

**INTER-AMERICAN COURT OF HUMAN RIGHTS**

**CASE OF GONZÁLEZ MEDINA AND FAMILY  
v. DOMINICAN REPUBLIC**

**JUDGMENT OF FEBRUARY 27, 2012  
(Preliminary objections, merits, reparations and costs)**

In the case of *González Medina and family*,

the Inter-American Court of Human Rights (hereinafter “the Inter-American Court” or “the Court”), composed of the following judges:<sup>1</sup>

Diego García-Sayán, President  
Manuel E. Ventura Robles, Vice President  
Leonardo A. Franco, Judge  
Margarette May Macaulay, Judge  
Alberto Pérez Pérez, Judge, and  
Eduardo Vio Grossi, Judge;

also present,

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

pursuant to Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”) and Articles 31, 32, 65 and 67 of the Rules of Procedure of the Court<sup>2</sup> (hereinafter “the Rules of Procedure”), delivers this judgment structured as follows:

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<sup>1</sup> In accordance with Article 19(1) of the Rules of Procedure of the Inter-American Court applicable to this case (*infra* note 2), which establish that “[i]n the cases referred to in Article 44 of the Convention, a judge who is a national of the respondent State shall not be able to participate in the hearing and deliberation of the case,” Judge Rhadys Abreu Blondet, a Dominican national, did not take part in the processing of this case or in the deliberation and signature of this judgment.

<sup>2</sup> The Court’s Rules of Procedure approved by the Court at its eight-fifth regular session held from November 16 to 29, 2009, which apply to the instant case in accordance with Article 79 thereof. According to Article 79(2) of the said Rules of Procedure, “[i]n cases in which the Commission has adopted a report under Article 50 of the Convention before the these Rules of Procedure have come into force, the presentation of the case before the Court will be governed by Articles 33 and 34 of the Rules of Procedure previously in force. These Rules of Procedure shall apply. The provisions of these Rules of Procedure shall apply to the reception of statements.” Therefore, Articles 33 and 34 of the Rules of Procedure approved by the Court at its forty-ninth regular session apply with regard to the presentation of the case.

## TABLE OF CONTENTS

	Paragraph
<b>I. INTRODUCTION OF THE CASE AND PURPOSE OF THE DISPUTE</b>	1-6
<b>II. PROCEEDINGS BEFORE THE COURT</b>	7-13
<b>III. PRELIMINARY OBJECTIONS</b>	14-61
A. "Inadmissibility of the application owing to failure to exhaust domestic remedies"	16-24
B. "Inadmissibility of the application owing to expiry of the time frame for the report under Article 50 of the American Convention"	25-35
C. "Partial Inadmissibility of the application owing to the 'fourth instance' principle"	36-41
D. "Incompetence <i>ratione temporis</i> of the Court"	42-61
D.1) Regarding the alleged violations to the detriment of Mr. González Medina	42-54
D.2) Regarding the alleged violations to the detriment of Mr. González Medina's family	55-61
<b>IV. COMPETENCE</b>	62
<b>V. MEDIDAS PROVISIONAL MEASURES</b>	63
<b>VI. EVIDENCE</b>	64-81
A. Documentary, testimonial and expert evidence	65
B. Admission of the evidence	66-81
B.1 Admission of the documentary evidence	66-78
B.2. Admission of the statements of the presumed victims and the testimonial and expert evidence	79-81
<b>VII. RIGHTS TO PERSONAL LIBERTY, TO PERSONAL INTEGRITY, TO LIFE, AND TO RECOGNITION OF JURIDICAL PERSONALITY, IN RELATION TO THE OBLIGATION TO RESPECT AND ENSURE THE RIGHTS OF NARCISO GONZÁLEZ MEDINA</b>	82-195
A) Arguments of the parties and of the Inter-American Commission	83-86
B) Proven facts	87-124
C) General considerations of the Court	125-134
D) Determination of the existence of the alleged forced disappearance and its subsistence at the time of the acceptance of the Court's jurisdiction	135-173
D.1 Alleged context at the time of the facts	137-144
D.2 Influence of Narciso González Medina on Dominican society and public impact of his speeches and writings	145-150
D.3 Surveillance of Mr. González Medina	151-154
D.4 Testimony of those who declared that they had seen Narciso González Medina in State entities	155-164
D.5 Failure to determine the whereabouts of Mr. González Medina and clarify the facts	165-170
D.6 Alleged destruction and alteration of documents as part of the forced disappearance	171-173
E) Alleged violations of Articles 7, 5(1), 5(2), 4(1) and 3 of the American Convention, owing to the forced disappearance of	174-195

	Narciso González Medina	
<b>VIII.</b>	<b>RIGHTS TO JUDICIAL GUARANTEES AND TO JUDICIAL PROTECTION, IN RELATION TO ARTICLES 7, 5, 4, 3, 1(1) AND 2 OF THE CONVENTION TO THE DETRIMENT OF NARCISO GONZÁLEZ MEDINA AND HIS FAMILY</b>	196-266
	A. Introduction	196-197
	B. Arguments of the parties and of the Inter-American Commission	198-201
	C. General considerations of the Court	202-213
	D. Background: investigations conducted by the Police Board and the Joint Board	214-219
	E. Lack of due diligence in the investigations conducted by the Investigating Court, the Review Chamber, and the Public Prosecution Service	220-254
	E.1) Investigation by the Investigating Court, and the Santo Domingo Review	224-246
	E.1.a) Lack of due diligence in the integral investigation of the elements that constituted forced disappearance	227-231
	E.1.b) Omission to follow up on logical lines of investigation and to gather evidence	232-241
	E.1.c) Domestic Legal Effects (Article 2 of the American Convention)	242-246
	E.2) Reopening of the investigation by the Public Prosecution Service	247-254
	F. Reasonable time of the investigations	255-262
	G. Right to know the truth	263
<b>IX.</b>	<b>RIGHT TO PERSONAL INTEGRITY, IN RELATION TO THE OBLIGATION TO RESPECT AND ENSURE THE RIGHTS OF NARCISO GONZÁLEZ MEDINA'S FAMILY</b>	267-275
	A. Arguments of the parties and of the Inter-American Commission	267-269
	B. Considerations of the Court	270-275
<b>X.</b>	<b>REPARATIONS (APPLICATION OF ARTICLE 63(1) OF THE AMERICAN CONVENTION)</b>	276-338
	A. Injured party	281
	B. Obligation to investigate the facts that gave rise to the violations and to identify, prosecute and, as appropriate, punish those responsible, as well as to determine the whereabouts of the victim	282-291
	C. Other measures of integral reparation: rehabilitations and satisfaction, and guarantees of non-repetition	292-309
	D. Compensation	310-320
	E. Costs and expenses	321-329
	F. Reimbursement of the expenses to the Victims' Legal Assistance Fund	330-332
	G. Means of complying with the payments ordered	333-338
<b>XI.</b>	<b>OPERATIVE PARAGRAPHS</b>	339

I  
**INTRODUCTION OF THE CASE AND PURPOSE OF THE DISPUTE**

1. On May 2, 2010, in keeping with Articles 51 and 61 of the Convention, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or “the Commission”) presented an application (hereinafter “application brief”) against the Dominican Republic (hereinafter “the State” or “the Dominican Republic”) in relation to case 11,324. The initial petition had been lodged before the Inter-American Commission on July 1, 1994,<sup>3</sup> by the Subregional Coordination Office for Central America, the Caribbean and Mexico of the World University Service.<sup>4</sup> On March 7, 1996, the Inter-American Commission approved Admissibility Report No. 4/96, which was published on March 3, 1998 as No. 16/98.<sup>5</sup> On November 10, 2009, 15 years and 4 months after the initial petition had been submitted, the Commission approved Report on Merits No. 111/09, under Article 50 of the American Convention.<sup>6</sup> This report was forwarded to the State on December 2, 2009, and the State was granted two months to report on the measures adopted to comply with its recommendations. On February 18, 2010, the State requested a two-month extension of the time frame accorded by the Commission, and this was granted;<sup>7</sup> subsequently, the State asked for a second extension, which was refused.<sup>8</sup> Owing to the lack of information, the Commission considered that the State had not adopted the recommendations made in the said report and decided to submit this case to the jurisdiction of the Inter-American Court. The Inter-American Commission appointed Gonzalo Escobar Gil, Commissioner, Santiago A. Canton, Executive Secretary, and Catalina Botero, Special Rapporteur for Freedom of Expression, as delegates, and Elizabeth Abi-Mershed, Deputy Executive Secretary, and Isabel Madariaga and Silvia Serrano, lawyers of the Executive Secretariat, as legal advisers.

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<sup>3</sup> The Inter-American Commission and the parties agree that the initial petition was presented on July 1, 1994. However, the copy of this document submitted to the Court does not show the date it was received by the Commission.

<sup>4</sup> On July 5, 1996, the Center for Justice and International Law (CEJIL) and Human Rights Watch joined the case as co-petitioners. On July 24, 1996, the World University Service and Luz Altagracia Ramírez de González, as the wife of the alleged victim Narciso González and as a member of the civil organization “Truth Commission,” advised the Inter-American Commission that Human Rights Watch and CEJIL would represent them before the Commission.

<sup>5</sup> According to the Inter-American Commission, on March 7, 1996, it declared the instant case admissible and assigned the case the number 11/324. On March 13, 1996, the Commission notified the said report to the parties and granted them 90 days to indicate their willingness to initiate a friendly settlement procedure and to take part in a public hearing. However, the Commission only decided to publish this report on March 3, 1998. *Cf.* Admissibility Report 4/96, Case 11,324 Narciso González v. Dominican Republic of March 7, 1996 (file of attachments to the application, attachment 3, folios 355 to 360), and Admissibility Report 16/98, Case 11,324 Narciso González v. Dominican Republic, of March 3, 2008 (file of attachments to the application, tome I, attachment 1, folios 2 to 6).

<sup>6</sup> Report on Merits No. 111/09, Case 11,324, Narciso González Medina v. Dominican Republic, November 10, 2009 (file of attachments to the application, attachment 2, folios 8 to 63).

<sup>7</sup> In a communication of January 22, 2010, received by the Inter-American Commission on February 18, 2010, the State indicated that it “expressly waived filing preliminary objections before the Inter-American Court with regard to observance of the time frame established in Article 51(1) of the Convention should the case be submitted to the said Court.” When granting the requested extension, the Commission’s Executive Secretariat informed the State, *inter alia*, that “[d]uring this time, the time frame established in Article 51(1) of the Convention for the submission of the case to the Inter-American Court of Human Rights was suspended and would expire on May 2, 2010.”

<sup>8</sup> The Inter-American Commission referred to the refusal of this second request for an extension in its application brief, and the State did not specifically contest this fact. However, the case file does not contain a copy of this extension request.

2. According to the Commission, the instant case relates to the alleged forced disappearance of the “university professor and opposition leader” Narciso González Medina, known as “Narcisazo” (*infra* para. 93), which started on May 26, 1994, “as a result of his criticism of the Army and the then President of the Republic, Joaquín Balaguer, as well as his participation in the public denunciation of electoral fraud in the context of the 1994 presidential election.” In addition, the application refers to the alleged absence “of serious, diligent and effective investigations to clarify the facts, identify those responsible, and impose the corresponding sanctions.”

3. Based on the above, the Commission asked the Court to declare the international responsibility of the Dominican Republic for the alleged violation of Articles 3 (Right to Juridical Personality), 4 (Right to Life), 5 (Right to Humane Treatment), 7 (Right to Personal Liberty), 13 (Freedom of Thought and Expression), 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection) of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of Narciso González Medina. In addition, the Commission asked the Court to declare the State responsible for the alleged violation of Articles 5 (Right to Humane Treatment), 13 (Freedom of Thought and Expression), 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection) of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of his wife, Luz Altagracia Ramírez, and of their children: Ernesto, Rhina Yocasta, Jennie Rossana and Amaury,<sup>9</sup> all González Ramírez. As a result of the foregoing, the Commission asked the Court to order the State to adopt specific measures of reparation, and pay the costs and expenses.

4. The application was notified to the State and to the representatives on July 19, 2010.

5. On September 19, 2010, the civil organization “Truth Commission” and the Center for Justice and International Law (CEJIL), representatives of the alleged victims in this case (hereinafter “the representatives”), submitted their brief with pleadings, motions and evidence (hereinafter “pleadings and motions brief”) to the Court, in accordance with Article 40 of the Court’s Rules of Procedure. The representatives agreed substantially with the arguments of the Commission and asked the Court to declare the international responsibility of the State for the alleged violation of the articles of the American Convention indicated by the Inter-American Commission, and added that the State had also violated Articles 17 (Rights of the Family) to the detriment of Mr. González Medina’s wife and children, 19 (Rights of the Child) to the detriment of Amaury González Ramírez, and 2 (Domestic Legal Effects) of the Convention, as well as Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture (hereinafter “the Convention against Torture”). Consequently, they asked the Court to order various measures of reparation. In addition, at that time, the representatives requested, on behalf of the alleged victims, that they be allowed to take advantage of the Victims’ Legal Assistance Fund of the Inter-American Court (hereinafter “the Legal Assistance Fund” or “the Fund”) “to cover some specific costs related to producing evidence during the processing of this case before the Court”; they detailed the said costs and, subsequently, presented probative elements regarding the alleged victims’ lack of financial resources to assume them.

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<sup>9</sup> The Commission identified Mr. González Medina’s younger son as “Amaury,” while the representatives identified him as “Amauris,” and he also appears on probative documents as “Amaurys.” The Court will refer to this presumed victim as “Amaury,” as his name appears in the extract from his birth certificate provided to the Court (file of attachments to the brief with pleadings, motions and evidence, attachment 31, folio 5166). Furthermore, the Commission and the parties referred to Mr. González Medina’s second daughter as “Jennie Rossana” and she also appears in some probative documents as “Jenny.” The Court will refer to this presumed victim as “Jennie Rosanna,” as she appears in her affidavit and in the summary of her birth certificate cited in the Investigating Court’s ruling of August 24, 2001 (*infra* paras. 65 and 119 and footnotes 99 and 105).

6. On December 28, 2010, the Dominican Republic submitted to the Court its brief with preliminary objections, in answer to the application and with observations on the pleadings and motions brief (hereinafter “answering brief”). In this brief, the State filed five preliminary objections (*infra* para. 14) and, alternatively, asked the Court to declare that “it had not incurred international responsibility for the alleged forced disappearance of Mr. González Medina,” and was not responsible for the alleged violations against the members of his family. In addition, “subsidiarily,” the Dominican Republic asked the Court, “if it determined that the facts alleged in the application and in the brief with pleadings, motions and evidence are true, [...] not to admit the reparations requested by the representatives of the [alleged] victims.” The State appointed José Marcos Iglesias Iñigo as its Agent for the instant case and, in its answering brief, appointed Bolívar Sánchez, as Deputy Agent, and Frank E. Soto Sánchez, José Dantes Díaz, Mayerlyn Cordero, Danissa Cruz, José R.L. Casado and Ricardo D. Ruiz Cepeda, as legal advisers.

## II PROCEEDINGS BEFORE THE COURT

7. In an order of February 23, 2011, the President of the Court (hereinafter “the President”) admitted the request filed by the alleged victims, through their representatives, to be allowed to use the Legal Assistance Fund (*supra* para. 5), and approved that the necessary financial assistance be granted for the presentation of a maximum of three testimonies (*infra* para. 9).

