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First Vice Chairman: Robert K. Goldman;
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I. SUMMARY OF THE CASE

1. This case addresses the violent death of Alvaro Moreno Moreno, a student who resided in Bogotá, Colombia. According to the petitioners, the Corporación Colectivo de Abogados "Jose Alvear Restrepo," agents of the Metropolitan Police for Bogotá (the "Police") detained and then killed Mr. Moreno on January 3, 1991. They further allege that the circumstances surrounding the death of Mr. Moreno were not adequately investigated and that the State failed to criminally sanction the Police agents responsible for Mr. Moreno's death. The petitioners thus allege that the Republic of Colombia (also "Colombia", "the State" or "the Colombia State") is responsible for violations of the American Convention on Human Rights (the "Convention" or the "American Convention"). Based on the information submitted and its investigation and analysis in this case, the Inter-American Commission on Human Rights (the "Commission") concludes that the Colombian State is responsible for violations of Articles 1, 4, 7, 8 and 25 of the American Convention.

II. BACKGROUND

A. Uncontested Background Information

2. On January 3, 1991, at approximately 6:30 or 7:00 p.m., an attack was carried out against a Police center known as "Los Libertadores" Center for Immediate Attention ("CAI") in southeast Bogotá. One Police agent lost his life in that attack and another was injured.

3. In response to the attack, a Police operation was mounted in the area. Police agents from various units, including from the Police intelligence section ("SIJIN"), were called to the scene to

provide support. The Police agents were asked to gather information, search for suspects and to take actions to prevent further attacks against other CAIs in the area.

4. The following day, January 4, 1994, the Technical Corps of the Judicial Police - Preliminary Investigations Unit for Zipaquirá ("Cuerpo Técnico de la Policía Judicial - Unidad de Indagación Preliminar de Zipaquirá") found a dead body in a place known as "llanos de la Diana" in the community of El Verganzo de Tocancipá, Cundinamarca. The body was subsequently identified, through the use of fingerprint analysis, as belonging to Alvaro Moreno Moreno. It was determined that numerous gunshot wounds were the cause of Mr. Moreno's death.

B. Allegations of the Petitioners

5. The petitioners allege that SIJIN Police agents detained Mr. Moreno during the operation carried out on January 3, 1991 after the attack on the Los Libertadores CAI. They allege that Mr. Moreno was subsequently killed by Police agents while held by the SIJIN.

6. The petitioners further allege that the Police engaged in activities designed to hide the truth regarding the death of Mr. Moreno and to prevent the identity of those responsible from becoming known. Among other things, they allege that the Police intentionally lost or destroyed important records relating to the events of January 3, 1991.

7. Finally, the petitioners allege that the Colombian State did not carry out timely and adequate investigations into the death of Mr. Moreno and did not sanction those responsible for his death. They thus assert that the State has failed in its duty to provide for the right to be heard within a reasonable time, access to an effective legal remedy and the proper application of justice in this case.

C. Position of the State

8. In its responses in the case, the State has generally limited itself to providing the Commission with information about the status of the various domestic proceedings related to the case. The State has suggested that it has carried out the appropriate investigations and proceedings in a manner which will not allow impunity to prevail in this case.

III. PROCESSING BEFORE THE COMMISSION

9. The Commission received the petition in this case on May 5, 1992 in the course of an on-site visit to Colombia. The Commission opened case 11.019 on June 17, 1992 and sent the pertinent parts of the petition to the Colombian State for its response.

10. On June 10, 1993, the Commission reiterated its request for an answer from the State regarding the case. The State provided its answer on August 20, 1993.

11. The State's answer was transmitted to the petitioners who submitted their rejoinder on October 4, 1993. The petitioners submitted additional information regarding the case on

December 30, 1993. The Commission forwarded the petitioners' rejoinder and additional information to the State in communications dated December 7, 1993 and January 10, 1994. The Commission received the response of the State to these communications on March 15, 1994.

12. The petitioners and the Colombian State exchanged additional written briefs and information relating to the status of the domestic investigations and proceedings and in relation to central questions of law and fact. The Commission thus received written briefing from the petitioners on the following dates: August 18, 1994; January 25, 1995; July 14, 1995, and; January 29, 1996. The Commission received written briefs from the State on the following dates: October 20, 1994; April 26, 1995, and; November 13, 1995. The Commission transmitted the pertinent parts of each of these communications to the opposing party.

13. The Commission held a hearing in relation to case 11.019 on February 23, 1996. At that time, each of the parties had an opportunity to make oral arguments before the Commission regarding points of fact and law relevant to the case. During the hearing, the Commission also placed itself at the disposition of the parties for the purpose of seeking a friendly settlement of the matter.

14. On March 8, 1996, the petitioners sent a communication advising the Commission that discussions had taken place within Colombia in relation to the possibility of seeking a friendly settlement of the case. The petitioners attached a letter directed to them from the Government, making a proposal for the settlement of the case. The petitioners requested that the friendly settlement proceedings be formalized before the Commission. The Commission sent the pertinent parts of the communication from the petitioners to the State on April 1, 1996.

15. The State requested an extension of time to respond on May 14, 1996 and again on July 31, 1996. The Commission granted the two extensions of time.

16. The State's response, submitted on September 24, 1997, provided information regarding the merits of the case and the status of the domestic proceedings but made no mention of friendly settlement or of the possibility of formalizing a friendly settlement proceeding before the Commission. The Commission forwarded the State's response to the petitioners on October 1, 1996.

17. The petitioners sent a further note to the Commission inquiring about the possibility of initiating friendly settlement proceedings on October 17, 1996. On October 24, 1996, the Commission sent a note to the Colombian State reiterating its offer to place itself at disposition of the parties for the purposes of arriving at a friendly settlement.

18. In a communication dated November 5, 1996, the State confirmed that there had been some discussion within Colombia regarding the possibility of entering into friendly settlement negotiations in the case and that the State had made an initial proposal for settlement. The letter stated that the Government would notify the Commission when it reached a decision regarding the possibility of a friendly settlement of the case and when it formulated a position in response to the observations of the petitioners regarding its initial proposal for friendly settlement. The Commission forwarded this note to the petitioners on November 19, 1996.

19. On January 29, 1997, the Commission sent a note to the State requesting information regarding the position that the State had decided to adopt regarding the possibility of entering into friendly settlement negotiations in this case.

20. The next communication from the State, dated March 4, 1997, provided information relating to the merits of this case, specifically regarding the domestic proceedings.

21. On June 18, 1997, the Commission reiterated its request that the State make known its position on the possibility of entering into friendly settlement negotiations. The Commission referenced its previous note of January 29, 1997 and requested that the State reply within 30 days. The Commission has received no further communications in this case.

IV. ANALYSIS

A. Admissibility

1. Procedure for Deciding Admissibility

22. The Commission has not prepared an independent admissibility decision in this case. Rather, the Commission sets forth its analysis of the admissibility of the petition in this report, prepared in accordance with Article 50 of the Convention, which also contains the conclusions of the Commission on the merits of the petition. The Commission has adopted this procedure for several reasons.

23. First, it is not clear that the State has raised timely objections to admissibility. The State provided its answer in this case more than one year after the Commission opened the case and requested information from the State regarding the allegations of the petitioners. The answer was received only after the Commission reiterated its request for information. This delay in responding to the Commission's request for information is excessive. In this regard, the Regulations of the Inter-American Commission on Human Rights provide that the State will receive a period of 90 days to respond to the Commission's original request for information on a case. That period may be extended to a total of 180 days where the State requests successive extensions of time, of no more than 30 days each, and provides reasons for such requests.[FN1] In this case, the State failed altogether to comply with these time limits for providing its answer without any justification.

[FN1] See Regulations of the Inter-American Commission on Human Rights, art. 34(5)(6).

24. When it submitted its answer, the State argued that the case was not susceptible to analysis by an international body, such as the Commission, because domestic remedies had not been exhausted. The State suggested that proceedings before the contentious-administrative jurisdiction constituted a remedy which should be exhausted before the case could be brought

before an international body.[FN2] The State did not again raise this objection in any of its subsequent communications relating to this case.

