INTER-AMERICAN COURT OF HUMAN RIGHTS

CASE OF ISAZA URIBE AND OTHERS VS. COLOMBIA

JUDGMENT OF NOVEMBER 20, 2018
(Merits, Reparations and Costs)

In it*Isaza Uribe et al. case,*

the Inter-American Court of Human Rights (hereinafter "the Inter-American Court", "the Court" or "the Tribunal"), made up of the following Judges[1]:

Eduardo Ferrer Mac-Gregor Poisot, President;
Eduardo Vio Grossi, Vice President;
Elizabeth Odio Benito, judge;
Eugenio Raúl Zaffaroni, judge, and
L. Patricio Pazmiño Freire, judge;

present, in addition,

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

pursuant to Articles 62.3 and 63.1 of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") and with Articles 31, 32, 65 and 67 of the Rules of Court (hereinafter "the Regulations"), dictates this Judgment, which is structured in the following order:

[1] Judge Humberto Antonio Sierra Porto, a Colombian national, did not participate in the deliberation and signing of this Judgment, in accordance with the provisions of Articles 19.2 of the Statute and 19.1 of the Rules of Court.

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INTRODUCTION OF THE CAUSE AND PURPOSE OF THE DISPUTE

1. *The case submitted to the Court*. – On April 3, 2016, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") submitted to the jurisdiction of the Inter-American Court, in accordance with the provisions of Articles 51 and 61 of the American Convention and Article 35 of the Rules of Court, the case *Víctor Manuel Isaza Uribe regarding the Republic of Colombia* (hereinafter "the State", or "Colombia"). According to the Commission, the case is related to the alleged forced disappearance of Víctor Manuel lsaza Uribe since November 19, 1987, while he was in preventive detention in the prison of the municipality of Puerto Nare, Department of Antioquia, when a group of men unidentified people took it from there. The Commission indicated that he was a member of the Single Union of Workers of the Construction Materials Industry (SUTIMAC) and sympathizer of the political party Patriotic Union (UP). The Commission determined that, in relation to the versions of how the events occurred, there are sufficient elements to qualify them as a forced disappearance carried out by paramilitary groups with the acquiescence of state agents, in a context in which regulatory frameworks were in force that favored paramilitarism and the identification of trade unionists within the notion of "internal enemy". In addition, it indicated that the investigation of the facts has been subject to unjustified delays, remains in the preliminary stage and has not followed important lines of investigation, in addition to the fact that the State has not reported on specific actions to find the whereabouts of the disappeared person. The alleged victims in the case are Mr. Víctor Manuel Isaza Uribe, his wife, Mrs. Carmenza Vélez, and his children, Mr. Jhony Alexander Isaza Vélez and Mr. Haner Alexis Isaza Vélez. it indicated that the investigation of the facts has been subject to unjustified delays, remains in the preliminary stage and has not followed important lines of investigation, in addition to the fact that the State has not reported on specific actions to find the whereabouts of the disappeared person. The alleged victims in the case are Mr. Víctor Manuel Isaza Uribe, his wife, Mrs. Carmenza Vélez, and his children, Mr. Jhony Alexander Isaza Vélez and Mr. Haner Alexis Isaza Vélez. It indicated that the investigation of the facts has been subject to unjustified delays, remains in the preliminary stage and has not followed important lines of investigation, in addition to the fact that the State has not reported on specific actions to find the whereabouts of the disappeared person. The alleged victims in the case are Mr. Víctor Manuel Isaza Uribe, his wife, Mrs. Carmenza Vélez, and his children, Mr. Jhony Alexander Isaza Vélez and Mr. Haner Alexis Isaza Vélez.

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

to. *Petition*.- In December 1990, the Commission received a petition presented by the Association of Relatives of the Detained-Disappeared (ASFADDES) and the Colombian Commission of Jurists, acting on behalf of the alleged victims.

b. *Admissibility report*. – On July 22, 2011, the Commission approved Admissibility Report 102/11, in which it declared that petition 10,737 was admissible.[2].

c. *Background Report.*–On July 21, 2015, the Commission issued Merits Report No. 25/15, pursuant to Article 50 of the American Convention (hereinafter "Merits Report" or "the Report"), in which it reached a series of conclusions and made several recommendations to the State[3].

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[2] *cf.* IACHR, Report No. 102/11 (admissibility), Petition 10,737, Víctor Manuel Isaza Uribe and Family (Colombia), July 22, 2011. Available at: https://www.oas.org/es/cidh/decisiones/2011/COAD10737ES.doc . In this report, the Commission concluded that the case was admissible with respect to the alleged violations of the rights recognized in Articles 3, 4, 5, 7, 8(1), 16 and 25, in accordance with Article 1.1 of the American Convention and Article 1 of the Inter-American Convention on Forced Disappearance of Persons.

[3] The Commission concluded that the State is responsible for "the violation of the rights to legal personality, to life, to personal integrity, to personal liberty, to freedom of association, to judicial guarantees, and to judicial protection enshrined in articles 3, 4, 5, 7, 16, 8 and 25 in relation to articles 1.1 and 2 of the same instrument to the detriment of the persons indicated throughout the [...] report. Likewise, the Commission concludes that the State is responsible for the violation of Articles Ia) and Ib) of the Inter-American Convention on Forced Disappearance of Persons."

The Commission recommended that the State: 1. Completely, impartially, and effectively investigate the whereabouts of Víctor Manuel Isaza Uribe and, if applicable, adopt the necessary measures to identify and deliver the mortal remains to his next of kin; 2. Carry out the internal procedures related to the human rights violations declared in this report and conduct the corresponding processes for the crime of forced disappearance of Víctor Manuel Isaza Uribe, impartially, effectively and within a reasonable time, in order to fully clarify the facts, identify all those responsible and impose the corresponding sanctions; 3. Adequately repair the human rights violations declared in this report, both materially and morally, including fair compensation, the establishment and dissemination of the historical truth of the facts and the implementation of an adequate care program for their next of kin; 4. Adopt the measures of non-repetition necessary to prevent similar events from occurring in the future, including the strengthening of protection mechanisms for trade unionists so that they can develop

d. *Notification to the State*.- The Commission notified the Merits Report to the State on August 3, 2015 and granted it a period of two months to report on compliance with the recommendations. The Commission indicated that, after granting two extensions, the State had made no progress in this regard, particularly with regard to the investigation and punishment of those responsible and the search for the fate or whereabouts of the alleged victim.**(f.3)**

3. *Submission of the case before the Court*.- On April 3, 2016, after more than 31 years of the facts of the case and more than 25 years after the petition was presented to the Commission, the latter submitted to the Court all the facts and conclusions on human rights violations described in Merits Report 25/15, by the " the need to obtain justice for the [alleged] victims of the case"[4].

4. *Requests from the Inter-American Commission*.- Based on the foregoing, the Commission requested the this Tribunal to conclude and declare that the State is responsible for the violation of the rights declared in its Merits Report and to order, as reparation measures, the recommendations contained therein.

II
PROCEEDINGS BEFORE THE COURT

5. *Notification to the State and representatives of alleged victims*.- The submission of the case the Commission notified the State and the representatives of the alleged victims[5] (hereinafter "the representatives") on May 23, 2016.

6. *Brief of requests, arguments and evidence*.-On July 26, 2016, the representatives They submitted their pleadings, motions, and evidence brief (hereinafter "pleadings and motions brief"), under the terms of Articles 25 and 40 of the Regulations. The representatives substantially agreed with the arguments and conclusions of the Commission and, furthermore, argued that the State is responsible for the violation of the right to protection of the family (Article 17) in relation to the right to protection of honor (Article 11.2). They asked the Court to order various reparation measures.

7. *Response and acknowledgment of responsibility*[6]. – On October 29, 2016 The State submitted its response brief to the submission of the case and the pleadings and motions brief (hereinafter "answer" or "answer brief"), in which it also made a partial acknowledgment of international responsibility.

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their activities freely and without fear of reprisals; and 5. Publicly acknowledge, guaranteeing adequate dissemination mechanisms, the violations declared in this case.*cf.* IACHR, Report No. 25/15 (Merits), Víctor Manuel Isaza Uribe and Family, Colombia, OEA/Ser.L/V/II.155, Doc. 4, July 21, 2015. Available at:https://www.oas.org/es/cidh/decisiones/corte/2016/10737fondoes.pdf

[4] The Commission appointed Commissioner José de Jesús Orozco Enríquez and then Executive Secretary Emilio Álvarez lcaza L. as its delegates, as well as Elizabeth Abi-Mershed, then Deputy Executive Secretary, and Silvia Serrano Guzman and Paulina Corominas, attorneys for the Executive Secretariat, as legal advisers.

[5] On May 12, 2016, the organization "Colombian Commission of Jurists" forwarded a power of attorney granted to it by Ms. Carmenza Vélez and by Messrs. Jhony Alexander Isaza Vélez and Haner Alexis Isaza Vélez, presumed victims, to act before the Court in relation to this case. Mr. Gustavo Gallón Giraldo, its Director, and the lawyers Mr. Fredy Alejandro Malambo Ospina and Mrs. Carolina Solano Gutiérrez have acted on behalf of said organization.

[6] On July 8, 2016, the State of Colombia, through the Director of the National Legal Defense Agency of the State and in accordance with the provisions of Articles 23 and 39.3 of the Rules of Procedure of the Court, appointed Messrs. Roberto Molina Palacios as Agent and Felipe Ferreira Rojas as his adviser. After the answer, on May 15, 2017, the State reported that Mr. Molina would no longer act as Agent and that in his replacement it appointed Ms. Ángela María Ramírez Rincón and, in addition to Mr. Ferreira, also Mrs. María del Pilar. Gutiérrez Perilla as adviser. As of January 2018, Mr. Jonathan Riveros Tarazona also began to act as Agent.

8. *Observations to the acknowledgment of responsibility*. - On December 19, 2016 the representatives and the Commission presented their observations on said recognition.

9. *Victims Legal Assistance Fund*.- Through Resolution of the President of the Court of On May 4, 2017, the request filed by the alleged victims, through their representatives, to avail themselves of the Court's Legal Assistance Fund (hereinafter "the Fund" or "Legal Assistance Fund") was declared admissible.[7].

10. *Public hearing and statements of alleged victims, witnesses and expert witnesses*.- Through Resolution of December 13, 2017[8], the President summoned the parties and the Commission to a public hearing to receive the statements of an alleged victim, a witness, and an expert, respectively proposed by the representatives, the State, and the Commission, as well as to hear their final arguments and observations. oral on the merits and eventual reparations. Likewise, it was ordered to receive the affidavit statements of two alleged victims, two witnesses and five expert witnesses, proposed by the representatives, as well as one witness and three expert witnesses proposed by the State. In addition, the President established the items of expenses that would be covered by economic assistance from the Fund. On December 22, 2017, the State requested the "reconsideration" of said Resolution and, on the following December 29, requested the substitution of an expert witness.[9]. On January 17, 19 and 25, 2018, the affidavit statements were received, after the parties had been given the opportunity to ask questions to the declarants. The public hearing was held on January 30 and 31, 2018 during the 121st Regular Period of Sessions, at the seat of the Court[10]. In the course of said hearing, the Judges requested additional information or clarifications from the parties.

eleven. *Amici curiae.*-On February 14, 2018, briefs were received as*amicus curiae* of the organizations "National Union School (ENS)"[eleven]and "Central Unitaria de Trabajadores (CUT)" of Colombia[12].

12. *Final written arguments and observations*.- On March 2, 2018, the parties and the Commission submitted their final written arguments and observations, respectively. On the following March 21, the representatives and the State submitted observations regarding the documents forwarded by them as annexes to their final written arguments.

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7 *Cf. Case of Isaza Uribe et al. Colombia.*Order of the President of the Court of May 4, 2017. Available at: http://www.corteidh.or.cr/docs/asuntos/isaza_fv_17.pdf

8 *Cf. Case of Isaza Uribe et al. Colombia.*Order of the acting President of the Court of December 13, 2017. Available athttp://www.corteidh.or.cr/docs/asuntos/isaza_13_12_17.pdf

9 *Cf. Case of Isaza Uribe et al. Colombia.*Order of the President of the Court of January 16, 2018. Available at: http://www.corteidh.or.cr/docs/asuntos/isaza_16_01_18.pdf

10 The following appeared at this hearing: a) for the Commission, Commissioner Francisco Eguiguren Praeli, Chairman, and Mrs. Silvia Serrano Guzmán, adviser; b) for the State, Ángela María Ramírez Rincón and María del Pilar Gutierrez Perilla and Jonathan Duvan Riveros Tarazona, Agents; and c) for the alleged victims: Gustavo Gallón Giraldo, Fredy Alejandro Malambo Ospina and Carolina Solano Gutiérrez, of the Colombian Commission of Jurists, as representatives. The Court heard the statement of the presumed victim Carmenza Vélez and the reports of Alberto Yepes Palacio and Carlos Enrique Arévalo Narváez, who had submitted written versions of their expert opinions. Video available at:https://vimeo.com/album/4957913

eleven The paper presents information on anti-union violence in Colombia as a historical phenomenon and its interpretation; said violence in Antioquia and particularly against SUTIMAC. The document was signed by the general director of the organization, Mr. Eric Alberto Orgulloso Martínez.

12 The document, which refers to anti-union violence in Colombia, points out that the CUT is the largest trade union center in Colombia and that SUTIMAC was one of its founding unions. The document was signed by Luis Alejandro Pedraza Becerra and Fabio Arias Giraldo, president and general secretary of the CUT.

13. *Disbursements in application of the Assistance Fund.*-On March 14, 2018, the Secretariat of the Court forwarded to the State the report on the disbursements made in application thereof, in accordance with the provisions of Article 5 of the Regulations of the Court on the Operation of the Legal Assistance Fund (hereinafter "Regulations on the Merits"), and granted it a period for its observations. On the following March 23, the State indicated that it had no observations.

14. *Deliberation of the present case*.- The Court began the deliberation of this Judgment on November 20, 2018.

II
COMPETENCE

15. The Court is competent to hear this case, under the terms of Article 62(3) of the Convention, because Colombia has been a State Party to the Convention since July 31, 1973, and recognized the contentious jurisdiction of the Court on July 21, 1973. June 1985.

IV.
RECOGNITION OF INTERNATIONAL RESPONSIBILITY OF THE STATE

TO.*Act of acknowledgment and observations of the Commission and of the representatives*

16. In his reply, the*State*manifested

> The Isaza Vélez family can be sure that the Colombian State will not cease its search for truth and justice in this case [... and] sincerely apologizes to Mrs. Carmenza and her children Jhony Alexander and Haner Alexis and expresses absolute respect and consideration[. I] understand that the long time that has elapsed since the disappearance [...] has resulted in their losing confidence in the State and its institutions. We hope that this recognition will help them recover some of that lost trust."

17. The Commission positively assessed this acknowledgment and considered that it constitutes a constructive step in this international process, although it is partial and limited to a very limited part of the case. In particular, the State asked the Court to accept its recognition "in the terms in which it was proposed", which it presented in three parts:

> *a) "Responsibility for the violation of the rights to recognition of legal personality (art. 3), life (art. 4), personal integrity (art. 5) and personal freedom (art. 7), in relation to article 1.1 of the ACHR regarding Víctor Manuel Isaza Uribe"*

18. The*State*stated that, "taking into account that the judicial authorities have not been able to determine the specific circumstances of [his] disappearance, [...] acknowledges its responsibility for [the said] rights [...] of Víctor Manuel Isaza Uribe [...] based on that he was in the custody of a prison[13], and for [...] being in a relationship of

[13] The State indicated that its acknowledgment "does not cover the events that occurred between October 27 and November 18, 1987, during which time Víctor Manuel Isaza was detained on the orders of Criminal Investigation Court 64 of Puerto Nare, due to a criminal case that was advanced against him, in accordance with what is expound[ed] on the merits of the matter."

special subjection, the administration had to respond fully for their safety and protection"[14]. Its recognition "does not imply acceptance of the occurrence of the international crime of forced disappearance of persons in the specific case, since there are still not enough elements to conclude that state agents participated in the facts." Therefore, it does not recognize the alleged violation of the guarantees contained in Articles 1.a and 1.b of the Inter-American Convention on Forced Disappearance of Persons, nor of Articles 2, 16, 11.2 and 17 of the Convention. He clarified that his recognition "is directly related to the absence of an effective investigation."

19. The *Commission* indicated that in its Report it declared the violation of those rights derived from the classification of the facts as a forced disappearance, for which reason what the State indicated does not constitute an acknowledgment of responsibility, since it expressly questions the facts raised by the Commission and the representatives and their legal classification, invoking those rights but with different hypotheses about the reasons that support their responsibility.

20. The *representatives* They did not accept the recognition of the State because it only admits failures in the control of the prison and the impossibility of establishing what happened, but it does not recognize the forced disappearance by paramilitary groups with State acquiescence nor does it accept the factual framework, the alleged contexts or the current legal frameworks , so it should be rejected.

b) *"Partial responsibility for the violation of judicial guarantees (art. 8), and judicial protection (art. 25), in relation to article 1.1 of the ACHR, with respect to Carmenza Vélez, Jhony Alexander Isaza Vélez and Haner Alexis Isaza Vélez" .*

21. The *State* recognizes that "the prolonged delay in the investigation carried out in the ordinary jurisdiction, related to the disappearance of Víctor Manuel Isaza Uribe, constituted, by itself, a violation of [those rights... since] the 29 years that have elapsed since the beginning of [it]] exceed a term that can be considered reasonable" and that in that investigation "there were some inconsistencies" that made it difficult to clarify the facts, such as the delay in carrying out various procedures and periods of inactivity. In its final arguments, the State added that this acknowledgment is based on the fact that the criminal file shows extensive periods of unjustified inactivity and that, among the inconsistencies related to the delay in carrying out proceedings,

22. The *Commission* It stated that this acknowledgment does not include Mr. Isaza Uribe as a victim, despite the fact that in these cases the forcibly disappeared person is also a victim of such violations; limited to breach of reasonable time warranty; and it only adds a generic reference to "some inconsistencies", without specifying them, so that other factors of impunity analyzed remain controversial.

23. The *representatives* They indicated that the recognition is not consistent with the reparations offered, in which the State wants the Court to refer only to domestic regulations; that it makes key aspects of the case invisible and that it corresponds more to an acceptance of their own version of the facts, for which they asked the Court to dismiss it. Secondarily, they requested that it take effect only as pertinent to a reasonable period of time and that the pertinent reparation be established, taking into account the seriousness of the case and the lack of judicial response.

[14] In its final written arguments, the State added that such acknowledgment is based on its duty to guarantee vis-à-vis persons deprived of their liberty in prison establishments, in the absence of a satisfactory response regarding the circumstances of their abduction by unidentified persons against his will, for which reason his responsibility for failing in his duty of custody is presumed," with which he "partially accepted some of the claims of the Commission and the representatives" and that he has not been able to clarify these facts.

c) "Liability for the violation of the right to personal integrity (article 5) in relation to the guarantee obligation established in article 1.1 of the ACHR with respect to Carmenza Vélez, Jhony Alexander Isaza Vélez and Haner Alexis Isaza Vélez."

24. The *State* recognizes that the delay in the investigation has generated feelings of anguish, pain and uncertainty in the Isaza Vélez family as a result of the disappearance and the lack of information on the specific circumstances in which it happened, therefore, taking into account the application of a presumption *iuris tantum* Regarding direct family members, the State acknowledges its responsibility for said violation.

25. Although the *Commission* valued this acknowledgment, considered that it is partial with respect to the totality of the damage, since the impact on the personal integrity of the next of kin of victims of forced disappearance is linked to its own dynamics, which are not necessarily present in other types of cases. disappearances.

26. The *representatives* indicated that it is contradictory for the State to cite the jurisprudence on presumption *iuris tantum* to accept responsibility for a violation that according to him did not occur, such as the forced disappearance. They request to reject the recognition because it does not take into account the cruel and inhumane treatment for the relatives for the forced disappearance.

b. *Considerations of the Court*

27. In accordance with articles 62 and 64 of the Regulation[fifteen], and in exercise of its powers of international judicial protection of human rights, a matter of international public order, it is incumbent on this Court to ensure that the acts of acknowledgment of responsibility are acceptable for the purposes sought by the Inter-American System. This task is not limited to verifying, recording or taking note of the acknowledgment made, or its formal conditions, but must confront them with the nature and seriousness of the alleged violations, the demands and interest of justice, the particular circumstances of the specific case , as well as the attitude and position of the parties, in such a way that it can specify, as far as possible and in the exercise of its competence, the judicial truth of what happened[16].

28. This Tribunal considers that, although partial and in its own terms, the acknowledgment of international responsibility constitutes a positive contribution to the development of this process and to the validity of the principles that inspire the Convention, as well as partially to the reparation needs of the victims[17].

29. The State did not make an express acknowledgment of responsibility for the facts alleged by the Commission and the representatives. Thus, given that it would not be plausible to accept said acknowledgment without it implying at the same time acknowledging the occurrence of the facts on which it was based, the Court understands that it also covers those facts of the factual framework of the case related to the violations of the rights that were recognized to the detriment of the alleged victims, with

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[fifteen] Articles 62 and 64 of the Regulations of the Court establish: "Article 62. Acknowledgment: If the defendant communicates to the Court his acceptance of the facts or his total or partial acceptance of the claims that appear in the submission of the case or in the brief of the presumed victims or their representatives, the Court, having heard the opinion of the other parties involved in the proceeding, will decide, at the appropriate procedural moment, on its origin and its legal effects." "Article 64. Continuation of the examination of the case: The Court, taking into account the responsibilities incumbent on it to protect human rights, may decide to continue the examination of the case, even in the presence of the assumptions indicated in the preceding articles."

[16] *Cf. Case of Kimel v. Argentina. Merits, Reparations and Costs*. Judgment of May 2, 2008. Series C No. 177, para. 24; and *Case of Ramírez Escobar et al. v. Guatemala. Merits, Reparations and Costs*. Judgment of March 9, 2018. Series C No. 351, para. 27.

[17] *Cf. Case of Benavides Cevallos v. Ecuador. Merits, Reparations and Costs*. Judgment of June 19, 1998. Series C No. 38, para. 57; and *Case of López Soto et al. v. Venezuela. Merits, Reparations and Costs*. Judgment of September 26, 2018. Series C No. 362, para. 3. 4.

exception of those facts that were expressly controversial[18]. The Court notes that the acknowledgment of specific and specific facts and violations may have effects and consequences in the analysis that this Court makes of the other alleged facts and violations, to the extent that they all form part of the same set of circumstances.[19]. Thus, taking into account the violations acknowledged by the State, as well as the observations of the representatives and the Commission, the Court considers that the controversy has ceased with respect to:

a) The violation of the rights to judicial guarantees (article 8.1) and to judicial protection (article 25), to the detriment of the next of kin of the alleged victim of forced disappearance, specifically with regard to the reasonable period of time in the investigation carried out in the ordinary criminal justice; the delay in carrying out certain procedures, including the lack of urgent search actions for Mr. Isaza after his removal from prison, as well as the periods of inactivity that have made it difficult to clarify the facts; and

b) the violation of the right to personal integrity (article 5) of the aforementioned relatives, specifically due to the anguish, pain and uncertainty they have suffered and the lack of information on the circumstances in which the events occurred, without prejudice to what it corresponds to decide on the alleged legal classification of the facts as forced disappearance and the consequences thereof (*infra* paras. 165 and 166).

30. On the other hand, the State acknowledged the violation of the rights recognized in Articles 3, 4, 5 and 7 of the Convention, in relation to Article 1.1 thereof, to the detriment of Mr. Isaza Uribe for failing in his duty of custody and protection while he was deprived of liberty, as well as for the absence of an effective investigation, but he emphasized that this does not include an acknowledgment for the commission of a forced disappearance. It is clear that said statements by the State do not constitute an acknowledgment of the claims of the Commission and the representatives, since they are based on versions of the facts, assessments of the evidence, and a legal classification different from the one they maintain. Therefore, the Court deems that the controversy regarding the alleged facts and violations to the detriment of the presumed victim of forced disappearance continues,[twenty]. Likewise, the controversy continues regarding the alleged violation of the rights to protection of the family and to honor and dignity (articles 17 and 11).

31. Likewise, with regard to judicial guarantees and judicial protection (Articles 8.1 and 25 of the Convention), the Court has understood that, in cases of forced disappearance, the disappeared person is also a victim of the violation of those rights, for which is still the controversy in this sense, as well as with respect to the other aspects of such alleged violations, particularly the lack of due diligence in the logical lines of investigation.

32. Lastly, the State recognized its "obligation to make reparation to the victims in this case" and presented certain observations on the requests for reparation measures or the modalities in which they could be granted (*infra*para. 174), for which reason the Court will determine, in the corresponding chapter, the measures of reparation that are appropriate in the present case, taking into account the request, the jurisprudence in this matter and the observations of the State.

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[18] *Cf. Case of Zambrano Vélez et al. v. Ecuador. Merits, Reparations and Costs*. Judgment of July 4, 2007. Series C No. 16, para. 17, and*Case of López Soto et al. v. Venezuela*, para. 29.

[19] *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, para. 27; and*Case of Vereda La Esperanza v. Colombia. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 31, 2017. Series C No. 341, para. twenty-one.

[twenty] On April 12, 2005, the State deposited the instrument of ratification of the Inter-American Convention on Forced Disappearance of Persons.

V
PRIOR CONSIDERATION

33. The State stated that, in the framework of the processing of the case before the Commission, "there were inconsistencies that [...] warrant a pronouncement" by the Court. Clarifying that, consistent with its acknowledgment of responsibility, the jurisdiction of the Court is not challenged or questioned, it asked it to carry out a legality check on the following[twenty-one]:

a) In its Report, the Commission stated in an imprecise manner that it had concluded the possibility of a friendly settlement because "the State did not make a statement," which is not true[22].

b) In the proceedings before the Commission there was a period of inactivity of 11 years that is not attributable to the State[23], which violates due process. Since the passage of time produces obstacles regarding measures that a State can adopt to remedy the situation, if it is required to respond within a reasonable time in the processing of petitions and cases, the Commission must also ensure that this criterion is respected. by the petitioners, so that the process can be processed in the shortest time possible for the benefit of the victims.

c) Once the Merits Report was notified, the State began the pertinent steps to comply with the recommendations of the Commission[24]Therefore, it regrets the Commission's decision to refer the case to the Court, since the progress achieved allowed the case to continue before it.

34. The State asked the Court for a pronouncement "at least with a declaratory nature", in which it invites the Commission to regulate the legal consequences of this type of situation, especially the long periods of procedural inactivity and the decision to refer a case before the Court when the State has shown seriousness, willingness and capacity to comply with its recommendations.

35. The Court cannot deny the reasonableness of some of the State's proposals, but recalls that the Commission has autonomy and independence in the exercise of its mandate

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[twenty-one] The State argued that the recent position adopted by the Court in the*case of Rodríguez Vera et al.*regarding the "control of legality" (which requires that the error be alleged by means of a preliminary objection), denatures it, since it can also be exercised when the Commission deviates from due legal process, without thereby conflicting with its autonomy or with a possible ruling of the Court on the merits.

[22] The State indicated that, in March 2012, it received a communication from the Commission forwarding a friendly settlement proposal submitted by the petitioners and that, on the following October 3, the State did tell the Commission that it considered that the conditions were not met. to start a search process for a friendly solution.

[23] The State noted that the Admissibility Report was issued in 2011, more than 20 years after the petition was filed; that between 1998 and 2009 there was a period of procedural inactivity in the case before the Commission, without stating the reasons why the representatives did not respond to information provided by the State in September 1997 and regarding which the Commission reiterated the request of observations in August 1998. During that period, the IACHR or the representatives did not promote the processing of the petition.

