In the case of Garibaldi,

the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court"), pursuant to Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") and Articles 29, 31, 37(6), 56 and 58 of the Rules of Procedure of the Court [FN1] (hereinafter "the Rules of Procedure"), delivers this judgment.

[FN1] Under Article 72(2) of the current Rules of Procedure of the Inter-American Court, the latest amendments of which entered into force as of March 24, 2009, "[c]ases pending resolution shall be processed according to the provisions of these Rules of Procedure, except for those cases in which a hearing has already been convened at the time of the entry into force of these Rules of Procedure; such cases shall be governed by the provisions of the previous Rules of Procedure." Thus, the Court's Rules of Procedure mentioned in this judgment correspond to the instrument approved by the Court at its forty-ninth session held from November 16 to 25, 2000, partially amended by the Court at its sixty-first session held from November 20 to December 4, 2003.

I. INTRODUCTION OF THE CASE AND PURPOSE OF THE DISPUTE

1. On December 24, 2007, pursuant to the provisions of Articles 51 and 61 of the American Convention, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") submitted to the Court an application against the Federative Republic of Brazil (hereinafter "the State", "Brazil" or "the Union"), originating from the petition presented by the organizations Justiça Global, Rede Nacional de Advogados e

Advogadas Populares (RENAP) and the Movimento dos Trabalhadores Rurais Sem Terra (MST) on May 6, 2003, on behalf of Sétimo Garibaldi (hereinafter also "Mr. Garibaldi") and his next of kin. On March 27, 2007, the Commission issued Report on Admissibility and Merits No. 13/07 (hereinafter also "Report No. 13/07"), under Article 50 of the Convention, which included specific recommendations for the State. The report was notified to Brazil on May 24, 2007, and the State was granted two months to provide information on the actions taken to implement the Commission's recommendations. Despite an extension granted to the State, the time limit for presenting information on compliance with the recommendations expired without the Commission receiving any information. Given the failure to implement the recommendations contained in Report on Admissibility and Merits No. 13/07 satisfactorily, the Commission decided to submit the case to the jurisdiction of the Court, considering that it represented an important opportunity to develop inter-American case law on the State's obligation to conduct criminal investigations into extrajudicial executions, and to examine the application of norms and principles of international law and the effects of non-compliance with them on the proper conduct of criminal proceedings, as well as the need to combat impunity. The Commission appointed Clare K. Roberts, Commissioner, and Santiago A. Canton, Executive Secretary, as delegates, and Elizabeth Abi-Mershed, Deputy Executive Secretary, and Lilly Ching and Andrea Repetto, lawyers, as legal advisers.

2. According to the Commission, the application refers to the alleged "responsibility [of the State] arising from the failure to comply with the obligation to investigate and punish the murder of Sétimo Garibaldi on November 27, 1998, [during] an extrajudicial operation to evict families of landless workers, who were occupying a hacienda in the municipality of Querencia del Norte, in the state of Paraná".

3. In the application, the Commission asked the Court, based on its temporal competence, to declare the State responsible for the violation of Articles 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection) of the American Convention, in relation to the general obligation to respect and ensure human rights and the obligation to adopt legislative and other domestic measures established in Articles 1(1) and 2 of the Convention, respectively, and also taking into consideration the provisions of the Federal Clause contained in Article 28 of this instrument, to the detriment of Iracema Cioato Garibaldi, Sétimo Garibaldi's widow, and her six children. The Commission asked the Court to order the State to adopt specific measures of reparations.

4. On April 11, 2008, the organizations, Justiça Global, RENAP, Terra de Direitos, Comissão Pastoral da Terra (CPT) and MST (hereinafter "the representatives") presented their brief with pleadings, motions and evidence (hereinafter "the pleadings and motions brief"), in the terms of Article 23 of the Rules of Procedure. In this brief, they asked the Court to declare the violation of the rights to life and to personal integrity of Sétimo Garibaldi, and to judicial guarantees and judicial protection of Iracema Garibaldi and her six children, established in Articles 4, 5, 8 and 25 of the Convention, respectively, all in relation to Articles 1(1), 2 and 28 thereof. Consequently, they requested the Court to order various measures of reparation. Iracema Garibaldi, Darsônia Garibaldi Guiotti, Itamar José Garibaldi, Itacir Caetano Garibaldi and Vanderlei Garibaldi appointed the lawyers of Justiça Global, Andressa Caldas, Luciana Silva Garcia, Renata Verônica Cortes de Lira and Tamara Melo as their legal representatives by powers of attorney granted on July 10, 2007.

5. On July 11, 2008, the State presented a brief in which it filed four preliminary objections, answered the application and made observations on the pleadings and motions brief (hereinafter "answer to the application"). The State asked the Court to consider founded the preliminary objections and, consequently: (i) to acknowledge its lack of competence ratione temporis to examine alleged violations that took placed before Brazil had accepted the compulsory jurisdiction of the Court; (ii) not to admit, as time-barred, the pleadings and motions brief of the representatives; (iii) to exclude the alleged failure to comply with Article 28 of the Convention from the examination of the merits, and (iv) to declare its lack of competence owing to the failure to exhaust domestic remedies. In addition, regarding the merits, Brazil alleged that "there is nothing to indicate that the way in which the investigations were conducted was contrary to the parameters established in [Articles] 8 and 25 of the Convention," hence, the State should not be accused of violating them. Furthermore, it asked the Court not to declare that Brazil had failed to comply with Articles 2 and 28 of the American Convention. The State appointed Hildebrando Tadeu Nascimento Valadares as agent, and Márcia Maria Adorno Calvalcanti Ramos, Camila Serrano Giunchetti, Bartira Meira Ramos Nagado and Cristina Timponi Cambiaghi as deputy agents.

6. In accordance with Article 37(4) of the Rules of Procedure, the Commission and the representatives presented their arguments on the preliminary objections filed by the State on August 24 and 27, 2008, respectively.

II. PROCEEDING BEFORE THE COURT

7. The Commission's application was notified to the State and to the representatives on February 11, 2008. [FN2] During the proceedings before this Court, in addition to the presentation of the principal briefs (supra paras. 1, 4 and 5) and others forwarded by the parties, in an order of November 20, 2008, the President of the Court (hereinafter "the President") ordered that the testimony of four witnesses proposed by the Commission, by the representatives and by the State, as well as the opinion of an expert witness, be received by statements made before notary public (affidavits), [FN3] and the parties were given the opportunity to submit their observations. Also, based on the particular circumstances of the case, the President convened the Commission, the representatives and the State to a public hearing to hear the testimony of two witnesses, one proposed by the Commission and the other by the State; the opinions of two expert witnesses, one proposed by the Commission and the other by the State, and the final oral arguments of the parties on the preliminary objections and the possible merits, reparations and costs. [FN4]

[FN2] On February 11, 2008, the representatives and the State received the original application with its attachments; this constituted the notification of the parties. Previously, the Commission's application, without its attachments, had been forwarded to the State and to the representatives by the Court's Secretariat on February 6, 2008. On the same date, the State was advised that it could appoint a judge ad hoc to take part in the deliberation of the case. In this regard, on January 16, 2008, the Inter-American Commission had forwarded a brief entitled "Position of the Inter-American Commission on Human Rights on the office of judge ad hoc." On March 24,

2008, following an extension granted by the Court, the State appointed Roberto de Figueiredo Caldas as judge ad hoc.
[FN3] Cf. Sétimo Garibaldi v. Brazil. Notice of a public hearing. Order of the President of the Inter-American Court of Human Rights of November 20, 2008, first operative paragraph.
[FN4] Cf. Sétimo Garibaldi v. Brazil. Notice of a public hearing, supra note 3, fourth operative paragraph.
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8. The public hearing was held on April 29 and 30, 2009, during the thirty-ninth special session of the Court held in Santiago, Chile. [FN5]

[FN5] At this hearing, there appeared: (a) for the Inter-American Commission: Felipe González, Commissioner; Lilly Ching Soto and Leonardo Hidaka, legal advisers; (b) for the representatives: Rafael Dias, Renata Lira and Luciana Garcia of Justiça Global; Gisele Cassano of Terra de Direitos, and Teresa Cofré of RENAP, and (c) for the State: Ambassador Hildebrando Tadeu Nascimento Valadares; Camila Serrano Giunchetti, Cristina Timponi Cambiaghi, Bartira Meira Ramos Nagado and Raimundo Jorge Santos Seixas.
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9. On June 10, 2009, the Commission, the representatives and the State forwarded their final written arguments.

10. On May 15, 2009, the Court received an amicus curiae brief from the Human Rights Clinic of the Legal Practice Unit of the Law School of the Getulio Vargas Foundation of Río de Janeiro, [FN6] which referred to the context of violence in the rural areas of Brazil and to the closure and subsequent re-opening of the procedure to investigate the death of Sétimo Garibaldi. Also, on May 18, 2009, the Court received an amicus curiae brief presented by the Coordinator of Social Movements of Paraná, [FN7] describing the context of violence against landless rural workers in the state of Paraná. Lastly, on May 27, 2009, the Human Rights Unit of the Law Department of the Pontificia Universidad Católica de Río de Janeiro [FN8] also presented an amicus curiae brief on the scope of the protection of Article 4 of the American Convention in this case.

[FN6] The brief was signed by: Bernardo Vasconcellos, Bruna Vilar, Carla Tulli, Daniel Arruda, Igor Mosso, Isabella Gama, Isabela Bueno, Luisa Di Prieto Gonçalves, Pablo Sá Domingues and Rinuccia Ruina, students of the Law School of the Fundación Getulio Vargas of Río de Janeiro
[FN7] The brief was signed by Silvana Prestes de Araujo of the Coordinator of Social Movements of Paraná.
[FN8] The brief was signed by: Márcia Nina Bernardes, law professor, Coordinator of the Human Rights Unit, Department of Law, Pontificia Universidad Católica de Río de Janeiro.

III. PRELIMINARY OBJECTIONS

11. In its brief answering the application, the State filed four preliminary objections, which the Court will examine in the order in which they were submitted.

A) The Court's lack of competence 'ratione temporis' to examine alleged violations that occurred prior to the State's acceptance of its jurisdiction

12. The State indicated that, according to Article 62 of the Convention and inter-American case law, the Court is competent to hear cases relating to the interpretation and application of the provisions of the Convention as of the date on which the State accepts its jurisdiction. Brazil accepted the compulsory jurisdiction of the Court on December 10, 1998, with the reservation of reciprocity and for events occurring after that date. Moreover, the temporal limitation to the date of acceptance of the Court's jurisdiction also derives from the principle of the non-retroactivity of treaties established in Article 28 of the Vienna Convention on the Law of Treaties and recognized by the Court in its case law. Therefore, since the death of Sétimo Garibaldi occurred on November 27, 1998, the Court would not have competence to declare violations of the Convention in the instant case.

13. Brazil also indicated that, even though the Commission had only alleged non-compliance with the obligation to investigate Mr. Garibaldi's murder effectively and adequately and to provide effective remedies to punish those responsible, it was seeking that "the State be sentenced indirectly […] for the violation of Articles 4 (Right to Life) and 5 (Right to Humane Treatment) of the [Convention], as claimed by the representatives of the [alleged] victims, and this is not possible, since the death of Sétimo Garibaldi occurred before Brazil had accepted the Court's jurisdiction." This conclusion is clear from some of the measures of reparation requested by the Commission that can only be understood in light of an attempt to hold the State responsible for the murder of Sétimo Garibaldi. In this regard, there is flagrant incongruity between the facts that are alleged to have violated the Convention and the reparations requested by the Commission. Hence, the allegations of denial of justice and the violations related to Articles 1(1), 2 and 28 "merely represent a device or a pretext" used by the Commission to submit the application to the jurisdiction of the Court. Consequently, it asked the Court to admit this preliminary objection.

14. The Commission considered that the State's argument was "factually incorrect and legally irreceivable," because the application related to the failure to comply with the obligation to investigate and sanction Mr. Garibaldi's murder. It is true that the facts that have not been investigated correspond to the said death, but it cannot be inferred that the Commission is seeking a sentence convicting the State for the deprivation of life. The State cannot allege the inadmissibility of the case arguing an extensive interpretation of what the Inter-American Commission expressly requested in its application regarding the failure to investigate. Based on the conclusions of Report on Admissibility and Merits No. 13/07, the Commission founded its application solely on acts and omissions that occurred independently after the date on which the State accepted the Court's jurisdiction, such as its obligation to investigate Mr. Garibaldi's murder effectively and adequately and within a reasonable time. Consequently, the Commission indicated that, for the effects of the Court's jurisdiction, the application relates to the denial of justice that Sétimo Garibaldi's next of kin have experienced, and continue to experience today, subsequent to the date on which the State accepted the Court's compulsory jurisdiction. Lastly, it

clarified that the reparations requested in the application are those it considered adequate; that the State had reported on efforts made to implement them during the proceedings before the Commission, and that the Court would decide their pertinence in accordance with its decision on the merits of the case. Based on the above, it considered that the Court has competence ratione temporis to examine the facts and violations described in the application.

15. The representatives contested "the arguments presented by the [State] and reaffirmed that the State was responsible for Sétimo Garibaldi's death, in the understanding that the State erred by failing to conduct an exhaustive investigation, by not identifying the perpetrators and the masterminds, and by not preventing the recurrence of similar acts." The violation does not end with an act that violates a human right, but persists until appropriate measures are adopted to ensure an end to the violation, to attribute the corresponding responsibility, and to prevent the occurrence of similar violations. The obligation to investigate is a fundamental element of the right to life and, by failing to ensure a diligent investigation, the State violated Article 4 of the Convention even though it had not been responsible for the original violation. The authorities were negligent and omissive in the investigation they conducted and did not identify the individual responsible for the execution of Sétimo Garibaldi.

16. In addition, the representatives affirmed that the State's obligation to respect the rights established in the Convention existed prior to the date on which it accepted the Court's compulsory jurisdiction, because the State was already a party to the Convention. The murder created a continuing situation of violations with acts and effects that took place after it accepted the Court's jurisdiction. Accordingly, they asked the Court to examine the arguments and evidence that Brazil had violated and continues to violate the rights to life and humane treatment in this case and should also be sentenced and convicted in this regard, insofar as it was incapable of protecting Sétimo Garibaldi's right to life. In particular, in relation to the violation of the right to humane treatment, they stated that "Sétimo Garibaldi […] suffered extreme mental and moral suffering up until the moment of his death[,] which proves that the State violated Article 5." Regarding Article 28 of the Vienna Convention on the Law of Treaties, they affirmed that the Court has understood that it has competence to examine continuing violations initiated before the date on which the State party accepted its jurisdiction and that persist after that date. The Court has competence to examine continuing violations without infringing the principle of non-retroactivity. However, should the Court understand that Mr. Garibaldi's death does not fall within its jurisdiction owing to the temporal limitation imposed by Brazil, there are sufficient elements to reaffirm the State's responsibility for the violation of the judicial guarantees of Sétimo Garibaldi's next of kin and other rights after December 10, 1998. They also considered that the Court "could recognize that the violation of the right to life and the consequent non-compliance with the obligation to provide an official response is a continuing violation of Articles 4 and 5 [of the Convention]." Based on the foregoing, they asked the Court not to admit the preliminary objection filed by the State.

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17. Although the American Convention and the Rules of Procedure do not develop the concept of "preliminary objection," the Court has stated repeatedly in its case law that this measure questions the admissibility of an application or the competence of the Court to hear a

specific case or any of its aspects, owing to the person, the matter, the time or the place. [FN9] Thus, the Court has indicated that the purpose of a preliminary objection is to obtain a decision that prevents or impedes the examination of the merits of the aspect questioned or of the case as a whole. Consequently, the content and purpose of the claim must satisfy the essential juridical characteristics that accord it the nature of "preliminary objection." Claims that do not conform to this description, such as those relating to the merits of the case, can be formulated by other procedural acts established in the American Convention, but not as a preliminary objection. [FN10]

[FN9] Cf. Las Palmeras v. Colombia. Preliminary objections. Judgment of February 4, 2000. Series C No. 67, para. 34; Escher et al. v. Brazil. Preliminary objections, merits, reparations and costs. Judgment of July 6, 2009. Series C No. 200, para. 15, and Tristán Donoso v. Panama. Preliminary objection, merits, reparations and costs. Judgment of January 27, 2009. Series C No. 193, para. 15.
[FN10] Cf. Castañeda Gutman v. Mexico. Preliminary objections, merits, reparations and costs. Judgment of August 6, 2008. Series C No. 184, para. 39; Case of Escher et al., supra note 9, para. 15 and Case of Tristán Donoso, supra note 9, para. 15.

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18. In the instant case, the State's arguments questioning the competence of the Court to rule on alleged violations of the American Convention owing to the time at which they supposedly occurred indeed constitutes a preliminary objection.

19. In general, in order to determine whether it has competence to hear a case or any aspect of it pursuant to Article 62(1) of the American Convention, [FN11] the Court must take into consideration the date of the State's acceptance of its jurisdiction, the terms in which the State accepted it, and the principle of non-retroactivity established in Article 28 of the 1969 Vienna Convention on the Law of Treaties, which stipulates:

Unless a different intention appears from the treaty or is otherwise established, its provisions do not bind a party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the treaty with respect to that party.

[FN11] Article 62 of the Convention establishes:
1. A State Party may, upon depositing its instrument of ratification or adherence to this Convention, or at any subsequent time, declare that it recognizes as binding, ipso facto, and not requiring special agreement, the jurisdiction of the Court on all matters relating to the interpretation or application of this Convention.
[…]

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20. Brazil accepted the compulsory jurisdiction of the Court on December 10, 1998, and in its declaration indicated that the Court would have competence for "facts subsequent" to this acceptance. [FN12] Based on this and on the principle of non-retroactivity, the Court is unable to

exercise its contentious jurisdiction to apply the Convention and to declare a violation of its norms when the alleged facts or conduct of the State that could entail international responsibility preceded the acceptance of the Court's jurisdiction. [FN13]

[FN12] In its acceptance of jurisdiction on December 10, 1998, Brazil indicated that "[t]he Government of the Federative Republic of Brazil declares that it accepts the jurisdiction of the Inter-American Court of Human Rights, for an indefinite time, as obligatory and ipso jure, in all cases related to the interpretation or application of the American Convention on Human Rights, pursuant to Article 62 thereof, with the reservation of reciprocity and for facts subsequent to this declaration." Cf. General information on the Treaty: American Convention on Human Rights, Brazil, acceptance of jurisdiction. Available at: http://www.oas.org/juridico/spanish/firmas/b-32.html; accessed on September 21, 2009.

[FN13] Cf. Cantos v. Argentina. Preliminary objections. Judgment of September 7, 2001. Series C No. 85, para. 36; Heliodoro Portugal v. Panama. Preliminary objections, merits, reparations and costs. Judgment of August 12, 2008. Series C No. 186, para. 24, and Nogueira de Carvalho et al. v. Brazil. Preliminary objections and merits. Judgment of November 28, 2006. Series C No. 161, para. 44.

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21. Having established the foregoing, the Court must decide whether it can examine the facts that are the grounds for the alleged violations of the Convention in this case, namely: (a) the suffering before Mr. Garibaldi's death and his death, which would constitute the violation of Articles 4 and 5 of the American Convention alleged by the representatives; (b) the supposed errors and omissions in the investigation into the death of Sétimo Garibaldi subsequent to December 10, 1998, facts that would constitute a violation of Articles 8 and 25 of the American Convention, alleged by the Inter-American Commission and by the representatives, and (c) based on the same acts and omissions in relation to the investigation, the violation of the procedural aspect of Article 4 of the Convention alleged by the representatives.

22. The parties agree that Mr. Garibaldi died on November 27, 1998; in other words, prior to the State's acceptance of the Court's contentious jurisdiction. The deprivation of Mr. Garibaldi's life, which was implemented and occurred instantaneously on that date, falls outside the Court's competence; consequently, it will not examine the State's alleged responsibility for this act. The alleged violation of the right to humane treatment owing to Mr. Garibaldi's alleged suffering before his death falls outside the Court's competence for the same reason, as well as any other fact prior to the State's acceptance of the Court's contentious jurisdiction (infra para. 147).

23. However, the Court is competent to examine the acts and possible omissions related to the investigation into the death of Mr. Garibaldi, which took place during the temporal competence of the Court – in other words, after December 10, 1998 – in light of Articles 8 and 25, in relation to Articles 1(1), 2 and 28 of the Convention. Similarly, the Court also has competence to examine those facts in light of the procedural obligation derived from the obligation to guarantee rights arising from Article 4 of the Convention, in relation to Article 1(1) thereof. Brazil did indeed ratify the American Convention in 1992, six years before Mr. Garibaldi's death. Therefore, as of that date, the State was required to comply with all the

obligations arising from the Convention, including the obligation to investigate and, if applicable, punish the deprivation of the right to life, even though the Court would not have competence to prosecute it for alleged violations of this right. Despite the foregoing, the Court can examine and rule on possible non-compliance with the Convention obligation concerning the acts and supposed omissions relating to the investigation as of December 10, 1998, when the State accepted the Court's contentious jurisdiction.

24. Nevertheless, even though the Court has temporal competence in the terms set forth above, in keeping with the Court's case law, the alleged victims must be indicated in the application and in the Commission's report under Article 50 of the Convention. In addition, according to Article 33(1) of the Rules of Procedure, it is the Commission, and not the Court, that must identify the alleged victims in a case before the Court precisely and at the appropriate procedural opportunity. [FN14] Taking into account the foregoing, and pursuant to its constant case law, the Court considers as alleged victims those who are indicated as such in the Commission's application brief. In the instant case, in its Report on Admissibility and Merits No. 13/07, the Commission established the State's responsibility for the violation of Article 4 of the American Convention to the detriment of Sétimo Garibaldi. However, in the application, the Commission indicated that Mrs. Garibaldi and her six children were the alleged victims of the presumed violation of Articles 8 and 25 of the American Convention. Therefore, the Court will only refer to the alleged violations that prejudiced the individuals who the Commission named as alleged victims in its application.

[FN14] Cf. The Ituango Massacres v. Colombia. Preliminary objection, merits, reparations and costs. Judgment of July 1, 2006 Series C No. 148, para. 98; Kawas Fernández v. Honduras. Merits, reparations and costs. Judgment of April 3, 2009 Series C No. 196, para. 27, and Perozo et al. v. Venezuela. Preliminary objections, merits, reparations and costs. Judgment of January 28, 2009. Series C No. 195, para. 50.

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25. Based on the above, the Court admits this preliminary objection partially.

