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Decided by:	Chairman: Claudio Grossman; First Vice-Chairman: Juan E. Mendez; Second Vice-Chairman: Marta Altolaguirre; Commissioners: Robert K. Goldman, Hélio Bicudo, Peter Laurie, Julio Prado Vallejo.
Dated:	6 April 2001
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Represented by:	APPLICANT: Colombian Commission of Jurists
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I. SUMMARY

1. On December 19, 1996, the Colombian Commission of Jurists (hereafter "the petitioners"), submitted a complaint to the Inter-American Commission on Human Rights (hereafter "the Commission") against the Republic of Colombia (hereafter "the Colombian State" or "the State"), alleging that on April 16, 1993, members of the National Army of Colombia executed Mr. Leonel de Jesús Isaza Echeverry and caused injury to his four year-old daughter, Lady Andrea Isaza Pinzón, and his 75 year-old mother, Mrs. María Fredesvinda Echeverry (hereafter "the victims"), at the family home located in the north-eastern area of Barrancabermeja, department of Santander.

2. The petitioners alleged that, as a consequence of the execution of Mr. Isaza Echeverry and the injuries inflicted on his relatives, the State is responsible for violating the rights to life, humane treatment, judicial protection and the rights of the child, as set forth in Articles 4, 5, 8, 25, and 19 of the American Convention on Human Rights (hereafter "the American Convention"). The State alleged that the petition was inadmissible because of lack of exhaustion of domestic remedies, and presented information on proceedings still pending before military and disciplinary courts.

3. After analyzing the elements of fact and law presented by the parties during the proceedings, the Commission declared that the case was admissible and that the State was responsible for violating the right to life (Article 4); the right to humane treatment (Article 5); the right to judicial protection (Articles 8 and 25); and the rights of the child (Article 19); as well as the obligation of ensuring the respect for the rights established in the American Convention.

II. PROCESSING BEFORE THE COMMISSION

4. On December 18, 1996, a case was opened under number 11.712 and the pertinent parts of the petition were sent to the Colombian State, with a period of 90 days to present information. On February 28, 1997, the State requested an extension, which was duly granted.

5. On May 23, 1997, the State presented its response, which was duly forwarded to the petitioners. On July 23, 1997, the petitioners presented their observations, which were sent to the State. On November 20, the State presented its observations, which were forwarded to the petitioners. On May 22, 1998, the petitioners presented their response, which was duly transmitted to the State.

6. On October 1st, 1999, during its 104th regular session, the Commission held a hearing that was attended by both parties. During the course of the hearing, the petitioners presented a written statement, which was duly forwarded to the State. On December 13, 1999, the State presented the corresponding observations, which were transmitted to the petitioners on December 15, 1999.

7. On January 24, 2000, the petitioners requested an extension for submitting their response, which was duly granted. On March 20, 2000 the petitioners reported to the Commission that the Center for Justice and International Law (CEJIL) had joined them as a co-petitioner in the case.

8. On May 2, 2000, the petitioners presented additional information to the Commission, which was duly transmitted to the State. On June 9, 2000, the State requested additional time to present its observations, and the Commission granted an extension. On July 12, 2000, the State presented its observations.

9. On August 31, 2000, the Commission placed itself at the disposal of the parties for the purpose of arriving at a friendly settlement of the matter, pursuant to Article 48(f) of the Convention and Article 45 of its Rules of Procedure, and granted them 30 days to present a response. On September 1, 2000 the petitioners communicated to the Commission that, given the characteristics of the case, it was not possible to settle the matter amicably.

10. On October 25, 2000, the Commission requested from the State a copy of a Resolution issued by the Auditoría 82 de Guerra on November 25, 1999, as well as a decision issued by the Office of the General Procurator of the Nation on April 14, 1998. On November 17, 2000 the State forwarded copies of the General Procurator of the Nation's decision (file No. 022-139783) and a decision issued by the Supreme Military Tribunal on September 19, 2000 (file No. 133888-7314) declaring null and void the aforementioned Resolution of the Auditoría 82 de Guerra.

III. POSITIONS OF THE PARTIES

A. Position of the petitioners

11. The facts as presented by the petitioners indicate that on April 16, 1993, around 7 p.m., members of the Nueva Granada battalion of the Colombian Army broke into Mr. Leonel de Jesús Isaza Echeverry's home in the north-eastern sector of Barrancabermeja, and shot him as he rose up from the chair from where he had been watching television. Despite the gravity of his wounds, the victim managed to move towards another room, where he was shot again and killed.

12. The petitioners allege that after Mr. Isaza's execution, members of the Army threatened his companion, Hermencia Pinzón Cala, and before leaving the house, threw a grenade into the backyard, injuring Mr. Isaza Echeverry's mother and daughter, María Fedesvinda Echeverry and Lady Andrea Isaza Pinzón, who had to be hospitalized.

13. As a consequence of these facts, the petitioners allege that Mr. Leonel de Jesús Isaza Echeverry was arbitrarily deprived of his life by State agents in violation of Article 4 of the American Convention. They also argue that the State is responsible for violating Articles 5 and 19 of the American Convention because of the injuries sustained by María Fedesvinda Echeverry and the minor Lady Andrea Isaza Pinzón.[FN1]

[FN1] Communication of the petitioners dated Mary 22, 1998.