[24] The State indicated that it carried out inter-institutional consultations to implement the recommendations in concert with the victims and their representatives, who participated valuable in the meetings, and that it informed the Commission, in October 2015, January and March 2016, about the status of compliance. In particular, he made reference to the following:

- The Attorney General's Office and the Attorney General's Office showed all the necessary disposition to promote the investigations. The Attorney General agreed to the request of the representatives to revoke the filing of the preliminary investigation and reopen the disciplinary process.
- Progress was made with the indemnities, since a favorable concept had been obtained from the Committee of Ministers.
- Regarding violence against unionists, the State referred to a series of regulatory and institutional measures adopted between 1997 and 2015 for the protection of union leaders and labor activists.
- Significant progress was made in the implementation of satisfaction measures, specifically the public act of acknowledgment of responsibility and the installation of a commemorative plaque in the Puerto Nare municipal jail, which was to be assumed by the Attention and Repair Unit Comprehensive to the Victims in agreement with the representatives, but later the case was submitted to the Court.
- Regarding actions to combat the crime of forced disappearance, the State referred to Law 589 of 2000 that defines it; as well as the creation of the Commission for the Search of Disappeared Persons, the National Registry of Disappeared Persons, the Urgent Search Mechanism, the Bank of Genetic Profiles of Disappeared Persons, and commemoration spaces; as well as other legal, institutional and administrative mechanisms in this regard.

in accordance with the provisions of the Convention[25]. On the other hand, the Court considers that the "control of legality" of the procedure of a case before the Commission is to protect the right of defense before the Court when one of the parties alleges well-founded that there is a serious error that violates it.[26], which has not been alleged in the present case. In addition, requests from States of this type have been considered when they have been presented as a preliminary objection.[27]and, in another case in which the State had renounced the exceptional nature of its request, the Court decided that it was inadmissible because "it exceeds its competence [...] to carry out a legality control in the abstract, for merely declaratory purposes", since this "it would be incompatible with the partial recognition of responsibility of the State"[28]. These criteria are applicable to the present case, for which reason the Court does not rule on what is alleged by the State.

SAW
PROOF

A. Admissibility of documentary evidence

36. The Court received various documents presented as evidence by the Commission, the representatives and the State, which, as in other cases, it admits on the understanding that they were presented at the due procedural opportunity (Article 57 of the Rules of Procedure).[29]and its admissibility was not contested or contested[30].

37. The State objected to the admissibility and eventual assessment of the report "Footprints and Faces of Forced Disappearance (1970-2010)", published by the National Center for Historical Memory of Colombia[31], requesting that it not be taken as evidence in the process because it is a self-referential evidence (since it summarizes the processing of the case before the Commission and includes the positions presented by the representatives themselves) and because the impartiality of the source is seriously questionable, since the rapporteur of said report, Mr. Federico Andreu-Guzmán, was in turn representative of the alleged victims before the Commission in this case.

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[25] *Cf. Control of Legality in the exercise of the powers of the Inter-American Commission (Articles 41 and 44 to 51 of the Convention)*, Advisory Opinion OC-19/05 of November 28, 2005, para. 25, and *Case of Dismissed Workers of Petroperú et al. v. Peru. Preliminary Exceptions, Merits, Reparations and Costs*. Judgment of November 23, 2017. Series C No. 344, para. 51.

[26] *Cf. Case of Castañeda Gutman v. Mexico. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 6, 2008. Series C No. 184, para. 40; and *Case of Valencia Hinojosa and another v. Ecuador. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 29, 2016. Series C No. 327, para. 28.

[27] It is noted that, in a recent case, this allegation was not presented as a preliminary objection, since it was the representatives who asked the Court to exercise legality control in relation to an alleged victim who had been excluded in the Commission Report. *Cf. Case of Dismissed Workers of Petroperú et al. v. Peru*, paras. 49 to 57.

[28] *Cf. Case of Rodríguez Vera et al. (Disappeared from the Palace of Justice) v. Colombia*, para. 54. See also *Case of Herrera Espinoza et al. v. Ecuador. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 1, 2016. Series C No. 316, para. 39.

[29] Documentary evidence may be submitted, in general and in accordance with Article 57.2 of the Regulations, together with the submission of the case, requests and arguments, or response briefs, as appropriate, and evidence submitted outside of these opportunities is not admissible. procedures, except in the exceptions established in the aforementioned article 57.2 of the Regulation (namely, force majeure, serious impediment) or unless it were a supervening event, that is, occurred after the aforementioned procedural moments. *Cf. Case of the Barrios Family v. Venezuela. Merits, Reparations and Costs*. Judgment of November 24, 2011. Series C No. 237, paras. 17 and 18, and *Case of Acosta et al. v. Nicaragua. Preliminary Objections, Merits, Reparations and Costs*. Judgment of March 25, 2017. Series C No. 334, para. 23.

[30] *cf. Case of Velásquez Rodríguez v. Honduras. Background*. Judgment of July 29, 1988. Series C No.4, para. 140, and *Carvajal case Carvajal and others v. Colombia. Merits, Reparations and Costs*. Judgment of March 13, 2018. Series C No. 352, para. 18.

[31] *cf.* Report of the National Center for Historical Memory, "Footprints and Faces of Forced Disappearance (1970-2010)", Volume II, National Printing Office of Colombia, Bogotá, 2013 (evidence file, f. 5453).

38. It is noted that, in the preparation of said report, Mr. Andreu-Guzmán certainly participated as an expert[32]. On the other hand, it is highlighted that the National Center of Historical Memory is a public establishment of the national order, created by Law 1448 of 2011 (Law of Victims and Land Restitution), with autonomy and jurisdiction throughout the national territory, with the objective to gather and recover all documentary, testimonial and other media material related to human rights violations[33]. Their reports have been evaluated or referred to in previous cases before this Court[3. 4]and, in response to questions from the Judges during the hearing, the State stated that these reports have indeed been used to design public policies and that the Center tries to ensure that its findings and recommendations have an impact on the competent entities for this purpose. From the foregoing it can be deduced that the reports of said institution, legally created as one of the transitional justice mechanisms, have documentary, symbolic and historical value and are intended to influence the design of public policies. For these reasons, the Court rejects what is alleged by the State and admits the report "Footprints and Faces of Forced Disappearance (1970-2010)", which will be assessed in accordance with the principles of sound judgment, taking into account the whole of the body of evidence and what is alleged in the case.

39. Regarding the annexes to the briefs with final arguments, the Court notes that the documents had already been provided previously, that they were not contested, and that the observations of the representatives on those that were forwarded by the State refer to their value. or probative weight, so they do not affect your admissibility[35].

B. Admissibility of testimonial and expert evidence

40. The Court received statements rendered before a notary public by the alleged victims, witnesses, and expert witnesses, requested by the President[36], as well as statements by an alleged victim and two expert witnesses during the public hearing, which he admits as long as they conform to the purpose defined in the Resolution that ordered to receive them and to the purpose of this case (*supra* para. 10). Regarding the statements made by the alleged victims, the Court reiterates, in accordance with its jurisprudence, that they will be assessed to the extent that they can provide more information on the alleged violations and their consequences, but not in isolation but within the set of evidence. of process[37].

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[32] The first edition of the Report was published in November 2013, one year after the last letter signed by him in the processing of the case before the Commission as a member of the organization representing the alleged victims.

[33] Its objective is to make the information available to interested parties, researchers and citizens in general, to provide and enrich knowledge of the political and social history of Colombia and contribute to the realization of comprehensive reparation and the right to truth of the victims. and of society as a whole, as well as the duty of memory of the State on the occasion of the violations that occurred in the framework of the Colombian armed conflict. Information taken from the website of the National Center for Historical Memory. Available in: http://www.centrodememoriahistorica.gov.co/somos-cnmh/que-es-el-centro-nacional-de-memoria-historica

[3. 4] For example, in the *Case of the Afro-descendant Communities Displaced from the Cacarica River Basin (Operation Genesis) v. Colombia*, in which they were referenced by the declarant for information purposes offered by the State (see para. 249). also see *Vereda La Esperanza v. Colombia, Yarce et al. v. Colombia* and *Carvajal Carvajal v. Colombia*.

[35] Notwithstanding this, in their final written arguments the representatives presented some plans of the municipality of Puerto Nare and requested that the Court admit them as evidence to facilitate adjudication. The State argued that the documentation is from April 2016, so there is no justification, under Article 57 of the Regulations, for them to be presented on that occasion. In this sense, the Court considers that, although the presentation of these documents would be untimely, the State also stated, when acknowledging responsibility, that one of the inconsistencies of the internal investigations is the lack of exact verification of police stations and armed forces. (*supra* note 15), for which reason it deems it appropriate, in application of Article 58.a) of its Regulations, to incorporate such ex officio documentation into the body of evidence in this case, considering it useful or necessary for its analysis.

[36] The State forwarded the opinions of Mrs. Paula Gaviria Betancur and Mr. Jorge Mauricio Cardona Angarita and the testimonies of Mr. Diego Fernando Mora Arango and Mrs. Luz María Ramírez García. The representative forwarded the statements of the alleged victims Jhony Alexander Isaza Vélez and Haner Alexis Isaza Vélez, of the witnesses Ofelia Uribe and Fabiola Lalinde, as well as of the expert witnesses Michael Reed Hurtado, José Luciano Sanin Vasquez, Carlos Medina Gallego, Yeini Carolina Torres Bocachica and Fernando Ruiz Acosta.

[37] *cf. Case of Loayza Tamayo v. Peru. Background*. Judgment of September 17, 1997. Series C No. 33, para. 43, and *Case of Pacheco León et al. v. Honduras. Merits, Reparations and Costs*. Judgment of November 15, 2017. Series C No. 342, para. twenty.

VII
FACTS

41. In this chapter, the Court will establish the facts that it will consider proven in the present case, based on the State's acknowledgment of responsibility and according to the factual framework and the body of evidence admitted, in the following order: a) Context; b) Disappearance of Víctor Manuel Isaza Uribe; and c) Investigations and internal processes.

A. Context: Magdalena Medio, Puerto Nare and conflict

A.1 Magdalena Medio and paramilitarism

42. The Magdalena Medio region is of great strategic and economic importance, mainly due to its geographical position. Despite this, it has remained a peripheral region "due to the lack of state institutions," for which reason a large part of that space has been filled by all the armed actors, becoming an area of high conflict. In this sense, it was not "by chance that the National Liberation Army (ELN) emerged in the area in the mid-1960s and at the end of the 1970s, the so-called "Self-defense groups". At the beginning of the 1980s, "the Revolutionary Armed Forces of Colombia, the People's Army FARC-EP, the Popular Liberation Army (EPL) and six battalions of the National Army made incursions." Regarding the appearance of paramilitary groups in that region,[38].

43. As has been verified in previous cases before this Court, in the context of the fight against the guerrilla groups, the State promoted the creation of "self-defense groups" among the civilian population through a regulatory framework, whose main purposes They were helping the Public Force in anti-subversive operations, for which they were granted permits to carry and possess weapons and logistical support. In addition, mainly from 1985, it became notorious that many of these groups changed their objectives and became criminal groups, commonly called "paramilitaries", which first developed in Magdalena Medio and later spread to other regions of the country. country[39].

44. One of the self-defense groups that operated in the region was called Autodefensas Campesinas del Magdalena Medio ("ACMM"), known at the beginning as "Los Escopeteros" and made up of peasants who owned small and medium-sized tracts of land in February 1978 to fight the guerrilla that controlled the area, for which he received help from the Army

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[38] *Cf., inter alia, Case of Vereda La Esperanza v. Colombia, supra*, paras. 52 to 54. The Historical Memory Group of the National Reparation and Reconciliation Commission (CNRR) verified that, in Magdalena Medio, "[s]ince 1982 the army accentuated and complemented counterinsurgency tactics that had previously been used marginally such as joint patrols by military and paramilitary units. The creation of military training schools for civilians, where training was conducted by officers and former army officers, was an important step not only in training but also in the reproduction and naturalization of self-defense groups in Magdalena Medio. [... The] self-defense groups in their early years were the 'vanguard' of the army squads, with the mission of seeking contact with the guerrillas and dismantling their political and social bases". *La Rochela: memories of a crime against justice"*, Ed. Aguilar, Altea, Taurus, Alfaguara SA, Bogotá, 2010, Page 278. Available at: http://www.centrodememoriahistorica.gov.co/descargas/informes2010/informe_la_rochela.pdf . The Administrative Department of Security (DAS) documented that, in Magdalena Medio, starting in 1982, a "major effort to disinfect the area against the FARC" was launched through the formation of officially organized, trained and supervised paramilitary groups. (Administrative Department of Security, Central Intelligence, circa 1990, "Creation of self-defense in Magdalena Medio", p. 5, quoted by expert witness Michael Reed in his written statement, exp. evidence folio. 6245).

[39] *Cf. Case of 19 Merchants vs. Colombia,* paras. 84.a) to 84.h), and *Case of the Mapiripán Massacre v. Colombia,* paras. 96.2 to 96.3.

with weapons, ammunition, training and support in their operations[40]. According to the Office of the Attorney General of the Nation, in 1982 the ACMM began their incursion into various villages located in the municipality of Puerto Boyacá, in the places where the subversion had been extorting money –through the so-called "boleteo" and the so-called "vaccination"– to various farmers and ranchers in the region. This moment of paramilitarism in the region was characterized, among other things, by the massive entry of drug traffickers, either as financiers (the war became more and more expensive and could not be paid for only with extensive cattle raising) or as competitors[41].

45. In several cases before this Court, it has been possible to verify, in different periods and geographical contexts, the existence of links between members of the Public Force and the Armed Forces of Colombia and paramilitary groups, which would have consisted of: a) actions support or collaboration, or in b) omissions that allowed or facilitated the commission of serious crimes by non-state actors[42]. The "legitimacy" of these paramilitary groups in the region was publicly claimed and promoted by high levels of the Armed Forces[43]and the aforementioned links have also been revealed in statements by paramilitaries[44].

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[40] The State stated that this ACMM group, known in the beginning as "Los Escopeteros", was founded and led by Ramón María Isaza Arango, alias "el viejo", "Moncho" or "el patrón". He stated, based on a document from the Attorney General's Office, that while this was happening in Antioquia, in the municipality of Puerto Boyacá a process of organization and arming of the civilian population was taking place to confront the siege of peasants, ranchers and farmers. of the region generated by various FARC Fronts. Thus, in order to procure weapons for the civilian population, it was decided to create and operate the Association of Farmers and Ranchers of Magdalena Medio ("ACDEGAM"), which would become a front for the transit of money, logistics, payment of salaries , weapons and ammunition of the nascent Peasant Self-Defense Forces of Puerto Boyacá, which is why in 1984 Ramón Isaza, for economic and logistical reasons, admitted to merging his group "Los Escopeteros" with the nascent Peasant Self-Defense Forces of Puerto Boyacá (ACPB), and both used the already existing "ACDEGAM" . The unified group extended its actions throughout the Magdalena Medio. In addition, he pointed out that there is evidence according to which the ACPB was also born as a group of gunmen, which leads one to believe that they grew more quickly in terms of men, weapons, and logistics, supported by a secondary source of financing from drug trafficking, allowing them to lead and organize various groups with anti-subversive ideals known interchangeably at the beginning of the eighties as "Masetos" and "Escopeteros", overflowing the original territory and spreading the paramilitary phenomenon and the interference of the illegal armed group at the national level. (*cf.* State's answering brief, pgs. 48 to 54, exp. background ff. 307 to 313). Indeed, this Court was informed in another case that in 1984 a "self-defense group" called the Association of Campesinos and Ranchers of Magdalena Medio (ACDEGAM) was formed in the Municipality of Puerto Boyacá, which initially had social and defense against possible attacks by the guerrillas and, over time, this group became a "paramilitary" or criminal group, which not only sought to defend itself against the guerrillas but also to attack and eradicate them. This group had great control in the municipalities of Puerto Boyacá, Puerto Berrío and Cimitarra and was commanded by Gonzalo Pérez and his sons Henry and Marcelo Pérez. At the time the events in this case occurred,*Cf. Case of 19 Merchants vs. Colombia,*para. 84.d). Thus, this first stage of the paramilitary period emerged from a context that was characterized by: (i) the precariousness of the State in the territory, (ii) the progress achieved by the FARC in Magdalena Medio, (iii) the empowerment of groups self-defense groups at the national level and their promotion by the Army, (iv) the organization of ranchers through "ACDEGAM", and (vi) the formation of a political leadership, all within a framework in which contextual circumstances coexisted. such as the existence of territorial demands for private provision of security (*Cf. Case of Vereda La Esperanza v. Colombia,*para. 54).

[41] *Cf. Case of Vereda La Esperanza v. Colombia, supra*, paras. 55 and 56. See also the written statement of the expert Carlos Medina Gallego (evidence exp. ff. 7000-7010).

[42] See in this sense the documentation and citation of information and its own jurisprudence, carried out by this Court in the*Vereda La Esperanza case vs. Colombia, supra*, para. 68 to 70.

[43] Thus, for example, in a speech delivered in April 1986 by the Commander of the Fifth Brigade of the National Army, with jurisdiction in Magdalena Medio, Brigadier General Daniel García Echeverry made a "fervent appeal to the nationalist sentiments of Colombians to move from the inaction to the legitimate defense, to the offensive action to confront the terrorist activity" (*cf.* https://www.semana.com/nacion/articulo/con-sus-propias-manos/7681-3) In 1987, in a debate on paramilitary groups in the House of Representatives, the Minister of Defense (1986-1988), General Rafael Samudio Molina, stated that "the right to self-defense is a natural principle. Everyone can appeal to the legitimate right of defense and, if the communities organize, it must be seen from the point of view that they do it to protect their goods and their lives" (*cf.* El Mundo newspaper, Medellín, July 25, 1987 edition, p. 8, exp. evidence, page 4962). See also the written statement of the expert Carlos Medina Gallego (exp. proof ff. 7000-7010).

[44] In the aforementioned document of the Administrative Department of Security (DAS), the links between the paramilitary organization of Puerto Boyacá and the "Bárbula" Battalion are reported; joint operations and patrols between paramilitaries and the military; the "cleansing" activities in the Magdalena Medio region against all individuals considered "FARC collaborators"; the way in which the paramilitary group of Puerto Boyacá began to articulate its activities with other "autodefensas" from other regions of Colombia and established alliances with drug traffickers, such as Gonzalo Rodríguez Gacha and Víctor Carranza, with the help of members of military intelligence. Cf. Document of the Administrative Department of Security, without title or date,

46. Thus, with the interpretation given to the legal framework for years, the State encouraged the formation of said groups, that is, it objectively created a situation of risk for its inhabitants.Four. Five. Certainly, starting in January 1988, the State began to adopt normative measures to exclude from its legal system the provisions that promoted the creation and operation of these groups and to promote their dismantling, their reinsertion into civilian life and the investigation and punishment of their criminal conduct46.

A.2 Puerto Nare, economic activity, trade unionism and anti-union violence

47. The municipality of Puerto Nare is located in the Magdalena Medio region, in the Department of Antioquia, on the banks of the Magdalena River, a few kilometers from the municipality of Puerto Boyacá and borders the municipalities of San Luis, Puerto Berrío, Puerto Triunfo , Caracolí and San Carlos. In relation to the natural wealth and industrial and mining projection of the municipality, in the first decades of the 20th century the companies "Cementos del Nare SA" and, later, "Colcarburos SA" settled in the municipality, in the village of La Sierra47.

48. The trade union organizations created by the workers of Cementos del Nare and Colcarburos in Puerto Nare affiliated with the “Single Union of Workers of the Construction Materials Industry” (SUTIMAC), created in 1971, thus giving birth to the “ Sectional Nare de Sutimac”. By 1986, SUTIMAC had four branches: Nare, Medellín, Itagüí and Caracolí. Between 1981 and 1985 SUTIMAC organized stoppages or strikes, particularly in the cement companies in Puerto Nare or together with other unions in the cement industry, affiliated with the National Federation of Construction and Cement Workers (FENALTRACONCEM).48.

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confirming what is stated in the DAS Document. The testimony of Viáfara Salinas was reproduced in “Testimony on Drug Trafficking and Private Justice”, in Anales del Congreso, Year XXXII, No. 89, Bogotá, September 2, 1989. (evidence file, ff. 1470 to 1548). Also cited in the*case 19 Merchants v. Colombia*, para. 84.d.

Four. Five *Cf. Case of the Pueblo Bello Massacre v. Colombia*.Judgment of January 31, 2006. Series C No. 140,para. 126.

46 Thus, in April 1989, Decree 0815 was issued, through which the validity of paragraph 3 of article 33 of the Decree was suspended. Legislative 3398 of 1965, which empowered the Ministry of National Defense to authorize individuals to carry weapons for the exclusive use of the Armed Forces. It should be noted that in the considering part of said decree it was indicated that "the interpretation of [Legislative Decree 3398 of 1965, adopted as permanent legislation by Law 48 of 1968,] by some sectors of public opinion has caused confusion about its scope and purposes in the sense that they can be taken as a legal authorization to organize armed civilian groups that end up acting outside the Constitution and the laws.” By means of a judgment of May 25, 1989, the Supreme Court of Justice declared the aforementioned paragraph 3 of Article 33 of Decree 3398 “unenforceable”. On June 8, 1989, the State issued Decree 1194 "to sanction new criminal modalities, as required by the restoration of public order." In the considering part of this norm, it was stated that "the events that have been occurring in the country have shown that there is a new criminal modality consisting of the commission of atrocious acts by armed groups, misnamed "paramilitaries", constituted in squads of death, gangs of hit men, self-defense or private justice groups, whose existence and actions seriously affect the social stability of the country, which must be repressed to achieve the restoration of public order and peace.” In this decree the promotion, financing, organization, direction, promotion and execution of acts "tended to obtain the formation or entry of people into armed groups of the commonly called death squads, bands of hitmen or private justice, mistakenly called paramilitaries." Linking and belonging to said groups was also criminalized, as well as instructing, training or equipping "persons in military tactics, techniques or procedures for the development of criminal activities" of the aforementioned armed groups. In addition, the fact that they were "committed by active or retired members of the Military Forces or the National Police or State security agencies" was stipulated as an aggravating circumstance of the above conducts, from which it can be deduced that this aggravating circumstance had a important motivation, which was that members of the Public Force were effectively linked to such criminal groups. Since then, a number of other regulations have been adopted in this regard.*Cf. Case of 19 Tradesmen v. Colombia*,paras. 84.a) to 84.g).

47 *cf.* Website of the Mayor's Office of Puerto Nare, Historical review. Available in: antioquia.gov.co/informacion/nuevaweb/historia Traces and Faces of Forced Disappearance (1970-2010) (exp. test ff. 5553 to 5600). According to the representatives, today the corporate name of said companies is "Cementos Argos" and "Caldesa SA" respectively.

48 *cf.*Traces and Faces of Forced Disappearance (1970-2010) (evidence file, folio 5566); and "Exterminated union leaders: a history of resistance against the logic of terror against SUTIMAC Puerto Nare." In: “NOS FACEN FALTA Historical memory of anti-union violence in Antioquia, Atlántico and Santander (1975-2012)”. National Union School. First edition. Medellín: 2015 (exp. proof f. 1769).

49. Said union represented a close relationship between union demands and popular struggles and, later, the Communist Party of Colombia (PCC) began to exercise great influence in it.[49]. In the mid-1980s, the appearance of the political party Unión Patriótica (UP) on the national political scene in Puerto Nare meant the revitalization and combination of political activity with the demands of the workers and trade unionists of the affiliated companies Cementos Nare and Colcarburos. to SUTIMAC. Several union leaders became local leaders of the UP and, as such, participated in the 1986 elections, in which mayors and councilors were elected for the period 1986-1990. In Puerto Nare, the UP won two seats for the Municipal Council, one of them the President of the Nare Section of SUTIMAC, Julio Cesar Uribe Rúa. The association of the union with the UP gave rise to great violence against it,[fifty]:

50. In the same sense, according to a report by the United Nations Development Program (UNDP), "when FENALTRACONCEM had already given way to the current [SUTIMAC], and union activity was combined within it with left-wing political activity In the UP movement, the paramilitary group from Puerto Boyacá, under the command of Gonzalo Rodríguez Gacha, also appeared in Puerto Nare in 1986, to prevent any protest action, and to threaten and assassinate unionists from Sutimac [...] The act that he signed the dominance of the paramilitaries in Puerto Boyacá was in December 1986 the assassination of the union president, whom they made get off a bus to kill him [...] from then on, the homicides of Sutimac members increased rapidly, and all their victims coincide in being, in addition to trade unionists,militant local politicians of the Patriotic Union and almost all of them councilors [...] between 1986 and 1990 alone there were 25 homicides among whose victims completely exterminated two boards of directors of the Cementos del Nare union”[51].

51. Since the assassination of the president of SUTIMAC and councilor for the UP in December 1986, up to December 1987 there are seven cases of members, activists or leaders of that union (in some cases also councilors for the UP) who were murdered by people unidentified women or paramilitaries from the “MAS” group (“death to kidnappers”). Several of these events took place in situations in which the victims had been in state custody or in the vicinity of state security facilities.[52].

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49 *cf.*“Exterminated union leaders: a history of resistance against the logic of terror against SUTIMAC Puerto Nare”, *supra*(exp. test, f. 1771).

fifty "In view of the achievements obtained in labor matters for the workers of the region [by] the labor unions settled in La Sierra, SUTIMAC and SINTRACOLCARBURO, [... whose] leaders defined themselves as "communists", mainly coming from Puerto Nare and its La Sierra corregimiento, the union leaders entered the political arena, observing that they could obtain benefits for the entire population and not only labor benefits, by dragging a large political flow, with the workers and their families, while: "in the Council of Puerto Nare, they generally had a seat, at least two (2) councilors, coming from the unions; first as part of the political movement UNO — PARTIDO COMUNISTA, later as FRONT DEMOCRATICO and from 1986, as UNION PATRIOTICA (U.P)" [... It was like that] until they were decimated at the end of the eighties and practically disappeared in the nineties, recomposing the power map of the municipality of Puerto Nare [...] What is clear and concrete is that In the term of twenty-one (21) months, from December 8, 1986 to August 30, 1988, in [...] Puerto Nare, [...] a strategy of physical extermination, forced displacement, and psychological torture was developed against of the people who represented the union movement and at the same time the political movement of the Patriotic Union in the area”.From December 8, 1986 to August 30, 1988, in [...] Puerto Nare, [...] a strategy of physical extermination, forced displacement, and psychological torture was developed against the people who represented the trade union movement and the politician of the Patriotic Union in the area”.From December 8, 1986 to August 30, 1988, in [...] Puerto Nare, [...] a strategy of physical extermination, forced displacement, and psychological torture was developed against the people who represented the trade union movement and the politician of the Patriotic Union in the area”.*cf.*Judicial Police Report No. 9-5413 of September 10, 2015 (evidence exp. ff. 950-956); and report of the Technical Investigation Corps (CTI) of the Office of the Attorney General of the Nation of February 9, 2016. (evidence file, folio, 7154).

51 Cf. “Recognize the past, build the future. Report on violence against trade unionists and unionized workers, 1984 – 2011”. United Nations Development Program (UNDP)-Colombia. (2012), Bogota, p. 128 (evidence exp., folio 2603).