B) Failure of the representatives to comply with the time limit established in the Court's Rules of Procedure for submitting the pleadings and motions brief and its attachments

26. The State alleged that the representatives failed to comply with the time limits established in Articles 26(1) and 36(1) of the Rules of Procedure of the Court. It affirmed that, with the reform of the Rules of Procedure that entered into force on January 1, 2004, the procedural system became more rigorous with parties that failed to submit their briefs within the time frame specified in Article 36(1) of the Rules of Procedure. It considered that the procedural balance should be preserved and that the treatment imposed on the defendant should also apply to the representatives. It maintained that, on February 6, 2008, the Court notified the application to the representatives; hence, they should have submitted their pleadings and motions brief by April 6, 2008, at the latest; namely, two months after the notification. However, a copy of this brief (not the original), without its attachments, was received by the Court on April 11, 2008. On May 16, 2008, the representatives forwarded the original of the briefs with two of the eleven attachments,

and these were sent to the State on May 20, 2008. The same day, the Court received three more attachments, which were forwarded to the State on May 23, 2008. To date, it has not been able to examine the remaining documents. The State affirmed that, owing to the delays, it was granted ex officio an extension until July 11, 2008, to present its answer to the application. However, the extension was only for one month and 15 days, which was considerably less than the two months it should have been granted to examine all the briefs of the representatives, including the attachments, under the provisions of Article 38 of the Court's Rules of Procedure, and this prejudiced the State's defense. Consequently, it considered that the Court should deem the representatives' right to submit their pleadings and motions brief precluded, and requested that all the representatives' briefs and the attachments should be removed from the case file and rejected owing to failure to comply with Articles 26 and 38 of the Rules of Procedure. [FN15]

[FN15] Infra notes 32 and 34.

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27. The Commission did not refer to this allegation by the State "because it was unaware of the dates on which the documents were received." It considered that the Court should assess the arguments of the State and the representatives in accordance with its competence and the reasonableness of the said time limits.

28. The representatives stated that they had received the application submitted by the Commission, via facsimile on February 6, 2008. However, the original brief and its attachments were received on February 11, 2008, and they considered that this was the date on which calculation of the non-extendible period of two months for forwarding their pleadings and motions brief should commence. Hence, they sent the said brief, via facsimile, on April 11, 2008. Then, on April 18, 2008, they forwarded the original version of their brief and its attachments by mail. They indicated that the time limit of seven days established in Article 26(1) of the Rules of Procedure referred to the "sending" of the original documents and their attachments, without establishing a time limit within which they should be received by the Court. They clarified that, despite the opportune mailing of the documents, on April 18, 2008, the national postal service was in the process of regularizing its activities following a long strike by its employees, and this caused the delay in the Court's receiving the correspondence. Accordingly, this delay "bore no relationship to the effort and diligence" of the representatives, who even provided the receipt for the mailing issued by the post office. Consequently, they asked the Court to reject the State's claim in this regard.

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29. In the instant case, the supposed failure of the representatives to comply with the time limits established in the Rules of Procedure for presentation of the pleadings and motions brief and its attachments does not support a preliminary objection (supra para. 17), because it does not contest the admissibility of the application or prevent the Court from hearing the case. Indeed, even if, hypothetically, the Court should accept the State's claim, it would in no way affect its competence to examine the merits of the dispute. Therefore, the Court rejects this claim because it does not constitute a preliminary objection.

30. Despite the above, the Court will examine the State's argument in relation to the admissibility of the pleadings and motions brief and its attachments in the chapter of this judgment concerning evidence (infra paras. 55 to 59).

C) Impossibility of alleging violations not considered during the proceedings before the Inter-American Commission

31. The State indicated that, in its application, the Commission had asked the Court to declare non-compliance with Article 28 of the Convention. It indicated that the representatives had also alleged non-compliance with this article, stating that, on the occasion of the 130th regular session of the Inter-American Commission, the representative of the State had affirmed, during a working meeting, that there were communication difficulties with the state of Paraná. It alleged that the Court's case law has established that a violation that was not assessed during the proceedings before the Commission could not be included at this stage, because the State had been unable to comment on the issue before the Commission prior to the case being submitted to the Court. It added that the said provisions did not establish any right or freedom, but rather rules for the interpretation and application of the Convention, and that this instrument, particularly Articles 48(1) and 63, clearly established that the organs of the inter-American system may only examine possible violations of rights and freedoms. Based on the above, the State considered that the Court should not assess the alleged violation of Article 28 of the Convention.

32. The Commission argued that, under Article 28 of the Convention, both the Federal Government and the state government must adopt the necessary measures to ensure compliance with the obligations contained in the American Convention. The said Article establishes obligations, compliance with which, as with the obligations arising from Articles 1(1) and 2 of the Convention, can be verified and ruled on by the supervisory organs of the inter-American system. It also indicated that "the State – in its answer to the application – did not deny having used in its defense during the proceedings before the [Commission] the alleged difficulties in coordinating work with the authorities of the state of Paraná, during the Commission's 130th regular session; this had caused the Commission to refer to this specific issue in light of Article 28 of the Convention when issuing its report on merits in the instant case (and not only in the application brief)." It stated that the Court has the power to examine compliance with the obligations arising from Article 28 of the Convention and, consequently, asked the Court to reject the preliminary objection.

33. The representatives agreed substantially with the Commission and added that the Court has recognized that "facts that occur after the application has been submitted can be presented to the Court up until it delivers its judgment. Regarding the inclusion of new articles, the Commission and the [representatives] are legally entitled [to submit them to the consideration of the Court], in the understanding […] that, if this possibility was not admitted, it would restrict their status as subjects of international law." In addition, the Court's authority to examine these articles, included on the basis of the iura novit curia principle, has been extensively supported by international case law. Consequently, the State's declaration, during a working meeting held at the seat of the Commission on October 11, 2007, that it was unable to report on progress concerning the recommendations made by the Commission in Report on Admissibility and

Merits No. 13/07 because it had been unable to establish contact with the authorities of the state of Paraná, allowed it to conclude that, as of that time, Brazil had violated Article 28 of the Convention. Accordingly, it asked the Court to reject the preliminary objection.

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34. The Court observes that the State's allegation corresponds to a preliminary objection, designed to prevent the Court from examining the alleged non-compliance with Article 28 of the American Convention, containing the "federal clause."

35. When the Commission's actions in relation to the proceedings before it have been alleged as a preliminary objection, the Court has stated that the Inter-American Commission has autonomy and independence in the exercise of its mandate, as established by the American Convention [FN16] and, in particular, in the exercise of its functions in relation to processing individual petitions, established by Articles 44 to 51 of the Convention. [FN17] Nevertheless, when the Court is examining a case, it has the authority to control the legality of the measures taken by the Commission when processing the matter. [FN18] The Court has upheld the opinion that the American Convention grants it full jurisdiction over all matters relating to a case submitted to its consideration, including those concerning the procedural assumptions on which its capacity to exercise its competence is founded. [FN19] This does not necessarily entail reviewing the proceedings before the Commission, except in exceptional cases where a grave error exists that violates the right to defense of the parties. [FN20]

[FN16] Cf. Control of the Legality of the Exercise of the Attributions of the Inter-American Commission on Human Rights (Arts. 41 and 44 to 51 of the American Convention on Human Rights). Advisory Opinion OC-19/05 of November 28, 2005. Series A No. 19, first operative paragraph; Case of Escher et al., supra note 9, para. 22, and Case of Castañeda Gutman, supra note 10, para. 40.

[FN17] Cf. Control of the Legality of the Exercise of the Attributions of the Inter-American Commission on Human Rights (Arts. 41 and 44 to 51 of the American Convention on Human Rights), supra note 16, second operative paragraph; Case of Escher et al., supra note 9, para. 22, and Case of Castañeda Gutman, supra note 10, para. 40.

[FN18] Cf. Control of the Legality of the Exercise of the Attributions of the Inter-American Commission on Human Rights (Arts. 41 and 44 to 51 of the American Convention on Human Rights), supra note 16, third operative paragraph; Case of Escher et al., supra note 9, para. 22, and Case of Castañeda Gutman, supra note 10, para. 40

[FN19] Cf. Velásquez Rodríguez v. Honduras. Preliminary objections. Judgment of June 26, 1987. Series C No. 1, para. 29; Case of Escher et al., supra note 9, para. 22, and Case of Castañeda Gutman, supra note 10, para. 40.

[FN20] Cf. The Dismissed Congressional Workers (Aguado Alfaro et al.) v. Peru, Preliminary objections, merits, reparations and costs. Judgment of November 24, 2006. Series C No. 158, para. 66; Case of Escher et al., supra note 9, para. 22, and Case of Castañeda Gutman, supra note 10, para. 40.

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36. Moreover, the party that indicates that a grave error has occurred affecting its right to defense, owing to an action by the Commission during the proceedings before it, must prove this injustice. [FN21] Hence, a complaint or difference of opinion with regard to the Inter-American Commission's actions is, in itself, insufficient.

[FN21] Cf. Case of the Dismissed Congressional Workers (Aguado Alfaro et al.), supra note 20, para. 66; Case of Escher et al., supra note 9, para. 23, and Case of Castañeda Gutman, supra note 10, para. 42.

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37. The Court observes that the case file does not support the State's argument that the alleged failure to comply with Article 28 was not considered during the proceedings before the Inter-American Commission and had only been included in the application after the State had made a comment during a working meeting on compliance with the reparations required in Report on Admissibility and Merits No. 13/07. During its proceedings, the Commission examined the facts of the case in light of Article 28 of the American Convention, concluding in the said report that the State had failed to comply with the obligations deriving from the so-called "federal clause" and, consequently, it had alleged the supposed failure to comply with this norm in the application it filed before the Court. [FN22] Furthermore, the State itself, in its arguments on merits in the answer to the application, indicated that the alleged violation of Article 28 was included in Report No. 13/07. [FN23]

[FN22] The Commission decided to include in its Report No. 13/07 the alleged violation of the so-called "federal clause" by considering that the State should have: (a) take adequate measures to avoid the death of Sétimo Garibaldi, and (b) provided the family of Mr. Garibaldi with an effective investigation into the facts; the prosecution and punishment of those responsible, and adequate civil compensation. "The failure to act in this way constituted non-compliance with the provisions of Article 28 of the Convention." Cf. Report on Admissibility and Merits No. 13/07 of March 27, 2007 (file of attachments to the application, tome II, attachment 2, folio 740).
[FN23] Cf. Brief with the answer to the application (merits file, tome II, folio 698).

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38. The Court observes that Article 46(1) of the American Convention stipulates the requirements for a petition to be admitted by the Inter-American Commission, and Article 28 of the Rules of Procedure of the Commission establishes the elements that the petition should include at the time it is presented, Neither article requires the petitioner to specify the articles of the Convention they consider violated. Similarly, Article 32(c) of the Commission's Rules of Procedure in force at the date the petition was presented (current Article 28(f)) established the possibility of a petition being processed before it, even if no specific reference had been made to the article presumed to have been violated. [FN24] Thus, in its decision on admissibility, the Commission determines the possible violations of the rights embodied in the American Convention based on the facts denounced by the petitioner and on the legal considerations it deems pertinent.

[FN24] According to Article 32(c) of the Commission's Rules of Procedure in force on the date of presentation of the petition, complaints submitted to the Commission must include: "the State the petitioner considers responsible, by act or omission, for the violation of any of the human right recognized in the American Convention on Human Rights, in the case of States Parties, even if no specific reference is made to the article(s) alleged to have been violated." The Rules of Procedure of the Inter-American Commission on Human Rights approved at its 49th period of sessions, during session 660, held on April 8, 1980, and modified at its 64th period of sessions, during session 840, held on March 7, 1985, at its 70th period of sessions, during session 938 held on June 29, 1987; at its 90th period of sessions, during session 1282, held on September 21, 1995; at its 92nd period of special sessions, during session 1311 held on May 3, 1996; at its 96th period of special sessions, during session 1354 held on April 25, 1997, and at its 97th period of sessions, during session 1366ª held on October 15, 1997.

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39. The Court finds that the inclusion in the application of the supposed failure to comply with Article 28 of the American Convention, which appeared in the Commission's Report No. 13/07, is not contrary to the relevant provisions of the American Convention and the Commission's Rules of Procedure. Moreover, during the processing of the case before the Court, the State had the opportunity to submit its arguments for the defense on this aspect of the application and has not proved that its right to defense was impaired owing to the said action of the Commission. Thus, the Court finds that there are no elements that would justify modifying a decision by the Inter-American Commission in this case.

40. Moreover, according to Article 62(3) of the Convention, "[t]he jurisdiction of the Court shall comprise all cases submitted to it concerning the interpretation and application of the provisions of this Convention, provided that the States parties to the case recognize or have recognized such jurisdiction, whether by special declaration pursuant to the preceding paragraphs, or by a special agreement." Thus from the literal interpretation of this provision, the Court has competence to rule on "the provisions" of the Convention, without any limitation or differentiation such as that mentioned by the State. Consequently, the Court has competence to examine the alleged failure to comply with Article 28 of the Convention, irrespective of its juridical nature, whether it is a general obligation, a right, or a norm of interpretation. [FN25]

[FN25] Cf. Case of Escher et al., supra note 9, para. 26.

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41. This conclusion is reflected in the Court's case law, which has indicated that the comprehensive terms in which the Convention is written signify that the Court exercises full jurisdiction over all its articles and provisions. [FN26]

[FN26] Cf. Case of Velásquez Rodríguez, supra note 19, para. 29; Acevedo Buendía et al. ("Dismissed and Retired Employees of the Comptroller's Office") v. Peru. Preliminary objection, merits, reparations and costs. Judgment of July 1, 2009 Series C No. 198, para. 16, and

The 19 Tradesmen v. Colombia. Preliminary objection. Judgment of June 12, 2002. Series C No. 93, para. 27.

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42. Based on these findings, the Court rejects this preliminary objection.

D) Failure to exhaust domestic remedies

43. The State indicated that when the petition was submitted to the Commission on May 23, 2003, the Police Investigation was underway. From the time that Sétimo Garibaldi was murdered until this date, around four years and five months had elapsed, which was a reasonable period for processing the Police Investigation, bearing in mind "the complexity of the investigation, which included, among other measures, steps taken in other cities." When the proceedings before the Commission began, there was no indication that the petitioners had been unable to exhaust domestic remedies. To the contrary, if their main objective was to obtain a comprehensive and effective investigation, in the context of the Police Investigation that was underway, they were empowered to suggest complementary measures and to urge the Public Prosecutor's Office to take a different course of action, by means of a simple petition. There is no evidence that the petitioners took advantage of this right. The State also argued that, according to Article 18 of the Code of Criminal Procedure and the parameters established in Directive 524 of the Federal Supreme Court, the closure of a police investigation does not mean that a final decision has been taken, and police investigations can be taken up again at any time should new evidence be produced; consequently, the closure of the investigation "does not imply the impossibility of clarifying the circumstances of the act denounced. Although the alleged victims filed a mandado de segurança in order to re-open the investigation, this action was not considered appropriate and was rejected by the competent judge. Lastly, "if [the alleged victims] had new evidence concerning the facts, they were empowered, motu proprio, to file a claim; to request the re-opening of the Police Investigation; to request measures and report irregularities before the Public Prosecutor's Office, and they did not do this." Hence, the State concluded that all available domestic remedies had not been exhausted.

44. The Commission maintained that this preliminary objection was based on the State's disagreement with decisions taken at the opportune moment. It added that, with strict adherence to the adversarial principle, it received the arguments of both parties, which it duly examined and considered in light of the Convention, the case law of the inter-American system, the evidence provided, and the characteristics of the case. In its answer to the application, the State had not alleged that the admissibility decision had been based on erroneous information or that it was the result of a proceeding in which the parties were unable to act with equal weapons or that the right to defense had been violated. In this regard, there were no grounds for re-examining the Commission's reasoning concerning admissibility, which was compatible with the relevant provisions of the Convention. It added that "the facts of the case that have constituted violations of the rights to judicial guarantees, the ineffectiveness of domestic remedies, and the reasonableness of the time taken by the domestic proceedings vis-à-vis the complexity of the investigation are elements that relate to the merits of the dispute." Consequently, any discussion on the unjustified delay and the failure of the domestic proceedings to meet the State's

obligations under the Convention must be considered part of the merits of the case. Based on the above, it asked the Court to reject the State's preliminary objection as unfounded

45. The representatives alleged that, when the petition was submitted to the Commission, the investigation had already been underway for four years, although the Code of Criminal Procedure established that this procedure should be concluded within 30 days, with the possibility of obtaining a 30-day extension of this period. Even taking into account the need to take measures in different cities, the Police Investigation had lasted more than 40 months, without making any significant progress, which proves that there was an unjustified delay. In relation to the closure of the Police Investigation, they stated that the Public Prosecutor's Office had been negligent in its handling of the clear indications of authorship in the case file. In a final intent, they filed a mandado de segurança against the order closing the investigation, but this was denied by the Court of Justice of the state de Paraná. Based on the above, they asked the Court not to admit the preliminary objection.

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46. The Court has developed criteria for examining an objection concerning failure to comply with the rule of the exhaustion of domestic remedies. [FN27] With regard to the formal aspects, given that this objection is a defense available to the State, procedural issues must be verified, such as the procedural moment at which the objection was filed; the facts about which it was filed, and whether the interested party has indicated that the admissibility decision was based on erroneous information or on an aspect that infringed the right to defense. Regarding the material presumptions, the Court examines whether domestic remedies were filed and exhausted in keeping with generally recognized principles of international law and, particularly, whether the State filing the objection specified the domestic remedies that were not exhausted. Furthermore, the State must demonstrate that those remedies were available and were adequate, appropriate and effective. Since this question relates to the admissibility of a petition before the inter-American system, the all aspects of this rule must be verified, even though the analysis of the formal premises prevails over those of a material nature and, at certain times, the latter may be related to the merits of the case. [FN28]

[FN27] Cf. Case of Velásquez Rodríguez, supra note 19, para. 88; Case of Escher et al., supra note 9, para. 28, and Case of Perozo et al., supra note 14, para. 42.

[FN28] Cf. Case of Velásquez Rodríguez, supra note 19, para. 91; Case of Escher et al., supra note 9, para. 28, and Case of Perozo et al., supra note 14, para. 42.

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47. From the case file before the Inter-American Commission, the Court observes that, in a note of February 5, 2004, the Commission asked the State, for the first time, to present information on the petition within two months and informed it that this did not prejudge the decision on admissibility, pursuant to Article 30(2) and 30(3) of the Commission's Rules of Procedure. On October 12, 2004, the representatives advised the Commission that on May 18, 2004, the competent judge of the Comarca of Loanda had decided that Police Investigation No. 179/98 opened for the death of Sétimo Garibaldi, should be closed. In view of the State's lack of

response, in a note of December 20, 2004, the Commission advised the State that it had opened the case and that it would postpone consideration of the admissibility of the petition until the discussion and decision on merits, as established in Article 37(3) of its Rules of Procedure. On June 6, 2005, the representatives presented their additional observations on merits. In a note of August 5, 2005, in application of Article 38(1) of its Rules of Procedure, the Inter-American Commission asked the State to forward its observations on the merits of the case within two months. On June 6, 2006, the State presented its answer to the Inter-American Commission and alleged, among other matters, the failure to exhaust domestic remedies.

48. The Court observes that the State filed this preliminary objection before the Commission two years and four months after it had first been asked to submit information on the petition. In addition, it did so following a communication in which the Commission, in the terms of Article 38(1) of its Rules of Procedure, asked the State to forward its observations on the merits. Nevertheless, the preliminary objection of failure to exhaust domestic remedies was filed before the Inter-American Commission's decision on the admissibility of the petition, which occurred in Report No. 13/07. In addition, the Court observes that the Commission did not find that the objection filed by the State was time-barred. Based on the above, the Court concludes that this objection was presented opportunely.

49. In the instant case, the failure to exhaust domestic remedies is disputed in relation to the criminal investigation. In general, criminal remedies are designed to determine the existence of a punishable act and, if applicable, the criminal responsibility of the alleged perpetrators. [FN29] When the Commission issued its Report No. 13/07, on March 27, 2007, the Police Investigation into the death of Sétimo Garibaldi had been closed at the request of the Public Prosecutor's Office and by court order.

[FN29] Cf. Case of Escher et al., supra note 9, para. 42.

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50. From the arguments of the parties and the evidence provided to the case file, the Court observes that the State's allegations concerning the effectiveness of the Police Investigation and the inexistence of an unjustified delay involve matters relating to the merits of the case, because they contradict the arguments concerning the presumed violation of Articles 8 and 25 of the American Convention.

51. Based on the above findings, the Court rejects this preliminary objection.

IV. COMPETENCE

52. The Inter-American Court is competent, in the terms of Article 62(3) of the Convention, to hear the instant case, because Brazil has been a State Party to the American Convention since September 25, 1992, and accepted the compulsory jurisdiction of the Court on December 10, 1998.

V. EVIDENCE

53. Based on the provisions of Articles 44 and 45 of the Rules of Procedure, as well as on its case law concerning evidence and its assessment, [FN30] the Court will examine and assess the documentary evidence forwarded by the parties at different procedural opportunities, as well as the testimony and expert opinions provided by sworn statements made before notary public (affidavits) and during the public hearing before the Court. To this end, it will abide by the principles of judicial discretion within the corresponding normative framework. [FN31]

[FN30] Cf. The "White Van" (Paniagua Morales et al.) v. Guatemala. Reparations and costs. Judgment of May 25, 2001. Series C No. 76, para. 50; Case of Escher et al., supra note 9, para. 55, and Reverón Trujillo v. Venezuela. Preliminary objection, merits, reparations and costs. Judgment of June 30, 2009. Series C No. 197, para. 26.

[FN31] Cf. Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Merits. Judgment of March 8, 1998. Series C No. 37, para. 76; Case of Escher et al., supra note 9, para. 55, and Case of Reverón Trujillo, supra note 30, para. 26.

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54. Before making the assessment, the Court will examine the State's allegation that the evidence presented by the representatives with the pleadings and motions brief was time-barred (supra paras. 26 and 30).

A. Evidence presented by the representatives in their pleadings and motions brief

55. First, with regard to the State's argument concerning the failure of the representatives to comply with the time limits established in Articles 26(1) and 36(1) of the Rules of Procedure, [FN32] the Court considers it necessary to clarify that the original application brief and its attachments were received by Justiça Global on February 11, 2008. That is the date of notification of the application as of which the two-month period stipulated in Article 36 of the Rules of Procedure should be calculated. [FN33] Thus, by presenting their pleadings and motions brief on April 11, 2008, [FN34] via facsimile and by e-mail, the representatives submitted it to the Court on the last day of the established period. This brief was forwarded to the State immediately and the State received it on April 17, 2008. [FN35] Consequently, the Court concludes that the representatives complied with the time limit established in Article 36(1) of the Rules of Procedure.

[FN32] Articles 26(1) and 36(1) of the Rules of Procedure applicable to this case establish:

Article 26. Filing of briefs

1. The application, the reply thereto, the written brief containing pleadings, motions, and evidence, as well as any other written material addressed to the Court, may be presented in person, by courier, facsimile, telex, mail or any other method generally used. When any such material is transmitted to the Court by electronic means, the original documents, as well as accompanying evidence, shall be submitted within seven days.