[FN2] The contentious-administrative jurisdiction is established by the Colombian Constitution to take jurisdiction over administrative controversies and litigation resulting from the actions of State agents and public entities. It is a legal means by which Colombian citizens may seek compensation for the violation of a right by State agents. Constitution of Colombia, art. 237; Contentious-Administrative Code, art. 82.

25. The Inter-American Court of Human Rights (the "Court") has repeatedly noted that an objection based on non-exhaustion of domestic remedies, "must be made at an early stage of the proceedings by the State entitled to make it" and has held that a State may waive an objection based on the exhaustion requirement.[FN3] The State made its only objection to admissibility in its answer, which was submitted to the Commission in an untimely manner. The State then failed to pursue the objection at any other point in the proceedings before the Commission. The Commission therefore considers that the State might be considered to have waived its objection on exhaustion grounds.

[FN3] I/A Court H.R., Velásquez Rodríguez Case, Judgment of June 26, 1987, Preliminary Objections, par. 88; see also I/A Court H.R., Neira Alegría Case, Judgment of December 11, 1991, Preliminary Objections, par. 30 (citing Velásquez Rodríguez, par. 88).

26. Second, the analysis of the State's objection to the admissibility of the petition in this case on the grounds of failure to exhaust domestic remedies is necessarily closely tied to an analysis of the merits of the case. The petitioners argue that the requirement of exhaustion of domestic remedies is excused in this case, pursuant to Article 46(2) of the Convention, because domestic remedies have been ineffective and because there has been undue delay in the resolution of the domestic proceedings which have been initiated in the case. This line of argumentation of the petitioners is linked directly to the petitioners' claim that the State has failed to provide adequate judicial protection and access to justice in this case.

27. In this connection, the Inter-American Court of Human Rights (the "Court" or the "Inter-American Court") has noted:

Under the Convention, States Parties have an obligation to provide effective judicial remedies to victims of human rights violations (Art. 25), remedies that must be substantiated in accordance with the rules of due process of law (Art. 8(1)), all in keeping with the general obligation of such States to guarantee the free and full exercise of the rights recognized by the Convention to all persons subject to their jurisdiction (Art. 1). Thus, when certain exceptions to the rule of non-exhaustion of domestic remedies are invoked, such as the ineffectiveness of such remedies or the lack of due process of law, not only is it contended that the victim is under no obligation to pursue such remedies, but indirectly, the State in question is also charged with a new violation of

the obligations assumed under the Convention. Thus, the question of domestic remedies is closely tied to the merits of the case.[FN4]

[FN4] Velásquez Rodríguez Case, Judgment of June 26, 1987, Preliminary Objections, par. 91.

28. Where the applicability of the requirement of exhaustion of domestic remedies is closely linked to the merits and may not be easily separated from that question, it may be appropriate to decide the question of the admissibility of a petition together with the merits of the case in order to avoid prejudging the merits of the case in the decision on admissibility.[FN5] Such is the situation presented in this case.

[FN5] *Id.* at pars. 95, 96.

29. Therefore, in order to address the objection to admissibility raised by the State, albeit in an untimely manner, the Commission will proceed to discuss the question of admissibility of the petition in this Article 50 report before proceeding to its discussion on the merits.

2. The Exhaustion of Domestic Remedies Requirement

a. The Various Domestic Proceedings

30. The domestic criminal investigations in this case began with the inspection and removal of Mr. Moreno's cadaver from the site where it was found on January 4, 1991 by the Technical Corps of the Judicial Police. At the same time and before they learned that the victim's body had been found, Mr. Moreno's family members filed a complaint with the Office of the General Procurator of the Nation ("Procuraduría General de la Nación") asserting that Mr. Moreno had been detained and then disappeared.[FN6] Several domestic proceedings were triggered as a result of these initial actions by the Colombian authorities and by Mr. Moreno's family members. The trajectory of the various domestic proceedings, as presented to the Commission by the petitioners and the State, is as follows:

[FN6] The Office of the Procurator General of the Nation has competence to carry out disciplinary proceedings and sanctions against State agents and to intervene in judicial and administrative proceedings to seek protection for fundamental rights and guarantees. Constitution of Colombia, arts. 275, 277.

i. Criminal Proceeding

31. After the identification of Mr. Moreno's cadaver, the 27th Judge for Criminal Investigation for Bogotá began to carry out investigative proceedings in relation to his death. In

June of 1991, for example, this Judge carried out on-site judicial inspections at the Los Libertadores CAI and at the systems office for the Metropolitan Police for Bogotá. The 27th Judge for Criminal Investigation for Bogotá became Prosecutor 262 of the Special Investigations Unit when the Constitution of 1991 entered into force and changed the structure of the criminal justice system in Colombia.

32. The criminal investigation was formally opened on November 25, 1991, and one Police officer was named as a suspect. The following day, a civil party was accepted in the case. In March and July of 1992, additional Police suspects were named in the case.

33. On September 10, 1992, the Office of the Inspector General for the Police requested to have the case transferred to the military justice system. When the Office of the Prosecutor General ("Fiscalía General de la Nación")[FN7] refused to relinquish jurisdiction over the case, the Superior Council of the Judiciary ("Consejo Superior de la Judicatura")[FN8] was asked to decide which jurisdiction should handle the case. The Superior Council of the Judiciary decided, on October 29, 1992, that the case should remain under the jurisdiction of the civil criminal justice system.

[FN7] The Office of the Prosecutor General of the Nation is an autonomous entity which forms part of the judicial branch and which is responsible for investigating and prosecuting criminal cases. Constitution of Colombia, arts. 249, 250.

[FN8] The Colombian Constitution provides that the Superior Council of the Judiciary will make the final decision as to which entity has competence to handle a case when jurisdictional conflicts occur. Constitution of Colombia, art. 256(6).

34. During 1993 and 1994, the prosecution issued several arrest warrants against Police agents. During this time, the case also was transferred periodically to new prosecutorial units.

35. The case was then transferred, in late 1994, to the Office of the Regional Prosecutor for Bogotá ("Fiscalía Regional de Bogotá").[FN9] The Regional Prosecutor's Office decided to transfer the case to the military justice system on March 10, 1995.

[FN9] The Regional Prosecutors are the prosecutorial entities for the regional criminal justice system. The regional criminal justice system has jurisdiction over cases involving narcotics, terrorism and other serious offenses.

36. On April 28, 1995, the Office of the Inspector General for the National Police, acting as trial court judge in this case for the military justice system, decided to return the case to the civil criminal justice system. The 1992 decision of the Superior Council of the Judiciary formed the basis for this decision.

37. The Office of the Regional Prosecutor for Bogotá reassumed jurisdiction over the case on May 18, 1995. On May 26, 1995, the investigation was declared complete and was closed. Formal charges were not made, however, and the case was thus not brought to trial.

38. On August 15, 1995, the case was transferred to the National Unit for Human Rights (the "Human Rights Unit") of the Office of the Prosecutor General for further investigation. The case was assigned to a prosecutor on September 26, 1996. At the end of 1996, the Human Rights Unit resolved several outstanding motions and ordered that new investigative proceedings be carried out.

39. The case remains with the National Unit for Human Rights in the investigative stage. No formal charges have yet been made and the case has not been brought to trial.

ii. Disciplinary Proceeding

40. The Office of the Procurator General of the Nation carried out two separate disciplinary proceedings related to the death of Alvaro Moreno Moreno. The Delegate Procurator for the Judicial Police carried out an investigation into the alleged irregular detention and subsequent death of Mr. Moreno at the hands of Police agents. The Delegate Procurator for the National Police carried out an investigation into the alleged cover-up of the events of January 3, 1991 and into the internal Police disciplinary investigation which absolved the Police of all responsibility in the case.

41. On June 14, 1994, the Procurator Delegate for the National Police reached its decision in the disciplinary case under its jurisdiction. The decision exonerated three persons named as defendants in the proceedings and sanctioned a fourth individual with five days suspension from active duty.