52 The record: ii) on January 11, 1987, Luis Antonio Gómez was reportedly handed over to presumed paramilitary groups by the police from the township of La Sierra; iii) on March 7, 1987, Jhon Alberto Montoya was assassinated by MAS paramilitaries in the Sierra Departmental Police Inspectorate; iv) on March 9, 1987, Jesús Antonio Molina, leader of the UP and trade union of Sutimac Nare, was assassinated by the MAS paramilitary group half a block from the La Sierra police station; v) on September 30, 1987, Pablo Emilio Córdoba Madrigal, UP councilor, member of the board of directors of SINTRACOLCARBURO and director of SUTIMAC, was murdered by the paramilitary group MAS, when he was at the Sierra Police Departmental Inspection; and vi) on November 16, 1987, Gustavo de Jesús Callejas and Héctor Alonso Loaiza Londoño, activists from the Caracolí Section of SUTIMAC and workers from Cementos Nare, were assassinated by the MAS paramilitary group a few meters from the La Sierra police station. .*cf.*Footprints and Faces of Forced Disappearance (1970-2010), *supra*(exp. evidence, folios 5569 to 5574).

52. Given the seriousness of what was happening, the union leaders of SINTRACOLCARBUROS, SUTIMAC Nare and SUTIMAC Caracolí made various calls in April 1987 to the then governor of Antioquia, Antonio Yepes Parra, to "put an end to the wave of violence [and put] the measures to protect the union leadership into practice."

53. According to the National Center for Historical Memory, between 1986 and 1988 the vast majority of SUTIMAC members were killed, disappeared, or displaced by paramilitary groups, specifically the "MAS" group, which had ties to military units stationed in the region. for which the union was almost banished from the municipality of Puerto Nare[53].

54. Between 1987 and 1989, the Central Unitaria de Trabajadores (CUT) and FENALTRACONCEM informed the President of the Republic, the Attorney General, the Minister of Government and the Minister of Justice, about "the wave of terror and violence" that The workers of the Cementos del Nare and Colombiana de Carburo companies were being victims, among them Mr. Víctor Manuel Isaza Uribe[54].

B. Disappearance of Victor Manuel Yosaza Oribe

55. Mr. Víctor Manuel Isaza Uribe was 33 years old at the time of his disappearance, he was the husband of Carmenza Vélez and the father of Jhony Alexander and Haner Alexis Isaza Vélez.

56. On October 27, 1987, Mr. Isaza Uribe had been detained by agents of the police substation in the town of La Sierra, in the municipality of Puerto Nare. The next day

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[53] *cf.* Traces and Faces of Forced Disappearance (1970-2010) (evidence file, folios 5553 to 5600). In addition to those already mentioned, the aforementioned murders and/or disappearances are: Carlos Arturo Salazar and Darío Gómez, Cementos Nare trade unionists and UP militants on January 19, 1988; Jesús Emilio Monsalver Mesa, trade unionist from the Nare section of Sutimac and UP militant on January 24, 1988; Juan de Jesús Grisales Urrego, member of Sutimac and company guard on February 3, 1988; Héctor Julio Mejía, union leader of Sutimac Nare, on February 8, 1988; Jesús Anibal Parra Castrillón, director of Sutimac Nare, on March 28, 1988; León de Jesús Cardona Isaza, national president of Sutimac and member of Fenaltraconcem and the UP, on August 30, 1988; Jose Manuel Herrera, member of the organizing committee of the Cementos Nare union, affiliated with Sutimac, on September 4, 1988; Carlos Alfonso Tobón Zapata, member of Sutimac, on January 28, 1989; Juan Rivera, operator of the Colcarburos company and vice president of Sutimac on August 12, 1989; and Luis E. Durán, a worker affiliated with Sutimac, on September 29, 1989. Also, see press releases "They will investigate the disappearance of two leaders in Puerto Nare" published by El Colombiano on January 25, 1988; and "In the last year, 32 trade unionists were assassinated" published by El Colombiano on May 1, 1987, (file evidence folio. 87). See also: International Labor Organization, Interim Report - Report no. 259, November 1988, Complaint 613, "The CUT, the ICFTU, the CMOPE and the WFTU have reported the following murders:http:// www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:50002:0::NO::P50002_COMPLAINT_TEXT_ID:2901664 .

[54] In these communications, a list of the murders and disappearances that occurred in Magdalena Medio, beginning in December 1986, was presented. The CUT and FENALTRACONCEM informed the Mayor, the Governor, the military and police authorities, and the national authorities; they indicated that "the members of a paramilitary group of approximately 30 people, called 'Popular Self-Defense', continue to sow terror and uncertainty"; and they requested the cessation of the criminal policy against the workers and the investigation of the facts, as well as the withdrawal of the Army patrols that were stationed in Puerto Nare and "Montañitas", in the department of Antioquia. *cf.* Letters addressed to various authorities. (exp. test, ff. 89 to 98). In a public statement of January 19, 1989, the executive committee of FENALTRACONCEM denounced that: "The dirty war that the bearers of the 'national security' doctrine have unleashed against our peoples is the offensive of right-wing and reactionary sectors expressed in a criminal response against the process of popular participation... has been put into practice against defenseless people for political purposes, to intimidate the population, prevent their struggles and destroy their social organizations. The criminal wave unleashed in the Nare region was directed against the militants of the Patriotic Union to prevent their presence in the Puerto Nare municipal council [...] whose councilors were assassinated and others exiled, the only "crime" they committed was that of staunchly defending the rights of the residents of the village of La Sierra [...] it is no coincidence that the members of the so-called "Popular Self-Defense" walk proudly down the street of the Sierra carrying weapons of short and long range in the presence of the police". On September 22, 1988, the Sutimac trade unionists who survived thanks to exile from the region denounced, in the newspaper Voz, the alliances between employers, high military commanders and the MAS in the chain of murders in this region; that commanders of the army and the police were with the paramilitaries: "in many regions of Puerto Berrio they are (...) with the commander of the fourteenth brigade or at the Calderón military base or at the Puerto Boyacá mayor's office (...) unfortunately Who denounces is sent to the cemetery. Who denounces the witnesses? The same promiscuous judge from Puerto Nare, Mr. Manuel García and the same commanders of the police and the army (...) That is the leak through which everything escapes towards the murderers". Cited in the written version of the expert witness Yepes (exp. evidence folio. 7175).

was placed at the disposal of the 64th Criminal Investigation Court of Puerto Nare, which, that same day, issued a measure of preventive detention in relation to the investigation into the murder of Francisco Humberto García Montoya that was attributed to him, after which Mr. Isaza Uribe was sent to the Puerto Nare jail[55].

57. At the date of his arrest, Mr. Víctor Manuel Isaza Uribe had worked for 13 years at the Cementos Nare SA company and was an active member of the union organization SUTIMAC.[56], as well as a supporter of the Patriotic Union political movement[57].

58. In the early morning of November 19, 1987, a group of between eight and ten armed men, some in civilian clothing and others in military clothing, entered the prison; they would have left the two guards defenseless and locked up; and they took Mr. Isaza Uribe and three other detainees out of the total of nine who were there [58]. The four people were put into a vehicle and taken to an unknown destination. Since that date, his whereabouts have not been known.

59. As acknowledged by the State, there is no record that the police or military authorities present in the area carried out search actions to find the whereabouts of the disappeared from the Puerto Nare prison (*supra*para. twenty-one).

60. That same day, Mrs. Carmenza Vélez reported the disappearance before the Court and began the search for her husband, for which she hired the driver of a vehicle to take her to remote parts, who later disappeared or left Puerto Nare. under threats[59]. Mrs. Vélez and her children, Jhony Alexander and Haner Alexis Isaza Vélez, found it necessary to leave Puerto Nare and move to the municipality of Copacabana, Antioquia.[60].

C.IINVESTIGATIONS AND INTERNAL PROCESSES

C.1. Prior criminal investigation

61. According to the information provided by the Commission, the representatives and the State, the main actions carried out within the criminal investigation are the following:[61]:

a) On November 19, 1987, the 64th Criminal Investigation Court of Puerto Nare ordered the opening of a preliminary investigation and various procedures were carried out[62].

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[55] On November 7, 1989, two years after his disappearance, Mr. Víctor Manuel Isaza Uribe was sentenced in absentia by the Ninth Superior Court of Medellín to 16 years in prison, for having found him responsible for committing the crime of aggravated homicide in the person of Mr. Francisco Humberto García Montoya, as intellectual and material author.*cf.*Judgment of November 7, 1989 of the Ninth Superior Court of Medellín, file 6.724-16 (evidence file, f.5380).

[56] *cf.*Copy of certificate issued on November 12, 1989 by the president of SUTIMAC (evidence file, f. 8); copy of the affiliation card to the Sutimac union in the Puerto Nare section, dated January 21, 1979, a document delivered at the public hearing by the alleged victim Carmenza Vélez (evidence file, f. 7184); and written statement before the Court of the witness Luz María Ramírez García, Prosecutor 91 of Human Rights and International Humanitarian Law of Medellín (evidence file, ff. 6229 to 6234).

[57] *cf.* Statement rendered at a public hearing before the Court by Mrs. Carmenza Vélez.

[58] The other three abducted detainees were William Mejía Restrepo, Pedro Delgado Jurado and Mario Patiño Gutiérrez.

[59] *cf.* Statement rendered at a public hearing by Mrs. Carmenza Vélez.

[60] *cf.*Statements before notary public of Haner Alexis Isaza Vélez and Jhony Alexander Isaza Vélez (file evidence, ff. 6981 and 6986), and Statement rendered at a public hearing by Mrs. Carmenza Vélez.

[61] It is noted that, in its final written arguments, the State made reference to several proceedings that it had not previously reported or that were not documented. Therefore, this section includes only the main actions carried out within the framework of the previous investigation.*cf.* communication from the State of April 22, 2013 (evidence exp. ff. 31 to 33); and written statement of Mrs. Luz María Ramírez García, witness offered by the State (evidence file, folios 6206 to 6234).

b) On November 8, 1994, the 125th Anti-Kidnapping Prosecutor of Puerto Berrio ordered the suspension of the investigation.
c) The investigation was reopened on February 28, 1995 by the Puerto Berrio Sectional Anti-Kidnapping Unit and, after certain procedures, on the following September 8, the Medellín Regional Prosecutor's Office ordered the opening of the investigation for kidnapping crimes. aggravated extortion and conspiracy to commit a crime and arrest warrant against four people for alleged ties to the MAS paramilitary group[63]. After taking his statements, on the following September 22, the Prosecutor's Office refrained from ordering an arrest warrant against him, considering that there were no serious indications of responsibility, and on April 30, 1996, it ordered the preclusion of the investigation in his favor. ;

d) on July 15, 1996, the reopening of the preliminary investigation was declared, for which the taking of various tests was ordered[64];
e) on August 25, 1997, the Medellín Regional Prosecutor's Office ordered the suspension of the investigation, due to lack of evidence;
f) in 2010 the reopening of the investigation was ordered. In August 2011, the Prosecutor's Office arranged to hear applicants for the benefits of Justice and Peace Law 975 of 2005 who committed crimes in Magdalena Medio[65];
g) the investigation was reassigned to the 91st Prosecutor for Human Rights and International Humanitarian Law of Medellín, which had requested its assignment due to connection to the process filed under number 9241 (specially assigned by the Attorney General of the Nation to the Delegate Prosecutor for Human Rights). Humanos) in which the crimes committed against 14 members of the union SUTIMAC and COLCARBUROS who were murdered, disappeared or displaced are investigated;

h) Between August 24, 2011 and December 15, 2017, other procedures were carried out by order of the Prosecutor's Office: expansion of statements; reports from the Judicial Police (CTI); location of other possible witnesses; georeferencing and topographic fixation of Puerto Nare, among others. In addition, the Prosecutor's Office collected information in proceedings before the Court of Justice and Peace[66]and the State stated that information had been analyzed in the “NNs” and disappeared persons Unit attached to the CTI and DNA tests were ordered.

C.2. Preliminary inquiry in the disciplinary proceedings

62. On January 11, 1989, Mrs. Carmenza Vélez filed a complaint regarding the disappearance of her husband with the Office of the Delegate Attorney for the Defense of Human Rights.[67].

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[62] Between November 19, 1987 and November 8, 1994, Criminal Investigation Court 64 of Puerto Nare and Criminal Investigation Court 104 of Medellín received 19 statements from residents of the area, workers of the Cementos company Nare, relatives of the four detainees who were taken from the jail, people who were near the scene of the events (the watchman of a boat), the other detainees in the jail and the two jail guards.*cf.* Statement before notary public of the witness offered by the State Luz María Ramírez García. (exp. evidence, ff. 6207 to 6220)

[63] *cf.*Written statement of Mrs. Luz María Ramírez García, witness offered by the State (evidence file, f. 6223). Likewise, on January 25, 1996, the Delegate Prosecutor's Office before the Supreme Court of Justice settled a jurisdictional conflict between the Puerto Berrio Anti-Kidnapping Sectional Prosecutor's Office and the Medellín Regional Prosecutor's Office regarding knowledge of the investigation, assigning jurisdiction to the latter.

[64] Between November 7, 1996 and August 25, 1997, the Medellín Regional Prosecutor's Office received 9 statements.*cf.*Statement before notary public of the witness offered by the State Luz María Ramírez García. (exp. proof, ff. 6224 to 6228)

[65] The State reported that the facts have not been stated or confessed by any postulate nor are they registered in the Justice and Peace Information System (SIJYP) of the Office of the Attorney General of the Nation.*cf.*Communication from the State of April 22, 2013 (evidence file, folios 10 to 41); and statement of Mrs. Luz María Ramírez García (evidence file, ff. 6206 to 6234)

[66] *cf.*Written statement before the Court of the 91st Prosecutor of Human Rights and International Humanitarian Law of Medellín, Luz María Ramírez García (evidence file, ff. 6229 to 6234)

[67] Mrs. Vélez filed an extension of the complaint on July 22 of that year, in which she denounced the lack of progress in the criminal investigation; that on July 17, 1989, he went to Criminal Investigation Court 64 to inquire about the investigation, where he was informed "that it was archived because there was no one to testify, that unfortunately no one spoke"; He stated that "it is impossible

63. On March 10, 1989, the Delegate Prosecutor commissioned the Regional Prosecutor of Puerto Berrío to visit the Court in charge of the case, which, in turn, on April 22 and May 16 commissioned the Municipal Ombudsman to visit the investigation carried out by the local Police Inspectorate and receive testimonies. On June 1, 1989, said Regional Attorney sent an evaluation report to the Delegate Attorney[68].

64. On October 20, 1992, the Delegate Prosecutor's Office ordered the provisional filing of the preliminary proceedings "because there was no evidence that would commit any public servant to the disappearance of Víctor Manuel Isaza Uribe."[69].

65. On February 29, 2016, the Office of the Attorney General of the Nation ex officio revoked the order of October 20, 1992 and ordered that the Delegate Disciplinary Attorney for the Defense of Human Rights continue with the disciplinary action[70].

C.3. Contentious-administrative process[71]

66. On August 8, 1989, Mrs. Carmenza Vélez filed a claim for direct reparation before the Administrative Court of the Department of Antioquia, on her own behalf and on behalf of her children, for the disappearance of Mr. Isaza Uribe. The lawsuit was filed under number 25,861.

67. On November 26, 1993, the Administrative Court of Antioquia decided to deny the claim filed by Mrs. Vélez, who challenged the decision.

68. On September 23, 1994, the Administrative Litigation Chamber of the Council of State confirmed the judgment, endorsing the legal, factual, and evidentiary assessment of the trial court.

GAVEREPORT OF THEC.I ENTERNO.NATIONAL OFMMEMORYHISTORICA

69. In November 2013, the National Center for Historical Memory, within the framework of its powers established in the respective law (*supra* para. 28), published his report "Footprints and Faces of Forced Disappearance (1970-2010)", which, among others, concludes:

> "The forced disappearance of Víctor Manuel Isaza Uribe dramatically illustrates the implementation of the National Security Doctrine and the paramilitary strategy by the Colombian Armed Forces, as well as the demonization of the social and political opposition and the elimination of union movements during the decade of the 1980s. The inaction of the ordinary jurisdiction and the complicity of the local public powers constituted the master pieces of the construction of impunity in the case [...]"[72].

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that they do nothing knowing that armed men dressed as soldiers and others in civilian clothes took him out of prison", among other information. *cf.* Extension of complaint of July 22, 1989 by Mrs. Carmenza Vélez (evidence file, folios 70 to 72).

[68] *cf.* Communication from the State of October 11, 1991 (evidence file, page 77).

[69] *cf.* Resolution of October 20, 1992 of the Office of the Delegate Attorney for Human Rights (evidence file, folios 42 to 48).

[70] *cf.* Resolution of February 29, 2016 of the Office of the Attorney General of the Nation, direct revocation of the disciplinary ruling of October 22, 1992 (file evidence, ff. 5999 to 6007).

[71] *cf.* Communications from the State of September 16 and October 11, 1991 (evidence file, folios 73 to 80 and 81 to 83); Judgment of September 23, 1994 of the Council of State, Administrative Litigation Chamber, Third Section. Santa Fe de Bogotá (exp. evidence, f. 2).

[72] *cf.* Footprints and Faces of Forced Disappearance (1970-2010) (exp. test, f. 5553 to 5600).

VIII

BACKGROUND

70. In the present case, the Commission and the representatives maintain that the disappearance of Mr. Víctor Manuel Isaza Uribe and its consequences constitute a forced disappearance committed by paramilitary groups, with the acquiescence of State agents. Although the State recognized the violation of their rights to legal personality, life, integrity and personal liberty, which are understood to be injured in cases of forced disappearance of persons in the jurisprudence of this Court, the State emphasized that it does not accept the legal qualification of the facts as such international wrong. In addition, it remains in dispute whether the State violated the freedom of association of the alleged victim; if it carried out a complete and diligent investigation and if it is responsible for alleged violations of rights with respect to the next of kin.

71. Therefore, the Court will analyze the subsisting controversy in the following order: 1) alleged forced disappearance of Mr. Isaza Uribe (Articles 3, 4.1, 5.1 and 7, in relation to Articles 1.1 and 2 of the Convention and 1.a and 1.b of the Inter-American Convention on Forced Disappearance of Persons), as well as the alleged violation of freedom of association (Article 16); 2) rights to judicial guarantees and judicial protection (articles 8.1 and 25); and 3) right to personal integrity of the next of kin and alleged violations of the rights to honor and dignity and protection of the family (articles 5, 11.2 and 17).

VIII.1
RIGHTS TO RECOGNITION OF LEGAL PERSONALITY[73], TO THE LIFE[74], TO THE PERSONAL INTEGRITY[75] AND PERSONAL FREEDOM[76] (ARTICLES 1.1, 2, 3, 4, 5 and 7 OF THE AMERICAN CONVENTION and IA) OF THE INTER-AMERICAN CONVENTION ON FORCED DISAPPEARANCE OF PERSONS[77]) –

Arguments of the parties

Yo. Regarding the alleged forced disappearance

72. The ***Commission*** considered it evident that the State did not comply with its special obligation as guarantor of the life and integrity of Mr. Isaza and therefore it is incumbent on it to provide a satisfactory and convincing explanation about what happened when a person disappears in its custody, nor its duty to exhaustively investigate what happened. happened. He considered that, taking into account the contexts, the fact that Isaza Uribe was a member of the SUTIMAC union and sympathizer of the UP put him in a special situation of risk while being deprived of liberty

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[73] Article 3 of the American Convention establishes: "Everyone has the right to have their legal personality recognized."

[74] Article 4.1 of the American Convention establishes: “Every person has the right to have his life respected. This right will be protected by law and, in general, from the moment of conception. No one can be deprived of life arbitrarily".

[75] Article 5.1 of the American Convention states: "Everyone has the right to have their physical, mental and moral".

[76] Article 7 of the American Convention establishes: “1. Everyone has the right to personal liberty and security [;] 2. No one may be deprived of their physical liberty, except for the causes and under the conditions established in advance by the Political Constitutions of the States Parties or by the laws enacted pursuant to them [;] 3. No one may be subjected to arbitrary detention or imprisonment [...]”.

[77] Article Ia) and Ib) of the Inter-American Convention on Forced Disappearance of Persons establishes: “The States Parties to this Convention undertake to: a) Not practice, allow, or tolerate the forced disappearance of persons, even in a state of emergency, exception or suspension of individual guarantees; b) Sanction the perpetrators, accomplices and accessories after the crime of forced disappearance of persons, as well as the attempted commission of the same, within the scope of its jurisdiction.

in the custody of state security forces that had ties to paramilitary groups, for which the authorities had to adopt special preventive measures.

73. In addition, the Commission considered that the act should be classified as forced disappearance of persons because, in addition to the foregoing, there are elements that point to the acquiescence of state agents and there were multiple contexts that indicated that Mr. Isaza Uribe was at serious risk. of being attacked by paramilitaries: violence by state agents and paramilitaries against members and supporters of the UP; persecution and extermination -by paramilitaries- of trade unionists from SUTIMAC and in Puerto Nare, where there were patterns of joint action between the army and paramilitaries; and the validity of regulations that gave rise to paramilitarism and military regulations and manuals that favored the identification of trade unionists as internal enemies. Regarding the state's refusal to reveal the fate of the person, The Commission considered that the investigations (and the Council of State itself) focused on a jailbreak hypothesis, without considering the contextual elements and without exhausting the lines of investigation. For this reason, it considered the State responsible for the violation of the rights recognized in Articles 3, 4, 5 and 7 of the Convention, in relation to Articles 1.1 and 2 thereof, to the detriment of Víctor Manuel Isaza Uribe, as well as Article Ia of the Inter-American Convention on Forced Disappearance.

74. The***representatives***They elaborated on what was alleged by the Commission, emphasizing that Mr. Isaza was disappeared by the MAS paramilitary group in a highly militarized town, in circumstances that allow inferring the complicity of members of the Public Force.

75. The***State***indicated that its acknowledgment of responsibility "does not cover [...] the commission of the international crime of forced disappearance", since the elements that appear are not sufficient "for the Court to conclude that a complex conduct was committed that includes elements of fraud, a subject qualified asset (State agent) and the denial of the possibility of accessing legal protection". In addition, the State presented general arguments on the attribution (which it understood as "the proven relationship between the perpetrator of the conduct and the State") as an essential element of the internationally wrongful act, citing several precedents of the International Court of Justice and the first cases. before the Court. He claimed that,

76. Regarding the deprivation of liberty, the State argued that the detention of Mr. Isaza responded to legally established criteria and the guarantees of due process and, although it was in a position of guarantor, there is no evidence to link such detention with an enforced disappearance due to his union and political activities. Regarding the acquiescence of state agents, it argued that the Commission and the representatives did not reach consistent conclusions, nor did they argue why the proximity of the public forces to the municipal jail would allow them to derive their acquiescence. He pointed out that there are various hypotheses about the perpetrators of the abduction, since they could be members of paramilitary groups, of the FARC guerrilla or individuals who helped them escape or a possible retaliation for the homicide for which he was accused, despite which the Commission and the representatives assess the evidence in a fragmentary and biased manner and fail to establish a link of causality between the facts and the contexts referred to. Thus, it argued that there are no conclusive factual elements that allow the fact to be attributed to either guerrilla groups, paramilitaries, or State agents and stated, in its final arguments, that there are compelling pieces of evidence that corroborate the participation of third parties in these events and that, given Among the different hypotheses, the strongest concerns the participation of private actors. Despite this, the Commission and the representatives assess the evidence in a fragmentary and biased manner and fail to establish a causal link between the facts and the contexts referred to. Thus, it argued that there are no conclusive factual elements that allow the fact to be attributed to either guerrilla groups, paramilitaries, or State agents and stated, in its final arguments, that there are compelling pieces of evidence that corroborate the participation of third parties in these events and that, given Among the different hypotheses, the strongest concerns the participation of private actors. Despite this, the Commission and the representatives assess the evidence in a fragmentary and biased manner and fail to establish a causal link between the facts and the contexts referred to. Thus, it argued that there are no conclusive factual elements that allow the fact to be attributed to either guerrilla groups, paramilitaries, or State agents and stated, in its final arguments, that there are compelling pieces of evidence that corroborate the participation of third parties in these events and that, given Among the different hypotheses, the strongest concerns the participation of private actors.

ii. Regarding article 2 of the Convention

77. The ***Commission*** It considered that this violation is related to the validity of the regulatory frameworks related to paramilitaries and to the identification of trade unionists within the notion of internal enemy.

78. The ***representatives*** They alleged that the internal enemy doctrine introduced into the policies of the military forces through the military manuals promulgated from 1965, and protected by Decree 3398 of 1965 and Law 48 of 1968, contradict the principle of distinction (regulated by International Humanitarian Law) and the principle of non-discrimination based on political opinion (safeguarded by the American Convention), since it caused social movements, union groups and opposition political parties to be identified as "internal enemies" that supported insurgent groups. , generating stigmatization and crude violence against them, in flagrant violation of Articles 1 and 2 of the Convention.

79. The ***State*** He pointed out that, although at the time there were legal provisions in force that promoted the creation of self-defense groups that led to criminal groups, the State implemented measures to control and punish their acts. He considered subjective and biased the interpretation according to which Decree 3398 of 1965 was a document of the "national security doctrine", since it simply refers to the necessary doctrine to guarantee security and national defense. In relation to the military operations manuals, the State stated that their application is not in force and, in any case, it cannot be affirmed that its security forces applied such a "doctrine" because the Political Constitution and the rule of law prohibit them. persecute the civilian population. He claimed that, Even if these normative frameworks were considered to constitute an international wrongful act, they have already been excluded from the legal system, which is why, due to the principle of subsidiarity, it is not up to the Court to ratify what has already been declared at the national level. Lastly, it argued that, given the lack of clarity regarding the causal link between the disappearance and such contexts, the Court could not evaluate this legal framework without thereby carrying out an abstract control of conventionality, which openly exceeds its contentious jurisdiction. For the above reasons, he asked the Court to declare that Article 2 of the Convention was not violated. it is not up to the Court to ratify what has already been declared at the national level. Lastly, it argued that, given the lack of clarity regarding the causal link between the disappearance and such contexts, the Court could not evaluate this legal framework without thereby carrying out an abstract control of conventionality, which openly exceeds its contentious jurisdiction. For the above reasons, he asked the Court to declare that Article 2 of the Convention was not violated. it is not up to the Court to ratify what has already been declared at the national level. Lastly, it argued that, given the lack of clarity regarding the causal link between the disappearance and such contexts, the Court could not evaluate this legal framework without thereby carrying out an abstract control of conventionality, which openly exceeds its contentious jurisdiction. For the above reasons, he asked the Court to declare that Article 2 of the Convention was not violated.

iii. Regarding freedom of association[78]

80. The ***Commission*** recalled that the States must guarantee that no person is deprived of their life or assaulted as a consequence of the exercise of their union activity and, since the State is responsible for the forced disappearance of Mr. Isaza Uribe, in this context of violence against trade unionists and specifically against SUTIMAC, it turns out that the motive for the violations of his rights was his union membership, for which the State is also responsible for the violation of the right recognized in Article 16 of the Convention, in relation to Articles 1.1 and 2 of the herself, to her detriment. The ***representatives*** They added that this was also a consequence of his political activity with the UP and that, with his disappearance and the other actions against the union, the union organization was disrupted. He ***State*** alleged that there could only be a violation of this right if it were established that the act of which he was a victim was a consequence of his links with SUTIMAC and his sympathy with the UP, but it was not shown that he exercised such highly visible union and political activity. that makes it possible to infer that this was the motive, nor the acquiescence of state agents, therefore it is not possible to declare the international responsibility of the State for violation of Article 16 of the Convention.

