

WorldCourts™

Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 5/99; Case 11.739
Title/Style of Cause: Hector Felix Miranda v. Mexico
Doc. Type: Report
Decided by: Chairman: Professor Robert K. Goldman;
First Vice-Chairman: Dr. Helio Bicudo;
Second-Vice Chairman: Dean Claudio Grossman;
Members: Dr. Jean Joseph Exume, Dr. Alvaro Tirado Mejia.
Dated: 13 April 1999
Citation: Miranda v. Mexico, Case 11.739, Inter-Am. C.H.R., Report No. 5/99,
OEA/Ser.L/V/II.106, doc. 6 rev. (1999)
Represented by: APPLICANT: the Inter-American Press Society
Terms of Use: Your use of this document constitutes your consent to the Terms and
Conditions found at www.worldcourts.com/index/eng/terms.htm

1. On March 11, 1997, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the IACHR") received a claim presented by the Inter-American Press Society (hereinafter "the petitioners" or "the IAPA"). It alleged that the United Mexican States (hereinafter "the State", "the Mexican State", or "Mexico") had failed to conduct an exhaustive investigation into the murder of Mexican news reporter Héctor Félix Miranda on April 20, 1988. The petitioners denounce the violation of various rights set forth in the American Convention on Human Rights (hereinafter "the American Convention"): the right to life (Article 4); the right to humane treatment (Article 5); the right to a fair trial (Article 8); the right to equal protection (Article 24); and the right to judicial protection (Article 25).

I. FACTS

2. Journalist Héctor Félix Miranda was assassinated on April 20, 1988 in the city of Tijuana, Mexico. At the time, he was driving his car to the place where he worked (the weekly paper Zeta) when two vehicles began to follow him. The driver of one of them stepped out of that car and shot him point-blank with a 12 mm rifle, thereby killing Miranda. The persons accused and sentenced as the material perpetrators of the crime are Victoriano Medina Moreno, a former member of the judicial police force in the State of Baja California and his boss, Antonio Vera Palestina, the head of security at the Agua Caliente racetrack in Tijuana.

3. Héctor Félix Miranda was the associate director of the weekly Zeta and the author of a column entitled "Un poco de algo" (Bits and Pieces) which consisted of gossip from the political spheres and sarcastic remarks about government officials. The petitioners believe that his murder was directly related to the publication of his column, and that the mastermind behind the crime should therefore be investigated. According to the claim, that was why Vera Palestina had been paid the equivalent of ten thousand dollars on the day of the crime; this detail had never been

investigated by the State's jurisdictional bodies. To this day, the investigation of the murder is still under way, its object being to determine the intellectual author behind the crime. But the petitioners allege that those efforts were suspended some time ago, because the Mexican State's was not willing to continue the search.

II. PROCEEDINGS BEFORE THE COMMISSION

4. On April 23, 1997, the Commission requested from the State information relative to the petition and assigned number 11.739 to it. The response was the object of observations from the petitioners. Thereafter, when extensions had been requested by both parties and granted by the IACHR, successive pieces of information were received until the procedure set forth in Article 48 of the American Convention could be completed.

5. On July 13, 1998 the Commission placed itself at the disposal of the parties to begin a friendly settlement procedure. The State reported that the authorities were "in the process of evaluating the offer," to which end they "wanted to know what the petitioners had in mind." In their reply dated July 29, 1998, the petitioners rejected the IACHR proposal, citing "the need for the facts in these cases to be investigated."

III. ADMISSIBILITY

6. In its initial response, the State asked that the case be declared inadmissible on grounds that the statutory time limit had expired, and because it considered that no acts violating the American Convention had been discerned. Later on, in replying to the petitioners' observations, the State alleged that domestic remedies available in Mexico's domestic law had not yet been exhausted. The IACHR's recent practice has been to issue a separate decision regarding admissibility.[FN1] At the same time, however, the IACHR has also made express exceptions to that general practice in cases--such as this one--in which the alleged violation of the rights to a fair trial and to judicial protection is linked to an examination as to the reasonableness of the period of time in which the jurisdictional bodies issue a decision on the domestic remedies relevant to the case, along with the effectiveness of such remedies.[FN2] In order to give due consideration to these factors, in the following paragraphs the Commission shall analyze compliance with the requirements set forth in Articles 46 and 47 of the American Convention.

[FN1] Reports N° 5/97 (Case 11.227 – José Bernardo Díaz and others), Colombia; N° 12/97 (Case 11.427 – Víctor Rosario Congo), Ecuador; N° 13/97 (Case 11.515 – Bolívar Camacho Arboleda), Ecuador; N° 7/97 (Case 11.321 – Delford Gardener), Jamaica; N° 25/96 (Case 11.411 – Severiano Santiz Gómez and others), Mexico; N° 44/96 (Case 11.479 - Evaristo and Blas Dorado Almanza), Mexico; N° 9/97 (Case 11.509 – Manuel Manríquez San Agustín), Mexico; and N° 14/97 (Case 11.381 – Milton García Fajardo), Nicaragua, OEA/Ser.L/V/II.95, March 14, 1997; and Annual Report 1997, Reports N° 7/98 (Case 11.597 – Emiliano Castro Tortrino), Argentina; N° 33/97 (Case 11.405 – Newton Coutinho Mendes), Brazil; N° 17/98 (Case 11.286 and others – Aluísio Cavalcanti Junior and others); N° 18/98 (Cases 11.285 – Edson Damiao Calixto and 11.290 – Roselindo Borges Senado), Brazil; N° 19/98 (Case 11.516 – Ovelario Tames), Brazil; 14/98 (Case 11.778 - Ruth Garcés Valladares), Ecuador; N° 53/97 (Case 11.312

– Emilio Tec Pop), Colombia; N° 22/98 (11.275 – Francisco Guarcas Cipriano), Guatemala; N° 21/98 (Case 11.435 - José Sucunú Panjoj) Guatemala; N° 28/98 (Case 11.625 - María Eugenia de Sierra), Guatemala; N° 46/97 (Case 11.166 - Walter Humberto Vásquez), Perú; N° 20/98 (Case 11.762 – Baruch Ivcher Bronstein), Perú; and N° 16/98 (Case 11.324 – Narciso González), Dominican Republic, OEA /Ser.L/V/II.98 Doc. 6 rev., April 13, 1998.

[FN2] See in this regard, IACHR, 1996 Annual Report, Report N° 43/96 (Case 11.430 - General Gallardo), Mexico. OEA/Ser.L/V/II.95, March 14, 1997, paragraphs 40 through 44 on pages 595 and 596; and the 1997 Annual Report, Report N° 49/97 (Case 11.520 - Tomás Porfirio Rondin and others, "Aguas Blancas"), Mexico, paragraphs 42 through 49, pp. 687 through 689.