42. On August 11, 1992, the Procurator Delegate for the Judicial Police brought disciplinary charges against five individuals for failure to properly process the detention of Mr. Moreno, including failure to present him before the proper authorities. In decisions dated September 27 and November 1, 1995, the Procurator Delegate for the Judicial Police issued a decision in this disciplinary proceeding. The Procurator Delegate determined that four of the individuals should be sanctioned with removal from their positions in the Police Department. One of the individuals was exonerated.

iii. Contentious-administrative Proceeding

43. On October 28, 1993, the Administrative Tribunal for the Department of Cundinamarca[FN10] issued a decision requiring the Colombian State to pay monetary compensation to Mr. Moreno's family members for his death. The Third Section of the Contentious-Administrative Chamber of the Council of State ("Sección Tercera de la Sala de lo Contencioso Administrativo del Consejo de Estado") affirmed the lower court decision awarding damages. The family received payment of the damages awarded in the contentious-administrative proceeding on April 27, 1995.

[FN10] The administrative tribunals form part of the contentious-administrative jurisdiction.

b. Analysis of the Commission Relating to the Requirement of Exhaustion of Domestic Remedies

44. The Commission decides that, pursuant to Article 46(2) of the American Convention, the requirement of exhaustion of domestic remedies found in Article 46(1)(a) is not applicable in this case. Article 46(1)(a) specifies that admission of a petition requires that "remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law." Those remedies which must be exhausted are those which are suitable to address the alleged infringement of a legal right.[FN11]

[FN11] See I/A Court H.R., Velásquez Rodríguez Case, Judgment of July 29, 1988, par. 64.

45. However, pursuant to Article 46(2), exhaustion is not required where the party alleging violations of his rights has effectively been denied access to the remedies theoretically available under domestic law. Article 46(2) also excuses exhaustion where "there has been unwarranted delay in rendering a final judgment" in relation to the domestic remedies invoked. The petitioners have adequately shown that the provisions of Article 46(2) excuse exhaustion in the instant case.

46. In a case such as this one, where the violation of a right may properly be characterized as a criminal offense, the victims or their family members have the right to obtain a judicial investigation and a decision by a court of criminal law which determines, where possible, those responsible for the crimes committed and punishes them accordingly.[FN12] Thus, the appropriate remedy to be invoked is a criminal proceeding, which allows for criminal investigation and sanction as well as providing for the possibility of monetary compensation to the family members of the victim.

[FN12] See I/A Comm. H.R., Report No. 28/92 (Argentina), October 2, 1992, pars. 32, 50, Annual Report of the Inter-American Commission on Human Rights 1992-1993, OEA/Ser.L/V/II.83, Doc. 14, corr. 1, March 12, 1993; I/A Comm. H.R., Report No. 10/95 (Ecuador), September 12, 1995, pars. 42-48, Annual Report of the Inter-American Commission on Human Rights 1995, OEA/Ser.L/V/II.91, Doc. 7 rev., February 28, 1996.

47. Yet, it became clear even before the petition in this case was filed before the Commission that the criminal proceeding was not advancing at a reasonable pace toward the clarification of the events of January 3, 1991 and the sanction of those responsible for Mr. Moreno's death. The criminal investigation was not formally opened, and the civil party was not allowed to take part in the investigation, until eleven months after Mr. Moreno's death. At that time, only one suspect

was named. Further suspects were not named for several more months. This delay in the investigation occurred despite the fact that the Judge who originally carried out the investigations had already found convincing evidence that Mr. Moreno had been detained by the Police on January 3, 1991 shortly before his death, in judicial inspections carried out in June of 1995.

48. The Commission notes that this delay in the initial stages of the investigation necessarily prejudiced the possibility for success in the investigation. An investigation will always have a greater opportunity to clarify the events in question if it is carried forward soon after the occurrence of those events. Evidence vital to the prosecution of a case becomes increasingly difficult to obtain as time lapses. In addition, after the investigation was formally opened, the case was transferred numerous times to different prosecutors, resulting in further delay and thereby prejudicing the possibility of obtaining the evidence necessary to identify and sanction the individuals responsible for Mr. Moreno's death.

49. In 1995, four years after Mr. Moreno's death, the Office of the Regional Prosecutor for Bogotá decided to submit the case to the military justice system. The case was subsequently transferred back to the civil criminal justice system, but several more months were lost in this process.

50. In response to the petitioners' arguments suggesting that the 1995 transfer to the military jurisdiction contributed to a denial of access to an effective remedy, the State recognized that "the transfer of the investigation from one jurisdiction to another may contribute to a situation of delay in obtaining positive results in the investigation."^[FN13] The State suggested that this delay was nonetheless justifiable as a means of ensuring that the proper judicial system exercised jurisdiction over the case so as to protect the eventual results of the proceedings from challenge on jurisdictional grounds.^[FN14]

[FN13] State Brief of November 13, 1995.

[FN14] See *id.*

51. However, such reasoning does not justify the transfer which occurred in this instance. At the time of the transfer, there already existed a three-year old decision by the competent authority indicating that the military justice system should not be granted jurisdiction over the case. The Office of the Regional Prosecutor for Bogotá thus made the decision to transfer the case to the military justice system either negligently or in direct defiance of a legitimate prior judicial decision.

52. After the case returned to the civil criminal jurisdiction, in May of 1995, the prosecution declared the investigation closed. At this juncture, the prosecution should have formally charged some or all of the suspects or issued a determination that there existed insufficient evidence to continue against them. The prosecution failed to take this required action within the period of time provided for pursuant to the applicable laws.

53. The subsequent transfer of the case, in August of 1995, to the Human Rights Unit of the Office of the Prosecutor General constituted a positive move for the reactivation of the investigation. However, a prosecutor from the Human Rights Unit was not actually assigned to the case until one year later, on September 26, 1996. A full year later, the Unit for Human Rights, like the other prosecutorial units who have handled the case, has failed to formally charge any defendants in the case and bring this case to trial.

54. Six years after the events of January 3, 1991, the criminal proceedings remain in the investigative stage. Furthermore, there exists no indication that those proceedings will result in the identification and sanction of those responsible for Mr. Moreno's death.

55. The State has suggested that the involvement of the civil party caused some of the delay in the criminal proceedings.[FN15] The procedural activity carried out by those persons interested in a judicial proceeding is relevant to the analysis of whether the proceeding has suffered from undue delay.[FN16]

[FN15] See *id.*

[FN16] See I/A Court H.R., Genie Lacayo Case, Judgment of January 29, 1977, par. 77 (citing Eur. Court H.R., Motta judgment of 19 February 1991, Series A no. 195-A, par. 30; Eur. Court H.R., Ruiz Mateos v. Spain judgment of 23 June 1993, Series A no. 262).

56. However, in the present case, the State has never offered any information regarding the specific procedural activities carried out by the civil party which might have caused a delay in the criminal proceedings. The Commission cannot assume, based on the mere fact that a civil party has become involved in a case, that the civil party has contributed to an undue delay in the proceedings. The Commission also notes that the civil party was not formally included in the case until almost one year after Mr. Moreno was killed. The initial delay in the proceedings, which prejudiced the subsequent investigations, obviously cannot be attributed to the civil party.

57. The Commission thus concludes that the criminal proceedings initiated in this case have not allowed for access to an effective remedy. In addition, an unjustified delay of more than six years has occurred without a final decision by the criminal tribunals in this case. Exhaustion of the remedy provided through the criminal proceeding is thus excused.

58. In addition to the criminal proceedings, a disciplinary proceeding and a contentious-administrative proceeding were initiated in relation to Mr. Moreno's death. The Commission considers that neither of those proceedings could have resulted in a suitable remedy for the violations alleged in this case and thus need not have been exhausted.

59. A disciplinary proceeding, including the possibility of a disciplinary sanction, simply is not sufficient in a case involving the violent death of a person, allegedly at the hands of Police agents and in Police custody. Such a case should terminate in the criminal sanction, wherever possible, of the persons responsible for the crimes committed. The disciplinary sanction of those responsible could not adequately repair the rights violated.