8. On March 9 and 12, 2011, the Inter-American Commission and the representatives, respectively, presented their observations on the preliminary objections filed by the State (*supra* para. 6) and asked the Court to reject them. In their brief, the representatives also asked the Court to issue “an accessory order” so as to eliminate certain arguments and evidence presented by the State.<sup>10</sup>

9. On June 3, 2011, the President of the Court issued an Order,<sup>11</sup> in which he required the testimony of three alleged victims, eight witnesses, and six expert witnesses to be received by affidavit, and the latter were presented on June 22 and 23, 2011.<sup>12</sup> Also, in this Order, the President convened the parties to a public hearing (*infra* para. 11), and ruled on the representatives’ request that the Court reject certain arguments and evidence presented by the State (*supra* para. 8).<sup>13</sup> Lastly, the President took decisions regarding the Legal Assistance Fund (*supra* para. 7).

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<sup>10</sup> The representatives asked the Court to “order the elimination of the argument and opinions concerning the possible suicide of Narciso González during the public hearing and at all subsequent stages of the litigation on the merits of this case,” in order to “avoid the re-victimization of the [alleged] victims.”

<sup>11</sup> Cf. *Case of González Medina and family v. Dominican Republic*. Order of the President of the Court of June 3, 2011.

<sup>12</sup> The State did not forward the sworn statements of the witnesses Jimmy Sierra and Bolívar Sierra.

<sup>13</sup> The President decided that “[t]he Court w[ould] assess the observations and objections of the representatives regarding certain arguments and evidence offered by the State at the respective procedural opportunity. Consequently, as he has previously, [...he] consider[ed] that, at th[at] procedural stage, it [was] not appropriate to decide to exclude evidence and arguments submitted by the State to explain or reject the facts and claims set out by the Commission and the representatives. Thus, to ensure the proper evolution of the proceedings, the President order[ed] that any evidence which could, in principle, be pertinent be received, taking into consideration the facts that the parties are arguing and trying to prove, without this implying a decision or a prejudgment of the merits of the case. The evidence and arguments that form part of the State’s position in these proceedings w[ould] be examined and assessed by the Court at the appropriate stage.”

10. On June 1, 2011, the State presented certain documentation (*infra* para. 75) and the representatives and the Inter-American Commission submitted observations in this regard. On June 24, 2011, the parties were informed of the decision of the President of the Court to reject the incorporation of this documentation. On June 27, 2011, the Dominican Republic submitted a petition for reconsideration of the President's decision. In an order of July 5, 2011, the Court ratified the President's decision (*infra* paras. 75 and 77).

11. The public hearing was held on June 28 and 29, 2011, during the Court's ninety-first regular session, which took place at its seat.<sup>14</sup> During the hearing, the Court received the testimony of one alleged victim, two witnesses, and one expert witness, as well as the observations and final oral arguments of the Inter-American Commission, the representatives, and the State. During the said hearing and in a note of July 13, 2011, the Court required the parties and the Commission to present specific helpful documentation and explanations.<sup>15</sup>

12. On August 1, 2011, the representatives and the State forwarded their final written arguments and the Inter-American Commission presented its final written observations. The representatives and the Inter-American Commission responded to the Court's requests for helpful information, documentation and explanations (*supra* para. 11). The State forwarded part of the information that the Court had asked for (*supra* para. 11), and provided the written report of witness Eduardo Sánchez Ortiz that the Court had requested. After it had been granted an extension, the State presented some of the missing information, documents and explanations requested by the Court as helpful evidence on August 22 and September 29, 2011. In its brief of August 22, 2011, the State desisted from one preliminary objection (*infra* para. 14 and footnote 16) and presented some "additional observations on the costs" requested by the representatives.

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<sup>14</sup> The following appeared before this hearing: (a) for the Inter-American Commission: Elizabeth Abi Mershed, Deputy Executive Secretary; Catalina Botero, Special Rapporteur for Freedom of Expression; Silvia Serrano Guzmán and Ana Luisa Gomes Lima, advisers; (b) for the representatives: Viviana Krsticevic, Ariela Peralta, Francisco Quintana and Annette Martínez of the Center for Justice and International Law (CEJIL); Rafael Domínguez from the civil society organization "Truth Commission" and Tomás Castro Monegro, lawyer, and (c) for the State: Nestor Juan Cerón Suero, Ambassador of the Dominican Republic to the Republic of Costa Rica; José Marcos Iglesias Iñigo, Agent and Minister Counselor of the Dominican Republic; Bolívar Sánchez Veloz, Deputy Agent and Deputy Attorney General of the Dominican Republic; Fran Soto, legal adviser to the State and Deputy Attorney General of the Dominican Republic; Danissa Cruz, legal adviser to the State and Deputy Prosecutor General of the Dominican Republic; José Casado Liberato, legal adviser, and Ricardo D. Ruíz Cepeda, legal adviser and human rights analyst of the Ministry of Foreign Affairs.

<sup>15</sup> The following documentation and explanations, *inter alia*, were requested: (i) the State was asked to provide: detailed and specific information on the reopening of the criminal investigation in 2007 and a copy of the respective case file; regarding the alleged hypothesis of suicide, to specify or explain how this hypothesis approaches the issue of what happened to the body; information and documentation regarding the testimony rendered before police, judicial and investigation bodies of all those persons who stated that they had seen, or that another person had told them that they had seen, Mr. González Medina on the day of his alleged disappearance or on subsequent days, and who affirmed that they had witnessed, known of, or confirmed the destruction or alteration of official documents and, regarding this aspect, the State was asked to explain whether this aspect had been investigated during the domestic criminal proceedings and the conclusions reached; in relation to the conclusion reached by the Joint Board in its report that the deponent Juan Dionisio Marte took part in the detention of retired Brigadier General Jesús M. Mota Henríquez, rather than of Narciso González Medina, despite the deponent's testimony, the State was asked to provide a copy of the record of detentions (logbook) of May 16, 1994, where this detention was recorded, as well as explanations about how the conclusion was reached that Mr. González Medina and Mr. Mota Henríquez resembled each other, and (ii) the witness Eduardo Sánchez Ortiz, who was the judge of the National District Seventh Investigating Court in charge of the investigation into what happened to Narciso González Medina, was asked to submit a report explaining various points relating to the domestic judicial proceedings, under Article 58(cc) of this Court's Rules of Procedure.

13. The briefs with final arguments and observations were forwarded to the parties and to the Inter-American Commission. The President granted the representatives and the State a specific time frame to present any observations they deemed pertinent on the helpful evidence requested by the Court and the information and attachments sent by the representatives in relation to their claims for costs and expenses (*supra* paras. 11, 12 and 71). On October 21, 2011, the representatives presented their observations. The State did not submit observations.

### III PRELIMINARY OBJECTIONS

14. In its answering brief, the State filed five preliminary objections and, subsequently, desisted from one of them.<sup>16</sup> The other four preliminary objections refer to:

1. "Inadmissibility of the application owing to failure to exhaust domestic remedies"
2. "Inadmissibility of the application owing to the expiry of the time frame for the report under Article 50 of the Convention"
3. "Partial inadmissibility of the application owing to the 'fourth instance' principle"
4. "Lack of competence *ratione temporis* of the Court"
  - 4.A) "Lack of competence of the Inter-American Court *ratione temporis* to examine the alleged violations of the American Convention and of the Convention against Torture to the detriment of Mr. González Medina";
  - 4.B) "Lack of competence of the Inter-American Court *ratione temporis* to examine the alleged violations of the American Convention to the detriment of the members of the alleged victim's family."

15. The Court will analyze the admissibility of these preliminary objections in the order in which they were presented.

#### ***A) "Inadmissibility of the application owing to failure to exhaust domestic remedies"***

##### *Arguments of the parties and of the Inter-American Commission*

16. The State argued that the application was inadmissible owing to the failure to exhaust the domestic remedies available under Dominican law. It argued that it was impossible that Mr. González Medina's family had exhausted the domestic remedies in just 35 days, which is the time that elapsed between his disappearance and the filing of the petition before the Inter-American Commission. In addition, it asserted that the exceptions contained in Article 46(2) of the Convention were not applicable because the petitioners could not argue the ineffectiveness of judicial remedies that had not been filed. The State argued that it had not waived, either explicitly or tacitly, the possibility of filing this preliminary objection, and affirmed that "it had always indicated, especially before the issue

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<sup>16</sup> In a brief presented on August 22, 2011, the State desisted from the preliminary objection of "Inadmissibility of the application owing to the time-barred seizure of the Inter-American Court." The State indicated, *inter alia*, that it "apologized to the Inter-American Court, the Inter-American Commission, the representatives of the alleged victims, and the family of the alleged victims for any inconvenience that the involuntary factual error committed by the State by filing this objection has caused them in these proceedings." The Court admits this withdrawal of the preliminary objection, even though it had been filed in a brief containing other arguments that the Court has not admitted, considering them time barred (*infra* para. 70), to the extent that it does not prejudice the defense of the alleged victims, and that the filing of preliminary objections is one of the State's procedural rights that it can waive at any moment of the proceedings.



of Admissibility Report No. 4/96, the domestic remedies that the petitioners were exhausting and should exhaust." In addition, the State referred to five domestic remedies that it considered "remain to be exhausted."

17. The representatives indicated that, "during the petition's admissibility proceeding before the Commission, the Dominican State did not argue th[is] objection [... and] did not specify the remedies that remained to be exhausted, or their effectiveness to respond to the complaints filed," even though the Commission asked it for specific information in this regard. The representatives indicated that "Article 46 [of the Convention] does not require that domestic remedies be exhausted before the petition is presented, but rather that the Commission must analyze whether domestic remedies have been exhausted before issuing a decision on admissibility." They also indicated that, when lodging the initial petition, they had "explained that the investigations initiated by the State based on the complaint filed by the victims had not been effective" and, subsequently, when the civil action was filed on May 26, 1995, and the State was informed of it, the latter "never ruled on this civil action filed by the victim's family, or indicated to the Commission whether the action was sufficient or whether other remedies remained to be exhausted." The representatives also referred to the remedies that, according to the State, remained to be exhausted.

18. The Commission argued that this preliminary objection was not filed before the ruling on admissibility and that the only relevant communication presented by the State during the admissibility stage was the brief of September 19, 1994. In this regard, the Commission stated that "although, [it had] mentioned in the Admissibility Report that this observation by the State [in the said communication ...] appeared to be related to the requirement of exhaustion of domestic remedies, this did not imply that it had been presented as a means of defense or as support for a request to declare the petition inadmissible." The Commission added that, "even if it is considered that the State's observations in its brief of September 19, 1994, were equivalent to an argument of exhaustion of domestic remedies as a means of defense, [...] the State did not mention any of the five remedies that it referred to in its answer to the application." The Commission also referred to the other remedies that, according to the State, remained to be exhausted.

#### *Considerations of the Court*

19. Article 46(1)(a) of the American Convention establishes that, in order to determine the admissibility of a petition or communication lodged before the Inter-American Commission under Articles 44 or 45 of the Convention, the remedies under domestic law must have been pursued and exhausted in accordance with generally recognized principles of international law.<sup>17</sup> The Court recalls that the rule of previous exhaustion of domestic remedies is conceived in the interests of the State, because it seeks to exempt the State from responding before an international organ for acts attributed to it, before it has had the opportunity to remedy them by its own means.<sup>18</sup>

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<sup>17</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Preliminary objections*. Judgment of June 26, 1987. Series C No. 1, para. 85, and *Case of Mejía Idrovo v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of July 5, 2011. Series C No. 228, para. 27.

<sup>18</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*. Judgment of July 29, 1988. Series C No. 4, para. 61, and *Case of Mejía Idrovo v. Ecuador. Preliminary objections, merits, reparations and costs*, *supra* note 17, para. 27.

20. The foregoing means that these remedies must not only exist formally, but they must also be adequate and effective, as a result of the exceptions established in Article 46(2) of the Convention.<sup>19</sup>

21. This Court has maintained consistently that an objection to the exercise of the Court's jurisdiction based on the alleged failure to exhaust domestic remedies must be presented at the appropriate procedural stage.<sup>20</sup> In the instant case, since the Commission ruled on the admissibility of the petition in Report No. 4/96, which it adopted on March 7, 1996, the appropriate occasion for the State to file this objection was before the said report was issued.

22. When arguing the failure to exhaust domestic remedies, the State must, at the same time, indicate the remedies that must be exhausted and their effectiveness. In this regard, the Court reiterates that the interpretation it has given to Article 46(1)(a) of the Convention for more than 20 years is in keeping with international law<sup>21</sup> and that, according to its own case law<sup>22</sup> and to international case law,<sup>23</sup> it is not incumbent on the Court or the Commission to identify *ex officio* the domestic remedies that remain to be exhausted.

23. In this case, when filing the preliminary objection before the Court, the State referred to five communications that it had sent to the Inter-American Commission during the proceedings before that organ and asserted that, in them, it had argued the failure to exhaust domestic remedies. The Court has verified that only the above-mentioned communication of September 19, 1994, was sent to the Commission prior to the adoption of Admissibility Report No. 4/96 on March 7, 1996, and its notification to the parties.<sup>24</sup> In this communication, the State indicated that "all the country's agencies are searching for Dr. González" and that "all the necessary remedies will be exhausted for the prompt and satisfactory solution of this case which has dismayed the Government and the whole community."

24. The Court observes that, in the said Admissibility Report, the Commission stated that "[t]he assertions [made] by the Government of the Dominican Republic [in its brief of September 19, 1994,] appear to argue the failure to exhaust domestic remedies." In addition, the Commission indicated that the State had failed to respond specifically" to the reiterated requests that it indicate the remedies that must be exhausted and the failure to exhaust them. The Court has verified that the Dominican Republic did not identify the domestic remedies that had to be exhausted and their effectiveness, at the opportune procedural occasion. In general, none the arguments submitted by the State in the answer to the application to found the objection of failure to exhaust domestic remedies were filed

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<sup>19</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Preliminary objections*, *supra* note 17, para. 63, and *Case of Mejía Idrovo v. Ecuador*, *supra* note 17, para. 28.

<sup>20</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Preliminary objections*, *supra* note 17, para. 88, and *Case of Mejía Idrovo v. Ecuador*, *supra* note 17, para. 29.

<sup>21</sup> Cf. *Case of Reverón Trujillo v. Venezuela. Preliminary objection, merits, reparations and costs*. Judgment of June 30, 2009. Series C No. 197, para. 22, and *Case of Usón Ramírez v. Venezuela. Preliminary objection, merits, reparations and costs*. Judgment of November 20, 2009. Series C No. 207, para. 22.

<sup>22</sup> Cf. *Case of Velásquez Rodríguez*, *supra* note 17, para. 88; *Case of Usón Ramírez v. Venezuela*, *supra* note 21, para. 22.

<sup>23</sup> Cf. European Court of Human Rights (hereinafter "ECHR"), *Deweert v. Belgium*, 27 February 1980, para. 26, Series A No. 35; ECHR, *Foti et al. v. Italia*, 10 December 1982, para. 48, Series A No. 56, and ECHR, *De Jong, Baljet and Van den Brink v. The Netherlands*, 22 May 1984, para. 36, Series A No. 77.

<sup>24</sup> This report was notified to the State on March 13, 1996 (file of attachments to the application, attachment 3, folios 171 and 175).

at the appropriate procedural stage before the Commission, so that filing them before the Court is time-barred, because it does not comply with one of the formal conditions for this preliminary objection.<sup>25</sup> Consequently, the Court rejects the preliminary objection of failure to exhaust domestic remedies filed by the Dominican Republic.

