal integrity of Leonor Movilla Galarcio should be considered as also applying to his other sisters.

175. However, the Court notes that, in addition to his parents, children, siblings and spouse, other family members of Pedro Movilla have been identified as victims. There are testimonies highlighting how the human rights violations affected not only those people already mentioned, but also others, as well as the family as a whole. Thus, in his testimony, Carlos Movilla Vergara describes the effects on his family group. In detailing the detrimental change the family experienced, he stated, among other things, that “we were all sad, we were no longer the happy family we had been and we became a shadow of what we were.”<sup>198</sup> Similarly, in her testimony Jenny Movilla Vergara spoke of the family’s isolation, pointing out that “I feel that [Candelaria Vergara] fell into a very deep depression,” that “everything was broken” and that “the relationship among [the three] brothers and sisters was fractured.”<sup>199</sup> Carlos Movilla Vergara highlighted the importance of his father to his sisters, brothers and nephews. He stated that Pedro Movilla “was not only responsible for [his children],” adding that “[w]hen he could, he went to his sisters’ homes, he looked out for them and made sure they were okay,” and that “when he disappeared, it also broke them, it broke my aunts and the dynamic that there had been with them and my father’s nephews, my cousins. For my cousins and for my aunts and uncles, my father was the heart, he was the cornerstone of the family group, and he was an example to follow.”<sup>200</sup> Jenny Movilla Vergara said the same thing.<sup>201</sup> José Antonio Movilla Vergara also reported having noticed changes in his father’s family when he saw them again ten years later.<sup>202</sup>

176. Referring to some of his relatives, Carlos Movilla Vergara spoke of Pedro Movilla’s relationship with Erasmo de la Barrera Movilla and Raúl Rafael Ramos Movilla, stating that “he was very close to Erasmo and Raúl.” He explained that “[t]hey were [my] cousins, but about the same age as [Pedro Movilla],” who was like Erasmo and Raúl Rafael’s “older brother.” Carlos Julio said the two of them “suffered a lot” when Mr. Movilla disappeared, “the dynamic between them was also destroyed, they were also victims.”<sup>203</sup> Similarly, when expert Yeiny Carolina Torres

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<sup>196</sup> Report of the Working Group on Enforced or Involuntary Disappearances on standards and public policies for the effective investigation of enforced disappearances. Document A/HRC/45/13/Add.3 of August 7, 2020, para. 60. The Court clarifies that the mention of “torture” by the Working Group in the citation does not mean that this Court automatically considers that not knowing the whereabouts of a forcibly disappeared person implies an act of torture. Nonetheless, the citation does underscore the seriousness and scope of the situation, which may result in harm to personal integrity, contrary to Article 5(2) of the American Convention.

<sup>197</sup> *Case of Blake v. Guatemala. Merits, supra*, para. 114, *Case of Rodríguez Vera et al. (The Disappeared from the Palace of Justice) v. Colombia, supra*, para. 533.

<sup>198</sup> Written statement of Carlos Julio Movilla Vergara (evidence file, folios 11832 to 11853).

<sup>199</sup> Written statement of Jenny Movilla Vergara (evidence file, folios 11879 to 11902).

<sup>200</sup> Written statement of Carlos Julio Movilla Vergara (evidence file, folios 11832 to 11853).

<sup>201</sup> Written statement of Jenny Movilla Vergara (evidence file, folios 11879 to 11902).

<sup>202</sup> Written statement of José Antonio Movilla Vergara (evidence file, folios 11904 to 11927).

<sup>203</sup> Written statement of Carlos Julio Movilla Vergara (evidence file, folios 11832 to 11853).

met with Raúl Rafael Ramos, the latter commented that: “we used to do what Pedro said, because he was the one at the helm [...] Pedro was that voice that said what had to be done.”<sup>204</sup> Jenny Movilla Vergara also recounted some of the effects suffered by specific relatives:

[M]y grandmother, my mother’s mother, loved him very much. She would welcome him with hugs and kisses, and he also respected her and loved her very much [...] My cousin Erasmo and my cousin Raúl, who are no longer with us, were like his older nephews. They were like his brothers. They were the ones who took care of us (*sic*) while he was gone when we were in Montería [...].<sup>205</sup>

177. During the hearing in this Court, when asked by the representatives how life had changed for Pedro Movilla’s siblings, nieces and nephews, Candelaria Vergara replied:

Completely, because look, as I told you, on the coast the men were the ones who held the reins of the family at that time. And he... practically raised his nephews ... and his sisters, there were five sisters, four have died waiting for the State’s response and it’s not been possible. So the effect on the family, the nephews, the sisters, is an emotional disaster, because they actually died of a broken heart on account of the disappearance of their brother, his nephews haven’t studied, because that support wasn’t there, so it’s a situation of total vulnerability.

178. According to the expert opinion prepared by Yeiny Carolina Torres Bocachica, Pedro Julio Movilla played an important role in his wider family. She pointed out that one of the changes experienced by the extended family was their failure to achieve their lifetime ambitions. She also identified various types of pain and suffering, such as: pathological grief, family stigmatization, changes of role, deterioration in health, and a breakdown in their basic belief system.<sup>206</sup>

179. The Court therefore deems the existence of harm to the personal integrity of Pedro Movilla’s relatives to have been proven. The Court notes, in this regard, that the statements of Mr. Movilla’s relatives and the expert opinion offered by Yeiny Carolina Torres Bocachica, are consistent and concordant, and reflect the magnitude of the effects in every case: the uncertainty, pain and suffering caused by the disappearance of a relative.

180. This Court also finds the representatives’ claims regarding differentiated, gender-based effects that specifically harmed Candelaria Nuris Vergara to be substantiated. They will be examined below. It should be noted that, following the disappearance of their close relatives, women may experience stigma, violence and discrimination associated with gender roles and, in cases where the disappeared person is a male head of household, the victimization of relatives can be even greater. According to the General comment on women affected by enforced disappearances, approved by the Working Group on Enforced or Involuntary Disappearances at its ninety-eighth session in 2013, in cases of enforced disappearances, women are affected economically, socially and psychologically: the emotional impact is aggravated by the economic impact, in particular when the woman searches for her loved one and, when the woman also becomes the head of the family, family obligations increase, and there is less time available to deal with everything else.<sup>207</sup>

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<sup>204</sup> Cf. Raúl Rafael Ramos Movilla, cited in the expert opinion rendered by Yeiny Carolina Torres Bocachica (evidence file, folios 10733 to 10779).

<sup>205</sup> Written statement of Jenny Movilla Vergara (evidence file, folios 11879 to 11902).

<sup>206</sup> Cf. Expert opinion rendered by Yeiny Carolina Torres Bocachica (evidence file, folios 10733 to 10779).

<sup>207</sup> Cf. Working Group on Enforced or Involuntary Disappearances, General comment on women affected by enforced disappearances, adopted by the Working Group on Enforced or Involuntary Disappearances at its ninety-eighth session (October 31 to November 9, 2012), February 14, 2013.



181. The States parties to the American Convention on Human Rights have an obligation to undertake actions to recognize and guarantee the efforts of women searching for their loved ones as part of the prevention and investigation of forced disappearance. They must also guarantee that those efforts are carried out without obstacles, intimidation or threats, ensuring the personal integrity of the women concerned and recognition of their rights to political participation acknowledged in the Convention. States parties must also address the historical and cultural obstacles that limit their search, and guarantee that the women and their dependents can continue to pursue their lifetime ambitions in decent conditions.<sup>208</sup> This must include reparations, which should be ordered in such a way that they do not reproduce gender stereotypes, but rather reflect the ways in which women seeking their loved ones wish to be represented.