A. Timeliness

7. The State initially argued that the petition had not been presented within the six month period established in Article 46(1)(b) of the American Convention, and to that end cited the dates of the final sentences in the trials of Antonio Vera Palestina (March 27, 1991) and Victoriano Medina Moreno (August 23, 1989). The authorities also asserted that Mexico's National Commission on Human Rights (CNDH) had opened a case file on September 10, 1990, the final conclusions of which had been reported to the representatives of the victim on July 17, 1992.[FN3]

[FN3] In its note, the Mexican State cited the IACHR report in the case of Jesús Armando Lara Preciado. The Commission, however, did not include in that report the procedure before the CNDH as one of the remedies which must be exhausted in Mexico, but quite the opposite: "the National Human Rights Commission [is] a quasi-judicial body that issues recommendations which are therefore not legally enforceable." IACHR, 1996 Annual Report, Report N° 45/96 (Case 11.492) Mexico, OEA/Ser.L/V/II.95, Doc. 7 rev., March 14, 1997, paragraph 24 on page 527.

8. In this context, the IACHR observes that the petition does not refer to the punishment of Messrs. Vera Palestina and Medina Moreno, but to the failure of the Mexican State in investigating the existence of an intellectual author or authors of the deed, despite the fact that--in the petitioners' opinion--there were ample grounds for doing so. Moreover, the State indicated in a later missive that "the authorities are continuing to investigate the possibility that a third party may have been involved," as part of its argument that the remedies afforded by domestic law had not yet been exhausted. In the same message (which contradicts its earlier position), the State omitted any reference to its argument that the petition had been presented after expiry of the deadline stipulated for that purpose. The IACHR therefore rejects the respective objection presented by the State, and concludes that Article 46(1)(b) of the American Convention is not applicable to the instant case.

B. Exhaustion of domestic remedies

9. In its letter dated April 29, 1998, the State maintained that the petition failed to comply with the requirement in Article 46(1)(a) of the American Convention regarding exhaustion of the remedies afforded by the country's laws. It offered the following argument in this respect:

Given the importance which the country's authorities and Mexican society place on complete clarification of any offense committed against a journalist, the investigation has not been closed... In the face of the perspicacity and doubts displayed by the petitioners when they contend that the individuals who have now been found guilty are not the intellectual authors of the crime in question, [the authorities] have carried out a series of measures and activities designed to remove any doubt regarding the conclusions reached, not only by the investigations but also by means of the respective criminal proceeding itself.

10. To pinpoint the position of the parties in the present case, the Commission observes that the petitioners have expressed their belief in no uncertain terms, as may be seen in the text of the accusation presented to the Mexican State:

The fact that the investigation was suspended when the persons who had actually committed the deed were captured, and that there has been no investigation of the mastermind behind the crime...shows that a certain "tolerance" was evinced by the government, a trend that has continued to prevail in recent years (sic). Even though the case has not officially been closed, no further progress was made toward clearing up the crime.

11. One of the exceptions to the rule of exhaustion of internal remedies is precisely an unwarranted delay in rendering a final judgment under those remedies. Hector Felix Miranda was assassinated in April of 1988, and over the ensuing three years the country's jurisdictional bodies tried and sentenced the material perpetrators. But the fact that the investigation was kept open during a period as prolonged as the one that has transpired since the events took place until the present is not, per se, evidence of the wish to establish full-fledged responsibility or to solve the case. The IACHR finds, on the contrary, that if the Mexican authorities have adequate grounds on which to continue investigating a case which shows no signs of complex ramifications, the time span of ten years which has elapsed since the murder is clearly unreasonable. The Commission thus finds that there has been an unwarranted delay in reaching a decision on this case and that, consequently, the exception in Article 46(2)(c) of the American Convention is indeed applicable. This question will be examined at greater length in the section on the right to judicial protection.

C. Jurisdiction

12. The State's final argument in its request for the present case to be declared inadmissible is based on the absence of events violating human rights. As we have seen above, the allegations in this case are characteristic of a violation of several rights recognized and enshrined in the American Convention: a violation that was committed in connection with events which took place when the obligation to respect and safeguard the rights established in that instrument had already entered into effect for Mexico. [FN4] In the absence of any grounds for a finding of inadmissibility, the IACHR has jurisdiction to hear and decide on the matters addressed in the complaint.

[FN4] The Mexican State deposited the instrument of ratification of the American Convention on April 3, 1982.

IV. ANALYSIS

A. The right to life (Article 4)

13. Article 4(1) of the American Convention guarantees the right of all persons to have their lives respected and commands that "no person shall be arbitrarily deprived" thereof. In the present case, the petitioners did not place direct blame for Héctor Félix Miranda's murder on agents of the State; but they do consider that it resulted from the authorities failure to protect him.

14. In that connection, the petitioners allege that the Mexican State did not comply with its obligation to protect Mr. Miranda, who had been the object of threats and feared for his life. The State's response was that the victim "did not report to a competent authority that he had been threatened and neither had he been physically attacked in any way, nor intimidated by any authority in his newspaper career, as may be seen in the communication presented by the petitioners." Later statements on that subject from the claimants indicate that the offices of the weekly publication Zeta had been attacked a year before the murder; and this, according to the paper's director, "could only have been motivated by an attempt to silence Félix Miranda because of the accusations and criticism which repeatedly appeared in his articles."

15. The Commission considers that it is not clear, in the present case, that the authorities knew about the threats Mr. Félix Miranda had received, since they had not been apprised thereof by the competent bodies in order for the State to take the steps necessary for safeguarding the security and the life of the aforementioned journalist.[FN5] Consequently, the IACHR concludes that the State cannot be held responsible--either for an act committed, or for one omitted--in the violation of Héctor Félix Miranda's right to life.

[FN5] The Inter-American Court of Human Rights has established:
Article 1(1) is essential in determining whether a violation of the human rights recognized by the Convention can be imputed to a State Party. In effect, ... any impairment of those rights which can be attributed under the rules of international law to the action or omission of any public authority constitutes an act imputable to the State, which assumes responsibility in the terms provided by the Convention. IACHR, Velásquez Rodríguez Case, Judgment of July 29, 1988, paragraph 164.

B. The right to humane treatment (Article 5) and the right to equal protection (Article 24)

16. In their observations relative to the State's initial response, the petitioners cite the rights of Héctor Félix Miranda to have his physical integrity respected and to be given equal protection. That reference is limited to the following words:

Article 5.1. Every person has the right to have his physical integrity respected.

Article 24. His right to equal treatment before the law was violated inasmuch as he was denied the protection of the law.

17. The petitioners did not provide the grounds for that statement, nor does it appear in other remarks in the record. Given the absence of the necessary substantiating material, the Commission rejects the claim that the rights to physical integrity and equal treatment by the law were violated in the present case.

C. The right to a fair trial (Article 8) and to judicial protection (Article 25), in connection with the obligation to respect and guarantee rights (Article 1(1))

18. The Commission has pointed out previously that "the question of a State's compliance with its obligations under Articles 8 and 25 is closely linked to the question of the applicability of exceptions to the requirement that domestic remedies be exhausted." [FN6] The IACHR has already determined in a preliminary manner the lack of compliance with those obligations by concluding supra that the exception stated in Article 46(2)(c) of the American Convention is indeed applicable to the case before us. The present analysis will be made on the basis of the rights to a fair trial and to judicial protection--both of them as they relate to the general obligation incumbent upon the State to respect the rights contemplated in the American Convention, and to ensure that those rights are exercised:

Article 1(1)

The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth or any other social condition.