***B) "Inadmissibility of the application owing to expiry of the time frame for the report under Article 50 of the Convention"***

*Arguments of the parties and of the Inter-American Commission*

25. The State argued that the application is inadmissible because the Commission issued the report under Article 50 of the American Convention without respecting the period of 180 days established in Article 23(2) of its Statute, a time frame referred to in Article 50(1) of the Convention. According to the State, this period must be calculated taking into account the reasons established in Article 40(1) of the Commission's Rules of Procedure to consider the friendly settlement procedure concluded; therefore, it must be calculated from May 16, 2001, when the petitioners stated clearly and consistently their intention to end the friendly settlement procedure. In addition, it should have been taken into account that, after April 25, 1997, the Dominican Republic "did not demonstrate any intention of reaching a friendly settlement." The State indicated that "the Commission should have produced the merits report by November 12, 2001, at the latest." According to the State "the failure to produce the report under Article 50 of the [Convention ...] in eight years is more than unreasonable and inconsistent with due process before the inter-American system, *pacta sunt servanda* in compliance with treaties, and the principles of legal certainty and the predictability of the system for its actors." The State based this argument on the Court's decision in the *case of Cayara v. Peru*. In addition, it argued that, since the time frame for the report under Article 50 of the Convention had expired, "it was not possible for the [Commission] to present the application in question [... and,] the appropriate course, [... was] the issue of the second report established in Article 51(1) *in fine* of the American Convention."

26. The Commission indicated that it had "processed the instant case in keeping with [its] powers under the Convention and its Rules of Procedure, issuing the respective reports on admissibility and merits when it had all the necessary elements to do so," and that "both parties participated in all the stages, which respected the adversarial principle." The Commission observed that "the Dominican State has not indicated how an alleged delay in the approval of the merits report affected its right to defense in the proceedings before the Inter-American Commission; therefore the Court should reject this preliminary objection."

27. The representatives argued that "the State has never indicated that the Commission's actions have given rise to a grave error or a harm that limited its right to defense and therefore warrant a review of the proceedings by the Court." In addition, they argued that the assertion that the friendly settlement procedure had concluded as of May 16, 2001, was incorrect. They also affirmed that the State had "promoted the continuation of the dialogue" after April 25, 1997, and referred to several actions in this regard. In addition, they indicated that, "on several occasions, they had asked that the process be terminated, but they were also open to discuss the possibility of reaching a satisfactory agreement," and that the State, "on numerous occasions, gave the appearance of wanting to continue the dialogue."

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<sup>25</sup> Cf. *Case of Vélez Loo v. Panama. Preliminary objections, merits, reparations and costs*. Judgment of November 23, 2010. Series C No. 218, para. 26, and *Case of Vera Vera et al. v. Ecuador. Preliminary objection, merits, reparations and costs*. Judgment of May 19, 2011, Series C No. 226, para. 16.

### *Considerations of the Court*

28. When an action by the Commission in relation to the proceedings before it is alleged as a preliminary objection, this Court has maintained that the Inter-American Commission has autonomy and independence in the exercise of its mandate as established by the American Convention and, in particular, in the exercise of its functions in the proceedings relating to the processing of individual petitions established in Articles 44 to 51 of the Convention. Nevertheless, in matters that it is considering, the Court is empowered to control the legality of the Commission's actions.<sup>26</sup> This does not necessarily entail revising the proceedings carried out before the latter, unless one of the parties argues, with justification, that there has been a grave error that violates its right of defense.<sup>27</sup> In addition, the Court must ensure a fair balance between the protection of human rights, which is the ultimate purpose of the system, and the legal certainty and procedural balance that ensure the stability and reliability of the international protection.<sup>28</sup>

29. Article 50(1) of the American Convention establishes that "[i]f a settlement is not reached, the Commission shall, within the time limit established by its Statute, draw up a report setting forth the facts and stating its conclusions." Article 23(2) of the Commission's Statute stipulates that "[i]f the friendly settlement referred to in Articles 44 to 51 of the Convention is not reached, the Commission shall draft, within 180 days, the report required by Article 50 of the Convention." Likewise, regarding the friendly settlement procedure, the relevant provisions of the Commission's Rules of Procedure approved in 1980, 2000 and 2009<sup>29</sup> established that the Commission could terminate its intervention in the friendly settlement procedure if it found that the matter was not susceptible to such a settlement, or if one of the parties did not consent to its implementation, decided not to continue it, or did not show willingness to reach a friendly settlement based on respect for human rights.<sup>30</sup> The Commission must assess the specific circumstances in each case, taking into account these parameters to determine that a friendly settlement will not be reached and to proceed to draw up the merits report observing the said time frame.

30. When analyzing all the above-mentioned regulations under the Convention, the Statute and the Rules of Procedure regarding the procedural moment for the Commission to issue the merits report, the Court finds that the most relevant, in terms of the State's right of defense and legal certainty, is that the Commission issue this report if the matter has not been settled by the parties, and that it refrain from issuing it if there is a possibility that a friendly settlement will be reached, as well as until the State has been given the opportunity to comply with its obligations in relation to the alleged violations attributed to it, and the

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<sup>26</sup> Cf. *Control of Due Process in the Exercise of the Powers of the Inter-American Commission on Human Rights (Arts. 41 and 44 of the American Convention on Human Rights)*. Advisory Opinion OC-19/05 of November 28, 2005. Series A No. 19, first and third operative paragraphs, and *Case of Grande v. Argentina. Preliminary objections and merits*. Judgment of August 31, 2011. Series C No. 231, para. 45.

<sup>27</sup> Cf. *Case of Castañeda Gutman v. United Mexican States. Preliminary objections, merits, reparations and costs*. Judgment of August 6, 2008. Series C No. 184, para. 42, and *Case of Vélez Loo v. Panama, supra* note 25, para. 22.

<sup>28</sup> Cf. *Case of Cayara v. Peru. Preliminary objections*. Judgment of February 3, 1993. Series C No. 14, para. 63; *Case of Baena Ricardo et al. v. Panama. Preliminary objections*. Judgment of November 18, 1999. Series C No. 61, para. 42, and *Case of the Serrano Cruz Sisters v. El Salvador. Preliminary objections*. Judgment of November 23, 2004. Series C No. 118, para. 70.

<sup>29</sup> The Court notes that these three Rules of Procedure have been applicable to the processing of this case before the Commission.

<sup>30</sup> Cf. Article 45(7) of the 1980 Rules of Procedure, Article 41(2) and 41(4) of the 2000 Rules of Procedure, and Article 40(2) and 40(4) of the 2009 Rules of Procedure.

alleged victims have been able to consider whether the State's actions constitute an appropriate remedy. In this regard, the Court has indicated that the procedures established in Articles 48 to 50 of the Convention "offer the parties the possibility of adopting the necessary provisions to resolve the situation in question, with due respect for the human rights established by the Convention."<sup>31</sup> Furthermore, the Court has emphasized that:

The procedures under Articles 48 to 50 have a more extensive purpose as regards the international protection of human rights: compliance by the States with their obligations and, more specifically, with their legal obligation to cooperate in the investigation and resolution of the violations of which they may be accused.

[...]

The procedure described contains a mechanism designed, in stages of increasing intensity, to encourage the State to fulfill its obligation to cooperate in the resolution of the case. The State is thus offered the opportunity to settle the matter before it is brought to the Court, and the petitioner has the chance to obtain an appropriate remedy more quickly and simply. We are dealing with mechanisms whose operation and effectiveness will depend on the circumstances of each case and, above all, on the nature of the rights affected, the characteristics of the acts denounced, and the willingness of the government to cooperate in the investigation and to take the necessary steps to resolve it.<sup>32</sup>

31. Regarding the instant case, first, the Court has verified that owing to the position assumed by the parties during the proceedings before the Commission with regard to a possible friendly settlement, it is not possible to establish an exact date on which it can be determined that a settlement of this nature would not be reached. The Court considers that the case file does not reveal that, on May 16, 2001, the relevant procedure had concluded before the Commission. Even though the representatives stated that they did not wish to continue with this stage of the proceedings, there are elements in the case file that suggest that the friendly settlement procedure continued. After that date, the representatives indicated their interest in continuing the discussions towards a possible settlement of the case.<sup>33</sup> For example, the day after the communication of May 16, 2001, the representatives submitted to the "consideration" of the Inter-American Commission the possibility of sending a letter directly to the President of the Dominican Republic, "in order to try and move the case of Narciso González towards a satisfactory settlement." In addition, in a communication presented to the Commission on May 24, 2001, the representatives proposed the creation of a "Plenipotentiary Committee" in which the Inter-American Commission would "be present"; this committee should be created "[i]mmmediately" by means of "an agreement duly formalized before the [Inter-American Commission]" to "monitor the actions taken by the State" in relation to the investigation of this case. Moreover, although the State indicated that, after April 25, 1997, it "had shown no intention of reaching a friendly settlement," the case file reveals that, after this date, on several occasions, it informed the Commission that it was committed to taking measures aimed at resolving the instant case.<sup>34</sup> For example, in a brief of February 25, 1998, the State

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<sup>31</sup> *Case of Velásquez Rodríguez v. Honduras. Preliminary objections, supra* note 17, para. 58.

<sup>32</sup> *Case of Velásquez Rodríguez v. Honduras. Preliminary objections, supra* note 17, paras. 59 and 60.

<sup>33</sup> *Cf. inter alia*, report of the "Truth Commission" organization of February 25, 1998, addressed to the Inter-American Commission; copy of the interactive edition of the *Diario Listín* of April 2, 1998; communications of May 16, 17 and 24, 2001, of Alberto García, S.J., member of the "Truth Commission" organization addressed to the Inter-American Commission (file of attachments to the application, attachment 3, folios 619, 653, 760 to 762 and 765 to 767), and record of the hearing before the Inter-American Commission of October 6, 1997 (file of attachments to the application, attachment 2, folios 3696 and 3699).

<sup>34</sup> Among others, the Court notes the communication of June 26, 2008, in which the State informed the Inter-American Commission that the Public Prosecution Service had adopted the decision to reopen the case and that this had been announced in a press conference at which the family of the presumed victim and their representatives were present, and added that it was "committed to conclude this case in the domestic jurisdiction and [that the said decision is] proof of this" (file of attachments to the application, attachment 3, folios 657, 816, 818 and 953). Also, *Cf.* communications of the Permanent Mission of the Dominican Republic to the Organization of

indicated “its willingness to continue cooperating in the procedure, in the understanding that the friendly settlement mechanism is the most appropriate.” Furthermore, in its brief of March 19, 2007, the State indicated its intention of organizing a meeting with the petitioners as “a new attempt to find [...] ways to resolve the case in the national jurisdiction.”

32. Second, the Court emphasizes that, in the case file before the Commission there is no evidence that, when the Commission forwarded merits report No. 111/09 to the State or before this, the State had filed any objection before this organ related to the time frame for the issue of the said report. Furthermore, the fact that it had not issued the merits report “by November 12, 2001, at the latest,” as the State argues (*supra* para. 25), gave the Dominican Republic more time to take measures at the domestic level to investigate the facts that had been denounced.

33. Lastly, the Court has observed that, when analyzing the said time frame under Article 23(2) of the Commission’s Statute, the Dominican Republic misapplied the criteria of this Court in its judgment in the *case of Cayara v. Peru* (1993) concerning the period indicated in Article 51(1) of the American Convention for the submission of the case to the Court. In this regard, it should be pointed out that there are fundamental differences between the two time frames. It must be emphasized that, regarding the three-month period established in the said Article 51(1), the Convention itself establishes the legal consequence that, if the case is not submitted to the Court within this period, this possibility is precluded and the Commission may, at its own discretion, issue a second report under the provisions of Article 51(1) of this treaty.<sup>35</sup> This characteristic of the time frame of the latter article is not found with regard to the time frame under Article 23(2) of the Commission’s Statute. The Convention and the Commission’s Statute do not stipulate the legal consequence that, if the merits report is not issued within the time frame indicated in Article 23(2), the case cannot be submitted to the Court.

34. The foregoing findings allow it to be verified that, in the instant case, the Commission’s actions are justified owing to the position assumed by the parties, and they did not prejudice the State’s right of defense or procedural guarantees, such as those relating to the adversarial principle and the principles of procedural balance and legal certainty.<sup>36</sup>

35. Based on the above, the Court rejects this preliminary objection.

### **C) “Partial inadmissibility of the application owing to the ‘fourth instance’ principle”**

#### *Arguments of the parties and of the Inter-American Commission*

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American States of October 21, 1997, and May 2, 2007, both addressed to the Inter-American Commission; communications and briefs of the Office of the Attorney General of the Dominican Republic of November 6, 1997, addressed to Alberto García, S.J.; communications and briefs of the Office of the Attorney General of the Dominican Republic of February 25 and September 18, 1998, addressed to the Inter-American Commission, of September 18, 1998, addressed to the Deputy Secretary of State for Foreign Affairs of the Dominican Republic, and of December 15, 1997, addressed to the “Truth Commission” organization (file of attachments to the application, attachment 3, folios 605, 623, 640, 641, 643, 693, 694 and 1013).

<sup>35</sup> Cf. *Case of Cayara v. Peru*, *supra* note 28, paras. 59 to 63, and *Reports of the Inter-American Commission on Human Rights* (Art. 51 American Convention on Human Rights). Advisory Opinion OC-15/97 of November 14, 1997. Series A No. 15, paras. 46 and 47.

<sup>36</sup> Cf. *Case of Cayara v. Peru*, *supra* note 28, para. 42; and Advisory Opinion OC-19/05, *supra* note 26, paras. 25 to 27.

36. The State maintained that “by arguing the alleged violation of Articles 8 and 25 of the American Convention in relation to the [domestic] judicial proceedings,” the Inter-American Commission and the petitioners are attempting to make the Court re-examine the evidence, which means that the Court “would act as a fourth judicial instance, in violation of the [Convention].”

37. Both the Commission and the representatives asked the Court to reject this preliminary objection, because the State’s arguments were not of a preliminary nature. The representatives indicated that Dominican Republic was attempting to invalidate the arguments concerning the alleged violation of Articles 8 and 25 of the Convention. In addition, the Commission indicated that it had asked the Court to rule on the domestic proceedings because it considered that the State had failed to comply with the American Convention “owing to the acts and omissions of its authorities in the context of the investigation and the criminal proceedings.”

#### *Considerations of the Court*

38. This Court has established that the nature of the international jurisdiction is subsidiary,<sup>37</sup> additional, and complementary;<sup>38</sup> hence, it does not perform the functions of a court of “fourth instance.” It is for the Court to decide whether, in each specific case, the State has violated a right protected by the Convention, thus incurring international responsibility. Consequently, this Court is not a higher court or a court of appeal to decide disagreements between the parties with regard to the scope of the evidence or the application of domestic law on aspects that are not directly related to compliance with international human rights obligations.<sup>39</sup>

39. The Court has indicated that preliminary objections are acts that seek to prevent the analysis of the merits of a disputed matter by contesting the admissibility of an application or the competence of the Court to hear a specific case or an aspect of the latter, owing either to the person, the matter, the time, or the place, provided that these objections are of a preliminary nature.<sup>40</sup> If these objections cannot be examined without previously analyzing the merits of a case, they cannot be examined by means of a preliminary objection.<sup>41</sup>

40. The Court has also indicated that, for this objection to be admissible, it would be necessary that the petitioner request the Court to review the judgment of a domestic court “owing to its incorrect assessment of the evidence, the facts, or domestic law, without

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<sup>37</sup> Cf. *Case of Acevedo Jaramillo et al. v. Peru. Interpretation of the judgment on preliminary objections, merits, reparations and costs.* Judgment of November 24, 2006. Series C No. 157, para. 66, and *Case of Mejía Idrovo v. Ecuador*, *supra* note 17, para. 18.

<sup>38</sup> The Preamble of the American Convention indicates that the international protection “reinforce[es] or complement[s] the protection provided by the domestic law of the American States.” See also, *The Effect of Reservations on the Entry into Force of the American Convention on Human Rights* (Arts. 74 and 75). Advisory Opinion OC-2/82 of September 24, 1982. Series A No. 2, para. 31; *The Word “Laws” in Article 30 of the American Convention on Human Rights*. Advisory Opinion OC-6/86 of May 9, 1986. Series A No. 6, para. 26; *Case of Velásquez Rodríguez v. Honduras. Merits*, *supra* note 18, para. 61, and *Case of Mejía Idrovo v. Ecuador*, *supra* note 17, para. 18.