[78] Article 16 of the American Convention recognizes that: "Every person has the right to associate freely for personal ideological, religious, political, economic, labor, social, cultural, sports or of any kind."

Considerations of the Court

81. The Court recalls that, in its constant jurisprudence, international consolidation has been verified in the analysis of forced disappearance as a serious violation of human rights, given the particular relevance of the transgressions that it entails and the nature of the rights violated, as well as its permanent and multi-offensive nature, which emerges not only from the very definition of Article II of the Inter-American Convention on Forced Disappearance of Persons, -of which the Colombian State is a party-, from the preparatory work of this , its preamble and regulations, but also other definitions contained in different international instruments[79]. Thus, the need for comprehensive treatment of forced disappearance has led this Court to analyze it as a complex form of violation of various rights recognized in the Convention jointly, due to the plurality of conducts that, united for a single purpose, permanently violate legal rights protected by said instrument, in particular the rights to recognition of legal personality, to life, to personal integrity and to personal liberty, enshrined in Articles 3, 4, 5 and 7 of the Convention, respectively[80].

82. For this reason, the analysis of a possible forced disappearance must cover the entire set of facts that are presented to the Court for consideration, in order to be consistent with the complex violation of human rights that it entails, with its permanent and with the need to consider the context in which it is alleged that it occurred, in order to analyze its prolonged effects over time and comprehensively focus its consequences, taking into account the *corpus juris* both inter-American and international protection[81].

83. With respect to what was alleged by the State regarding the attribution of an international wrongful act (*supra* para. 75), it is opportune to remember what has been repeatedly indicated in its jurisprudence, in that the Court is not a criminal court in which the criminal responsibility of individuals can be determined.[82]. Thus, under article 1.1 of the Convention[83], to establish that there has been a violation of the rights recognized therein, it is not necessary to determine, as is the case in domestic criminal law, the guilt of the perpetrators or their intention, nor is it necessary to prove beyond all reasonable doubt. o Individually identify the agents to whom the violations are attributed[84] much less in cases of forced disappearance of persons. For this Court, what is necessary is to acquire the conviction that actions or omissions have been verified, attributable to the State, that have allowed the perpetration of those violations or that there is an obligation of the State that has not been fulfilled by it.[85]. In addition, the Court recalls that circumstantial evidence or

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[79] *Cf. Case of Goiburú et al. v. Paraguay. Merits, Reparations and Costs.* Judgment of September 22, 2006. Series C No. 153, para. 84; *Case of Anzualdo Castro v. Peru. Preliminary Objection, Merits, Reparations and Costs.* Judgment of September 22, 2009. Series C No. 202., para. 60, and *Case of Vereda La Esperanza v. Colombia,* para. 149.

[80] *Cf., inter alia, Case of Velásquez Rodríguez v. Honduras. Background, above; Godinez Cruz v. Honduras. Background. Judgment of January 20, 1989. Series C No. 5; Case of Anzualdo Castro v. Peru,* paras. 51-103; and *Case of Vásquez Durand et al. v. Ecuador,* para. 133.

[81] *Cf. Case of Goiburú et al. v. Paraguay*, para. 85; and *Case of Vásquez Durand et al. v. Ecuador,* para. 106.

[82] *Cf. Case of Suárez Rosero v. Ecuador. Background.* Judgment of November 12, 1997. Series C No. 35, para. 37, and *San Miguel case Sosa et al. v. Venezuela, supra,* para. 203.

[83] Under article 1.1 of the Convention, any impairment of the human rights recognized in the Convention that can be attributed, according to the rules of International Law, to the action or omission of any public authority, constitutes an act attributable to the State that commits its responsibility. in the terms established by the same Convention, regardless of whether the body or official has acted in contravention of provisions of internal law or exceeded the limits of its own competence. *Cf., inter alia, Case of "Five Pensioners" v. Peru.* Judgment of February 28, 2003. Series C No. 98, para. 63; *Legal Condition and Rights of Undocumented Migrants.* Advisory Opinion OC-18/03 of September 17, 2003. Series A No. 18, para. 76.

[84] *Cf. Case of the "Street Children" (Villagrán Morales et al.).* Judgment of November 19, 1999. Series C No. 63, para. 75; *Case 19 Merchants.* Judgment of July 5, 2004. Series C No. 109, para. 141; and *Case of Rodríguez Vera et al. (Disappeared from the Palace of Justice) v. Colombia,* para. 81.

[85] *Cf. Case of Velásquez Rodríguez v. Honduras. Background,* paras. 127 and 128, and *Case of Rodríguez Vera et al. (Disappeared from the Palace of Justice) v. Colombia, supra,* para.81.

presumptive is of special importance when it comes to complaints about forced disappearance, since this form of rape is characterized by seeking the suppression of all elements that allow verifying the detention, whereabouts and fate of the victims[86].

84. Having indicated the foregoing, the Court recalls that in its jurisprudence it has identified the following as concurrent and constitutive elements of forced disappearance: a) deprivation of liberty; b) the direct intervention of state agents or persons or groups of persons acting with their authorization, support, or acquiescence; and c) the refusal to acknowledge the arrest and to reveal the fate or whereabouts of the person concerned.[87]. Indeed, the act of disappearance and its execution begin with the deprivation of the person's liberty and the subsequent lack of information about their fate, and remain as long as the whereabouts of the disappeared person are not known or their remains are identified with certainty.[88]. While the disappearance persists, the States have the correlative duty to investigate it and eventually punish those responsible, in accordance with the obligations derived from the American Convention and, in particular, from the Inter-American Convention on Forced Disappearance.[89].

85. This case has the particularity of dealing with an alleged forced disappearance that occurred while the person was deprived of liberty in a State prison, in preventive detention, in the framework of a criminal proceeding that was ongoing against him.

86. In this regard, although the manner in which the deprivation of liberty takes for the purposes of characterizing a forced disappearance is indistinct.[90], since any form of deprivation of liberty satisfies that first element[91], it is pertinent to note that, in this case, the disappearance began from the moment the alleged victim was taken from prison by persons not yet identified and not from the very beginning of the detention, which had been formally and legally ordered. by a judge. Notwithstanding this, the fact is that Mr. Isaza Uribe was disappeared while he was in custody in a state prison.

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[86] *Cf. Case of Velásquez Rodríguez v. Honduras. Bottom, above*,paras. 130 and 131; and*Case of Munárriz Escobar et al. v. Peru*,para. 67. In this sense, in the*case of González Medina and relatives vs. Dominican Republic*The Court concluded, by means of circumstantial evidence, that the victim had been detained and subsequently forcibly disappeared (*Cf. Case of González Medina and family v. Dominican Republic. Preliminary Objections, Merits, Reparations and Costs*. Judgment of February 27, 2012. Series C No. 240.). Likewise, in the *case of Osorio Rivera and relatives vs. Peru*,the Court qualified the facts in the same way, inferring that the victim's detention had continued beyond a release order (*Cf. Case of Osorio Rivera and family v. Peru*. supra.).

[87] *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 Munárriz Escobar et al. v. Peru*,para. 63.

[88] *Cf. inter alia, Case of Velásquez Rodríguez v. Honduras. Background*, supra, paras. 155 to 157, and*Case of Vereda La Esperanza vs. Colombia, supra*, para. 150.

[89] *Cf. Case of Radilla Pacheco v. Mexico. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 23, 2009. Series C No. 209, para. 145, and*Case of Members of the Chichupac Village and neighboring communities of the Municipality of Rabinal v. Guatemala.* Preliminary Exceptions, Merits, Reparations and Costs. Judgment of November 30, 2016. Series C No. 328.

[90] The 1992 Declaration on the Protection of All Persons against Enforced Disappearances establishes that enforced disappearances occur in the event that: "persons are arrested, detained or transferred against their will, or that they are deprived of their liberty in any way otherwise by government agents of any sector or level, by organized groups or by individuals acting on behalf of the Government or with its direct or indirect support, authorization or assent [...]". Article 2 of the 2006 International Convention for the Protection of All Persons against Enforced Disappearances defines them as: "the arrest, detention, kidnapping or any other form of deprivation of liberty that is the work of State agents or by persons or groups of persons acting with authorization, the support or acquiescence of the State [...]". For its part, Article II of the Inter-American Convention on Forced Disappearance defines it as: "the deprivation of liberty of one or more persons, whatever its form, committed by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, [...]".*Cf. Case of Velásquez Rodríguez v. Honduras. Background*, para. 129, and*Case of Tenorio Roca et al. v. Peru. Preliminary Objections, Merits, Reparations and Costs*. Judgment of June 22, 2016. Series C No. 314, para. 148.

[91] *Cf. Case of Blanco Romero et al. v. Venezuela. Merits, Reparations and Costs*.Judgment of November 28, 2005. Series C No. 138, para. 105; and*Case of Munárriz Escobar et al. v. Peru*,para. 70. Thus, "enforced disappearance can begin with an illegal arrest or with an initially legal arrest or detention. In other words, the protection of the victim against forced disappearance must be effective against deprivation of liberty, whatever form it may take, and not be limited to cases of illegal deprivation of liberty" (Working Group on Enforced Disappearances or Involuntary, Report of the Working Group on Enforced or Involuntary Disappearances, General Comment on the Definition of Enforced Disappearances, A/HRC/7/2, January 10, 2008, paragraph 7).

87. The Court has indicated that the States have special duties, derived from their general obligations to respect and guarantee the rights under Article 1(1) of the Convention and that can be determined based on the particular protection needs of the subject of law, either by their personal condition or the specific situation in which you find yourself[92]. In this sense, the State is in a special position of guarantor with respect to people who have been deprived of their liberty, since the prison authorities exercise strong control or control over those who are subject to their custody.[93], as well as the particular intensity with which the State can regulate their rights and obligations and the circumstances of confinement[94].

88. Thus, in cases in which a person who has been in the custody of State agents exhibits injuries, it has been considered that whenever a person is deprived of liberty in a state of normal health and later appears affected to their health, it is appropriate to to the State to provide a satisfactory and convincing explanation of that situation and to disprove the allegations regarding its responsibility, through adequate evidence. The Court has considered that the lack of such an explanation entails the presumption of State responsibility for such injuries. [95].

89. This Tribunal considers that this presumption is applicable,*a fortiori*, to situations in which a person disappears in the custody of the State, in which an objective responsibility of the State operates with respect to the life, integrity and security of the person.

90. In cases of forced disappearance of persons, this Court has considered such a presumption of responsibility when the last news received of the person was that they were in state custody, since it was up to the State to prove their version of the facts.[96].

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[92] *Cf. Case of the Pueblo Bello Massacre v. Colombia, supra*, para. 111; and*Case of Gonzales Lluy et al. v. Ecuador,*para. 168

[93] *Cf. Case of Neira Alegría et al. v. Peru. Background*. Judgment of January 19, 1995. Series C No. 20, para. 60, and*Quispialaya case Vilcapoma vs. Peru. Preliminary Exceptions, Merits, Reparations and Costs.*Judgment of November 23, 2015. Series C No. 308. para. 117.

[94] *Cf. Case of the "Institute for the Reeducation of Minors" v. Paraguay, supra*, para. 152, and*Case of Chinchilla Sandoval et al. v. Guatemala. Preliminary Objection, Merits, Reparations and Costs*. Judgment of February 29, 2016. Series C No. 312, para. 168. See also IACHR, Report on the Human Rights of Persons Deprived of Liberty in the Americas, OEA/ Ser. L/V/II Doc. 64, December 31, 2011, paras. 49 et seq.

[95] *Cf. Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Background*, paras. 95 y. 170;*Case of Juan Humberto Sánchez v. Honduras. Preliminary Objection, Merits, Reparations and Costs.*Judgment of June 7, 2003. Series C No. 99, paras. 100 and 111; *Case of Mendoza et al. v. Argentina. Preliminary Exceptions, Merits and Reparations.*Judgment of May 14, 2013 Series C No. 260, para. 203. It is worth mentioning the jurisprudence of the European Court of Human Rights, which has held that, under Article 3 of the European Convention, which recognizes the right to personal integrity, the State has the obligation to provide a "convincing explanation" of any injury suffered by a person deprived of his liberty. Likewise, an official and effective investigation is required when an individual makes a "credible assertion" that any of their rights stipulated in Article 3 of said instrument have been violated by a State agent. The investigation must be capable of achieving the identification and punishment of those responsible. Along the same lines, it has affirmed that, otherwise, the general prohibition of cruel, inhuman and degrading treatment, among others,*cf.* ECHR.*Elci and others v. Türkiye*, No. 23141 and 25091/94, Judgment of November 13, 2003, paras. 648 and 649, and*Assenov and others v. Bulgaria*, No. 24760/94, Judgment of October 28, 1999, para. 102.

[96] *Cf., inter alia, Case of Bámaca Velásquez v. Guatemala. Background*. Judgment of November 25, 2000. Series C No. 70, paras. 132 to 135 and 143;*Case of Anzualdo Castro v. Peru,*paras. 33 to 50 and 68 to 72;*Case of Osorio Rivera and family v. Peru. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 26, 2013. Series C No. 274, paras. 141 and 155; and,*mutatis mutandis, Case of Munárriz Escobar et al. v. Peru,*para. 79. This criterion is shared, in a similar sense, by the European Court of Human Rights, which has indicated that, in cases where the detention of a person by state authorities has not been proven, said detention can be presumed or inferred if it is established that the person was in a place under state control and has not been seen since. In the original text, the European Court stated: "*Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, such as in cases where persons are under their control in custody, strong presumptions of fact will arise in respect of injuries and death occurring during that detention . Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation [...].These principles apply also to cases in which, although it has not been proven that a person has been taken into custody by the authorities, it is possible to establish that he or she entered a place under their control and has not been seen since. In such circumstances, the onus is on the Government to provide a plausible explanation of what happened on the premises and to show that the person concerned was not*

91. Thus, if the State had a duty of custody with respect to Mr. Víctor Manuel Isaza Uribe, it is precisely because he was under the power of the agents who had to guard the prison, for which reason it makes no sense to suggest that State agents did not participate in his disappearance. , since in the least serious of the hypotheses such agents participated by omission by not having effectively ensured his safety and protection before the entry of some individuals who abducted him.

92. In this regard, the Court notes that the Inter-American Convention on Forced Disappearance of Persons, as well as other relevant international instruments on the matter[97]and the jurisprudence of this Court, have foreseen and prohibited the most serious forms of forced disappearance, which should not be understood as comprehensive of all the possible modalities of this very serious violation of human rights and excluding others that are not foreseen. Therefore, in some cases, the analysis of the disappearance based on the three aforementioned elements may be insufficient or unnecessary. Thus, in cases in which the State has a special position as guarantor, and regardless of the individual responsibilities that the authorities must determine within the framework of their respective jurisdictions, it is possible that forms of enforced disappearance by omission may be configured within the framework of the international responsibility of the State. So,

93. In addition, whenever it is suspected that a person has been subjected to forced disappearance while in the custody of the State, the State has the obligation to provide an immediate, satisfactory and convincing explanation of what happened to the person.[98], which is naturally linked to the state obligation to carry out a serious and diligent investigation in this regard.[99](*infra* para. 151). Indeed, in previous cases this Court has considered that the State's failure to clarify the facts is a sufficient and reasonable element to give value to the evidence and indications that indicate the commission of a forced disappearance.[100]or, in cases like the present, to complete its configuration when the person was in state custody.

94. In this case, the State partially acquiesced in the violation of the rights to judicial guarantees and judicial protection of Mr. Isaza Uribe, both due to the delay

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detained by the authorities, but left the premises without subsequently being deprived of his or her liberty". ECHR,*Case of Khadzhialiyev et al. v. Russia*, No. 3013/04, Judgment of November 6, 2008, paras. 79 and 80.

[97] *cf.* International Convention for the protection of all persons against forced disappearances. See also Economic and Social Council of the United Nations, Report of the Working Group on the Enforced or Involuntary Disappearance of Persons, General Comment on Article 4 of the Declaration on the Protection of All Persons from Enforced Disappearance of January 15, 1996 (E/CN. 4/1996/38), para. 55.

[98] *Cf., mutatis mutandis, Case of Juan Humberto Sánchez v. Honduras, supra,*para. 111, and*Case of Chinchilla Sandoval et al. v. Guatemala*,para. 257.

[99] *Cf. Case of Anzualdo Castro v. Peru,*para. 65.*cf.*article 12.2 of the International Convention for the protection of all persons against forced disappearances and article 13 of the Declaration on the protection of all persons against forced disappearances. In addition, the Vienna Declaration and Program of Action approved by the World Conference on Human Rights on June 25, 1993, established that: "it is the obligation of all States, in all circumstances, to undertake an investigation whenever there are reasons to believe that a forced disappearance has occurred in a territory subject to its jurisdiction and, if the complaints are confirmed, prosecute the perpetrators of the act" (para. 62).

[100] *Cf. Case of González Medina and relatives v. Dominican Republic,*paras. 169 and 170. In the*case of Gutiérrez Hernández et al. v. Guatemala*, this Court considered, when observing that the investigations carried out regarding the disappearance of the victim had not been diligent, that it could not be ruled out that what happened was a forced disappearance (*Cf. Case of Gutiérrez Hernández et al. v. Guatemala*, para.135). See also*Case of Rodriguez Vera et al. (Disappeared from the Palace of Justice) v. Colombia*,paras. 299 and 301.

of the investigation in ordinary criminal proceedings as well as inconsistencies in the conduct of proceedings, particularly the lack of urgent search actions after his removal from jail, among others. Having accepted that his responsibility is presumed for having failed in his duty of custody, security and protection of Mr. Isaza Uribe while he was in detention, the State also accepted that this "is directly related to the absence of an effective investigation " (*supra*para. 18). Thus, more than 31 years have elapsed since the disappearance of Mr. Isaza Uribe without the facts having been judicially clarified in said investigation, which has not gone beyond the preliminary phase, and the conclusions of the authorities in the contentious-administrative and disciplinary measures have not been complete (*infra* paras. 102, 107 to 109 and 152 to 159).

95. Thus, given that the State's investigative response does not constitute an explanation of what happened to the alleged victim who disappeared while he was in its custody, the Court considers that the State has not disproved the presumption of his responsibility. Consequently, the Court considers that in this case the forced disappearance of Mr. Isaza Uribe was configured, for which the State is responsible for the violation of the rights recognized in Articles 3, 4.1, 5.1 and 7.1 of the American Convention.

96. Notwithstanding the foregoing, it is pertinent to remember that, by rejecting this classification of the facts, the State argued that, from the evidence provided, what can be derived are various hypotheses about who is responsible for the disappearance and there are even possibilities of a flight of Mr. Isaza and/or a reprisal for the homicide he committed, although there are no conclusive factual elements that allow the fact to be attributed to members of the FARC, paramilitaries, or state agents. For their part, the Commission and the representatives proposed a specific way of attributing the international wrongful act to the State, namely: that the forced disappearance was committed by members of paramilitary groups with the acquiescence of State agents.

97. The Court finds that, without prejudice to the already established legal classification of the fact of the forced disappearance of Mr. Isaza Uribe; in view of the fact that the State itself has suggested the aforementioned hypotheses about the perpetrators of the disappearance, as well as in view of the right of their next of kin to know the truth (*infra*paras. 150 and 151), the Court goes on to examine such hypotheses to determine if there was any greater or additional degree of participation by acquiescence by state agents and if it is appropriate, therefore, to qualify the responsibility of the State in some more specific way. For these purposes, the hypothesis of the alleged escape of the alleged victim will be analyzed first, and, secondly, the hypothesis of the abduction by paramilitaries.

a) Approach regarding the possible escape of Mr. Isaza from jail

98. One of the hypotheses put forward regarding what happened to Mr. Isaza Uribe is that in reality he escaped from prison with the help of the armed men who abducted him. In a first case, said individuals would have been members of the FARC and, in a second case, they would have been individuals who helped him seek his freedom in light of the imminent sentence he would be subjected to for the murder attributed to him.

99. The first assumption of this hypothesis initially arose from the report that the commander of the Puerto Nare police station rendered on what happened, which states that the armed men would have left papers (pamphlets or flyers) in the place that contained "subversive propaganda allusive to the ninth front of the FARC" [101]. It is noted that such flyers do not appear

[101] He indicated: "[...] that today [November 19, 1987 at] 00:30 hours. urban area east Mpio. local jail, [...] at around 02:20 a.m. [a person] appeared at the Police Command and reported that something strange had apparently happened in the jail, because when he passed in front of the establishment he saw the door It was open and the guards were nowhere to be seen. Upon entering and checking the premises, he saw that the guards were locked in one of the cells, then he went out to the Command to give notice when he saw through the

in the evidence file of the case before the Court and that, as alleged by the State, this police report does not make a conclusive determination about any perpetrator of the facts.

100. In addition, in their statements before the Attorney General's Office, other men who were detained in jail – and who were not taken away– made reference to such pamphlets alluding to the FARC or to bracelets that the armed men would wear. One of them also stated that before the events he had been aware of possible escape plans by another prisoner who was not Mr. Isaza Uribe.[102]. Regarding the prison guards who were allegedly locked in a cell by those who abducted the alleged victim, in some statement they referred to such pamphlets or stated that they had observed that the captors were wearing FARC armbands[103]. Other declarants stated that at that time there were no guerrillas in the region.[104]. However, as the representatives and the State affirmed, such statements are not consistent to reach the conclusion that the captors were members of the FARC, since their versions are contradictory as to whether they wore armbands of that guerrilla group or not; whether they invited all the detainees to leave or only chose those who were going to be taken away; or if there was violence or not. In addition, the State did not dispute the Commission's assertions that the prison security agents could be involved in the disappearance.

101. On the other hand, the head of the Criminal Investigation Court 64 of Puerto Nare, who weeks before had ordered Mr. Isaza Uribe's preventive detention, on the same day of his abduction, recorded that he had not been able to carry out an examination procedure. In said record, which contains a preliminary assessment of the judge about the probable authorship of the abduction, it is indicated that, "due to the way in which the unknown persons acted when carrying out the incursion and abduction of the four prisoners, it is not very credible that It is about some subversive group but rather paramilitary movements”[105].

102. For its part, the Delegate Attorney for the Defense of Human Rights questioned that several deponents did not accept that members of the FARC were probable perpetrators because, according to them, “at the time (November 1987) there were no [...] groups operating guerrillas in the area. For this reason, the Attorney General's Office pointed out that "the intelligence reports of the DAS and the Army indicate the opposite, as well as the fact, which is accepted, of the presence of paramilitary groups whose existence confirms that of the guerrilla." In other words, although the Attorney General's Office slightly mentioned the hypothesis of guerrilla participation or received certain

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public street a quantity of scattered papers which is about subversive propaganda alluding to the ninth front of the FARC. Then the service patrol moved to the prison and it was verified that things had actually happened as per the information provided by the aforementioned who [...] at the time was a guard at the school [...] It was also verified that of the total 9 prisoners there, 4 were missing, with only 5 inmates, and that the release of the detainees was effective. The guards say they have noticed the presence of about ten guys armed with submachine guns. [...] It should be noted that at the time of submitting Messrs. The guards were stripped of their weapons and when they fled they left their weapons and ammunition scattered around the different units.” *cf.*Report of assault on the local jail, Puerto Nare Station of the National Police, dated November 19, 1987. (evidence file, folio 5960).

[102] *cf.*Testimony of Horacio de Jesús Gil Gómez, before Criminal Investigation Court 64 of Puerto Nare, on November 19, 1987. (evidence file, folio 5409).

[103] *cf.*Testimony of Jorge Obed Rendón Moreno, before Criminal Investigation Court 64 of Puerto Nare, on November 19, 1987. (evidence file, folio 5429)

[104] *cf.*Statements by Alirio Antonio Sierra Pérez, Francisco Javier Gómez and Omar de Jesús Correa Isaza before the Departmental Attorney's Office in the city of Medellín, on January 30, 1992, the first two, and on February 4 of the same year, the third. (evidence exp., folio 5939)

[105] In addition, the judge indicated: “[...] Up to the time of this record (twelfth day [of November 19, 1987]) it is unknown course taken by the strangers with the prisoners they took with them and for whom it is feared an attempt on their lives. It should be noted that the prison establishment is located at one of the ends of the town, already at the exit of the same, a great distance from the Command where the Police station is, in the opposite direction, for which the guarding of the prisoners is entrusted two workers at the service of the municipality, with scant and lousy weapons that, among other things, the intruders did not take with them, limiting themselves to ordering the guards to unload their weapons while they remained in the establishment selecting the prisoners they were going to kidnap. [...]” *cf.* Record of Criminal Investigation Court 64, La Sierra, Puerto Nare, dated November 19, 1987. (evidence file, folio 5957)

information about it[106], in its resolution it indicated that it was not "possible to reliably establish what happened to Isaza Uribe and even less to know the possible perpetrators of his presumed disappearance." Thus, his ruling is by no means conclusive.

103. On the other hand, the Commission indicated that the State did not dispute that the municipality of Puerto Nare was heavily militarized at the time of the events, so it is reasonable to infer that a FARC incursion of this nature would have generated some kind of confrontation with the public force, despite which there is no information in this regard.

104. The Court considers it relevant that in the specific case, in an area with the presence of the armed forces (Army, Coast Guard and Navy) and police, that night it was possible for 10 armed men to transit and raid, regardless of whether they were individuals , members of guerrilla or paramilitary groups. The information provided is not clear or sufficient regarding the location of such bases or stations, even if certain statements or documents indicate that, at that time, the Puerto Nare prison was located near the National Navy Coast Guard post.[107]or a few blocks away from the military base and the National Police station[108]. In any case, the State recognized that, among the lacks of due diligence in the investigation, was the lack of exact verification of said military and police bases and posts (*supra*para. twenty-one). What is relevant is that there is no reasonable explanation as to how the transit and incursion of 10 armed men was possible on the night of the disappearance of Mr. Isaza in Puerto Nare, without the knowledge or reaction of the police and military authorities stationed in the area. Even if the lack of any confrontation is not, in itself, conclusive, the truth is that there was a context of collaboration between members of the Public Force and paramilitary groups in that region and at that time (*supra*paras. 42 to 46), which reduces the probability of the guerrilla incursion hypothesis and makes the action of paramilitary groups more plausible. Finally, there is no record that the possibility that the pamphlets had been left by the paramilitaries themselves or other actors to divert attention was investigated.[109], to

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106 It is on record that, in his evaluation report, the Puerto Berrío Regional Prosecutor indicated to the Delegate Prosecutor that, from the evidence provided, it can be inferred that the group of unidentified men “apparently” belonged to the FARC. In addition, during the processing of the case before the Commission, the State reported that on June 5, 1991, the DAS sent a report to the Delegate Attorney General's Office in which it indicated that at the time of the events there was widespread violence against various sectors of the population. and that the men who took Víctor Isaza out of jail belonged to the IX front of the FARC guerrilla movement.*cf.*Communication from the State of October 11, 1991, (evidence file, folios 73 to 80). This report was not contributed to this process and it is not stated whether it was evaluated by the Attorney General's Office.