182. In the present case, the differentiated gender effect was experienced by Candelaria Vergara, who set aside her personal ambitions to devote herself to the search for her husband, and became her family's head of household. According to her statement:

From the moment they "disappeared" Pedro, it was my job to look for him with my children, and instead of having to go to school, my children had to accompany me to go look for him everywhere. Because of that search, I even lost my job, we have devoted ourselves to attending organized campaign events, to carrying him here in our hearts, looking for him night and day (...) The economic consequences were total (*sic*), terrible, we lost our house in Montería, Pedro's relatives, Pedro is the youngest son of a Monterian family where there are five sisters, he also maintained that family, as well as supporting Jenny, José and Carlos and me, so since there was no support, the person who supported the family was not there, everything collapsed, we lost the house, we have lost, we lost everything. I lost my job, before we used to spend vacations together, there were no vacations, there was no quality of life [...].

183. Moreover, the Court has found that the family, without defining a particular model for it, is the natural and fundamental unit of society and is entitled to protection by society and the State. In view of the importance of this right, recognized in Article 17 of the Convention, the Court has found that the State has an obligation to support the development and strengthening of the nuclear family. It is therefore required to take both positive and negative actions to protect persons from arbitrary or illegal interference with their families and foster effective respect for family life. Moreover, the Court has understood that among the most severe interference that the State could engage in against the family are actions that result in separation or break-ups. This situation is especially grave when the separation affects the rights of children and adolescents.<sup>209</sup> The status of such persons, pursuant to Article 19 of the American Convention, necessitates special protection by the State, and this must be understood as an additional right, supplementing the other rights the Convention recognizes for all people.<sup>210</sup>

184. According to the Working Group on Enforced or Involuntary Disappearances,

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<sup>208</sup> According to the Working Group, "Women as relatives, particularly where they become household heads due to an enforced disappearance, are in specific material, financial, psychological and legal needs. The relevant governmental institutions must provide them adequate counselling, rehabilitation and support services, assistance and information." Working Group on Enforced or Involuntary Disappearances, General comment on women affected by enforced disappearances, adopted by the Working Group on Enforced or Involuntary Disappearances at its ninety-eighth session (October 31 to November 9, 2012), February 14, 2013.

<sup>209</sup> *Case of López et al. v. Argentina, supra*, paras. 98 and 99.

<sup>210</sup> *Cf. Legal status and human rights of the child. Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17*, paras. 53, 54, 60, 86, 91, and 93, and *Case of Vera Rojas et al. v. Chile. Preliminary objections, merits, reparations and costs. Judgment of October 1, 2021, Series C No. 439*, para. 104.

The psychological state of a family after a relative's disappearance can be described as "sustained shock," that is, a latent and prolonged critical state characterized by an inconclusive search for the loved-one, anguish, sorrow and uncertainty. Children participate directly or indirectly in every moment of the progressive deterioration of the family structure [...] Many changes occur in family life as a consequence of the disappearance, such as: lack of economic resources, particularly in modest families which depended upon the missing person's wages; permanent psychological stress, which sometimes causes other health problems among members of the family; changes in the use of time, since a good part of it is devoted to the search for the missing person; children are frequently left alone or without assistance [...].<sup>211</sup>

185. According to Doria Yanette Bautista Montañez's statement, another immediate impact is the total disintegration of the family.<sup>212</sup> In this regard, as the Working Group on Enforced or Involuntary Disappearances has pointed out, "appropriate and comprehensive psychological care must be provided to child victims of enforced disappearance and take into account the fact that the disintegration of families deeply affects children. States have duties to ensure children's physical and psychological recovery and social integration."<sup>213</sup>

186. Based on the testimonies of Carlos Julio Movilla Vergara, José Antonio Movilla Vergara and Jenny Movilla Vergara, Mr. Movilla's children, the Court finds that, in the specific circumstances of this case, as they were children at the time of their father's forced disappearance, they were especially affected, given their experiences in an environment of suffering and uncertainty due to failure to determine their father's whereabouts.<sup>214</sup> In the wake of Pedro Movilla's forced disappearance, his children developed feelings of loss, intense fear, uncertainty, distress, and pain, which varied and intensified depending on the age and particular circumstances of each one.

187. Consequently, bearing in mind the particular characteristics of this case, the Court finds that Pedro Movilla's forced disappearance, and the failure to investigate what occurred, had a particular impact on the rights of the child acknowledged in Article 19 of the American Convention, to the detriment of Carlos Julio Movilla Vergara, José Antonio Movilla Vergara and Jenny Movilla Vergara. They also undermined the right to protection of the family of all Mr. Movilla's relatives.

188. Therefore, and taking into account the State's acknowledgment of responsibility (*supra* paras. 14, 17, 32, 34, 39 and 172), this Court finds that the State has violated the rights to personal integrity and to the protection of the family, recognized in Articles 5(1) and 5(2), and 17 of the American Convention on Human Rights, in relation to Article 1(1), to the detriment of Candelaria Nuris Vergara Carriazo, Carlos Julio Movilla Vergara, José Antonio Movilla Vergara, Jenny del Carmen Movilla Vergara, Leonor María Movilla de Sierra, María de Jesús Movilla Barrera, Florencia Movilla Galarcio, Rita Candelaria Movilla Galarcio, Nery del Carmen Movilla Galarcio, Erasmo de la Barrera Movilla, Raúl Rafael Ramos Movilla, Ricardo Adolfo Ramos Movilla, Franklin Hander Movilla, Dominga Josefa Movilla Galarcio, Iván Darío Vega Movilla, Nery del Carmen Vega Movilla, Ana Karina Vega Movilla and María Isabel Carriazo de Román. Furthermore, the State violated the rights of the child recognized in Article 19 of the American Convention on Human Rights, in relation to its Article 1(1), to the detriment of Carlos Julio Movilla Vergara, José Antonio Movilla Vergara and Jenny Movilla Vergara.

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<sup>211</sup> Working Group on Enforced or Involuntary Disappearances, Thematic Report 19 (E/CN.4/1984/21), December 9, 1983.

<sup>212</sup> Cf. Statement of Doria Yanette Bautista Montañez (evidence file, folios 11928 to 11939).

<sup>213</sup> Working Group on Enforced or Involuntary Disappearances, Thematic Report 25 (A/HRC/WGEID/98/1).

<sup>214</sup> Cf., in a similar vein, *Case of Gudiel Álvarez et al. ("Diario Militar") v. Guatemala. Merits, reparations and costs.* Judgment of November 20, 2012. Series C No. 253, para. 312.

## IX REPARATIONS<sup>215</sup>

189. Based on the provisions of Article 63(1) of the American Convention, the Court has maintained that every violation of an international obligation that results in harm creates a 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.<sup>216</sup>

190. Reparation of the harm caused by the violation of an international obligation requires, whenever possible, full restitution (*restitutio in integrum*), which consists in the restoration of the previous condition. If this is not feasible, as happens in most cases of human rights violations, this Court will determine measures to guarantee the violated rights and repair the consequences resulting from the violations.<sup>217</sup> Therefore, the Court has considered the need to grant different measures of reparation in order to provide comprehensive redress so that, in addition to pecuniary compensation, measures of restitution, rehabilitation and satisfaction as well as guarantees of non-repetition have special relevance for the harm caused.<sup>218</sup> In addition, the Court considers that the reparations must include an analysis that considers not only the right of victims to obtain redress, but also one that incorporates a gender perspective and a child-oriented approach, both in its formulation and in its implementation.<sup>219</sup>

191. The Court has established that reparations must 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. Therefore, the Court must examine the concurrence of these elements to rule appropriately and in keeping with law.<sup>220</sup>

192. Bearing in mind the violations of the American Convention established in the previous chapters, in light of the criteria established in the Court's case law in relation to the nature and scope of the obligation to make reparation,<sup>221</sup> the Court will examine the claims presented by the Commission and the representatives, as well as the State's arguments on the matter, in order to establish measures to redress the harm caused.

### **A) Injured party**

193. This Court considers the injured party, in the terms of Article 63(1) of the American Convention, to be those who have been declared victims of the violation of a right in this judgment. Therefore, the Court considers Pedro Julio Movilla Galarcio and the following members of his family to be the injured party: Candelaria Nuris Vergara Carriazo (wife), Carlos Julio Movilla Vergara (son), José Antonio Movilla Vergara (son), Jenny del Carmen Movilla Vergara (daughter), Leonor María Movilla de Sierra (sister), María de Jesús Movilla Barrera (sister), Florencia Movilla

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<sup>215</sup> Application of Article 63(1) of the American Convention.