<sup>39</sup> Cf. *Case of Nogueira de Carvalho et al. v. Brazil. Preliminary objections and merits.* Judgment of November 28, 2006. Series C No. 161, para. 80, and *Case of Mejía Idrovo v. Ecuador*, *supra* note 17, para. 18.

<sup>40</sup> Cf. *Case of Las Palmeras v. Colombia. Preliminary objections.* Judgment of February 4, 2000. Series C No. 67, para. 34, and *Case of Mejía Idrovo v. Ecuador*, *supra* note 17, para. 19.

<sup>41</sup> Cf. *Case of Castañeda Gutman v. United Mexican States*, *supra* note 27, para. 39, and *Case of Mejía Idrovo v. Ecuador*, *supra* note 17, para. 19.

simultaneously arguing that the said judgment violated international treaties with regard to which the Court has jurisdiction."<sup>42</sup>

41. The Court considers that the arguments presented by the Commission and the representatives concerning the alleged violations of Articles 8 and 25 of the Convention correspond to the examination of the merits of the case and is unable to rule on them in the form of a preliminary objection. The State's arguments will be taken into account when analyzing whether or not the said convention-based rights were violated. Based on the foregoing, the Court rejects the preliminary objection filed by the State.

**D) "Lack of competence *ratione temporis* of the Court"**

**D.1) Regarding the alleged violations to the detriment of Mr. González Medina**

*Arguments of the parties and of the Inter-American Commission*

42. The State asked the Court to "declare itself incompetent *ratione temporis* to examine the violations alleged by the Commission and the representatives to the detriment of Mr. González Medina, because "these alleged violations were of an instantaneous nature" and they occurred "almost five years before" it accepted the Court's binding jurisdiction. The State argued that, according to the Court's case law, when a disappearance occurs there are violations of an instantaneous nature and others of a continuing nature, and that those relating to the rights established in Articles 4, 5, 7, 13, 8 and 25 of the Convention "are of an instantaneous nature with regard to the alleged victim." The alleged acts of the arbitrary deprivation of liberty of Mr. González Medina and the denial of this detention or the refusal to provide information about his whereabouts "had begun to be executed, been completed, and had caused their effects" before the date on which it accepted the Court's jurisdiction, because "it is presumed that the alleged victim has been dead at least since May 26, 1995." The State asserted that "it is almost impossible, first, that the alleged victim survived more than six months without appropriate medical care, because he suffered from epilepsy and had a brain tumor and, second, that he was kept captive for more than a year in such a small country, especially in a case that acquired national notoriety."<sup>43</sup>

43. The representatives argued that the Court is competent *ratione temporis* to examine the alleged violations that are of a continuing nature to the detriment of Mr. González Medina." They indicated that the factor which determines the continuing or permanent nature of forced disappearance stems from the fact that it persists until the whereabouts of the disappeared person are discovered and the facts have been elucidated. Regarding the presumption of death, they stated that the criteria established by the Court in the judgment in the *case of Radilla Pacheco v. Mexico* are applicable.

44. The Inter-American Commission argued that the Court "is competent *ratione temporis* to rule on all the violations alleged in the application to the detriment of Narciso

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<sup>42</sup> *Case of Cabrera García and Montiel Flores v. Mexico. Preliminary objections, merits, reparations and costs.* Judgment of November 26, 2010. Series C No. 221, para.18.

<sup>43</sup> Based on the principle of equality between the parties, the Court finds that the additional arguments included by the State in its final written arguments, that differ from those submitted when raising the preliminary objection in its answering brief, and which are not designed to respond to any argument of the Commission or the representatives in their observations on the preliminary objections, are time-barred and therefore inadmissible.



González Medina." According to the Commission, the State's consideration that the above-mentioned violations of the American Convention are of an instantaneous nature "is incompatible even with the Court's most restricted approach to cases of forced disappearance." The Commission also referred to the criteria of the system's organs concerning the presumption of death in cases of forced disappearance of persons and the Court's competence to rule on alleged continuing violation of the right to freedom of expression "insofar as it was a reason for the forced disappearance." Regarding the alleged facts about destruction and loss of documents, as well as on the State's omissions in the search for and recovery of this information," the Commission indicated that these are violations that "not only continue having effects today, but they are the means by which the fate and whereabouts of the victim have been concealed."

#### *Considerations of the Court*

45. First, the Court reiterates that, as any organ with jurisdictional functions, it has the authority inherent in its powers to determine the scope of its own competence (*compétence de la compétence/Kompetenz-Kompetenz*). The instruments accepting the optional clause concerning the compulsory jurisdiction (Article 62(1) of the Convention) suppose the acceptance by the States presenting those instruments of the Court's right to decide any dispute concerning its jurisdiction.<sup>44</sup>

46. According to Article 62(1) of the American Convention,<sup>45</sup> in order to determine whether or not it has competence to hear a case, or any aspect of it, the Court must take into consideration the date on which the State accepted its jurisdiction, the terms in which it indicated its acceptance, and the principle of non-retroactivity established in Article 28 of the 1969 Vienna Convention on the Law of Treaties.<sup>46</sup> Although the State is bound to respect and guarantee the rights protected in the American Convention as of the date on which it ratifies it,<sup>47</sup> the competence of the Court to declare a violation of its norms is regulated by the said acceptance of the Court's jurisdiction by the State.

47. The Dominican Republic ratified the American Convention on April 19, 1978, and accepted the binding jurisdiction of the Inter-American Court on March 25, 1999; in its declaration it indicated that it acknowledged the jurisdiction of the Court as legally binding and without any special agreement in all cases concerning the interpretation or application

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<sup>44</sup> Cf. *Case of Hilaire, Constantine and Benjamin et al. Merits, reparations and costs*. Judgment of June 21, 2002. Series C No. 94, paras. 16 and 17, and *Case of the Serrano Cruz Sisters v. El Salvador*, *supra* note 28, para. 63.

<sup>45</sup> Article 62(1) of the Convention establishes:

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.

<sup>46</sup> This article establishes that "[u]nless 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."

<sup>47</sup> Article 28 of the 1969 Vienna Convention on the Law of Treaties establishes that: "[u]nless 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."

of the Convention.<sup>48</sup> In addition, on January 29, 1987, the Dominican Republic ratified the Inter-American Convention to Prevent and Punish Torture.

48. In light of the said acceptance of this Court's jurisdiction and of the principle of non-retroactivity, the Court can examine acts or facts that occurred after the date of this acceptance.<sup>49</sup> The Court also has competence to examine violations of a permanent or continuing nature that began before the defendant State accepted the Court's binding jurisdiction, and that persist following this acceptance, because they continue to be committed; thus the principle of non-retroactivity is not contravened.<sup>50</sup>

49. In the instant case, the objections raised by the Dominican Republic contest the permanent nature of forced disappearance and maintain that the alleged forced disappearance of Mr. González Medina had ceased before the acceptance of the Court's jurisdiction because the State presumes that, owing to his health and possible lack of medical care, Mr. González Medina would have died before the date of this acceptance (*supra* para. 42).

50. First, the Court finds inadmissible the State's argument that the alleged violations that would have occurred if forced disappearance had been constituted are of an instantaneous nature (*supra* para. 42). In its consistent case law since 1988,<sup>51</sup> the Court has established the continuing or permanent nature of the forced disappearance of persons, which has repeatedly been recognized by international human rights law. The Court classified the series of multiple and continuing violations of various rights protected by the Convention as forced disappearance of persons, based on the development of this concept in international human rights law at that time.<sup>52</sup> This Court's case law has been in the vanguard of the consolidation of a comprehensive perspective of the multiple offenses against the rights affected and the permanent or continuing nature of the offense of forced disappearance of persons,<sup>53</sup> in which

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<sup>48</sup> The acceptance of jurisdiction by the Dominican Republic indicated that "[t]he Government of the Dominican Republic, by means of this instrument, declares that it accepts the jurisdiction of the Inter-American Court of Human Rights as legally binding and without any special agreement with regard to all cases relating to the interpretation or application of the American Convention on Human Rights of November 22, 1969.

<sup>49</sup> Cf. *Case of Blake v. Guatemala. Preliminary objections* Judgment of July 2, 1996. Series C No. 27, paras. 39 and 40; and *Case of Ibsen Cárdenas and Ibsen. Peña v. Bolivia. Merits, reparations and costs.* Judgment of September 1, 2010. Series C No. 217, para. 21.

<sup>50</sup> Cf. *Case of the Serrano Cruz Sisters v. El Salvador. Preliminary objections, supra* note 28, paras. 65 and 66, and *Case of Radilla Pacheco v. Mexico. Preliminary objections, merits, reparations and costs.* Judgment of November 23, 2009. Series C No. 209, para. 24.

<sup>51</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits, supra* note 18, para. 155, and *Case of Contreras et al. v. El Salvador. Merits, reparations and costs.* Judgment of August 31, 2011. Series C No. 232, para. 82.

<sup>52</sup> In the sphere of international human rights law, the United Nations Working Group on Enforced or Involuntary Disappearances developed a functional definition of the phenomenon in the 1980s. The conceptual elements established by this Working Group were subsequently included in the definitions of several international instruments. Cf. *Case of Chitay Nech et al. v. Guatemala, Preliminary objections, merits, reparations and costs.* Judgment of May 25, 2010. Series C No. 212, para. 82, and *Case of Torres Millacura et al. v. Argentina. Merits, reparations and costs.* Judgment of August 26, 2011. Series C No. 229, para. 92. See, also, the report of the Working Group on Enforced or Involuntary Disappearances, Commission on Human Rights, thirty-seventh session, U.N. Doc. E/CN.4/1435, of 22 January 1981, para. 4; report of the Working Group on Enforced or Involuntary Disappearances, Commission on Human Rights, thirty-ninth session, U.N. Doc. E/CN.4/1983/14, of 21 January 1983, paras. 130 to 132, and report of the Working Group on Enforced or Involuntary Disappearances, Commission on Human Rights, Report on visit to Sri Lanka by three members of the Working Group, 7 to 18 October 1991, E/CN.4/1992/18/Add. 1, of 5 January 1992.

<sup>53</sup> Cf. *Case of Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil. Preliminary objections, merits, reparations and costs.* Judgment of November 24, 2010. Series C No. 219, para. 102. The European Court of Human Rights

the act of disappearance and its execution begin with the deprivation of liberty of the person and the subsequent absence of information on their whereabouts, and remain while the whereabouts of the disappeared person is not known or until their remains are identified with certainty (*infra* note 55). The Court developed this characterization of forced disappearance even before the definition included in the Inter-American Convention on Forced Disappearance of Persons.<sup>54</sup>

51. Second, the Court also considers inadmissible the State's argument that the presumed forced disappearance of Mr. González Medina had ceased before its acceptance of the Court's jurisdiction, because, according to this Court's consistent case law, the relevant factor to terminate a forced disappearance is the determination of the whereabouts of the person, or the identification of their remains, and not the presumption of death.<sup>55</sup> The Court has applied the presumption of death in cases of forced disappearance when the passage of time or other relevant circumstances allow it to be presumed that there has been a violation of the right to life,<sup>56</sup> but this is in no way equivalent to establishing the whereabouts of the victim or finding his remains. In this regard, it should be recalled that the Court has indicated that "it would be inadmissible that the party on whom the burden falls to disprove the presumption [of death] uses this in order to exclude or limit the Court's competence with regard to certain facts of a case of forced disappearance in advance by a preliminary objection."<sup>57</sup>

52. Regarding two of this Court's judgments that the Dominican Republic cites in support of its arguments, the Court notes that the State makes an inappropriate interpretation of the Court's decisions and their effects for this case. The particularity of the judgment in the *case of the Serrano Cruz Sisters v. El Salvador* is that the Court ruled on a preliminary objection based on a temporal limitation introduced by the said State when accepting this Court's jurisdiction.<sup>58</sup> In contrast, the Dominican Republic did not establish a temporal limitation when accepting the Court's jurisdiction. Regarding the judgment in the *case of Heliodoro Portugal v. Panama*, when deciding on its competence *ratione temporis*, the Court understood that the disappearance ended with the identification of his remains,<sup>59</sup> but not on

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has also considered the permanent or nature of the forced disappearance of persons in the following case: *Cyprus v. Turkey* [GC], No. 25781/94, paras. 136, 150 and 158, 2001-IV.

<sup>54</sup> Article II of this Convention establishes that "forced disappearance is considered to be the act of depriving a person or persons of his or their freedom, in whatever way, perpetrated by agents of the state or by persons or groups of persons acting with the authorization, support, or acquiescence of the state, followed by an absence of information or a refusal to acknowledge that deprivation of freedom or to give information on the whereabouts of that person, thereby impeding his or her recourse to the applicable legal remedies and procedural guarantees.

<sup>55</sup> Cf. *inter alia*, *Case of Velásquez Rodríguez v. Honduras. Merits*, *supra* note 18, para. 155, *Case of Chitay Nech et al. v. Guatemala*, *supra* note 52, paras. 81 and 87; *Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia*, *supra* note 49, paras. 59, 60 and 82; *Case of Radilla Pacheco v. Mexico*, *supra* note 50, para. 23, and *Case of Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil*, *supra* note 53, para. 17.

<sup>56</sup> Cf. *Case of Neira Alegria et al. v. Peru. Merits*. Judgment of January 19, 1995. Series C No. 20, para. 76; *Case of Caballero Delgado and Santana. Merits*. Judgment of December 8, 1995. Series C No. 22, para. 56; *Case of Blake, Preliminary objection*, *supra* note 49, para. 39, and *Case of Bámaca Velásquez v. Guatemala. Merits*. Judgment of November 25, 2000. Series C No. 70, para. 72.

<sup>57</sup> *Case of Radilla Pacheco v. Mexico*, *supra* note 50, paras. 47 and 48.

<sup>58</sup> The purpose of the temporal limitation imposed by El Salvador was to eliminate from the Court's jurisdiction the facts or acts prior to the date on which it deposited the declaration accepting the Court's jurisdiction, as well as the acts and effects of a continuing and permanent violation that started prior to this acceptance. *Case of the Serrano Cruz Sisters v. El Salvador. Preliminary objections*, *supra* note 28, para. 72.

<sup>59</sup> The factor, in that particular case, that the remains had been identified and allowed it to be presumed that the death had occurred before the date of acceptance of the Court's jurisdiction led the Court to declare itself incompetent to rule on the alleged extrajudicial execution of Mr. Portugal in relation to the violation of the right to life and on the alleged acts of torture and ill-treatment. Cf. *Case of Heliodoro Portugal v. Panama. Preliminary objections, merits, reparations and costs*. Judgment of August 12, 2008. Series C No. 186, paras. 32 and 35.

the real or probable date of the victim's death. In other words, the situation encountered in the case of *Heliodoro Portugal*, that the remains had been found and identified, is not present in this case, where the whereabouts of Mr. Gonzalez Medina have not been discovered, and his remains have not been identified.

53. Lastly, the Court recalls that even though it must analyze the alleged forced disappearance with an integral perspective that covers all the facts submitted to its consideration,<sup>60</sup> and determine whether they have persisted over time,<sup>61</sup> it can declare a violation of the American Convention or other treaties as of the date that the defendant State accepted its jurisdiction.

54. Based on the foregoing, the Court rejects the first part of the preliminary objection on lack of competence *ratione temporis* in relation to the fact of the alleged forced disappearance and the alleged violations to the detriment of Mr. González Medina, so that it is competent to rule in this regard as of March 25, 1999, the date on which the Dominican Republic accepted its compulsory jurisdiction.