107 A Cementos Nare worker and union leader of SUTIMAC declared: “in that highly militarized region they cannot operate with the consent of the local authorities, because the day they took Víctor Manuel out of jail, the Coast Guard 121 of the Navy was there. National a hundred meters or less and nobody says anything.*cf.*Statement by Omar de Jesús Correa Isaza before the One Hundred and Fourth Court of Mobile Criminal Investigation. Medellín, June 19, 1991, (evidence file, page 925). Another Cementos Nare worker, in his version rendered on January 30, 1992 before the Departmental Attorney's Office: "[...] the street advertisements accused the guerrillas of having kidnapped them, but the truth is that in the municipality of Puerto Nare the prison remains o It is located in a very central place from the Police posts to the same river port where there was the River Guard patrol that we called and marked with the number 122, which were by security devices in the region and one cannot be explained as without any resistance from the authorities in an area where there are no guerrillas, there is talk of kidnapping by these people” (evidence file, f. 55). Statement by Alirio Antonio Sierra Pérez on January 30, 1992, before the Departmental Attorney's Office: "At that time, Army Coast Guard No. 122 was in Puerto Nare, fifty meters from the prison in a place called La Peña." (exp. test, f. 50). See also: statement by Darío García before the Office of the Delegate Attorney for the Defense of Human Rights, January 28, 1992 (evidence file, page 940); Statement before notary public of Jhony Alexander Isaza Vélez (evidence file, f. 6986); georeferenced inspection procedure, Office of the Attorney General of the Nation (exp. evidence ff. 7447 to 7449) 122 and who was fifty meters from the prison in a place called La Peña” (evidence file, f. 50). See also: statement by Darío García before the Office of the Delegate Attorney for the Defense of Human Rights, January 28, 1992 (evidence file, page 940); Statement before notary public of Jhony Alexander Isaza Vélez (evidence file, f. 6986); georeferenced inspection procedure, Office of the Attorney General of the Nation (exp. evidence ff. 7447 to 7449) 122 and who was fifty meters from the prison in a place called La Peña” (evidence file, f. 50). See also: statement by Darío García before the Office of the Delegate Attorney for the Defense of Human Rights, January 28, 1992 (evidence file, page 940); Statement before notary public of Jhony Alexander Isaza Vélez (evidence file, f. 6986); georeferenced inspection procedure, Office of the Attorney General of the Nation (exp. evidence ff. 7447 to 7449)

108 *cf.*Geo-referenced inspection procedure, Office of the Attorney General of the Nation (evidence file folios 7447 to 7449), and “Footprints and Faces of Forced Disappearance (1970-2010)” (evidence file, f. 5555).

109 A DAS report states that "in the ACDEGAM facilities in Puerto Boyacá there is a printing press [...] in which, on many occasions, black FARC propaganda was prepared to address it in letters to individuals and thus locate the helpers of that organization. Brochures, flyers, bulletins and communications have also been prepared on behalf of various private justice organizations. *cf.*Administrative Department of Security, Central Intelligence, circa 1990, “Creation of self-defense in Magdalena Medio”, p. 5, quoted by the expert Michael Reed in his written statement (exp. Exhibit f. 6245).

despite the fact that this was raised before the domestic authorities by some declarants[110] and it was an obvious line of inquiry.

105. It should be noted that, ultimately, to support the hypothesis of the escape caused by an incursion by members of the FARC guerrilla, it would be necessary to start from the premise that Mr. Isaza had some connection with it. However, as noted by the State (*infra* paras. 164 and 198), no authority or public official came to the conclusion that he was a member of a subversive group.

106. Regarding the second case of the aforementioned hypothesis (escape caused by individuals), this was considered in the previous investigation in criminal proceedings and in the investigation of the Attorney General's Office and was assumed as true by the Council of State in the contentious-administrative process .

107. In this regard, the Attorney General's Office indicated, in this sense, that "in this field of assumptions it is also possible to think that Víctor Manuel Isaza Uribe fled in order not to face the criminal investigation for the murder of Dr. Francisco Humberto García Montoya, Director of Industrial Relations of Cementos Nare, continuing to 'disappear' in order not to comply with the sentence handed down against him". However, as pointed out (*supra* para. 102), the resolution is by no means conclusive and does not support this assumption.

108. As regards the resolution in the contentious-administrative jurisdiction, although the State argued that it was not conclusive regarding a flight of the detainees, the truth is that the Administrative Court of Antioquia considered in its judgment that the homicide by which Mr. Isaza Uribe was accused and sentenced "*was committed in front of a considerable number of people, including company managers*" and, "*although it is not possible to specify with certainty whether it was a kidnapping or a ransom –escape facilitated by armed third parties–, the circumstances noted [...] lead the Chamber to think that it could have been, rather, an escape facilitated with the action by armed third parties, given the imminence of a lengthy conviction, as actually occurred on November 7, 1989*". Said court ruled that "*Therefore, the failure in the service or the unlawful damage attributable to the defendant entities is not proven.*"[111]. Subsequently, the Council of State confirmed the previous sentence "*for finding it serious, pondered and adjusted to the logic of what is reasonable*" and, although he estimated that "*the administration failed to monitor the detainee*", also considered that "[...] *everything indicates that the escape was prepared and carried out to favor and protect the four accused [...] because freedom was a benefit for them and imprisonment was a burden. For this reason, whoever tried to demonstrate that the result was different, bore the burden of proof, that is, they had to prove that the detainees were released to take revenge, either by the public force, or by private individuals.*"[112].

109. This Tribunal notes that the contentious-administrative authorities basically used the report of the police commander and the criminal sentence imposed in absentia on Mr. Isaza Uribe to establish the hypothesis of the escape, without considering and ruling out other hypotheses about the facts. Furthermore, despite stating that the administration had failed

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110 *cf.* Statement by Omar de Jesús Correa Isaza before the Medellín Departmental Attorney's Office: "[...] that same night the municipality appears flooded with a pamphlet signed by the FARC. The strange thing is that there has not been any type of confrontation. [...] I made this complaint a long time ago, asking the Attorney General's Office to examine the typewriters of the municipal administration to establish what relationship there was between the pamphlet and the municipal machines, that was not done". Statement by Alirio Antonio Sierra Pérez: "I had a leaflet from them in my possession [...] I see it as impossible that in the midst of the army, the Police and the paramilitaries the guerrillas would enter to take out four comrades and no one would see anything (sic), personally I think that this bulletin was released by the same paramilitaries, in order to further confuse the region". (exp. test f. 50).

111 *cf.* Administrative Court of Antioquia, judgment of November 26, 1993, file 25,861. (evidence file, folio 5969)

112 *cf.* Council of State, Third Section, judgment of September 23, 1994, file 9458. (evidence file, folio 5988)

"in the surveillance of the detainee", the second sentence considered that there was a reversal of the burden of proof for the plaintiffs (relatives of the disappeared person) of distorting the factual hypothesis of the escape, which was moreover assumed and not proven .

110. In short, it is pertinent to point out that the Municipal Mayor of Puerto Nare stated that Mr. Isaza had been "forced out" from prison and that although Mrs. Carmenza Vélez stated that "this rumor was spreading that the guerrilla was to go to jail to get him out," she also stated that on her last visit to jail her husband told her that for this reason "he was afraid and that he wouldn't let himself be released[, that] it was better to get himself killed."[113]. Indeed, the State itself stated, when defining the scope of its acknowledgment of responsibility, that "unidentified persons entered the jail and took him away*Against his will*" (*supra*para. 18). In view of the foregoing, the Court considers that the hypothesis of the escape promoted by private individuals to help Mr. Isaza to evade the sentence that would later be imposed on him is not consistent with the proven fact that he was taken from the prison against his will.

111. Therefore, the hypothesis of the escape, in both cases, is inconsistent according to the elements indicated and provided in this case, for which reason it cannot be considered a reasonable explanation of what happened against the hypothesis that is analyzed below. continuation.

b) Forced disappearance of Mr. Isaza Uribe committed by members of paramilitary groups

112. As indicated, the Commission and the representatives maintain that the forced disappearance of Mr. Isaza Uribe was committed by paramilitaries who acted with the acquiescence of state agents because they operated in contexts that coincided temporally and geographically with the event, namely: paramilitarism in Puerto Nare and links with state agents, as well as the violence against members of SUTIMAC and the UP and the regulatory frameworks that supported or favored it.

113. The State argued that the evidence is not "totally conclusive", it raises "reasonable doubts" and that there are no elements, beyond the contextual ones, that make it possible to attribute responsibility to the State based on the alleged acquiescence between state agents and the group armed who entered the jail. In turn, in its final arguments and in relation to its acknowledgment, the State indicated that the "strongest hypothesis to date relates to the participation of private actors who abducted Mr. Isaza." The State did not clarify whether by saying "private actors" it was referring to hit men, other private individuals or members of paramilitary groups who would have acted as such, but it also indicated that one of the hypotheses would be a private reprisal or revenge for the aforementioned homicide of Mr. Humberto García,[114].

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[113] *cf.* Judgment of the Administrative Litigation Chamber, Third Section of the Council of State of Colombia, of September 23, 1994 (exp, evidence, f. 7255); and statement of Carmenza Vélez on January 8, 1997 before the Attorney General's Office, cited in the State's final written arguments (merits file, f. 816).

[114] The State noted that, in a statement dated May 9, 1991, Mrs. Vélez stated that "[t]he paramilitaries believe they are the authority of the people and dominate it. [Víctor] was chosen because he was a trade unionist and also because he was accused of the death of Dr. Humberto García, [who] was head of Industrial Relations at Cementos Nare" [and] had ties to paramilitary groups and he said he had to put an end to unions. [García's] father went to the Cementos Nare company [...] and said that they were not going to do anything for the death of his son." At the same time, in another statement, she stated that when Víctor asked her to work for a nephew, "Humberto replied [to Víctor] that he was not going to place more guerrillas there and also that Víctor was the next one on the list [...] implying that he was the next one they were going to kill,

114. In this regard, it is noted that, in their statements, Mrs. Vélez and Mr. Jhony Alexander Isaza Vélez[115], son of Mr. Isaza Uribe, related his disappearance to the murder of Mr. García, but they did so based on an alleged link that he had with paramilitary groups or because of an alleged death threat made by him against Isaza.

115. Since the responsibility of States under the Convention must not be confused with the criminal responsibility of private individuals (*supra* para. 83), it is not for this Court to rule on the innocence or guilt of Mr. Isaza Uribe in the homicide for which he was convicted, nor on the character of Mr. García as a homicide victim or on his alleged links with paramilitary groups.

116. Notwithstanding the foregoing, the Court notes that, when imposing a measure of preventive detention, Criminal Investigation Court 64 of Puerto Nare noted that witnesses to the homicide reported that Víctor Manuel Isaza Uribe stated – before them and other workers – that had killed Mr. García because he had said that there was an order to kill all the guerrillas in the company and that "[Isaza's] name was on the list," as well as because García had killed Julio César Uribe[116], namely, president of SUTIMAC and councilor for the UP who had been assassinated in December 1986 (*supra* paras. 49 and 50). Although the Court did not develop the matter further, it is relevant that in its resolution it also stated that, after the murder of Julio César Uribe, "*a wave of violence was unleashed referring to the constant murders and disappearances of several workers from that cement company, which has been the preponderant factor in the tense situation currently being experienced there [February 1988] and where the workers, on indefinite strike in In recent days due to that wave of violence, they are preparing on the date to attend the burial of their last murdered colleague, Mr. Héctor Julio Mejía, treasurer of the union*"[117].

117. An intelligence report from the Administrative Department of Security (DAS) has also been referred to, in which a detailed account is made of the formation of self-defense groups in alliance with drug traffickers and members of the National Army in Magdalena Medio, specifically in Puerto Boyacá. This report was prepared mainly with statements from a source who in 1983 was linked to the self-defense groups of Magdalena Medio, in which he served as a trusted man for the leaders of ACDEGAM, which was a front association created by ranchers and drug traffickers and used as a logistics and financial platform for paramilitary activities (*supra* para. 44). This report highlights that, from Puerto Nare, the drug trafficking organization mobilized cement for the laboratories of Puerto Boyacá and other regions of the country, also highlighting that, within the logistics structure, they had a DC-3 aircraft that transported food and supplies from Bogotá and Puerto Nare to

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[115] She stated that "when my father was arrested on October 27, 1987, it was because he went to work that day and went out to the club [...] in lunchtime and he met the company's lawyer and asked him for a job for one of his nephews. To the request, the lawyer replied that 'what job if you are a son of a bitch guerrilla and you are the next on the list'. Then that night my dad got drunk and went and killed that lawyer."*cf.* Statement Jhony Alexander Isaza Vélez. (exp. proof, f. 6985)

[116] According to the Court, "the testimony of the doctor Carlos Mario Saldarriaga, who said that he had gone to the dining room, due to the natural scandal that caused the event, and observed Víctor Manuel, also proves compromising against the accused Isaza Uribe. whom he had treated many times as a doctor, wielding a knife and when inquiring about what was happening, he stated [referring to Mr. Humberto García] that 'this son of a bitch killed Julio César Uribe.'"*cf.* Resolution of October 29, 1987 of the 64th Criminal Investigation Court of Puerto Nare, in the proceeding against Víctor Manuel Isaza Uribe. Document provided by the State. (exp. proof folio, 5361). The foregoing was reiterated in the accusation made against him for the homicide, in which the aforementioned Court also noted that, after having committed the act, Mr. Isaza Uribe stated before other company workers "that at the club the Lawyer García had told him not to have any illusions that Lucio Serrano was alive (said citizen appears as one of the disappeared so far from last year to the present time, notes the office); that two days after his capture he had been sent to death because there was an order to finish off all the guerrillas in the company.*cf.* Judgment of November 7, 1989 handed down by the Ninth Superior Court of Medellín, criminal conviction against Víctor Manuel Isaza Uribe for the crime of aggravated homicide (evidence file, f. 5382).

[117] *cf.* Decision of February 15, 1988 of the 64th Criminal Investigation Court of Puerto Nare, in the proceeding against Víctor Manuel Isaza Uribe. Document provided by the State (evidence file, folios 5366 and 5368).

Yari (Caqueta); and that, according to the glossary and encrypted language used by the organization, the airstrip of the Cementos del Nare company was called "La Chimenea"[118].

118. Based on the foregoing elements, it appears that, in a hypothesis that the disappearance of Mr. Isaza Uribe was committed in retaliation for the murder of Mr. García, the “private actors” referred to by the State could well have been members of paramilitary groups related to the company or paid by it.

119. The Attorney General's Office made indirect mention of this hypothesis, but indicated, without further foundation, that “to assert that those responsible are the paramilitary groups financed by the companies Colcarburos, Cementos Nare and others and protected by the civil and military authorities, is as much as say nothing [...]”.

120. There is a statement from one of the people who was also detained in the Puerto Nare municipal jail on November 19, 1987, that he was not taken by the armed group, in which he indicated that he had recognized one of the men armed as one of the MAS paramilitaries who, on September 30 of that same year, had assassinated Pablo Emilio Córdoba Madrigal, a director of SUTIMAC and councilor for the UP, in La Sierra[119]. The Court considers that said statement constitutes one more indication of the participation of paramilitaries that night, despite which it is not enough to establish this fact conclusively. At the same time, it is noted, as indicated by the State, that in their statements the other three detainees who were not abducted did not recall specific details due to the situation of fear in which they found themselves, a fear that was also expressed by that witness. In any case, with respect to these four statements, the representatives and the State agree that their versions are contradictory in various ways or that none is conclusive.

121. Other testimonies affirm that the acts were committed by paramilitaries with the connivance of members of the Armed Forces, such as that of Mrs. Carmenza Vélez, wife of Mr. Isaza Uribe, and some members of SUTIMAC. However, as the State pointed out, those deponents were not direct witnesses to the facts but rather “hearsay”, for which reason they do not offer sufficient probative weight either.

122. In short, in addition to those already indicated, the indications of participation of members of paramilitary groups in the events also clearly arise from the context of violence against trade unionists in Puerto Nare, specifically against members of SUTIMAC, to which Mr. Isaza Uribe belonged, as discussed below.

b.1 Violence against trade unionists in relation to the counterinsurgent military doctrine and paramilitarism

123. In general terms, in its Second Report on the Situation of Human Rights in Colombia of 1993, the Commission documented that since the creation of the Central

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[118] *cf.* Document of the Administrative Department of Security, without title or date (exp. test, ff. 1470 to 1548).

[119] The 64th Criminal Investigation Court of Puerto Nare, which took a statement from Horacio de Jesús Gil Gómez, stated that he stated the following: "What I can tell you is that I believe that among those who were dressed in civilian clothes, there was one who I believe was the one who killed Pablo Emilio Córdoba Madrigal, the councilor of the UP, because that day of the death of don Pablo I felt the shots because I had to stock a canteen establishment nearby and then when the shots ran to look out and I saw a guy just like you, Mr. Secretary but with a boso... That was one of those also yesterday they were in the jail and last night he was wearing black pants and a long-sleeved striped shirt. He covered his face with a poncho but when, at the moment the poncho fell off, that was where I recognized him and that's when fear invaded me... (at this moment, despite the very possible importance of what the deponent said and the tell him that he will take rest to expand his statement later). The declarant read his statement, ratified what was said and signed on record. The representatives noted that when the witness stated the foregoing, the procedure was suspended, without it having been resumed afterwards, despite the importance of that statement. *cf.* Testimony of Horacio de Jesús Gil Gómez, before Criminal Investigation Court 64 of Puerto Nare, on November 19, 1987. (file evidence folio 5410 and 5411)

Unitaria de Trabajadores de Colombia (CUT) in November 1986 and up to May 1990, 538 activists and trade union leaders had been assassinated and disappeared in Colombia[120].

124. In this sense, it was argued that such violence was related to the identification of trade unionists within the notion of "internal enemy", which was fostered by the so-called "national security doctrine", included in Decree 3398 of 1965.[121]and assumed by the Armed Forces since the beginning of the 1960s, as well as by the contents of various anti-guerrilla military regulations and manuals[122].

125. In this regard, expert witness Michael Reed stated that the conduct of military operations in the eighties of the 20th century in Colombia was framed within the counterinsurgency doctrine, which reflects highly irregular contents both in the conception of the targets as well as the methods of warfare, since the war and the operations were directed not only against armed groups but also against the "insurgent civilian population", in a notion of an ethereal and broad enemy that included "*a heterogeneous mass made up of elements from different sectors and unified through a process of psychological activity that achieves their adherence to revolutionary causes.*[123]. In this way, within the framework of counterinsurgent military action, the actions of political and social demonstrations, typical of opposition political parties or worker-union, peasant or student movements, were seen as an integral part of the "subversive conflict" and were identified a civilian component of the revolutionary force as a target of military operations[124]. In addition, such regulations and

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[120] IACHR, Second Report on the Situation of Human Rights in Colombia. OEA/Ser.L/V/II.84 Doc.39 rev., October 14, 1993, Ch. VIII. Available in:http://www.cidh.org/countryrep/Colombia93sp/cap.8.htm . In addition, the media reported in May 1987 that in one year 32 trade union leaders had been assassinated in Colombia, events that were reportedly denounced at the V National Forum on Human Rights, held in Bogotá, and it is stated that "the main The directors of the workers unions received death threats, at least once, in the last year". In another press release from January 1988, the disappearance of two union leaders in Puerto Nare was reported, as well as the meeting that executives of the National Federation of Construction, Cement and Wood Workers (sic) would have held with the Attorney General of the Nation, to whom they denounced "the difficult situation of public order in the Antioquia region."*cf.* Press release "They will investigate the disappearance of two leaders in Puerto Nare" published by El Colombiano on January 25, 1988 (file evidence folio. 87).

[121] In its recitals, the decree affirms: "That the commitments that the country has contracted in the international field require the adoption and execution of measures that strengthen its internal and external security." According to the expert Yepes, with these instruments the Government established a legal ground to apply the recommendations contained in the report of the mission of the United States Special War College, in February 1962, to train mixed groups of civilians and soldiers and to develop a paramilitary counterinsurgency strategy.The use of civilians in activities of "restoration of normality" (art. 25), and the possibility of giving civilians weapons for the exclusive use of the Armed Forces (art. 33, par. 3) create the basis of paramilitarism"*cf.*Written version of the expert opinion rendered during the hearing before the Court by Mr. Yepes. (exp. test, f. 7165).

[122] The following were referred to: Counter-guerrilla combat regulations – EJC 3-10, of the General Command of the Military Forces, Provision No. 005 of April 9, 1969; Manual of Urban Guerrillas and Counterguerrillas – EJC 3-18, of the National Army, Provision No. 00006 of 1977; Manual of general instructions for counter-guerrilla operations, of the General Command of the Army of 1979; Combat manual against bandits or guerrillas - ECJ-3-101, of the General Command of the Army, of June 25, 1982; and Counter-guerrilla Combat Regulations – EJC-3-10, of the General Command of the Military Forces, of 1987.*cf.*Written statement of expert witness Michael Reed Hurtado. (exp. evidence folios. 6237 to 6975)

[123] It can have a specific geographical seat or be dispersed within the national conglomerate but united through the political and economic postulates of the insurgency; it is directed and activated by minority agitation groups, which operate clandestinely, through clearly defined norms and which have proven their effectiveness in insurgent movements from other times and from other latitudes. Within the war process, the insurgent civilian population is entrusted with adequate missions that allow the strengthening, increase and success of the armed groups".

[124] Expert witness Reed pointed out that, more specifically, this type of sign is observed in a military structure used for the instruction from, at least, the end of 1985, called "Let's Know Our Enemy", which is an official publication of the Military School of Cadets that succinctly presents the conception of the enemy and the inclusion within that category of social organizations and politicians who defend rights, including unions and non-governmental human rights organizations. Thus, the instruction manual incorporates lists of organizations that it calls "front organizations", and defines as: "organic structure of direct dependency that in some cases are legally constituted, used by the Party (Colombian Communist) as an instrument to obtain

The manuals adopted as a method of operation "military organization of the civilian population," including the formation of paramilitary groups, then called "self-defense juntas."[125], a description used by the groups organized by the Army in areas such as Magdalena Medio in the 1980s. In other words, the Army had as a policy and practice, in the framework of its counterinsurgency operations, the sponsorship, formation, manning and control of paramilitary groups and, under the cover of "plausible deniability", actions of "dirty war" that included executions, disappearances and torture of people who were part, according to the doctrine, of the "insurgent civilian population"[126].

126. The expert witness Alberto Yepes Palacio indicated that, "given the rise of the social and trade union movements since the mid-1970s in Colombia and the influence that communist and left-wing ideas had on the trade union movement, different governments and especially the forces The military perceived the trade union movement as an expression of 'international communism' and as an integral part of the 'internal enemy'". Thus, in application of this doctrine, "the Armed Forces and their paramilitary allies have applied a counterinsurgency strategy with which they have tried to deprive the guerrillas of all real and imaginary support from the civilian population [and] terror is a fundamental part of that strategy. This concept of internal enemy "extended to all forms of political or social opposition and dissidence,"[127], and it was "notorious that union activity was considered a subversion strategy"[128].

127. This notion of "internal enemy" within the national security doctrine was also documented in 1994 in a Joint Report of two United Nations Special Rapporteurs who, after their visit to Colombia, indicated:

> The armed forces apparently continue to apply an anti-subversive strategy based on the concept of 'national security', under which anyone known or suspected to be linked to the guerrillas is considered an internal enemy. [... I]n the areas classified as 'red zones', where the insurgents operate and armed confrontations take place, the security forces consider that practically all the civilians are collaborators with the subversion (...) The category of 'internal enemy', applied to all

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immediate and intermediate objectives, which base their actions on the pursuit of common benefits and especially for the less favored classes; essentially giving a political meaning to situations so that they have repercussions in favor of their interests (sic.)" The list includes: the Colombian Workers Union Confederation (CSTC), the National Agrarian Federation (FENSA), the Committee of Solidarity with Political Prisoners, the Permanent Committee for the Defense of Human Rights, and the Colombian Association of Labor Lawyers (ACJL).

[125] The Manual "Combat against bandits or guerrillas" established in 1982 that organizing, instructing and supporting the self-defense juntas should be a permanent objective of the Military Force where the population is loyal and manifests itself aggressive and determined against the enemy. Explicitly, the Counter-Guerrilla Combat Regulation (EJC 3-10) orders "military organization of the civilian population, so that (...) it supports the execution of combat operations". The following provisions determine the organization, military endowment, training, operation, and supervision of paramilitary groups, called "self-defense juntas," understood as "a military-type organization made up of selected civilian personnel from the zone of combat,*cf.*Written statement of the expert Michael Reed Hurtado (exp. evidence f. 6245).

[126] *cf.*Written statement of the expert Michael Reed (exp. evidence ff. 6237-6251).

[127] The expert referred as examples that, in his memory to the Congress of 1987-1988, the Minister of Defense General Rafael Samudio Molina stated that: "Subversion acts in the political, economic, educational, union and armed fields, with well-defined purposes (...) the subversive groups act simultaneously in urban and rural areas, develop military activity parallel to political action and use the convergence strategy in the political, social, labor, educational, judicial and armed fields"; that General Jaime Sarmiento Sarmiento, Commander of the Military Forces, affirmed, in an editorial in the Magazine of the Armed Forces of 1980, that "the strategy of subversion was to 'infiltrate all national institutions, from the simple family cell (...) going through the groups (...) without neglecting the unions'"; and that Colonel Orlando Zafra Galvis, The second Commander of the Army's BINCI between 1981 and 1982 wrote in the Armed Forces Magazine in 1985 that "clandestine agents and agitators infiltrate social and state organizations, seize leadership positions and generate plans to weaken the structures with a view to creating chaos and the final collapse of the State. There is no institute, organization or social, political or religious group that they do not have an interest in penetrating and dominating. All these activities constitute what is called political warfare, which is the most dangerous part of the life of democracies. they seize management positions and generate plans to weaken the structures with a view to creating chaos and the final collapse of the State. There is no institute, organization or social, political or religious group that they do not have an interest in penetrating and dominating. All these activities constitute what is called political warfare, which is the most dangerous part of the life of democracies. they seize management positions and generate plans to weaken the structures with a view to creating chaos and the final collapse of the State. There is no institute, organization or social, political or religious group that they do not have an interest in penetrating and dominating. All these activities constitute what is called political warfare, which is the most dangerous part of the life of democracies.". *cf.* Written version of the expert opinion rendered during the hearing before the Court by Mr. Alberto Yepes Palacio (evidence exp., ff. 7159 to 7182).

[128] *cf.*Written version of the expert opinion rendered during the hearing before the Court by Mr. Alberto Yepes Palacio (evidence exp. ff. 7176 to 7178). See also the written statement of the expert Carlos Medina Gallego (exp. proof f. 7000-7010).

> person who is considered to support the guerrillas in one way or another (even if the insurgents use force to obtain, for example, food or money from civilians), has apparently been extended to all those who They express dissatisfaction with the political, economic and social situation, especially in rural areas. Consequently, the leaders and members of unions, political parties of the political opposition, human rights organizations, social workers, etc., have been, together with peasants, the main victims of human rights violations in conflict zones. armed[129].

128. Thus, it has been documented that, based on the counterinsurgency military doctrine in force at the time of the events, the activation of paramilitary groups was promoted, on the one hand, to combat an "enemy" that, on the other hand, included people and organizations that exercised or claimed their rights through collective action. Such conjunction could be a factor that led to violence against trade unionists in Magdalena Medio, and specifically in Puerto Nare.

129. Although it is true that, starting in 1988 and 1989, the State began to implement regulatory frameworks to exclude the provisions that promoted the creation and operation of paramilitary groups and to promote their dismantling, what is relevant for the purposes of this case is that the legal framework and its interpretations, which led to the formation and activities of such groups, were in force at the time of the disappearance of Mr. Isaza in November 1987.

b.2 Violence against the SUTIMAC union

130. As indicated (*supra* paras. 49 to 54), before the disappearance of Mr. Isaza Uribe there are seven cases of members, activists or leaders of the SUTIMAC union (in some cases also councilors for the UP) who were assassinated by unidentified persons or paramilitaries from the “MAS” group. After his disappearance and until 1989 other members and leaders of SUTIMAC were assassinated, disappeared or displaced. Despite the complaints and requests for protection addressed by the union leaders, the CUT and FENALTRACONCEM to various state authorities, reporting on the "wave of terror and violence" of which the workers of the Cementos del Nare and Colcarburo companies were being victims, including Mr. Isaza Uribe, there is no record that protection measures were adopted in favor of that group.