<sup>216</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and costs*. Judgment of July 21, 1989. Series C No. 7, para. 25, and *Case of Pavez Pavez v. Chile, supra*, para. 161.

<sup>217</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and costs, supra*, paras. 25 and 2, and *Case of Cuya Lavy et al. v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of September 28, 2021. Series C No. 438, para. 186.

<sup>218</sup> Cf. *Case of Las Dos Erres Massacre v. Guatemala, supra*, para. 226, and *Case of Noguera et al. v. Paraguay, supra*, para. 88.

<sup>219</sup> Cf. *Case of I.V. v. Bolivia. Preliminary objections, merits, reparations and costs*. Judgment of November 30, 2016. Series C No. 329, para. 326, and *Case of Guzmán Albarracín et al. v. Ecuador. Merits, reparations and costs*. Judgment of June 24, 2020. Series C No. 405, para. 215.

<sup>220</sup> Cf. *Case of Ticona Estrada v. Bolivia, supra*, para. 110, and *Case of Azul Rojas Marín et al. v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of March 12, 2020. Series C No. 402, para. 224.

<sup>221</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and costs, supra*, paras. 25 to 27, and *Case of Azul Rojas Marín et al. v. Peru, supra*, para. 225.

Galarcio (sister), Rita Candelaria Movilla Galarcio (sister), Nery del Carmen Movilla Galarcio (sister), Erasmo de la Barrera Movilla (nephew), Raúl Rafael Ramos Movilla (nephew), Ricardo Adolfo Ramos Movilla (nephew), Franklin Hander Movilla (nephew), Dominga Josefa Movilla Galarcio (niece), Iván Darío Vega Movilla (nephew), Nery del Carmen Vega Movilla (niece), Ana Karina Vega Movilla (niece), and María Isabel Carriazo de Román (mother-in-law).

194. According to the information available to this Court (*supra* para. 43), some of the persons mentioned have died. They are: María de Jesús Movilla Barrera, Florencia Movilla Galarcio, Rita Candelaria Movilla Galarcio, Nery del Carmen Movilla Galarcio, Erasmo de la Barrera Movilla, Raúl Rafael Ramos Movilla, Ricardo Adolfo Ramos Movilla, Franklin Hander Movilla, and María Isabel Carriazo de Román.

### **B) Obligation to investigate to determine individual responsibilities**

195. The **Commission** asked that the State be ordered to investigate the human rights violations that occurred in this case diligently, effectively and within a reasonable time, with the objective of “clarifying the facts completely, identifying all possible responsibilities and establishing the corresponding punishments.”

196. For their part, the **representatives** asked the Court to order the State “to conclude the criminal investigation diligently, effectively and within a reasonable time” in order to clarify the facts completely, identify all the persons responsible for the forced disappearance of Pedro Movilla, and establish the corresponding punishments. They also asked that, in carrying out the investigation, the authorities “acknowledge the context of persecution and forced disappearance in which the actions against political leaders and leftist militants were framed within the doctrine of ‘the enemy within.’”

197. The **State** rejected the representatives’ request that, in carrying out the criminal investigation, the authorities recognize the contextual elements mentioned, and reiterated its acknowledgment of responsibility until 2019. Moreover, it affirmed that, since 2019, the State had continued and intensified its investigative work, and reiterated its commitment to continue with the investigations.

198. The **Court** has established that the State failed to comply with its obligation to investigate Mr. Movilla’s disappearance (*supra* para. 168). Given that criminal proceedings are ongoing, and in keeping with its consistent case law, the Court orders that the State must continue, effectively and with due diligence, the ongoing investigations and the criminal proceedings, endeavoring to conclude them within a reasonable time. To do this, it must take into account a line of investigation that acknowledges the context of persecution and forced disappearance within which the events involving political leaders and leftist militants were framed as part of the concept of “the enemy within,” and open whatever lines of investigation are necessary to identify, prosecute and, if applicable, punish those responsible for the forced disappearance of Pedro Julio Movilla Galarcio within a reasonable time and for the purpose of establishing the truth of the facts. Due diligence in the investigation implies that all State authorities are obligated to collaborate in gathering evidence and provide the judicial body involved, the Prosecutor’s Office or other competent authority, with all the information it may require, and to abstain from actions that might obstruct the investigative process.<sup>222</sup>

199. Furthermore, the State must ensure that the following criteria are observed:

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<sup>222</sup> Cf. *Case of Garzón Guzmán et al. Ecuador. Merits, reparations and costs*. Judgment of September 1, 2021. Series C No. 434, para. 103, *Case of Myrna Mack Chang v. Guatemala, supra*, para. 277, and *Case of Vásquez Durand et al. v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of February 15, 2017. Series C No. 332, para. 203.

- a. Carry out the relevant investigations, ensuring that evidence is gathered, and logical lines of investigation are followed up on;
- b. Ensure that the investigations are comprehensive, encompassing all the elements involved in the forced disappearance;
- c. Identify the individuals believed to be the instigators and perpetrators of the victim's forced disappearance;
- d. Ensure that the competent authorities carry out the pertinent investigations *ex officio* and that they have available and utilize all the logistical and scientific resources needed to collect and process the evidence and, specifically, that they have the authority to examine the relevant documentation and information in order to investigate the acts reported, and carry out, in a timely manner, the actions and inquiries that are essential to shed light on what happened to Pedro Julio Movilla Galarcio;
- e. In view of the seriousness and continuous or permanent nature of Mr. Movilla's disappearance, the State shall not, as a matter of principle and pursuant to the relevant international law, apply statutes of limitation, nor have recourse to reasons to exclude responsibility that are an excuse to impede the investigation.<sup>223</sup>

200. In accordance with its settled case law, the Court reiterates that the State must ensure that the victims or their next of kin have full access and the capacity to act during all stages of the investigation and the prosecution of those responsible. The purpose of their participation must be access to justice and knowledge of the truth of what happened.<sup>224</sup>

### **C) Determination of Mr. Movilla's whereabouts**

201. The **Commission** asked for the State to be ordered to investigate the fate or whereabouts of Pedro Julio Movilla Galarcio and, if applicable, to adopt the necessary measures to identify and hand over the remains to his relatives.

202. The **representatives** asked the Court to order the State to continue to conduct an effective search for Pedro Julio Movilla, and locate the victim or his remains as quickly as possible by means of an appropriate, effective procedure and with due diligence.

203. The **State** maintained that, together with the Unit for the Search for Disappeared Persons, actions continued to be carried out in the search for Mr. Movilla as part of the Regional Plan for the Search for Persons Disappeared by Political Leaders in Bogotá.

204. In the instant case, Pedro Movilla's whereabouts remain unknown, and the **Court** has found that the State has violated the rights to judicial guarantees, to judicial protection, and to the truth, including in relation to the fact that insufficient efforts have been made to find the victim (*supra* paras. 32, 34 and 39, 142 to 148, and 168). The Court underlines the fact that Mr. Movilla's forced disappearance took place nearly 29 years ago, so his relatives are entitled to expect that his whereabouts be identified, which in itself is a measure of reparation, so the State has an obligation to satisfy it. This also alleviates the anguish and uncertainty suffered by the relatives.

205. In that regard, the Court takes note of the "search mechanisms" that Colombia mentioned (*supra* footnotes 165 and 181). It also observes that witness Moyano, in her oral testimony at the public hearing, said that Colombia's "installed capacity includes search teams," made up of "highly specialized personnel," within both judicial bodies and the Prosecutor General's Office,

<sup>223</sup> Cf. *Case of Garzón Guzmán et al. Ecuador, supra*, para. 104, and *Case of Vásquez Durand et al. v. Ecuador, supra*, para. 203.