## **D.2) Regarding the alleged violations to the detriment of the alleged victim's family**

### *Arguments of the parties and of the Inter-American Commission*

55. The Dominican Republic argued that the Court lacks competence *ratione temporis* to examine the facts on which the alleged violations to the detriment of Mr. González Medina's family are based and that, regarding the investigations, it cannot consider facts that took place before the date on which it accepted the Court's jurisdiction. It indicated that the alleged violation of Article 13 "would have been of an instantaneous nature," and that the "facts that allegedly prevented access to the information concerning the alleged forced disappearance of Mr. González Medina to the detriment of his family" took place before March 25, 1999. In addition, it asserted that "all the facts" alleged with regard to the supposed violation of the family's integrity took place before the acceptance of the Court's jurisdiction and were of an instantaneous nature. Regarding the alleged violations to the detriment of Amaury González Ramírez, it indicated that, when the Court's compulsory jurisdiction was accepted, he was 20 years old."

56. The representatives indicated that the State's arguments disregard the "continuing or permanent nature of the violations alleged with regard to the victim's family," and that "the preliminary objection filed by the State cannot be examined without entering into considerations that form part of the debate on the merits of this case." Additionally, they indicated that, concerning the right of access to information, "the family of [Mr. González Medina] was never provided with an official copy of the investigation conducted by the Police Board" and that "this refusal of documents continues up until today." They added that the State's obligation to replace and reconstruct the information incinerated and destroyed by State officials "remains in effect today." Furthermore, the representatives asserted that

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<sup>60</sup> Cf. *Case of Heliodoro Portugal v. Panama*, *supra* note 59, para. 112, and *Case of Contreras et al. v. El Salvador*, *supra* note 51, para. 84.

<sup>61</sup> In order to analyze the alleged act of forced disappearance, the Court will assess the evidence provided by the parties and the Commission that has been admitted and the helpful evidence that was requested, so that the State's request that the evidence related to the domestic investigations, which took place before the said acceptance of jurisdiction, is inadmissible (*infra* para. 78). Furthermore, to analyze the alleged violation of the obligation to guarantee the rights protected in Articles 7, 5, 4 and 3 of the American Convention by an effective investigation into what happened to Mr. González Medina, the Court will take into consideration the facts relating to the investigations as of the date that the Dominican Republic accepted the Court's jurisdiction.

the effects resulting from the harm to personal integrity, because of the lack of due diligence of the authorities in finding Mr. González Medina and investigating the facts, “remain today,” and are “effects that are included entirely in the complex nature of forced disappearance, [that] continue over time while the factors of impunity that have been verified persist.” Regarding the alleged violations of judicial guarantees and the right to judicial protection, they indicated that “[a]lthough [...] some of the investigations were initiated before the acceptance of the Inter-American Court’s compulsory jurisdiction, [their] files were incorporated into the proceedings conducted subsequently by the Public Prosecution Service.” They added that “the ineffectiveness of these investigations and the violations that occurred [before the said acceptance] remain intact today, because they have never been rectified.”

57. The Commission stated that the Court is competent to rule on all the violations alleged in the application because “they all continue not only to cause effects but also to be constituted up until today.” The Commission underscored that Narciso González Medina’s family still do not have access to the information on the time the victim spent in different State entities, because “the State continues omitting” to adopt the measures to recover this information. In addition, it indicated that, “by its very nature, the violation of the family’s personal integrity is a continuing violation, the effects of which persist over time,” owing to the State’s acts and omissions. Regarding the alleged violations arising from the domestic investigations and proceedings, the Commission indicated that the facts continue in impunity and the effects of the irregularities and omissions committed by the judicial and extrajudicial authorities in charge of the different investigations continue having serious effects on the right of access to justice

#### *Considerations of the Court*

58. Regarding the alleged violations to the detriment of Narciso González Medina’s family, the Court is only competent to rule on the facts that took place following the said acceptance of its jurisdiction (*supra* paras. 46 to 48). The facts on which the said violations are based refer to supposed acts and omissions executed instantaneously and do not form part of the elements that constitute the supposed forced disappearance of Mr. González Medina. Even though the Commission and the representatives argued that the supposed violations have continued over time, this does not mean that they are permanent violations enabling the Court to exercise its binding jurisdiction. This decision is in keeping with this Court’s decisions in previous cases,<sup>62</sup> and does not preclude the Court, when ruling on the merits, to consider whether it is admissible to apply its consistent case law concerning the presumption of the effects that the phenomenon of forced disappearance can cause on the rights of the family of the disappeared person.<sup>63</sup>

59. In relation to the alleged violation of Article 19 of the Convention to the detriment of Amaury González Ramírez, Narciso González Medina’s son, the Court has verified that, at the time of the said acceptance of jurisdiction, he was no longer a child, because he was 20 years of age.<sup>64</sup> Hence, the Court lacks competence *ratione temporis* to rule on the State’s alleged responsibility with regard to Article 19.

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<sup>62</sup> Cf. *Case of the Serrano Cruz Sisters v. El Salvador. Preliminary objections*, *supra* note 28, paras. 83 and 84, and *Case of Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil*, *supra* note 53, para. 18.

<sup>63</sup> Cf. *Case of Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil*, *supra* note 53, paras. 161 and 235 al 239, and *Case of Radilla Pacheco v. Mexico*, *supra* note 50, paras. 163, 164 and 172.

<sup>64</sup> Cf. extract from the birth certificate of Amaury González Ramírez of September 21, 1978, in which his date of birth is recorded as September 4, 1978, *supra* note 9, folio 5166.

60. Lastly, regarding the State's request that the Court refrain from ruling on the facts on which the alleged violation of Article 13 of the Convention to the detriment of the family are based, the Court finds it pertinent to admit this request with regard to the alleged request made through the "Truth Commission" to have "access to the records of the [...] investigation" of the Police Board, because this fact occurred prior to the date of acceptance of the Court's jurisdiction.<sup>65</sup>

61. Taking into account everything decided in this chapter concerning the preliminary objection of lack of competence *ratione temporis*, the Court admits this objection partially, in the terms of paragraphs 58 to 60, and rejects it in the terms of paragraphs 45 to 54. Consequently, this Court is competent to examine and rule on the alleged forced disappearance of Narciso González Medina and the alleged violations to his detriment as of the date of acceptance of the Court's jurisdiction, and on the alleged facts that occurred after that acceptance with regard to the alleged violations to the detriment of Mr. González Medina's family.

#### **IV COMPETENCE**

62. The Inter-American Court is competent to hear this case, in the terms of Article 62(3) of the Convention, because the Dominican Republic has been a State Party to the American Convention since April 19, 1978, and accepted the compulsory jurisdiction of the Court on March 25, 1999. On January 29, 1987, the Dominican Republic ratified the Inter-American Convention to Prevent and Punish Torture. The Court admits partially the preliminary objection on lack of competence of the Court *ratione temporis* in the terms of paragraphs 58 to 61 of this judgment.

#### **V PROVISIONAL MEASURES**

63. On August 30, 2011, the Court issued an order in which it required the State to adopt all necessary measures to protect the life and personal integrity of Mario José Martín Suriel Núñez,<sup>66</sup> who was a witness before the Court and is a member of the civil society organization "Truth Commission." The said measures remain in force.

#### **VI EVIDENCE**

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<sup>65</sup> According to the body of evidence, this request for information had been made in a meeting with the Head of the National Police between the end of 1994 and the beginning of 1995. *Cf.* Letter of the "Truth Commission" organization dated February 22, 1995, to the Head of the National Police (file of attachments to the application, attachment 12, folio 3827) and testimony of Rafael Oscar Bencosme Candelier of June 8, 1998, before the Joint Board of the Armed Forces and the National Police (hereinafter the "Joint Board") (file of attachments to the application, attachment 13, folios 3915 and 3917).

<sup>66</sup> *Cf. Case of González Medina and family. Provisional measures with regard to the Dominican Republic.* Order of the Inter-American Court of Human Rights of August 30, 2011.

64. Based on the provisions of Articles 46, 47 and 50 of the Rules of Procedure, as well as on its case law concerning evidence and its assessment,<sup>67</sup> the Court will examine and assess the documentary probative elements forwarded by the parties on different procedural occasions, the statements, testimony and expert opinions provided by affidavit and during the public hearing before the Court, and the helpful evidence requested by the Court (*supra* para. 11). To this end, the Court will abide by the principles of sound judicial discretion within the corresponding legal framework.<sup>68</sup>

**A) Documentary, testimonial and expert evidence**

65. The Court received different documents presented as evidence by the Inter-American Commission, the representatives and the State attached to their principal briefs (*supra* paras. 1, 5 and 6). In addition, the Court received the affidavits made by: the alleged victims Jennie Rosanna González Ramírez, Ernesto González Ramírez and Rhina Yokasta González Ramírez; the witnesses Luis Eduardo Lora Iglesias (Huchi Lora), Juan Bolívar Díaz, Manuel de Jesús de la Rosa, Guillermo Moreno García, Dante Castillo Medina and Francisco José Polanco, and also the expert witnesses Secundino Palacios, José Antinoe Fiallo Billini, Robert Salvador Ramos Vargas, Oscar López Reyes and Rafael Molina Morillo. With regard to the evidence provided during the public hearing, the Court heard the statements of the presumed victim Luz Altagracia Ramírez, the witnesses Mario Suriel Núñez and Eduardo Sánchez Ortiz, and the expert witness Federico Andreu Guzmán.<sup>69</sup>

**B) Admission of the evidence**

**B.1) Admission of the documentary evidence**

66. In this case, as in others, the Court grants probative value to those documents presented opportunely by the parties that were not contested or opposed, and the authenticity of which was not disputed.<sup>70</sup> The documents requested by the Court as helpful evidence (*supra* para. 11) are incorporated into the body of evidence in application of the provisions of Article 58 of the Rules of Procedure.

67. Regarding the newspaper articles presented by the parties and the Commission with their different briefs, this Court has considered that they can be assessed when they refer to well-known public facts or declarations by State officials or when they corroborate aspects related to the case.<sup>71</sup> The Court decides to admit those documents that are complete or that, at least, allow their source and date of publication to be verified and will assess them, taking into account all the evidence, the observations of the State, and the rules of sound judicial discretion.

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<sup>67</sup> Cf. *Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Merits*. Judgment of March 8, 1998. Series C No. 37, paras. 69 to 76; and *Case of Fleury et al. v. Haiti. Merits and reparations*. Judgment of November 23, 2011. Series C No. 236, para. 12.

<sup>68</sup> Cf. *Case of the "White Van" (Paniagua Morales et al.) v. Guatemala*, *supra* note 67, para. 76, and *Case of López Mendoza v. Venezuela. Merits, reparations and costs*. Judgment of September 1, 2011. Series C No. 233, para. 15.

<sup>69</sup> The purpose of all these statements were established in the Order of the President of the Court of June 3, 2011, which can be consulted on the Court's web page via the following link: [http://www.corteidh.or.cr/docs/asuntos/gonzalezmedina\\_03\\_06\\_11.pdf](http://www.corteidh.or.cr/docs/asuntos/gonzalezmedina_03_06_11.pdf) (last consulted February 27, 2012).

<sup>70</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*. Judgment of July 29, 1988. Series C No. 1, para. 140; *Case of Contreras et al. v. El Salvador*, *supra* note 12, para. 32, and *Case of López Mendoza v. Venezuela*, *supra* note 12, para. 18.

<sup>71</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*, *supra* note 18, para. 146, and *Case of Fontevecchia and D'Amico v. Argentina*, *supra* note 70, para. 14.

68. Also, with regard to some documents indicated by the parties and the Commission by means of electronic links, the Court has established that, if a party provides the direct link to the document that it cites as evidence and it is possible to access it, legal certainty and procedural balance are not affected because it can be located immediately by the Court and the other parties.<sup>72</sup> In this case, the other parties did not contest or submit observations on the content and authenticity of such documents.

69. Regarding the procedural occasions to present documentary evidence, according to Article 57(2) of the Rules of Procedure, in general, this must be presented together with the brief submitting the case, the pleadings and motions brief, or the answering brief, as appropriate. The Court recalls that evidence forwarded at any other time is not admissible, except in the case of the exceptions established in the said Article 57(2) of the Rules of Procedure; namely, *force majeure* or serious impediment, or if it relates to a fact that occurred after the said procedural occasions. In this regard, it observes that, with its final written arguments, the State forwarded documentation consisting in judgments of the domestic courts<sup>73</sup> and alleged evidence relating to the determination of the eventual reparations, costs and expenses, without providing any justification for its submission after its answering brief. In this regard, the Court finds that it is not appropriate to admit the copies of the domestic judgments submitted by the State at an inappropriate time; hence, the Court will not consider them in its decision.

70. The Court observes that, with its brief of August 22, 2011 (*supra* para. 12), the State included arguments, information and documentation that had not been requested by the Court as helpful evidence. The Dominican Republic even indicated at that time that the said brief had “the same juridical value” as its final written arguments, and that, “if there was a contradiction between its final arguments brief and [its brief of August 22, 2011], the position set out in the latter would prevail.” The representatives contested the admissibility of the “additional arguments that modify those that had been presented in the [State’s] final arguments brief.” In this regard, this Court notes that the time frame for the presentation of final written arguments cannot be extended, as established in the Order of the President of June 3, 2011, and that the period of 21 days established in Article 28(1) of the Rules of Procedure to present the duly signed briefs does not constitute an opportunity to amend them. Based on the foregoing, as well as on the principle of equality between the parties, the additional arguments presented by the State in its brief of August 22, 2011, that contradict or modify its final written argument are not admissible, and consequently will not be considered by the Court in its decision.

71. With their final written arguments, the representatives forwarded vouchers for the costs and expenses incurred following the presentation of the pleadings and motions brief. Therefore, the Court finds that the said documentary evidence complies with the formal requirements to be admitted as evidence on a supervening fact, in keeping with Article 57(2) of the Rules of Procedure, and incorporates it into the body of evidence to assess it, according to the rules of sound judicial discretion. Consequently, the Court also admits the observations on costs and expenses submitted by the State after its answering brief.

72. In addition, the representatives contested the Court’s request to the State for information regarding “the alleged destruction and alteration of documents,” on the basis

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<sup>72</sup> Cf. *Case of Escué Zapata v. Colombia. Merits, reparations and costs*. Judgment of July 4, 2007. Series C No. 165, para. 26, and *Case of Chitay Nech et al. v. Guatemala*, *supra* note 52, para. 54.

<sup>73</sup> These documents consist of “three judgments of the Supreme Court of Justice, admitting a remedy of cassation against [...] decision[s] of the Review Chamber” in other cases.



that, in its answering brief, the State had not contradicted or contested the representatives' arguments in this regard; thus, according to the representatives, Article 40(1) of the Court's Rules of Procedure should be applied.

73. The Court considers the representatives' request inadmissible. First, Article 58 of the Rules of Procedure authorizes the Court to request the parties to provide any explanation "that, in the Court's opinion, may be useful,"<sup>74</sup> and this is not limited only to probative procedures or to explanations related to them, as the representatives indicate. In addition, according to Article 41(3) of its Rules of Procedure, "the Court may" consider as accepted those arguments that have not been contested by the State in its answering brief,<sup>75</sup> without this signifying that it will automatically consider them accepted in all the cases in which the State does not oppose this, without making an assessment of the specific circumstances of the case and the existing body of evidence. The silence of the defendant or its evasive or ambiguous answer may be interpreted as acceptance of the facts in the application, while this is not contradicted during the proceedings or because the Court finds that the contrary has been proved. Nevertheless, the Court may try to overcome these procedural difficulties, ordering *ex officio* the reception of certain evidence, without this entailing the waiver of its discretionary powers to assess the State's silence or inertia, or its obligation to assess all the facts.<sup>76</sup> Consequently, the information submitted by the State on the alleged destruction or alteration of documents will be assessed by the Court, taking into account the body of evidence, the observations of the parties, and the rules of sound judicial discretion.