Article 36. Brief with pleadings, motions and evidence

2. When the application has been notified to the alleged victim, his next of kin or his duly accredited representatives, they shall have a period of two months, which may not be extended, to present autonomously to the Court their pleadings, motions and evidence.
[FN33] Cf. Note of the Secretariat CDH-12,478/033 of June 9, 2008 (merits file, tome I, folio 657).
[FN34] Cf. Note of the Secretariat CDH-12,478/019 of April 17, 2008 (merits file. tome I, folio 467).
[FN35] Cf. Note of the Secretariat CDH-12,478/021 of April 17, 2008 (merits file, tome I, folio 470).
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56. Regarding the attachments, the representatives sent some of them by mail on April 18, 2008, with the original pleadings and motions brief. [FN36] Given the delay in the reception of these documents and the President's request that they be submitted as soon as possible, [FN37] the representatives forwarded another copy of the original pleadings and motions brief and two attachments, by courier, and the Court received those documents on May 16, 2008. [FN38] The documents were received by the State on May 20, 2008, and, on the same date, the State was notified that the President had granted it, ex officio, an extension until July 11, 2008, to present its brief answering the application. [FN39] On May 20, 2008, the Court received the documentation forwarded by the representatives by regular mail on April 18, 2008, with the original pleadings and motion brief and five of the eleven attachments listed in the text. Two of these attachments had already been submitted by the representatives with their brief of May 16, 2008. [FN40] The Court forwarded the representatives' original brief and the attachments to the State, which received them on May 23, 2008. In addition, the Court reiterated to Brazil the extension granted by the President to submit its brief answering the application. [FN41] To date, the Court has not received the other attachments listed in the pleadings and motions brief.

[FN36] Cf. Communication of the representatives JG/RJ No. 075/08 of May 5, 2008 (merits file, tome I, folios 480 and 481).
[FN37] Cf. Note of the Secretariat CDH-12,478/023 of May 6, 2008 (merits file, tome I, folio 482).
[FN38] Cf. Communication of the representatives JG/RJ No. 064/08 of April 11, 2008, received by the Court on May 16, 2008, and note of the Secretariat CDH-12.478/026 of May 20, 2008 (merits file, tome I, folios 489 and 554).
[FN39] Cf. Note of the Secretariat CDH-12,478/028 of May 20, 2008 (merits file, tome I, folio 567).
[FN40] Cf. Note of the Secretariat CDH-12,478/029 of May 23, 2008 (merits file, tome I, folio 633).
[FN41] Cf. Note of the Secretariat CDH-12,478/031 of May 23, 2008 (merits file, tome I, folio 642 to 644).
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57. The Court notes that, without prejudice to the two-month time limit for the representatives to present their pleadings, motions and evidence established in Article 36 of the Rules of Procedure, Article 26 of these regulations establishes that, should they be sent

electronically, the original brief and the evidence accompanying it "shall be submitted" ("deverão ser remitidos" [Note: 'shall be forwarded' in the Portuguese version]), within seven days at the latest. [FN42] It can therefore be interpreted, as the representatives have, that the said term of seven days refers to the act of the parties sending the said documents, and not to their reception by the Court. [FN43] Consequently, the Court considers that the original pleadings and motions brief and the five attachments were presented by the representatives respecting the time limit indicated in Articles 26(1) and 36(1) of the Rules of Procedure.

[FN42] This expression corresponds, in the Spanish and French versions of the Rules of Procedure to "deberán ser remitidos" and "doivent être présentés," respectively.
[FN43] To avoid possible ambiguity in the interpretations of this time limit, the Rules of Procedure of the Court in force as of March 24, 2009 establish:
Article 27(1). Filing of briefs
The application, the answer thereto, the brief containing pleadings, motions, and evidence, as well as any other written material addressed to the Court, may be presented in person, by courier, facsimile, telex, mail, or any other method generally used. When any such material is transmitted to the Court by electronic means, the original documents and annexes must be submitted to the Court within a non-renewable term of 21 days as from the expiration of the deadline established to submit those documents. To ensure the authenticity of the documents the Court shall have an adequate protocol.
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58. The Court also observes that, according to Article 38 of the Rules of Procedure, [FN44] the State initially had until June 11, 2008, to present its answer to the application and observations on the pleadings and motions brief. Calculation of the four-month time limit established in Article 38 of the Rules of Procedure began as of the notification of the application, irrespective of reception of its attachments or of the pleadings and motions brief. [FN45] Given the delay in the reception of the attachments to the latter brief, the President, ex officio, granted the State an extension until July 11, 2008; in other words, an additional 30 days to present its defense. Furthermore, the lapse between the date established in the Rules of Procedure on which the representatives should have send their original pleadings and motions brief and its attachments, on April 18, 2008, and the date on which they were received by the State, on May 23, 2008, represented a delay of 35 days in the processing of this case. In this regard, the additional time granted to Brazil to submit its answer to the application up until July 11, 2008, was 30 days; in other words, very similar to the time that transpired between the expiry of the time limit established in the said Article 26(1) and the date on which the State received the original brief and its attachments.

[FN44] Article 38 of the Rules of Procedure applicable to this case stipulated:
Article 38. Answer to the application
The respondent shall answer the application in writing within a period of 4 months of the notification, which may not be extended. The requirements indicated in Article 33 of these Rules shall apply. The Secretary shall communicate the said answer to the persons referred to in Article 35(1) above. Within this same period, the respondent shall present its comments on the written

brief containing pleadings, motions and evidence. These observations may be included within the answer to the application or in a separate brief.
[FN45] The Rules of Procedure of the Court in force as of March 24, 2009 establish:
Article 39(1) Answer to the application.
The respondent shall answer the application together with the brief containing pleadings, motions, and evidence in writing, within the non-renewable term of 2 months as of the receipt of the latter brief and its annexes. [...]
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59. Lastly, despite the State's affirmation that the supposed failure to respect the regulatory time limit prejudiced its defense (supra para. 26), Brazil did not indicate what the said prejudice was or how the delayed receipt of the attachments to the representatives' brief could affect the preparation of its defense negatively, particularly when it was granted an extension of one month to submit its answer to the application. The Court underscores that the representatives' arguments and reasoning were developed in their pleadings and motions brief, which was received within the established time limit, and not in the attachments, which were delayed. Therefore, by receiving a copy of the pleadings and motions brief on April 17, 2008, and since the President had granted an extension ex officio, the State had 30 additional days to the time established in the Rules of Procedure. This allowed it to proceed with the preparation of its defense arguments prior to receiving the attachments on May 23, 2008, when it had 49 days to present its answer to the application and observations on the pleadings and motions brief. Furthermore, it should be emphasized that the factual framework of the case was established in the Commission's application, which had been notified to the State on February 11, 2008, and that the representatives could not include other facts or alter this factual framework. Based on the foregoing, the Court does not observe the alleged prejudice to the State's defense, or to the adversarial principle, or an imbalance between the parties, and therefore admits the pleadings and motions brief and the evidence accompanying it, and considers that the remaining attachments indicated but not provided by the representatives have not been submitted (supra para. 56).

B. Documentary, testimonial and expert evidence

60. The Court received the testimony provided by the witnesses and expert witnesses who are named in this section on the issues mentioned below. The content of the said testimony is included in the corresponding chapter.

1) Vanderlei Garibaldi. Son of Sétimo Garibaldi, alleged victim, proposed by the Inter-American Commission. Among other matters, he testified on the alleged lack of justice in this case and its effects on Mr. Garibaldi's next of kin.
2) Giovani Braun. [FN46] Director of the Department of Agriculture of the Prefecture of the Municipality of Querência do Norte, witness proposed by the representatives. He testified, among other matters, about the efforts of the Garibaldi family to obtain title to the land on which they live, and how they followed the investigations into Mr. Garibaldi's death.
3) Rolf Hackbart. President of the National Institute of Colonization and Agrarian Reform, witness proposed by the State. Among other matters, he testified on Brazil's agrarian reform policy and the relations of the Federal State with the social movements of landless workers.

4) Sadi Pansera. Legal adviser of the Ouvidoria Agrária Nacional of the Ministry of Agrarian Development, witness proposed by the State. Among other matters, he testified on the State's policy to combat violence in rural areas.
5) Sérgio Sauer. Degrees in philosophy and theology, doctorate in sociology, expert witness proposed by the representatives. Among other matters, he provided his expert opinion on the rural workers in relation to the right to land and the alleged continuous situation of vulnerability to violence, threats to life and physical integrity, and also on the supposed ineffectiveness of public policies to combat the violence.

[FN46] On September 16, 2008, the representatives presented their brief with the final list of witnesses and an expert witness and requested the substitution of the witnesses, Atilio Martins Mieiro, Carlos Valter da Silva and Nelson Rodrigues dos Santos, offered in the pleadings and motions brief, by Silvio de Jesús Coelho. Subsequently, in a communication of October 2, 2008, the representatives requested the substitution of the latter by Giovani Braun. On October 8, 2008, the Court advised the State and the Commission that they had until October 14, 2008, to present their observations on the representatives' most recent request. In a communication of October 9, 2008, the Commission indicated that it had no observations on the said request, while the State did not file any objections in this regard. In an order of November 20, 2008, the President required the sworn statement before notary public of Giovani Braun. Cf. Sétimo Garibaldi v. Brazil. Notice of a public hearing, supra note 3, first operative paragraph. In addition, in a communication of March 19, 2009, the representatives asked the Court whether the witness, Giovani Braun, who had already presented his sworn statement before notary public, could also testify during the public hearing. According to the note of the Secretariat CDH-12,478/075 of March 25, 2009, this request was not granted (merits file, tome II, folio 1077).
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61. Regarding the evidence provided during the public hearing, the Court received the testimony of the following persons: [FN47]

1) Iracema Garibaldi. Alleged victim, proposed by the Inter-American Commission. She testified, among other matters, on the investigation conducted in this case, the alleged obstacles and the resulting impunity, as well as the personal consequences for herself and for Mr. Garibaldi's children.
2) Fábio André Guaragni. Witness proposed by the State. Among other matters, he testified about how Police Investigation No. 179/98 concerning Mr. Garibaldi's murder had been conducted.
3) Salo de Carvalho. Expert witness proposed by the Inter-American Commission. He provided his expert opinion on technical aspects of the Police Investigation into the death of Mr. Garibaldi and the supposed impunity in relation to the judicial proceedings in relation to the murder of rural workers in Brazil in the context of the agrarian conflict.

[FN47] Minister Maria Thereza Rocha de Assis Moura, the expert witness proposed by the State, did not appear at the public hearing, but justified her absence.

C. Assessment of the evidence

62. In this case, as in others, the Court accepts the probative value of those documents forwarded by the parties at the opportune procedural moment that were not contested or opposed and whose authenticity was not questioned. [FN48]

[FN48] Cf. Velásquez Rodríguez v. Honduras. Merits. Judgment of July 29, 1988. Series C No. 4, para. 140; Case of Escher et al., supra note 9, para. 67, and Case of Reverón Trujillo, supra note 30, para. 29.

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63. The Court accepts the documents provided by the State and the expert witness proposed by the Commission during the public hearing, because it considers them useful for this case; furthermore, they were not contested and their authenticity and veracity were not questioned.

64. Regarding the testimony and expert opinions given by the witnesses and expert witnesses during the public hearing and by sworn statements, the Court considers them pertinent to the extent that they respond to the purpose defined by the President of the Court in the order requiring them, taking into account the observations presented by the parties. [FN49]

[FN49] Cf. Loayza Tamayo v. Peru. Merits. Judgment of September 17, 1997. Series C No. 33, para. 43; Case of Escher et al., supra note 9, para. 68, and Case of Reverón Trujillo, supra note 30, para. 30.

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65. In this regard, the Commission indicated that it had no observations to make on the sworn statements forwarded by the parties.

66. The representatives made observations on the content of the testimony of Sadi Pansera and Rolf Hackbart. [FN50]

[FN50] Regarding the merits, among other considerations, the representatives indicated that the witness Rolf Hackbart “merely [made] a general statement on the agrarian reform policy and the agencies responsible for implementing it, [without presenting] real data on the results of that policy.” In this regard, the representatives countered the assertions of the witness with the information provided in the expert opinion of Sérgio Sauer. Moreover, they indicated that the affirmation that Sétimo Garibaldi’s next of kin benefited from an agrarian reform program is untrue, and his widow, Iracema Garibaldi, continued living in an irregular situation with two of her children until 2007. Regarding the testimony of Sadi Pansera, they refuted the information he presented concerning violence against landless workers and countered the information provided by this witness with that contained in the publication Conflitos no Campo-Brasil 2007 of the Comissão Pastoral da Terra. Furthermore, the representatives indicated that both testimonies

were "totally invalid" owing to the way in which they were rendered, because they were not certified by a notary or signed by the witnesses, so that the Court should not consider them. Cf. Brief of the representatives of March 16, 2009 (merits file, tome III, folios 1104 to 1106). Regarding the latter, copies of the testimonies received by the Court on February 10, 2009, were forwarded to the representatives and to the Inter-American Commission on February 19, 2009. The same day, the Court received the two original statements, duly signed and authenticated by notary public, the contents of which were identical to the ones forwarded.

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67. The State submitted observations on the content of the testimony of Vanderlei Garibaldi, [FN51] Giovani Braun, [FN52] and the expert opinion of Sérgio Sauer. [FN53]

[FN51] Among other considerations, the State alleged that "the witness merely described the facts that caused the death of the landless worker, Sétimo Garibaldi, and stated that a lawyer had informed him about the closure of the Police Investigation" without mentioning the existence of possible measures adopted by the family to seek sanctions or reparation; therefore, he did not cover the points for which his testimony was proposed. Cf. Brief of the State of March 11, 2009 (merits file, tome III, folio 1084).

[FN52] Among other considerations, the State alleged that this person extrapolated several aspects of the purpose of his testimony and gave opinions that did not correspond to the reality of the actual situation of Sétimo Garibaldi's next of kin. It indicated that the following points should not be considered because they go beyond the facts of the case; (a) statements about land conflicts in Paraná that have nothing to do with the case; (b) opinions about the proceedings of the Judiciary and its actions with regard to the "paramilitary groups in the region," and (c) comments on the alleged murder of a worker that is not related to the case. In addition, they countered the information presented by this witness on the living conditions of the next of kin of Sétimo Garibaldi, with the testimony of Rolf Hackbart, witness proposed by the State, who described the benefits supposedly granted by the State to Sétimo Garibaldi's family. Cf. Brief of the State of March 11, 2009, supra note 51, folios 1084 and 1085.

[FN53] The State rejected the comments made by the expert witness on the situation of rural workers and the supposed attempt to criminalize social movements in Brazil. During the proceedings before the Commission, it described several "programs and actions executed [by the State] to implement the agrarian reform and to combat violence in rural areas." It added that "the Brazilian State does not deny the existence of problems that are still pending solution; [nevertheless,] the agrarian reform is underway even though episodes of violence sometimes occur despite the State's efforts to combat them." However, it could not accept that these situations were generalized, so that they appeared to be rife throughout the country, to the detriment of the policies and institutions that were working to democratize the right of access to land and the protection of the rights of rural workers. Cf. Brief of the State of March 11, 2009, supra note 51, folios 1085 and 1086.

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68. Regarding the observations made by the parties, first, the Court finds that, in keeping with the reiterated criterion in its case law, since the alleged victims Vanderlei Garibaldi and Iracema Garibaldi have a direct interest in this case, their testimonial statements cannot be

assessed alone, and they will therefore be evaluated in conjunction with all the evidence in the proceedings. [FN54]

[FN54] Cf. Case of Loayza Tamayo, supra note 49, para. 43; Case of Escher et al., supra note 9, para. 72, and Case of Reverón Trujillo, supra note 30, para. 45.

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69. In addition, regarding the observations on the contents of the statements, the Court will take the arguments of the parties into consideration and will assess the statements to the extent that they are in keeping with the purpose established in the order of the President and together with the other elements in the body of evidence.

70. Regarding the press cuttings presented by the parties, the Court has considered that they can be assessed when they refer to well-know public facts or declarations by State officials, or when they corroborate aspects of the case. [FN55]

[FN55] Cf. Case of Velásquez Rodríguez, supra note 48, para. 146; Case of Escher et al., supra note 9, para. 76, and Case of Reverón Trujillo, supra note 30, para. 47.

VI. ARTICLES 8(1) (JUDICIAL GUARANTEES) [FN56] and 25(1) (JUDICIAL PROTECTION) [FN57] OF THE AMERICAN CONVENTION, IN RELATION TO ARTICLE 1(1) (OBLIGATION TO RESPECT RIGHTS) [FN58] THEREOF

[FN56] Article 8(1) of the Convention establishes:
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.
[FN57] Article 25(1) of the Convention establishes:
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.
[FN58] Article 1(1) of the Convention establishes that:
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.

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71. As established in Chapter III of this judgment, the Court will examine the facts related to the investigation into the murder of Sétimo Garibaldi that occurred after December 10, 1998, the date on which the State accepted the Court's compulsory jurisdiction. Consequently, it will examine whether the alleged errors and omissions in the said proceedings constituted violations of Articles 8 and 25 of the Convention, in relation to Article 1(1) thereof. To this end, the Court will: (A) determine the facts that have been proved; (B) describe the arguments of the parties, and (C) set out the pertinent legal considerations on: (i) the presumed errors and omissions in the investigation, and (ii) whether this procedure was processed within a reasonable time.

A) Facts

A(i) Background

72. In order to examine the supposed violation of the rights embodied in Articles 8(1) and 25(1) of the American Convention, as it has in previous cases, [FN59] the Court will describe the facts relating to Sétimo Garibaldi's murder and measures taken by State officials that occurred before the State's acceptance of the Court's compulsory jurisdiction, merely as background to the case; consequently, it will not determine any juridical consequences from them.

[FN59] Cf. Almonacid Arellano et al. v. Chile. Preliminary objections, merits, reparations and costs. Judgment of September 26, 2006. Series C No. 154, para. 82; Case of Nogueira de Carvalho et al., supra note 13, para. 67, and García Prieto et al. v. El Salvador. Preliminary objections, merits, reparations and costs. Judgment of November 20, 2007. Series C No. 168, para. 76.

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73. On November 27, 1998, Sétimo Garibaldi was deprived of his life during an extrajudicial eviction operation in Hacienda São Francisco (hereinafter "the Hacienda"), in Querência do Norte, state of Paraná. At the time of the facts, the Hacienda was occupied by about 50 families linked to MST. That day, around 5 a.m., a group of approximately 20 armed and hooded men came to the Hacienda and, firing shots in the air, ordered the workers to abandon their shacks, go to the center of the camp, and lie down on the ground. When Mr. Garibaldi came out of his shack, he was shot in his left thigh by a bullet from a caliber 12 rifle fired by a hooded individual. The worker was unable to withstand the injury and died as a result of a hemorrage. The armed group withdrew without completing the eviction. [FN60]

[FN60] Cf. Answer to the application, supra note 23, folios 667 and 668, opinion of the Public Prosecutor's Office of May 12, 2004 (file of attachments to the answer to the application, sole tome, attachment 4, folios 2130 to 2132), and request to re-open Police Investigation No. 179/98 presented by the Public Prosecutor's Office on April 20, 2009 (file of documents presented at the public hearing, sole tome, folios 2582 and 2585).

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74. Later that same morning, the military police agents, Ademar Bento Mariano and Fábio de Oliveira, accompanied by police clerk Cezar Napoleão Casimir Ribeiro (hereinafter "police clerk Ribeiro"), went to the scene of the crime. Then they proceeded to try and locate Ailton Lobato, administrator of Hacienda São Francisco, who had been recognized as a member of the armed group by witnesses. When he was found at Hacienda Monday (also referred to as "Mundaí" or "Mondai" in the case files), Mr. Lobato had with him a caliber 38 rifle and, since the weapon was not registered and he did not have authorization to carry it, he was arrested in flagrante delicto for illegal possession of a weapon and taken to the Headquarters of the Civil Police of Querência do Norte (hereinafter "the Police Headquarters"). Before leaving the Hacienda Monday, police clerk Ribeiro fired a shot with the seized weapon (infra para. 80). [FN61]

[FN61] Cf. Brief with the State's final arguments (merits file, Tome III, folio 1371); opinion of the Public Prosecutor's Office of May 12, 2004, supra note 60, folios 2130 to 2132; request to re-open the Investigation filed by the Public Prosecutor's Office on April 20, 2009, supra note 60, folios 2581; request for reconsideration filed by Ailton Lobato on December 16, 1998, (file of attachments to the answer to the application, sole tome, attachment 4, folios 2187 to 2190), and written expert opinion presented by Salo de Carvalho (file of documents presented at the public hearing, sole tome, folios 2532).

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75. The same day, Police Investigation No. 179/98 (hereinafter also "the Police Investigation" or "the Investigation") into the facts of the instant case was opened. The purpose of this procedure was to investigate Sétimo Garibaldi's murder as well as the offenses of illegal possession of a weapon and assembling in a gang or band to commit crimes (formação de quadrilha). [FN62]

[FN62] Cf. Opinion of the Public Prosecutor's Office of May 12, 2004, supra note 60, folio 2130, and request to re-open the Investigation filed by the Public Prosecutor's Office on April 20, 2009, supra note 60, folio 2581 and 2582. In addition, the Penal Code in force at the times of the facts, defined the crime of formação de quadrilha as follows: "[w]hen more than three persons assemble in a gang or band in order to commit crimes. Punishment: from one to three years' imprisonment. Sole paragraph: The punishment shall be duplicated if the gang or band is armed" (File of attachments to the answer to the application, sole tome, attachment 12, folio 2509).

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76. Within the framework of the Investigación, prior to December 10, 1998, the testimony was heard of Ademar Bento Mariano and Fábio de Oliveira, the police agents who detained Ailton Lobato. In addition, the testimony was received of "Atílio Martins Mieiro, Carlos Valter da Silva and Nelson Rodrigues dos Santos, all rural workers who were at the scene [of the crime]" and who stated that they had identified "the owner of the Hacienda, Morival Favoreto, and the administrator, Ailton Lobato, as members of the group, because they uncovered their faces for a few moments during the incident." [FN63] Other individuals summoned to testify stated that "the men arrived at the scene [of the crime] with two trucks and a pick-up, which

belonged to the owners of the Hacienda." [FN64] The Police Chief ordered other measures of investigation to be taken and requested the pre-trial detention of Morival Favoreto. [FN65] On December 9, 1998, Prosecutor Nayani Kelly Garcia (hereinafter "Prosecutor Garcia") issued an opinion in favor of the pre-trial detention request and ordered other measures to be taken. [FN66]

[FN63] Answer to the application, supra note 23, folio 668); Cf. Testimony given by Fábio Guaragni during the public hearing before the Inter-American Court on April 29, 2009; opinion of the Public Prosecutor's Office of May 12, 2004, supra note 60, folio 2130, and the State's brief with final arguments, supra note 61, folio 1371

[FN64] Opinion of the Public Prosecutor's Office of May 12, 2004, supra note 60, folio 2130.

[FN65] Cf. Final arguments of the State, supra note 61, folio 1371; opinion of the Public Prosecutor's Office of May 12, 2004, supra note 60, folio 2131, and testimony given by Fábio Guaragni during the public hearing, supra note 63.