<sup>224</sup> Cf. *Case of the Caracazo v. Venezuela. Reparations and costs. Judgment of August 29, 2002. Series C No. 95*, para. 118 and *Case of Maidanik et al. v. Uruguay, supra*, para. 213.

and also within “non-judicial” agencies, particularly the Search Unit for Disappeared Persons. She also referred to institutional mechanisms for coordinating the two areas, as well as the possibility that victims or their relatives have of taking part in search plans. Expert Camacho also explained the institutional framework developed in Colombia, although she pointed out that the various “mechanisms” face “financial, technical and human” difficulties in carrying out their mission.

206. Therefore, the Court orders the State to immediately continue the search actions. The search should be rigorous and conducted via the pertinent judicial and/or administrative channels, making every effort, as quickly as possible, to determine the whereabouts of Pedro Julio Movilla Galarcio, or to identify his remains. To do that, the State must have sufficient, suitable human, technical and scientific resources at its disposal, and undertake whatever institutional coordination actions are necessary or advisable. For these proceedings of investigation, the State must establish a communication strategy with the relatives and reach agreement with them on a framework for coordinated action, to ensure their participation, knowledge and presence, pursuant to the relevant guidelines and protocols. If it is established that the victim is dead, the remains must be handed over to his relatives, once his identity has been proven, as quickly as possible and at no cost to the family. The State must also cover the funeral expenses, if applicable, by mutual agreement with the relatives.<sup>225</sup>

207. However, this Court notes that, based on “the International Convention for the Protection of All Persons from Enforced Disappearance<sup>226</sup> and other pertinent international instruments,”<sup>227</sup> the United Nations Committee on Enforced Disappearances adopted the “Guiding Principles for the Search for Disappeared Persons.”<sup>228</sup> The Court considers it important that they be taken into account in complying with the reparation measure ordered. The principles are consistent with the guidelines already mentioned (*supra* para. 206) and cite others, including the following:

- a) The search for disappeared persons must continue until their fate or whereabouts are determined with certainty, which means that the persons concerned are “again under the protection of the law” or, if they are dead, “have been fully identified.”<sup>229</sup>
- b) The victim’s relatives, who are also victims, and people who represent or assist them are entitled to participate in the search, which means, among other things, they must have access to information, without prejudice to the measures adopted to preserve the integrity and effectiveness of the criminal investigation or the search.

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<sup>225</sup> Cf. *Case of Contreras et al. v. El Salvador. Merits, reparations and costs*. Judgment of August 31, 2011. Series C No. 232, paras. 191 and 192 and *Case of Garzón Guzmán et al. Ecuador, supra*, para. 110.

<sup>226</sup> Ratified by Colombia on July 11, 2012. It entered into force for the State on the thirtieth day after the date of the deposit of the instrument of ratification, pursuant to Article 39(2) of the treaty.

<sup>227</sup> The document clarifies that the Principles “take into account the experience of other international bodies and various countries around the world” (Introduction, para. 1). Guiding Principles for the Search for Disappeared Persons of the U.N. Committee on Enforced Disappearances, April 16, 2019.

<sup>228</sup> Adopted by the Committee on Enforced Disappearances at its sixteenth session (April 8 to 18, 2019). Doc. CED/C/7.

<sup>229</sup> However, the document clarifies (in Principle 7(4)) that “If the disappeared person has not been found and there is credible evidence beyond a reasonable doubt of his or her fate or whereabouts, the search may be suspended when it is not physically possible to recover the person and once all obtainable information has been exhaustively analysed and all possible scenarios investigated. This decision should be taken in a transparent manner and requires the prior and informed consent of the relatives or persons close to the disappeared person.” The Working Group on Forced or Involuntary Disappearances has also maintained that, although the right of the relatives of a disappeared person to know the truth about the fate and whereabouts of the victim does not admit “any limitation or derogation,” “there is no absolute obligation of result,” given that: “in certain cases, clarification is difficult or impossible to attain, for instance when the body, for various reasons, cannot be found. [...] The State still has an obligation to investigate until it can determine by presumption the fate or whereabouts of the person.” (U.N. Human Rights Council. Working Group on Enforced or Involuntary Disappearances. Report of the Working Group on Enforced or Involuntary Disappearances. January 26, 2001. A/HRC/16/48. Para. 39 General Comments *General comment on the right to the truth in relation to enforced disappearance*, No. 4.).

c) The competent authorities should design a “comprehensive search strategy” that considers all reasonable hypotheses concerning the person’s disappearance, which may be rejected only when they cannot be supported based on objective and verifiable criteria. The strategy should “take into account the contextual analysis.”

d) “[A]ll [...] the activities to be performed are determined in an integrated fashion, through all necessary and appropriate means and procedures for the identification, release or exhumation of the disappeared person or establishment of the person’s identity. The comprehensive search strategy should include an action plan and a timeline and should be evaluated periodically.”

e) “The search should be centralized under, or coordinated by, a competent body that ensures effective coordination with all the other entities whose cooperation is needed for the search to be effective, exhaustive and prompt.”

f) “The search for the disappeared person and the criminal investigation of the persons responsible for the disappearance should be mutually reinforcing.” “When the search is conducted by non-judicial authorities independent of those that make up the justice system, mechanisms and procedures should be established to ensure cooperation, coordination and an exchange of information.”

208. In order to comply with the Court’s ruling, the State, within three months of notification of this judgment, shall prepare a specific search plan for Pedro Movilla. It must follow the guidelines set out in the two preceding paragraphs. Colombia shall allow the relatives of Mr. Movilla who have been declared victims in this judgment, and/or their representatives, to take part in the preparation of the specific search plan. The State may not take advantage of the established term, nor possible delays in the adoption of the plan that must be drawn up, to suspend search actions. The State shall inform this Court immediately once the drafting of the search plan is complete, and must send the Court a copy of the document in which it is laid out. The one-year deadline for the State to submit its first report established in operative paragraph 14 of this judgment does not apply to the search plan.

#### ***D) Measure of rehabilitation***

209. The **Commission** asked the Court to establish the physical and mental health care measures necessary for the rehabilitation of Pedro Julio Movilla Galarcio’s relatives, if they so wish and by mutual agreement.

210. The **representatives** asked the Court to provide, free of charge, the medical and psychological treatment required by each member of Pedro Movilla’s family separately, or, if they so wished, jointly, through specialized health institutions of their choice, with their prior and informed consent. They asked that the care not be provided through the Comprehensive Health and Psychosocial Care Program for Victims (hereinafter “PAPSIVI” or “the Program”).

211. The **State** referred to the efforts made through the PAPSIVI, as one of the “many mechanisms that the Colombian State has adopted within the framework of a transitional process from armed conflict to peace,” stating that “it is the most appropriate mechanism it possesses for offering victims psychosocial care.” It mentioned that the program offers special care for the victims and relatives of victims of forced disappearance, so victims would receive “special attention tailored to their needs,” and said it stood ready to establish channels for the beneficiaries to access the program at no charge. Finally, it asked the Court to recognize the suitability of the PAPSIVI as a transitional justice mechanism that contributes to the comprehensive reparation of the victims of the armed conflict.

212. The **Court** has determined that the personal integrity of Mr. Movilla's relatives has been violated (*supra* para. 188). Therefore, as it has done in other cases,<sup>230</sup> it deems it necessary to order a measure of reparation that provides appropriate attention to the psychological and/or psychiatric suffering of the victims.

213. With regard to the PAPSIVI, which the State has identified as the "most appropriate mechanism" for providing care to the victims, expert Torres Bocachica pointed out that the victims in this case have been "referred to the PAPSIVI," but have not received treatment. She also said it was important to ascertain whether the Program really has coverage in rural areas, and whether the care is actually provided by Health Promoting Entities (EPS), since many do not have experience in treating victims. In her oral testimony, Candelaria Vergara insisted that she was not prepared to receive treatment from the PAPSIVI, even if she were registered with them. She added that she does not trust that entity, "because it's part of the State, they are the representatives of those who harmed [her]" and disappeared her husband.