74. Following the public hearing, at the Court's request during this hearing, expert witness Federico Andreu Guzmán submitted a "written summary" of the expert opinion he presented during the said hearing, which was forwarded to the parties. The Court admits this document to the extent that it is in keeping with the purpose duly defined by its President for this expert opinion (*supra* paras. 9 and 65), because it finds it useful for this case, it was not contested, and its authenticity and veracity were not disputed.

75. In a note of June 24, 2011, the parties were informed of the decision of the President of the Court to reject the incorporation of the documentation presented by the State on June 1, 2011 (*supra* para. 10), consisting, *inter alia*, in the copy of a letter supposedly handwritten by Narciso González Medina and "the interview with Rafael González Laucer, brother of Mr. González." The President considered that the time-barred presentation of evidence was not based on any of the exceptions established in Article 57(2) of the Court's Rules of Procedure. In an order of July 5, 2011, the Court ratified the President's decision (*supra* para. 10).

76. Regarding the helpful evidence, the State did not submit all the information and documents required by the Court (*supra* paras. 11 and 12). In particular, the Dominican

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<sup>74</sup> Article 58(b) of the Rules of Procedure establishes:

The Court may, at any stage of the proceedings:

[...]

b. Request the Commission; the victims or alleged victims, or their representatives; the respondent State; and, if applicable, the petitioning State to submit any evidence that they may be able to provide or any explanation or statement that, in the Court's opinion, may be useful.

<sup>75</sup> Article 41(3) of the Court's Rules regarding the presentation of the answering brief by the State, establishes that:

The Court may consider those facts that have not been expressly denied and those claims that have not been expressly contested as accepted.

<sup>76</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*, *supra* note 18, para. 138.

Republic did not present specific detailed information on the reopening of the criminal investigation in 2007, or a copy of the corresponding file, but merely forwarded a five-page report prepared by the National District Public Prosecutor in this regard and two attachments. One of the attachments consists of the transcript of a copy of the letter allegedly handwritten by the presumed victim Narciso González Medina, the admissibility of which had been rejected by the President and the Court previously (*supra* para. 10 and 75, and *infra* para. 77), while the other attachment consists of an interview supposedly conducted with Jimmy Sierra by the Public Prosecutor on August 9, 2010, which is not signed. In their observations on this information, the representatives requested that the Public Prosecutor's report not be admitted as evidence, because "it c[ould] not be considered a substitute for the judicial case file."

77. In this regard, the Court considers that, although the Public Prosecutor's report does not respond completely and in detail to the Court's request for information on the reopening of the investigation in 2007, it is appropriate to admit the said document under Article 58(b) of the Court's Rules of Procedure, and it will be assessed in the context of the body of evidence and taking into account the corresponding observations of the parties. However, regarding the attachments to this report, the Court reiterates the considerations contained in its Order of July 5, 2011, based on which it had not admitted, *inter alia*, the copy of the said letter (*supra* para. 10). The Court recalls that it was inappropriate that the Dominican Republic only submit the proceedings and actions that are part of the investigation underway designed to provide grounds for its defense in the international proceedings before this Court. In the said Order, the Court advised the State that, when submitting information produced during the said investigation, it "should forward all the information it possesses, because the isolated presentation of specific documents does not allow the Court to assess adequately either these documents or the investigation conducted by the State." The Court advised the Dominican Republic that, if the said documentation did, in fact, constitute part of the evidence in the domestic investigation, it could submit it by presenting the complete information on the reopening of the criminal investigation and the copy of the respective case file, which the Court had twice requested as helpful evidence. Based on the above, it is unacceptable that the Dominican Republic has once again presented copies of two supposed probative measures in isolation, without attaching the complete file of the respective investigation. Accordingly, the Court finds that the two documents that accompany the National District Public Prosecutor's report are inadmissible.

78. Finally, the State asked the Court to "exclude from the case file any document, statement and/or element of evidence that could be inferred from [the investigations conducted by the Police and Joint Boards], because they occurred before the Dominican Republic had accepted the compulsory jurisdiction of the Court." The Court ruled on this request by the State when making the pertinent decision on the preliminary objection of lack of competence *ratione temporis* (*supra* para. 53 and footnote 61).

### ***B.2) Admission of the statements of the alleged victims, and of the testimonial and expert evidence***

79. Regarding the statements of the alleged victims, the testimony of the witnesses, and the opinions given during the public hearing and by means of affidavits, the Court finds them pertinent only to the extent that they are in keeping with the purpose defined by the President of the Court in the order requiring them (*supra* paras. 9, 11, 64 and 65). They will

be assessed in the corresponding chapter, together with the other elements of the body of evidence, taking into account the observations made by the parties.<sup>77</sup>

80. In accordance with the Court's case law, the statements of the alleged victims cannot be considered alone, but must be assessed together with all the evidence in the proceedings, because they are useful to the extent that they can offer further information on the alleged violations and their consequences.<sup>78</sup> Consequently, Court admits these statements (*supra* paras. 9, 11 and 65), and will assess them based on the criteria indicated.

81. The Court notes that the State did not forward the affidavits of the witnesses Jimmy Sierra and Bolívar Sierra, proposed by the State and convened by the President to declare by affidavit in his Order of June 3, 2011 (*supra* para. 9 and footnote 12). In this regard, the Court recalls that, according to Article 50(4) of the Court's Rules of Procedure, "[t]he party who offers a deponent shall be responsible for their appearance before the Tribunal or the submission of their affidavit, as applicable."

## VII RIGHTS TO PERSONAL LIBERTY, PERSONAL INTEGRITY, LIFE, AND TO RECOGNITION OF JURIDICAL PERSONALITY, IN RELATION TO THE OBLIGATION TO RESPECT AND TO ENSURE THE RIGHTS OF NARCISO GONZÁLEZ MEDINA

82. In this chapter, the Court will determine whether what happened to the presumed victims constitutes the alleged forced disappearance and, if appropriate, will rule on the consequent international responsibility of the State. The Commission and the representatives alleged the violation of the rights to recognition of juridical personality,<sup>79</sup> to life,<sup>80</sup> to personal integrity,<sup>81</sup> to personal liberty,<sup>82</sup> to judicial guarantees, to judicial protection,<sup>83</sup> and to

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<sup>77</sup> Cf. *Case of Loayza Tamayo v. Peru. Merits*. Judgment of 17 September 1997. Series C No. 33, para. 43, and *Case of the Barrios Family v. Venezuela. Merits, reparations and costs*. Judgment of November 24, 2011. Series C No. 237, paras. 23 and 24.

<sup>78</sup> Cf. *Case of Loayza Tamayo v. Peru. Merits*, *supra* note 77, para. 43, and *Case of Fontevecchia and D'Amico v. Argentina*, *supra* note 70, para. 15.

<sup>79</sup> Article 3 of the American Convention establishes that "[e]very person has the right to recognition as a person before the law."

<sup>80</sup> Article 4(1) of the American Convention establishes that "[e]very person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life."

<sup>81</sup> The pertinent part of Article 5 of the American Convention establishes that: "1. [e]very person has the right to have his physical, mental, and moral integrity respected. 2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person."

<sup>82</sup> Article 7(1) of the American Convention establishes that "[e]very person has the right to personal liberty and security."

<sup>83</sup> Article 8(1) of the American Convention establishes that: "[e]very person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature [...]" Article 25(1) of the American Convention establishes that: "[e]veryone 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."

freedom of expression of Narciso González Medina, in relation to the obligation to respect and to ensure rights<sup>84</sup> established in the American Convention (*supra* paras. 3 and 5).

### ***A) Arguments of the parties and of the Inter-American Commission***

83. The Commission argued that “the constituent elements of forced disappearance are present in [this] case.” It indicated that, at the time of the facts, “the repressive mechanisms of the dictatorship [...] and of the previous governments of Joaquín Balaguer” persisted, and this facilitated the selective forced disappearance of anyone who opposed them. It underlined the role that Narciso González Medina played in the political context of the time. In particular, the Commission indicated that the detention of Mr. González Medina “constituted the first step in [his] forced disappearance,” so that it was not necessary to analyze whether the specific elements Article 7 of the Convention had been constituted. In addition, it emphasized that the refusal to acknowledge the deprivation of liberty and to provide information on the whereabouts of the alleged victim, was also constituted by mechanisms such as “the destruction and modification of the official records of the entities in which Narciso González was seen for the last time.” It underscored the testimony according to which Narciso González Medina was seen in State entities in a very bad condition and that, in addition, “it can be inferred” that “this was exacerbated by the failure to provide the medical treatment he required to control his convulsions,” as well as the effects on his mental and moral integrity, inherent in forced disappearance, such as “feelings of fear, anguish and helplessness that, in the least critical of these situations, constituted cruel, inhuman or degrading treatment.” In addition, the Commission indicated that the State had not offered any explanation, or “official version” about what happened to the victim, and had not disproved the presumption of death. It also argued that the presumed forced disappearance of Mr. González Medina “was ensured by the impossibility of the victim and of his family seeking judicial protection,” in view of the denial of his detention, and also owing to the absence of a diligent investigation, “the purpose of which was to deprive him of his juridical personality, excluding him from the legal and institutional system.”

84. The representatives argued that, “on May 26, 1994, Narciso González was abducted by State agents, specifically by officials of the J-2 (the Intelligence Service of the Armed Forces Secretariat of State) and [...] was taken to various State entities,” where he was tortured and then secretly disappeared; in this regard, testimonies exist that were rejected and not considered valid by the State. They emphasized that this case “occurred at a time of great political and social tension,” while the repressive policies implanted in the security apparatus of the State decades earlier remained in effect. They also indicated that “[t]he refusal to acknowledge the detention and to reveal the fate of [Mr.] González [Medina] transformed his deprivation of liberty into a forced disappearance, especially because, in this case, the family approached different State entities and authorities asking for information and informing them of the disappearance.” Furthermore, they indicated that “the forced disappearance” of Mr. González Medina also violated Article 13 of the American Convention, because it was perpetrated against a journalist who played a decisive role in the Dominican democratic sphere and had denounced the electoral fraud, and also because the denial of information concerning the presumed victim’s detention was also constituted by the actions of State agents who, “by mutual agreement, destroyed evidence and concealed information.” In addition, they argued that Narciso González Medina suffered

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<sup>84</sup> Article 1(1) of the American Convention establishes that “[t]he 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.”

"physical and mental torture during his detention," owing to the "pattern of police abuse and the practice of torture in places of detention in the Dominican Republic at the time of the facts," the testimony of those who stated that they had seen the alleged victim "bathed in blood" and in a "very bad condition," the intervention of the so-called "*paleros*" [Note: literally men with batons] in his detention, "and the victim's illness." They underscored that, to date, no serious investigation has been conducted into the facts.

85. The State argued that it had not "participate[d] in the disappearance of Narciso González Medina, and had not given its acquiescence to possible private individuals who may have taken part in it." It indicated that Mr. González Medina "was not detained irregularly and forcibly by State agents or with their consent and, in particular, he was never in the State's custody." The State added that it had acted "with due diligence to clarify the disappearance [of the alleged victim] and to punish those eventually found responsible for his capture," so that "there is no causal relationship" between the disappearance of Professor González Medina and the alleged failure of the State to comply with its international obligations to protect him." It also emphasized that the Court cannot convict the State of an act committed by a private individual. It stressed that the context in which the disappearance of Mr. González Medina occurred "did not respond to a systematic climate of forced disappearance of persons [...] and that the representatives had 'erroneously equated' the different periods of the government of Balaguer because, when the facts of this case took place, there was more respect for public freedoms and "the facts and/or acts [...] described by the representatives no longer occurred." It argued that it "would have had no reason to carry out such an act," because the alleged victim "was not a well-known figure [...] able to influence public opinion." In addition, it underscored that it had "been able to disprove the circumstantial evidence presented by the [Commission] and the representatives" by the investigations that had been conducted. In particular, regarding the testimony of the witnesses, it considered that the representatives "have not been able to prove [...] the anonymous rumors in the case [and] the inconsistent statements that [...] the judge had to reject because they did not constitute serious, grave and consistent indications." In addition, subsidiarily, it asked the Court not to declare the violation of Article 3 of the Convention, because the Court had only declared this violation in one case. Lastly, the State "declare[d] categorically" that neither the Dominican police nor the military authorities destroyed or altered documents relating to Mr. González Medina.

86. The Court will establish the proven facts, in order to determine whether what happened to Mr. González Medina constitutes a forced disappearance, and to rule on the alleged violations. The Court recalls that, in accordance with Article 41(3) of its Rules of Procedure, it may consider accepted the facts that have not been explicitly denied and the claims that have not been expressly contested. In addition, in order to determine whether the alleged disappearance occurred and whether it was continuing to occur on the date that the Dominican Republic accepted the Court's jurisdiction, when determining the facts, the Court will include some aspects relating to the context and some relevant facts that occurred before that date. The Court will also include the investigations conducted prior to that date as background information.

## ***B) Proven Facts***

### **B.1) Historical context**

87. The State did not dispute the fact that, from 1930 to 1961, the Dominican Republic was governed by a dictatorial regime, presided by Rafael Leonidas Trujillo. During this

period, Joaquín Balaguer was appointed Vice President in 1957 and President in 1960.<sup>85</sup> The Trujillo dictatorship was characterized by the severe repression of opposition political parties, using clandestine surveillance mechanisms, monitoring, illegal detentions, cruel treatment and torture in detention centers<sup>86</sup> and, in particular, a “practice of forced disappearance as a State policy designed to eliminate political opposition.”<sup>87</sup>

88. Following the death of Trujillo in 1961, Joaquín Balaguer became President of the country from 1966 to 1978,<sup>88</sup> a period of government usually known as the “12 Balaguer years,” during which, as described by the State itself, the systematic practice of repression against the opposition parties continued. According to the evidence provided by the Dominican Republic, during the Trujillo dictatorship, most murders and disappearances were perpetrated against members of the press, and “the autocratic Government of Joaquín Balaguer,” referring to the 12-year government, together with other dictatorial governments “led the atrocities and other acts of vandalism against the press.”<sup>89</sup>

## B.2) 1994 Electoral Process

89. Joaquín Balaguer was elected President in 1986 and 1990. Between 1991 and 1994, a political and socio-economic crisis began to emerge, in particular “a crisis of the Balaguerist model.”<sup>90</sup> On May 16, 1994, presidential elections were held in the Dominican Republic, and Joaquín Balaguer was re-elected President of the Republic. The elections were held in a highly-polarized climate among the participating political parties and this, added to the close result of the vote (approximately 1%), resulted in serious doubts about his legitimacy.<sup>91</sup>

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<sup>85</sup> Balaguer was Vice President when he accompanied the presidential candidacy of Trujillo’s brother, Héctor Bienvenido Trujillo. Cf. Affidavit prepared by expert witness José Antinoe Fiallo Billini on June 16, 2011 (merits file, tome III, folio 1168); book entitled “*Yo fui del servicio secreto de la policía dominicana*” by Rafael Ortega, pp. 155-156 (file of attachments to the pleadings and motions brief, attachment 2, folio 4687), and book entitled “*Manual de Historia Dominicana*” by Frank Moya Pons, p. 524 (file of attachments to the pleadings and motions brief, attachment 1, folios 4624 and 4626).

<sup>86</sup> Cf. “*Yo fui del servicio secreto de la policía dominicana*”, *supra* note 85, p. 36, folio 4659; article by Roberto Cassa entitled “Negotiated elections” published in the NACLA Report on the Americas, March/April 1997 (file of attachments to the pleadings and motions brief, attachment 12, folio 4895), and “*Manual de Historia Dominicana*”, *supra* note 85, p. 513, folio 4619.