Article 8(1)

Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

Article 25(1)

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, even though such violation may have been committed by persons acting in the course of their official duties.

[FN6] IACHR, 1997 Annual Report, Report N° 3/98 (Case 11.221 - Tarcisio Medina Charry), Colombia, OAS/Ser.L/V/II.98, Doc.6 rev., April 13, 1998, para. 80, page 499.

19. In the first place, it should be noted once again that the petitioners did not question the trial and sentencing of the material authors, but the failure to investigate the intellectual authorship of the murder. They consider that the crime was the direct consequence of publication of the column entitled "Un poco de algo" (A Little Something), in which the newspaper writer "in a harsh and at times sarcastic vein, criticized and denounced private and public matters in connection with acts of corruption, crimes in general and drug trafficking."

20. The petitioners go on to say that businessman Jorge Hank Rhon --whom they describe as "the son of one of the wealthiest and most powerful men in Mexico"--had been attacked by Félix Miranda on several occasions in his column in Zeta months before the murder. The petitioners consider this to be a relevant fact, since both Medina Moreno and Vera Palestina were employees of the Tijuana racetrack owned by Hank Rhon's family. Finally, presumed evidence had been found showing the payment of a substantial sum of money--from the track's receipts--to Vera Palestina.

21. The State maintained, in response to that allegation, that "the investigations have not led to the determination of the possible intellectual authorship of any person, since under Mexico's law, the mere suspicion of some felonious action has no legal weight; that notwithstanding, the investigations have been continued." The State explained that Medina Moreno had confessed that he was "the intellectual and moral author of the murder," in reply to which the petitioners made the following statement:

In the presumed confession of Victoriano Medina Moreno, after he had been found guilty of the murder of Félix Miranda, [the subject] made the argument that he had been the object of criticism in the column written by the newspaperman. But neither newspaper reporters nor police ever found any mention whatsoever of Medina Moreno in his column.

A security guard at the Agua Caliente racetrack stated that Antonio Vera Palestina, after being tried for and found guilty of the murder of Félix Miranda, had on the very day of the crime, received a voucher in pesos for a sum equivalent to ten thousand United States dollars--a matter which had not been duly followed up and investigated. The police centered their investigation exclusively on Medina Moreno and Vera Palestina: no attempt had been made to get to the bottom of the crime, which could have led them to the intellectual author thereof.

Police director Gustavo Romero Meza, who had presumably been investigating the ties between Jorge Hank Rhon and the murderers--all of whom had some connection to the Agua Caliente racetrack, the majority shareholders in which were the family of Hank Rhon was the majority share holder--suddenly declared closure of the investigation.

22. The petitioners also emphasized that the investigation conducted by the State had been neither serious nor complete. To that end, they say that none of the agencies--not the Office of the Public Prosecutor (Procuraduría General de Justicia, hereinafter "PGJ") of the State of Baja California, not the CNDH and not the Office of the Human Rights Defender of the State (Procuraduría Estatal de Derechos Humanos)--had carried out a thorough investigation of Jesús Blancornelas, who at the time was the associate director of the Zeta weekly.[FN7] Finally, the petitioners state the suggestion of undue tolerance on the part of the public officials, inasmuch as the "intellectual author" had still not been investigated, despite the fact that the case continued to be "legally open."

[FN7] Jesús Blancornelas received a threat in November of 1996, as he was preparing to leave for New York City, where he was to be given an International freedom of the Press Prize awarded to him by the Committee to Protect Journalists (CPJ). Journalist Blancornelas was noted for his articles on the ties between the heads of drug trafficking and the State police of Baja California as well as on the wave of killings committed on instructions from the drug dealers. The threat against Blancornelas was carried out a year later: on November 27, 1997, on the way to his office and accompanied by his bodyguard, Luis Valero, he was attacked by the driver of a vehicle that pulled in front of him and opened fire. When Valero tried to escape, another vehicle drove alongside his, and its four occupants shot at both of them, Valero and Blancornelas. Valero was killed, and Blancornelas survived the four gunshots he received. See Joel Simon, Breaking Away: Mexico's Press Challenges the Status Quo, the Committee to Protect Journalists, pages 1 and 2.

23. The State's position in this regard is the following:

The competent authorities have emphasized that the material perpetrators of the homicide have also been declared the intellectual authors; but to date there has still been no word about the evidence presented by private sources, or the steps taken by the investigating officials, the part played by a third party, or the existence of a mastermind behind the crime other than the persons already tried.

24. Nevertheless, the State has declared that the investigation has not yet been closed "due to the importance which the authorities and Mexican society place on complete clearing up of any offense committed against a journalist."

i. Scope of the investigation

25. The Inter-American Court of Human Rights has established that "the States must prevent, investigate and punish any violation of the rights recognized by the Convention"; and that it should seek, insofar as possible, to restore the right violated and provide compensation for the damage caused.[FN8] For its part, the IACHR has argued before the Inter-American Court that the State has a commitment to investigate and punish "all persons responsible for the violations related to this case." [FN9] The Commission has also stated that:

It is the Government's obligation to carry out a complete, independent and impartial investigation of any presumed violation of the right to life. That obligation is an inherent part of the Government's obligation to protect the human rights acknowledged in the American Convention.[FN10] (Emphases added)

[FN8] Inter-American Court of Human Rights, Velásquez Rodríguez Case, Judgment of July 29, 1988, paragraph 166.

[FN9] Inter-American Court of Human Rights, Benavides Cevallos Case. Judgment of June 19, 1998, paragraph 51.

[FN10] IACHR 1995 Annual Report, Report N° 10/95 (Case 10.580), Ecuador, OEA/Ser.L/V/II.91, doc. 7, rev., February 28, 1995, paragraphs 46 and 48. In that report, the Commission observed that the investigation by Ecuador's authorities lasted more than three years, but even so, all of the possible steps to find the truth had not yet been taken. The Commission concluded that the investigation had been inadequate, which---together with the excessive delay--added up to a violation of the right to justice and to discover the truth as to the victim's whereabouts. Also see IACHR Reports 28/92 on Argentina and 29/92 on Argentina in the 1992-1993 Annual Report, OEA/Ser.L/V/II.83.

26. In the same light, the United Nations Committee on Human Rights has stated that the victims of violations of human rights should be permitted "to discover the truth about the acts committed, to learn who are the authors thereof and to obtain suitable compensation." [FN11] Also, the U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities has said that "the right to justice entails obligations for the State: to investigate the violations, to prosecute the perpetrators and, if their guilt is established, to punish them." [FN12] The impunity of persons who have violated human rights has been defined in the following terms:

[Impunity is] an infringement of the obligations incumbent upon the States to investigate violations, adopt appropriate measures regarding the authors thereof--especially within the sphere of justice--to see that they are tried, judged and sentenced to appropriate penalties, to ensure that the victims have effective remedies and compensation for the damages suffered, and to take all the necessary measures to avoid a repetition of such violations. [FN13]

[FN11] United Nations Committee on Human Rights, Observations and Recommendations to the State of Guatemala, doc. CCPR/C/79/Add.63, para. 25.