214. Expert Cepeda Pérez explained how the PAPSIVI functions, pointing out that it was designed specifically to treat victims. He said the Program had two components, one for comprehensive health care and another for psychosocial care, and that the former offers services nationwide, while the latter does not. He commented that, on average (based on data collected between 2017 and 2019), the first six sessions were used to help the beneficiaries "get on board with the process." Financial resources were not the main consideration, but treatment was not necessarily provided completely free of charge in every case. Decisions were taken based on the principles of equity, solidarity and sustainability, and the patient's "SISBÉN score" (score calculated by the System for the Identification of Potential Social Program Beneficiaries).

215. The **Court** appreciates the efforts of State agencies to provide treatment to a large number of victims. While accepting the observations of expert Cepeda, the Court is bound to point out that its remit is not to conduct a comprehensive assessment of the Program, but rather to gauge how appropriate it would be for it to serve as a measure of reparation for the victims in this case. In fact, the Court does not believe it would be an appropriate way of implementing the measure of rehabilitation, because it would be directly contrary to the victims' wishes. Moreover, it notes that some aspects of the Program, such as the fact that the beneficiaries might be charged for the services provided, may not be consistent with the reparation to which they are entitled. Leaving aside the question of whether such services should be provided free of charge as part of a general public policy, in this judgment the Court has ruled that specific harm has been done to specific victims. It is not consistent with a decision of this kind that the victims should have to pay the party responsible for the harm done to them for a service that is part of the reparation that the latter party has been ordered to provide.

216. Therefore, this Court finds it appropriate, in this case, to allocate a sum of money so the victims can obtain the treatment they need. This Court orders the State, within six months of the notification of this judgment, to pay each of the victims in need of treatment the sum of six thousand United States dollars (USD 6,000.00). Payment of this sum shall not be made dependent on the victims effectively demonstrating, before or after they receive treatment, the medical and/or psychological expenses they have incurred or will incur. Furthermore, the State shall follow the guidelines set out below regarding the payment of sums of money (*infra* paras. 254 to 259). Once the State has paid all the sums of money ordered, it shall inform the Court immediately. The one-year deadline for the State to submit its first report established in operative paragraph 14 of this judgment does not apply to this measure of reparation.

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<sup>230</sup> Cf. *Case of Barrios Altos v. Peru. Reparations and costs*. Judgment of November 30, 2001. Series C No. 87, paras. 42 and 45, and *Case of Maidanik et al. v. Uruguay, supra*, para. 225.



### ***E) Measures of satisfaction***

217. The **Commission** asked that the comprehensive reparation of the human rights violations include measures of satisfaction.

218. The **representatives** asked that Colombia be ordered to publish and disseminate this judgment. They deemed the following mechanisms to be appropriate: a) publication of the official summary of this judgment, once, in the Official Gazette in a legible and appropriate font size; b) publication of the same official summary, once, in a national newspaper with wide circulation, in a legible and appropriate font size; and c) publication of the full text of the judgment for at least one year on a government website that the public can access by clicking on a banner on the homepage.

219. They also asked that the State be ordered to offer a public apology to the victims' relatives within six months of the publication of the judgment, in an act chaired by representatives of the National Government and the agencies responsible for guaranteeing and protecting human rights. They asked that the organization of the ceremony, and any travel or other expenses required, be coordinated with the victims. They also asked that the State be ordered to hold an "act of memory" highlighting the efforts of women searching for their loved ones in Colombia.

220. A further measure of satisfaction they requested was the awarding of grants to the youngest members of the Movilla family who wish to enter higher education (undergraduate or postgraduate studies) in the amount of COP 50,000,000 (approximately USD 14,312.00 when the pleadings and motions brief was filed) for each one.

221. In addition, they asked the Court to order the State to hand over all the information collected on Pedro Movilla and his family, and to delete it from the official records and archives.

222. The **State** was of the opinion that the ruling itself could constitute a measure of satisfaction and a guarantee of non-repetition, and reiterated its intention to hold an act of acknowledgment of responsibility based on the scope of responsibility presented by the State. It was willing to plan and hold an act with Mr. Movilla's relatives, and acknowledged Candelaria Vergara as a woman searcher in Colombia, expressing appreciation for her tireless efforts to find her husband. It was also prepared to engage with the alleged victims in offering educational grants to attend institutions in Colombia to the relatives of Pedro Julio Movilla that the Court had established as victims.

223. Colombia also responded to the representatives' request that all the information gathered on Pedro Movilla and his family be handed over, arguing that "all the information garnered from intelligence information on Pedro Julio Movilla has been passed on to the criminal investigation," and that any additional information required by the Prosecutor's Office during the criminal proceedings would be requested from the relevant entities.

#### ***E.1 Publication and dissemination of the judgment***

224. The **Court**, as in other cases,<sup>231</sup> hereby establishes that the State must publish, within six months of the notification of the judgment: a) the official summary of the judgment prepared by the Court, once, in the Official Gazette, in a legible and appropriate font size; b) the official summary of the judgment prepared by the Court, once, in a widely distributed national

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<sup>231</sup> Cf. *Case of Cantoral Benavides v. Peru. Reparations and costs*. Judgment of December 3, 2001. Series C No. 88, para. 79; *Case of Vera Rojas et al. v. Chile, supra*, para. 169; and *Case of Maidanik et al. Uruguay, supra*, para. 233.

newspaper, in a legible and appropriate font size; and c) the full text of this judgment, available for at least one year, on an official website of the National Government. The State must inform the Court immediately once it has complied with the publications ordered. The one-year deadline for the State to submit its first report established in operative paragraph 14 of this judgment does not apply to this measure of satisfaction.

#### *E.2 Public act of acknowledgement of responsibility*

225. The Court hereby orders Colombia to hold a public act of acknowledgment of international responsibility in relation to the facts of this case. The State should refer to the violations established in this judgment, and its commitment to complying with the ruling, ascertaining the whereabouts of the disappeared victim, and properly investigating, punishing, and making reparations for the human rights violations committed. During the act, mention should also be made of the particular impact on Candelaria Vergara because of her gender, due to the disappearance of her husband and her efforts to find him, as well as the work of other women who have had to search for their loved ones as victims of forced disappearances. The act should also highlight the effects that Mr. Movilla's forced disappearance and the State's failure to properly investigate it had on his family, with special mention of the impact on Mr. Movilla's children because they were small. The act should take the form of a public ceremony chaired by representatives of the National Government and the entities responsible for guaranteeing and protecting human rights. The public act should also be held in the presence of the victims of this case. The State should come to an agreement with the victims or their representatives on the manner of compliance of this public act, as well as on details, such as the date and place, and must have the means of facilitating the presence of the victims. The act should be disseminated via the media and must be held within one year of the notification of this judgment.

#### *E.3 Educational grants*

226. The Court has established in this judgment that the events that took place in this case sparked a significant change in the lives of Mr. Movilla's relatives, affecting their interpersonal relations and personal development. Therefore, and bearing in mind what the representatives requested and what the State has asserted, it orders, as a measure of satisfaction in this case, that the State award the victims who have not already entered higher (technical or university) education and who so request, grants for Colombian public institutions that cover all the costs until they have concluded their higher education, be it at the technical or university level. The victims of this measure of reparation, or their legal representatives, have six months from the notification of this judgment to inform the State, by reliable means, of the studies they wish to carry out. In each case, the grants must be awarded within six months of the date on which the application is submitted. If any victim fails to submit a request within the established timeframe, the State is exempted from complying with the measure.

#### *E.4 Handing over of information on Pedro Julio Movilla Galarcio*

227. It has been established in this judgment that the State carried out military intelligence activities with respect to Pedro Movilla. The Court accepts the State's argument that all such information has been provided to the judicial proceedings. Nonetheless, it considers that, as a measure of satisfaction for Mr. Movilla's relatives, separate from the judicial proceedings, it is appropriate for the State to afford them access to whatever information on him it has in its possession. Therefore, this Court orders Colombia, within six months of receiving the notification of this judgment, to undertake a comprehensive compilation of the information in the possession of the different state agencies and to hand it over to Mr. Movilla's relatives or their representatives, coordinating with them the pertinent actions for that purpose. Furthermore, within the same timeframe, the State must eliminate the mention of Mr. Movilla as an enemy of

the State, whether under that name or any other of equivalent significance, from any records in the State's possession in which he was referred to as such. The State must inform the Court immediately when it has complied with the measures ordered. The one-year deadline for the State to submit its first report established in operative paragraph 14 of this judgment does not apply to this measure of satisfaction.