[FN66] Cf. Prosecutor Garcia ordered the following measures among others: (a) identification of the black F1000 and grey D-20 vehicles mentioned by the witnesses; (b) a ballistic comparison between the cartridges found at the scene of the crime and the weapon confiscated from Ailton Lobato; (c) introduction in the case file of the incorporation documents of the company Favoretto Colheitas Agrícolas S/C Ltda. ME and the title deeds of the Hacienda; (d) reception of the testimony of other individuals who witnessed the facts, as well as the employees of Morival Favoreto who were possible suspects, and (e) an investigation into whether similar acts had taken place in the region. Cf. the State's brief with final arguments, supra note 61, folio 1371; order of the Public Prosecutor's Office attached to the official note sent by Police Chief Arildo Fulgêncio de Almeida to the Sertanópolis Police Headquarters on February 28, 2000 (file of attachments to the answer to the application, sole tome, attachment 4, folios 2030 and 2031).

A(ii) Facts that occurred after the acceptance of the Court's compulsory jurisdiction

77. On December 14, 1998, the permanent judge of the Loanda Court, Elisabeth Khater (hereinafter "Judge Khater"), did not order the pre-trial detention of Morival Favoreto, because there were "discrepancies among the witnesses at present," ordered compliance with the measures required by the Public Prosecutor's Office on December 9, 1998, and indicated that she would rule on the request for pre-trial detention at a later date. [FN67]

[FN67] Cf. Decision of Judge Khater of December 14, 1998 (file of attachments to the answer to the application, sole tome, attachment 4, folio 1893).

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78. On December 15, 1998, Morival Favoreto requested the Loanda Court to dismiss the request for pre-trial detention against him (supra para. 76), asked to testify in the Police Headquarters of Sertanópolis (hereinafter "the Sertanópolis Headquarters") and presented, among other documents, the registration papers of the white truck with licence plate AEW 7629, registered in the name of the company, Favoretto Colheitas Agrícolas S/C Ltda. (hereinafter "Favoretto Colheitas"), that according to some witnesses (supra para. 76, and infra paras. 80 and

82) had been used in the eviction; the incorporation documents of that company, whose partners were Morival Favoreto, Maurilio Favoreto and Darci Favoreto, and the deeds of Haciendas São Francisco and Monday, also owned by these three individuals. On the same day, Judge Khater ordered that Morival Favoreto should be questioned at the Sertanópolis Headquarters within 10 days. [FN68]

[FN68] Cf. Request to reject the request for the pre-trial detention of Morival Favoreto of December 15, 1998, and first order of Judge Khater of December 15, 1998 (file of attachments to the answer to the application, sole tome, attachment 4, folios 1895 to 1955).

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79. On December 17, 1998, pursuant to the court order, Police Chief Arildo Fulgêncio de Almeida (hereinafter "Police Chief Almeida") ordered that the measures determined by the Public Prosecutor's Office on December 9, 1998, should be carried out and issued an official note to the Sertanópolis Headquarters requesting them to take Morival Favoreto's statement. [FN69]

[FN69] Cf. Order and official note of Police Chief Almeida of December 17, 1998 (file of attachments to the answer to the application, sole tome, attachment 4, folios 1957, 1958 and 1962).

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80. On January 5, 1999, in response to Judge Khater's order of December 15, 1998, [FN70] police clerk Ribeiro presented a report on December 17, 1998, in which he indicated, among other matters, that: (i) on the day of the facts, "at around 6.30 [a.m.], he arrived at the scene of the crime with the military police." On that occasion, none of the witnesses mentioned a revolver or that Morival Favoreto and Ailton Lobato had taken part in the operation; they merely indicated that the group had used a white Volkswagen truck; (ii) then, the said police agents continued on to Hacienda Monday and located Ailton Lobato, who was found with a revolver; (iii) Mr. Lobato did not offer any resistence or obstruction to the police procedures and "showed them the hacienda and the house, which [the police] searched," without finding any other weapon; (iv) according to Ailton Lobato, the above-mentioned truck had been taken to Sertanópolis; (v) he fired a shot from the seized weapon, because he considered it necessary "when [he was] leading the convoy with the military police who were giving orders to the tractor drivers to remove the tractors from Hacienda [Monday] to avoid any type of reprisal from MST, because a vehicle was stationed in front of them, and fearful that it was some kind of blockade set up by that movement, it was agreed that [he] should go on ahead with Ailton Lobato's family and [if] nothing happened, he would fire a shot […] to let the convoy know that it should follow," and (vi) there were discrepancies between the testimony given by the witnesses at the Police Headquarters on November 27, 1998, and their informal statements in the morning at the scene of the crime. [FN71]

[FN70] Cf. Second order of Judge Khater of December 15, 1998 (file of attachments to the answer to the application, sole tome, attachment 4, folio 1894).
[FN71] Cf. Testimony of police clerk Ribeiro of December 17, 1998 (file of attachments to the answer to the application, sole tome, attachment 4, folios 1987 and 1988). In addition, according to the witness Fábio Guaragni, the information provided by police clerk Ribeiro differed from the information provided by the two military police officers, who also testified in the context of the Investigation, prior to the facts of the instant case. Cf. Testimony given by Fábio Guaragni during the public hearing, supra note 63.

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81. On January 20, 1999, owing to the expiry of the legal time limit for concluding the Investigation, Police Chief Almeida asked the Loanda Court to grant an extension so that the procedure could be finalized. On February 17, 1999, Prosecutor Garcia issued a favorable opinion on the requested extension and reiterated her request for the pre-trial detention of Morival Favoreto. [FN72]

[FN72] Cf. Request of Police Chief Almeida of January 20, 1999, and opinion of the Public Prosecutor's Office of February 17, 1999 (file of attachments to the answer to the application, sole tome, attachment 4, folios 1989 and 1992).

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82. On March 9, 1999, Morival Favoreto testified for the first time, denying the charges against him and stating that: (i) he was one of the owners of the Hacienda; (ii) on November 25, 1998, he had gone to São Bernardo do Campo, São Paulo, to accompany his brother, Darci Favoreto, to an appointment with Dr. Flair Carrilho, and had stayed at the home of his cousin "Eduardo"; (iii) he had owned a black F1000 pick-up truck, but had sold it before the facts; (iv) the company, Favoretto Colheitas, possessed a 1994 Volkswagen 7100 truck, but "the said vehicle was not in [the] region"; (v) "he did not carry a weapon, even though he had been threatened", and (vi) he did not know who fired the shot that killed Mr. Garibaldi. The deponent presented a receipt in his name dated November 25, 1998, signed by Dr. Flair Carrilho, for a doctor's visit by Darci Favoreto. [FN73]

[FN73] Cf. Testimony of Morival Favoreto of March 9, 1999, and receipt for payment of doctor's visit in the name of Morival Favoreto (file of attachments to the answer to the application, sole tome, attachment 4, folios 1995 to 1998).

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83. On March 15, 1999, Judge Khater sent the case file to be examined by the Public Prosecutor's Office. On August 4, 1999, Prosecutor Garcia: (i) reiterated that the measures ordered should be taken (supra paras. 76, 77 and 79); (ii) ordered that the testimony of the "individuals who confirm the alibi presented by the accused Morival Favoreto [on] the day of the facts," should be received, and (iii) issued her opinion contrary to the pre-trial detention of the said accused. [FN74]

[FN74] Cf. Order of Judge Khater of March 15, 1999, and opinion of the Public Prosecutor's Office of August 4, 1999 (file of attachments to the answer to the application, sole tome, attachment 4, folios 1999 and 2003). At that time, Prosecutor Garcia stated that the delay in her statement was a result of the accumulation of tasks and the large number of cases that she was responsible for, presenting information in this regard.

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84. On August 13, 1999, the Loanda Court forwarded the case file to the Police Headquarters so that the measures indicated by the Public Prosecutor's Office could be taken. However, even though the Public Prosecutor's Office repeated the request for evidence (supra para. 83) and despite the extension granted on February 11, 2000, in order to conclude the Investigation, no relevant measures were taken from August 14, 1999, to February 22, 2000, that would have allowed the said Investigation to progress. [FN75]

[FN75] Cf. Order of Judge Khater of August 13, 1999; communication of Police Chief Almeida of September 3, 1999; opinion of the Public Prosecutor's Office of November 10, 1999; request of Police Chief Almeida of February 8, 2000, and opinion of the Public Prosecutor's Office of February 11, 2000 (file of attachments to the answer to the application, sole tome, attachment 4, folios 2004 to 2011).

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85. On February 23, 2000, Police Chief Almeida issued a report in which he stated that some of the measures ordered by the Public Prosecutor's Office had been taken (supra paras. 76, 77, 79 and 83) and reiterated the request initially made on November 30, 1998, to the Maringá Institute of Forensic Science (hereinafter "the Institute of Forensic Science") for an expert appraisal of the weapon seized from Ailton Lobato. In addition, he ordered: (i) that an official note be sent to the Sertanópolis Police Headquarters for Morival Favoreto to produce, in addition to certain documents, the black F1000 and the grey D-20 pick-ups at the Loanda Police Headquarters so that they could be identified; (ii) that the testimony of all the Hacienda employees should be received, and (iii) that official communications be sent to the police headquarters that had jurisdiction to receive the testimony of Morival Favoreto's cousin "Eduardo," who should indicate when the accused stayed at his house, and of Dr. Flair Carrilho. The latter should confirm whether the signature on the receipt presented by the person investigated was his; identify the persons with whom the suspect came to his office, specifying the time, day, month and year; clarify whether he had an assistant or secretary, and present his patient's medical records. [FN76]

[FN76] Cf. Letter from Police Chief Almeida of February 23, 2000; certification and official notes of the Querência do Norte Police Headquarters of February 28, 2000, to the Institute of Forensic Science and to the Sertánopolis Police Headquarters Querência do Norte (file of attachments to the answer to the application, sole tome, attachment 4, folios 2012 and 2019).

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86. Following a further request for an extension, on May 15, 2000, Prosecutor Garcia granted a period of 30 days to conclude the Investigation. On June 1, 2000, the findings of the appraisal of the caliber 38 revolver confiscated from Ailton Lobato were added to the file; it attempted to clarify the serial number of the weapon and whether it had been fired near the date of the crime. The expert appraisal concluded that there were signs that the revolver's serial number had been altered and, consequently, it could not be identified. In addition, the experts "abstained from giving an opinion on the time or date on which the weapon was last used to fire a shot" because they did not have essential information, such as how the weapon had been conserved and maintained after its use. [FN77]

[FN77] Cf. Request of Police Chief Almeida of March 27, 2000; opinion of the Public Prosecutor's Office of May 15, 2000; certification of the Querência do Norte Police Headquarters of June 1 2000, and findings of the examination of the weapon issued by the Institute of Forensic Science (file of attachments to the answer to the application, sole tome, attachment 4, folios 2019 to 2026).

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87. On June 1, 2000, Morival Favoreto's second statement, made in Sertanópolis on March 24 that year, was placed in the case file. In it, he repeated his previous statement, provided complete information on his cousin, Eduardo Minutoli Junior, and on Dr. Flair Carrilho and, among other matters, added that: (i) the black F1000 pick-up that he had owned had been sold to Carlos Eduardo Favoreto da Silva on August 27, 1998, who had sold it to someone else on November 24, 1998, and (ii) neither he nor his partners had a grey D-20 truck. Furthermore, he presented evidence of the sales of the F1000 vehicle, of the liquidation of the company Favoretto Colheitas, and of the ownership of the Hacienda. [FN78]

[FN78] Cf. Certification of the Querência do Norte Police Headquarters of June 1 2000; testimony of Morival Favoreto of March 24, 2000; registration documents of the black F1000 vehicle; transfer authorizations of the black F1000 vehicle of August 27, 1998, and November 24, 1998; deed of the Hacienda dated July 25, 1991, and agreement to liquidate the company Favoretto Colheitas (file of attachments to the answer to the application, sole tome, attachment 4, folios 2022, and 2033 to 2045).

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88. On June 1, 2000, official communications were sent to the Police Headquarters of São José dos Campos and São Paulo, respectively, to receive the statements of Eduardo Minutoli Junior and Flair Lopes Carrilho (supra para. 85). [FN79]

[FN79] Cf. Official notes of the Querência do Norte Police Headquarters of June 1 2000 (file of attachments to the answer to the application, sole tome, attachment 4, folios 2049 to 2052).

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89. From June 2, 2000, to July 3, 2001, the Police Headquarters, in the person of police agent Luiz Alves da Silva (hereinafter "police agent Silva"), twice repeated the official notes sent to the the Police Headquarters of São José dos Campos and São Paulo and, on three occasions, requested extensions to complete the pertinent measures, given that they had not been taken. No other measures were taken over this period and all the requests for an extension were approved by the Public Prosecutor's Office. [FN80]

[FN80] Cf. Notes of police agent Silva of June 30, September 30 and December 11, 2000; official notes of police agent Silva of September 11 and November 20, 2000; certification of the Querência do Norte Police Headquarters of June 15, 2001, and opinions of the Public Prosecutor's Office August 7 and October 16, 2000, and of May 23, 2001 (file of attachments to the answer to the application, sole tome, attachment 4, folios 2054 to 2068).

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90. On July 4, 2001, Police Chief Cezar Napoleão Casimir Ribeiro (police clerk Ribeiro, supra para. 74 and 80), who was then head of the Police Headquarters of Santa Isabel do Ivaí, a neighboring town of Querência do Norte, assumed the investigation and ordered that the two orders pending compliance should be reiterated. [FN81]

[FN81] Cf. Order of Police Chief Cezar Napoleão Casimir Ribeiro of July 4, 2001 (file of attachments to the answer to the application, sole tome, attachment 4, folio 2069).

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91. On July 5, 2001, the statement made before the Civil Police of São José dos Campos by Eduardo Minutoli Junior was placed in the case file; in it he merely stated that "his cousin, Morival Favoreto, stayed at his house, with his brother, Darci Favoreto and [the latter's] wife, Sandra Favoreto," without mentioning when this visit took place. On July 10, 2001, Police Chief Cezar Napoleão Casimir Ribeiro reiterated the official communication requiring Flair Carrilho's statement to be received. [FN82]

[FN82] Cf. Testimony of Eduardo Minutoli Junior of September 28, 2000, and official communication of Police Chief Cezar Napoleão Casimir Ribeiro of July 10, 2001 (file of attachments to the answer to the application, sole tome, attachment 4, folios 2073, 2074 and 2076).

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92. From July 11, 2001, to September 11, 2002, no probative measures were taken; instructions were merely issued to comply with the orders of the Public Prosecutor's Office and to include pending documents in the case file. Consequently, on four different occasions during this period extensions were requested in order to take the steps necessary to complete the Investigation. All the requests for an extension were approved by the Public Prosecutor's Office, which granted extensions of up to 90 days. [FN83]

[FN83] Cf. Request of Police Chief Cezar Napoleão Casimir Ribeiro of July 13, 2001; court orders of Police Chief Valdir Fernandes of September 14 and October 11, 2001, and of April 8, 2002; court orders of Police Chief Jairo dos Santos of November 23 and December 20, 2001; court orders of Police Chief Paulo Cezar da Silva of May 10 and August 15, 2002, and opinions of the Public Prosecutor's Office of August 6 and October 23, 2001, and of February 22 and June 17, 2002 (file of attachments to the answer to the application, sole tome, attachment 4, folios 2075 to 2089). The prosecutor explained that the 90-day term granted was exceptional, owing to the proximity of the legal holidays of July 2002, and because the chief of police in charge of the Investigation was also responsible for investigations in five municipalities in the Comarca of Loanda and the Comarca of Santa Isabel do Ivaí.

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93. On September 12, 2002, Police Chief Paulo Cezar da Silva asked the Loanda Court to hand over the confiscated revolver and the two caliber 38 cartridges found at the scene of the crime so that they could be forwarded to the Institute of Forensic Science. [FN84]

[FN84] Cf. Request by Police Chief Paulo Cezar da Silva of September 12, 2002 (file of attachments to the answer to the application, sole tome, attachment 4, folio 2092). According to the witness Fábio Guaragni, the two caliber 38 cartridges were handed in to the Querência do Norte Police Headquarters by a witness. Cf. Testimony of Fábio Guaragni during the public hearing, supra note 63.

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94. On September 13, 2002, the statement made by Flair Carrilho before the Third Inter-state Investigations Headquarters on July 25 that year was added to the Investigation file. Among other matters, the witness stated that: (i) Darci Favoreto, who had been his patient since 1994, came to his appointments accompanied by his wife and another family member; (ii) "he could not state with certainty whether [Morival Favoreto] had been in his office on November 25, 1998"; (iii) "it was absolutely certain that the receipt [referred to] belonged to the clinic, the signature corresponded to the one used by the deponent in his documents at the clinic and, according to the patient's file, the latter was in his office that day [November 25, 1998]," and (iv) for legal reasons, he is unable to provide the patient Darci Favoreto's file. [FN85]

[FN85] Cf. Certification of the Querência do Norte Police Headquarters of September 13, 2009, and testimony of Dr. Flair Lopes Carrilho given before the Third Inter-state Investigations Headquarters of Sao Paulo on July 25, 2002 (file of attachments to the answer to the application, sole tome, attachment 4, folios 2091 and 2106).

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95. From September 14, 2002, to August 9, 2003, three extensions were requested and approved in order to conclude the Investigation, one of them again for 90 days. [FN86]

[FN86] Cf. Request by Police Chief Paulo Cezar da Silva of October 10, 2002; opinion of the Public Prosecutor's Office of November 11, 2002; order of Judge Khater of November 11, 2002; opinion of the Public Prosecutor's Office of March 13, 2003; request by Police Chief Flávio de Almeida Medina of April 20, 2003; opinion of the Public Prosecutor's Office of May 21, 2003 (file of attachments to the answer to the application, sole tome, attachment 4, folios 2109 to 2123), and request by Police Chief Flávio de Almeida Medina of February 12, 2003 (file of attachments to the pleadings and motions brief, attachment 8(1)(1), folio 1270).

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96. On August 10, 2003, Police Chief Paulo Gomes de Souza reiterated the official communication sent to the Loanda Court on September 12, 2002, regarding the seized weapon and the cartridges (supra para. 93). On August 27, 2003, Judge Khater ordered compliance with this request. [FN87] However, on March 25, 2004, the clerk of the Loanda Court certified that "the decision has not been complied with because the weapon was not in [that] court." On the same date, Judge Khater sent the case file to the Public Prosecutor's Office so that the latter could emit an opinion. [FN88]

[FN87] Cf. Court order of Police Chief Paulo Cezar da Silva of August 10, 2003; opinion of the Public Prosecutor's Office of August 25, 2003, and order of Judge Khater of August 27, 2003 (file of attachments to the answer to the application, sole tome, attachment 4, folios 2125 to 2127).

[FN88] Cf. Certification of the Loanda Court of March 25, 2004, and request for an opinion sent to the Public Prosecutor's Office of March 25, 2004 (file of attachments to the answer to the application, sole tome, attachment 4, folio 2128).

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97. On May 12, 2004, prosecutor Edmarcio Real requested the closure of the investigation, without referring to the fact that the weapon had not been found. He based his opinion on the following arguments: (i) four witnesses had said that Morival Favoreto and Ailton Lobato were part of the armed group, but "the other members of MST did not mention having seen these individuals"; (ii) Morival Favoreto denied that he had taken part in the crime and stated that he had been in São Bernardo do Campo accompanying Darci Favoreto to a doctor's appointment. "Dr. Flair [Carrilho had] confirmed the presence Darci Favoreto in his office […] on the day of the facts"; (iii) "Ailton Lobato denied having taken part in the facts and exercised his right to remain silent; (iv) police clerk Ribeiro "mentioned discrepancies in the statements of the members of MST"; (v) it was a hooded individual, and not Morival Favoreto or Ailton Lobato, who shot Mr. Garibaldi; (vi) the individual who fired the rifle could not be identified and no other information was provided to identify the other participants in the operation; (vii) it cannot be inferred that the other members of the group acquiesced to the murder; (viii) the man who fired the shot did not intend to kill Mr. Garibaldi, because he shot him in the leg; (ix) the members of the said group abandoned the scene following the shooting; (x) it had not been entirely proved that the vehicles used during the facts belonged to Morival Favoreto at the time; (xi) four years had elapsed since the facts with no apparent possibility of determining the authorship of the offense; (xii) charges for assembling in a gang to commit crimes were not admissible, because there was no evidence that the members of the group had got together to

commit crimes, and (xiii) with regard to Ailton Lobato in particular, the offense of unlawful possession of weapons had prescribed. [FN89]

[FN89] Cf. Opinion of the Public Prosecutor's Office of May 12, 2004, supra note 60, folios 2130 to 2132.

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98. On May 18, 2004, Judge Khater issued her decision as follows: "I share [the said] opinion [of the Public Prosecutor's Office] and, consequently, decide to close this case file, with the usual notes." [FN90]

[FN90] Decision of Judge Khater on May 18, 2004 (file of attachments to the answer to the application, sole tome, attachment 4, folio 2134).

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99. Iracema Garibaldi filed a mandado de segurança on September 16, 2004, against the order to close the case, asking for the Investigation to be re-opened. In her request, the alleged victim argued that the order was contrary to Article 93, paragraph IX, of the Federal Constitution. [FN91] On September 17, 2004, the Court of Justice of the state of Paraná rejected the remedy, because it found that the request was "incompatible with the scope of the jurisdiction of the [Mandado de Segurança]," since there was no specific and evident right in favor of the applicant. [FN92]

[FN91] Cf. 1988 Federal Constitution (file of attachments to the answer to the application, sole tome, attachment 4, folio 2230).
Art. 93. IX. "All trials by the organs of the Judiciary shall be public and all their decisions founded; to the contrary they will be null […]".
[FN92] Cf. Extract from the proceeding and decision rejecting the mandado de segurança (file of attachments to the application, tome I, attachment 35, folios 160 to 162).

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100. On April 20, 2009, prosecutor Vera de Freitas Mendonça asked the Loanda Court to re-open the investigation, alleging that new evidence had come to light; namely the testimony of Vanderlei Garibaldi and Giovani Braun given in the context of the case before this Court on February 3 and 5, 2009, respectively. Furthermore, the prosecutor requested certain measures, including the following: (i) statements should be taken from Vanderlei Garibaldi and his brothers-in-law, "Darci and Marcelo," who witnessed the facts; Giovani Braun; police clerk Ribeiro; other landless workers present at the time of the crime; Morival Favoreto, and Ailton Lobato; (ii) the weapons, cartridges and bullets seized during the investigation should be located and sent for a technical appraisal by the Institute of Forensic Science, and (iii) a verification should be carried out of whether any private militia had been identified that was active at the time of the murder and in subsequent years in armed conflicts with landless workers. On the same date, Judge Carla Melissa Martins Tria, currently head of the Loanda Court, found that,

"the documents provided by the Public Prosecutor's Office, include testimony by individuals who were not heard during the [Investigation] which provides new elements concerning the information already produced in the investigation into the death of Sétimo Garibaldi." Based on Article 28 of the Code of Criminal Procedure and Directive 524 of the Federal Supreme Court, she ordered the re-opening of the investigation. [FN93]

[FN93] Cf. Request to re-open the investigation presented by the Public Prosecutor's Office on April 20, 2009, supra note 60, folios 2582 and 2586, and decision of the Loanda Court of April 20, 2009 (file of documents presented at the public hearing, sole tome, folios 2590 and 2591).