60. In addition, the disciplinary proceedings which took place related to omissions allegedly committed by Police agents, such as the failure to maintain proper records and the failure to properly present Mr. Moreno to the authorities upon his detention. The disciplinary proceedings were never intended to address the petitioners' central allegation that State agents killed Alvaro Moreno Moreno while he was held in Police detention. They thus could not have resulted in an adequate remedy for the violations alleged.

61. The contentious-administrative proceeding is the only proceeding actually referenced by the State to support the inadmissibility of this case for failure to exhaust domestic remedies. The Commission has concluded in other Colombian cases that the contentious-administrative proceeding is "intended only as a means of supervision of the State's administrative activity and to obtain compensation for damages caused by abuse of authority." [FN17] The Commission has thus concluded that the contentious-administrative proceeding is generally not an adequate "means of redress of human rights violations" and thus need not be exhausted in a case such as this one. [FN18]

[FN17] See, e.g., I/A Comm. H.R., Report No. 15/95 (Colombia), September 13, 1995, Annual Report of the Inter-American Commission on Human Rights 1995, OEA/Ser.L/V/II.91, Doc. 7 rev., February 28, 1996, at 71.

[FN18] Id.

62. In this case, the State has specifically emphasized that the contentious-administrative proceeding provides only monetary compensation to persons who have suffered harm caused by State agents, "justly or unjustly." [FN19] Monetary compensation for damages inflicted, without any determination as to wrongdoing, is not an adequate or appropriate remedy in this case.

[FN19] See State Brief of November 13, 1995.

63. In addition, it is noted that in many member states of the O.A.S., including Colombia, a decision to convict in a criminal proceeding generally includes or precedes an order to pay compensation to those victims or family members who participated in the proceedings as civil parties. Thus, the criminal proceeding, which would constitute the appropriate remedy in a case such as this one, provides for the possibility of obtaining monetary compensation in addition to criminal sanction. The petitioners should not then be required to seek exhaustion of the administrative proceeding, which can provide only monetary compensation, when there exists another proceeding which serves to provide monetary compensation as well as the criminal investigation and sanction required in such a case. Where the criminal proceeding is invoked and yet does not lead to a remedy for the human rights violation, including an order to pay compensation, the victims cannot then be asked to exhaust another remedy in order to obtain that compensation.

64. In any case, both the disciplinary and contentious-administrative proceedings were, in fact, exhausted. The disciplinary proceeding carried out by the Procurator Delegate for the National Police terminated in a final decision dated June 14, 1994. The unappealable decisions of the Procurator Delegate for the Judicial Police, dated September 27 and November 1, 1995, completed the proceedings before that body. The contentious-administrative proceeding ended with the decision of the Council of State confirming the sentence of the administrative tribunal awarding damages and the final payment of damages on April 27, 1995. The State itself has noted that the remedy available through the contentious-administrative jurisdiction was exhausted.[FN20]

[FN20] Id.

3. Time for Filing the Petition

65. The State has neither alleged nor shown that the petitioners presented their claim to the Commission outside of the relevant time period for the filing of a petition provided for in Article 46(b) of the Convention and Article 38 of the Regulations of the Commission.[FN21] The Commission therefore determines that the case is admissible without reference to the question of the time period in which the petition was submitted.

[FN21] See I/A Court H.R., Neira Alegría et al. Case, Preliminary Objections, Judgment of December 11, 1991, par. 30 (indicating that the Government bears the burden of raising an objection on these grounds and may waive the objection).

4. Friendly Settlement

66. In accordance with Article 48(1)(f) of the Convention, the Commission offered to place itself at the disposition of the parties for the purposes of arriving at a friendly settlement in the hearing held before the Commission on February 23, 1996. According to both the petitioners and the State, some discussion of negotiation towards a friendly settlement subsequently occurred in Colombia. However, the State continued to provide briefs to the Commission relating to the merits of the case and failed to respond to the petitioners' request to formalize the friendly settlement proceedings before the Commission.

67. In response to a communication from the Commission reiterating its offer to place itself at disposition of the parties for the purposes of arriving at a friendly settlement, the State notified the Commission that it would define its position on friendly settlement and would notify the Commission of its decision in this regard. When the Commission received no further information from the State on this point, the Commission sent a note, on January 29, 1997, requesting a response regarding the position the State had decided to adopt regarding the possibility of entering into friendly settlement negotiations in this case. The Commission received no response to this communication. The Commission therefore reiterated, on June 18, 1997, its previous

request for information regarding the State's position on friendly settlement. The Commission granted the State a 30-day period of time to respond. The State has not yet responded to the Commission's request.

68. In the meantime, while the Commission sought a response regarding the State's position on friendly settlement, the State provided an additional brief relating to the merits of this case, specifically regarding the domestic proceedings, on March 4, 1997.

69. The Commission concludes that the State has implicitly indicated its desire not to pursue friendly settlement negotiations at this time. It arrives at this conclusion based, in part, on the State's failure to respond to its repeated requests for information regarding the State's position on friendly settlement. Also, the Commission notes that the State has moved forward with the proceedings before the Commission by continuing to submit briefs in this case. It has thus not been possible to enter into a friendly settlement proceeding.

5. Other Admissibility Requirements

70. The petition fulfills the other admissibility requirements contained in the Convention and the Regulations of the Commission. In accordance with Article 47(b) of the Convention, the Commission is competent to examine this case as it adequately alleges violations of several articles of the Convention. In accordance with the requirement of Convention Articles 46(1)(c) and 47(d) respectively, the Commission has received no information indicating that the subject of the petition is pending settlement in another international proceeding or that it duplicates a petition previously examined by the Commission.

B. Merits

1. Findings of Fact Regarding the Underlying Violations

71. The Commission finds that Police agents detained Alvaro Moreno Moreno on January 3, 1991. The record before the Commission includes several pieces of crucial evidence on this point. First, the record contains a copy of the "weekly summary report" dated January 7, 1991 provided by C.A.D. Station 100 to the Commander of the Metropolitan Police for Bogotá. That report provides information about the attack carried out on the Los Libertadores CAI. The report then names Alvaro Moreno Moreno as a suspect and indicates that he was placed at the disposition of the SIJIN.[FN22] The record also contains the testimony of Lieutenant Adriana Patricia Hernández Marín, an agent of the counterintelligence group of the SIJIN who participated in the support operation carried out on January 3, 1991 after the attack on the CAI. Ms. Hernández testified that she maintained radio contact with the other Police officers who participated in the support operation on January 3, 1991. She stated that she heard another Police agent announce over the radio that he had detained Alvaro Moreno Moreno and that he would take Mr. Moreno to intelligence headquarters to carry out a background check.[FN23]

[FN22] See Weekly Summary Report prepared by C.A.D. Station 100 and directed to the Commander of the Metropolitan Police for Bogotá, January 7, 1991.

[FN23] See Statement of Lieutenant Adriana Patricia Hernández Marín before the Judicial Police Office for Special Investigations of the Office of the Procurator General, December 16, 1991, Bogotá.

72. The report of the Judicial Police Office for Special Investigations of the Office of the Procurator General, issued on January 27, 1992, also reached the conclusion that the Police detained Mr. Moreno on January 3, 1991. That report stated that, “it has been clearly established that the citizen Alvaro Moreno . . . was captured by units of the Metropolitan Police for Bogotá and placed at the disposition of the SIJIN.” Nor has the State ever denied in the proceedings before the Commission that Police agents detained Mr. Moreno on the night in question.

73. Mr. Moreno’s lifeless body appeared the following day with numerous gunshot wounds. Thus, the last information which exists regarding Mr. Moreno, before his death, indicates that he had been detained by Police officials and was being held at the disposition of the SIJIN. Given these circumstances, the State bears the burden of proving before the Commission that Police agents did not cause Mr. Moreno’s death.

74. The burden of proof lies with the State, because when the State holds a person in detention and under its exclusive control, the State becomes the guarantor of that person’s safety and rights. In addition, the State has control over the information and evidence which might establish the fate of the detained person.[FN24]

[FN24] See I/A Court H.R., Neira Alegría et al Case, Judgment of January 19, 1995, pars. 60, 65.