#### ***F) Other measures requested***

228. The **Commission** asked the Court to order non-repetition mechanisms, including: a) the revoking of certain military regulations and manuals; b) an explicit instruction from the military and police high commands to all ranks to not use the military regulations and manuals in question due to their incompatibility with the American Convention; and c) steps to ensure the discontinuation of the practices created through the use of the regulations and manuals and the concept of "the enemy within," incorporating this case into human rights training provided to police, military and intelligence personnel.

229. The **representatives** asked that the State be ordered to expressly revoke all manuals that contain references to the concept of "the enemy within," and to publish them on the homepage of the Ministry of Defense's website, where they are visible and easy to access. They also requested that on the day they are published, the State promote and invite citizens to visit the website, through the social media accounts of the President, the National Agency for Legal Defense of the State, and the Ministry of Defense and the Ministry for International Affairs.

230. They also asked that the State be ordered to make the necessary improvements to the two properties around which the family's life revolves: the home of Candelaria Nuris Vergara Carriazo and Pedro Julio Movilla Galarcio in the city of Bogotá, and the home of Mr. Movilla's mother in Montería. Furthermore, bearing in mind the way in which Candelaria Vergara has been affected on account of her gender, they asked that the State be ordered to give her a piece of land and the resources required to mount an agricultural production project, reflecting Candelaria's wishes and life ambitions.

231. The **State**, in response to the request to revoke the military manuals, informed the Court that this had already been done. It also recalled that according to Law 57 of 1985 the State reserves the right to not publicize official acts and documents related to defense and national security, arguing that to do so would put at risk the integrity of the personnel who carry out military operations and the civilian population. Therefore, it asked the Court to reject the request that the manuals be published.

232. With respect to the measure regarding improvements to the properties where Pedro Movilla and his family lived, the State did not believe there was a strong connection between that measure of reparation and the victimizing act, and therefore rejected the pertinence or necessity of ordering it. But it did say it was willing to come to an agreement on the measure with the alleged victims, working with the entities concerned.

233. The **Court** notes that the State has not produced the military manuals in question for these proceedings, and has stated that they are no longer used, but no evidence has been presented to prove that. Therefore, this Court finds that it is appropriate to reiterate its observations in the case of *Isaza Uribe v. Colombia*:

It is not clear whether current military doctrine still contains notions or concepts whose application or interpretation could place certain individuals, groups or communities among the civilian population at risk or in vulnerable situations in the context of the armed conflict. This raises the question of the limits of, or exceptions to, the principles

of transparency and access to information in a democratic society, in relation to military doctrine, but the Court holds that at this time the information provided does not allow it to reach a more specific decision about the manuals and regulations in question, or the need to disclose or publish current military doctrine. Nonetheless, the Court deems it essential that any framework of transition to peace necessarily includes the strengthening of democratic society. Therefore it must be possible for the State to guarantee the right of Colombian society to have access, in a broad public dialogue, to information of this kind, and to establish parameters and limits, so that the actions of the Armed Forces and the definition of the means and methods of war are strictly in line with International Humanitarian Law and International Human Rights Law.<sup>232</sup>

234. With regard to the other measures requested, this Court finds that there is no causal link with the facts of the case, so it is not appropriate to order them. It also deems the measures already ordered to be sufficient. Nonetheless, it will take into account the differentiated impact suffered by Candelaria Vergara in determining compensatory damages.

### **G) Compensation**

235. The **Commission** asked the Court to order the State to fully repair the human rights violations declared in the Merits Report, in terms of both the material and moral harm suffered by the victims.

236. The **representatives** asked the Court to set, in equity, a total sum of USD 30,750 for *consequential damage*, to be distributed among the different relatives.

237. With regard to loss of earnings, the representatives were asked to calculate the amount of basic severance pay (IBL), taking into account Pedro Julio Movilla's monthly earnings at the time when the events took place, the legally established minimum wage for the year 2020, and a life expectancy of 74.1 years, according to Resolution No. 0110 of January 22, 2014, of the Financial Superintendency of Colombia. However, they asked that, instead of pegging the amount to an index, the Court take the minimum wage for the year 2020 into account (2020 was the year in which the pleadings and motions brief was submitted). The sum in question was 877,803.00, which, at the exchange rate provided up to the settlement date used by the representatives (1 USD=3,493.77 COP), equals USD 251.20. They asked that 25 per cent be added to this amount for social benefits, 25 per cent deducted for personal expenses, and the years of financial dependency of the beneficiaries determined, which they divided into four periods. This gave a total of COP 317,627,341.00 which, at the suggested exchange rate, would be USD 90,912.00. They asked that more than 60 per cent be given to the spouse, Candelaria Vergara, and the rest divided among her children, Carlos Julio, José Antonio and Jenny Movilla Vergara.

238. The representatives also asked that *non-pecuniary damages* in the amount of USD 100,000.00 be awarded to Pedro Movilla as a victim of forced disappearance, assigning 50 per cent to Candelaria Vergara as his spouse, and distributing the other 50 per cent in equal parts among his children Carlos Julio, José Antonio and Jenny Movilla Vergara.

239. The representatives also asked for compensation for non-pecuniary damage for other victims, based on the calculation of up to 300 times the minimum wage for serious human rights violations, as stipulated in the case law of Colombia's Council of State. They asked that an amount be allocated to each of Mr. Movilla's relatives who had been a victim, based on the closeness of the relationship and the severity of the harm done to them. For the purposes of compensation, they divided the relatives into the following three groups: the nuclear family of

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<sup>232</sup> Case of Isaza Uribe et al. v. Colombia, supra, para. 207.

Pedro Julio Movilla (compensation equal to 300 times the minimum wage); his siblings (an amount equal to 150 times the minimum wage); and the remaining relatives (compensation equal to 100 times the minimum wage).

240. Based on the above, the representatives asked for compensation for non-pecuniary damage for the harm suffered by Pedro Movilla and his relatives, divided up as follows:<sup>233</sup> a) Pedro Julio Movilla: USD 100,000.00, to be distributed as follows: 50 per cent for his wife and the other 50 per cent to be distributed in equal parts among his children; b) his wife: USD 75,374.40; c) each child: USD 75,374.40; d) each sibling, as well as Erasmo de la Barrera: USD 37,687.20; and e) each of Mr. Movilla's other relatives: USD 25,124.80.

241. The **State** asked the Court, if it decided to order financial reparations, to set them in accordance with the violations acknowledged by the State.

242. With respect to compensation for non-pecuniary damage, the State also asked the Court, in the event that it decided to order a payment, to bear in mind the principle of equality and legal certainty in domestic law, recognize the national parameters, and base its compensation for non-pecuniary damage on the ceiling established in domestic case law, which is a sum equal to 100 times the legally established minimum monthly wage.<sup>234</sup>

243. This **Court** has developed the concept of pecuniary damage in its case law, establishing that it involves the loss of or detriment to victims' earnings, the expenses incurred as a result of the facts, and the monetary consequences that have a causal nexus with the facts of the case.<sup>235</sup> Similarly, its case law has reiterated the entirely compensatory nature of compensation, the nature and amount of which depend on the harm caused, so it cannot be used for either the enrichment or the impoverishment of the victims or their heirs.<sup>236</sup>

244. Although the representatives did not provide evidence regarding the amounts of compensation for pecuniary damage, it is fair to assume that Pedro Julio Movilla's relatives incurred various expenses due to his disappearance and the search that has continued for 29 years. In fact, the Court recalls that, when the victim disappeared, his relatives, and especially Candelaria Nuris Vergara, took a number of steps to obtain information about Mr. Movilla's fate and whereabouts from different Colombian institutions and organizations. The Court therefore finds that the State must grant compensation for the expenses incurred, since they have a direct causal link with the violations in this case. As there are no supporting documents to determine the exact amount of the expenses incurred in the various proceedings, and in view of the particular circumstances of the case, the Court deems it pertinent to set, in equity, the amount of fifteen thousand United States dollars (USD 15,000.00) as compensation for *consequential damage*, which must be paid within the timeframe established for the purpose (*infra* para. 254), to Candelaria Nuris Vergara.