B) Arguments of the parties

101. The Inter-American Commission alleged that States are internationally responsible for the act or omission of any of their organs or agents, including their judicial and police bodies, when these organs or agents violate human rights established in the Convention. A crucial purpose of any criminal proceeding is to clarify the act investigated. The State must conduct the judicial investigation in good faith, diligently, exhaustively and impartially, and it should be designed to explore all possible lines of investigation leading to the identification of the authors of the crime, in order to prosecute and punish them. In the instant case, this required carrying out all necessary measures and inquiries to discover the truth about Sétimo Garibaldi's death and to punish those responsible. It considered that the authorities in charge of the Investigation failed to take into account the intervention of many perpetrators, concentrating on Morival Favoreto and Ailton Lobato; furthermore, they did not take into consideration the masterminds of the crime or those with a potential interest in the eviction. It identified the following errors, among others, in the investigation: (a) the co-owners of the Hacienda and partners in Favoretto Colheitas were not summoned to testify; (b) apart from the eight statements received, other individuals who witnessed the facts were not called on to give testimony, even though approximately 200 people were camped on the Hacienda; nor were other employees of this property or of Favoretto Colheitas; (c) police clerk Ribeiro, who provided information to the investigation about the shot fired with the weapon seized from Ailton Lobato, subsequently acted as the chief of police in charge of the investigation; (d) the date of the supposed visit of Morival Favoreto to the residence of Eduardo Minutoli Junior was not verified; (e) the caliber 38 bullet cartridges found at the scene of the crime were not compared with the weapon seized; (f) this weapon disappeared from the Loanda Court; (g) when urged to issue an opinion on the disappearance of the weapon, the Public Prosecutor's Office did not refer to it and did not adopt the relevant investigative measures; instead it requested the closure of the Investigation, even though the Police Chief had not completed it and presented his concluding report, and (h) at different times, no substantive actions were taken in the Investigation. The Commission added that the numerous serious errors in the investigation should be examined within their specific context; namely, that this was an operation involving a violent eviction from private property and that the facts of the case are in line with a common practice in Brazil. Both elements should have facilitated the development of the Investigation, because the operation evidently responded to a specific purpose and a modus operandi of which the authorities should have been aware.

102. The Commission maintained that, even though several years have elapsed since the State accepted the Court's jurisdiction, "the offense investigated remains unpunished, and more than a reasonable time has passed without the State's domestic bodies responsible for the investigation, prosecution and punishment of the facts producing results." Moreover, "the characteristics of the act, the personal situation of those implicated in the investigation procedure, the degree of complexity of the case, and the procedural activity of the interested parties [do not] constitute elements that can excuse the unjustified delay in the administration of justice that occurred in this case." The impunity of human rights violations is especially important in the case of landless workers, because it is one of the principal causes of violence in the rural areas of Brazil. Hence, regarding the facts subsequent to December 10, 1998, "the delay and lack of due diligence in the investigation procedure and the collection of essential evidence […] characterize a violation of Articles 8 and 25 of the American Convention, in relation to Article 1(1) thereof."

103. The representatives alleged that there are sufficient elements to prove the State's responsibility for the violation of the judicial guarantees of Sétimo Garibaldi's next of kin. They maintained that the State must act diligently, in order to ensure that investigations are conducted genuinely and not as a mere formality predestined to be ineffective, respecting the requirements of independence, effectiveness and promptness. The victims of human rights violations have the right to a rapid solution to such offenses and to the State authorities resolving them within a reasonable time. The investigation that is the subject of the instant case lasted almost six years and was marred by errors and the negligence and partiality of the State authorities. Even though sufficient elements existed to file criminal proceedings against the suspects, the investigative procedure was closed without identifying those responsible for Mr. Garibaldi's death, and this crime remains in absolute impunity.

104. The representatives alleged the following irregularities, among others, in the investigation: (a) by rejecting the request for the pre-trial detention of Morival Favoreto on December 14, 1998, Judge Khater acted in his favor, because the discrepancies indicated by the judge in her decision did not exist; (b) Morival Favoreto's testimony was only received on March 9, 1999; (c) there is no number on the receipt submitted by the latter, so that it could have been issued and signed on any date, without it being possible to verify when it really was issued; (d) the said receipt and the testimony of Eduardo Minutoli Junior and Flair Carrilho do not prove the presence of Morival Favoreto in São Bernardo do Campo on November 27, 1998; (e) despite this and the identification of Morival Favoreto by witnesses, the Public Prosecutor's Office understood that there was insufficient evidence to clarify the authorship of the crime and requested the closure of the investigation; (f) neither Vanderlei Garibaldi, who was an eye witness to the murder of Sétimo Garibaldi, nor the presumed purchaser of the pick-up truck that Morival Favoreto may have used during the eviction operation were summoned to give testimony; (g) the Public Prosecutor's Office made no mention of the disappearance of the weapon seized during the investigation; (h) the alleged discrepancies in the testimony of the landless workers indicated by police clerk Ribeiro did not exist, as shown by the statements of these witnesses and of the military police who arrived at the scene of the crime and detained Ailton Lobato in flagrante delicto, and (i) Judge Khater did not provide grounds for her decision to close the Investigation. Regarding the delay in this procedure, the representatives indicated that this case was not complex because there was sufficient information about the masterminds and perpetrators, as well as the testimony of witnesses. Regarding the procedural activity of the

interested party, even though the Investigation had been closed, Iracema Garibaldi filed a mandado de segurança to ensure her right that the investigation into the murder should continue. As regards the conduct of the authorities, the partiality and negligence with which the police and judicial authorities treated Sétimo Garibaldi's death is obvious. In conclusion, it is evident from the facts that there was no justification whatsoever for the delay in the Police Investigation, and much less for its closure.

105. Regarding the re-opening of the Investigation, the representatives considered that this was just one more example of the irregularities in the procedure, because the supposed new evidence was already in the case file. This State action confirms that there were sufficient elements to sustain the opinio delicti and, consequently, not to close the Investigation. They underscored that none of the members of Sétimo Garibaldi's family were called on to give testimony before the police, so that the re-opening of the Investigation was only a maneuver by the State to absolve itself from the violations that occurred in this case. Based on the above, they asked the Court to declare that the State had violated the right to judicial protection and to judicial guarantees of Sétimo Garibaldi's next of kin.

106. The State alleged that the Court has jurisdiction to examine domestic investigations and judicial proceedings only when serious irregularities are involved, and this did not happen in the instant case. It considered that there were no errors in the Investigation that would invalidate the whole procedure. Brazilian law provides for "an adequate and rational control of the general procedure to close investigations." The Public Prosecutor's Office exercises the external control of criminal investigations carried out by the police and is the only body that can request the competent judge to order the closure of an investigation or the filing of a criminal action. In Brazil, the principle of the obligatory nature of criminal prosecution is enshrined in law; consequently, there is an obligation to file a criminal action upon verification that evidence exists that a crime has been committed, and regarding the authorship. In addition, based on the principle of functional independence, the Constitution guarantees the Public Prosecutor's Office the freedom to form its own opinion when examining the requirements to file criminal charges. Furthermore, the closure of the investigation requires an explanation of the reasons for this request as well as subsequent judicial control, precisely to preclude failure to comply with the principle of the obligatory nature of criminal prosecution. Also, decisions to bring charges or to close an investigation can be reviewed by the head of the Public Prosecutor's Office at the request of the competent judge of the criminal action. In addition, should new evidence arise, the Public Prosecutor's Office retains the ability to re-open the investigation. In this regard, the testimony given by the witnesses Vanderlei Garibaldi and Giovani Braun during the processing of the instant case was considered new evidence and, consequently, the Investigation was re-opened. This occurred soon after the public hearing, because it was only then that the Public Prosecutor's Office examined this evidence. The representatives could have sent the said statements directly to the Public Prosecutor's Office, thus avoiding submission of the application.

107. In response to the alleged irregularities indicated in the application, the State affirmed, among other matters, that: (a) it had carried out an expert appraisal of the seized weapon, which was inconclusive as regards the last time it was fired; (b) police clerk Ribeiro, in charge of the investigation, searched the hacienda where Ailton Lobato was arrested for weapons but found

none; (c) Morival Favoreto was questioned about his weapon and stated that he did not carry one; (d) Ailton Lobato was questioned, but exercised his constitutional right to remain silent; (e) Morival Favoreto was not questioned about the other members of the armed group, because he denied having participated in the crime; neither was Ailton Lobato, because he exercised his right to remain silent; (f) statements were not taken from the other owners of the Hacienda, because they were not identified by the witnesses as participants in the operation; (g) an investigation was carried out with regard to the F1000 pick-up, and it was verified that it had been sold before the eviction; also, Morival Favoreto denied that he owned the D-20 pick-up, and (h) it was not necessary to carry out an expert appraisal of the receipt for the doctor's visit, because Dr. Flair Carrilho confirmed that he had issued it and said that he did not keep a record of those who accompanied his patients during their visits. The State also emphasized that: Morival Favoreto testified twice; the police went to the scene of the crime; statements were taken in other jurisdictions by means of official requests; the pre-trial detention of Morival Favoreto was requested; expert appraisals were carried out and diverse statements were taken. Furthermore, the State acknowledged that a ballistic comparison between the seized weapon and the cartridges found at the scene of the crime could have been performed. Consequently, in its opinion, with the exception of the absence of the appraisal, there were no errors in the investigation that the State should rectify.

108. In addition, Brazil indicated that the absence of a concluding report is not an irregularity in police investigations, because there is no legal provision that prohibits the closure of these procedures before the concluding report of the chief of police has been presented. Regarding the judge's failure to provide grounds for her decision in favor of closing the Investigation, this is common practice when a judge agrees with the reasons given by the Public Prosecutor's Office in the respective request, and it has been accepted by the case law of the Federal Supreme Court. With regard to the testimony of the victim's son, Vanderlei Garibaldi, the State maintained that it was not obliged to receive it, because article 6, paragraph IV, of the Code of Criminal Procedure merely establishes that, if he/she is alive, the victim should be heard. In relation to the alleged disappearance of the weapon seized from Ailton Lobato, it advised that the said piece of evidence was sent to the Institute of Forensic Science for an expert appraisal and, despite the presentation of the respective findings on June 1, 2000, there is no record in the case file that the weapon was returned to the Police Headquarters. Hence, the fact that the court does not have the weapon "does not mean that it has been lost; it could still be in the custody of the Civil Police or of the Institute of Forensic Science that performed the expert appraisal." Regarding the reasons for the lapses when no measures were taken during the Investigation, the respective case file contains the explanations, which include legal holidays, the workload, and delays while waiting for compliance with official requests sent to other jurisdictions. Successive extensions of the time limit for concluding an investigation are established in article 10, paragraph 3, of the Code of Criminal Procedure and are restricted to the time limit for prescription of the offense investigated, which, in the case of murder, is 20 years. In the State's opinion, there was no negligence in the way the investigation was conducted.

109. According to the State, in the instant case, the prosecutor examined all the evidence produced during the Investigation and concluded that it was a hooded individual who shot Sétimo Garibaldi, and not Morival Favoreto or Ailton Lobato. The prosecutor also stated in her opinion that there were contradictions in the testimony given by the rural workers, and that it

could not be inferred that the other members of the armed group were in agreement with the murder. Consequently, when analyzing whether the probative material was sufficient and reasonable to support the accusation at a trial, the prosecutor acted based on her personal conviction, protected by the principle of functional independence, and considered it imprudent to file a criminal complaint. The said prosecutor also stated that, owing to the absence of evidence provided by the witnesses that could identify the other members of the armed group, she did not see how to clarify the authorship of the crime and, thus, opted to close the investigation.

110. Lastly, the State indicated that, in other cases of agrarian conflict in the state of Paraná, the Public Prosecutor's Office emitted its opinio delicti and filed criminal actions for the perpetration of crimes, some of which had been committed against members of MST. Brazil affirmed that it had a consistent policy of combating violence in rural areas and, in this regard, mentioned the Paz no Campo program, whose activities include receiving complaints, mediating conflicts and training mediators throughout the country. It also stressed that the National Program to Combat Violence in Rural Areas had established specific legal mechanisms, such as courts, prosecutors' offices, and police headquarters specialized in investigating agrarian conflicts. Based on the foregoing, the State asked the Court to consider irreceivable the allegations of violations of Articles 8 and 25 of the Convention, in relation to Article 1(1) thereof.

C) Legal considerations

111. In previous cases, the Court has recognized the necessary relationship between the general obligation to guarantee rights indicated in Article 1(1) of the Convention and the specific rights protected by this instrument. [FN94] The said obligation to guarantee rights gives rise to State obligations to ensure the free and full exercise of the rights established in the Convention to every person subject to its jurisdiction. [FN95] Since it is related to specific rights, this guarantee obligation can be complied with in different ways depending on the right that the State has the obligation to guarantee and the particular characteristics of the case. [FN96]

[FN94] Cf. Vargas Areco v. Paraguay. Merits, reparations and costs. Judgment of September 26, 2006. Series C No. 155, para. 73; Case of García Prieto et al., supra note 59, para. 98.
[FN95] Cf. Case of Velásquez Rodríguez, supra note 19, para. 91; Case of Kawas Fernández, supra note 14, paras. 74 and 110, and Valle Jaramillo et al. v. Colombia. Merits, reparations and costs. Judgment of November 27, 2008. Series C No. 192, para. 97.
[FN96] Cf. Case of Vargas Areco, supra note 94, para. 73; Case of Heliodoro Portugal, supra note 13, para. 141, and Case of Valle Jaramillo et al., supra note 95, para. 97.

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112. The obligation to investigate human rights violations is one of the positive measures that States must adopt to guarantee the rights embodied in the Convention. [FN97] The Court has maintained that, to comply with this guarantee, the State must not only prevent, but also investigate violations of the human rights embodied in this instrument, such as those alleged in the instant case, as well as trying to re-establish the violated right when possible and, if applicable, to repair the damage produced by the human rights violations. [FN98]

[FN97] Cf. Case of Velásquez Rodríguez, supra note 48, paras. 166 and 176; Case of Reverón Trujillo, supra note 30, para. 146, and Case of Valle Jaramillo et al., supra note 95, para. 98.
[FN98] Cf. Case of Velásquez Rodríguez, supra note 48, para. 166; Case of Escher et al., supra note 9, para. 194, and Ticona Estrada et al. v. Bolivia. Merits, reparations and costs. Judgment of November 27, 2008. Series C No. 191, para. 78.

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113. It is pertinent to underscore that the obligation to investigate is an obligation of means and not of results. However, the State should assume it as an inherent juridical right and not as a mere formality predestined to be ineffective, [FN99] or simply as a measure responding to special interests that depends on the procedural initiative of the victims or their next of kin or on the private contribution of probative elements. [FN100]

[FN99] Cf. Case of Velásquez Rodríguez, supra nota 48, para. 177; Case of Escher et al., supra note 9, para. 195, and Case of Kawas Fernández, supra note 14, para. 101.
[FN100] Cf. Case of Velásquez Rodríguez, supra note 48, para. 177; Case of Escher et al., supra note 9, para. 195, and Case of Tristán Donoso, supra note 9, para. 146.

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114. In light of this obligation, in investigations into a violent death, as in the instant case, as soon as the State authorities are aware of the act, they should initiate ex officio and without delay a genuine, impartial and effective investigation. [FN101] This investigation should be conducted by all legal means available and be designed to discover the truth.

[FN101] Cf. The Gómez Paquiyauri Brothers v. Peru. Merits, reparations and costs. Judgment of July 8, 2004. Series C No. 110, para. 146; Case of Kawas Fernández, supra note 14, para. 101, and Case of Perozo et al., supra note 14, para. 298.

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115. This Court has specified the guiding principles that must be observed when investigating a violent death. According to the Inter-American Court's case law, the State authorities who conduct an investigation of this type should try, at least, inter alia: (a) to identify the victim; (b) to collect and preserve the probative material related to the death in order to assist any potential criminal investigation of those responsible; (c) to identify possible witness and obtain their testimony in relation to the death that is being investigated; (d) to determine the cause, manner, place and time of death, as well as to identify any pattern or practice that may have caused the death, and (e) to distinguish between natural death, accidental death, suicide and murder. It is also necessary to investigate the scene of the crime exhaustively and ensure that autopsies and analyses of the human remains are conducted rigorously by competent professionals using the most appropriate procedures. [FN102]

[FN102] Cf. Juan Humberto Sánchez v. Honduras. Preliminary objection, merits, reparations and costs. Judgment of June 7, 2003. Series C No. 99, para. 127; Case of Kawas Fernández, supra note 14, para. 102, and Zambrano Vélez et al. v. Ecuador. Merits, reparations and costs. Judgment of July 4, 2007. Series C No. 166, para. 121. Also, according to the United Nations Manual on the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary Executions, other measures may be necessary, depending on the circumstances of the case, such as: "the families of the deceased and their legal representatives shall be informed of, and have access to, any hearing and to all information relevant to the investigation, and shall be entitled to present evidence," and to a "report, within a reasonable period of time," on the procedures and conclusions of the investigations, etc. Cf. United Nations Manual on the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary Executions, Doc. E/ST/CSDHA/.12 (1991).

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116. Furthermore, the Court has referred to the right of the next of kin of the alleged victims to know what happened and who was responsible for the facts. In this regard, the Court has also indicated that it can be inferred from Article 8 of the Convention that the victims of human rights violations, or their next of kin, should have wide-ranging possibilities of being heard and acting in the respective proceedings to clarify the facts and punish those responsible, and to seek due reparation. [FN103] In this regard, the Court has indicated that, in cases of extrajudicial execution, the rights affected correspond to the deceased victim's next of kin, who are the interested party in seeking justice and to whom the State must provide effective remedies to ensure access to justice, the investigation and eventual punishment of those responsible, if applicable, and comprehensive reparation of the consequences of the violations. [FN104]

[FN103] Cf. The "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits. Judgment of November 19, 1999. Series C No. 63, para. 227; Case of García Prieto, supra note 59, para. 102, and Serrano Cruz Sisters v. El Salvador. Merits, reparations and costs. Judgment of March 1, 2005. Series C No. 120, para. 63

[FN104] Cf. Case of Valle Jaramillo, supra note 95, para. 170, and Case of Kawas Fernández, supra note 14, para. 120.

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117. Consequently, pursuant to the Court's case law, the victims' next of kin have the right, and the States the obligation, to ensure that what happened to the victims is investigated effectively by the State; that proceedings are filed against those presumably responsible for the unlawful acts; that, if applicable, the latter receive the pertinent punishment, and that the damage suffered by the said next of kin is repaired. [FN105]

[FN105] Cf. Durand and Ugarte v. Peru. Merits. Judgment of August 16, 2000. Series C No. 68, para. 130; Case of Ticona Estrada et al., supra note 98, para. 81, and Case of Heliodoro Portugal, supra note 13, para. 146.

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118. The Court has also indicated that the obligation to investigate and the corresponding right of the next of kin are not only a result of the treaty-based norms of international law that are binding for the States Party, but also arise from domestic laws that indicate the obligation to investigate, ex officio, certain unlawful conducts, and the norms that allow the victims or their next of kin to report offenses or file complaints, evidence or petitions or any other measure in order to play a procedural role in the criminal investigation to establish the truth of the facts. [FN106]

[FN106] Cf. Case of García Prieto et al., supra note 59, para. 104; Case of Kawas Fernández, supra note 14, para. 77, and Case of Valle Jaramillo et al., supra note 95, para. 99.

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119. The Brazilian Code of Criminal Procedure, in force at the time of the facts, established: (i) in article 5, that "in crimes subject to public [criminal] actions, the police investigation shall be initiated: I. Ex officio; II. At the request […] of the victim or of the person empowered to represent him"; [FN107] (ii) in article 14, that "the victim, or his legal representative, and the accused may request any measure, and the authority shall decide whether it shall be implemented"; [FN108] and (iii) in article 27, that "any citizen may request the initiative of the Public Prosecutor's Office, in cases subject to public [criminal] action, by providing the Office with written information on the act and the authorship and indicating the time, the place and the evidence." [FN109] Moreover, although article 129 of the Federal Constitution establishes that filing a criminal action is an exclusive function of the Public Prosecutor's Office, [FN110] article 268 of the Code of Criminal Procedure establishes that the victim or his legal representative or, in their absence, the spouse, parent, child or sibling may intervene as assistants of the Public Prosecutor's Office in the criminal action. [FN111]

[FN107] Code of Criminal Procedure (File of attachments to the answer to the application, sole tome, attachment 11, folio 2339).

Art. 5. In criminal actions, the Police Investigation shall be initiated:

I. Ex officio;

II. At the request of the judicial authority or of the Public Prosecutor's Office, or at the request of the victim or whosoever represents the latter […].

[FN108] Code of Criminal Procedure, supra note 107, folio 2340.

Art. 14. The victim, or his or her legal representatives, and the accused may request any measure, which shall or shall not be carried out, based on the opinion of the authority.

[FN109] Code of Criminal Procedure, supra note 107, folio 2341.

Art. 27. Any member of the public may request the Public Prosecutor's Office to take the initiative, in the cases in which a criminal action is in order, providing it, in writing, with information on the act and the authorship, and indicating the time, the place and the evidence.

[FN110] Cf. 1988 Federal Constitution, supra note 91, folio 2238.

Art. 129. The institutional functions of the Public Prosecutor's Office are:

I. To promote, exclusively, criminal actions, pursuant to the law; [...]

[FN111] Cf. Code of Criminal Procedure, supra note 107, folios 2342 and 2370.

Art. 268. At all stages of the public criminal action, the victim or his legal representative or, in their absence, any of the persons mentioned in article 31 may intervene, as assistants to the Public Prosecutor's Office.
Art. 31. If the victim is deceased or declared absent by a judicial decision, the right to file the complaint or prosecute the action shall pass to the spouse, parent, child or a sibling.
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120. Based on the foregoing, the Court must determine whether the State has violated the rights established in Articles 8(1) and 25(1) of the Convention, in relation to Article 1(1) thereof. To this end, the Court has established that clarification of whether the State has violated its international obligations owing to the actions of its judicial bodies can lead the Court to examine the corresponding domestic proceedings. [FN112] Hence, according to the circumstances of the case, the Court may have to examine the procedures that are followed in order to establish the grounds for judicial proceedings, particularly the investigative measures on which the opening and evolution of such proceedings depend. Therefore, the Court will examine the allegations concerning Police Investigation No. 179/98, particularly as regards any acts and omissions that have occurred since December 10, 1998, and will decide whether the rights to judicial guarantees and protection were violated in the said domestic procedure.