14. The petitioners also argue that the State is responsible for violating Articles 8 and 25 of the American Convention, because the investigation of the alleged extrajudicial execution of Leonel Jesús Isaza Echeverry was still pending before the military courts.

15. The petitioners maintain that the legal remedies provided by the State are not adequate or effective to address the violations committed in this case and that therefore the claims presented are admissible under the exceptions provided for in Article 46(2) of the American Convention.

B. The position of the State

16. The State alleges that the present case is inadmissible pursuant to Article 46(1)(a) of the American Convention because domestic legal remedies have not been exhausted.[FN2] The State specifically referred to proceedings currently pending before the military and the contentious administrative jurisdiction.

[FN2] Note EE. 1397 of the General Directorate for Special Affairs, July 12, 2000.

17. In response to the allegations of the petitioners concerning the adequacy and effectiveness of the remedies provided in the context of military jurisdiction in the present case, the State sustained that it was inappropriate to generically disqualify the role of military justice in the administration of justice.[FN3]

[FN3] Note EE. 2375 of the General Directorate for Special Affairs, December 13, 1999.

IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

A. Competence

18. The Commission is competent to examine the complaint presented by the petitioners. The facts alleged in the petition affected physical persons subject to State jurisdiction when the obligation to respect and guarantee the rights established in the Convention was already in force for the Colombian State.[FN4] The Commission therefore proceeds to examine whether this case satisfies the requirements established in Articles 46 and 47 of the American Convention.

[FN4] Colombia ratified the American Convention on Human Rights on July 31, 1973.

B. Admissibility

1. Exhaustion of domestic remedies and deadline for submitting the petition

19. The State alleges that the case is inadmissible because domestic legal remedies have not been exhausted. In turn, the petitioners argue that the domestic remedies pending have not provided the victims with an adequate judicial remedy and that in any event they have proved to be ineffective for redress of the violations alleged.[FN5]

[FN5] Communication from the petitioners dated October 1, 1999.

20. According to the allegations of the parties, First Instance Military Judge N° 24 of the Nueva Granada Battalion, formally opened the investigation of the case on May 23, 1993, and during 1996 and 1997 issued a number of arrest warrants against members of the Nueva Granada battalion.[FN6] Nonetheless, on November 25, 1999, the Auditoría 82 de Guerra ordered the closing of the proceedings against these members of the Army. This decision was appealed by the Ministerio Publico on December 10, 1999. On September 19, 2000, the Supreme Military Tribunal decided to declare the entire proceedings null and void and referred the investigation to the First Instance Military Judge of the Military Court in Bucaramanga.

[FN6] On December 9, 1996, the court issued a provisional ruling on the legal situation of Major Hernán Carrera Sanabria, ordering against him security measures consisting of preventive detention. On April 10, 1997, the court issued a ruling on the legal situation of the soldiers Alexander Bonilla Collazos, Antonio Chivatá and José Armando Cruz González, ordering on them security measures consisting of preventive detention with the benefit of provisional freedom.

21. Article 46(1) of the Convention provides that for a petition or communication to be admitted by the Commission, domestic legal remedies must have been pursued and exhausted in accordance with generally recognized principles of international law. In accordance with the Inter-American Court of Human Rights, whenever a State alleges a lack of exhaustion of domestic remedies, it has the burden of proving that the remedies that have not been exhausted are "adequate" to remedy the alleged violation,[FN7] meaning that the function of such remedies within the domestic legal system must be that of protecting the rights affected in that particular situation.[FN8]

[FN7] I/A Court HR Velásquez Rodríguez Case, Judgment of July 29, 1988, paragraph 63.
[FN8] Idem, paragraph 64.

22. The Commission has stated on numerous occasions that military jurisdiction does not constitute a suitable forum, and therefore does not provide an adequate remedy, to investigate, prosecute and sanction violations of the human rights enshrined in the American Convention, allegedly committed by members of the security forces.[FN9] In addition, the Inter-American Court recently confirmed that the military justice system is only suitable for judging military personnel who allegedly committed crimes or offenses that, due to their nature, affect the legal goods of the military order itself.[FN10]/ In this case, the Commission considers that military criminal justice does not constitute a suitable remedy for investigating, judging and sanctioning the type of conduct associated with the alleged facts. Thus, seven years after the fact, the investigation pending before the judge of criminal proceedings of Bucaramanga does not constitute a remedy that must be exhausted before resorting to the international protection afforded by the American Convention.

[FN9] IACHR Third Report on the Situation of Human Rights in Colombia (1999), page 175; Second Report on the Situation of Human Rights in Colombia (1993), page 246; Report on the Situation of Human Rights in Brazil (1997), pages 40-42.
[FN10] I/A Court H.R Durand and Ugarte Case, Judgment of August 15, 2000, para. 117.

23. The State also considers that the notion of domestic remedy not only covers criminal investigation of the facts denounced and judgment of the responsible parties, but that contentious-administrative remedies available under domestic legislation must also be exhausted before the Commission is qualified to act.