131. The representatives indicated that the paramilitary groups in the region claimed responsibility for their criminal actions under different names and acronyms, such as “Death to kidnappers (MAS)”, “Macetos”, “autodefensas”, “tiznados”, “toxicol”, the “ facepainted”; that from Puerto Boyacá they extended their actions to Puerto Berrío, headquarters of the XIV Brigade of the Army and to Puerto Nare, among others; and that, according to the Attorney General's Office, of the list of 163 members of the "MAS", 59 were active members of the Public Force and 5 of them were members of the Army assigned to the "Bárbula battalion".[130]. Regarding the area and time of the events, in the case *19 Merchants vs. Colombia* the existence of close ties between the "paramilitary" group in the area and members of the military base of the "Bárbula battalion" of the Colombian Army was proven[131], which had jurisdiction over the municipalities of Puerto Triunfo, Puerto Nare, Caracolí and Puerto Boyacá.

132. The reasons for this very specific violence against SUTIMAC have focused on its links with the UP and on the company's possible interests in ending the union.

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[129] *cf.* Joint report of the Special Rapporteur on the question of torture, Mr. Nigel S. Rodley, and the Special Rapporteur in charge of the issue of extrajudicial, summary or arbitrary executions, Mr. Bacre Waly Ndiaye. E/CN.4/1995/111 of January 16, 1995. Available at: http://www.hchr.org.co/documentoseinformes/documentos/html/informes/onu/rest/E-CN-4-1995-111.html

[130] *cf.* Cited in the written version of the expert opinion rendered during the hearing before the Court by Mr. Alberto Yepes (exp. evidence f. 7170)

[131] In that case, that conclusion was based on national court decisions, a report by the United Nations Special Rapporteur on summary or arbitrary executions on the visit to Colombia in October 1989 and reports from the Administrative Department of Security (DAS) for May 1988, March 1989 and February 1990. *Cf. Case of 19 Merchants vs. Colombia*, paras. 130 et seq.

Thus, when questioning the factors that triggered "such a spiral of violence", reports from the CTI of the Office of the Attorney General of the Nation of September 2015 and February 2016 indicate, among others, the following reasons:

> The struggle that was taking place between the emerging Campesino Self-Defense Forces of Magdalena Medio and the communist-tinged guerrilla structures that had been established in the region for some time, where everything related to the left was synonymous with subversion, especially if it was accompanied by union, popular and organizational. [...]
>
> The directors of the companies, CEMENTOS NARE and COLCARBURO, pay to put an end to the union affiliated to the left and [another] union could emerge [...] made up of personnel belonging to the traditional political parties, which sought to counterbalance SUTIMAC and SINTRACOLCARBURO, who were accused of communist orientation. These affirmations are based on a particular fact that began the series of violent acts that concern us here: "... For the union leaders, the murder of Julio Cesar Uribe meant the beginning of the bloodiest repression against the trade union organization and the Patriotic Union; which had already been announced, since in October 1986, German Froid, Manager of Cementos Nare,
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> [...] [One of the paramilitary chiefs], alias "Vladimir" acknowledged in one of his inquiries that the paramilitary group he commanded and was present in the area had contacts with the hydrocarbon and cement company and with the Police [... Said paramilitary stated that such a relationship] "did exist, it consisted in the fact that they paid us money [...] I contacted the general manager of the company named Froid... I explained to him that we guaranteed that the company's facilities We did not let them touch the guerrillas and we guaranteed the safety of the workers [...]"
>
> [Those companies] benefited from the situation generated, since [...] they took advantage of the massive departure of workers to implement the contract work system, which made it possible to maintain production with lower costs and without obligations to provide social security, benefits social security or job stability for new workers"[132].

133. In fact, in that report it is suggested that the Prosecutor's Office "study[ed] the possibility of linking the directors of the time of Cementos Nare and Colcarburos to the process, since there is testimony that relates them to making payments to the paramilitary group under the command alias 'Vladimir'[; inquire and establish which Police personnel were part of the Police Substation of the township La Sierra [who] contributed to the illegal group constituted there [... and] the linking of the [members of the MAS who have not been prosecuted] is considered viable]".

134. In the same sense, Mrs. Luz María Ramírez García, who testified as a witness offered by the State in this case as Prosecutor in charge of the investigation into the disappearance of Mr. Isaza Uribe, stated:

> The members of the SUTIMAC union were involved in this criminal persecution from the moment it began to be directed or directed by the left-wing political parties [...] since the union leaders were the first representatives of this political movement at the level of the municipality of Puerto Nare and were all targets of the criminal actions of the extreme right groups. In all the cases that this delegate investigates in context, the group that today is known as the peasant self-defense groups of Magdalena Medio, but which at the time called itself "MAS" is identified as the perpetrators.
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> [...] In view of the "labor victories" that the union leaders obtained benefiting the workers and employees of the Cementos Nare and Colcarburo companies, there was a presumption that the same benefits could be obtained in the political aspect, with the improvement of quality of life of the inhabitants of the municipality, this being the reason why, in addition to union leaders, they were political leaders with a seat in the municipal corporations[133].

135. Indeed, in response to the questions from the Judges during the hearing held before this Court, the State indicated that the Office of the Attorney General of the Nation reported that, in the

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132 *cf.* Report of the Technical Investigation Corps (CTI) of the Office of the Attorney General of the Nation of February 9, 2016 (evidence file, folios 7160 to 7163).

133 *cf.*Written statement of Mrs. Luz María Ramírez García (evidence file, ff. 6199 to 6204).

current investigations of 14 of the 22 cases of SUTIMAC trade unionists murdered, disappeared or displaced since December 1986, members of paramilitary groups have been criminally convicted or have been charged (or are pending charges), specifically Alonso de Jesús Baquero Agudelo – alias “El Negro Vladimir” – from the “MAS” organization of the Self-Defense Forces of Magdalena Medio, and Ramiro Vanoy Murillo – alias “Cuco Vanoy” - and Iván Roberto Duque Gaviria - alias “Ernesto Báez”, demobilized commanders of the “Mining Block” and the “Central Bolívar Block” of the United Self-Defense Forces of Colombia, who in free version statements rendered before Transitional Justice Prosecutors confessed to several of these facts by line of command.

136. Thus, for example, it was reported that in statements made by the paramilitary leader of Magdalena Medio, Alonso de Jesús Baquero Agudelo, alias "Vladimir" or "Negro Vladimir"[134], one of the perpetrators of the Rochela Massacre[135]Among other crimes, he confessed that he was in the service of the National Army as an informant and guide for the Tolemaida military base, to later be sent to Puerto Boyacá by the Commander of the XIV Brigade, as a paramilitary instructor in the early 1980s.[136]. He recounted how various crimes perpetrated by the paramilitary structure in the area were committed, such as the disappearance of 19 businessmen in October 1987 in Cimitarra and the massacre of judicial officials in the township of La Rochela (Simacota) in January 1989. He recounted that The central target of the persecution of the paramilitaries were the militants and sympathizers of the UP, the Communist Party and social and union organizations in the region. Likewise, it referred to the participation of senior officers of the Military Forces in meetings in which the commission of crimes was decided, as well as forms of coordination of the paramilitary structure of Magdalena Medio with military units (II Division of the Army, XIV Brigade, B2 of the XIV Brigade, “Bárbula”, “Calibío”, “Rafael Reyes” and “Bombona” Battalions).[137]. In addition, the representatives highlighted what was declared in 2007 by the former commander of the Self-Defense Forces of Magdalena Medio (ACMM), Ramón Isaza, alias "El Viejo", before the specialized jurisdiction for justice and peace, in which he revealed that the Self-Defense Forces of Puerto Boyacá exercised control of the region of Puerto Nare and La Sierra at the end of the 80s and were the perpetrators of numerous crimes in the region[138].

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[134] Proceeding No. 4239 of the Delegate Prosecutor's Office before the Technical Investigation Corps: extension of the investigation of August 3, 1995; extension of the investigation of August 8, 1995; extension of investigation of December 4, 1995; expansion of the investigation rendered on August 8, 1995; expansion of the investigation carried out on November 28 and 29, 1995.*cf.*CINEP, Noche y Niebla Magazine, "Debt to Humanity: State Paramilitarism in Colombia 1988-2003, "Bladimir" exceptional witness on paramilitary actions in the territories of the Army's 14th Brigade" (evidence file, ff 1180 to 1184).

[135] *Cf. Case of the La Rochela Massacre v. Colombia*. Judgment of May 11, 2007. Series C No. 163; and Judgment of November 14, 1990 of the Decision Chamber of the Superior Court of Public Order.

[136] He recounted about a meeting held in Cimitarra between an Army General and well-known paramilitary leaders from Puerto Boyacá, such as Henry and Gonzalo Pérez, in which the senior officer explained that the paramilitaries were going to move from a defensive phase to an offensive phase, in which they had to go to fight and for this they would have the full support of the Army.

[137] Extension of inquiry carried out on November 29, 1995, pages 7 and following. Extracts from said statements
They also appear in the Noche y Niebla Magazine, "Debt to Humanity: State Paramilitarism in Colombia 1988-2003, "Bladimir" exceptional witness on paramilitary actions in the territories of the army's 14th brigade",*supra*.

[138] The representatives referred to the free versions of Ramón Isaza before the Justice and Peace Jurisdiction of May 2,
June and August 21, 2009.

137. The context described reveals, without a doubt, a systematic pattern of violence against trade unionists and, in particular, against members of the SUTIMAC union, which has been attributed to the actions of paramilitary groups.

b.3 Link of Mr. Isaza Uribe with SUTIMAC and his disappearance

138. The State alleged that, although Mr. Isaza Uribe was a member of SUTIMAC, his union activity has not been proven. In this regard, the Court considers that, given the level of violence verified against union members, it is irrelevant whether the alleged victim's relationship with it at that time was merely affiliation, intense union activity, or representation, since neither has It has been discredited that mere sympathy or membership with the union was already, in this context, a sufficient or relevant reason to place them in the same risk situation. In addition, although it is true that Mr. Isaza Uribe did not hold a popularly elected position for the UP or was not a particularly visible leader or militant of the party, as the State affirmed,

139. Therefore, it is possible to consider that in a time and context in which the Armed Forces sponsored and formed paramilitary groups, in the framework of their counterinsurgency operations, and in which trade unionism could be understood as part of an "insurgent civilian population" , the mere perception of the "communist", "guerrilla", "subversive" or "unionist" identity, could be enough for that group of people, for the mere fact of being perceived or identified as members of the union or the UP , ran the risk of suffering violations of their rights.

140. Indeed, when asked about the hypothesis that she is currently using regarding those responsible for the disappearance, the Prosecutor in charge of the investigation into the disappearance of Mr. Isaza Uribe stated:

> "[...] this Prosecutor delegate, according to the evidence that is present throughout the process [...] is inclined towards the perpetrator of the peasant self-defense group of Magdalena Medio, since from the beginning of the investigation it was clear that the only The armed actor that at that time was beating the left-wing political and union groups were the nascent peasant self-defense groups of Magdalena Medio, with a single objective: the extermination of the communist guerrillas and their left-wing agents. [...]
>
> [...] The investigation into the forced disappearance of Mr. Víctor Manuel Isaza Uribe is currently being carried out in connection with the criminal conduct committed between 1986, 1987 and 1988, against leaders and sympathizers of the Patriotic Union political party, as well as leaders and members of the SUTIMAC and COLCARBUROS unions, all the acts committed in the Magdalena Medio Antioqueño region, mostly in the municipality of Puerto Nare, specifically in the town of La Sierra [...since] everything indicates [that the disappearance] occurred in the context of the persecution of the members, militants, and sympathizers of the Patriotic Union political party, [...] and this was the reason why this delegate decided to annex this investigation to the others. [...] Regarding Víctor Manuel Isaza Uribe,[139].

141. From the elements analyzed, it can be deduced that, even in the event of the forced disappearance of Mr. Isaza in retaliation for having committed the homicide of a person linked to the hierarchy of the Cementos del Nare company, the hypothesis of participation of members of groups paramilitaries is not excluded and, on the contrary, is strengthened, precisely because of the supposed links that they would have with the company. In this case, the fact that the drug trafficker had links with paramilitary groups and/or with the company is something that should have and should be investigated by the competent authorities and does not exclude a

[139] *cf.* Written statement of Mrs. Luz María Ramírez García (evidence file, folios. 6199 to 6204).

greater responsibility of the State due to the acquiescence of its agents with paramilitary groups that, at that time, were used as a military method of counterinsurgency and that, in that region, a series of attacks against members of the SUTIMAC union and UP militants are attributed to them.

c) Conclusion

142. The disappearance of Mr. Isaza Uribe is part of the series of murders and disappearances of several members of the SUTIMAC union that occurred since 1986 and have been attributed mainly to a paramilitary group called "MAS". Paramilitarism was a counterinsurgency military practice or method at the time, and such groups were active in that region. Puerto Nare was at that time a militarized zone or with a significant presence of military and police units. At that time, in numerous cases patterns of joint action between the Army and the paramilitary groups that dominated the area have been verified. There is also information indicating that there were links between these groups with drug traffickers, as well as with companies and members of the military and police forces in the area, which has not yet been investigated and determined in all its dimensions. The relationship that SUTIMAC members had with the UP and the perception or identification that its members and militants had at that time as part of an "insurgent civilian population" has been established. In turn, the State has recognized the excessive delay and lack of diligence in the investigations, which have also not been effective, since it has taken time to explore logical lines of investigation that take into account the relevant contexts and were directed, where appropriate, to unravel the structures that allowed the disappearance (The relationship that SUTIMAC members had with the UP and the perception or identification that its members and militants had at that time as part of an "insurgent civilian population" has been established. In turn, the State has recognized the excessive delay and lack of diligence in the investigations, which have also not been effective, since it has taken time to explore logical lines of investigation that take into account the relevant contexts and were directed, where appropriate, to unravel the structures that allowed the disappearance (The relationship that SUTIMAC members had with the UP and the perception or identification that its members and militants had at that time as part of an "insurgent civilian population" has been established. In turn, the State has recognized the excessive delay and lack of diligence in the investigations, which have also not been effective, since it has taken time to explore logical lines of investigation that take into account the relevant contexts and were directed, where appropriate, to unravel the structures that allowed the disappearance (*infra* paras. 153 to 158).

143. The Court deems that the evidence and context indicated allow us to consider that the forced disappearance of Mr. Isaza Uribe was perpetrated by members of an organized paramilitary structure that carried it out, who in this context acted with the acquiescence of members of the State security forces. , even if they have not been identified or the specific way in which such acquiescence operated has not been concretely established. Concluding that the indicated indications are not sufficient to establish that Mr. Isaza Uribe was forcibly disappeared would imply allowing the State to rely on the negligence and ineffectiveness of its investigations to evade its international responsibility.[140]. When assessing that the investigation is currently continuing, taking into account the relevant contexts, the Court considers that it is in the domestic instances that those specifically responsible must be identified and prosecuted.

144. Regarding the alleged breach of Article 2 of the Convention[141], the Court has taken into account the validity, at the time the execution of the enforced disappearance began, of the regulatory frameworks related to the creation and strengthening of paramilitaries and which favored the identification of trade unionism with the notion of "internal enemy". Regardless of whether the regulatory framework that fostered paramilitarism is not in force, or whether the military manuals in question continue to be in force or are being applied by the Colombian military forces (*infra* paras. 202 to 208), the Court considers that various contents of such normative frameworks, by their own text or by their interpretation, allowed or

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[140] *Cf., mutatis mutandis, Case of Kawas Fernández v. Honduras. Merits, Reparations and Costs*. Judgment of April 3, 2009. Series C No. 196, para. 97; *Case of Rodríguez Vera et al. (Disappeared from the Palace of Justice) v. Colombia*, para. 305, and *Case of Vásquez Durand et al. v. Ecuador*, para. 132.

[141] Article 2 of the Convention does not define which are the pertinent measures for adapting domestic law to it, obviously because it depends on the nature of the rule that requires it and the circumstances of the specific situation. For this reason, the Court has interpreted that such adaptation implies the adoption of measures in two aspects, namely: i) the suppression of norms and practices of any nature that entail a violation of the guarantees provided for in the Convention or that ignore the rights therein recognized or hinder their exercise, and ii) the issuance of regulations and the development of practices leading to the effective observance of said guarantees. *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 La Cantuta v. Peru, Merits, Reparations and Costs*. Judgment of November 29, 2006. Series C No. 162, para. 172, and *Case of San Miguel Sosa et al. v. Venezuela*, para. 166.

introduced risks for certain members or groups of the civilian population in the framework of the internal armed conflict, in this case trade unionists who were stigmatized, persecuted and attacked, in many cases by paramilitary groups. Consequently, such contents of that regulation or its practical application, otherwise contrary to the principle of distinction of International Humanitarian Law[142], constituted at that time a breach of the obligation of the State to conform its domestic legal system with the American Convention, established in Article 2 thereof, for violating its obligation to guarantee human rights in a democratic society, particularly in relation to with the freedom of thought and expression and of association, as well as with the principle of non-discrimination for reasons of political opinion and social condition.

145. In relation to the alleged violation of freedom of association, the Court notes that, notwithstanding the fact that, at the time of his disappearance, Mr. Isaza Uribe was in preventive detention and that this limited his possibilities of actively exercise his freedom of association, the fact is that he had not been criminally convicted at that time and that, in the aforementioned context, his disappearance is related to his union activity. The Court has considered that, when the violation of the right to life, integrity or personal liberty has the objective of preventing the legitimate exercise of another right protected in the Convention, such as freedom of association, a violation is configured in turn. autonomous to this right. Article 16. 1 of the American Convention also contains freedom of association and the State must guarantee that people can exercise it freely without fear of being subjected to any violence; otherwise, the ability of groups to organize to protect their interests could be diminished[143]. Additionally, it is presumable that the forced disappearance of Mr. Isaza Uribe would have increased its intimidating and intimidating effect on the other members of the union to which he belonged, as one more fact of the context of violence and impunity existing against him. For these reasons, the Court declares that the State is responsible for the violation of union freedom, contained in the freedom of association, recognized in Article 16 of the Convention, to the detriment of Mr. Isaza Uribe.

146. In conclusion, the Court declares that the State is responsible for the forced disappearance of Mr. Víctor Manuel Isaza Uribe and, consequently, for the violation of his rights to recognition of legal personality, to life, to personal integrity and to personal liberty, recognized in Articles 3, 4, 5 and 7 of the American Convention, in relation to Articles 1.1 and 2 thereof and Article I a) of the Inter-American Convention on Forced Disappearance of Persons, to the detriment of that.

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142 In accordance with the provisions of International Humanitarian Law, the principle of distinction refers to a customary norm for international and non-international armed conflicts, which establishes that "[t]he parties to the conflict must distinguish at all times between civilians and combatants", that "[a]ttacks may only be directed against combatants" and that "[c]ivilians must not be attacked". In addition, customary International Humanitarian Law norms stipulate that "[t]he parties to the conflict must at all times make a distinction between civilian objects and military objectives", in such a way that "attacks may only be directed against objectives military", while "civilian objects must not be attacked". In that same sense, *Cf. Case of the Santo Domingo Massacre v. Colombia. Preliminary Exceptions, Merits and Reparations*. Judgment of November 30, 2012. Series C No. 259, para. 212; and *Case of Cruz Sánchez et al. v. Peru. Preliminary Exceptions, Merits, Reparations and Costs*. Judgment of April 17, 2015. Series C No. 292, para. 276.

143 *Cf. 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 Cantoral Huamaní and García Santa Cruz v. Peru. Preliminary Objection, Merits, Reparations and Costs*. Judgment of July 10, 2007. Series C No. 167, paras. 146 and 147. See also *Case of Cepeda Vargas v. Colombia, supra*, para. 172, 176 and 177; and *Case of García and family v. Guatemala. Reparations and Costs Fund*. Judgment of November 29, 2012 Series C No. 258, paras. 116 and 117.

VIII.2
RIGHTS TO JUDICIAL GUARANTEES[144] AND JUDICIAL PROTECTION[145] (ARTICLES 1.1, 8.1 and 25 OF THE AMERICAN CONVENTION)

Arguments of the parties

147. Regarding the subsisting controversy, the ***Commission*** indicated that since 1995 no one else has been linked to the process and that the authorities did not follow lines of investigation that should have emerged from the beginning (possible responsibilities of public officials or members of paramilitary groups linked to other murders of members of the UP or SUTIMAC in Puerto Nare); they did not investigate the possible link with the other people who disappeared from jail that day; nor did they provide remedial measures to secure witness statements that might be relevant. Therefore, it considered that the State is responsible for the violation of the rights recognized in Articles 8 and 25 of the Convention, to the detriment of Mr. Isaza Uribe and his next of kin, as well as for the violation of Article Ib) of the Inter-American Convention on Forced Disappearance of Persons.

148. The ***representatives*** They emphasized that the ineffectiveness and lack of due diligence of the police and judicial authorities at the time of the disappearance prevented his rescue, the determination of his whereabouts, and the punishment of those responsible, since the criminal investigation was limited to repeating the police version. They alleged that the authorities did not investigate on which typewriter the alleged FARC pamphlet was prepared; there were no inspection procedures in military and police units in the area; the search for witnesses was not deepened; the possible responsibilities of members of the "Bárbula" Battalion, the Coast Guard and the nearby Navy were not investigated; and the investigations carried out by the Office of the Attorney General of the Nation on paramilitary activities in Magdalena Medio were not taken into account.

149. Although in his reply the ***State*** He limited himself to reiterating the scope of his acknowledgment of responsibility in this regard, in his final arguments he stated that "in general" the investigation has complied with the inter-American standards of access to justice, since a series of proceedings show that has investigated the motive for the abduction, the possible responsibility of state agents and paramilitary groups, taking into account the sociopolitical context that was present at the time of the events.

Considerations of the Court

150. States have the legal duty to "reasonably prevent human rights violations, to seriously investigate with the means at their disposal the violations that have been committed within the scope of their jurisdiction in order to identify those responsible, [if applicable] to impose the pertinent sanctions, and to ensure the victim adequate reparation."[146]. In particular, when it comes to the investigation of the death of a person who was in State custody, the corresponding authorities have the duty to initiate *ex officio* and without delay, a serious, independent, impartial and effective investigation is

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[144] Article 8 of the Convention states: "1. Every person has the right to be heard, with due guarantees and within a reasonable time, by a competent, independent and impartial judge or tribunal, previously established by law, in the substantiation of any criminal accusation made against him, or to the determination of their rights and obligations of a civil, labor, fiscal or any other nature".

[145] Article 25 of the Convention states: "1. Every person has the right to a simple and prompt recourse or any other effective recourse before the competent judges or courts, that protects them against acts that violate their fundamental rights recognized by the Constitution, the law or this Convention, even when such violation is committed. by persons acting in the exercise of their official duties. 2. The States Parties undertake: a) to guarantee that the competent authority established by the legal system of the State will decide on the rights of any person who files such a remedy; b) to develop the possibilities of judicial recourse, and c) to guarantee the compliance, by the competent authorities, of any decision in which the recourse has been deemed appropriate".

[146] cf. *Case of Velásquez Rodríguez v. Honduras. Background*, para. 174, and C. *Aso Carvajal Carvajal et al. v. Colombia*, para. 163.

that is, with due diligence and substantiated by all available legal means and aimed at determining the truth[147]. It is pertinent to remember that everyone, including the relatives of the victims of serious human rights violations, has the right to know the truth, so they must be informed of everything that happened in this regard.[148].

151. Such characteristics of the duty to investigate are applicable, even more so, in cases of possible forced disappearance of a person, in which the investigation must additionally include carrying out all the necessary actions to determine the fate or fate of the person. victim and the location of his whereabouts[149]. In other words, when it comes to reporting the disappearance of a person, regardless of whether it has been committed by individuals or by state agents, the protection of the person's life and integrity depends to a great extent on the immediate and diligent state response. who is reported missing. Therefore, when there are reasonable grounds to suspect that a person has been subjected to disappearance, prompt and immediate action by the tax and judicial authorities is essential, ordering timely and necessary measures aimed at determining the whereabouts of the victim or the place where they can be deprived of liberty[150].

152. In this case, the State acknowledged the violation of Articles 8(1) and 25 of the Convention, among other reasons, due to the lack of urgent search actions for Mr. Isaza Uribe after his disappearance, which has undoubtedly been one of the the determining factors in the lack of clarification of his disappearance and his whereabouts[151].

153. In addition, in certain types of complex cases, the obligation to investigate entails the duty to direct the efforts of the State apparatus to unravel the structures that allowed these violations, their causes, their beneficiaries and their consequences, and not only discover, prosecute and where appropriate, punish the immediate perpetrators, based on a comprehensive view of the facts, which takes into account the background and context in which they occurred and seeks to reveal the structures of participation. For this, the authorities must generate hypotheses and lines of investigation, according to the relevant contexts, to determine the people who in various ways allowed, designed and executed the act intellectually and materially, the patterns of joint action and the beneficiaries of the crime,[152].

154. The foregoing is applicable to the case, in view of the relevant contexts, for which the authorities have had to investigate diligently to reveal possible patterns of joint action or complex criminal structures.

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147 cf. *Velásquez Rodríguez Case, Merits,* para. 177; *Case of the Serrano Cruz Sisters v. El Salvador. Merits, Reparations and Costs.* Judgment of March 1, 2005. Series C No. 120, para. 83, and *Case of Ortiz Hernández et al. v. Venezuela. Merits, Reparations and Costs.* Judgment of August 22, 2017. Series C No. 338, para. 143.

148 *Cf., inter alia, Case of Velásquez Rodríguez v. Honduras. Background*, para. 181; *Case of Bámaca Velásquez v. Guatemala. Background*, para. 201; *Case of Barrios Altos v. Peru. Background*. Judgment of March 14, 2001. Series C No. 75, para. 48; and *Case of Munárriz Escobar et al. v. Peru*, para. 109.

149 *Cf. Case of Ticona Estrada et al. v. Bolivia. Merits, Reparations and Costs*. Judgment of November 27, 2008. Series C No. 191, para. 80, and *Case of Munárriz Escobar et al. v. Peru,* para. 104.

150 *Cf. Case of Anzualdo Castro v. Peru.* Preliminary Objection, Merits, Reparations and Costs. Judgment of September 22, 2009. Series C No. 202, para. 134, and *Case of Terrones Silva et al. v. Peru. Preliminary Exceptions, Merits, Reparations and Costs.* Judgment of September 26, 2018. Series C No. 360, para. 202.

151 Indeed, as confirmed by prosecutor Luz María Ramírez García, who testified as a witness offered by the State in this case: "Within the criminal investigation into the case of Víctor Manuel Isaza Uribe, no search plan was designed, planned or executed; A missing person search form was only filled out in 2009 and [it was] later, in an order dated June two (2), two thousand and fifteen (2015), [that] the Eighth Specialized Prosecutor of Medellín ordered [his] search in the different public access databases". *cf.* Written statement of Mrs. Luz María Ramírez García (evidence exp., f. 6204).

152 *Cf., mutatis mutandis, Case of Cepeda Vargas v. Colombia. Preliminary Exceptions, Merits, Reparations and Costs.* Judgment of May 26, 2010. Series C No. 213, paras. 118 and 119, and C. *aso Pacheco León et al. v. Honduras*, para. 93.