245. With regard to loss of earnings, the Court finds, as it has done in other cases involving forced disappearance,<sup>237</sup> that since the victim's whereabouts are unknown, the criterion of compensation for loss of earnings may be applied, meaning his potential lifetime earnings.

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<sup>233</sup> The exchange rate applied by the representatives was 1 USD = 3.493.77 COP.

<sup>234</sup> It added that, as of April 27, 2021, the ceiling of 100 times the legally established monthly minimum wage in effect in Colombia was equal to USD 24,727.97.

<sup>235</sup> Cf. *Case of Bámaca Velásquez v. Guatemala. Reparations and costs*. Judgment of February 22, 2002. Series C No. 91, para. 43; and *Case of Pavez Pavez v. Chile, supra*, para. 192.

<sup>236</sup> Cf. *Case of the "Panel Blanca" (Paniagua Morales et al.) v. Guatemala. Reparations and costs*. Judgment of May 25, 2001. Series C No. 76, para. 79; *Case of Ríos Avalos et al. v. Paraguay. Merits, reparations and costs*. Judgment of August 19, 2021. Series C No. 429, para. 205; and *Case of the Julien Grisonas Family v. Argentina, supra*, para. 300.

<sup>237</sup> Cf. *Case of Bámaca Velásquez v. Guatemala. Reparations and costs, supra*, para. 43; and *Case of Maidanik et al. Uruguay, supra*, para. 276.

Bearing in mind the victim's age at the time of his disappearance, the minimum wage in Colombia during the time that his whereabouts have remained unknown, and life expectancy in Colombia, and based on the criterion of equity, the Court hereby decides to set, in equity, the total amount of ninety thousand United States dollars (USD 90,000.00) for Pedro Julio Movilla's lost earnings, to be distributed as follows: forty-five thousand United States dollars (USD 45,000.00) for Candelaria Nuris Vergara, and the remainder, in equal parts, for Mr. Movilla's children.

246. The Court has also developed the concept of non-pecuniary damage in its case law, and has established that they may include both the suffering and afflictions caused to the direct victims and their relatives, and detriment to values that are very significant values for individuals, as well as non-monetary changes in the living conditions of victims or victims' families.<sup>238</sup> On the other hand, since it is not possible to assign a precise monetary equivalent to non-pecuniary damage, this can only be compensated, for the purposes of comprehensive reparation to the victims, through the payment of a sum of money or the delivery of goods or services that can be assessed monetarily, as prudently determined by the Court, applying judicial discretion and the principle of equity.<sup>239</sup>

247. Based on the compensation ordered by the Inter-American Court in other cases of forced disappearance of persons, the circumstances of the present case, and the essence, nature and seriousness of the violations committed, the Court deems it pertinent to set, in equity, the amount of one hundred thousand United States dollars (USD 100,000.00) for Pedro Julio Movilla. Fifty per cent (50%) of this sum should go to Candelaria Nuris Vergara, with the remaining fifty per cent (50%) being distributed equally among Mr. Movilla's children, namely: Carlos Julio Movilla Vergara, José Antonio Movilla Vergara, and Jenny Movilla Vergara.

248. In relation to the non-pecuniary damage suffered directly by Mr. Movilla's relatives (*supra* para. 193), the Court considers, in equity, that it is appropriate to order the State to pay the following amounts as compensation: a) to Candelaria Nuris Vergara: fifty-five thousand United States dollars (USD 55,000.00); b) to each of Mr. Movilla's children: forty-five thousand United States dollars (USD 45,000.00); c) to each of Mr. Movilla's siblings and to Erasmo de la Barrera:<sup>240</sup> twenty thousand United States dollars (USD 20,000.00); and d) to each of Mr. Movilla's other relatives deemed to be victims in this judgment: ten thousand United States dollars (USD 10,000.00).

#### **H) Costs and Expenses**

249. The **representatives** explained that they had been acting in the case at the national and international levels since 1993. They asked that the State be ordered to pay fifty-one thousand sixty-one United States dollars (USD 51,061) for the expenses they had incurred. They added that the Court should bear in mind that expenses would also be incurred during the merits and monitoring of compliance stage.

250. The **State** asked that amount recognized for costs and expenses be reasonable. The **Commission** did not refer specifically to this request.

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<sup>238</sup> Cf. *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Reparations and costs*. Judgment of May 26, 2001. Series C No. 77, para. 84; and *Case of Maidanik et al. Uruguay, supra*, para. 274.

<sup>239</sup> Cf. *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala, supra*, para. 84; and *Case of Pavez Pavez v. Chile, supra*, para. 197.

<sup>240</sup> In relation to Erasmo de la Barrera, the representatives have pointed out that he is Pedro Movilla's "foster brother," and demonstrated the close relationship that existed between them (*supra* para. 176). Therefore, Erasmo de la Barrera must be regarded as Mr. Movilla's sibling for the purposes of pecuniary compensation for the non-pecuniary damage that Erasmo de la Barrera suffered. (Cf., in the same vein, *Case of the 19 Merchants v. Colombia, supra*, para. 232).

251. The **Court** recalls that, based on its case law, costs and expenses form part of the concept of reparation, because the activities carried out by the victims in order to obtain justice, both at the national and the international level, entail disbursements that must be compensated when the State's international responsibility is declared in a judgment. Regarding the reimbursement of costs and expenses, it is for the Court to prudently assess their scope, which includes the expenses generated before the authorities of the domestic jurisdiction and those incurred during the proceedings before the inter-American system, bearing in mind the circumstances of the specific case and the nature of the international jurisdiction for the protection of human rights. This assessment may be made based on the principle of equity and taking into account the expenses indicated by the parties, provided their *quantum* is reasonable.<sup>241</sup>

252. This Court has established that "the claims of the victims or their representatives with regard to costs and expenses, and the evidence to support them, must be submitted to the Court at the first procedural opportunity granted to them; that is, in the pleadings and motions brief, without prejudice to such claims being updated subsequently, in keeping with the new costs and expenses incurred during the proceedings before this Court."<sup>242</sup> The Court also reiterates that it is not sufficient merely to forward evidentiary documents; rather, the parties are required to include arguments that relate the evidence to the facts that they represent and, in the case of alleged financial disbursements, clearly specify the items and their justification.<sup>243</sup>

253. Bearing in mind the amounts requested by the representatives and the expense vouchers presented,<sup>244</sup> the Court decides to establish, based on equity, the payment of forty thousand United States dollars (USD 40,000.00) for costs and expenses. This sum shall be delivered directly to the José Alvear Restrepo Lawyers' Association. When monitoring compliance with this judgment at a later stage, the Court may order the State to reimburse the victims or their representatives for any reasonable and duly proven expenses incurred at that point in the proceedings.<sup>245</sup>

### **I) Method of compliance with payments ordered**

254. The State must pay compensation for pecuniary and non-pecuniary damage, the reimbursement of costs and expenses, and the cost of the rehabilitation measure established in this judgment (*supra* paras. 216, 244, 245, 247, 248 and 253), directly to the persons indicated herein and to the CCAJAR, within the established timeframe or, failing that, within one year of

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<sup>241</sup> Cf. *Case of Garrido and Baigorria v. Argentina. Reparations and costs*. Judgment of August 27, 1998. Series C No. 39, paras. 82; and *Case of Pavez Pavez v. Chile, supra*, para. 200.