24. As mentioned earlier, the Inter-American Court has established that the exhaustion referred to in Article 46(1)(a) of the American Convention refers to suitable remedies for the violations that were allegedly committed. A remedy is suitable when:

Adequate domestic remedies are those which are suitable to address an infringement of a legal right. 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. A norm is meant to have an effect and should not be interpreted in such a way as to negate its effect or lead to a result that is manifestly absurd or unreasonable.[FN11]

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

25. The jurisprudence of the organs of the system establishes that whenever an officially prosecutable offense is committed, the State is under the obligation of promoting and pursuing the criminal proceeding to its final consequences[FN12] and that, in these cases, it is the suitable way of clarifying the facts, judging the responsible parties and establishing the corresponding sanctions, as well as making possible other pecuniary kinds of remedy. The Commission considers that the facts alleged by the petitioners in this case involve an alleged violation of non-alienable, basic rights, such as to life and personal integrity, that are translated in domestic legislation into officially prosecutable offenses and that therefore, it is this proceeding, pursued by the State itself, that should be examined to determine the admissibility of the complaint.

[FN12] Report N° 52/97, Case 11.218, Arges Sequeira Mangas, Annual Report of the IACHR 1997, paragraphs 96 and 96. See also Report 55/97, paragraph 392.

26. The IACHR has established in similar cases[FN13] that the contentious-administrative jurisdiction is a mechanism exclusively for use in supervising the administrative activity of the State, aiming to provide compensation for damages resulting from an abuse of authority. In general, this process, in and of itself, does not constitute a suitable mechanism for remedying cases of human rights violations; therefore, it is unnecessary to exhaust this remedy in a case such as this one, when other means exist both for reparation of the damage and for the judgment and required penalties.

[FN13] See for example, Report N° 15/95, Annual Report of the IACHR, paragraph 71; Report N° 61/99, Annual Report of the IACHR 1999, paragraph 51; Report N° 5/98, Annual Report of the IACHR 1998, paragraph 63; Report on Admissibility 57/00, case 12.050, paragraph 41.

27. Therefore, given the characteristics of the present case, the Commission considers that the lack of adequate domestic remedies for clarifying the alleged violation of the rights to life and to personal integrity of Leonel de Jesús Isaza Echeverry and his relatives, the requirements in the American Convention pertaining to the exhaustion of domestic remedies and, consequently, the six-month period for presentation of a complaint, do not apply.

28. The resort to the exceptions to the rule of exhaustion of domestic remedies referred to in Article 46(2) of the American Convention is closely linked to the determination of possible violations of certain rights enshrined in the treaty, such as the State's duty to guarantee of access to justice and judicial protection. However, by its nature and purpose, Article 46(2) is autonomous in relation to the substantive rules of the Convention. Therefore, determination of whether the exceptions to the rule of exhaustion of domestic remedies apply in this case was done before and separately from the analysis of the alleged violation of Articles 8 and 25, as it is appraised with different standards than those used to determine violation of the Convention. It is worth clarifying that the causes and effects that prevented exhaustion of the domestic remedies will be considered below in the analysis of merits, in order to verify whether they constitute violations of the American Convention.

2. Duplication of proceedings and res judicata

29. The record of the case shows that the subject of the petition is not pending before another international organ for settlement, nor does it reproduce a petition already examined by this or another international organ. Accordingly, this case satisfies the requirement of Article 46(1)(c) of the Convention.

3. Colorable Claim

30. The Commission considers that the allegations of the petitioners regarding the alleged violation of the right to life of Leonel de Jesús Isaza Echeverry and the personal integrity of María Fredesvinda Echeverry and Lady Andrea Isaza Pinzón, as well as the delays in the investigation and the lack of effective sentencing and sanctioning of the responsible parties, can be characterized as a violation of the rights guaranteed under Articles 4, 5, 8, 19, 25 and 1(1) of the American Convention, therefore satisfying the requirements established in Article 47(b) and (c) of said Convention.

4. Conclusions on competence and admissibility

31. The Commission considers that it is competent to examine the complaint submitted by the petitioner and that the present case is admissible pursuant to Articles 46 and 47 of the American Convention.

V. ANALYSIS OF THE MERITS

32. The Commission must now examine the allegations of fact and law presented by the parties. First, it will address the circumstances surrounding the death of Mr. Leonel de Jesús Isaza Echeverry and the responsibility of the State in relation to the alleged violation of the victim's right to life. Second, the Commission will refer to the facts and to the responsibility of the agents of the State with regard to the personal integrity of María Fredesvinda Echeverry and Lady Andrea Isaza Pinzón, as well as its obligation to provide special protection to the latter, in her condition as a minor. The Commission will also examine the State's compliance with its duty to ensure judicial protection to the victims and their relatives.

A. Right to life of Leonel de Jesús Isaza Echeverry

33. The petitioners allege that on April 16, 1993, around 7 p.m., members of the Nueva Granada battalion executed Mr. Leonel de Jesús Isaza Echeverry when he was at home in the north-eastern sector of Barrancabermeja. The State has not made direct reference to the allegations of fact presented by the petitioners; rather it has presented information on the proceedings in progress under military criminal and disciplinary jurisdiction for a number of members of the Army allegedly involved in committing the material facts of this case. In this regard, the Commission notes that on November 25, 1999, the Auditoria de Guerra 82 ruled that the proceedings on behalf of the State agents involved should cease, considering that they had shot the victim in response to an attack with firearms allegedly initiated by the victim himself.[FN14] Nonetheless, on September 19, 2000, the Superior Military Tribunal announced a decision annulling all earlier actions and remitting the investigation to the military criminal judge attached to the military criminal tribunal of Bucaramanga. Moreover, on April 14, 1998, the Procurator General of the Nation imposed the penalty of severe reprimand on the commander of the patrol attached to Nueva Granada battalion N° 2 of Barrancabermeja.