[FN112] Cf. Case of the "Street Children" (Villagrán Morales et al.), supra note 103, para. 222; Case of Heliodoro Portugal, supra note 13, para. 126, and Case of Tristán Donoso, supra note 9, para. 145.

C(i) Errors and omissions in Police Investigation No. 179/98

121. Before examining the alleged errors and omission in Police Investigation No. 179/98, the Court will refer to the representatives' allegation concerning the supposed partiality of Judge Khater when denying the request for the pre-trial detention of Morival Favoreto. The representatives stated that this decision was based on supposed discrepancies in the testimony, which, in their opinion, did not exist; consequently Judge Khater unduly favored the said accused. The Court observes that to examine this allegation it would have to analyze the testimonial statements that were given before December 10, 1998, and compare them with the questioned judicial measure. Since these statements fall outside the Court's temporal competence, they cannot be examined and juridical consequences cannot be extracted from them in relation to the State's responsibility. The Court does not have any other elements that support this allegation by the representatives.

Failure to gather essential 'prima facie' testimony

122. The Court notes that testimony was not received, which prima facie could have proved essential to clarify the facts. Vanderlei Garibaldi, who had witnessed the eviction operation and informed the police of the murder, and his brother-in-law, Marcelo, who was with Mr. Garibaldi at the time of his death, were among the persons who were not summoned to testify. [FN113] Even though Vanderlei Garibaldi did not go to the Police Headquarters spontaneously to make a

statement, it was for the State authorities to summon him, because the Investigation should have been conducted, ex officio, by the State and did not depend on the actions of the victim's next of kin. In addition, the Court also observes that, according to the State's subsequent actions, Vanderlei Garibaldi's testimony was so important that, several years later, his statement before the Inter-American Court led the Public Prosecutor's Office to request the re-opening of the Investigation. Therefore, the Court finds that the State did not seek exhaustively to identify possible witnesses and obtain statements that would have allowed the facts concerning Sétimo Garibaldi's death to be clarified.

[FN113] Cf. Testimony given by Vanderlei Garibaldi before notary public on February 3, 2009 (merits file, tome II, folios 1048 and 1049), and written expert opinion presented by Salo de Carvalho, supra note 61, folio 2532. The State did not contest the fact that it was Vanderlei Garibaldi who informed the police of the murder.

Failure to clarify contradictions in the testimonial statements

123. In addition, as indicated by the State and the witness before this Court, Fábio Guaragni, [FN114] the request to close the investigation made by the Public Prosecutor's Office was based principally on the information provided by police clerk Ribeiro that there were inconsistencies between the statements made by the witnesses (supra paras. 97 and 109). Despite possible discrepancies, no measure was taken to try and clarify them, such as a confrontation between the individuals whose statements were supposedly contradictory, [FN115] and no other statements were sought that could have clarified the alleged differences.

[FN114] Cf. The State's brief with final arguments, supra note 61, folio 1374, and testimony given by Fabio Guaragni at the public hearing, supra note 63.

[FN115] As indicated by the Court (supra note 71), the witness Fabio Guaragni affirmed that there were differences between the statements made by the military police and by police clerk Ribeiro. Also, according to the Code of Criminal Procedure in force at the time of the facts, supra note 107, folios 2339 and 2366:

Art. 6. When informed that a criminal offense has been committed, the police authority must: [...] VI. Proceed to the identification of persons and objects and to confrontations;

Art. 229. The confrontation shall be admitted between the accused, between the accused and a witness, between witnesses, between the accused or a witness and the victim, and between the victims, whenever their statements are at variance with regard to relevant facts or circumstances.

Sole paragraph. Those confronted shall be re-questioned, so that they can explain the conflicting points, gradually decreasing the confrontations.

Omissions in the evidence and rendering evidence unusable

124. The Inter-American Court notes that the inadequate handling of the seized weapon could have rendered an important piece of evidence unusable. It was contrary to acceptable standards for an investigation that police clerk Ribeiro used the weapon of one of the accused, who he was arresting, following the act. Moreover, there was no rational basis for using the shot as a means of communication with other persons (supra para. 80). Thus, the condition and state of the weapon was altered, making it impossible for the expert appraisal designed to determine whether it had been fired recently to produce any type of result that could have been useful to the Investigation (supra para. 86). [FN116]

[FN116] There is no record in the case file that this conduct was investigated by police clerk Ribeiro's superiors, or by the Public Prosecutor's Office or the judge who were in charge of the Investigation. To the contrary, in July 2001, police clerk Ribeiro, who at that time was chief of police, took over the Investigation.

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125. Furthermore, also concerning this weapon, the Court observes that the State acknowledged that the absence of an expert appraisal of a ballistic comparison between the caliber 38 cartridges found at the scene of the eviction and the weapon of the same caliber confiscated from one of the accused constituted a flaw in the Investigation (supra para. 107). The relevance of this appraisal was confirmed by the witness Fabio Guaragni, the expert witness, Salo de Carvalho, and also the prosecutor, Vera de Freitas Mendonça, [FN117] who ordered the appraisal following the re-opening of the Investigation in April 2009. This appraisal could have been useful to prove the participation of one of the accused in the eviction operation. [FN118]

[FN117] Cf. Testimony given by Fabio Guaragni at the public hearing, supra note 63; written expert opinion presented by Salo de Carvalho, supra note 61, folio 2532, and request to re-open the Investigation presented by the Public Prosecutor's Office on April 20, 2009, supra note 60, folio 2597.

[FN118] The Court observes that the competent bodies were not asked to provide the list of weapons registered in the name of the Hacienda's employees or owners, and there is no record that their homes were searched.

Lost evidence

126. The Court notes that the whereabouts of the seized weapon, which was in the custody of the State, is unknown. There is no record that this evidence or the caliber 38 cartridges found at the scene of the crime were attached to the file of the Investigation, despite the provisions of article 11 of the Code of Criminal Procedure. [FN119] Furthermore, there is no record in the case file of where the evidence was sent. In addition, despite Brazil's affirmation that the weapon has not been lost, but could be at the Police Headquarters or at the Institute of Forensic Science, the Court notes that the State did not provide precise information in this regard. Also, two different chiefs of police, who were in charge of the Investigation at different times, asked the Loanda Court for the revolver, and it is improbable that they would have done so if the evidence sought

was at the Police Headquarters (supra paras. 93 and 96). Given the absence of this information, when called upon to give its opinion in this regard, the Public Prosecutor's Office did not mention this situation and proceeded to request the closure of the investigation.

[FN119] Cf. Code of Criminal Procedure, supra note 107, folio 2340.
Art. 11. The instruments of the crime, together with any object of interest as evidence, shall be attached to the file of the investigation.

Failure to comply with the measures ordered

127. The Court also notes the failure to comply with some of the measures ordered by the chiefs of police and by the Public Prosecutor's Office. For example, the order given by Police Chief Almeida requiring that the vehicles that had been used in this operation should be produced for identification by the witnesses was not complied with; and neither was the order of the Public Prosecutor's Office that "the identification of the black F1000 and grey D-20 vehicles, mentioned by the witnesses, be carried out" [FN120] (supra paras. 76 and 85). Similarly, other measures requested by Prosecutor Garcia and reiterated by the different police chiefs were not taken in the Investigation; they included conducting an appraisal of the ballistic comparison between the weapon confiscated from Ailton Lobato and the cartridges found at the scene of the crime; receiving the statements of other eyewitnesses, of Morival Favoreto's employees, and of other possible suspects, and finding out whether similar acts had taken place in the region. It is worth noting that, despite Prosecutor Garcia's orders, no other eyewitnesses were called, especially bearing in mind the nature of the operation that involved around 50 families that were at the Hacienda during the eviction; it is also strange that the order to summon the Hacienda's employees to give testimony was not complied with (supra paras. 76 and 85). Likewise, the case file shows that some of the evidence required by Police Chief Almeida and by Prosecutor Garcia was only produced partially. [FN121]

[FN120] In this regard: (i) The new owner of the black F1000 pick-up was not summoned to produce the vehicle to the police authorities; (ii) the white truck owned by the company Favoretto Colheitas was not subjected to identification by the witnesses; nor was any evidence sought that this vehicle was not in Querência do Norte at the time of the facts (supra paras. 80 and 82), and (iii) the list of the vehicles registered in the name of the employees and owners of the Hacienda or of the nearest relatives of the latter at the time of the murder was never verified with the competent public bodies.
[FN121] In this regard, despite the instructions given in Police Chief Almeida's order to take the testimony of Eduardo Minutoli Junior (supra paras. 85 and 91), he was not questioned about the date on which Morival Favoreto stayed at his home in order to accompany his brother to a doctor's visit. As the witness Fábio Guaragni stated before this Court, that testimony was "laconic" and the deponent "was not asked essential questions." Testimony rendered by Fabio Guaragni at the public hearing, supra note 63. Similarly, the witness, Flair Carrilho, was not asked all the questions indicated by Police Chief Almeida in his request (supra paras. 85 and 94). Consequently, the Prosecutor's request that "the alibi presented by the accused, Morival

Favoreto, for the day of the facts be confirmed" was not complied with either (supra para. 83). In any case, the possible presence of Morival Favoreto in another city on November 25, 1998, did not provide an explanation with regard to a fact that occurred two days later.

Error in the request to close the Investigation

128. Additionally, the request of the Public Prosecutor's Office to close the Investigation was based, among other reasons, on the fact that "Morival Favoreto denied taking part in the facts, stating that he was in São Bernardo do Campo […] accompanying his brother, Darci Favoreto, on a doctor's visit," and that Dr. Flair Carrilho had "confirmed the presence of Darci Favoreto in his office, in the [said] city on the day of the facts (supra para. 97). In this regard, the Court highlights that, contrary to the statement made by the prosecutor, the witness Flair Carrilho stated that he attended Darci Favoreto on November 25, 1998, and that it was his signature on the receipt with the same date and, thus, he did not confirm the presence of Darci Favoreto, or of his brother Morival, in his office on November 27, 1998, the date of the facts.

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129. When requesting the closure of the investigation, the Public Prosecutor's Office did not consider the possibility of ordering the measures mentioned in the previous paragraphs concerning the statements, the vehicles and the weapons used in the eviction (supra paras. 122 to 127). Irrespective of the personal conviction of the prosecutor, it is clear that the latter accepted as true the information provided by police clerk Ribeiro and Morival Favoreto, without seeking to prove it, or compare it with other reiterated evidence in the case file, thus waiving the State's punitive powers. In addition, Judge Khater's decision to close the investigation merely endorsed the opinion of the Public Prosecutor's Office; it did not assess the measures that had been taken or provide grounds to justify the decision. In this regard, when deciding to close the investigation, the judge failed to exercise effective judicial control over the said request, which, as the Court has already described, contained various errors and omissions.

130. The Court considers that the State bodies responsible for an investigation into the violent death of an individual, the purpose of which is to determine the facts, identify those responsible and decide their possible punishment, should perform their task diligently and exhaustively. Given the juridical right to which the investigation relates, there is an obligation to make every effort to ensure that all necessary measures are taken to comply with this objective. The negligent or omissive action of State bodies is not compatible with the obligations arising from the American Convention, especially when an essential human right is involved.

131. Moreover, although the Court appreciates the re-opening of the Investigation in 2009, it underscores that the request to re-open the Investigation demonstrated the need to adopt investigative measures to clarify the facts; some of these have been noted in this section. In this regard, the Public Prosecutor's Office considered that the following measures, among others, should be taken: (i) the testimony of Vanderlei Garibaldi and two of his brothers-in-law who witnessed the events should be heard; (ii) the testimony of other individuals from the camp who were present during the eviction operation and also of Giovani Braun should be received; (iii)

police clerk Ribeiro should be heard in order to clarify the information he provided to the investigation; (iv) the testimony of Morival Favoreto and Ailton Lobato should be received and they should be asked where they were at the time of the crime, "emphasizing that [the receipt from the doctor's visit] refers to a date prior to the facts; namely 25/11/1998," and (v) the seized weapon, together with the confiscated cartridges and bullets, should be located and sent for ballistic comparison.

132. Based on the foregoing, the Court finds that the absence of a State response is a determinant element when assessing whether there has been a failure to comply with Articles 8(1) and 25(1) of the American Convention, because this is directly related to the principle of effectiveness that should characterize the development of investigations. [FN122] In the instant case, the errors and omissions noted by the Court show that the State authorities did not act with due diligence or in accordance with the obligations arising from the said articles concerning the obligation to investigate.

[FN122] Cf. Case of García Prieto, supra note 59, para. 115; Case of Escher et al., supra nota 9, para. 206, and Case of Ticona Estrada et al., supra note 98, para. 79.

C(ii) Duration of the investigation

133. The Court has indicated that the right of access to justice must ensure the right of the presumed victims or their next of kin that everything necessary should be done to discover the truth of what happened and to punish those responsible, within a reasonable time. [FN123] In principle, the absence of reasonableness in the duration of the investigation constitutes, in itself, a violation of judicial guarantees. [FN124] In this regard, the Court has taken into account four elements to determine the reasonableness of the time: (a) the complexity of the matter; (b) the procedural activity of the interested party; (c) the conduct of the judicial authorities, [FN125] and (d) the effect on the legal situation of the person involved in the proceeding. [FN126]

[FN123] Cf. Case of Bulacio v. Argentina. Merits, reparations and costs. Judgment of September 18, 2003. Series C No. 100, para. 114; Case of Kawas Fernández, supra note 14, para. 112, and Case of Ticona Estrada et al., supra note 98, para. 79.

[FN124] Cf. Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago. Merits, reparations and costs. Judgment of June 21, 2002. Series C No. 94, para. 145; Case of Valle Jaramillo et al., supra note 95, para. 154, and Case of Heliodoro Portugal, supra note 13, para. 148.

[FN125] Cf. Genie Lacayo v. Nicaragua. Merits, reparations and costs. Judgment of January 29, 1997. Series C No. 30, para. 77; Case of Kawas Fernández, supra note 14, para. 112, and Case of Valle Jaramillo et al., supra nota 95, para. 155.

[FN126] Cf. Case of Valle Jaramillo et al., supra note 95, para. 155, and Case of Kawas Fernández, supra note 14, para. 112.

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134. The Court notes that the delay in conducting the investigation cannot be justified based on the complexity of the matter. Indeed, in the instant case, there was a single act that took place in front of numerous witnesses, involving just one clearly identified victim. Thus, from the start of the Investigation, evidence might have existed about the possible authorship and motivation for the act that could have guided the procedure and the measures taken.

135. Regarding the second element to be considered, the Court observes that the crime of murder should be investigated ex officio by the State, as the State itself has explained and in accordance with domestic legislation (supra paras. 106 and 119) and, at no time, did the procedural activity of Mr. Garibaldi's next of kin obstruct the investigation.

136. Regarding the conduct of the responsible authorities, the Court has already described the authorities' delay in taking the testimony of the accused and the witnesses, as in the case of the statements of Morival Favoreto, Eduardo Minutoli Junior and Flair Carrilho; in complying with the measures ordered by the Public Prosecutor's Office and the chiefs of police, as in the case of the measures to identify specific vehicles and providing other evidence to the case file, such as the expert appraisal of the seized weapon and clarification of its whereabouts. In addition, on at least five occasions during the Investigation, periods of time ranging from three months to more than one year and six months elapsed without any substantial activity or the production of evidence, beyond the mere request or repetition of a request to take some measure (supra paras. 84 to 86, 89, 92, and 95 to 97). For example, from June 2, 2000, to July 3, 2001, the only actions in the file were three requests for an extension of the time frame for concluding the Investigation and the affirmative responses, and two reiterations of requests for evidence (supra para. 89). Similarly, following the reception of the testimonial statement of Eduardo Minutoli Junior on July 5, 2001, no measure was taken until September 12, 2002, other than requesting the statement of Dr. Flair Carrillo (supra paras. 91 and 92). After this doctor's testimony had finally been received on September 13, 2002, and up until the request to conclude the Investigation on May 12, 2004, the only action taken to advance the Investigation was the repetition of the request to forward the seized weapon, which finally received a reply on March 25, 2004 (supra paras. 94 to 96). Lastly, throughout the almost six years that the Investigation lasted, extensions of the time frame for conducting it were requested and granted on 13 occasions. Consequently, considering the time from December 10, 1998, when the Investigation was opened until the order to close it in May 2004, the Court finds that this procedure lasted the equivalent of more than 60 times the legal term of 30 days established in article 10 of the Code of Criminal Procedure. [FN127]

[FN127] Cf. Code of Criminal Procedure, supra note 107, folio 2340.

Art. 10. The investigation shall conclude within 10 days if the accused has been detained in flagrante delicto, or was in preventive detention, in that hypothesis, to be calculated from the day on which the arrest warrant was executed, or within 30 days, if the accused is at liberty, with or without bail.

[…]

§ 3 Should the facts be difficult to clarify, and the accused is at liberty, the authority may request the judge to return the case file, for further measures, to be taken within the time limit stipulated by the judge.

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137. Brazil alleged that the duration of the investigation was due to the legal holidays of some public officials, to measures being taken in other jurisdictions, and to the accumulation of procedures for which the state authorities were responsible. The Court recalls, as it has already established in this judgment, that the State has an international obligation to investigate facts such as those of the instant case and, therefore, it cannot allege domestic obstacles, such as the lack of infrastructure or personnel to conduct the investigative procedures, to exempt itself from an international obligation.

138. Regarding the fourth element, the Court has said that, in order to determine the reasonableness of the duration, the effect of the length of the procedure on the legal situation of the person involved must be taken into account considering, among other elements, the matter that is the object of the dispute. Thus, the Court has established that if the passage of time has a relevant impact on the legal situation of the individual, the procedure should progress more rapidly in order to resolve the case as soon as possible. [FN128] In this case, the Court considers that it is not necessary to examine this element to determine whether the duration of the Investigation into the death of Mr. Garibaldi was reasonable.

[FN128] Cf. Case of Valle Jaramillo et al., supra note 95, para. 155, and Case of Kawas Fernández, supra note 14, para. 115.

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139. Based on these findings, the Court concludes that the term of more than five years taken merely by the investigation stage of the domestic procedure goes far beyond a time that could be considered reasonable for the State to conduct the corresponding investigative measures and constitutes a denial of justice to the detriment of the next of kin of Sétimo Garibaldi.

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140. The Inter-American Court concludes that the State authorities did not act with due diligence in the investigation into the death of Sétimo Garibaldi, which also exceeded a reasonable time. Consequently, the State violated the rights to judicial guarantees and protection established in Articles 8(1) and 25(1) of the American Convention, in relation to Article 1(1) thereof, to the detriment of Iracema Garibaldi, Darsônia Garibaldi, Vanderlei Garibaldi, Fernando Garibaldi, Itamar Garibaldi, Itacir Garibaldi and Alexandre Garibaldi.

141. The Court cannot fail to express its concern owing to the serious errors and delays in the Investigation in the instant case, which affected the victims who are members of a group that is considered vulnerable. As this Court has indicated, impunity encourages the chronic repetition of human rights violations. [FN129]

[FN129] Cf. Case of the “White Van” (Paniagua Morales et al.), supra note 31, para. 173; Case of Kawas Fernández, supra note 14, para. 190, and Case of Valle Jaramillo et al., supra note 95, para. 100.

VII. ARTICLE 28 (FEDERAL CLAUSE) [FN130] IN RELATION TO ARTICLES 1(1) AND 2 OF THE AMERICAN CONVENTION

[FN130] Article 28 of the American Convention establishes:
1. Where a State Party is constituted as a federal state, the national government of such State Party shall implement all the provisions of the Convention over whose subject matter it exercises legislative and judicial jurisdiction.
2. With respect to the provisions over whose subject matter the constituent units of the federal state have jurisdiction, the national government shall immediately take suitable measures, in accordance with its constitution and its laws, to the end that the competent authorities of the constituent units may adopt appropriate provisions for the fulfillment of this Convention. […]
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142. The Commission indicated that, irrespective of the internal distribution of competences, in compliance with Article 28 of the American Convention, Brazil should have adopted: (1) adequate measures to ensure that Sétimo Garibaldi was not murdered by an armed group at the service of landowners of the state of Paraná, who were attempting to perform a clandestine eviction, as well as to provide his next of kin with an effective investigation into the facts, the prosecution and punishment of those responsible, and adequate civil compensation, and (ii) effective measure to avoid the proliferation of armed groups carrying out violent clandestine evictions. The federal form of government seeks to grant greater autonomy and wide-ranging administrative scope to the states that make up the Union, while the Federal State conserves some of the basic functions. According to article 23(1) of the Federal Constitution, the Union, the states, the federal district, and the municipalities, together, have the obligation to uphold the Constitution and the law. Given that "the mechanisms were ineffective, the State […] cannot argue its lack of responsibility at any level." The federal units, as parts of the Federal State, are equally bound by the provisions of the international treaties ratified by the latter. Moreover, Article 28 of the American Convention establishes obligations, compliance with which, as in the case of the obligations arising from Articles 1(1) and 2 of the Convention, is subject to verification and decisions by the supervisory organs of the inter-American system. Indeed, "the obligation to adopt provisions of domestic law requires the States Party not only to enact and implement measures of a legislative nature, but also all necessary measures to ensure the full and effective enjoyment of the rights and freedoms guaranteed by the American Convention to all persons subject to their jurisdiction." Based on these findings, it asked the Court to declare that Brazil had failed to comply with the said provision of the Convention.

143. The representatives stated that, since Brazil is a Federal State, it has the responsibility to comply with all the provisions of the American Convention, including Article 28, and that it cannot exempt itself of its responsibility owing to a negative response from the states that comprise the Union. In particular, they indicated that, at a working meeting held on October 11, 2007, during the proceedings before the Commission, the State had advised that "it had been unable to establish contact with the authorities of the state of Paraná and, therefore, could not [provide] information on compliance with the recommendations" included in the Commission's

Report No. 13/07. In their opinion, this attitude is evidence of the State's omissions. Even though it refused to assume responsibility for the violations perpetrated in the instant case, alleging discrepancies between the Federal State and the state entity, Brazil was not complying with its international obligation to ensure compliance with the Convention. Irrespective of its federal structure, the State should have respected its international obligation to adopt adequate measures to guarantee the rights of all persons subject to its jurisdiction. The State failed to comply with the provisions of Article 28 of the Convention by failing to facilitate a complete, impartial and effective investigation of the facts, holding the authors of the crime responsible; by failing to make full reparation to the victim's next of kin, and by not preventing the death of rural workers. Consequently, they considered that there was sufficient evidence to sentence the State for the violation of the said article.