[FN12] United Nations, Sub-Commission on Prevention of Discrimination and Protection of Minorities, The administration of justice and the human rights of detainees – Question of the impunity of perpetrators of human rights violations (Civil and political). Revised final report prepared by Mr. Joinet pursuant to Sub-Commission decision 1996/119, E/CN/Sub.2/1997/20/Rev.1, 2 October 1997, para. 27.

[FN13] Expert on the question of impunity of the authors of violations of the civil and political rights of the United Nations, doc. E/CN.4/Sub.2/1997/20, par. 17.

27. The nongovernmental organization Amnesty International has also referred to the scope of investigations regarding human rights violations:

de facto impunity ...may be adduced when the authorities neglect to investigate violations of human rights or even when investigating, fail to do so in a prompt and diligent manner, while adhering to international standards in this area. At the same time, impunity for acts arises not only when the State abstains from bringing the perpetrators of human rights violations before the courts, but also when only some of the guilty parties are subjected to judicial proceedings.[FN14] (emphasis added)

[FN14] Amnesty International, amicus curiae brief presented before the Inter-American Court on Human Rights in the case of Consuelo Benavides Cevallos--Ecuador, December 18, 1977, paragraph 68, page 23.

28. It must first of all be determined whether the trial and sentencing of the material authors of the murder constitute full compliance by the Mexican State with its obligation to investigate the violation of Héctor Félix Miranda's right to life.

29. As seen supra, the evidence presented by the petitioners--and not controverted by the State--contains numerous items which point to the existence of an intellectual author: the payment made to the assassins, the inconsistency in the statement made by the confessed agents, the absence of a statement from Blancornelas and the abrupt closure of the police investigation, among others. The IACHR considers that effective legal tutelage in the present case should include a complete investigation of the murder of Héctor Félix Miranda. Such an investigation must ascertain all of the details relative to the intellectual authorship of that act, in a conclusive and definitive manner, pursuant to the rules of due process.

ii. Reasonableness of the duration of the proceedings

30. More than ten years have gone by since newspaperman Héctor Félix Miranda was assassinated--a period which the IACHR has considered to be unreasonable--and the investigation to discover the intellectual author of the case is still open. The Inter-American Court on Human Rights has noted that the reasonable time period established in Article 8(1) "is not a concept of simple definition," and has cited decisions of the European Court of Human Rights to define the term more precisely. Those judgments establish the need to evaluate the following factors in order to determine the reasonable length of time it takes for a proceeding: the complexity involved; the procedural activity of the interested party; and the conduct of the judicial authorities.[FN15]

[FN15] Inter-American Court of Human Rights, Genie Lacayo Case, Judgment of January 29, 1997, par. 77.

31. The information available in the record reveals that this is not an extremely complex case. That is because of the relatively short time in which the material authors were tried and sentenced--a situation confirmed by the lack of State arguments to that effect. The delay cannot be attributed in this case to the procedural inactivity of the interested parties, since the elements of conviction required to investigate the intellectual authorship were in the hands of the police officials responsible for the investigation. According to the petitioners, the State police inquiry came to an inexplicable standstill; the State made no reference to this in its letters. Lastly, turning to the diligence displayed by the judicial authorities, the State limited its action to presenting photocopies of the sentence of conviction, along with five missives exchanged in 1997 between the State of Baja California Attorney General's Office of Human Rights and the Citizens' Protection group, the judge of the criminal court and the State's Assistant Attorney General of Justice. The end result of that exchange was the response from the last-named on July 18, 1997, the pertinent portion of which says:

The case of the homicide of Mr. Héctor Félix Miranda cannot be considered to have been closed in regard to the possible intellectual authorship, given the fact that--insofar as the actual perpetrators are concerned, two persons responsible for the homicide are serving out their sentences of guilt, now that the legal remedies have been exhausted. Unfortunately, it has not been possible to determine anything in connection with the intellectual authorship, since no evidence has been found that indicate the existence of such a person or persons.

32. In light of the foregoing information, the Commission confirms its preliminary assessment of the unreasonably prolonged duration of the investigation, which remains open without any further result whatsoever, after more than ten years have elapsed since the events took place.

iii. Effectiveness

33. The jurisprudence of the inter-American system has defined the obligation to investigate as an "obligation of means or behavior," which cannot be considered not to have been met simply because the investigation failed to yield a satisfactory result, but "must be undertaken in a serious manner, and not as a mere formality, preordained to be ineffective." The investigation "must have an objective and be assumed by the State as its own legal duty, not as a step taken by private interests which depends upon the initiative of the victim or his family or upon their offer of proof, without an effective search for the truth by the government." [FN16]

[FN16] Inter-American Court of Human Rights, Velásquez Rodríguez Case, Judgment of July 29, 1988, par. 177.

34. The IACHR has also expressed its view of the non-transferable nature of the State's obligation to investigate, try and punish the persons responsible for human rights violations:

One consequence is that public employees, unlike private individuals, have a legal obligation to denounce all crimes of public action that they come to learn of in the performance of their duties. The preceding statement is confirmed in those procedural regimes which deny the victim or the victim's relatives any standing, as the state monopolizes the ability to press criminal charges. And where such standing is provided for, its exercise is not compulsory, but an optional choice for the person who has suffered harm, and it does not take the place of state action.[FN17]

[FN17] IACHR, 1997 Annual Report, Report N° 52/97, (Case 11.218 - Arges Sequeira Mangas), Nicaragua, OEA/Ser.L/V/II.98 Doc.6 rev., April 13, 1998, par. 96 and 97, pp. 714-115. The IACHR has also maintained that:

the fact that no one has been convicted in the case or that, despite the efforts made, it was impossible to establish the facts does not constitute a failure to fulfil the obligation to investigate. However, in order to establish in a convincing and credible manner that this result was not the product of a mechanical implementation of certain procedural formalities without the State genuinely seeking the truth, the State must show that it carried out an immediate, exhaustive and impartial investigation.

IACHR, 1997 Annual Report, Report N° 55/97, Case 11.137 (Juan Carlos Abella et al.) Argentina, paragraph 412, page 370.

35. Mexico's juridical system is characterized precisely by the fact that the exercise of penal action is the exclusive purview of the State--an issue to which the IACHR has referred on various occasions. In a paradigmatic case of serious violations of human rights in Mexico, the following statement was made:

The Commission believes that because of the exclusive and sole monopoly which the Office of the Public Prosecutor holds in Mexico's juridical system on the exercise of criminal proceedings, the rights of persons should be assured adequately and effectively, so that this competence is not exercised arbitrarily but in a serious and professional manner in order to guarantee the right to judicial protection established in Article 25 of the American Convention. In this connection, the Commission has already pointed out that "the monopoly on the exercise of criminal proceedings that is conferred on the Office of the Public Prosecutor in Mexico requires the establishment of an independent and autonomous, professional, efficient and impartial institution." [FN18]

[FN18] IACHR, 1997 Annual Report, Report N° 49/97 (Case 11.520 - Tomás Porfirio Rondin and others, "Aguas Blancas"), Mexico, par. 67, page 675. In the same vein, see the IACHR 1997 Annual Report, Report N° 48/97 (Case 11.411 - Severiano Santiz Gómez and others, "Ejido Morelia"), Mexico, par. 50, page 647.