[FN14] On November 25, 1999, the judge of the first instance, Commander of the Fifth Army Brigade, declared absence of probative merit for issuing a ruling of Summons to War against members of that institution, Lt. Hernán Carrera Sanabria, volunteer soldiers Alexander Bonilla Collazos, Jose Armando Cruz González and Manuel Antonio Chivata Gallego, with regard to the crimes of homicide, personal injury, larceny, and damages to other party's goods that would impute them; consequently all proceedings against them were ceased.

34. The record shows that on April 16, 1993, the commander of Nueva Granada battalion A.D.A. N° 2 ordered the so-called "Operación Rastrillo N° 5" (Operation Rake N° 5), in order to conduct search and control operations in the north-eastern neighborhoods of Barrancabermeja, for "locating subversives breaking the law in the city, capturing them and/or neutralizing and destroying any armed resistance presented by the bandits." [FN15] According to statements by participants, its commander, Lt. Carrera Sanabria, three junior officers and approximately 30 soldiers participated in the operation.

[FN15] Resolution of the General Procurator of the Nation, of April 14, 1998, File N° 022-139. 783, page 13.

35. According to the version of the members of the Army who testified in the domestic legal proceedings, the victim was a member of an armed dissident group who attacked the members of the troop from the doorway of his house, using his elderly mother as a shield. The members of the Army involved maintained that they only fired in self-defense and that, after the confrontation, the victim was found dead with a revolver in his right hand. This version of the facts served as the basis for the ruling to cease the proceeding, ordered by Audit 82 on November

25, 1999. Nonetheless, in considering the testimony of the Superior Military Tribunal, it was observed that

as can be appreciated from the different versions [...] the details do not agree and they become contradictory, meriting the taking of further statements by the investigating judge to clarify the truth of the facts.[FN16]

[FN16] Superior Military Tribunal of the Military Forces of Colombia, Cabrera Sanabria Hernán and others, Ruling of September 19, 2000, page 8.

Consequently, the Supreme Military Tribunal decided to annul all previous actions and to reopen the investigation.[FN17]

[FN17] Idem, pages 9 and 10.

36. In its ruling of April 14, 1998, the Procurator General of the Nation confirmed that there were serious contradictions in the declarations of the implicated members of the Army as to how the confrontation had occurred:

It is not understood why Leonel Isaza Echeverry would shoot without first having been attacked, endangering his own life and the life of his mother, his companion and his daughter, especially considering that he was confronting approximately 34 men armed with Galil rifles. Nor is it logical that he would shield himself behind his mother when facing the Army, an act of such terrible cowardice that was, in addition, as mentioned earlier, dangerous and unnecessary, nor that he would throw a grenade into the area where his relatives were located.[FN18]

[FN18] Resolution of the Procurator General of the Nation, dated April 14, 1998, File N° 022-139. 783, page 26.

In the opinion of the Procurator, the existence of contradictions in the statements by the military personnel

makes it possible to affirm that they are lying when they present their version of the facts; in particular, the lack of veracity of the explanations of the investigated party makes it possible to construct presumptions against him, that is, to conclude that this version was prepared to hide a reality that is unfavorable to his interests from the legal and disciplinary points of view.[FN19]

[FN19] Idem.

In addition, the Delegate Procurator for the Military Forces determined that

the contents of the public document by which it was reported that Mr. Leonel de Jesús Isaza Echeverry belonged to the Bolivarian Militia has no backing; to the contrary, according to the statement of Second Sergeant Jaime Orlando Piragua Millán, before the death of Mr. Isaza Echeverry, there was no information that he belonged to a subversive group. Moreover, it was established that the deceased had no criminal antecedents. Therefore his elimination did not occur as a result of a counseled pursuit based on specific circumstances or antecedents, rather it was an isolated fact.[FN20]/

[FN20] Delegate Procurator for the Military Forces, decision dated July 17, 1997, by which the junior officer Lt. Hernán Carrera Sanabria was sanctioned with a 90-day suspension, as commander of the patrol attached to Nueva Granada battalion A.D.A. N° 2 (fls. 672 to 685), cited in *Ibidem*, page 5.

With regard to finding a weapon near the lifeless body of the victim, the Procurator indicated that

it has not been demonstrated by means of technical proof that Leonel Isaza Echeverry had fired the guns found in his hand and near his body. In effect, to prove what happened, it would have been convenient to run dermal nitrate gauntlet and ballistic tests, which was not done.[FN21]

[FN21] *Idem*, page 28.

In addition, the Procurator considered that the version of the facts arising from the declarations of civilians, which are consistent among themselves, are backed by the proof that can be found in the disciplinary file.[FN22] The version considered by the Procurator's Office indicates that

[FN22] *Idem*, page 26.