144. The State affirmed that the Commission and the representatives had not clarified the actions that Brazil should have taken to avoid violating Article 28 of the American Convention, and that it was not possible to know the scope of this supposed violation, because they had only made general accusations. It explained that the information it had provided concerning the instant case during the said working meeting at the Commission was offered in good faith to indicate the reasons for the State's delay in complying with all the recommendations made by the Inter-American Commission in its Report on Admissibility and Merits. Furthermore, it indicated that Article 28 of the American Convention is a procedural norm that does not alter the substance of the individual rights in question. In its final written arguments, Brazil added that the Commission, "[b]y alleging the violation of Articles 2 and 28 of the Convention, based on the supposed absence of policies that could have prevented the murder of Sétimo Garibaldi," was seeking a way to submit the State's alleged responsibility for this murder to the Court. The State cannot be held responsible for facts that occurred before its express acceptance of the Court's jurisdiction, and it is clear that the supposed omission of a preventive policy could only occur prior to Sétimo Garibaldi's death. Starting with the proceedings before the Commission, and in the answer to the application, the State had provided information on the public policies implemented by the Federal State to combat violence in rural areas and to promote the agrarian reform; consequently, it denied that it was using its federal structure as justification for not complying with the provisions of Articles 2 and 28 of the Convention. Lastly, it indicated that, based on Articles 48(1) and 63 of the American Convention, the Commission and the Court can only examine the rights and freedoms established therein and asked the Court to consider the claims of the parties relating to Article 28 of the Convention irreceivable.

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145. As it has already indicated (supra para. 40), the Inter-American Court is competent to interpret and apply all the provisions of the American Convention, not only those that recognize specific rights, but also those that establish general obligations, such as those arising from Articles 1 and 2 of the Convention, regularly interpreted and applied by the Court, as well as other provisions, including the norms of interpretation established in Article 29 of this instrument.

146. Regarding the so-called "Federal Clause" established in Article 28 of the American Convention, on previous occasions the Court has had the opportunity to refer to the scope of the

international human rights obligations of federal states. Recently, in Escher et al. the Court indicated that, under its contentious competence, the Court had established clearly that "case law, which has stood unchanged for more than a century, holds that a State cannot plead its federal structure to avoid complying with an international obligation." [FN131] This issue was also dealt with under its advisory competence, establishing that "international provisions that concern the protection of human rights in the American States […] must be respected by the American States parties to the respective conventions, regardless of whether they have a federal or a unitary structure." [FN132] Thus, the Court considers that States Parties must guarantee and ensure respect for all the rights embodied in the American Convention to all persons subject to their jurisdiction, without any limitation or exception based on their internal structure. The legal system and practices of the entities that form a Federal State party to the Convention must conform thereto. [FN133]

[FN131] Case of Escher et al., supra note 9, para. 219. Cf. Garrido and Baigorria v. Argentina. Reparations and costs. Judgment of August 27, 1998. Series C No. 39, para. 46.
[FN132] The Right to Information on Consular Assistance within the Framework of the Guarantees of Due Process of Law. Advisory Opinion OC-16/99 of October 1, 1999. Series A No. 16, para. 140. The Court has ruled similarly in provisional measures: "Brazil is a federal State, and […] the Urso Branco Prison is located in one of its federative units; however, this does not exempt the State from complying with its protection obligations. […] The State must organize its internal structures and adopt all necessary measures, in accordance with its political and administrative structure, to comply with these provisional measures." Matter of the Urso Branco Prison. Provisional measures with regard to Brazil. Order of the Inter-American Court of Human Rights of May 2, 2008, fourteenth considering paragraph.
[FN133] Cf. Case of Escher et al., supra note 9, para. 219.

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147. In the instant case, the Commission and the representatives alleged non-compliance with Articles 2 and 28 of the Convention owing to the supposed absence of public policies that could have prevented, on the one hand, the murder of Mr. Garibaldi and, on the other hand, the proliferation of armed groups carrying out clandestine evictions. In this regard, the Court has already determined (supra paras. 20 and 22) that any fact prior to the State's acceptance of its compulsory jurisdiction, in other words prior to December 10, 1998, is outside the Court's temporal competence. Consequently, the Court does not have competence to examine whether Brazil provided the necessary measures to prevent Sétimo Garibaldi's death. Moreover, according to the Inter-American Commission's application, the purpose of this case is constituted by the errors and omissions in the Police Investigation into the death of Mr. Garibaldi in violation of Articles 8 and 25 of the Convention and not the situation with regard to evictions in the state of Paraná.

148. In addition and lastly, the Court considers, as it did in the Case of Escher et al., [FN134] that the allegation about the possible failure to observe the obligations arising from Article 28 of the Convention should refer to a fact with sufficient entity to be considered as true non-compliance. In the instant case, a comment by the State during a working meeting regarding the difficulties in communicating with a component of the Federal State does not, in itself, mean or

entail non-compliance with this provision. The Court notes that, during the processing of the case, the State did not allege its federal structure as an excuse for failing to comply with an international obligation. According to the State, these comments constituted an explanation about progress in the implementation of the recommendations of the Commission's Report No. 13/07, and this was not denied by the Commission or the representatives.

[FN134] Cf. Case of Escher et al., supra note 9, para. 220.

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149. Based on the above, the Court does not find that the State has failed to comply with the obligations arising from Article 28 of the American Convention, in relation to Articles 1 and 2 thereof.

VIII. REPARATIONS (Application of Article 63(1) of the American Convention) [FN135]

[FN135] Article 63(1) of the Convention stipulates:
If the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party

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150. It is a principle of international law that any violation of an international obligation that results in harm entails the responsibility to make adequate reparation. [FN136] All aspects of this obligation to make reparation are regulated by international law. [FN137] The Court has based its decisions on Article 63(1) of the American Convention.

[FN136] Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and costs. Judgment of July 21, 1989. Series C No. 7, para. 25; Case of Escher et al., supra note 9, para. 221, and Case of Reverón Trujillo, supra note 30, para. 155.
[FN137] Cf. Aloeboetoe et al. v. Suriname. Reparations and costs. Judgment of September 10, 1993. Series C No. 15, para. 44; Case of Escher et al., supra note 9, para. 221, and Case of Perozo et al., supra note 14, para. 404.

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151. Pursuant to the findings on the merits and the violations of the Convention declared in the corresponding chapters, as well as in light of the criteria established in the Court's case law concerning the nature and scope of the obligation to make reparation, [FN138] the Court will proceed to examine the claims submitted by the Commission and by the representatives, and the corresponding arguments of the State, so as to order measures tending to repair the said violations.

[FN138] Cf. Case of Velásquez Rodríguez, supra note 136, paras. 25 to 27; Case of Escher et al., supra note 9, para. 222, and Case of Reverón Trujillo, supra note 30, para. 156.

A) Injured party

152. According to Article 63(1) of the Convention, the Court considers the injured party to be the person who has been declared a victim of the violation of any right embodied therein. In this case, the Court found that the State had violated the human rights of the following persons: Iracema Garibaldi, Darsônia Garibaldi, Vanderlei Garibaldi, Fernando Garibaldi, Itamar Garibaldi, Itacir Garibaldi and Alexandre Garibaldi (supra para. 140), consequently, it considers them "injured parties" and beneficiaries of the following reparations that it orders.

B) Measures of satisfaction and guarantees of non-repetition

153. In this section, the Court will decide measures of satisfaction which seek to repair non-pecuniary damage and that are not of a pecuniary nature, and will order measures of public scope or repercussion.

i) Obligation to publish the judgment

154. The Commission asked the Court to order the State to publish this judgment in a national newspaper as a measure of satisfaction for the victims.

155. The representatives, in their final arguments brief, asked that, as a form of symbolic reparation, the State publish the judgment in a national daily newspaper with widespread circulation.

156. The State did not submit additional arguments in this regard.

157. As the Court has ordered in other cases, [FN139] the State must publish once in the official gazette, in another national newspaper with widespread circulation, and in a newspaper with extensive circulation in the state of Paraná, the cover page, Chapters I, VI and VII, without the footnotes, and the operative paragraphs of this judgment, as a measure of satisfaction In addition, as the Court has ordered on previous occasions, [FN140] this judgment must be published in its entirety, for at least one year, on an appropriate official web site of the Federal State and of the state of Paraná, taking into account the characteristics of the publication that the Court has ordered. The publications in the newspapers and on the Internet must be made within six and two months, respectively, of notification of this judgment.

[FN139] Cf. Barrios Altos v. Peru. Reparations and costs. Judgment of November 30, 2001. Series C No. 87, operative paragraph 5(d); Case of Escher et al., supra note 9, para. 239, and Case of Kawas Fernández, supra note 14, para. 199.

[FN140] Cf. Case of the Serrano Cruz Sisters, supra note 103, para. 195; Case of Escher et al., supra note 9, para. 239, and Palamara Iribarne v. Chile. Merits, reparations and costs. Judgment of November 22, 2005. Series C No. 135, para. 252.

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ii) Public acknowledgement of international responsibility

158. The Commission asked the Court to order the State to publicly acknowledge its international responsibility for the violations that occurred and the damage caused.

159. The representatives, in their pleadings and motions brief, asked that an act should be held where the State publicly acknowledged its responsibility for the facts. In their final arguments brief, they added that the State should arrange a tribute (in memoriam) to Sétimo Garibaldi by inaugurating a public school in Querência do Norte with his name, in the presence of public authorities and his next of kin.

160. The State did not submit additional arguments in this regard.

161. The Court has ordered acts of public acknowledgement of international responsibility as a guarantee of non-repetition of the facts, generally although not exclusively, in order to repair violations of the rights to life, to humane treatment and to personal liberty. [FN141] In the instant case, the Court did not rule on the State's responsibility for the violation of any of the said rights to the detriment of the victims. In this regard, the Court does not observe any relationship between the measure of reparation requested and the violation declared in this case based on errors and omissions in the Police Investigation. Furthermore, the Court considers that this judgment and the measures of reparation ordered constitute important and sufficient measures to repair the violation of judicial guarantees and judicial protection declared in the instant case.

[FN141] Cf. Case of Castañeda Gutman, supra note 10, para. 239, and Case of Escher et al., supra note 9, para. 243.

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iii) Obligation to investigate, prosecute and punish those responsible for the murder of Sétimo Garibaldi

162. The Commission understood that the right of access to justice has been violated until an impartial and effective investigation into the facts has been conducted. It added that, according to the Court's case law, comprehensive reparation requires the State to investigate the facts with due diligence, so as to prosecute and punish those responsible for Mr. Garibaldi's death. The victims should have full access and capacity to act at all stages and in all instances of these investigations, in accordance with domestic law and the provisions of the Convention, and the State should ensure effective compliance with the decisions adopted by the domestic courts. It acknowledged the State's efforts to re-open the Police Investigation and, in this regard, understood that it was essential that the State comply with its obligation to avoid and combat

impunity by carrying out a genuine, exhaustive, impartial and effective investigation into the death of Sétimo Garibaldi.

163. The representatives asked the Court to order the State to investigate and punish the masterminds and perpetrators of Sétimo Garibaldi's death under criminal law.

164. In its final arguments brief, the State indicated that, since 2004, when the order was emitted to close the Investigation, no new evidence had been submitted to the Public Prosecutor's Office that would have justified re-opening it. However, as a result of the testimony of Vanderlei Garibaldi and Giovani Braun in these proceedings before the Inter-American Court, the Public Prosecutor's Office considered that they had provided evidence that was substantially new and, on April 20, 2009, requested the re-opening of the investigation, which the Loanda Court ordered on the same day. This measure responds to the first request of the Commission and the representatives. Consequently, in the State's opinion, the re-opening of the Police Investigation invalidates the purpose of this request.

165. In this judgment the Court has established that the investigation conducted in the instant case did not constitute an effective remedy guaranteeing real access to justice for the victims, within a reasonable time, and including clarification of the facts, and identification and, if applicable, punishment of those responsible for the murder of Sétimo Garibaldi.

166. The Court assesses positively the re-opening of the investigation. Nevertheless, the Court considers that, although this measure is an important initial step forward, the resumption of the investigative procedure should be followed the measures needed to elucidate the facts and establish the corresponding responsibilities, as described in this judgment (supra paras. 122 to 127).

167. The Court reiterates that the State is obliged to combat this situation of impunity by all available means, because it leads to the chronic repetition of human rights violations and the total defenselessness of the victims and their next of kin, who have the right to know the truth about the facts. [FN142] The recognition and exercise of the right to know the truth in a specific situation constitutes a measure of reparation. [FN143] Consequently, in the instant case, the right to know the truth gives rise to an expectation of the victims that the State must satisfy. [FN144]

[FN142] Cf. Case of Velásquez Rodríguez, supra note 18, para. 174; Bueno Alves v. Argentina. Merits, reparations and costs. Judgment of May 11, 2007. Series C No. 164, para. 90, and The Miguel Castro Castro Prison v. Peru. Merits, reparations and costs. Judgment of November 25, 2006. Series C No. 160, para. 440.

[FN143] Cf. Escué Zapata v. Colombia. Merits, reparations and costs. Judgment of July 4, 2007. Series C No. 165, para. 165.

[FN144] Cf. Castillo Páez v. Peru. Merits. Judgment of November 3, 1997. Series C No. 34, para. 90; La Cantuta v. Peru. Merits, reparations and costs. Judgment of November 29, 2006. Series C No. 162, para. 222, and Case of the Miguel Castro Castro Prison, supra note 142, para. 440.

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168. Furthermore, the Court finds that one of the most relevant ways to combat the situation of impunity in cases such as this, is to investigate the actions of the State agents implicated in the violations established in the judgment, whether they be police agents, members of the Public Prosecutor's Office, judges or general public officials, and this should be done within the domestic jurisdiction by the competent public institutions.

169. Bearing this in mind and based on its case law, [FN145] the Court decides that the State must conduct the investigation effectively and within a reasonable time, as well as any proceeding that is filed as a result of the investigation to identify, prosecute and, eventually, punish the authors of Mr. Garibaldi's death. In addition, the State must investigate and, if appropriate, punish possible functional misconduct committed by the public officials in charge of the Investigation. Also, as the Court has indicated, [FN146] the victims or their representatives must have access and capacity to act at all stages and in all instances of the domestic proceedings filed in the instant case, in accordance with domestic law and the American Convention.

[FN145] Cf. Baldeón García v. Peru. Merits, reparations and costs. Judgment of April 6, 2006. Series C No. 147, para. 199; Case of Kawas Fernández, supra note 14, para. 191, and Case of Perozo et al., supra note 14, para. 414.

[FN146] Cf. El Caracazo v. Venezuela. Reparations and costs. Judgment of August 29, 2002. Series C No. 95, para. 118; Case of Kawas Fernández, supra note 14, para. 194, and Case of Valle Jaramillo et al., supra note 95, para. 233.

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iv) Revocation of Law No. 15,662/07

170. The representatives asked the Court to order the State to revoke Law No. 15,662/07 which granted Judge Elisabeth Khater the title of honorary citizen of the state of Paraná.

171. The Commission did not submit additional arguments in this regard.

172. The State contested the pertinence of the request to derogate a law of the state of Paraná granting the title of honorary citizen to Judge Elisabeth Khater. Brazil maintained that it was difficult to imagine what effect this measure would have on the results of the Investigation.

173. The Court is competent to order a State to annul a domestic law when its terms violate the rights established in the Convention and are thus contrary to Article 2 thereof; however, that was neither alleged nor proved by the representatives in this case. Based on the foregoing, the Court does not admit the representatives' request.

v) Implementation of Article 10 of the Code of Criminal Procedure

174. The Commission asked the Court to order Brazil to adopt and arrange the necessary measures for the effective implementation of the provision contained in article 10 of the Code of Criminal Procedure (supra note 127) in all Police Investigations; also to prosecute any

punishable acts related to forced evictions in settlements of landless workers that result in deaths, in order to adapt to the parameters of the inter-American system.

175. The representatives did not submit specific arguments in this regard.

176. The State alleged that the time limit for police investigations is regulated by the principle of reasonableness. In this regard, the term of the said procedure can be conditioned to the availability of the material resources essential for complying with the legal norm, as well as the particular circumstances of the case. Accordingly, article 10, paragraph 3, of the Code of Criminal Procedure establishes the possibility of a longer duration of the investigation when the fact is difficult to elucidate.

177. In the instant case the Court declared that the duration of the investigation did not correspond to a reasonable time and ordered that this procedure should be continued, respecting the provisions of Articles 8 and 25 of the Convention. In this regard, the State must conduct the recently re-opened Investigation in accordance with article 10 of the Code of Criminal Procedure and the other criteria mentioned by the Court in this judgment. Regarding compliance with the said provision in all investigative procedures opened in Brazil, the Court is unable to rule on possible investigations regarding which it knows nothing of their merits and circumstances; accordingly, it does not order this measure of reparation.

vi) Other claims for reparation

178. The Commission alleged that, to prevent future human rights violations, the Court should order the State to adopt any measures that are: (a) necessary to ensure that human rights are observed in government policies on land occupation, in accordance with Article 28 in relation to Article 1(1) of the American Convention, and (b) appropriate for police and justice officials, in order to avoid the proliferation of armed groups carrying out violent and arbitrary evictions.

179. The representatives asked that the State be ordered: (a) to take the necessary measures to guarantee that there will be no violent evictions; (b) to adopt effective measures to protect the rights of rural workers creating an effective mechanism for mediating agrarian conflicts, and (c) not "to promulgate laws that prohibit verifying public or private rural properties that have been occupied for any period of time or for any other reason and that the existing norms in this regard should be revoked immediately."

180. The State indicated that it had implemented measures to ensure that human rights were observed in government policies on land occupation issues to prevent agrarian conflicts; these included the establishment of the Ouvidoria Agrária Nacional, the Paz en el Campo program, and the National Plan to Combat Violence in Rural Areas. This illustrates the State's interest in implementing a human rights protection system and respecting such rights in its government policies on land occupation. In addition, it had prepared a plan for execution of Mandados Judiciais de Reintegração de Posse Coletiva (judicial orders to restore collective ownership) and, within this framework, a manual of national guidelines for the execution of Mandados Judiciais de Manutenção e Reintegração de Posse Coletiva (judicial orders to maintain and restore collective ownership), the main purpose of which is to avoid land conflicts caused by compliance

with judicial orders, as well as to assist the public authorities responsible for guaranteeing and applying the law in specific agrarian cases submitted to the consideration and hearing of the Judiciary. The State also alleged that there was no evident correlation between the representatives' request concerning the non-promulgation of laws that prohibit verification in rural properties and the purpose of this case; moreover, it was not supported by any right established in the Convention.

181. The Court observes that the purpose of these measures of reparation requested by the Commission and the representatives is that the State should adopt a series of measure in relation to the situation of landless rural workers in Brazil, particularly in the context of land occupation and extrajudicial evictions. Even though the arguments concerning the alleged vulnerability of the landless workers are a cause of concern, the Court will not rule on the measures requested in relation to facts that were not examined in the instant case for the above-mentioned reasons, because of its lack of temporal competence with regard to the facts relating to the eviction that culminated in the death of Mr. Garibaldi.

C) Pecuniary and non-pecuniary damage, costs and expenses

i) Pecuniary damage

182. In its case law, the Court has developed the concept of pecuniary damage and the circumstances in which it should be compensated. [FN147]

[FN147] The Court has established that pecuniary damage supposes "the loss or detriment to the income of the victims, the expenses incurred as a result of the facts and the consequences of a pecuniary nature that have a causal relationship to the facts of the case." Bámaca Velásquez v. Guatemala. Reparations and costs. Judgment of February 22, 2002. Series C No. 91, para. 43; Case of Escher et al., supra note 9, para. 224, and Case of Kawas Fernández, supra note 14, para. 162.

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183. The Commission set out the general principles in this regard and highlighted that "the victims made a financial effort to achieve justice at the domestic level" and overcome the consequences of the State's actions. It requested that, without prejudice to the claims presented by the representatives, the Court establish, in equity, the amount of the compensation for indirect damage and loss of earnings.

184. The representatives indicated that Mr. Garibaldi's family suffered financial losses as a result of the facts. Following the death of her husband, Iracema Garibaldi had sole responsibility for their six children, two of whom where minors. Currently, in order to subsist, Mrs. Garibaldi, who receives a minimum monthly retirement pension, has to work together with other members of her family who are small-scale rural producers. Nevertheless, her monthly income is insufficient for the whole family. The financial damage is irreparable because their living conditions before the facts can never be restored. In particular, the representatives asked the Court to order the State to deliver to the Garibaldi family the sum of US$10,000.00 (ten thousand

United States dollars) to compensate for the indirect damage produced by: (a) the transport of Iracema Garibaldi between Querência do Norte, Paraná, and the municipalities of Caxias and Vacaria in Rio Grande do Sul "to visit family members and [to seek] their support"; (b) the funeral of Sétimo Garibaldi, and (c) the litigation before national and international courts, including transport, accommodation and food. In addition, they estimated the compensation for loss of earnings in the sum of R$212,040.00 (two hundred and twelve thousand and forty reales), considering that Sétimo Garibaldi was 52 years of age when he was murdered and that life expectancy in the state of Paraná is 71 years, so that he would have worked for 19 more years, and that his monthly income as a farmer was approximately R$930.00 (nine hundred and thirty reales).

185. Regarding the indirect damage, the State indicated that the Public Prosecutor's Office is responsible for criminal actions and that the victims did not incur any expenses processing the action in the domestic sphere. Also, in both the civil and the criminal sphere, the State guarantees free access to the judicial system by means of legal aid or by granting the benefit of free justice. Consequently, no expenses were incurred in processing the case in the domestic sphere. Nevertheless, if the Court understands that it is appropriate to order a payment, the amount should be limited to compensation for the damage effectively proved and the expenses duly authenticated as a result of the facts. The State added that neither the Commission nor the representatives had provided evidence of the expenses supposedly incurred by filing the action in the domestic courts, or of the alleged damage suffered by the victims. Moreover, Brazil added that, since the State had not violated Articles 4 and 5 of the Convention, "there was no justification for mentioning compensation for pecuniary damage related to loss of earnings, because the financial losses that resulted from Mr. Garibaldi's death could not be attributed to the State." In relation to the loss of earnings as a result of possible violations of Articles 8 and 25 of the Convention, the State indicated that "possible errors arising from the closing of the Police Investigation […] would not have reduced the income of the alleged victims; nor could it be alleged that the possible failure to comply with the obligations established in Articles 1(1), 2 and 28 [of the Convention] generated loss of earnings, since they are general obligations."

186. As the Court has indicated, reparations must have a causal connection with the facts of the case, the alleged violations, the proven damage, and the measures requested to repair the corresponding damage. Therefore, the Court must observe this series of factors in order to rule appropriately and in accordance with law. [FN148] In the instant case, the Court did not examine the State's responsibility for the death of Sétimo Garibaldi, since this was outside the Court's temporal competence (supra para. 22), so that it cannot order measures designed to repair damage arising from Mr. Garibaldi's death. The measures of reparation must be related to the facts which violate the Convention that have been declared in this judgment; namely, the errors and omissions in the Police Investigation.

[FN148] Cf. Case of Ticona Estrada et al., supra note 98, para. 110.

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187. Bearing in mind the above, the Court establishes, in equity, the sum of US$1,000 (one thousand United States dollars) with regard to the transport expenses incurred and the measures taken by Iracema Garibaldi when seeking the support of her family in other localities.