36. The IACHR will evaluate the action undertaken to determine whether the investigation in the present case meets the requirements stated above. The State itself made the following comment:

If the petitioners know, and have proof of their allegations, why haven't they filed a claim before the competent organs against the state authorities, so that the latter may be punished in accordance with the law for the presumed negligence and obstruction of justice.

If the petitioners consider that there have been irregularities in the investigation, as has been mentioned repeatedly in the present case, they must denounce such irregularities to the competent authority so that the pretrial investigation [averiguación previa] we are now conducting may be examined and evaluated by an authority other than the one which is performing the PA [pretrial investigation] of reference; and that this be the agency responsible for indicating whether or not there have been any irregularities, and whether they lead to a charge of criminal and/or administrative responsibility against the Office of the Public Prosecutor responsible.

It should be emphasized that in order for the competent authorities to investigate a crime, the citizens must be willing to denounce any felonious acts by judicial means, not simply by passing on the information.

37. In its letters to the IACHR, the Mexican State has failed to address a number of important issues, such as the supposed existence of a cash payment to the material authors, linked to a person described as being very powerful, whose reasons for enmity with Félix Miranda were public knowledge. Neither did it refer to the inconsistency in Medina Moreno's argument concerning the motives that impelled him to commit the crime, despite the fact that the supposed annoyance sparked by the publication of articles about his person had been denied; nor to the failure to question journalist Jesus Blancornelas, associate editor of the weekly newsmagazine Zeta, and a key figure in the investigation.

38. The State cited "the importance which the authorities and Mexican society attach to a complete clarification of any crime committed against a journalist." The grounds for reaching a decision that are available in this case send a contrary message regarding the conduct of the responsible authorities: their lack of activity in the investigation, interrupted only by a few formalities of a bureaucratic and trivial nature, with absolutely no concrete results. In that connection, the information submitted by the petitioners is worth noting:

In February of 1996, the public prosecutor of Baja California in Tijuana, Jesus Alberto Osuna Lafarga, announced that the assassination of Félix was considered an open case, but that the inspectors were unable to take action until the police could bring in some new information. The head of the Tijuana Police Force, Captain Antonio Torres Miranda, indicated that he no longer had anyone working on the case. "Judicially, the case against the people mentioned at the start of the investigation has been closed. We would need an order from the prosecutor to reopen it; and then we'd have to start all over again, from the beginning. ...Without statements from the men who have been found guilty, there's nothing that would lead us to investigate further."

39. On the other hand, the State did indeed devote ample space in its documents to addressing the question of the petitioners' conduct and the information they had sent to the IACHR.[FN19] The Commission believes that the intention of transferring to private sources the responsibility for providing proof of the charge of a mastermind behind the murder, together

with the authorities' lack of activity in that respect, clearly show that the State has eschewed the obligation to investigate imposed on it by the instruments of the inter-American human rights system. The Court has made the following statement relative to that obligation:

The State is obliged to investigate every situation involving a violation of the rights protected by the Convention. If the State apparatus acts in such a way that the violation goes unpunished and the victim's full enjoyment of such rights is not restored as soon as possible, the State has failed to comply with its duty to ensure the free and full exercise of those rights to the persons within its jurisdiction. The same is true when the State allows private persons or groups to act freely or with impunity to the detriment of the rights recognized by the Convention.[FN20] (Emphasis added).

[FN19] As an example, some excerpts--selected by the State to describe the data contributed by the petitioners--are shown below:

The column written by that news reporter was of a sensationalist nature, since gossip and political comments were published in it.

The presumed motive for the reporter's criticism of the system in his column is simply to air a vague speculation that has been neither proven nor accredited in the course of the investigations, so that it remains a theory which lacks legal substance and consists solely of the perceptions of certain organizations or persons.

The information provided by the petitioners ...is based on reports of non-governmental organizations, as well as from press clippings that only indicate the subjective and partial perception of a group of people, which in no way provide consistent legal elements--evidence--to accuse, as the petitioners have attempted to do, public officials of negligence, during investigations carried out to identify the alleged intellectual author of Mr. Héctor Félix Miranda's killing.

The direct accusations made by the petitioners regarding alleged irregularities in the proceedings on the part of the Office of the Public Prosecutor...are subjective and groundless, and they contradict the petitioner's statement according to which they did not have access to the information relevant to this case, although accusations of such a precise nature could only be formulated by someone who had direct access to the investigation and the record of the criminal case.

[FN20] Inter-American Court of Human Rights, Velásquez Rodríguez Case, Judgment of July 29, 1988, para. 176.

40. The Commission has established on solid grounds in the present report that the Mexican State incurred an unreasonable delay in the investigation of Héctor Félix Miranda's murder. Despite its exercise of the monopoly on criminal proceedings, the State declined to conduct the complete and serious investigation of the crime befalling the journalist as its own juridical duty, so that the judicial remedy available in Mexico has not been simple, rapid or effective. Consequently, the Mexican State violated--to the detriment of Héctor Félix Miranda's relatives--the rights to a fair trial and to the judicial protection protected by Articles 8 and 25 of the American Convention in regard to the obligation to respect and guarantee those rights, as established in Article 1(1) of that international instrument.

D. The right to freedom of thought and expression (Article 13)

41. The American Convention establishes the following right in Article 13(1):

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

42. In its "Report on the situation of human rights in Mexico", the IACHR included a chapter dedicated to the right to freedom of expression. In that chapter, the Commission analyzes the right to freedom of expression. More specifically, the problems of violence and harassment of journalists in that country are addressed in the following terms:

Attacks on journalists are specifically intended to silence them, and so they also constitute violations of the right of a society to have free access to information. An independent and critical press is fundamental to ensuring respect for other liberties that are part of a democratic system of government and a state in which the rule of law prevails.[FN21]

[FN21] IACHR, Report on the situation of human rights in Mexico, OEA/Ser.L/V/II.100, Doc. 7 rev.1, September 24 1998, par. 649, p. 142. That report makes reference to the case of Hector Félix Miranda at paragraph 655. Also in that report, the IACHR expresses preoccupation for the allegations of serious acts of violence against journalists, which tend to increase, making Mexico one of the countries in Latin America with the largest amount of reported aggressions against members of the media:

The Commission has been informed that during the current president's term of office, 428 incidents described as alleged violation of freedom of expression and information have been reported in Mexico, including 11 murders, 89 physical attacks, 67 threats, 57 acts of intimidation, and 14 kidnappings. These incidents, according to reports, have been classified by the Mexican authorities as common crimes, and not as violations of the freedom of expression and information.

IACHR Report, par. 651.