75. The Colombian State has failed to meet its burden of proof in this case.

The State has never even argued, much less adduced any credible evidence, that Police agents did not execute Mr. Moreno subsequent to his detention by the Metropolitan Police for Bogotá. The Commission thus concludes that State Police agents executed Alvaro Moreno Moreno after his detention on January 3, 1991.

2. Conclusions of Law Regarding the Underlying Violations

a. The Right to Life - Article 4

76. The Commission concludes that Police agents violated Mr. Moreno’s right to life, in violation of Article 4 of the Convention. Article 4 of the American Convention provides that, “[e]very person has the right to have his life respected. . . . No one shall be arbitrarily deprived of his life.”

77. The Commission has found that Police agents executed Alvaro Moreno Moreno after detaining him on January 3, 1991. There exist absolutely no indicia in this case suggesting that Mr. Moreno’s death was justified in any manner. The State has made no such argument and none

arises from the evidence in the record before the Commission. Police agents thus arbitrarily deprived Mr. Moreno of his life in a clear violation of the American Convention.

b. The Right to Personal Liberty - Article 7

78. The Commission further concludes that Police agents violated Mr. Moreno's right to personal liberty, in violation of Article 7 of the Convention. Article 7(1) of the Convention establishes that, "[e]very person has the right to personal liberty and security." Article 7(2) requires that a detention be carried out in accordance with the principle of legality, providing that, "[n]o one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand" pursuant to the law.

79. The Commission's conclusion that Police agents caused Mr. Moreno's death after detaining him on the night of January 3, 1991 implies the further conclusion that the Police agents violated Article 7. A detention which results in the execution of the detained person at the hands of Police agents cannot be considered to have been carried out in accordance with the principle of legality and under the pre-established conditions set forth in the law.

80. In addition, when Police agents caused Mr. Moreno's death in detention, they necessarily deprived him of his right to be taken without delay before a judge and to invoke the appropriate procedures to review the legality of the arrest. They thus incurred in violations of paragraphs 5 and 6 of Article 7 of the American Convention, which establish a detainee's rights in this regard.

c. Obligation to Respect Rights - Article 1(1)

81. The underlying violations at issue in the instant case demonstrate that the Colombian State has failed to uphold the undertaking set forth in Article 1(1) of the Convention "to respect the rights and freedoms recognized herein." The Court has held that:

Whenever a State organ, official or public entity violates . . . rights [named in the Convention], this constitutes a failure of the duty to respect the rights and freedoms set forth in the Convention . . . the State is responsible for the acts of its agents undertaken in their official capacity and for their omissions, even if they are acting outside the sphere of their authority or in violation of internal law.[FN25]

[FN25] Velásquez Rodríguez Case, Judgment of July 29, 1988, pars. 169, 170.

82. In the instant case, agents of the Colombian Police, acting under color of their official authority as law enforcement officials, detained and shortly thereafter executed Mr. Moreno, in violation of Articles 4 and 7 of the Convention. These actions constitute clear violations of the Convention which are imputable to the Colombian State in conjunction with an additional violation of Article 1(1).

3. Findings of Fact and Conclusions of Law Regarding the Subsequent Investigations and Proceedings

a. Statement of the Law - Articles 1(1), 8 and 25

83. Articles 8 and 25 of the American Convention provide individuals with the right of access to a remedy for violations of their rights, the right to pursue and be heard in judicial proceedings before a competent tribunal and the right to a decision by the appropriate legal authority. Article 25(1) of the American Convention sets forth that:

Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention.

Article 8(1) of the American Convention provides that every person has the right to be heard “with due guarantees” by a “competent, independent and impartial tribunal.” The Court has made clear that for judicial remedies to be adequate under articles 8 and 25 of the Convention, they “must be truly effective in establishing whether there has been a violation of human rights and in providing redress.”[FN26]

[FN26] I/A Court H.R., Judicial Guarantees in States of Emergency (Arts. 27(2), 25 and 8 American Convention on Human Rights), Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9, par. 24.

84. In addition, the second obligation of the State under Article 1(1) of the Convention is to “ensure” the free and full exercise of the rights recognized by the Convention. This obligation implies:

the duty of the States Parties to organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights. As a consequence of this obligation, the States must prevent, investigate and punish any violation of the rights recognized by the Convention and, moreover, if possible attempt to restore the right violated and provide compensation as warranted for damages resulting from the violation of human rights.[FN27]

[FN27] Velásquez Rodríguez Case, Judgment of July 29, 1988, par. 166.

85. As noted above, the question of a State’s compliance with its obligations under Articles 8 and 25 and with its Article 1(1) obligation to ensure human rights is closely linked to the question of the applicability of exceptions to the requirement of exhaustion of domestic remedies.[FN28] The Commission has found that exceptions to the requirement of exhaustion of domestic remedies apply in this case. This conclusion of the Commission constitutes at least an

initial finding that the Colombian State has not fulfilled its obligations under Articles 1, 8 and 25 of the Convention.

[FN28] See Velásquez Rodríguez Case, Judgment of June 26, 1987, Preliminary Objections, par. 91.

86. The Commission here definitively concludes that the Colombian State has failed to ensure that Mr. Moreno's family members received the judicial protection and access to an effective remedy which should have been provided pursuant to Articles 8 and 25 of the Convention. This denial of justice, in violation of Articles 8 and 25, is imputable to the State under Article 1(1), as it was brought about by the actions and omissions of State investigatory authorities and other State agents. The State also failed to adequately investigate Mr. Moreno's death and to punish those responsible as required by the obligation to ensure found in Article 1(1) of the Convention and is responsible for this failure as well.

b. Police Activities Intended to Impede Clarification of the Events

87. The Commission finds that the Police engaged in a cover-up of the events of January 3, 1991, which impeded the investigation of the case and prevented access to an effective remedy and an opportunity to be heard. The Commission notes that the initial domestic investigations reached such a conclusion. The report of the Judicial Police Office for Special Investigations of the Office of the Procurator General noted, as early as January 27, 1992, that "there was an effort on the part of members of the National Police to avoid that the truth was learned regarding the detention." [FN29] The information and evidence in the record before the Commission also supports this conclusion.

[FN29] Conclusions of the Report of the Judicial Police Office for Special Investigations of the Office of the Procurator General, January 27, 1992, at 2.

88. This cover-up began soon after Mr. Moreno's cadaver was found on January 4, 1991. The day after the body was originally found at "llanos de la Diana" in the community of El Verganzo de Tocancipá, Cundinamarca, it was transferred to the morgue at a local hospital in Tocancipá. The body then disappeared. It was recovered from the waters of a dam in the municipality of Chocontá on January 14, 1991. The Commission considers that, in the light of further evidence indicating that a cover-up occurred, it may be concluded that Mr. Moreno's body was removed from the hospital in Tocancipá in order to hide evidence regarding Mr. Moreno's fate.

89. As part of the cover-up surrounding Mr. Moreno's death, the Police sought to deny that Mr. Moreno had ever been detained. Thus, there appears no entry regarding Mr. Moreno's detention in the registries of the different police stations which correspond to the area where the attack on the CAI Los Libertadores occurred and where Mr. Moreno was presumably detained. [FN30]

[FN30] See id.

90. Documentary evidence regarding Mr. Moreno's detention also suspiciously disappeared or suffered alterations. The page of the registry at the CAI Los Libertadores corresponding to the date of the attack was mutilated. The bottom half of the page of the registry corresponding to January 3, 1991 was lost. The final notation which may be read, on the top half of the page, corresponds to 5:30 p.m. Thus, any notations made at, during or after the time of the attack are missing.[FN31] Also, the January 4, 1991 daily record of incidents for the First Police Station, which had jurisdiction over the area where the attack occurred on the CAI Los Libertadores, suspiciously failed to report any incidents the day after the attack.[FN32]

[FN31] See id.; Judicial Inspection Proceeding Report prepared by the 27th Judge for Criminal Investigation, June 24, 1991 (annexing a copy of the torn page).