[..] Mr. Leonel de Jesús Isaza Echeverry, his mother María Fredesvinda Echeverry, his companion Hermencia Pinzón Cala and his four year-old daughter, Lady Andrea Isaza Pinzón, were watching television. They were all inside the house, the front door was open, and they were sitting in a hall. At that time, three or four vehicles arrived and members of the Army got out. From the doorway they said to Isaza Echeverry "son-of-a-bitch guerrilla, don't move." His mother said to them, why did they call him a guerrilla, and they answered her: "don't answer, you old bitch, we're going to end this," and they immediately began firing, they fired several times, her son stood up, injured, walked toward a room, falling down dead next to two beds, face down.[FN23]

[FN23] Idem, page 15.

37. In effect, the statements of Hermencia Pinzón Cala and María Fredesvinda Echeverry agree concerning the participation of members of the Army in the execution of Mr. Isaza Echeverry when he was defenseless. In her statement dated March 16, 1996, Mrs. Hermencia Pinzón Cala, life companion of the victim and eye witness, said:

They arrived and got out of their cars, they meaning the Army, and one of them came up and aimed at him and shouted, there, you son-of-a-bitch guerilla, the others surrounded the entire house and fired everywhere, I was there with my mother-in-law and the girl; when they said that to him, my mother-in-law answered why did they say that to him, then they said, shut your mouth, you old bitch, we've come to finish this. When they aimed at him, he stood up and that's how they shot him, he was unable to say anything to them, when they shot him, he managed to get to the bedroom where he fell down, my mother-in-law said to him "nelo, they killed you" and he answered "yes, Vinda, they killed me"; I was there and I saw it all.[FN24]

[FN24] The statement also says: "They continued shooting at the house and at that moment I started looking for the girl who had hidden, and I found her under the dining room table, they were all there taking things and shooting at the walls, I got the girl and we went outside, we sat on the sidewalk next door, but the Army was watching us, then they grabbed me by the hair and forced me to leave the girl with my mother-in-law and they beat me, they took me inside and one of the said to the one who had me by the hair to take me out into the yard and kill me, and at that moment they got a weapon and forced me to take it, they said take it and turn on the light, but there was no light in the house because they had damaged everything, and I fought them and was able to get away, and went outside, and I realized that they were going to kill me too, so then I escaped."

38. The statement of Mrs. María Fredesvinda Echeverry, mother of the victim and eye witness, says

We were watching television when about eight or nine Army cars drove up, and they were armed as they got out of the cars and then they shouted, there, son-of-a-bitch guerrilla, and then I said why guerrilla, and they answered, because we have come to finish this with fire (a punto de candela) and they didn't stop talking, they did not search the house first, they just fired, he ran toward the bed, already wounded, and then fell down there, I don't know what else they did to him because we went outside and they were watching us, Hermencia, the girl that lived with him, and the little girl. Others stayed inside robbing everything they could, and what they didn't rob they damaged, the house was left like a strainer [..]

39. The Commission considers that this case has sufficient elements to conclude that on April 16, 1993 members of the Nueva Granada battalion of the Colombian National Army executed

Mr. Leonel de Jesús Isaza Echeverry in his home for no apparent reason while he was in a complete state of defenselessness. The execution of Mr. Isaza Echeverry under the aforementioned circumstances constitutes a serious violation of Article 4(1) of the American Convention that states that, "(e)very person has the right to have his life respected. [...] No one shall be arbitrarily deprived of his life."

B. The right to personal integrity of María Fredesvinda Echeverry and Lady Andrea Isaza Pinzón

40. The petitioners allege that the State is responsible for violating the right to personal integrity of María Fredesvinda Echeverry and the minor Lady Andrea Isaza Pinzón, who was four years old at the time. As indicated previously, the State referred to proceedings pending before the domestic courts to clarify the facts of the case.

41. It should be mentioned that in the context of the contentious-administrative process, it was established that the victim's elderly mother and four-year old daughter were wounded by shrapnel from the grenade thrown into Mr. Isaza Echeverry's house by members of the Nueva Granada battalion.[FN25] In addition, the petitioners presented a document dated April 17, 1993, certifying that the minor Lady Isaza Pinzón was admitted to the Ramón González Valencia Hospital, where she was hospitalized for a week to receive treatment for wounds from a firearm.[FN26]

[FN25] Decision of the Prosecutor General dated April 14, 1998, File N° 022-139.783, page 14.

[FN26] Document from the Ramón González Valencia Hospital dated February 21, 1997, certifying the admission of Lady Isaza Pinzón, who was hospitalized in the Pediatric Surgery Service from April 17, 1993 to April 24, 1993. The diagnosis was "left pneumo-hemothorax" and the procedure applied was "closed thoracostomy".

42. With respect to the circumstances in which these wounds were inflicted, the statement made by Mrs. María Fredesvinda Echeverry indicates that after Mr. Isaza Echeverry was executed,

after they damaged everything, they left, but they hurt the girl. They threw a grenade on the sidewalk where we were sitting and the girl and I were wounded, but before I left the house one of my feet was already hurt, then some soldiers came over [and said] "the lady is very sick, we'll take her to the hospital" because they saw I had lost a lot of blood and I said get out of here you sons of bitches and the girl got hurt too.

43. Article 5 of the American Convention establishes that all persons have the right to respect for their physical, mental and moral integrity. Moreover, Article 19 of the treaty also establishes that "every minor child has the right to measures of protection required by ... the State."