<sup>87</sup> IACHR, Report on the Situation of Human Rights in the Dominican Republic of October 7, 1999, OEA/Ser.L/V/II.104, para. 152 (file of attachments to the application, attachment 1, folio 3687). Also, Cf. Documentary video entitled “*La violencia del poder*” by René Fortunato (file of attachments to the application, attachment 20); documentary video entitled “*La Herencia del Tirano*” by René Fortunato (file of attachments to the application, attachment 21); testimony provided by expert witness José Antinoe Fiallo Billini, *supra* note 85, folio 1169, and affidavit made by expert witness Cristóbal Rodríguez Gómez on June 20, 2011 (merits file, tome III, folio 1159).

<sup>88</sup> Cf. “*Manual de Historia Dominicana*”, *supra* note 85, pp. 537 to 549, folios 4631 to 4637; testimony provided by expert witness José Antinoe Fiallo Billini, *supra* note 85, folio 1167, and affidavit made by witness Luis Eduardo Lora Iglesias (Huchi Lora) on June 26, 2011 (merits file, tome III, folio 1112).

<sup>89</sup> Book entitled “*Crímenes contra la prensa. Atentados and censuras en República Dominicana, 1844-2007*” by Oscar López Reyes, pp. 655 to 657 and 669 (file of attachments to the answer to the application, tome II, attachment 12, folios 6356, 6357 and 6363).

<sup>90</sup> Testimony provided by expert witness José Antinoe Fiallo Billini, *supra* note 85, folios 1167 and 1168. In addition, Robert Salvador Vargas explained that between 1990 and 1994, “the discontent was palpable; there were three or four national strikes, which was an indication of the economic, social and political unrest in the country.” Affidavit made by expert witness Robert Salvador Ramos Vargas on June 16, 2011 (merits file, tome III, folio 1181).

<sup>91</sup> Cf. Report of the Organization of American States entitled “Electoral Observations in the Dominican Republic 1994-1996” (file of attachments to the application, attachment 3, folios 3745 and 3748); article published

90. The Electoral Observation Mission of the Organization of American States (OAS) reported “a situation where the scale of the irregularities could affect the result of the elections.” In particular the Observation Mission provided information on irregularities derived from a factor known as “*dislocamiento*” [Note: literally ‘dislocation’], by which individuals with identity documents were unable to vote because they did not appear on the official lists of the polling stations, even though their names appeared on the copies of the electoral roll given to the party delegates.<sup>92</sup> This led to the accusations of fraud by the opposition and the establishment of a Verification Commission by the Central Electoral Board of the Dominican Republic.<sup>93</sup>

91. The alleged 1994 electoral fraud “led to a major political and social crisis,”<sup>94</sup> which the State did not contest before this Court.<sup>95</sup> President Balaguer had to recognize the scant legitimacy of the elections and sign an agreement with the opposition parties undertaking to call new presidential elections in 1996 instead of in 1998 when they should have been held. This agreement was signed after the above-mentioned Central Electoral Board determined that the electoral roll sent to the polling stations had been falsified.<sup>96</sup>

### **B.3) Profile of Narciso González Medina**

92. Narciso González Medina was born on October 29, 1941, in the Dominican Republic. He was married to Luz Altagracia Ramírez, and they had four children: Ernesto, Rhina Yocasta, Jennie Rossana and Amaury, all González Ramírez. Mr. González Medina suffered from “refractory epilepsy” owing to a brain injury and had to take medication for this every day.<sup>97</sup>

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in *Rumbo* magazine, May 19 to 25, 1994, entitled “*Sombras de ilegitimidad sobre las elecciones*” (file of attachments to the pleadings and motions brief, attachment 7, folio 4839), and article published in *Rumbo* magazine, May 30, 1994, entitled “*Embrolo electoral apunta hacia crisis política*” (file of attachments to the pleadings and motions brief, attachment 1, folio 4849).

<sup>92</sup> Cf. “Electoral Observations in the Dominican Republic 1994-1996,” *supra* note 91, folios 3741 and 3753; box entitled “*Lo que vieron los observadores de la OEA*” in the article published in *Rumbo* magazine, May 19 to 25, 1994, entitled “*Sombras de ilegitimidad sobre las elecciones*,” *supra* note 91, folio 4839; newspaper article entitled “*Embrolo electoral apunta hacia crisis política*” *supra* note 91, folio 4849, and article published in *Rumbo* magazine, May 26 to June 1, 1994, entitled “*Nueve días de tensión*” (file of attachments to the pleadings and motions brief, attachment 8, folio 4847).

<sup>93</sup> Cf. “Electoral Observations in the Dominican Republic 1994-1996,” *supra* note 91, folios 3745 to 3747, and affidavit made by expert witness Rafael Molina Morillo on June 22, 2011 (merits file, tome III, folio 1084).

<sup>94</sup> Testimony provided by expert witness Rafael Molina Morillo, *supra* note 93, folio 1084. Also, cf. article published in *Rumbo* magazine, July 20 to 26, 1994, entitled “*Convocarán a Huelga*” (file of attachments to the pleadings and motions brief, attachment 9, folio 4852).

<sup>95</sup> In this regard, the State even affirmed in its final written arguments that “professor [Narciso González Medina] disappeared in a socio-political context of post-electoral crisis caused by the electoral fraud attributed to former President Joaquín Balaguer R.”

<sup>96</sup> Cf. Testimony provided by expert witness Rafael Molina Morillo, *supra* note 93, folio 1085; testimony provided by expert witness José Antinoe Fiallo Billini, *supra* note 85, folio 1170; article published in *Rumbo* magazine, July 20 to 26, 1994, entitled “*Contradicciones y nuevos giros en la crisis post-electoral*” (file of attachments to the pleadings and motions brief, attachment 9, folios 4854, 4856 and 4862), and article “*Negotiated elections*”, *supra* note 86, folio 4896.

<sup>97</sup> Cf. Report of Doctor Santiago Valenzuela Sosa of June 22, 1994, on the health of Narciso González Medina (file of attachments to the application, attachment 5, folio 3759). See also: statement made by Luz Altagracia Ramírez before the Inter-American Court during the public hearing held in this case on June 28, 2011, and testimony given by Doctor Valenzuela on September 20, 2002, before the Santo Domingo Review Chamber (where he appears as “Ignacio Valenzuela”) (merits file, tome V, folios 1959 to 1961).

93. Narciso González Medina was a well know activist and critic of the dictatorial regime of Trujillo, and also of Joaquín Balaguer, and during the latter's 12-year Government (*supra* para. 88), he was on the Board of the Dominican Students Federation, where he received the nickname "Narcisazo," under which he was usually known.<sup>98</sup> He was a lawyer and excelled as a professor, giving classes in the Arts Department of the Humanities Faculty of the Universidad Autónoma de Santo Domingo (hereinafter "UASD").<sup>99</sup> He also acted as adviser to university student groups, as well as to cultural and grass-roots clubs.<sup>100</sup>

94. Narciso González was a prominent columnist,<sup>101</sup> television scriptwriter, poet, essayist, cultural facilitator for labor unions and grass-roots groups, journalist and humorist.<sup>102</sup> As Mr. González Medina himself explained, his articles, columns and scripts were "humorous political and social essays [...] written to denounce" the problems of the Dominican Republic under the different governments "and to galvanize the masses by showing them the absurdities of their oppressors."<sup>103</sup> At the time of his disappearance, he was not a member of any political party. However, according to expert witness Rafael Molina Morillo, "the vertical nature of his stance opposing the Balaguer regime caused him to lose jobs in the media and so he himself began to produce humorous magazines of a political nature in which he satirized the political leaders in power and the right-wing opposition."<sup>104</sup>

#### **B.4) The circumstances surrounding the disappearance of Narciso González Medina**

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<sup>98</sup> Cf. Testimony provided by expert witness Robert Salvador Vargas, *supra* note 90, folio 1178; affidavit made by witness Juan Bolívar Díaz Santana on June 16, 2011 (merits file, tome III, folio 1125), and biographical data of Narciso González (Narcisazo), published in *La Muralla* magazine (file of attachments to the application, attachment 4, folio 3755).

<sup>99</sup> Cf. Testimony provided by expert witness Rafael Molina Morillo, *supra* note 93, folio 1083; book entitled "*Narcisazo ¿Dónde estás?*" by José Díaz (file of attachments to the pleadings and motions brief, attachment 3, folio 4724), and summary of the statement made by Roberto José Santana Sánchez, then UASD Rector, on August 14, 1998, before the Seventh Investigating Court, cited in the August 24, 2001, ruling of the National District Seventh Investigating Court. Decisions Nos. 195/2001 and 110-2001 (file of attachments to the application, attachment 14, folio 4384). According to the testimony of Mario Suriel Núñez, at the time of the facts, Mr. González Medina was not giving classes in the UASD. Similarly, his daughter Jennie Rosanna González Ramírez stated that her father was on sabbatical leave from the UASD. Cf. Testimony of Mario Suriel Núñez before the Inter-American Court during the public hearing held in this case on June 28, 2011, and affidavit made by Jennie Rosanna González Ramírez on June 16, 2011 (merits file, tome III, folio 1123).

<sup>100</sup> Cf. "*Narcisazo ¿Dónde estás?*", *supra* note 99, folio 4724; testimony provided by expert witness José Antioe Fiallo Billini, *supra* note 85, folio 1167, and affidavit made by witness Manuel de Jesús de la Rosa Hidalgo on June 16, 2011 (merits file, tome III, folio 1135).

<sup>101</sup> *Inter alia*, he published a column entitled "*El lado flaco de las cosas gordas*" in the *El Sol* newspaper and, in the *La Noticia* newspaper, he published the column "*El Pueblo se queja en verso*". Cf. "*Narcisazo ¿Dónde estás?*", *supra* note 99, folio 4724. According to Juan Bolívar Díaz, the column "*El Pueblo se queja en verso*" was published in the *El Sol* newspaper. Cf. Testimony given by witness Juan Bolívar Díaz Santana, *supra* note 98, folio 1124.

<sup>102</sup> Cf. "*Narcisazo ¿Dónde estás?*", *supra* note 99, folios 4724 to 4735; testimony given by witness Juan Bolívar Díaz, *supra* note 98, folio 1124, and testimony provided by expert witness Rafael Molina Morillo, *supra* note 93, folio 1084.

<sup>103</sup> The essay entitled "*El Humor tiene Bandera*," by Narciso González Medina, can be found in "*Narcisazo ¿Dónde estás?*", *supra* note 99, folio 4728.

<sup>104</sup> Testimony provided by expert witness Rafael Molina Morillo, *supra* note 93, folios 1083 and 1084. See also: "*Narcisazo ¿Dónde estás?*", *supra* note 99, folio 4724; biographical data of Narciso González (Narcisazo) published in *La Muralla* magazine, *supra* note 98, folios 3755 and 3756, and testimony given by witness Manuel de Jesús de la Rosa Hidalgo, *supra* note 100, folios 1135 and 1136.



95. A few days before the May 1994 elections, Narciso González Medina published an opinion article in the magazine *La Muralla* entitled: “10 Pruebas que demuestran que Balaguer es lo más perverso que ha surgido en América” [10 tests that reveal that Balaguer is the most perverse individual to have emerged in America]. In this article, Narciso González Medina used 10 synonyms of the word perverse (“murderer”, “delinquent”, “immoral”, “depraved”, “perverted”, “servile”, “cheat”, “thief”, “despicable” and “swindler”) “to relate them to the words and acts of Joaquín Balaguer Ricardo” and, allegedly demonstrate that, among “other bullies, madmen, criminals and swindlers” who have “sprouted like weeds in every country and throughout history [in the Americas],” “Joaquín Balaguer [is] perversity taken to the nth degree.” He also stated that “[i]t is time for us to end [this] nightmare.”<sup>105</sup>

96. On May 24, 1994, Narciso González Medina’s eldest son, Ernesto González Ramírez, observed that, when his father entered the house, a car with tinted windows stopped in front, without turning off the engine. When his father saw this, he walked towards the vehicle, which drove away. Mr. González Medina allegedly said to his son: “just so that you know, I am being followed, they want to harm me.”<sup>106</sup>

97. The following day, May 25, 1994, Narciso González Medina gave a speech in the UASD urging the university professors, employees and students and, especially, the university authorities, to condemn firmly what had happened during the elections, and called on them to combat the fraud that had been reported by “civil disobedience,” and not “with mere documents,” to avoid a repetition of a situation such as the one that permitted the establishment of the Trujillo dictatorship. In addition, in his speech, Mr. González Medina insinuated that the heads of the Police, the Army, and the Air Force had supported the reported electoral fraud, because “the President of the Republic [Joaquín Balaguer] had given them the opportunity [...] to obtain 25 million pesos in contracts, without being engineers.”<sup>107</sup>

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<sup>105</sup> Undated article published in *La Muralla* entitled “10 pruebas que demuestran que Balaguer es lo más perverso que ha surgido en América” (file of attachments to the application, attachment 6, folios 3761 to 3762). This copy provided by the Commission is an undated reproduction of the said article published “in the understanding that the whole Nation is interested in knowing its content.” However, the body of evidence reveals that the said article was originally published in the April-May 1994 issue of *La Muralla*. Cf. August 24, 2001, ruling of the National District Seventh Investigating Court. Decisions Nos. 195/2001 and 110-2001 (hereinafter “August 24, 2001, ruling of the Investigating Court”) (file of attachments to the application, attachment 14, folio 1463); “Narcisazo ¿Dónde estás?” *supra* note 99, folios 4706 and 4745, and book entitled “*Crímenes contra la prensa. Atentados and censuras en República Dominicana, 1844-2007*,” *supra* note 89, folio 6324.

<sup>106</sup> Affidavit made by Ernesto González Ramírez on June 15, 2011 (merits file, tome III, folio 1099). Additionally, cf. Summary of the statement made by Ernesto González Ramírez before the Police Board, cited in the summary of October 25, 1994, of the investigation conducted by the Police Board entitled “*Investigación en torno a la ausencia del profesor universitario Dr. Narciso González Medina (or) Narcisazo*” [Investigation into the absence of university professor, Narciso González Medina] (hereinafter “Summary of the Police Board investigation”) (file of attachments to the pleadings and motions brief, attachment 10, folio 4871); testimony given by witness Manuel de Jesús de la Rosa Hidalgo, *supra* note 100, folio 1140; summary of the statement made by Luz Altagracia Ramírez on July 7, 1995, before the Seventh Investigating Court, cited in the Investigating Court’s ruling of August 24, 2001, (file of attachments to the application, attachment 14, folio 4315), and statement of Luz Altagracia Ramírez of June 6, 1998, before the Joint Board (file of attachments to the application, attachment 13, folio 4137).