[FN32] See Conclusions of the Report of the Judicial Police Office for Special Investigations of the Office of the Procurator General, January 27, 1992, at 3.

91. The only official police report which does reflect Mr. Moreno's detention is the weekly summary report submitted by the central dispatch station, C.A.D. Station 100, to the Commander of the Metropolitan Police. That weekly summary report disappeared from the files at C.A.D. Station 100.[FN33]

[FN33] See id.

92. Given the refusal of the Police to acknowledge Mr. Moreno's detention and the other evidence of a cover-up in this case, the Commission concludes that Police agents altered, manipulated and removed Police records in an effort to ensure the success of the Police cover-up.

93. The domestic authorities who carried out the early investigations at the Office of the Procurator General also found that several of the Police officials who they interviewed were evasive in responding to questions and provided inconsistent stories.[FN34] The Commission considers that this finding by the domestic authorities establishes that at least some Police officials contributed to the Police cover-up by refusing to cooperate in the investigations carried out by domestic authorities.

[FN34] See id., at 4.

94. Finally, the record before the Commission establishes that the Metropolitan Police Department of Bogotá carried out an internal investigation which also sought to bury the truth

regarding the events of January 3, 1991. Brigadier General Fabio Campos Silva, Commander of the Metropolitan Police for Bogotá, served as the decisionmaking authority in this internal investigation. General Campos terminated the investigations without finding any Police responsibility for the events of January 3, 1991, on the grounds that there existed insufficient evidence to continue. However, he reached this decision without considering the evidence available. For example, he did not consider, in reaching his decision, the weekly summary report which made reference to Mr. Moreno's detention and which was addressed directly to his office.[FN35]

[FN35] See Weekly Summary Report prepared by C.A.D. Station 100 and directed to the Commander of the Metropolitan Police for Bogotá, January 7, 1991.

95. Nor did the disciplinary proceedings carried out to investigate the Police cover-up activities achieve any significant results. As noted above, the investigations of the Office of the Procurator Delegate for the National Police terminated in a decision absolving three defendants. Brigadier General Campos was among those absolved of responsibility, despite the significant evidence indicating that he had acted improperly in carrying out the internal Police disciplinary investigation. The Procurator Delegate sanctioned the fourth defendant, accused of responsibility in the disappearance of the weekly summary report, with only five days suspension from service.

96. The Procurator Delegate took this decision not to provide any significant sanction despite the evidence indicating that Police agents engaged in a blatant cover-up of the facts surrounding Mr. Moreno's death. The State thus failed to provide the limited judicial protection which it might have made available through the sanction of the cover-up activities carried out in relation to this case.

97. The State has attempted to establish the legitimacy of the results of this disciplinary proceeding. The State argued, on this point, that the Procurator Delegate could not have imposed a more serious sanction on the individual held responsible for losing the weekly summary report which included the reference to Mr. Moreno's detention. The State suggested that a more serious sanction for the mere loss of a document would be inappropriate.[FN36]

[FN36] See State Brief of November 13, 1995.

98. The Commission finds this argument to be disingenuous. The facts of the case establish that the "loss" of the weekly summary report occurred in the context of a Police cover-up. That cover-up sought to deny that Police officials detained Mr. Moreno on January 3, 1991 shortly before he was killed. The weekly summary report constituted crucial evidence that the detention had occurred. The destruction or intentional loss of that document must thus be seen as an additional act in the cover-up effort. Once the disciplinary proceedings identified the person responsible for that act, they should have imposed a sanction which corresponded to the seriousness of the infraction. The Commission considers that the State has not adequately

justified the failure of the disciplinary proceedings to achieve the punishment of the Police agents responsible for the cover-up regarding Mr. Moreno's death.

99. The Commission thus concludes that the Police carried out significant activity designed to block the investigations into the death of Alvaro Moreno Moreno, through such varied tactics as removing evidence, including the victim's cadaver, and refusing to cooperate in interviews with investigative authorities. These facts demonstrate that the family members of Alvaro Moreno Moreno faced a Police cover-up, which precluded access to an effective remedy.

100. When State agents engage in a cover-up of facts which violate the Convention, the State is prevented from carrying out an adequate investigation. Even if some State agents, for example prosecutors or the courts, attempted to carry out an adequate investigation, they would meet with interference from other State agents which prevents the success of the investigation. Without a complete investigation, which enjoys the cooperation of all involved State agents, it becomes extremely difficult to provide an effective legal remedy to the victims or their family members and to sanction those responsible for the violations. The State thus incurs in violations of Articles 1, 8 and 25 of the Convention.

101. In this connection, the Inter-American Court has previously noted that when State agents fail to cooperate with domestic proceedings or otherwise engage in an obstruction of justice, they violate the right to be heard and to access judicial protection, in violation of the Convention.[FN37] In the present case, the Colombian State has incurred in just such violations of the Convention as a result of the Police cover-up which prevented an adequate investigation and full access to effective legal recourse.

[FN37] See Genie Lacayo Case, Judgment of January 29, 1997, par. 76.

c. The Domestic Investigations and Proceedings

102. The violations of Articles 1, 8 and 25 were perfected when the Colombian State failed to carry out domestic investigations and proceedings sufficiently rigorous to counteract the cover-up. As the Commission noted above, in this case involving the execution of Mr. Moreno by Police agents, the State was required to carry out a criminal investigation and to criminally sanction the individuals responsible for the violations committed.

103. However, as the Commission found above, the criminal proceedings in this case have not been effective and have not advanced in a timely manner. Thus, six years after the facts, the criminal case remains in the investigative stage, and no individual responsible for the violations has been formally charged, much less criminally sanctioned. The case has been transferred from one prosecutorial body to another, causing unnecessary delay and difficulty in the proceedings. The Human Rights Unit of the Office of the Prosecutor General has held jurisdiction over the case for more than two years. Yet, the Commission has still received no information indicating that the case will move out of the investigative stage in the near future.

104. The failure of the criminal proceedings to reach a conclusion and to achieve the sanction of those responsible for Mr. Moreno's death contrasts with the disciplinary proceedings carried out by the Procurator Delegate for the Judicial Police. Those proceedings concluded with a finding of Police responsibility and the sanction of four Police agents in relation to the death of Mr. Moreno.

105. The Commission recognizes that the duty to investigate does not imply a duty to obtain a specific outcome in the domestic proceedings.[FN38] However, the investigation "must be undertaken in a serious manner and not as a mere formality preordained to be ineffective." [FN39]

[FN38] See Velásquez Rodríguez Case, Judgment of July 29, 1988, par. 177.
[FN39] Id.

106. The initial investigations of the Judicial Police Office for Special Investigations of the Office of the Procurator General and of the 27th Judge for Criminal Investigation uncovered important evidence pointing towards the culpability of several Police officials in the death of Mr. Moreno. However, the State has not provided information indicating that the criminal authorities have carried out subsequent investigative proceedings in a serious manner and has not informed the Commission of any positive results derived from the investigations.

107. In addition, the State has only sporadically detained suspects in the case and has sometimes freed persons already detained without clear justification or as a result of the State's own negligence. A working list of suspects in the criminal proceedings was developed in July of 1992. Some months later, on April 12, 1993, the Office of the Prosecutor General issued arrest warrants against Captain Oscar Mariño Romero, head of the counterintelligence group of the SIJIN, and against Sergeant Leonel Adolfo Morales, a member of the counterintelligence group. These two individuals were arrested.

108. However, several months later, the prosecution terminated the criminal investigation of these two individuals and granted them their freedom. The authorities reversed this decision upon appeal by the civil party. Both individuals were again formally named as suspects in the case and a new arrest warrant was issued against Captain Mariño. However, by that time, Captain Mariño had become a fugitive from justice. According to the information in the record before the Commission, State officials have not succeeded in detaining him again. Despite the fact that the domestic proceedings have determined that there exist indicia of responsibility as against this individual sufficient to require his detention, he remains at liberty after he was freed from his original arrest.