44. The testimony and documentary evidence produced in this case establish that on April 16, 1993, after executing Mr. Leonel de Jesús Isaza Echeverry, members of the Army threw a

grenade into his house for no apparent reason, fully aware of the presence of the victim's mother and minor daughter, injuring Mrs. Fredesvinda Echeverry and the little girl Lady Andrea Isaza Pinzón.

45. Based on these elements, the Commission concluded that the State is responsible for violating the right to personal integrity established in Article 5 of the American Convention to the detriment of Mrs. María Fredesvinda Echeverry, as well as the right to personal integrity associated with the obligation to provide due protection for minors, as established in Articles 5 and 19 of said instrument, to the detriment of Lady Andrea Isaza Pinzón.

C. Legal protection for victims and State obligation to respect and guarantee rights protected under the Convention

46. The petitioners allege that the State failed to fulfill its obligation to investigate the facts of the case and to judge and sanction those responsible as provided in Articles 8 and 25 of the American Convention because the investigation is still pending before military criminal jurisdiction.[FN27]

[FN27] Communication from the petitioners dated May 22, 1998.

47. According to the information provided by the different parties, on May 11, 1993, Tribunal 24 of Criminal Military Proceedings, located in the Municipality of Barrancabermeja, opened an investigation into the facts involved in this case. Through its December 9, 1996 ruling, the court ruled on the legal situation of Major Hernán Carrera Sanabria on a provisional basis, proffering security measures against him consisting of preventive detention without benefit of release from prison. On April 10, 1997, the court ordered security measures consisting of preventive detention with benefit of provisional freedom against the soldiers Alexander Bonilla Collazos, Antonio Chivatá and José Cruz González.

48. On November 25, 1999, Defense Audit 82 ruled to cease proceedings against the members of the military, considering that they had acted in compliance with their duty in using arms to defend themselves from attack by the victim. The representative of the Public Ministry appealed this decision on December 10, 1999. On September 19, 2000, the Superior Military Tribunal handed down a ruling annulling all earlier actions, and remitted the investigation to the military judge of Bucaramanga, where it remains pending.

49. In view of these elements the Commission must determine whether the judicial action taken by the State and carried out under military jurisdiction for seven years meets the standards established by the American Convention in terms of access to justice and judicial protection.

50. Article 8(1) of the American Convention on Human Rights establishes that:

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.

In turn, Article 25 of the American Convention establishes that:

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.

2. The States Parties undertake:

- a. to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state;
- b. to develop the possibilities of judicial remedy; and
- c. to ensure that the competent authorities shall enforce such remedies when granted.

51. These norms establish the obligation to provide access to justice with guarantees of competence, independence and impartiality within a reasonable period of time and with due guarantees, as well as the general obligation to provide effective legal remedy against the violation of fundamental rights, incorporating the principle of efficiency of procedural instruments or mechanisms.

52. As stated by the Inter-American Court of Human Rights:

... 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.[FN28]

[FN28] I/A Court H.R.. Velásquez Rodríguez Case, Preliminary Objections, Judgment of June 26, 1987, para. 91.

53. As is shown by the elements provided by the parties, seven years after the facts referred to in this case, the investigation is pending under military criminal justice without any real judgment or sanction of the State agents involved in the extrajudicial execution of Leonel de Jesús Isaza Echeverry and in violation of the right to personal integrity of his relatives.

54. In this respect, the Commission must reiterate once more that, due to its nature and structure, military criminal jurisdiction does not meet the standards of independence and impartiality required by Article 8(1) of the American Convention, which are wholly applicable in this case. The unsuitability of the Colombian military courts as a forum for examining, judging and sanctioning cases involving human rights violations has already entered into a pronouncement of the Commission:

The military criminal justice system has several unique characteristics which prevent access to an effective and impartial judicial remedy in this jurisdiction. First, the military justice system may not even be properly referred to as a true judicial forum. The military justice system does not form part of the judicial branch of the Colombian State. Rather, this jurisdiction is operated by the public security forces and, as such, falls within the executive branch. The decision-makers are not trained judges, and the Office of the Prosecutor General does not fulfill its accusatory role in the military justice system.[FN29]

[FN29] IACHR Third Report on the Situation of Human Rights in Colombia (1999), p. 175 to 186. See also Second Report on the Situation of Human Rights in Colombia (1993), p. 237, where it states “The military tribunals do not guarantee the right to access justice since it lacks independence, which is a basic requisite for the existence of this right. In addition, the judgments issued have shown a notable partiality, they frequently abstain from imposing sanctions on members of the security forces that likely participated in serious human rights violations.” (unofficial translation)

Likewise, the Inter-American Court recently expressed that:

In a democratic Government of Laws the penal military jurisdiction shall have a restrictive and exceptional scope and shall lead to the protection of special juridical interests, related to the function assigned by law to the military forces. Consequently, civilians must be excluded from the military jurisdiction scope and only the military shall be judged by commission of crimes or offenses that by their own nature attempt against legally protected interests of military order.[FN30]

[FN30] I/A Court H.R. Durand and Ugarte Case, Judgment of August 16, 2000, para. 117.