188. Regarding the expenses for national and international litigation alleged by the representatives, the Court will consider them in the section corresponding to costs and expenses as it has in previous cases. [FN149]

[FN149] Cf. Kimel v. Argentina. Merits, reparations and costs. Judgment of May 2, 2008. Series C No. 177, para. 109; Case of Tristán Donoso, supra note 9, para. 184, and Case of Ticona Estrada et al., supra note 98, para. 124.

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ii) Non-pecuniary damage

189. The Court has developed the concept of non-pecuniary damage and the circumstances in which it should be compensated. [FN150]

[FN150] The Court has established that non-pecuniary damage "can include the suffering and hardship caused to the direct victim and to his next of kin, the harm to values that are very significant for the individual, as well as changes of a non-pecuniary nature in the living conditions of the victim or his family." The case of the "Street Children" (Villagrán Morales et al. v. Guatemala. Reparations and costs. Judgment of May 26, 2001. Series C No. 77, para. 84; Case of Escher et al., supra note 9, para. 229, and Case of Reverón Trujillo, supra note 30, para. 175.

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190. The Commission stated that, in the instant case, "the victims endured mental suffering, anguish, uncertainty and changes in their life, owing to the denial of justice in relation to the murder of Mr. Garibaldi." It asked the Court to establish, based on the equity principle, the amount of the compensation for non-pecuniary damage.

191. In their pleadings and motions brief, the representatives indicated that the financial damage caused to Mr. Garibaldi's family was irreparable from a financial viewpoint, because their living conditions before the facts could never be restored. The financial compensation, together with other forms of reparation, could help the family build a new life project. They indicated that the Court has considered that the next of kin are victims when their right to physical and moral integrity is harmed as a result of violations perpetrated against their loved ones, and of the continuing suffering caused when State agents, by act or omission, fail to investigate the facts and hold the perpetrators responsible. In their final arguments brief, they requested the sum of US$280,000.00 (two hundred and eighty thousand United States dollars), to be divided proportionately between Mr. Garibaldi's next of kin.

192. The State affirmed that the Court's judgment alone constituted a form of moral satisfaction, and that it was not appropriate to raise the issue of pecuniary compensation.

193. The Court has established repeatedly that a judgment declaring the existence of a violation constitutes, per se, a form of reparation. [FN151] Nevertheless, considering the circumstances of this case and the consequences for the victims of the violations that were perpetrated, the Court finds it pertinent to determine the payment of compensation, established in equity, for non-pecuniary damage in favor of the next of kin who are considered victims of the violation of Articles 8(1) and 25(1) of the American Convention, in relation to Article 1(1) thereof (supra para. 140). Consequently, the Court orders the State to pay the sum of US$50,000.00 (fifty thousand United States dollars) to Iracema Garibaldi and US$20,000.00 (twenty thousand United States dollars) to each of the following victims: Darsônia Garibaldi, Vanderlei Garibaldi, Fernando Garibaldi, Itamar Garibaldi, Itacir Garibaldi and Alexandre Garibaldi.

[FN151] Cf. Neira Alegría et al. v. Peru. Reparations and costs. Judgment of September 19, 1996. Series C No. 29, para. 57; Case of Escher et al., supra note 9, para. 233, and Case of Kawas Fernández, supra note 14, para. 184.

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iii) Costs and expenses

194. As the Court has indicated on other occasions, costs and expenses are included in the concept of reparations embodied in Article 63(1) of the American Convention. [FN152]

[FN152] Cf. Case of Garrido and Baigorria, supra note 131, para. 79; Case of Escher et al., supra note 9, para. 255, and Case of Perozo et al., supra note 14, para. 417.

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195. The Inter-American Commission asked the Court to order the State to "pay the reasonable and necessary costs and expenses that are duly authenticated derived from processing the instant case in both the domestic sphere and before the inter-American system."

196. The representatives asked the Court to order the State to pay the costs of processing the case at the domestic and international levels. They recalled that, even with free access to justice, Mr. Garibaldi's next of kin incurred various expenses during the Investigation, including expenditure for telephone communications, correspondence, transport, etc. The State should pay these expenses that the family assumed while the Investigation was underway.

197. In their brief with final arguments, the representatives indicated that they had "incurred significant, but reasonable, expenses to provide [the victims] with competent legal services valued at US$20,000.00 (twenty thousand United States dollars) which included expenditure for travel, accommodation, lawyers, transfer of the lawyers [and of the] impoverished witnesses, photocopies, correspondence, telephone, fax, notaries, Internet [and the] international litigation

proceedings." They added that "the petitioner organizations represent Sétimo Garibaldi's family as a pro bono service and therefore do not expect any payment from them[, consequently, they] requested a payment of US$45,000.00 (forty-five thousand United States dollars), which includes US$20,000.00 (twenty thousand United States dollars) as reimbursement for the expenses incurred for the application and US$25,000.00 (twenty-five thousand United States dollars) for fees for the time and work of their lawyers over the years of processing the case before the inter-American system."

198. The State argued that none of the proceedings in the domestic sphere gave rise to expenses for the victims, because in both the criminal and civil sphere they benefited from free justice and the Investigation was carried out by the State, irrespective of the actions taken by private individuals. In this regard, it affirmed that neither the Commission nor the representatives presented vouchers for expenses at the opportune procedural moments. Consequently, it rejected the need to make reparation for costs and expenses.

199. The Court has indicated that "the claims of the victims or their representatives concerning costs and expenses, and the evidence supporting them, must be submitted to the Court at the first procedural moment granted to them; namely in the pleadings and motions brief, without prejudice to these claims being updated subsequently, in keeping with the new costs and expenses incurred owing to the proceedings before this Court." [FN153] Neither in their pleadings and motions brief nor at any other subsequent opportunity did the victims' representatives provide any evidence to support the expenses allegedly incurred. In addition, regarding the Police Investigation, the Court notes that, as Brazil has indicated, this was implemented by State bodies. In the international sphere, as the representatives indicated, the victims did not incur expenditure for legal assistance, since the representatives acted pro bono. Nevertheless, the Court also notes that the victims' representatives incurred expenses to attend the public hearing of the case held in Santiago, Chile, as well as expenses related to the exercise of their legal representation, such as the submission of their briefs, as well as communication expenses, during the proceedings before this Court. Bearing this in mind and given the lack of vouchers for these expenses, the Court decides, in equity, that the State must deliver the sum of US$8,000.00 (eight thousand United States dollars) for costs and expenses. This amount includes any future expenses that the victims may incur during monitoring compliance with this judgment and must be delivered within one year of notification of this judgment to Iracema Garibaldi, who shall deliver the amount she deems appropriate to her representatives in the domestic sphere and in the proceedings before the inter-American system.

[FN153] Cf. Chaparro Álvarez and Lapo Íñiguez. v. Ecuador. Preliminary objections, merits, reparations and costs. Judgment of November 21, 2007. Series C No. 170, para. 275; Case of Escher et al., supra note 9, para. 259, and Case of Tristán Donoso, supra note 9, para. 215.

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iv) Means of complying with the payments ordered

200. The payment of the compensation for pecuniary and non-pecuniary damage and the reimbursement of costs and expenses established in this judgment shall be made directly to the

victims, within one year of notification of this judgment, taking into consideration the provisions of paragraphs 187, 193 and 199 hereof. Should any of the victims die before payment of the respective amounts, these amounts shall be delivered to their successors, in accordance with the applicable domestic law.

201. The State shall comply with its pecuniary obligation by payment in United States dollars or the equivalent amount in national currency, using the rate in force on the New York market the day before the payment to calculate the exchange rate.

202. If, for causes that can be attributed to the victims, it is not possible to pay the amounts ordered within the specified time, the State shall deposit the said amounts in an account or a certificate of deposit in favor of the victims in a solvent Brazilian financial institution in the most favorable financial conditions allowed by banking practice and law. If, after 10 years, the sum allocated has not been claimed, the amount shall be returned to the State with the accrued interest.

203. If the State falls in arrears, it shall pay interest on the amount owed corresponding to bank interest on arrears in Brazil.

IX. OPERATIVE PARAGRAPHS

204. Therefore,

THE COURT

DECIDES,

unanimously:

1. To declare partially admissible the preliminary objection relating to competence ratione temporis filed by the State, in accordance with paragraphs 12 to 25 of this judgment.
2. To reject the other preliminary objections filed by the State, as established in paragraphs 26 to 51 of this judgment.

DECLARES,

unanimously that:

3. The State violated the rights to judicial guarantees and judicial protection established in Articles 8(1) and 25(1) of the American Convention, in relation to Article1(1) thereof, to the detriment of Iracema Garibaldi, Darsônia Garibaldi, Vanderlei Garibaldi, Fernando Garibaldi, Itamar Garibaldi, Itacir Garibaldi and Alexandre Garibaldi, as established in paragraphs 111 to 141 of this judgment.
4. The State did not fail to comply with the Federal Clause established in Article 28 of the American Convention, in relation to Articles 1(1) and 2 thereof, to the detriment of Iracema

Garibaldi, Darsônia Garibaldi, Vanderlei Garibaldi, Fernando Garibaldi, Itamar Garibaldi, Itacir Garibaldi and Alexandre Garibaldi, as established in paragraphs 145 to 149 of this judgment.

AND ORDERS,

unanimously that:

5. This judgment constitutes per se a form of reparation.
6. The State must publish once in the official gazette, in another national newspaper with widespread circulation, and in a newspaper with extensive circulation in the state of Paraná, the cover page, Chapters I, VI and VII, without the footnotes, and the operative paragraphs of this judgment, and also publish this judgment in its entirety, for at least one year, on an appropriate official web site of the Federal State and of the state of Paraná taking into account the characteristics of the publication that the Court has ordered. The publications in the newspapers and on the Internet must be made within six and two months, respectively, of notification of this judgment, as stipulated in paragraph 157 hereof.
7. The State must conduct the Investigation effectively and within a reasonable time, together with any proceedings that may be filed as a result of the Investigation to identify, prosecute and, if appropriate, punish the authors of Mr. Garibaldi's death. Similarly, the State must investigate and, if applicable, punish possible functional misconduct committed by the public officials in charge of the Investigation, as established in paragraphs 165 to 169 of this judgment.
8. The State must pay Iracema Garibaldi, Darsônia Garibaldi, Vanderlei Garibaldi, Fernando Garibaldi, Itamar Garibaldi, Itacir Garibaldi and Alexandre Garibaldi, the amounts established in paragraphs 187 and 193 of this judgment for pecuniary and non-pecuniary damage, within one year of notification hereof and as specified in paragraphs 200 to 203 of this judgment.
9. The State must pay Iracema Garibaldi the amount established in paragraph 199 of this judgment for reimbursement of costs and expenses, within one year of notification hereof and as specified in paragraphs 200 to 203 of this judgment.
10. The Court will monitor compliance with all aspects of this judgment in exercise of its attributes and in fulfillment of its obligations under the American Convention, and will close the case when the State has complied fully with all of its provisions. Within one year of notification of this judgment, the State must submit a report to the Court on the measures adopted to comply with it.

Judge Roberto de Figueiredo Caldas informed the Court of his concurring opinion which accompanies this judgment.

Done, at San José, Costa Rica, on September 23, 2009, in Spanish, Portuguese and English, the Spanish and Portuguese texts being authentic.

Cecilia Medina Quiroga
President

Diego García-Sayán

Sergio García Ramírez
Manuel Ventura Robles
Leonardo A. Franco
Margarette May Macaulay
Rhadys Abreu Blondet

Roberto de Figueiredo Caldas
Judge ad hoc

Pablo Saavedra Alessandri
Secretary

So ordered,

Cecilia Medina Quiroga
President

Pablo Saavedra Alessandri
Secretary

OPINION OF JUDGE AD HOC ROBERTO DE FIGUEIREDO CALDAS IN RELATION TO THE JUDGMENT OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS IN GARIBALDI V. BRAZIL, DELIVERED ON SEPTEMBER 23, DE 2009.

I. Introduction

1. Even though I fully agree with the terms of the judgment, prepared collectively and seeking consensus, I submit this opinion with my own reasoning in the hope that it will contribute to a profound reflection by Brazil and other jurisdictional countries; this Court has repeatedly ruled that States were guilty of failing to comply with a reasonable time for deciding litigations without finding a preventive or definitive answer.

2. The violation of the rights to judicial guarantees and judicial protection established in Articles 8(1) and 25(1) of the American Convention on Human Rights has proved to be a constant reality, even if not a permanent one.

3. The Court follows the procedure of acting and delivering judgment only in specific cases and precisely when these are submitted to its jurisdiction. It avoids making a general analysis of the human rights situation in a State sub judice. Its intention is that delivery of the judgment and presentation of the grounds will help the State re-examine its own course of action in order to rectify its path, and also to help other jurisdictional States of the inter-American human rights system make their own self-assessment of whether they are in compliance with the Convention.

4. It is worth stating that the purpose of the Court's judgments is to provide a model and an example for the actions of the States. Moreover, the Court expects the States to comply with its

decisions and comply with them, irrespective of whether they were handed down against them or against another State.

5. However, as this case deals with the excessive delays in the judicial system and the consequent impunity – chronic evils that always go hand in hand, and for which out Continent does not appear to have an adequate remedy in order to attain the objectives of the Convention – it is worth trying to illuminate the path for those who will follow.

6. The purpose here is not just to punish a violation of the Convention, but to act preventively so that the unjust delay that violates the Convention does not occur. And also not to let the situation reach the stage of violating the Convention because, before this happens, the whole system should function preventively so that the delay never occurs, or only from time to time but not as a general rule.

7. The fundamental goal should be to respect the "reasonable time" (Art. 8(1); but how? This is the question that the nations of the Americas should take up in order to find an answer.

8. In this opinion, I wish to outline a simple model capable, if duly followed by the States, of creating the conditions to resolve judicial delays definitively, easily, promptly and inexpensively.

9. Despite the complexity of the subject matter and the claim made by this statement, since a judicial opinion should also maintain the characteristics of a "simple and prompt" proceeding in order to be understood by the general public with a basic education, I will refrain from presenting a parenthesis with the relevant historical or philosophical explanation.

II. In favor of a distributive model for the Judiciary

10. Consequently, it is time to turn to the question posed: what must be done to obtain simple, prompt justice?

11. Answer: change the usual conception (model or principles) of retributive justice – in force throughout most of the Continent – for distributive justice.

12. There is no innovation or novelty in this. These two principles were initially described by Aristotle, in Ancient Greece, more than two thousand years ago. More recently, John Rawls prepared a contemporary synthesis, [FN154] which has influenced various judicial reforms.

[FN154] In 1967, in his article "Distributive Justice", developed further in his classic 1971 study "A Theory of Justice."

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13. There are just two types of justice followed by contemporary courts: retributive (also called commutative, restorative, rectifying, corrective, sinalagmatic or arithmetic) and distributive (also known as proportionate or geometric).

14. The retributive model is the one that sentences the individual who has broken the law, the debtor, to pay the victim, or creditor, merely what he took from him. In other words, to make retribution, to restitute, taking into consideration just the facts, acts, things or services in question, in a merely arithmetic proportion and in fairly reasonable terms, totally disregarding the individuals involved. There are numerous cases in the courts; violation of a reasonable time and impunity are constant.

15. On the contrary, the distributive model is the one that sentences the individual who has broken the law, or the debtor, to pay the victim, or creditor, more (or much more) than the property that was taken from him or the injury suffered. In other words, in addition to the necessary restitution, it sentences the offender to pay something more, taking into consideration not just the facts, acts, things or services in litigation, but the characteristics or merit of the individuals involved in the dispute, to the extent that they are unequal, such as for example full knowledge of the criminal or injurious act, intent to commit it, acknowledgement of guilt, intention of postponing payment to the creditor, financial capacity, property, rights, schooling, function, position. In other words, personal factors can increase or reduce the sentence. In this model, geometric proportion can be introduced in values that are consequently higher.

16. In the distributive model, it is prohibited to litigate in bad faith and the person who does so is punished. There is fear that the creditor will obtain justice. Consequently, it is more effective in preventing litigations and greatly reducing the number of cases in court, especially those artificial disputes concerning simple collections, repeated by thousands, with little real litigation substance, and that only exist because the debtor wants to postpone the payment of his debt and take advantage of property that belongs to another person.

17. If we take a look at the global panorama, it can be said that, in general, in countries where justice is prompt and respected by society, and feared by offenders and criminals, where the ability to punish prevails, the number of cases is limited, the country is usually developed, and the model is distributive.

18. Distributive justice is the appropriate model for countries that are trying to develop, and overcome the delay in processing court cases, corruption and impunity.

19. If the countries of the Americas changed their model and their method of sentencing, there would be a considerable reduction in the excessive number of judicial actions, the increases in justice-related expenditure, and the construction of new prisons, and accelerated automation and procedural reforms. If no changes are made, the chronic and tragic situation of justice in our countries will only get worse.

20. We must also change the way we approach judicial reforms; it is not enough merely to reduce the time it takes to process a case by about one-third, for example, because the system has already collapsed. We need to reduce the length of the delay of court proceedings much more, ten or twenty times more, aiming at dealing with rulings that can be processed rapidly, making remedies truly simple and prompt, and achieving respect for least a reasonable time. To the

contrary, the consequence will be that the Inter-American Court will continue to deliver judgments based on the slowness of the proceedings indefinitely.

21. The general public must be guaranteed access to real, substantial justice; not access to a merely theoretical, rhetoric, symbolic, unreal, virtual, nominal, partial and relative justice.

22. As stated by Bobbio, "una sociedad en la que el gobierno adopte medidas de justicia distributiva que conviertan a los ciudadanos en iguales no sólo formalmente o frente a la ley, como se suele decir, sino también sustancialmente" [FN155] [A society in which the Government adopts measures of distributive justice that converts the citizens into equals, not only formally or before the law, but also substantially].

[FN155] BOBBIO, Norberto. De la ideología democrática a los procedimientos universales. Jurídica Boletín Mexicano de Derecho Comparado, No. 103, January-April 2002. Available at: http://www.juridicas.unam.mx/publica/rev/boletin/ cont/103/inf/inf10.htm. Access: 14 Nov. 2007.

III. International protection of the human right to jurisdictional services within a reasonable time

23. We should remember the words of a 1920 address by Ruy Barbosa, the brilliant Brazilian jurist, whose bust adorns the entrance hall of the Inter-American Court of Human Rights (beside the Venezuelan, Andrés Bello). According to Barbosa, "justiça atrasada não é justiça, senão injustiça qualificada e manifesta" [FN156] [Delayed justice is not justice, but true manifest injustice]. This is possibly an elaborate version of the universal juridical aphorism in several languages, for example: justiça atrasada é justiça denegada," "justice différée est justice refusée," "justicia atrasada es justicia denegada," in other words, "justice delayed is justice denied."

[FN156] BARBOSA, RUY. Oração aos moços. São Paulo: Russel, 2004, p. 47.

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24. The idea of justice done is inconceivable if the injured individual does not receive prompt reparation or, at the very least, does not obtain it within a reasonable time, which varies from one level of the courts to another. While a case is pending judgment, neither party feels that he has received justice.

25. Slowness discourages resorting to the courts to settle disputes (with serious repercussions on the right of access to justice) and a factor that encourages the individual who does not comply with his social obligations or the criminal to act without worrying much about whether or not he will be prosecuted, because most of them are not or, when they are, the offense has prescribed.

26. This is why human rights have established access to justice and to the settlement of disputes within a reasonable time, since the 1948 Universal Declaration of Human Rights:

"Article VIII - Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law." (Bold added by the author.)
"Article X - Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him."

27. The American Declaration of the Rights and Duties of Man, also dating from 1948, includes similar terms in relation to access to justice and even clearer wording as regards the guarantee of promptness in the hearing of the dispute by the courts and by the public administration:

"Article XVIII. Right to a fair trial. Every person may resort to the courts to ensure respect for his legal rights. There should likewise be available to him a simple, brief procedure whereby the courts will protect him from acts of authority that, to his prejudice, violate any fundamental constitutional rights." (Bold added by the author.)
"Article XXIV. Right of petition. Every person has the right to submit respectful petitions to any competent authority, for reasons of either general or private interest, and the right to obtain a prompt decision thereon." (Bold added by the author.)

28. By indicating that the State's omissions violate the rights of those subject to its jurisdiction, the Court seeks to implement the provisions of the American Convention on Human Rights (Pact of San José, Costa Rica), adopted by the Organization of American States (OAS) on November 22, 1969, which entered into force at the international level on July 18, 1978, in accordance with its Article 74(2).

29. In the case of Brazil, this important treaty came into force at the international level on September 25, 1992, when it deposited its instrument of adherence before the OAS, and at the domestic level on November 9, 1992, with the publication in the Official Gazette of the Union [FN157] of the Presidential Decree which made it an obligation erga omnes.

[FN157] Official Gazette of the Union of 9/11/92, Section 1, p. 15,562/15,567.
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30. The following are the provisions of Articles 8 and 25 of the Convention:

Article 8. Right to a Fair Trial
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. [...]" (Bold added by the author.)

Article 25. Right to Judicial Protection

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. [...]" (Bold added by the author.)

31. The protection that international law provides for a prompt trial, within a reasonable time, is clear; based on the foregoing Brazil is evidently not complying with this.

32. The fact that, for a long time, the case law of the Inter-American Court of Human Rights has been very firm in this regard is extremely important. This can be seen from its first two judgments in this regard in 1997; the first of which was Genie Lacayo v. Nicaragua, of January 29, 1997.

33. Subsequently, but still the same year, the Court heard Suárez Rosero v. Ecuador during the first session presided by Judge Antônio Augusto Cançado Trindade who, with his careful and abundant reasoning, established a unanimous position.

34. In fact, the above-mentioned decisions are in line with the case law of the European Court of Human Rights, where there had been several earlier precedents in this regard.

35. Consequently, the requirement of promptness in judicial proceedings is not new, and goes back to the most important treaties for the protection of human rights, which should be implemented by Brazil [FN158] and throughout the Americas.

[FN158] According to the precept established in the Constitution by Constitutional Amendment No. 45, of 2004: "Art. 5. (...) LXXVIII –Everyone shall be ensured a reasonable duration of proceedings in the judicial and administrative sphere, and the means to guarantee promptness in their processing."

IV. Conclusion

36. The Court found that the Brazilian State had violated Articles 8(1) and 25(1) of the Convention, and the States members of the inter-American human rights system should heed this ruling, in the sense of reforming their judicial bodies to adjust the processing of cases to the duration required by the norms and by the citizens of the Americas, transcending this stage of chronic non-compliance with legal time limits by the courts and by the rest of the system, such as the police, in the instant case, whose investigation took more than 60 times the legal 30-day time limit to conclude the inquiry.

37. Delays are among the most serious judicial errors committed by the State, and must be compensated according to international law. Procedural promptness engenders fluidity and respect in social relations, appropriate to the level of development to which the nations of the Americas aspire.

Roberto Figueiredo Caldas
Judge Ad Hoc

Pablo Saavedra Alessandri
Secretary