109. In September of 1994, the prosecution added two additional suspects to the investigation: Lieutenant Samuel Castrillón Santana, head of the intelligence group of the SIJIN, and; Alvaro Parada Medina, a SIJIN agent. Lieutenant Castrillón was not detained at this time despite the issuance of a warrant for his arrest. Agent Parada was detained. However, when the criminal case was erroneously transferred to the military justice system, Agent Parada obtained an order from

the military tribunals granting him his freedom. The Commission has received no information establishing legitimate reasons for his release.

110. In June of 1995, the arrest warrant against Lieutenant Castrillón was revoked. An additional arrest warrant issued in 1993 against Major José Gregorio Sánchez Lozano, administrative chief for the SIJIN, was also revoked. It is not clear from the record whether these two suspects had ever been detained in accordance with the arrest warrants outstanding against them. If so, they would have been freed when the warrants against them were revoked. The warrants for their detention were revoked as a result of the negligence of the Office of the Regional Prosecutor for Bogotá which formally closed the investigations and then failed to take a decision as to the charges it would file within the period of time provided for under the law.

111. The information in the Commission's possession thus establishes that four of the arrest warrants originally granted were revoked. The warrant for the arrest of Captain Mariño is apparently the only warrant which was not revoked. However, Captain Mariño has been declared a fugitive from justice and there is no indication that he will be detained in the future. The Human Rights Unit of the Office of the Prosecutor General has not issued any further arrest warrants. This information thus establishes that no suspects are currently held in detention in the criminal proceedings relating to the death of Alvaro Moreno Moreno.

112. The failure to carry out the timely arrest of suspects against whom there exist outstanding arrest warrants, the improper release of persons who have been detained and the revocation of arrest warrants as a result of the negligence of State agents has necessarily impeded the investigation of this case and blocked access to an effective remedy. In addition, the failure of the State to detain suspects in this case seriously prejudices the State's ability to sanction the persons responsible for the violations committed. Even if the events of January 3, 1993 are eventually clarified and convictions are entered, the State may experience difficulty in locating and detaining the defendants in order to carry out the criminal sanctions eventually imposed. The Commission again notes, in this connection, that at least one suspect has already been declared a fugitive from justice.

113. The cover-up carried out by State Police agents and the failure of the criminal proceedings to investigate in a serious and timely manner have provided those responsible for the death of Mr. Moreno with impunity. As a result, the State is responsible for its failure to provide Mr. Moreno's family with access to effective legal recourse and judicial protection, in violation of Articles 8 and 25 of the American Convention. The State has also failed to comply with its obligation, pursuant to Article 1(1), to investigate human rights violations and to sanction those responsible, where possible.

114. The Commission notes, as a final matter, that the Colombian State has complied with part of its obligation pursuant to Article 1(1) by providing monetary compensation to Mr. Moreno's family members. However, the family members of Mr. Moreno and the petitioners in this case before the Commission continue to press for justice, including the investigation and sanction of those responsible for Mr. Moreno's death. The Commission must point out that the payment of monetary compensation does not discharge the State's responsibility pursuant to Article 1(1) in a

case such as this one where the family members of the victim legitimately demand the criminal investigation and sanction of the persons responsible for the violations committed.

V. CONSIDERATIONS IN RESPECT OF THE ACTIONS TAKEN SINCE ADOPTION OF THE ARTICLE 50 REPORT

A. Procedure after the adoption of the Article 50 Report

115. The Commission examined this case during its 97^o Regular Session. On September 30, 1997, pursuant to Article 50 of the Convention, it adopted Report 28/97, which concluded that the Colombian State was responsible for violations of the Convention, including violations of Mr. Moreno's right to life (Article 4) and personal liberty (Article 7) and for violations of the rights of his family members to a fair trial (Article 8) and judicial protection (Article 25), all in conjunction with the violation of Article 1(1) of the Convention. The Commission recommended that the State adopt specific measures to resolve the situation.

116. The Commission sent Report 28/97 to the Colombian State on October 28, 1997, with a request to the State to inform the Commission as to the measures taken to remedy the situation, in line with the recommendations made. The State was given a two-month period to respond. The Commission notified the petitioners of the adoption of the report in a note of the same date.

117. On December 30, 1997, the Commission received a note from the State requesting an extension of time for the filing of its response. By note dated December 31, 1997, the Commission granted an extension of time of 30 days. On February 9, 1998, the Commission received the State's response to Report 28/97, which was dated February 4, 1998. The Commission wishes to express its concern regarding the late filing of the State's response. The State failed to respond in a timely manner despite having received from the Commission a total period of three months to provide information regarding compliance with the report adopted in accordance with Article 50 of the Convention.

B. The State's Arguments Regarding the Commission's Admissibility Decision

1. Procedural Objections

118. The State first questions the Commission's statement, in Report 28/97, that "it is not clear that the State has raised timely objections to admissibility." The State suggests that a preliminary objection on the grounds of failure to exhaust domestic remedies was implicitly raised when the State provided information regarding domestic remedies. The State further suggests that it is inappropriate to invoke the Court's holding in *Velásquez Rodríguez* in this case to suggest that the objection was not made "at an early stage of the proceedings." The State argues that there exists a lack of clarity in this case regarding the appropriate time period for raising an objection on the grounds of failure to exhaust domestic remedies.

119. The Commission first notes that, despite finding that it was not clear that the State had raised timely objections to admissibility, the Commission nonetheless proceeded to analyze the various requirements for admitting a petition, including the requirement of exhaustion of

domestic remedies. The procedural question raised by the State thus had no effect on the outcome of the case.

120. The Commission also notes that the State must make clear that it is raising an objection to admissibility, on exhaustion grounds, in order for the Commission to consider that objection. To properly raise the objection, the State must describe which adequate remedies have not been exhausted and explain the basis for the objection, so that the Commission may analyze the alleged shortcomings of the petitioners on this point.[FN40]

[FN40] Velásquez Rodríguez Case, Preliminary Objections, Judgment of June 26, 1987, par. 88.

121. However, in this case, the Commission's principle reason for questioning whether the State had made a timely objection was not based on a failure to clearly allege an objection on exhaustion grounds. Rather, the Commission focused on the fact that the State made its objection to admissibility in its answer, which was submitted to the Commission in an untimely manner. The State provided its response in this case more than one year after the Commission opened the case, only after the Commission reiterated its request for information.

122. The State thus did not merely fail to clearly allege an objection on exhaustion grounds but rather failed to respond altogether within the established time period, without any justification. The failure to respond within the established time period obviously also implied a failure to raise any preliminary objection within that time period.

123. The Commission reiterates that, under those circumstances, it is not clear that the Commission should consider the admissibility objection put forth by the State. The Convention explicitly establishes the obligation of the State to respond to the Commission's request for information within the time period established by the Commission.[FN41] The Commission considers that there must exist some procedural consequence for the failure of the State to respond to the request for information made by the Commission when it opens a case.

[FN41] See Convention, art. 48(1)(a).

124. In fact, as the State itself notes, in its response to Report 28/97, all of the proceedings in the first stages before the Commission should occur "in a period no greater than 300 days after the case is opened." The State thus provided its first response in this case after the time provided, in the Commission's regulations, for the completion of all of the initial stages of processing of the communications between both parties.

125. The State is responsible, in the present case, for lengthening the period of exchange of the initial communications between the parties. A State may not grant itself additional time to raise preliminary objections by failing to respond, thereby lengthening the time period for the early stages of the proceedings in which preliminary objections may be raised. The statutory time

period for the early stages of the proceedings had ended by the time the State filed its answer and preliminary objection. The Commission thus considers applicable the language in Velásquez Rodríguez regarding the waiver of a preliminary objection which is not raised in the first stages of the proceedings.

2. Substantive Objections

126. In its response to Report 28/97, the State also questioned the substance of the Commission's decision on admissibility regarding the requirement of exhaustion of domestic remedies. The State suggests that the Commission erroneously disqualified the disciplinary and contentious-administrative proceedings as possible effective domestic remedies which must be exhausted. The State argues that the Commission has failed to recognize the integrated nature and the effectiveness of those two proceedings in Colombia.