43. The right to freedom of expression is fundamental for the development of democracy and for the full-fledged exercise of human rights. The Inter-American Court of Human Rights has referred to freedom of expression as "a cornerstone in the very existence of a democratic society...indispensable for the formation of public opinion." The Court added the following:

It is also a *conditio sine qua non* for the political parties, the labor unions, the scientific and cultural associations and, in general, any persons seeking to influence the people as a whole to be able to achieve full development. It is, finally, a condition to ensure that the community is sufficiently well informed when the time comes to exercise its options. Finally, it may be said that a society which is not well informed is not completely free. [FN22]

[FN22] Inter-American Court of Human Rights, "Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 of the American Convention on Human Rights), Advisory Opinion OC-5/85 of November 13, 1985, Series A N° 5 (1985), paragraph 70. The democratic system is closely related to the right to freedom of thought and expression, as understood also by the Inter-American Court:

The concept of rights and freedoms as well as that of their guarantees cannot be divorced from the system of values and principles that inspire them. In a democratic society, the rights and freedoms inherent in the human person, the guarantees applicable to them and the rule of law form a triad. Each component thereof defines itself, complements and depends on the other two in orders for its meaning.

Inter-American Court of Human Rights, "Habeas Corpus in Emergency Situations" (Articles 27.2, 25.1 and 7.6 of the American Convention on Human Rights), Advisory Opinion OC-8/87, January 30, 1987, Series A N° 8, paragraph 26. Along the same lines, the Secretary General of the United Nations (UN) has considered that freedom of expression and of opinion together constitute "the cornerstone of all the freedoms to which the United Nations is dedicated." Notes to the text of the draft International Pact on Human Rights (prepared by the Secretary General, 10 U.N. GAOR, Annexes (Item N° 28 on the agenda) 50, UN Doc. A/2929, 1944).

44. The United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has used similar terms in his recently issued report, which includes the following conclusion:

In several countries, democratic transformations and consolidations have brought about new liberties and freedoms. Freedom of expression has proved to be one of the most important elements in initiating change, contributing to peaceful transformations, as well as consolidating democratic regimes by providing the citizen with the means to participate in public affairs.

Unfortunately, long-standing patterns of harassment and oppression of persons whose views and opinions differ from those of persons holding power persist in a number of countries. In many instances, restrictions on the freedom of opinion and expression limit to a significant extent the possibility of violations becoming known and investigated. In the view of the Special Rapporteur, such trends perpetuate patterns such as government corruption and impunity.[FN23]

[FN23] United Nations, E/CN.4/1998/40, Report of the Special Rapporteur, Mr. Abid Hussain, submitted pursuant to Commission on Human Rights resolution 1997/26, 28 January 1998, pars. 1 and 2, p. 21. When addressing the problem of the situation of the right to freedom of opinion and expression in Mexico, the report mentions allegations of kidnapping, torture and killing of journalists in that country, linked to news published regarding police participation in acts of corruption (especially drug trafficking) and in violations of human rights).

45. The IACHR finds that in the present case, the scope of Article 13(1) of the American Convention should be established in light of the norms contained in Article 29 of that international instrument:

No provision of this Convention shall be interpreted as:

a. permitting any State Party, group, or person to suppress the enjoyment or exercise of the rights and freedoms recognized in this Convention or to restrict them to a greater extent than is provided for herein.

46. The Inter-American Court has established that "freedom of expression includes the giving and receiving of information and has a double dimension, individual and collective"; and that "the freedom and independence of journalists is a good which must be protected and ensured.[FN24] The Commission, for its part, has upheld the following concept:

Freedom of expression is universal and its concept embraces the juridical faculty which assists all persons, individually or collectively considered, to express, transmit and disseminate their thoughts; parallel and correlative thereto, the freedom to inform oneself is also universal, and it involves the collective right of persons to receive such information as others may impart to them without any interferences that may distort it.[FN25] (Emphasis added).

[FN24] Inter-American Court of Human Rights, Advisory Opinion OC-5/85, paragraphs 75 and 79, respectively.

[FN25] Inter-American Commission on Human Rights, 1980-81 Annual Report, OEA/Ser.L/V/II, page 122. it should also be mentioned that in 1997, the IACHR established a Rapporteur on Freedom of Expression as a means of strengthening the activities performed pursuant to the competence granted to it by Articles 13 and 41 of the American Convention, among other sources. During its 98th Regular Session, the Commission defined the mandate of the Rapporteur on Freedom of Expression and decided to appoint a "Special IACHR Rapporteur on the Freedom of Expression." The Rapporteur was created and its mandate defined by the Commission in the belief that this mechanism will help to promote and protect freedom of expression, which is considered a key element in the development of democracy in the Hemisphere.

47. The U.N. Special Rapporteur for the matter under analysis has said, in the same regard, that "the right to seek and receive information is not simply a converse of the right to freedom of opinion and expression but a freedom on its own".[FN26]

[FN26] United Nations, *idem*, par. 11, p. 3.

48. In view of the foregoing, the IACHR must determine whether the Mexican State is responsible for the violation of the freedom of thought and expression, in the broad sense given

to it by inter-American jurisprudence. In the present case, that right includes Héctor Félix Miranda's freedom to express himself and disseminate his ideas, along with the complementary freedom of every citizen to receive such information without unlawful and unjustified interference.[FN27]

[FN27] Article 32(2) of the American Convention indicates that "The rights of each person are limited by the rights of others, by the security of all, and by the just demands of the general welfare in a democratic society." Any limitation placed on the right to freedom of expression must conform to those parameters.

49. The petitioners allege that the failure to investigate the intellectual authorship of Héctor Félix Miranda's murder constitutes a violation of the right to freedom of expression. For its part, the State avers that "there is no relationship between the characteristics of a ministerial investigation and the juridical assumption set forth in Article 13 as cited" and went on to say that the right of the public to be informed

cannot and should not predispose or prejudge the content and the nature of the information available. The fact that the petitioners do not share it is no reason to disqualify it, much less to charge that the right of the public to be informed has been violated. If, on the other hand, the petitioners' aim is to state that the public was not sufficiently informed of the investigations, it should be noted that the obligation of discretion incumbent on the Office of the Public Prosecutor in each and every one of its investigations--particularly those which continue to be open--complies with the need to refrain from placing obstacles in the path thereof and from fostering, for example, the escape of accused criminals from justice.

50. According to the State's argument, the public does not have the right to be informed of the investigation. The IACHR finds it quite odd that the State should muster that argument in the present case, since the facts point precisely to the absence of an investigation pursuant to the parameters of international law, which leads to the lack of punishment (an "escape from justice") for the intellectual authors. In any case, that is not the question under analysis in the present case. What we must establish here is whether the failure to investigate the mastermind that conceived the plot for murdering Héctor Félix Miranda constitutes a violation of the right of every citizen to be freely given "information and ideas of all kinds."

51. While it has not yet been definitively and conclusively determined who were the intellectual authors of the crime--the issue which constitutes the central violation in the present case---the evidence shows that Héctor Félix Miranda was assassinated because of what he wrote in his newspaper articles. In point of fact, the confession of Victoriano Medina Moreno, admitting that he had committed the crime because he had been criticized in Felix Miranda's column, was noted earlier in this text.