55. As expressed in previous rulings of the Inter-American Court of Human Rights, the Constitutional Court of Colombia itself has addressed the jurisdiction of military courts to examine cases concerning human rights violations, declaring that:

For a crime to fall within the competence of the military criminal justice system there must be a clear connection from the beginning between the crime and activities of the military service. In other words, the punishable act must occur as excessive or an abuse of power within the sphere of an activity directly related to the function itself of the armed forces. The connection between the criminal act and the activity related to military service is broken when the crime is extremely grave, as in the case of crimes against the human genus. Under these circumstances, the case shall be remitted to the civil justice system.[FN31]

[FN31] Constitutional Court, Decision C-358 of August 5, 1997

The Commission considers that the extrajudicial execution of Mr. Leonel de Jesús Isaza Echeverry by members of the military and the injuries caused to his mother and minor child cannot be considered a legitimate activity in connection with functions pertaining to the Army. In this case, the gravity of the violation of the victims' right to life and personal integrity makes the trial of those responsible within the sphere of military jurisdiction inappropriate.

56. The American Convention obliges States to prevent, investigate, identify and sanction the authors of human rights violations and those involved in their cover-up. As indicated by the Inter-American Court,

...Article 25 in relation to Article 1(1) of the American Convention obliges the State to guarantee to every individual access to the administration of justice and, in particular, to simple and prompt recourse, so that inter alia, those responsible for human rights violations may be prosecuted and reparations obtained for the damages suffered. As this Court has ruled, Article 25 "is one of the fundamental pillars not only of the American Convention, but of the very rule of law in a democratic society in the terms of the Convention".[FN32]

[FN32] I/A Court H.R Loayza Tamayo Case, Reparations, November 27, 1998, paragraph 169.

In this sense, the context of Article 25 is directly linked to Article 8(1), which establishes the right of all persons to a hearing with due guarantees within a reasonable period of time by an independent and impartial judge or tribunal and confers to victims' relatives the right to investigate their disappearance and death by State authorities, to carry out a process against the liable parties of unlawful acts, to impose the corresponding sanctions, and to compensate damages suffered by their relatives.[FN33]

[FN33] I/A Court H.R Durand and Ugarte Case, Judgment of August 16, 2000, paragraph 130.

57. In this case, the State has not arbitrated the required measures for satisfying its obligation to investigate the extrajudicial execution of the victim, judge and sanction those responsible and dictate reparation for his family members. The execution of Mr. Isaza Echeverry remains unresolved, which, as has been indicated by the Court, "fosters chronic recidivism of human rights violations and total defenselessness of victims and their relatives."[FN34] Nor has the State complied to date with its obligation to provide compensation for violation of the right to personal integrity against the mother of the victim and his four-year old daughter.

[FN34] I/A Court H.R Paniagua Morales et al Case, March 8, 1998, paragraph 173.

58. The Commission also considers that the State has failed to comply with its obligation under Article 1(1) of the American Convention, by which State Parties must ensure the free and full exercise of the rights recognized by the Convention to every person subject to its jurisdiction. 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 protected in the American Convention.[FN35] The Inter-American Court of Human Rights has sustained that:

[FN35] I/A Court H.R Velásquez Rodríguez Case, Judgment of July 29, 1988, paragraph 166.

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.[FN36]/

[FN36] Idem, paragraphs 174 and 176.

In this case, seven years have passed and the State has still not yet effectively carried out its duty to judge and sanction those responsible for the extrajudicial execution of the victim and provide reparation for his relatives.

59. Therefore, based on the facts and applicable law expounded above, the Commission concludes that the State has not fulfilled its obligation to investigate the execution of the victim and judge those responsible pursuant to Articles 8(1) and 25 of the American Convention or its duty to ensure the fulfillment of its obligations in accordance with Article 1(1) of this Treaty.

VI. PROCEEDINGS SUBSEQUENT TO THE ISSUANCE OF REPORT 115/00 PURSUANT TO ARTICLE 50 OF THE AMERICAN CONVENTION

60. On December 8, 2000, the Commission approved Report 115/00 pursuant to Article 50 of the American Convention. In this report, the Commission concluded that the State was responsible for violating the right to life of Mr. Leonel de Jesús Isaza Echeverry, as established in Article 4 of the American Convention; the right to personal integrity of Mrs. María Fredesvinda Echeverry, as established in Article 5 of the American Convention; the right to personal integrity and noncompliance with the obligation to adopt special measures of protection in relation to the minor Lady Andrea Isaza Pinzón, as established in Articles 5 and 19 of the American Convention; as well as noncompliance with the obligation to provide due judicial protection for the victims in this case, in accordance with Articles 8 and 25, in conjunction with Article 1(1) of the treaty. Likewise, the Commission recommended that the State: (1) conduct an impartial and effective investigation of those responsible for the extrajudicial execution of Mr.

Leonel de Jesús Isaza Echeverry; (2) adopt the necessary measures for compensating the consequences of violations committed to the detriment of María Fredesvinda Echeverry and Lady Andrea Isaza Pinzón, as well as provide due indemnity for the family members of Leonel de Jesús Isaza Echeverry; and (3) adopt the measures necessary for avoiding a repetition of these events in the future, in conformance with the duty of prevention and guarantee of basic rights recognized in the American Convention, as well as adopt the necessary measures for full compliance with the doctrine developed in the Constitutional Court of Colombia and by this Commission in the investigation and judgment of similar cases under ordinary criminal justice. On December 11, 2000, the Commission remitted this report to the State, with a period of two months to comply with its recommendations.