155. The State argued that in this case, from the beginning, an inquiry was made about the sociopolitical context of the area at the time of the facts; about the armed groups present in the area and their relationship with economic and political powers; security issues; possible responsibilities of state agents; and violence against trade unionists and UP militants. In this regard, the Court notes that the State bases its argument on judicial police reports from 2016, issued after judicial inspection proceedings and other evidence ordered or evacuated in the framework of the investigation of crimes against SUTIMAC trade unionists and members of the UP, of which the Isaza Uribe case was not a part until April 2016, when the investigation was reassigned to the Human Rights Prosecutor 91 (111) of Medellín, *supra* paras. 61 and 140).

156. The actions of the criminal investigation judges and the prosecutor's offices that initially heard the case were not exhaustive: in addition to the fact that there are no proceedings aimed at corroborating or ruling out the hypothesis of participation of members of the FARC[153]; there is no record that the possible link between the events and the other people who were taken from jail that day has been determined; the relevance of the location and presence of the military and police units stationed in the area; or possible actions or omissions of these or of the prison guards. Neither did the search for witnesses go deeper, nor were actions taken by the Attorney General's Office or the Prosecutor's Office to investigate the fear expressed by witnesses to testify.[154] and possibly order protection measures in their favor to favor the investigation[155].

157. On the other hand, the lack of effectiveness of the preliminary investigation of the Attorney General's Office has also been verified (*supra* paras. 102, 107 and 119). In addition, the State reported that the Antioquia National Police does not know that administrative investigations have been initiated into the facts; that the Naval Operations and Disciplinary Investigations Directorates of the National Navy did not have information on any search or investigation action; and that, according to the National Army, in the Command of the Infantry Battalion No. 3 “Bárbula” there is no disciplinary investigation regarding the facts of this case.

158. Thus, it is evident that the State has begun to comply very late with its duty of due diligence in the investigations into the disappearance of Mr. Isaza Uribe, particularly in exploring logical and necessary lines of investigation that could and should have arisen from the beginning. beginning, taking into account the relevant contexts and aimed at unraveling the structures that allowed it.

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[153] For example, there is no evidence that the investigation carried out any action aimed at ruling out whether the alleged FARC pamphlets could have been made on municipal typewriters.

[154] As the Attorney General's Office verified, the investigations verified: “[...] the reluctance of people who saw how the events occurred [to testify] was a determining factor in the impossibility of clarifying them. This is how the plaintiff CARMENZA VELEZ herself, in her expansion of the complaint, points out that the criminal investigation was archived '... because there was no one to testify' [...] Mr. Francisco Javier Gómez makes a similar statement when he declares that 'it is noteworthy that for that At that time, he refers to the years 86 and 87, there was a Public Order Court (sic) and an itinerant judge who were able to collect some very fragmentary statements from the population. Fragmentary in the sense that no one accuses anyone for fear of being threatened or killed'. In the same sense, the Municipal Ombudsman of Puerto Nare stated that [...] he stated the following: 'It should also be added that commissions of Criminal Investigation and the Technical Corps of the Judicial Police have arrived in this Municipality, which have reached the same conclusion , that there are no witnesses, or rather that the few that exist have refused to speak for fear of possible reprisals against their physical integrity'”. (exp. test ff.45, 55 and 71).

[155] In this sense, the Court has indicated that "in order to comply with the obligation to investigate within the framework of the guarantees of due process, the State must provide all necessary means to protect justice operators, investigators, witnesses and family members of the victims of harassment and threats whose purpose is to hinder the process, prevent the clarification of the facts and cover up those responsible for them. *Cf. Case of Myrna Mack Chang v. Guatemala. Merits, Reparations and Costs*. Judgment of November 25, 2003. Series C No. 101, para. 199, and *Case of Carvajal Carvajal and others v. Colombia. Merits, Reparations and Costs*. Judgment of March 13, 2018. Series C No. 352, para. 126.

159. On the other hand, this Court has considered that every person, including the next of kin of the victims of serious human rights violations, has the right to know the truth. Consequently, the next of kin of the victims and society must be informed of everything that happened in relation to said violations.[156]. The Inter-American Court has developed the content of the right to know the truth in its jurisprudence, particularly in cases of forced disappearance. Thus, from the*Velasquez Rodriguez case*The Court affirmed the existence of a "right of the next of kin of the victim to know what was the fate of the victim and, where appropriate, where his remains are."[157]. Subsequently, in different cases, the Court has indicated that said right "is subsumed in the right of the victim or his next of kin to obtain clarification of the violations and the corresponding responsibilities from the competent State bodies, through the investigation and the trial provided for in Articles 8 and 25.1 of the Convention"[158]. In other cases, the Court has made additional and specific considerations applicable to the specific case regarding the violation of this right.[159]and it has considered that, given the need to remedy that violation, the obligation to investigate is a form of reparation. From the foregoing it can be deduced that, although the right to know the truth has been fundamentally framed within the right of access to justice, it is broad in nature and its violation may affect different rights enshrined in the American Convention, depending on the context and particular circumstances of the case[160].

160. In this case, more than 31 years after the forced disappearance of Mr. Isaza Uribe, the State has not yet clarified what happened or determined the corresponding responsibilities. The Court verified that the investigation has not gone beyond the preliminary phase and that the conclusions of the authorities in the contentious-administrative and disciplinary proceedings have not been complete. As indicated, in cases of forced disappearances, the right to know the whereabouts of the disappeared victims constitutes an essential component of the right to know the truth of their relatives, since the uncertainty about what happened to their loved ones is one of their main sources of mental and moral suffering[161]. The State is obligated to combat this situation of impunity by all available legal means, since it fosters the chronic repetition of human rights violations and the defenselessness of the victims.[162]. By virtue of the foregoing considerations, the Court declares the violation of the right to know the truth, to the detriment of the next of kin of Mr. Isaza Uribe.

161. For the above reasons, the Court declares that the State is responsible for the violation of the rights of access to justice and to be heard within a reasonable time, in terms of the rights to judicial guarantees and judicial protection recognized in articles 8.1 and 25

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156 *cf.Case of 19 Tradesmen v. Colombia,*para. 261, and*Case of Gomes Lund et al. ("Guerrilha do Araguaia") v. Brazil. Preliminary Exceptions, Merits, Reparations and Costs.*Judgment of November 24, 2010. Series C No. 219, para. 200.

157 *Cf. Case of Velásquez Rodríguez v. Honduras. Background,*para. 181.

158 *Cf. Case of Chitay Nech et al. v. Guatemala. Preliminary Exceptions, Merits, Reparations and Costs.*Judgment of May 25, 2010. Series C No. 212, para. 206;*Case of Gelman vs. Uruguay*and.*Background and Repairs.*Judgment of February 24, 2011. Series C No. 221, paras. 243 and 244;*Case of Uzcátegui et al. v. Venezuela. Background and Repairs.*Judgment of September 3, 2012. Series C No. 249, para. 240;*Case of the Rochela Massacre v. Colombia,*para. 147; and*Case of the Massacres of El Mozote and nearby places v. El Salvador,*para. 298. See also*Case of the Barrios Family v. Venezuela,*para. 291;*Case of Contreras et al. v. El Salvador. Merits, Reparations and Costs.*Judgment of August 31, 2011. Series C No. 232, para. 173, and*Case of the Peasant Community of Santa Bárbara v. Peru. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 1, 2015. Series C No. 299, para. 264.

159 *cf.,*For example,*Case of Anzualdo Castro v. Peru,*paras. 118 to 119;*Case of Gelman v. Uruguay,*paras. 192, 226 and 243 to 246;*Case of Gudiel Álvarez et al. (Military Newspaper) v. Guatemala,*para. 202;*Case of Gomes Lund et al. ("Guerrilha do Araguaia") v. Brazil,*para. 201.

160 *inter alia,Case of Velásquez Rodríguez v. Honduras. Background*, para. 181;*Case of Bámaca Velásquez v. Guatemala. Background.*Judgment of November 25, 2000. Series C No. 70, para. 201;*Case of Barrios Altos v. Peru. Background,*para. 48;*Case of Almonacid Arellano et al. v. Chile, supra*, para. 148;*Case of the Peasant Community of Santa Bárbara v. Peru,*para. 264.

161 *Cf. Case of the Peasant Community of Santa Bárbara v. Peru,*para. 267, and*Case of Tenorio Roca et al. v. Peru, supra,*para. 244.

162 *Cf. Velásquez Rodríguez v. Honduras. Background, above*, para. 174; and*Case of Anzualdo Castro v. Peru, supra*, para. 179.

of the Convention, in relation to Article 1.1 thereof and Article Ib) of the Inter-American Convention on Forced Disappearance of Persons, to the detriment of Víctor Manuel Isaza Uribe, Carmenza Vélez, Jhony Alexander Isaza Vélez and Haner Alexis Isaza Vélez. In addition, the State is responsible for the violation of the right to know the truth of the next of kin of the disappeared victim.

VIII.3
RIGHT TO PERSONAL INTEGRITY OF FAMILY MEMBERS (ARTICLE 5 OF THE CONVENTION)

Arguments of the parties

Yo. Regarding article 5 of the Convention

162. The ***Commission*** considered that, in cases that involve the forced disappearance of persons, the violation of the right to mental and moral integrity of the next of kin of the victim is a direct consequence and, to date, they do not know the fate or whereabouts of Mr. Isaza, They have not had an adequate judicial response and, due to violence and fear, they had to leave Puerto Nare, for which reason the State violated their right to personal integrity. The ***representatives*** They agreed with what was stated by the Commission and, furthermore, they argued that the serious suffering caused to the next of kin constitutes cruel and inhuman treatment. In making his acknowledgment of responsibility with respect to Article 5 of the Convention, the ***State*** indicated that the fact of not knowing the whereabouts of a loved one may affect the family nucleus, without necessarily constituting a forced disappearance.

ii. Regarding articles 11.2[163] *and 17.1*[164] *of the convention*

163. The ***representatives*** They alleged that the dynamics of the Isaza Vélez family were radically modified by the forced disappearance, the uprooting of the family, and the displacement to which they were forced, which had emotional consequences and consequences for their personal integrity. They alleged that state entities identified Víctor as a member of the FARC, which generated stigmatization in the family that deepened its disintegration and seriously affected the rights of minors in their natural development, which constitutes arbitrary interference in the private life of the family. , for which the State violated the right to protection of the family (article 17.1) in relation to the right to honor and dignity (article 11.2), to their detriment.

164. The ***State*** It alleged, in relation to the alleged stigmatization, that if a police or judicial investigation for a crime could constitute a violation of Article 11, the authorities would be prohibited from establishing hypotheses of authorship of the facts; that the representatives misrepresented what was indicated by the police and judicial authorities, since none concluded that Mr. Isaza Uribe was a member of the FARC nor did they establish an official version of his escape, therefore there can be no violation of that right. Regarding the alleged forced displacement, the State stated that this does not conform to the factual framework of the case; that the representatives did not provide evidence in this regard; and its agents did not create such a situation nor were they aware of the existence of a certain risk for the family that would give rise to a duty of particular protection,

[163] Article 11 of the Convention states: “1. Every person has the right to respect for his honor and to recognition of his dignity. 2. No one may be the object of arbitrary or abusive interference in their private life, that of their family, in their home or in their correspondence, nor of illegal attacks on their honor or reputation. 3. Everyone has the right to the protection of the law against such interference or attacks”.

[164] Article 17.1 of the Convention states: "The family is the natural and fundamental element of society and must be protected by society and the State."

Considerations of the Court

165. In cases that involve the forced disappearance of persons, it is possible to understand that the violation of the right to integrity of the next of kin of the victims is a direct consequence of this phenomenon, which causes them severe suffering due to the fact that increases, among other factors, due to the constant refusal of the authorities to provide information about the whereabouts of the victims or to carry out an effective investigation to clarify what happened[165]. In cases of serious human rights violations, the violation of that right may be declared to the detriment of relatives of victims by applying a presumption *iuris tantum* with respect to mothers and fathers, daughters and sons, husbands and wives, companions and permanent companions and sisters and brothers, provided that this responds to the particular circumstances in the case[166]. These affectations, fully included in the complexity of the forced disappearance, will be projected in time as long as the lack of clarification of the final whereabouts of the disappeared victim subsists.[167].

166. In the specific case, as a direct consequence of classifying the facts as forced disappearance of Mr. Isaza Uribe, and taking into consideration the partial acknowledgment of responsibility made by the State, the Court deems presumable the affectation to his mental and moral integrity of the relatives, which arises in addition to their statements[168] and the report made on the psychosocial impact[169], which show that they have suffered deep suffering and anguish and family breakdown.

167. Regarding the alleged violation of Article 17 of the Convention, although it is clear that the displacement of the family to another municipality in Antioquia was a consequence of the economic and emotional situation they faced after the disappearance, such impacts on the dynamics relatives have already been taken into account as part of the effects on their personal integrity, and will also be considered in the chapter on reparations. Consequently, the Court does not rule on the alleged violation of the protection of the family contained in Article 17.1 of the Convention.

168. Regarding the right to honor and dignity, recognized in Article 11 of the Convention[170], the argument of the representatives focuses on the fact that the police, the courts

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165 *Cf. Case of Blake v. Guatemala. Background*. Judgment of January 24, 1998. Series C No. 36, para. 114, and *Case of Munárriz Escobar et al. v. Peru, supra*, para. 114.

166 *Cf. Case of Valle Jaramillo et al. v. Colombia, supra* para. 119, *and Case of Coc Max et al. (Xamán Massacre) v. Guatemala. Merits, Reparations and Costs*. Judgment of August 22, 2018. Series C No. 356, para. 123.

167 *Cf. Case of Goiburú et al. v. Paraguay,* para. 103, and *Case of Vereda La Esperanza v. Colombia,* para. 250.

168 During the hearing, Mrs. Carmenza Vélez testified about her anguish and concern suffered by as a consequence of the disappearance, which "was a destruction for us, they ended us as a family, I had half my life left", as well as for the activities carried out to find their whereabouts. Jhony Alexander Isaza Vélez recalled the murders of the parents of his schoolmates, who were workers at the Cementos del Nare company and members of SUTIMAC; he recounted about the "uncertainty [about the whereabouts of his] father, silence and emptiness was the daily bread"; He recalled how the company later took away their "food rations" and then the house in which they lived, the economic hardships and the struggle to earn a daily living marked the family relationship. Haner Alexis Isaza Vélez remembers that he was the one who broke the news of the disappearance to his mother, who "never got tired of looking for him"; the financial difficulties of the family, *cf*. Statements by Carmenza Vélez during the hearing before the Court and written statements by Haner Alexis Isaza Vélez and Jhony Alexander Isaza Vélez (evidence file, ff. 6979 to 6983 and 6984 to 6988).

169 *cf*. Written statement of the expert Yeiny Carolina Torres (evidence file, ff. 7147 and ss).

170 The Court has declared violations of the right to honor and dignity in cases in which States have subjected individuals or groups of people to hatred, stigmatization, public contempt, persecution or discrimination through public statements by public officials (*Cf. Case of Ríos et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 194, para. 148; and *Case of Andrade Salmón v. Bolivia. Merits, Reparations and Costs*. Judgment of December 1, 2016. Series C No. 330, para. 183) or due to the application of certain discriminatory regulations and the consequences of a process carried out with respect to the victim, in relation to the social context and the specific circumstances of injury to his esteem or reputation due to the distortion in the public concept that was applied to him. had (*Cf. Case of Flor Freire v. Ecuador. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 31,

administrative litigation and the Office of the Attorney General pointed out to Mr. Isaza as a member of the FARC, which would have generated stigmatization and affectations in his family. However, as analyzed in the previous chapter, from the preliminary, provisional or final determinations of the administrative or judicial authorities that had some intervention in the investigation of the facts, it does not appear that public officials declared or promoted versions of the facts in which it is affirmed or declared categorically or implicitly that Mr. Isaza Uribe was a member of the FARC guerrilla group. That has not been the position of the State before this Court either. That was a research hypothesis that arose from some elements, which was not conclusive or corroborated by said authorities. In that way,

169. In conclusion, this Court declares that the State is responsible for the violation of the right to personal integrity, recognized in Article 5(1) of the American Convention, in relation to Article 1(1) of the same instrument, to the detriment of Mrs. Carmenza Vélez and Messrs. Jhony Alexander Isaza Vélez and Haner Alexis Isaza Vélez.

IX
REPAIRS
(TO ARTICLE APPLICATION 63.1 OF THE C.ONVENTION TO MERICAN[171])

170. Based on the provisions of Article 63(1) of the American Convention, the Court has indicated that any violation of an international obligation that has produced damage entails the duty to adequately repair it, and that this provision includes a customary norm that constitutes one of the fundamental principles of contemporary International Law on the responsibility of a State[172].

171. The reparations must have a causal link with the facts of the case, the declared violations, the accredited damages, as well as with the measures requested to repair the respective damages, the concurrence of which must be observed by the Court in order to rule duly and in accordance with the law.[173].

172. The reparation of the damage caused by the breach of an international obligation requires, whenever possible, full restitution (*restitutio in integrum*), which consists in restoring the previous situation. If this is not feasible, as occurs in most cases of human rights violations, the Court will determine measures to guarantee the violated rights and repair the consequences that the violations produced.[174].

173. When submitting the case, the Inter-American Commission requested the Court to order the State the same measures of reparation that it recommended in its Merits Report (*supra* para. 2 C),

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2016. Series C No. 315, paras. 154 to 158, and *Case of Acosta et al. v. Nicaragua*, para. 204.).

[171] Article 63(1) of the American Convention establishes that: "[w]hen it decides that there has been a violation of a right or freedom protected in [the] Convention, the Court will order that the injured party be guaranteed the enjoyment of his violated right or freedom. It will also provide, if appropriate, that the consequences of the measure or situation that has configured the violation of those rights and the payment of fair compensation to the injured party be repaired.

[172] Regarding the obligation to repair and its scope, see *Case of Velásquez Rodríguez v. Hondura*s ace. *Reparations and Costs*. Judgment of July 21, 1989. Series C No. 7, paras. 25 to 27; and *Case of López Soto et al. v. Venezuela*, para. 268.

[173] *Cf. Case of Ticona Estrada et al. v. Bolivia. Merits, Reparations and Costs.* Judgment of November 27, 2008. Series C No. 191, para. 110, and *Case of López Soto et al. v. Venezuela*, para. 270.

[174] *Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and Costs*, para. 26; and *Case of López Soto et al. v. Venezuela*, para. 269.

which are reproduced in this chapter. The representatives raised their own requests for reparations, which will be considered below.

174. In its answer, the State did not present specific arguments regarding the claims for reparations, except for those relating to pecuniary damage. Subsequently, in its final written arguments, the State stated that "it is aware that by acknowledging its partial international responsibility, the subsequent obligation to make reparation to the victims of this case arises" and indicated that the prospects for reparation expressed by Mrs. Carmenza Vélez during the hearing and for their children in written statements "are framed within one of the modalities that make up comprehensive reparation in light of the Inter-American System." In addition, the State presented other observations on the requests for reparation measures or on the modalities in which they could be granted or executed.

175. In consideration of the violations declared in the previous chapter, and assessing the recognition expressed by the State of its obligation to make reparation to the victims in this case, the Court will proceed to order the measures aimed at reparating the damage caused to the victims, According to the Commission's claims (*supra* paras. 2 and 4) and the representatives, in attention to the observations of the State and in light of the criteria established in its jurisprudence in relation to the nature and scope of the obligation to make reparation.

A. Injured party

176. The Court considers Víctor Manuel Isaza Uribe, Carmenza Vélez, and Jhony Alexander Isaza Vélez and Haner Alexis Isaza Vélez as the “injured party,” under the terms of Article 63.1 of the Convention.

B. Obligation to investigate

B.1. Investigation and, where appropriate, prosecution and punishment of those responsible

177. The ***representatives*** They requested the Court to order the State, specifically the Office of the Attorney General of the Nation, to directly revoke the order to file the preliminary investigation and reopen it to establish disciplinary responsibilities for state agents from the Puerto Nare prison or from the public force of the municipality for their participation in the forced disappearance. In addition, they requested that the Office of the Attorney General of the Nation be ordered to promote the criminal investigation for the case that is currently under file 9241 of the Office of the 91st Human Rights Prosecutor, in order to identify and prosecute those responsible for the facts. , taking into account the contexts.

178. By reiterating that it has not renounced the investigation of the facts and that in recent proceedings an attempt has been made to reveal those responsible, the context and patterns of crime, the ***State*** It stated that "a measure aimed at expediting an investigation that [...] today presents activity that denotes diligence and effectiveness would be unnecessary."

179. The ***Court*** notes, in relation to the first request, that the State reported that, in compliance with what was recommended by the Commission, effectively in February 2016 the Office of the Attorney General of the Nation revoked ex officio the 1992 order to archive the investigation and the reopened for the purpose of establishing the responsibilities of state agents (*supra* para. 33). The Court appreciates the reopening of the disciplinary investigation and urges the State to continue it diligently. The Tribunal will not supervise compliance with this obligation to investigate in this way.

180. On the other hand, the Tribunal appreciates that the investigation into the facts remains open and that it has recently shown certain advances in considering the context in which it occurred and expanding the proceedings towards other hypotheses of participation. However, based on the legal classification of the facts and the conclusions of this Judgment, the Court establishes that the State must continue or carry out the broad, systematic, and meticulous investigations that are necessary to determine and, where appropriate, judge and punish those responsible for the forced disappearance of Mr. Isaza Uribe. For these purposes, the competent authorities must, where appropriate, adopt the necessary measures to determine the criminal structure involved in the execution of the act, including possible beneficiaries, and the patterns of joint action in the relevant contexts; continue articulating coordination mechanisms between the different state bodies and institutions with investigative powers and other existing schemes or to be created; as well as exhausting the logical lines of investigation to determine if civil, police or military authorities were involved. Said obligation must be fulfilled within a reasonable period of time in order to establish the truth of the facts of this case, taking into account that more than 31 years have elapsed since they occurred and impunity persists.

B.2. Determination of the whereabouts and identification of the disappeared victim

181. The***representatives***They requested that the Office of the Attorney General of the Nation be ordered to establish an adequate and pertinent search plan, for as long as necessary, to determine the whereabouts of the victim or the location of his remains, for which it must provide for the assignment of a minimum group of two investigators from the Technical Investigation Corps, with exclusive dedication, that allows obtaining results in a reasonable period of time in the prosecution and in the search.

182. It is the opinion of this Court that the obligation of the competent authorities to investigate subsists as long as there is uncertainty about the final fate of the disappeared person, since the right of their next of kin to know the truth about their fate or, in their case, where his remains are, represents a fair expectation that the State must satisfy with all the means at its disposal[175]. In this case, more than 31 years after the disappearance of Mr. Isaza Uribe, his whereabouts are still unknown. For this reason, the Court orders that the State continue with its search through the pertinent judicial and administrative channels, within the framework of which it must make all efforts to determine, as soon as possible, the whereabouts of the victim. This search must be carried out systematically and rigorously and have adequate and suitable human, technical and scientific resources. For the aforementioned proceedings, a communication strategy with the next of kin must be established and a framework of coordinated action agreed upon to ensure their participation, knowledge and presence, in accordance with the guidelines and protocols on the matter. If the victim is found deceased, Mortal remains must be handed over to their next of kin, after reliable proof of identity, as soon as possible and at no cost to them. In addition, the State must cover the funeral expenses, where appropriate, in agreement with the relatives, and in accordance with their beliefs.[176].

C. Measure of rehabilitation

183. The***representatives***They requested that the State be ordered to grant medical and psychological treatment to the next of kin, free of charge and with a differential approach due to their status as victims of a serious human rights violation, for as long as necessary. He***State***He stated that he recognizes that this type of traumatic event requires psychological and psychosocial attention and to

[175] *Cf. Case of Velásquez Rodríguez v. Honduras. Background*,para. 181, and*Case of Terrones Silva et al. v. Peru*,para. 195.

[176] *Cf. Case of Contreras et al. v. El Salvador. Merits, Reparations and Costs*.Judgment of August 31, 2011. Series C No. 232, para. 191,*Case of Terrones Silva et al. v. Peru*,para. 248.

This has programs focused on the population that is victims of the armed conflict, for which reason it requested the Court to allow this measure to be implemented through the Program for Psychosocial Care and Comprehensive Health for Victims – PAPSIVI.

184. In response to the request of the victims and the acknowledgment of the State in this regard, the ***Court*** provides in this case that the State must provide free of charge, as a priority and immediately, without any charge and for as long as necessary, adequate psychological or psychiatric treatment to victims who require it, prior expression of will, which must be given within a period of six months from the notification of this Judgment. As long as it is appropriate to what was ordered, the Court considers, as in other cases[177], that the State may grant said treatment through the national health services, including through the PAPSIVI.

D. Satisfaction measures and guarantees of non-repetition

D.1 Public act of recognition of responsibility

185. The ***representatives*** They requested that the State be ordered to publicly acknowledge responsibility and apologize to the next of kin[178]. He ***State*** noted that, in accordance with the recommendations of the Commission, progress had been made (*supra* para. 33).

186. Although the State has made a partial acknowledgment of responsibility in this proceeding, which could represent partial satisfaction for the victims regarding the violations declared in this Judgment, the ***Court*** considers it pertinent to order, at the request of the victims, in order to repair the damage caused and to avoid the repetition of similar acts, that the State carry out a public act of acknowledgment of international responsibility in Colombia, in relation to the facts of this case. In said act, the State must refer to the facts and violations of human rights declared in this Judgment. The act must be carried out through a public ceremony that must be disclosed. The State must ensure the participation of the victims declared in this Judgment and their representatives. The realization and other particularities of said public ceremony must be previously and duly consulted with the victims and their representatives. The state authorities that must be present or participate in said act must be senior state officials. To comply with this obligation, the State has a period of one year from the notification of this Judgment.

D.2 Publication and dissemination of the judgment

187. The ***representatives*** requested that the State be ordered to publish this Judgment[179]. He ***State*** expressed its agreement with this measure (*infra* para. 205).

188. The ***Court*** provides, as it has done in other cases[180], that the State publish, within a period of six months from the notification of this Judgment: a) the official summary

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177 *Cf. Case of 19 Tradesmen v. Colombia*, para. 278, and *Case of Carvajal Carvajal et al. v. Colombia*, para. 206.

178 They requested that the act be agreed upon with the victims and their representatives, by high State authorities and with the most wide diffusion possible in television, radio, digital and press media of the national order.

179 They requested that it be published in the Official Gazette (of the relevant parts, including the names of each chapter and the respective section, as well as the operative part); in a newspaper with wide national circulation (official summary); and on the official website of the Presidency of the Republic, the Ministry of Foreign Affairs and the Ministry of Labor and Social Security (immediately and the full text)

of this Judgment prepared by the Court, once only, in the official gazette in a legible and adequate font size; b) the same official summary, only once, in a newspaper with wide circulation at the national level in a legible and adequate font size; and c) this Judgment in its entirety, available for at least a period of one year, on a website *Web*official, accessible to the public and from the home page of the website. The State must immediately inform this Court once it proceeds to carry out each one of the publications provided for, regardless of the one-year term to submit its first report provided for in the operative part of the Judgment.

D.3 Protection measures for union leaders and organizations

189. The***representatives***They requested that the State be ordered to implement a public policy in the armed forces and in the executive branch that instructs on the obligation to protect the exercise of the right to unionize as a legitimate, social and democratic expression of workers' rights.