52. A State's refusal to conduct a full investigation of the murder of a journalist is particularly serious because of its impact on society. And that is the case here, because the impunity of any of the parties responsible for an act of aggression against a reporter--the most serious of which is

assuredly deprivation of the right to life--or against any person engaged in the activity of public expression of information or ideas, constitutes an incentive for all violators of human rights. At the same time, the murder of a journalist clearly has a "chilling effect", most notably on other journalists but also on ordinary citizens, as it instills the fear of denouncing any and all kinds of offenses, abuses or illegal acts. The Commission considers that such an effect can only be avoided by swift action on the part of the State to punish all perpetrators, as is its duty under international and domestic law. The Mexican State must send a strong message to society that there will be no tolerance for those who engage in such a grave violation of the right to freedom of expression.

53. In this context, one of the Principles of the Declaration of Chapultepec states:

Assassination, terrorism, kidnapping, pressures, intimidation, unjust imprisonment of newspaper reporters, physical destruction of the means of communication, violence of any sort and the impunity of the aggressors seriously hamper freedom of expression and of the press. Such acts must be promptly investigated and severely punished.[FN28] (Emphasis added).

[FN28] Principle N° 5 of the Declaration of Chapultepec, adopted by the Hemispheric Conference on Freedom of Expression, held in Mexico City on March 11, 1994. The President of Mexico at the time, Carlos Salinas de Gortari, signed the Declaration on the day following approval; as of the date of adoption of the instant report, the Declaration had also been signed by representatives of Argentina, Bolivia, Brazil, Chile, Colombia, Dominican Republic, El Salvador, Guatemala, Honduras, Jamaica, Nicaragua, Panama, Paraguay, Puerto Rico, Uruguay, and the United States. Principle N° 1 of the Declaration states that "There cannot be free persons or societies without freedom of expression and of the press. The exercise thereof is not a concession of the authorities: it is an inalienable right of the people." In addition, the IAPA organized the Hemispheric Conference on "Unpunished crimes against journalists," which took place in Guatemala City from July 30 through August 1, 1997. The following resolutions were adopted at that Conference:

TO CONDEMN assassination and all physical violence against journalists as one of the greatest crimes against society because it hampers freedom of expression and thus affects all other rights and freedoms.

TO CONDEMN action as an accessory, or any failure to act, on the part of the persons who are responsible for investigating or punishing such crimes, thus leaving them unpunished and thereby further compounding the seriousness thereof;

TO DEMAND that the authorities carry out their duty to prevent, investigate and punish such crimes and to repair the consequences thereof.

54. In addition, the United Nations Organization for Education, Science and Culture (UNESCO) has expressed its concern over the growing number of journalists assassinated in the past ten years as a result of exercising their profession, and over the impunity of the persons responsible for such crimes. UNESCO made the following recommendations, among others, to its member states:

a. That the governments adopt the principle of not permitting the statute of limitations to expire on crimes against the person when they are perpetrated to impede the exercise of freedom of information and expression or when intended to obstruct justice;b. That the governments improve legislation to provide for the trial and conviction of the masterminds of murders of those who exercise the right to freedom of expression.[FN29]

[FN29] UNESCO Resolution 29/C/HR. 120 of November 12, 1997. The petitioners alluded to the adoption of that Resolution in their letter of February 13, 1998:

Indeed, the attitude of the highest Mexican authority was fundamental in supporting the initiative of the IAPA, later taken up by the Governments of Uruguay, and later by Mexico, Germany, Colombia and Costa Rica...

Also noteworthy are these expressions:

The fundamental freedoms are very vulnerable, and none more so than freedom of expression and freedom of the press, which are constantly being curtailed by censorship, imprisonment and sometimes death...This year the list of violations of every kind, including the murder of some 50 journalists, makes it only too clear, once again, that no region of the world is spared. These violations are the work of governments, but also of organised crime and extremist groups wishing to intimidate a profession that could stand in their way...UNESCO will take action whenever action is necessary, since any setback for freedom of expression and freedom of the press is a setback for democracy.

Message delivered on May 3, 1998 by UNESCO Director-General Federico Mayor, on the celebration of World Press Freedom Day.

55. This preoccupation is shared by the U.N. Special Rapporteur for the promotion and protection of the right to freedom of opinion and expression, who has said that:

Governments should...make special efforts to investigate all acts or threats of acts of violence, intimidation or harassment directed against media personnel or offices and bring those responsible to justice.[FN30]

[FN30] United Nations, report cited above, par. 28.

56. In the instant case, the IACHR has examined the substance of the right to freedom of expression, and has emphasized the importance which the international community--particularly the organs which see to the effectiveness of and respect for human rights--attaches to that right. In this context, the Commission concludes that the failure to investigate and punish the mastermind behind the murder of Héctor Félix Miranda, pursuant to the laws and domestic procedures of Mexico, goes hand-in-hand with a violation of the right to inform and to express one's views freely and publicly. The IACHR also concludes that the killing of this journalist constitutes an attack on the duty to denounce arbitrary conduct and abuses against society, aggravated by the impunity of one or more of the intellectual authors. Accordingly, the absence of a serious and complete investigation of the facts in the present case generates the international

responsibility of the Mexican State for violating Héctor Félix Miranda's right to freedom of expression and that of the citizens in general to receive information freely and to learn the truth about the events that took place.

V. ACTIONS AFTER REPORT N° 42/98

57. On September 29, 1998, the IACHR adopted Report N° 42/98 in this case, pursuant to Article 50 of the American Convention, and transmitted it to the Mexican State with its recommendations. The State forwarded its observations on December 2, 1998.

58. The Mexican State argued that the petition was time-barred, as well as failure to exhaust domestic remedies. Furthermore, the State held in its observations that in Mexico the Public Ministry has exclusive jurisdiction over the investigation and prosecution of crimes "as the sole organ of the State that has the attributes and autonomy required to carry out its work." For this reason, it indicated, "the assessments or consideration of any person are not, of themselves, sufficient for the investigating authorities to act in a certain manner, when they are not credible nor made known to the authorities through the channels provided by law."

59. The State also considered that this case was "based solely on premises whose veracity has not been shown," such as the payment of US\$ 10,000 that was alleged to have been made by the Tijuana race track, which was the employer of the material perpetrators of the journalist's murder. It also called into question that the IACHR, in this report, should give weight to the confession of Victoriano Medina Moreno so as to "derive liability for the violation of the freedom of expression," and that at the same time it should accord no weight to the fact that the same person incriminated himself as the mastermind. The State is of the view that this was a clear contradiction and that it "confirms that the material perpetrator and mastermind were one and the same, Medina Moreno." It concluded with the assertion that "there was no assent or tolerance on the part of the authorities," and that neither could one derive "the existence of a mastermind other than the persons convicted," for which reason it requested "that the IACHR declare that the Government of Mexico has complied with the general obligation to respect and guarantee human rights, and that it is not responsible" for the violations established in Report 42/98.

60. The Commission will not refer to the arguments on the admissibility of the case, as they constitute a reiteration of the State's arguments put forth during the processing of the case, which were already analyzed in the corresponding chapter of this report, and which, in the pertinent parts, constitutes the firm decision of the IACHR. In contrast, the Commission does deem it necessary to develop two important issues: the weight of the evidence and the failure to investigate the journalist's murder.