61. On January 29, 2001, the State addressed the Commission in order to report that

having analyzed the case and consulted with the competent authorities, the National Government has decided to include it in the project to be carried out under the direction of the Ombudsman in order to comply, within the possibilities of the Colombian legal system, with the recommendations formulated by the honorable Commission.[FN37]/

[FN37] Note EE 199 from the Director General of Multilateral Organisms of the Ministry of Foreign Affairs, dated January 29, 2001.

The aforementioned project indicates that the State has considered it pertinent to request the Ombudsman to prepare a special report prior to August 21, 2001 “to further compliance with recommendations contained [...] in the framework of the legal and constitutional competencies in force in our country.”[FN38] According to this project, the Ombudsman would prepare a report taking into consideration the opinion of the parties involved in the process before the IACHR, the victims or their beneficiaries, the corresponding judicial and administrative authorities, and the persons and institutions whose opinion is considered pertinent. According to the project, the Ombudsman would establish time periods and modalities for complying with the conclusions and recommendations of its own final report, which would also be submitted for consideration by the Intersectional Committee for Human Rights. The project states that the State “is committed to addressing the conclusions and recommendations of the Ombudsman’s Final Report.”

[FN38] “Project of the Colombian State regarding certain cases being processed by the Inter-American Commission on Human Rights, concerning which reports have been proffered pursuant to Article 50 of the American Convention on Human Rights,” as an attachment to Note EE 199 from the Director General of Multilateral Organisms of the Ministry of Foreign Affairs, dated January 29, 2001.

62. The Commission takes note of the content of the project presented by the State in response to Report 115/00, approved in conformance with Article 50 of the American

Convention, in this case. Likewise, the Commission appreciates its willingness to “address the recommendations of the Commission” through an evaluation of the conclusions of Report 115/00 to be made in the future by the Ombudsman. However, the State’s response does not reflect an adoption of concrete measures or the assumption of specific and express commitments relative to the recommendations issued by the Commission. Consequently, the Commission must proceed in accordance with Article 51 of the American Convention.

VII. CONCLUSIONS

63. In light of the background of facts and applicable law analyzed supra, the Commission reiterates its conclusions to the effect that the Colombian State is responsible for violating the right to life of Mr. Leonel de Jesús Isaza Echeverry established in Article 4 of the American Convention; the right to personal integrity of Mrs. María Fredesvinda Echeverry established in Article 5 of the American Convention; the right to humane treatment, and noncompliance with the obligation to adopt special measures of protection in relation to the minor Lady Andrea Isaza Pinzón, established in Articles 5 and 19 of the American Convention; as well as noncompliance with the obligation to provide due judicial protection for the victims in this case, in accordance with Articles 8 and 25, in conjunction with Article 1(1) of the Treaty.

VIII. RECOMMENDATIONS

64. Based on the analysis and conclusions of this report,

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

1. Conduct an impartial and effective investigation before ordinary jurisdiction for the purpose of judging and sanctioning those responsible for the extrajudicial execution of Mr. Leonel de Jesús Isaza Echeverry.
2. Adopt the measures necessary for reparation of the consequences of violations committed to the detriment of María Fredesvinda Echeverry and Lady Andrea Isaza Pinzón, as well as providing due indemnity for the relatives of Leonel de Jesús Isaza Echeverry.
3. Adopt the measures necessary to avoid similar events from occurring in the future, in conformance with the obligation of preventing and guaranteeing the basic rights recognized in the American Convention, as well as adopting the necessary measures for full compliance with the doctrine developed by the Colombian Constitutional Court and by this Commission in the investigation and judgment of similar cases by ordinary criminal justice.

IX. PUBLICATION

65. On February 28, 2001 the Commission transmitted this Report to the Colombian State pursuant to Article 51 of the American Convention and granted a period of one month as from that date to present information on compliance with the above recommendations. On that same date, the Commission transmitted the Report to the Petitioners. On January 28, 2001 the State requested additional time to respond and the Commission granted a seven-day extension.

66. The State presented its response on April 3, 2001 and once more referred to the mechanism of compliance proposed in its previous response to the report adopted pursuant to Article 50 of the American Convention (see supra paras. 61 and 62). The State expressed that "it shall follow up on compliance with the recommendations by continuing with the investigations and other pending procedures in each case and shall submit a study on adequate compensation to the instances contemplated in Act No. 288 (1996)."[FN39]

[FN39] Note EE 0705 General Director of Special Affairs(in charge), Ministry of Foreign Affairs, April 3, 2001.

67. Accordingly, pursuant to Articles 51(3) of the American Convention and 48 of its Regulations, the Commission decides to reiterate its conclusions and recommendations included in chapters VII and VIII 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 Colombian State with respect to those recommendations until the State has complied with them.

Done and signed in Santiago de Chile in the sixth day of the month of April of the year 2001.
(Signed:) Claudio Grossman, Chairman; Juan E. Mendez, First Vice-Chairman; Marta Altolaguirre, Second Vice-Chair; Robert K. Goldman, Hélio Bicudo, Peter Laurie, Julio Prado Vallejo, Commissioners.