127. The Commission clarifies, on this point, that it does not question the integrated nature of the various remedies provided for under Colombian law, including the criminal proceedings, the contentious-administrative proceedings and the disciplinary proceedings. The Commission recognizes that these proceedings, when carried out effectively, may provide a joint result which includes the criminal sanction of individuals responsible for human rights violations, the disciplinary sanction of those individuals and a finding of State responsibility, including a duty to compensate the victims.

128. However, the Court has clearly established that:

A number of remedies exist in the legal system of every country, but not all are applicable in every circumstance. If a remedy is not adequate in a specific case, it obviously need not be exhausted.[FN42]

The Commission thus need only analyze the exhaustion of adequate domestic remedies in reaching its decision on admissibility.

[FN42] Velásquez Rodríguez Case, Judgment of July 29, 1988, par. 64.

129. Adequate domestic remedies are those "which are suitable to address an infringement of a legal right." [FN43] The Commission has consistently held in this and other similar cases that, where the violation of a human right may properly be characterized as a criminal offense, the victims or their family members have the right to obtain a judicial investigation and a decision by a court of criminal law which establishes criminal responsibility and provides for an appropriate punishment.

[FN43] Id.

130. Although Colombian disciplinary and contentious-administrative proceedings may supplement and complement criminal proceedings in important ways, they may never provide for a criminal investigation, criminal determination of responsibility and criminal sanction. They thus can never completely and adequately address the infringement of the legal rights involved in cases such as this one which require criminal investigations and sanctions. As a consequence, the Commission need not analyze whether they have been exhausted before admitting a case. The criminal proceedings which, where successful, presuppose an award of compensation as well as a criminal investigation and sanction, constitute the adequate remedy which must be exhausted.

131. The State's response in this case further illustrates this point. The State points out that there exist many cases in which no criminal conviction is achieved but yet the disciplinary and/or contentious-administrative proceedings result in sanctions, declarations of State responsibility or orders to compensate victims and their family members. The Commission recognizes the importance of the disciplinary and contentious-administrative decisions in those cases. It is far better for the victims or their family members to achieve an award of compensation and disciplinary sanctions than to face a complete lack of response from the State regarding the violations. However, the remedy provided in those cases is necessarily incomplete and inadequate, because it does not provide for criminal investigation and sanctions. The contentious-administrative and disciplinary proceedings thus need not have been exhausted, although they did provide an important partial remedy.

132. In its response to Report 28/97, the State also questions statements made in this specific case by the Commission regarding the contentious-administrative proceedings. In its Report 28/97, the Commission noted that, "[m]onetary compensation for damages inflicted, without any determination as to wrongdoing, is not an adequate or appropriate remedy in this case." The Commission made this statement, because the State had specifically emphasized in the processing of this case that the contentious-administrative proceeding provides monetary compensation to persons who have suffered harm caused by State agents, "justly or unjustly."

133. In its response to Report 28/97, the State for the first time informed the Commission that the Council of State decision in the contentious-administrative jurisdiction in the present case did expressly find that State agents had engaged in wrongdoing and in a violation of rights. The State suggests, in its response, that the Commission was aware of the findings included in this contentious-administrative decision. However, the State never submitted the text of the decision to the Commission. The State simply informed the Commission that a decision awarding compensation existed, without providing information regarding the basis for that decision. Nor did the text of the decision reach the Commission from another source. The Commission may only analyze those documents which form part of the record before it. If the State wishes to rely on judicial decisions or other documents in its power, it must provide that documentation to the Commission.

134. In any case, the Commission continues to hold that the contentious-administrative proceeding serves essentially as a means of providing monetary compensation for harm caused by State authorities with or without wrongdoing, as the State properly noted in this case. Even where the compensation is predicated on a finding of wrongdoing, the contentious-administrative

remedy continues to be inadequate in human rights cases such as this one. It simply does not provide for the criminal investigation and sanction required in these cases.

C. State Compliance with the Commission's Recommendations

1. Investigation and Criminal Proceedings

135. The State provided important information, in its response to Report 28/97, regarding the Commission's recommendations to the State to investigate the case, to provide an officially sanctioned account of the violations against Mr. Moreno and to submit all those responsible to the appropriate criminal proceedings. The State recognized that the criminal proceedings have been slow and have been affected by errors. The State then informed the Commission about ongoing investigations which seek to individualize and sanction the persons responsible for the disappearance and extrajudicial execution of Mr. Moreno. The State also informed the Commission that it has taken measures to seek investigations and possible sanctions against the investigative and judicial authorities who failed to properly carry out the criminal proceedings. The Commission considers these steps to be of utmost importance.

136. Nonetheless, the Commission considers that the State has not yet fully complied with its recommendations to investigate and sanction in this case. Seven years after the death of Mr. Moreno and three months after the Commission issued its Article 50 decision, the domestic criminal case remains in the investigative stage. No individual has been sanctioned and no formal charges have been brought.

137. In its response, the State informed the Commission that another suspect had been detained in relation to the case. However, that suspect was then freed. This information follows a pattern which has occurred in the case, whereby suspects are detained for a time and then freed. The Commission also notes that, according to the information provided by the State, three suspects in the case continue in active service in the National Police.

2. Reparation

138. As to the Commission's recommendation to the State to provide for reparation for the violations, the State suggests that the publication of the Commission's report will constitute reparation in this case. The publication of a Commission finding of State responsibility for human rights violations does constitute a form of moral reparation for the victims of those violations or for their family members. However, the Commission made a recommendation to the State to provide reparation. The publication of a report by the Commission does not relieve the State of its responsibility to comply with the recommendation and to provide adequate reparation.

139. The State also suggests that a successful conclusion of the criminal proceedings would serve as a form of moral reparation. Again, the Commission agrees that criminal investigations and sanctions constitute a form of reparation. However, the Commission has found that the State has not yet complied with its recommendation to carry out investigations and to sanction the

individuals responsible for the violations committed against Mr. Moreno. The State has thus not yet provided this form of moral reparation.

Based on the foregoing:

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

CONCLUDES:

140. That the Colombian State is responsible for violations of the human rights of Alvaro Moreno Moreno to life (Article 4) and personal liberty (Article 7) and for violations of the rights of his family members to a fair trial (Article 8) and judicial protection (Article 25), all in conjunction with the violation of Article 1(1) of the Convention.

RECOMMENDS:

141. That the Colombian State undertake a serious, impartial and effective investigation of the facts denounced so that the circumstances of and the responsibility for the violations found may be fully detailed in an officially sanctioned account of the death of Alvaro Moreno Moreno.

142. That the Colombian State submit all of the individuals suspected of involvement in the violations to the appropriate criminal proceedings so that those persons responsible for the violations may be sanctioned.

143. That the Colombian State adopt measures to make full reparation for the violations found.

VI. PUBLICATION

144. In conformity with Article 51(1) and (2) of the American Convention, the Commission sent Report No. 5/98, adopted in the present case, to the Colombian State on February 24, 1998. The Commission granted the State a one-month period to adopt the necessary measures to comply with the foregoing recommendations and to resolve the situation under analysis.

145. The Commission received the response of the Colombian State to Report No. 5/98 on March 25, 1998. The State attached to its communication the decision of the Council of State from May 18, 1994, mentioned in the response of the State to Report No. 28/97, adopted by the Commission pursuant to Article 50 of the Convention.

146. The Colombian State does not provide, in its response, new information regarding the adoption of measures in order to comply with the recommendations of the Commission.

VII. FINAL ANALYSIS AND CONCLUSIONS

147. For these reasons, the Commission decides that the State has not taken all of the appropriate measures to comply with the recommendations set forth in this report.

148. Based on the foregoing and pursuant to Article 51(3) of the American Convention and Article 48 of the Commission's Regulations, the Commission decides to reiterate the conclusions and recommendations contained in Report No. 5/98. The Commission further decides to make public this report and include it in the Commission's Annual Report to the General Assembly of the OAS.