<sup>242</sup> Cf. *Case of Garrido and Baigorria v. Argentina, supra*, para. 79; and *Case of Pavez Pavez v. Chile, supra*, para. 201.

<sup>243</sup> 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 Pavez Pavez v. Chile, supra*, para. 201.

<sup>244</sup> The Court accepts, based on the representatives' arguments concerning the expenses they are claiming, that the amount indicated is an estimate for which they cannot provide full details (although they did send receipts for some of their expenditures). The explanation is as follows. The representatives stated that "it is not possible to calculate exactly the amounts invested" between 1993 and 2001. For that period, they considered the cost of the work of three professionals. They based their calculations on the minimum salary during those years, which, they affirmed, was less than what similar professionals actually received. They did not specify their expenses during the period from 2002 to 2011. They said that the workload increased in 2011 and at least five legal professionals and several assistants took part, and travel expenses were also incurred. They gave details of the salaries of the professionals concerned during the years that each one was involved. They did not specify whether, at the time when they received the salaries for which reimbursement is being sought, the professionals worked on the case full time or part time. Nor did they do so with respect to the period from 1993 to 2001. They did not attach receipts for salaries paid. Moreover, during the period from 1993 to 2001, they included the cost of a lawyer who acted in the administrative proceedings, which were not examined and had no impact on the violations declared in this judgment.

<sup>245</sup> Cf. *Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia, supra* para. 291; and *Case of Pavez Pavez v. Chile, supra*, para. 202.

the notification of this judgment, without prejudice to the possibility of making payment in full in a shorter time, in the terms specified below.

255. If the beneficiaries have died, or pass away before the payments are made, the monies concerned should be paid to their heirs, pursuant to the applicable domestic law.

256. The State shall comply with the monetary obligations by means of payments in United States dollars, or the equivalent amount in national currency, using for the calculation the market exchange rate published or calculated by a pertinent banking or financial authority, on the date closest to the day of payment.

257. If, for reasons that can be attributed to the beneficiaries of the pecuniary measures or their heirs, it is not possible to pay the amounts ordered within the established timeframe, the State shall deposit the monies concerned in a bank account or certificate of deposit in a solvent Colombian financial institution, in United States dollars, and on the most favorable financial terms permitted by banking laws and practice. If the amount in question is not claimed after ten years have elapsed, it shall be returned to the State with the interest accrued.

258. The amounts allocated in this judgment as compensation for pecuniary and nonpecuniary damage, as reimbursement of expenses and costs and as a rehabilitation measure, shall be paid in full to the persons indicated, as established in this judgment, without deducting any possible taxes or charges.

259. If the State should fall into arrears, it shall pay interest on the amount owed, in line with banking interest payable on arrears in Colombia.

## **X OPERATIVE PARAGRAPHS**

260. Therefore,

### **THE COURT,**

Unanimously,

### **DECIDES TO,**

1. Accept the partial acknowledgement of international responsibility made by the State, pursuant to paragraphs 28 to 39 of this judgment.

### **DECLARES THAT,**

2. The State is responsible for the violation of the rights to recognition of juridical personality, to life, to personal integrity and to personal liberty, established in Articles 3, 4(1), 5(1), 5(2), and to freedom of association, acknowledged in Articles 3, 4(1), 5(1), 5(2), 7 and 16, of the American Convention on Human Rights, in relation to Articles 1(1) and 2 of the same treaty and Article I a) of the Inter-American Convention on the Forced Disappearance of Persons, to the detriment of Pedro Julio Movilla Galarcio, pursuant to paragraphs 33, 34, 39, 117 and 119 to 141 of this judgment.

3. The State is responsible for the violation of the rights to judicial guarantees and to judicial protection, acknowledged in Articles 8(1) and 25(1) of the American Convention on Human



Rights, in relation to its Article 1(1), and to Article I b) of the Inter-American Convention on the Forced Disappearance of Persons, to the detriment of Pedro Julio Movilla Galarcio, Candelaria Nuris Vergara Carriazo, Carlos Julio Movilla Vergara, José Antonio Movilla Vergara, Jenny del Carmen Movilla Vergara, Leonor María Movilla de Sierra, María de Jesús Movilla Barrera, Florencia Movilla Galarcio, Rita Candelaria Movilla Galarcio, Nery del Carmen Movilla Galarcio, Erasmo de la Barrera Movilla, Raúl Rafael Ramos Movilla, Ricardo Adolfo Ramos Movilla, Franklin Hander Movilla, Dominga Josefa Movilla Galarcio, Iván Darío Vega Movilla, Nery del Carmen Vega Movilla, Ana Karina Vega Movilla and María Isabel Carriazo de Román. The State also violated the right to the truth to the detriment of the relatives of Pedro Julio Movilla Galarcio listed above. All of the above, pursuant to paragraphs 32, 34, 39, and 155 to 168 of this judgment.

4. The State is responsible for the violation of the rights to personal integrity and to the protection of the family, recognized, respectively, in Articles 5(1) and 5(2), and 17, of the American Convention on Human Rights, in relation to its Article 1(1), to the detriment of Candelaria Nuris Vergara Carriazo, Carlos Julio Movilla Vergara, José Antonio Movilla Vergara, Jenny del Carmen Movilla Vergara, Leonor María Movilla de Sierra, María de Jesús Movilla Barrera, Florencia Movilla Galarcio, Rita Candelaria Movilla Galarcio, Nery del Carmen Movilla Galarcio, Erasmo de la Barrera Movilla, Raúl Rafael Ramos Movilla, Ricardo Adolfo Ramos Movilla, Franklin Hander Movilla, Dominga Josefa Movilla Galarcio, Iván Darío Vega Movilla, Nery del Carmen Vega Movilla, Ana Karina Vega Movilla and María Isabel Carriazo de Román, pursuant to paragraphs 32, 34, 39 and 173 to 188 of this judgment.

5. The State is responsible for the violation of the rights of the child, recognized in Article 19 of the American Convention on Human Rights, in relation to its Article 1(1), to the detriment of Carlos Julio Movilla Vergara, José Antonio Movilla and Jenny Movilla Vergara, pursuant to paragraphs 173 to 187 of this judgment.

**AND ESTABLISHES THAT,**

6. This judgment constitutes, per se, a form of reparation.

7. The State shall continue the investigations and the ongoing criminal proceedings related to the disappearance of Pedro Julio Movilla Galarcio, pursuant to paragraphs 198 to 200 of this judgment.

8. The State shall continue to search for Pedro Julio Movilla Galarcio, pursuant to paragraphs 206 to 208 of this judgment.

9. The State shall issue the publications ordered in paragraph 224 of this judgment.

10. The State shall hold a public act of acknowledgement of responsibility, pursuant to paragraph 225 of this judgment.

11. The State shall provide grants, pursuant to paragraph 226 of this judgment.

12. The State shall allow Pedro Julio Movilla Galarcio's relatives access to the information about him that it holds, and shall remove all mention of him as an enemy of the State from all records in its possession, pursuant to paragraph 227 of this judgment.

13. The State shall pay the sums established in paragraphs 216, 244, 245, 247, 248 and 253 of this judgment as a measure of rehabilitation, compensation for pecuniary and non-pecuniary damage, and the reimbursement of costs and expenses, pursuant to paragraphs 254 to 259 of this judgment.

14. The State, within one year from notification of this judgment, shall provide the Court with a report on the measures adopted to comply with it, without prejudice to the provisions of paragraphs 208, 216, 224, and 227.

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

DONE in the Spanish language at San José, Costa Rica, on June 22, 2022.

I/A Court of H.R. *Case of Movilla Galarcio et al. v. Colombia*. Merits, reparations and costs. Judgment of June 22, 2022.

Ricardo C. Pérez Manrique  
President

Eduardo Ferrer Mac-Gregor Poisot

Nancy Hernández López

Patricia Pérez Goldberg

Rodrigo Mudrovitsch

Pablo Saavedra Alessandri  
Registrar

So ordered,

Ricardo C. Pérez Manrique  
President

Pablo Saavedra Alessandri  
Registrar