190. The***State***He stated that he does not intend to deny that, at a certain time, the unions "were the object of particularly high and directed violence", for which reason he has taken a series of prevention, protection, guarantee and reparation measures aimed at reversing it.[181]. He noted that, within the framework of Law 1448 of 2011 (“Victims Law”), a collective reparation process is currently underway for trade unionists and their organizations.[182], a measure that starts from the recognition of the victimization of the community and aims to highlight the legitimacy of its activities, which will obviously deal with the issue of the Magdalena Medio unions, covering Puerto Nare, La Sierra and neighboring municipalities. Thus, the State considered that, with the publication of the judgment and this collective reparation, satisfaction measures are being met. He *State*It also stated that it has adopted "adequate and effective" regulatory and institutional measures to reverse any context of violence or discrimination, both to dismantle paramilitary groups and to reverse violence against members of the UP.[183], for which reason it considered it unnecessary to order guarantees of non-repetition.

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[180] *Cf. Case of Chitay Nech et al. v. Guatemala. Preliminary Exceptions, Merits, Reparations and Costs*.Judgment of May 25, 2010. Series C No. 212,para. 244; and*Case of López Soto et al. v. Venezuela*, para. 299.

[181] The State referred to a series of measures adopted: the creation in 1997 of the Protection Program to deal with the consequences of the situation of violence against vulnerable population groups, reflected since 2003 in a 61% decrease in the homicide of trade unionists. Regarding the protection of trade union leaders and labor activists, in 2011 the Ministry of the Interior expanded the scope of the definition of trade unionists subject to protection; In 2011, the National Protection Unit -UNP was created, which has carried out more than 3,000 risk level studies, with 500 union leaders and activists with protection measures; in 2015 the Program for the Prevention and Protection of the rights of certain people; training for prosecutors in charge of handling violations of the right to freedom of association and crimes of anti-union violence; Law 1453 of 2011, which penalizes acts or behaviors that disturb the right of trade union association; the creation of the Inter-institutional Commission for Human Rights of Workers and the Special Commission for the Treatment of Conflicts before the ILO. He pointed out that the number of homicides of union leaders has decreased by 51%.

[182] The State referred to the statement rendered before the Court by Mrs. Paula Gaviria Betancur, former Presidential Adviser for Human Rights, who reported that in 2012 the Unit for Victims, in coordination with the Ministry of Labor, summoned the trade union movement to initiate a collective reparation process; that the trade unions General Confederation of Labor (CGT), Central Unitaria de Trabajadores (CUT), Confederation of Colombian Workers (CTC) and the Colombian Federation of Educators (FECODE) defined their representation; and that a communications strategy was built as an exercise to strengthen, not stigmatize, and make visible the reparation process for trade unionism, after which the Permanent Roundtable for Agreement was created with said trade union centrals and the National Government recognized the collective victimization of the movement union.

[183] The State referred to the following: creation in 2017 of the Special Investigation Unit for the dismantling of criminal organizations and conducts responsible for conducts committed against human rights organizations and political movements; and in 2000 and 2010 and 2017 collective and specific protection programs for leaders, members and survivors of the UP and the Communist Party, product of the search for a friendly solution between 1999 and 2006 with the UP in the framework of the petition before the Commission; call of the National Government to political parties and movements and two experts delegated by the FARC-EP for the formation of a commission that builds guidelines for the statute of guarantees for the opposition; the Comprehensive Security System for the Exercise of Politics in 2017; and rapprochement since 2013 of the Victims Unit with representatives of the UP to offer their link to the Collective Reparation Program (with which a Committee of Electoral Guarantees for the Political Party of the UP was created).

191. The ***Court*** considers that, according to the information provided by the representatives and the State, and even in the *amici curiae* of the National Union School (ENS) and the Unitary Confederation of Workers (CUT) of Colombia, it is clear that violence against trade union organizations, their members and representatives persists in Colombia. In other words, the data indicates that the policies and programs adopted by the State are not yet effective. For this reason, the Court deems it pertinent to order the State to strengthen protection mechanisms for trade unionists, representatives and already existing trade union organizations and, furthermore, to establish those that are necessary, in coordination and consultation with the trade union organizations, so that they can develop their activities freely and without fear of retaliation. The State must submit an annual report to this Court, for three years, in which it specifically reports on compliance with this measure.

E. Compensatory indemnities

E.1 Material damage

192. The ***representatives*** requested compensation for material damage[184].

193. The ***State*** In his answer, he indicated that, at the time of his removal from prison, Mr. Isaza Uribe was under an arrest warrant, accused of the crime of aggravated homicide, for which he was subsequently sentenced to 16 years in prison, which implies that he did not was carrying out any productive activity, so it is not possible to recognize the loss of earnings requested by the representatives, in accordance with the reiterated jurisprudence of the Third Section of the Council of State. However, in its final arguments the State stated that the amount corresponding to those 16 years would have to be subtracted from the calculation of lost earnings.

194. The ***Court*** has developed the concept of material damage and the cases in which it corresponds to compensate it[185].

195. Given that, once his sentence has been completed, the victim would still be of working age, the Court finds the State's request to subtract those 16 years from the amount corresponding to lost earnings admissible. In this sense, expert Ruiz did calculate the consolidated loss of earnings taking into account the above.[186]. The State did not submit any observations regarding the amount set by the expert witness and requested by the representatives, nor did it question the expert opinion as such. However, the Court notes that the expert opinion shows significant inconsistencies regarding the sum of months to calculate the amount for

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[184] The representatives alleged that Víctor Manuel Isaza Uribe, with his work for 12 years in the company Cementos Nare SA, he contributed financially to his family and, as a result of his disappearance, his wife Carmenza Vélez was forced to look for new sources of income to support and educate their two children, since she was not certain of his death and she has not been able to access the pension that would fit The amount requested for lost profits was determined based on an expert opinion from Mr. Fernando Ruiz.

[185] This Court has established that pecuniary damage supposes "the loss or detriment of the income of the victims, the expenses incurred as a result of the facts and the pecuniary consequences that have a causal link with the facts of the case." *Case of Bámaca Velásquez v. Guatemala. Reparations and Costs*. Judgment of February 22, 2002. Series C No. 91, para. 43, and *Case of López Soto et al. v. Venezuela,* para. 359.

[186] The expert took October 27, 2007 as the start date for the calculation, when the victim would have completed his sentence and could return to work, and October 31, 2014, when he would have reached pension age. established in Colombian law. Subsequently, he analyzed the future loss of earnings between December 31, 2017 and the estimated date of death. To calculate the income, the expert Ruiz Acosta considered, in attention to the restrictions of the *ius variandi*, that upon returning to work the victim would have held, at least, the same position or salary that he earned before his arrest and, taking into account the life expectancy in Colombia, established that, in accordance with the formulas of the Council of State, the consolidated lost earnings of the victim correspond to $699,359,813 pesos (US$244,171.00), and the future lost earnings $572,872,800 pesos (US$200,010.00) for a total of $1,272,232,613 pesos (US$444,182.00), as of March 2, 2018 with a representative rate of 2,864.21 Colombian pesos per US dollar according to the New York Stock Exchange. *cf.* Written statement of the expert Fernando Ruiz (evidence file, ff. 7022-7026)

concept of lost earnings, the life expectancy used and the indexes used to update the salary.

196. Consequently, the Court establishes, in equity, that the State must pay the amount of USD $96,000.00 (ninety-six thousand United States dollars) for pecuniary damage. Fifty percent (50%) of the compensation will be distributed, in equal parts, between Messrs. Jhony Alexander Isaza Vélez and Haner Alexis Isaza Vélez and the other fifty percent (50%) must be delivered to Mrs. Carmenza Vélez, in the period established for this purpose (*infra* para. 214).

E.2 immaterial damage

197. The ***representatives*** requested compensation for non-pecuniary damage[187].

198. The ***State*** He insisted that he has not supported the version of Mr. Isaza Uribe's supposed escape or his membership in a subversive group, so this cannot be part of the compensation for non-material damage. It requested that the sum of 100 monthly legal minimum wages in force in Colombia be recognized for each of the applicants, in consideration of the principle of equality and legal certainty in domestic law, since that is the maximum amount recognized by the Council of State in cases of damage caused to persons deprived of liberty. Regarding the non-pecuniary damage requested in favor of Mr. Isaza, the State requested its denial, reiterating that in this case there was no forced disappearance. These requests were not reiterated in their final arguments.

199. In their final arguments, the *representatives* They opposed the State's request to limit the compensation to amounts established in the contentious-administrative proceedings. They alleged that Mrs. Vélez tried to obtain reparation in that way, which denied the responsibility of the State and the requested compensation, therefore it is unacceptable that, after a process before the System and 30 years after the facts, the State intends to limit the reparation that it should have granted in 1993. They argued that the State must make reparation according to inter-American standards and that, according to the jurisprudence of the Council of State in cases of death, the compensation is limited to the spouse and parent-child relatives, excluding the direct victims, therefore, with such criteria, it would not be possible to compensate the damage suffered by Víctor Manuel Isaza Uribe.

200. Regarding the non-pecuniary damages alleged, the judgment may itself constitute a form of reparation[188]. However, the ***Court*** has developed in its jurisprudence the concept of non-pecuniary damage and the cases in which it is appropriate to provide compensation in this regard[189].

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[187] They alleged that profound non-pecuniary damage is caused to the victims due to the disappearance, the stigmatization suffered by the relatives and persistent impunity; that the State has systematically denied the forced disappearance, despite having him registered in an official database (SIRDEC) as missing; and that the life project of the next of kin was severely cut short. They request that, in equity, the Court order compensation for non-pecuniary damage of $80,000.00 dollars in favor of Carmenza Vélez, Jhony Alexander Isaza Vélez, and Haner Alexis Isaza Vélez, and for the direct damage and moral impairment generated by the violations. suffered directly by Víctor Manuel Isaza Uribe, the payment of US$100,000.00 dollars, which must be distributed among his wife and children.

[188] *Cf. Case of Suárez Rosero v. Ecuador. Reparations and Costs*. Judgment of January 20, 1999. Series C No. 44, para. 72, and *Case of Munárriz Escobar et al. v. Peru*, para. 144.

[189] The Court has established that non-pecuniary damage can include both the suffering and affliction caused by the violation of rights, as well as the impairment of very significant values for people and any alteration, of a non-pecuniary nature, in the living conditions of the victims. . Since it is not possible to assign a precise monetary equivalent to non-pecuniary damage, it can only be the object of compensation, for the purposes of comprehensive reparation to the victim, through the payment of an amount of money or the delivery of goods or services appreciable in money. , that the Court determines in reasonable application of judicial discretion and in terms of equity. *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; *Case of Cantoral Benavides v. Peru. Reparations and Costs*. Judgment of December 3, 2001. Series C No. 88, para. 53, and *Case of Munárriz Escobar et al. v. Peru*, para. 144.

201. In this case, the Court has verified that the victims were affected in various ways by the forced disappearance of Víctor Manuel Isaza Uribe, which caused profound consequences for their personal integrity, as well as changes in their relationships and family dynamics (*supra* para. 165). In this case, the contentious-administrative jurisdiction did not grant compensation for moral damages and did not contribute to revealing the truth of the facts (*supra* paras. 68, 94 and 109) and it is the reiterated criterion of this Court that, in cases of forced disappearance, it is appropriate to recognize and compensate the disappeared victim. Taking into account the compensation ordered by this Court in other cases on forced disappearance of persons, as well as the circumstances of the instant case, the entity, nature, and seriousness of the violations committed, the Court deems it pertinent to set, in equity, the amount of USD $100,000.00 (one hundred thousand United States dollars) in favor of Víctor Manuel Isaza Uribe. Fifty percent (50%) of this compensation will be divided, in equal parts, between Messrs. Jhony Alexander Isaza Vélez and Haner Alexis Isaza Vélez and the other fifty percent (50%) must be delivered to Ms. Carmenza Vélez. Besides, The Court establishes in equity the amount of USD $60,000.00 (sixty thousand United States dollars) for the non-pecuniary damage caused to Mrs. Carmenza Vélez and to Mr. Jhony Alexander Isaza Vélez and Mr. Haner Alexis Isaza Vélez, for each one of them. from them. The amounts arranged in favor of the aforementioned persons must be paid directly to them, within the period established for this purpose (*infra* para. 214).

F. Other measures requested

F.1 Repeal and publicity of military counterinsurgency manuals

202. The ***representatives*** They requested that the State be ordered to issue a regulatory decree that repeals and suppresses, in the Army's counter-guerrilla combat manuals and regulations, any statement about the notion of "internal enemy" or any other equivalent concept that equates the right of association union with activities of subversive groups, prohibiting the use of said concept in future instruments of the same nature in any security body of the Public Force.

203. The ***State*** requested the Court, in reference to what was indicated by the expert witness Yepes regarding the fact that the State should be ordered to publish the manuals that enjoy confidentiality and the drafting of new manuals that include a doctrine that is public and previously debated, that does not accommodate this request because: a) it is unnecessary, since the manuals are not current; b) the current doctrine enjoys legal and constitutional reserve, and; c) It is clearly inconvenient and dangerous for the State to reveal its current military doctrine.

204. The ***Court*** notes that what has been stated by the Commission and the representatives has not been disputed, regarding the fact that, in a judgment of the Council of State in 2009[190], it is affirmed that Provision No. 005 of 1969 and Manual EJC-3-10 of the Military Forces of 1987 or Regulations for counter-guerrilla combat "are still followed by the National Army to combat armed groups and other criminals [...] [and] contain instructions that [...] from then until now have been used for military training to combat the guerrilla groups."

205. In this regard, expert witness Reed Hurtado stated the following:

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[190] *cf.* Council of State. Contentious-Administrative Chamber. First Section. February 5, 2009. File 11001-03-15-000-2008-01400-01. Actor, Javier Giraldo Moreno. (exp. test, ff 1021 to 1028)

> "[...] the content of the regulations and manuals shows visions [...] openly contrary to the values of the rule of law and pluralistic democracy [... which is why,] among others, the military doctrine produced and taught in Colombia to The time of the events continues to be the object of concealment, denial [and...] secrecy. Under the protection of distorted interpretations related to national security, the Ministry of National Defense continues to deny access to [...] to the military doctrine adopted [between] the 1960s and 1990s[, a]alarmingly [...] citing its current validity in counterinsurgency operations and its reserve. [...] It is probable and desirable that the vast majority of current Colombian state authorities reject the type of stigmatization [...] contained in the old documents of military doctrine [...] However, Informal and implicit rejection does not rectify the grievance or damage [since] it is not an acknowledgment that these processes of stigmatization, persecution and repression have taken place. [...] Fully assuming the complexity and seriousness of any consideration related to national security, [...] it is necessary to face the past and transform realities and organizations on the basis of knowledge, not concealment and denial[191].

206. In particular, the State indicated, regarding the validity of the anti-subversive manuals, that the Ministry of National Defense stated that Law 57 of 1985 established the legal reserve for the publication of acts and official documents related to defense and security. national[192], with which, by their nature, military manuals are related, as they are part of the military doctrine used for the planning and execution of military operations. According to the understanding of said Ministry, the reserve operates for 15 years more than the initial term of 30 years provided by law and it considered it important that the military doctrine be kept under reserve. In addition, it stated that the manuals in question were successively repealed by Provisions No. 00006 of 1977, No. 036 of 1987, No. 018 of 1999, and 0317 of 2010.[193]

207. In view of the foregoing, it is clear that the controversy continues regarding the validity of the manuals and regulations that fostered violence against certain sectors of the population due to their classification as "insurgent civilian population." Due to the reservation cited by the State, it is not clear if the current military doctrine still contains notions or concepts whose application or interpretation could place certain individuals, groups, or communities of the civilian population in situations of risk or vulnerability within the framework of the armed conflict. Although this raises a debate about the limits or exceptions to the principles of transparency and access to information in a democratic society, in relation to military doctrine, The Court deems that at this time the information provided does not allow it to make a more specific decision regarding the manuals and regulations in question or the need to reveal or publish current military doctrine. Notwithstanding the foregoing, the Court considers it essential that, within the framework of the transition towards peace and the strengthening of a democratic society, it is possible for the State to guarantee the right of Colombian society to know, in a broad public deliberation, this type of information and establish the parameters and limits so that the actions of the Armed Forces and the definition of the means and methods of war are kept in strict line with International Humanitarian Law and International Human Rights Law.

208. In this sense, the Court finds it reasonable that, as peace is established in the territory, social control and crime prevention remain in the hands of the police or security forces and the Armed Forces return to its specific functions, as befits a State governed by law that conditions peaceful coexistence.

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191 *cf.*Written statement of the expert Michael Reed Hurtado (exp. evidence ff. 6240 to 6250)

192 Law 57 of 1985, Article 12.- "Every person has the right to consult the documents that rest in public offices since a copy of them is issued, provided that said documents are not reserved in accordance with the Constitution or the law, or are not related to defense or national security.

193 The Ministry of Defense affirmed that the Manuals referred to in this document contain the forms, methods and means through which the Military Forces have counteracted the actions of the different actors in the conflict during the last six decades, a threat that is maintained at the date, for this reason, said strategies cannot be of public knowledge, since otherwise it would place at risk the personal integrity of the personnel that executes the military operations and of the civilian population, since by leaving them exposed they would grant a wide military advantage in favor of organized armed groups, making it difficult to fully comply with the constitutional mission of the military forces, also placing national security and the integrity of the military territory at risk.*cf.*Ministry of Defence. Official letter of March 2, 2018, file OFI18-19276 MDN-DVPAIDH (exp. merits, f. 894).

F.2 Other measures

209. Regarding the other reparation measures requested[194], the Court considers that this Judgment constitutes, by itself, a form of reparation, for which reason it is not pertinent to order them.

G. Costs and expenses

210. The***representatives***They stated that since the presentation of the case as representatives of the victims, the organization Colombian Commission of Jurists has faced a series of expenses, for which they requested that the reimbursement of USD $400.00 be ordered.[195], as well as USD $20,000.00, for expenses and costs[196].

211. The***Court***reiterates that, according to its jurisprudence[197], the costs and expenses are part of the concept of reparation established in Article 63.1 of the Convention, since the activities carried out by the victims in order to obtain justice, both nationally and internationally, imply expenditures that must be compensated when the international responsibility of the State is declared by means of a conviction[198].

212. The Court deems it reasonable to order the State to pay the amount of USD $20,400.00 (twenty thousand four hundred United States dollars) for litigation costs and expenses. The State must deliver this compensation directly to the representatives within the term set for that purpose (*infra*para. 214). In the stage of monitoring compliance with this Judgment, the Court may order the reimbursement by the State to the victims or their representatives of reasonable and duly verified subsequent expenses.

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[194] The representatives requested that the State be ordered to carry out the erection, in a public act, of a plaque at the main entrance of the Puerto Nare Municipal Prison where the State acknowledges its responsibility in the forced disappearance; and that the plaque must clarify that there was no escape on his part, that these events cannot be repeated and reaffirming his commitment to defending and protecting the exercise of the right to unionize, as agreed with the next of kin

[195] They included travel, hotels, communications, photocopies and shipments, in addition to expenses corresponding to legal work time dedicated to specific attention to the case and to investigation, collection and presentation of evidence and preparation of briefs. They provided a certification and form with supporting documentation corresponding to travel expenses to Washington in the litigation process before the Commission, value of expenses incurred in the years of litigation divided by the number of cases handled by the CCJ.

[196] They provided a certification and a form attached to the expenses incurred by the CCJ in the fees of the lawyers in charge of the case (value of the lawyers' salary divided by the dedication of time in litigating the case with respect to their workload).

[197] *Cf. Case of Velásquez Rodríguez v. Honduras. Repairs,*para. 42, and*Case of San Miguel Sosa et al. v. Venezuela*,para. 248.

[198] Regarding its reimbursement, it is up to the Tribunal to prudently assess its scope, which includes the expenses generated before the authorities of the domestic jurisdiction, as well as those generated in the course of the proceedings before this Court, taking into account the circumstances of the specific case and the nature of the international jurisdiction for the protection of human rights. This assessment can be made based on the principle of equity and taking into account the expenses indicated by the parties, provided that their*quantum*be reasonable. The claims of the victims or their representatives in terms of costs and expenses, and the evidence that supports them, must be presented at the first procedural moment granted to them, that is, in the pleadings and motions brief, notwithstanding that such claims are updated at a later time, in accordance with the new costs and expenses that have been incurred during the proceedings before this Court. The remittance of probative documents is not enough, but the parties are required to make an argument that relates the evidence to the fact that is considered represented, and that, in the case of alleged economic disbursements, the items and justification are clearly established. thereof.*Case of Garrido and Baigorria v. Argentina. Reparations and Costs*, Judgment of August 27, 1998. Series C No. 39. para. 82, and*Case of San Miguel Sosa et al. v. Venezuela*,para. 248.

H. Reimbursement of expenses to the Victims Legal Assistance Fund

213. The President approved the economic assistance necessary to cover certain expenses of the victims charged to the Legal Assistance Fund. The report on such expenses was duly submitted to the State[199], which stated that it had no observations. Consequently, in application of Article 5 of the Regulations of the Fund, the Court orders the State to refund to the Fund the amount of USD $1,172.70 (one thousand one hundred and seventy-two United States dollars and seventy cents) for the expenses paid in application of the Fund. Said amount must be reimbursed to the Inter-American Court within a period of six months, counted from the notification of this Judgment.

I. Modalities for compliance with ordered payments

214. The State must pay the compensation provided in this Judgment for pecuniary and non-pecuniary damage, as well as the reimbursement of costs and expenses, directly to the persons indicated in this Judgment, within a period of one year, counted from the notification of the same, without prejudice to the fact that you can develop the full payment in a shorter period.

215. In the event that the beneficiaries (other than the victim of forced disappearance as such) have died or die before the respective compensation is delivered, it will be made directly to their successors, in accordance with applicable domestic law. The distribution of the compensation ordered in favor of the victim of forced disappearance must be carried out in accordance with the provisions of paragraphs 196 and 201 of this Judgment.

216. The State must comply with its monetary obligations by paying in United States dollars or its equivalent in national currency, using for the respective calculation the exchange rate in force on the New York, United States of America stock exchange. America, the day before payment.

217. If for reasons attributable to the beneficiaries of the compensation or, where appropriate, to their heirs, it is not possible to pay the determined amounts within the indicated period, the State will deposit said amounts in their favor in an account or certificate of deposit. in a solvent Colombian financial institution, in US dollars and under the most favorable financial conditions allowed by law and banking practice. If the corresponding compensation is not claimed after ten years, the amounts will be returned to the State with the accrued interest.

218. The amounts assigned in this Judgment as compensation and as reimbursement of costs and expenses must be fully delivered to the persons and organizations indicated in accordance with the provisions of this Judgment, without reductions derived from possible tax charges.

219. In the event that the State incurs in default, it must pay interest on the amount owed corresponding to the bank default interest in Colombia.

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[199] It is noted that, although the financial assistance from the Fund was approved, it was also approved to cover reasonable costs of formalizing and sending the affidavits of Messrs. Isaza Vélez (*supra* para. 10), the report states that the supporting documents for these items were not received for the purpose of being reimbursed, so no reimbursement was made in this regard.

X
RESOLUTIVE POINTS

220. Therefore,

COURT

DECIDE,

unanimously,

1. Accept the partial acknowledgment of international responsibility made by the State, in the terms of paragraphs 27 to 32 of this Judgment.

DECLARES,

unanimously, that:

2. The State is responsible for the violation of the rights to recognition of the legal personality, life, physical integrity, and personal liberty, recognized in Articles 3, 4.1, 5.1, and 7 of the American Convention, in relation to Articles 1.1 and 2 thereof, and Article Ia) of the Inter-American Convention on Forced Disappearance of Persons, to the detriment of Víctor Manuel Isaza Uribe, in the terms of paragraphs 81 to 144 and 146 of this Judgment.

3. The State is responsible for the violation of union freedom, contained in the freedom of association, recognized in Article 16 of the Convention, to the detriment of Víctor Manuel Isaza Uribe, in the terms of paragraph 145 of this Judgment.

4. The State is responsible for the violation of the rights of access to justice and to be heard within a reasonable time, in terms of the rights to judicial guarantees and judicial protection recognized in Articles 8(1) and 25 of the American Convention, in relation to Article 1(1) thereof and Article Ib) of the Convention Inter-American Court on Forced Disappearance of Persons, to the detriment of Víctor Manuel Isaza Uribe, Carmenza Vélez, Jhony Alexander Isaza Vélez and Haner Alexis Isaza Vélez. In addition, the State is responsible for the violation of the right to know the truth of the next of kin of the disappeared victim, in the terms of paragraphs 150 to 161 of this Judgment.

5. The State is responsible for the violation of the right to personal integrity, recognized in Article 5(1) of the American Convention, in relation to Article 1(1) of the same instrument, to the detriment of Carmenza Vélez, Jhony Alexander Isaza Vélez and Haner Alexis Isaza Vélez, in the terms of paragraphs 165, 166 and 169 of this Judgment.

6. The State is not responsible for the alleged violation of the right to protection of the family, recognized in Article 17 of the American Convention, for the reasons indicated in paragraph 167 of this Judgment.

7. The State is not responsible for the alleged violation of the right to honor and dignity, recognized in Article 11 of the American Convention, for the reasons indicated in paragraph 168 of this Judgment.

AND ARRANGES,

unanimously, that:

8. This Judgment constitutes, by itself, a form of reparation.

9. The State must continue with the ongoing investigations and legal proceedings for the purposes to determine the facts and the corresponding responsibilities, in the terms of paragraph 180 of this Judgment.

10. The State must carry out a rigorous search through the pertinent channels to determine, as soon as possible, the whereabouts of Víctor Manuel Isaza Uribe, in the terms of paragraph 182 of this Judgment.

11. The State must provide psychological or psychiatric treatment to the victims who request it, in the terms of paragraph 184 of this Judgment.

12. The State must carry out a public act of acknowledgment of international responsibility in Colombia, in relation to the facts of this case, in the terms of paragraph 186 of this Judgment.

13. The State must make the publications indicated in paragraph 188 of this Judgment, in the terms of that same paragraph.

14. The State must strengthen the protection mechanisms for trade unionists, representatives and trade union organizations, in the terms of paragraph 191 of this Judgment.

15. The State must pay the amounts established in paragraphs 196, 201, 212 and 213 of this Judgment as compensatory compensation for pecuniary and non-pecuniary damage, as well as for the reimbursement of costs and expenses and to the Legal Assistance Fund, in the terms of the aforementioned paragraphs and paragraphs 214 to 219 of this Judgment.

16. The State must submit a report to the Court on the measures adopted to comply with this Judgment, within a period of one year from its notification, and must also present a report, within a period of six months counted from the notification of the same, in which it indicates -for each of the reparation measures ordered- which are the bodies, institutions or state authorities in charge or responsible for implementing them, including a work schedule for full compliance .

17. The Court will monitor full compliance with this Judgment, in the exercise of its powers and in compliance with its duties in accordance with the American Convention on Human Rights, and will conclude this case once the State has fully complied with what arranged in it.

Written in Spanish in San José, Costa Rica, on November 20, 2018.

IHR Court. *Case of Isaza Uribe et al. Colombia*, Merits, Reparations and Costs.

Eduardo Ferrer Mac-Gregor Poisot
President

Eduardo Vio Grossi

Elizabeth Hate Benedict

Eugenio Raul Zaffaroni

L. Patricio Pazmino Freire

Pablo Saavedra Alessandri
Secretary

Communicate and execute,

Eduardo Ferrer Mac-Gregor Poisot
President

Pablo Saavedra Alessandri
Secretary