61. First, the Commission recalls that the procedure in the inter-American human rights system, as the Inter-American Court has held, "has its own particular features that distinguish it from domestic law procedure."^[FN31] The State's arguments during the processing of the case, and in its observations to Report 42/98, are based on the criteria for weighing the evidence provided for in Mexican domestic legislation to determine individual criminal liability, and are aimed at establishing that the authorities were not required to investigate who was the

mastermind of the murder, since the evidence provided by the petitioners was not presented in the domestic jurisdiction.

[FN31] Inter-American Court of Human Rights, Case of Paniagua Morales et al., Judgment of March 8, 1990, para. 70. The Court held, in the same paragraph, that the inter-American human rights procedure "is less formal and more flexible" than the domestic law of a state, "without therefore ceasing to safeguard juridical security and the procedural balance between the parties."

62. The Inter-American Court of Human Rights has also said:

It is necessary to bear in mind that the international protection of human rights should not be confused with criminal justice. In the cases in which the states appear before the Court, they do not do so as subjects in a criminal proceeding, for the Court does not impose penalties on the persons guilty of violating human rights. The function of the Court is to protect the victims and determine the reparations for the damages caused by the states responsible for such actions (Case of Velásquez Rodríguez, Judgment of July 29, 1988. Series C No. 4, para. 134; Case of Suárez Rosero, Judgment of November 12, 1997. Series C No. 35, para. 37).

In addition to direct evidence, be it in the form of witness testimony, expert testimony, or documents, international courts, like domestic ones, may base their judgment on circumstantial evidence, indicia, and presumptions, so long as conclusions can be drawn from them that are solidly grounded in the facts.[FN32]

[FN32] Id., paras. 71 and 72.

63. The definition set forth above applies to the procedure for individual petitions before the IACHR, the principal organ of the OAS whose function is to promote the observance and defense of human rights in the hemisphere. As already seen in the chapter of this report that sets forth the analysis, the Commission evaluated the available elements and established the following facts: journalist Héctor Félix Miranda regularly published news critical of the authorities and other major figures in Tijuana, especially the police; his assassination was perpetrated by persons directly linked to a powerful local businessman who were convicted and sentenced for this act; later, an investigation was initiated to determine the responsibility of a "third mastermind" ("tercer autor intelectual"), which is still ongoing after 10 years, with no results. All of these facts derive from the information provided by both parties, and have not been refuted by the State. The indicia and presumptions mentioned by the Commission in this report were not used to establish those facts, but only to confirm them, in accordance with the criteria for weighing the evidence defined by the Inter-American Court.

64. The IACHR is not authorized to establish who was or were the masterminds of the assassination of Héctor Félix Miranda, nor to determine the respective punishment, since this is a power and an obligation of the Mexican State. In contrast, the Commission is fully authorized to

determine, in the processing of an individual case, whether a State Party to the American Convention--through any of the ways in which public power is expressed, including the Public Ministry or the judiciary--has become internationally responsible, for example, by failing in its duty to carry out an exhaustive, independent and impartial investigation into the human rights violations committed in its territory. In the exercise of these powers, the Commission analyzed the facts mentioned in the preceding paragraph, confirmed by other elements, and developed the conclusions and recommendations of Report 42/98.

65. In the face of these facts determined by the Commission, the State provided no information about any measure aimed at establishing the full truth, at determining who were the masterminds, or at applying the respective sanctions. For example, the alleged payment of US\$ 10,000 to the material perpetrators the day after the murder was never investigated. To the contrary, in the face of this specific lead, the State used several arguments in its effort to justify the failure of the authorities to investigate and to shift that obligation to an alleged negligence on the part of private persons. The investigation technically continues to be "open," which manifestly contradicts the thesis according to which "the material perpetrators and masterminds were one and the same" that the authorities consider to be definitively established based on the confessions of the convicts. In view of the foregoing, the Commission considers it apparent that such an investigation lacks any meaning and is irremediably doomed to failure. Consequently, the State has renounced its obligation to carry out a serious and definitive investigation into the assassination of journalist Héctor Félix Miranda.

VI. CONCLUSIONS

66. The IACHR has no evidence that allows it to establish in this case the responsibility of the Mexican State for the violation of the rights to life, to personal security and to equality before the law. On the other hand, based on the facts in the record, which are consistent with other evidence analyzed according to the rules in effect in the inter-American system, the IACHR concludes that the State has--to the detriment of Héctor Félix Miranda and that of every citizen--violated the right to freedom of expression guaranteed by Article 13 of the American Convention; and--to the detriment of members of his family-- the rights to a fair trial and to the judicial protection set forth in Articles 8 and 25 of that international instrument, cited in relation to the general obligation to respect and guarantee the rights set forth in Article 1(1) thereof.

VII. RECOMMENDATIONS

67. Based on the analysis and conclusions in the present report,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS REITERATES THE FOLLOWING RECOMMENDATIONS TO THE MEXICAN STATE:

1. To conduct a serious, exhaustive and impartial investigation to determine the punitive responsibility of all the perpetrators of Héctor Félix Miranda's assassination.
2. To conduct a serious, exhaustive and impartial investigation to determine whether there have been instances of concealment and crimes against the administration of justice which have

impeded a complete investigation of the incidents which give rise to the present report; and, if so, that it apply such pertinent penal, administrative and/or disciplinary measures which may be pertinent.

3. To provide members of Héctor Félix Miranda's family with adequate reparation and compensation for the human rights violations established in this document.

VIII. PUBLICATION

68. On February 25, 1999, the Commission sent Report N° 5/99--the text of which is above--to the Mexican State and to the petitioners, in keeping with Article 51(2) of the American Convention; and it set a deadline of one month for the State to comply with the foregoing recommendations. On March 26, 1999, the State sent a communication containing observations on admissibility, the weight of the evidence, and the violation of freedom of expression in this case. In accordance with Article 51(2), the Commission, in this phase of the process, shall confine itself to assessing the measures taken by the Mexican State to comply with the recommendations and to remedy the situation under review.

69. The communication of March 26, 1999, contains no concrete information on measures taken by the State to comply with the recommendations issued by the Commission in Report N° 5/99.

70. Accordingly, and pursuant to Articles 51(3) of the American Convention and 48 of the Commission's Regulations, the Commission decides: to reiterate the conclusions and recommendations contained in Chapters VI and VII supra; to publish this report; and to include it in the Commission's Annual Report to the General Assembly of the OAS. Pursuant to the provisions contained in the instruments governing its mandate, the IACHR will continue to evaluate the measures taken by the Mexican State with respect to those five recommendations, until the State has fully complied with them.

Approved by the Inter-American Commission on Human Rights in the city of Washington, D.C. on the 13 day of the month of April, 1999. (Signed): Robert K. Goldman Chairman; Hélio Bicudo First Vice Chairman; Claudio Grossman, Second Vice Chairman; Commissioners Alvaro Tirado Mejía and Jean Joseph Exumé.