<sup>107</sup> “[...] If we take now into account that this electoral fraud was organized after the President of the Republic gave the Chief of Police, the Head of the Air Force and the Head of the Army the opportunity to obtain 25 million pesos in contracts, without being engineers; if we take this into account and we observe the militarization to which the entire country is subjected, we reach the conclusion that we are faced with the repetition of the Horacio Vásquez phenomenon; and this cannot be fought with mere documents, but with attitudes that approach what in Civics is known as civil disobedience.” Transcript of the speech given by Narciso González Medina on May 25, 1994 (file of attachments to the application, attachment 7, folio 3764). Also, cf. Video recording of the speech made by Narciso González Medina before the UASD Professors’ Assembly on May 25, 1994 (file of attachments to the pleadings and motions brief, attachment 23, folio 5036); testimony of Mario Suriel Núñez before the Inter-

98. This speech was filmed. Several deponents before the Court suggested that the said video reached the hands of the State's security forces.<sup>108</sup>

**B.5) The disappearance of Narciso González Medina and steps taken to find him by family and friends**

99. On May 26, 1994, Narciso González Medina disappeared from his daily activities. According to witnesses, that day Mr. González Medina had been at a hippodrome in the afternoon and, subsequently, he had been seen in a cinema in the city, which he left at around 9 p.m.<sup>109</sup>

100. On the morning of May 27, 1994, Jennie Rossana González Ramírez realized that her father had not slept at home and therefore advised her mother, Luz Altagracia Ramírez, who was visiting her own mother, and had spent the previous night there.<sup>110</sup>

101. Initially, the family and friends feared that he had had an epileptic attack or an accident. On May 27, 1994, Luz Altagracia Ramírez went to the National Police to verify whether the name of her husband appeared in any pertinent police records. She also examined the list of disappeared persons. The family and friends of Mr. González Medina looked for him in hospitals, morgues, barracks and detention centers.<sup>111</sup>

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American Court during the public hearing held in this case on June 28, 2011; testimony provided by expert witness Robert Salvador Ramos Vargas, *supra* note 90, folio 1183; summary of the statement made by Roberto José Santana Sánchez before the Seventh Investigating Court, *supra* note 99, folio 4385, and summary of the undated testimony given by Ana Dolores Guzmán de Camacho, then Dean of the UASD Humanities Faculty, in the Summary of the Police Board investigation (file of attachments to the pleadings and motions brief, attachment 10, folio 4875 and 4876)

<sup>108</sup> Cf. Recording of speech given by Narciso González Medina before the UASD Professors' Assembly on May 25, 1994, *supra* note 107, folio 5036; testimony of Mario Suriel Núñez before the Inter-American Court during the public hearing held in this case on June 28, 2011, and testimony provided by expert witness Robert Salvador Ramos Vargas, *supra* note 90, folio 1182.

<sup>109</sup> Cf. Summary of the undated statement made by Luz Altagracia Ramírez before the Police Board, cited in the Summary of the Police Board investigation (file of attachments to the pleadings and motions brief, attachment 10, folio 4869); summary of the statement made by Luz Altagracia Ramírez on July 7, 1995, before the Investigating Court, *supra* note 106, folio 4315; Report of the Joint Board on the "Case of Narciso González (Narcisazo)" (hereinafter "Report of the Joint Board") (file of attachments to the application, attachment 13, folio 3847); summary of the undated statement and statement of August 25, 1997, given by Lucrecia Puente Mateo, before the Police Board and cited in the Summary of the Police Board investigation, respectively, as well as before the Seventh Investigating Court (file of attachments to the pleadings and motions brief, attachment 10, folio 4872 and merits file, tome V, folios 1821 and 1822); summary of the undated statement and statement of August 27, 1997, made by Danilo Cecilio Nazario or Freddy Danilo Cecilio Eliz(a) Renco before the Police Board and cited in the Summary of the Police Board investigation, respectively, as well as before the Seventh Investigating Court (file of attachments to the pleadings and motions brief, attachment 10, folio 4873 and merits file, tome V, folios 1823 and 1824); summary of undated statement and statement of August 28, 1997, made by Dionicio Patiño Infante before the Police Board and cited in the Summary of the Police Board investigation, respectively, as well as before the Seventh Investigating Court (file of attachments to the pleadings and motions brief, attachment 10, folio 4873 and merits file, tome V, folio 1826), and extract from undated statement and statements of August 22 and 28, 1997, made by José Luis de León Sánchez before the Police Board and cited in the Summary of the Police Board investigation, respectively, as well as before the Seventh Investigating Court (file of attachments to the pleadings and motions brief, attachment 10, folio 4873 and merits file, tome V, folios 1816 to 1817 and 1819 to 1820).

<sup>110</sup> Cf. Statement made by Luz Altagracia Ramírez before the Inter-American Court during the public hearing held in this case on June 28, 2011; summary of statement made by Luz Altagracia Ramírez on July 7, 1995, before the Investigating Court, *supra* note 106, folio 4315; statement made by Jennie Rosanna González Ramírez on June 16, 2011, *supra* note 99, folio 1119, and summary of statement made by Jennie Rosanna González Ramírez on July 14, 1995, before the Investigating Court, cited in the Investigating Court's August 24, 2001, ruling (file of attachments to the application, attachment 14, folio 4321).

<sup>111</sup> Cf. Statement made by Luz Altagracia Ramírez before the Inter-American Court during the public hearing held in this case on June 28, 2011; statement made by Ernesto González Ramírez on June 15, 2011, *supra* note

102. On May 28, 1994, Luz Altagracia Ramírez, the family and friends of Narciso González Medina filed a complaint before the Disappeared Persons Office of the Homicide Investigation Department of the National Police.<sup>112</sup> Around this date, the media began to disseminate news of Mr. González Medina's disappearance.<sup>113</sup>

103. In the days following Mr. González Medina's disappearance, Luz Altagracia Ramírez and other family members received telephone calls, anonymous letters, and visits from people all of which gave different versions about what had happened to Mr. González Medina, with indications of place, date and time, some indicating that he was in military or police facilities. Among others, they received several telephone calls indicating that Mr. González Medina was in the Intelligence Division or Directorate of the Armed Forces Secretariat (J-2).<sup>114</sup>

104. On June 1, 1994, Luz Altagracia Ramírez was received by the Secretary of the Armed Forces in his office. Mrs. Ramírez informed the Secretary about her husband's disappearance, and he told her that there were no prisons in the Armed Forces Secretariat and that he had learned of what had happened through the media. The following day, Mrs. Ramírez went to the National Police in search of information, "without any success." Since she continued to receive calls that Narciso González Medina was in the facilities of the Armed Forces in a bad condition, Mrs. Ramírez went again to the offices of the Armed Forces where she was received by the Secretary's assistant. On that occasion, Mrs. Ramírez

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106, folio 1100; statement made by Jennie Rosanna González Ramírez on June 16, 2011, *supra* note 99, folio 1119; affidavit made by Rhina Yokasta González Ramírez on June 16, 2011 (merits file, tome III, folios 1129 and 1130); statement made by Luz Altagracia Ramírez on June 6, 1998, before the Joint Board, *supra* note 106, folio 4135; summary of the statement of Luz Altagracia Ramírez of July 7, 1995, before the Investigating Court, *supra* note 106, folios 4315 and 4316; summary of the statement made by Luz Altagracia Ramírez on July 16, 2002, before the Santo Domingo Review Chamber (file of attachments to the application, attachment 15, folio 4570); summary of the statement made by Jennie Rosanna González Ramírez on July 14, 1995, before the Seventh Investigating Court, *supra* note 110, folio 4321; summary of the statement made by Roberto José Santana Sánchez before the Seventh Investigating Court, *supra* note 99, folios 4386 and 4387, and summary of the statement made by Ana Dolores Guzmán de Camacho, cited in the Summary of the Police Board investigation, *supra* note 107, folio 4875.

<sup>112</sup> Cf. Summary of complaint of May 28, 1995, filed before the Section of Disappeared Persons of the Homicide Investigation Department of the National Police by Luz Altagracia Ramírez, cited in the Summary of the Police Board investigation (file of attachments to the pleadings and motions brief, attachment 10, folios 4864 and 4868); statement made by Luz Altagracia Ramírez before the Inter-American Court during the public hearing held in this case on June 28, 2011; and letter from the "Truth Commission" to the Head of the National Police dated February 22, 1995, *supra* note 65, folio 3828.

<sup>113</sup> Cf. Statement of Luz Altagracia Ramírez of June 6, 1998, before the Joint Board, *supra* note 106, folio 4135); newspaper article published in *Hoy* entitled "*Profesor de UASD está desaparecido*" on May 28, 1994, can be seen on page 220 of the book by José Díaz entitled "*Narcisazo ¿dónde estás?*", *supra* note 99, folio 4745.

<sup>114</sup> Cf. Statement made by Luz Altagracia Ramírez before the Inter-American Court during the public hearing held in this case on June 28, 2011; statement made by Luz Altagracia Ramírez on June 6, 1998, before the Joint Board, *supra* note 106, folio 4135; summary of the statement of Luz Altagracia Ramírez of July 7, 1995, before the Investigating Court, *supra* note 106, folios 4315 to 4318; testimony given by Mario José Martín Suriel Núñez during the public hearing held in this case on June 28, 2011; summary of the statement made by Clara Feliz del Villar before the Police Board, cited in the Summary of the Police Board investigation (file of attachments to the pleadings and motions brief, attachment 10, folio 4880); summary of the statement made by Rosalía Ramírez Martínez of February 3, 1999, before the Investigating Judge, cited in the Investigating Court's ruling of August 24, 2001, *supra* note 105, folio 4482; summary of the statement made by Rosalía Ramírez Martínez before the Police Board, cited in the Summary of the Police Board investigation (file of attachments to the pleadings and motions brief, attachment 10, folio 4874).

saw a document that contained information on her husband and asked for a copy of it; this was denied alleging that the document was for “internal use.”<sup>115</sup>

105. On July 4, 1994, the then President of the Republic, Joaquín Balaguer, received Mrs. Ramírez, her son Ernesto González Ramírez, and the President of the Universidad Autónoma de Santo Domingo in his office, in relation to what had happened to Mr. González Medina.<sup>116</sup>

106. On October 9, 1994, the family, friends, colleagues and acquaintances of Narciso González Medina formed an organization they called “*Comisión de la Verdad*” [Truth Commission]” in order to “establish a civic body to demand that the case [of Mr. González Medina] be clarified and that the clarification correspond to the truth.” This organization was established because they considered that the investigation conducted during the four months following Narciso González Medina’s disappearance had not been diligent. The “Truth Commission” took different steps to find Mr. González Medina; for example, it provided support to the family for the presentation of briefs and in the steps they took before the entities that were investigating what had happened.<sup>117</sup> The “Truth Commission” installed “letter boxes” in public places, such as the UASD, so that people could deposit any information they considered pertinent about Mr. González Medina’s disappearance. The organization then forwarded the information it received to the authorities in charge of the investigation.<sup>118</sup>

107. Some of the friends who were assisting the search for Mr. González Medina and supporting the family were followed and subjected to surveillance and threats, as were certain family members.<sup>119</sup> Owing to these threats, the National Police provided an escort service to protect the personal safety of Ernesto González Ramírez, Mr. González Medina’s eldest son, who, together with his mother, was the person who appeared most in the media calling for justice.<sup>120</sup> On November 8, 1996, the Inter-American Commission asked the

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<sup>115</sup> Cf. Statement made by Luz Altagracia Ramírez before the Inter-American Court during the public hearing held in this case on June 28, 2011, and statement of Luz Altagracia Ramírez of June 6, 1998 before the Joint Board, *supra* note 106, folios 4135 and 4136.

<sup>116</sup> Cf. Statement made by Luz Altagracia Ramírez before the Inter-American Court during the public hearing held in this case on June 28, 2011; statement made by Ernesto González Ramírez on June 15, 2011, *supra* note 106, folios 1100 and 1101; summary of the statement of Luz Altagracia Ramírez of July 7, 1995 before the Investigating Court, *supra* note 106, folio 4319, and letter dated July 24, 1994, addressed by Luz Altagracia Ramírez to then President Joaquín Balaguer (file of attachments to the pleadings and motions brief, attachment 17, folio 4941). See also, the summary of the statement made by Roberto José Santana Sánchez on August 14, 1998, before the Seventh Investigating Court, *supra* note 99, folio 4385.

<sup>117</sup> Cf. Letter of the “Truth Commission” of February 22, 1995, addressed to the Head of the National Police, *supra* note 65, folios 3827 to 3840; testimony given by Mario José Martín Suriel Núñez before the Inter-American Court during the public hearing held in this case on June 28, 2011; the newspaper article published in *El Nacional* entitled “*Integran Comisión verá el caso de Narcisazo*,” dated October 8, 1994, can be seen on page 247 of “*Narcisazo ¿dónde estás?*,” *supra* note 99, folio 4758; Report of the Joint Board, *supra* note 109, point a-5, folio 3847; statement made by Ernesto González Ramírez on June 15, 2011, *supra* note 106, folio 1100.

<sup>118</sup> Cf. statement made by Luz Altagracia Ramírez before the Inter-American Court during the public hearing held in this case on June 28, 2011; testimony given by Mario José Martín Suriel Núñez before the Inter-American Court during the public hearing held in this case on June 28, 2011; summary of the statement of Luz Altagracia Ramírez of July 7, 1995, before the Investigating Court, *supra* note 106, folio 4319, and summary of the statement made by Tomás Castro Monegro on May 29, 1998, before the Joint Board (file of attachments to the application, attachment 13, folio 4118).

<sup>119</sup> Testimony given by witness Manuel de Jesús de la Rosa Hidalgo, *supra* note 100, folio 1139; testimony given by Mario José Martín Suriel Núñez before the Inter-American Court during the public hearing held in this case on June 28, 2011; statement made by Ernesto González Ramírez on June 15, 2011, *supra* note 106, folio 1102.

<sup>120</sup> Cf. Statement made by Ernesto González Ramírez on June 15, 2011, *supra* note 106, folio 1102, and statement made by Jennie Rosanna González Ramírez on June 16, 2011, *supra* note 99, folio 1120.

Dominican Republic to adopt “urgent precautionary measures to guarantee the life and personal integrity of Virgilio Almánzar, Tomás Castro and Luz Altagracia Ramírez, and other witnesses” in this case. On November 27, 1996, the Dominican Republic responded to this request indicating that it had “asked the National Police to investigate the threats, and to provide protection for each person.”<sup>121</sup>

#### **B.6) “Police Board” investigation**

108. On June 3, 1994, the National Police appointed an extrajudicial committee, known as the “Police Board,” to respond to the complaints filed by both Narciso González Medina’s family and the “Truth Commission” concerning his disappearance. The Board was composed of two colonels and one lieutenant who, respectively, were the Commanders of the Secret Service Department, the Property Crimes and Misdemeanors Department, and the Homicide Department of the National Police.<sup>122</sup>

109. The Police Board did not issue a formal final report with the conclusions of its investigation, but merely made a summary of the steps taken dated October 25, 1994. The Joint Board that would be established later (*infra* para. 111) indicated that the Police Board’s work was a compilation of “numerous versions and testimonies that was unable to prove that specific responsibility could be attributed to any particular individual in relation to the ‘disappearance’ of Professor Narciso González Medina.”<sup>123</sup>

110. The “Truth Commission” had access to the summary of the Police Board’s investigation after filing a request for information before the Head of the National Police. Nevertheless, neither this organization nor the family was given access to the file of the police investigation. On February 22, 1995, the “Truth Commission” submitted a document to the then Head of the National Police in which it set out the reasons why it considered that the Police Board’s investigation had not been serious and revealed serious omissions.<sup>124</sup>

#### **B.7) Investigation conducted by a “Joint Board” of the Armed Forces and the National Police**

111. On April 21, 1998, the President of the Republic at the time, Leonel Fernández Reyna, “in response to the requests” of Narciso González Medina’s family “proceeded to give [...] instructions [...] to the State’s security forces to forward him a detailed report on the

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<sup>121</sup> Precautionary measures granted or extended by the Commission in 1996, at: <http://www.cidh.org/medidas/1996.sp.htm> (last consulted February 27, 2012). See also: Newspaper article entitled “Protección caso Narcisazo,” published in *El Siglo* on November 22, 1996 (file of attachments to the pleadings and motions brief, attachment 18, folio 5007), and newspaper article entitled “Piden proteger investigadores caso Narcisazo,” published in *El Nacional* on November 22, 1996 (file of attachments to the pleadings and motions brief, attachment 18, folio 5008).

<sup>122</sup> Precautionary measures granted or extended by the Commission in 1996, at: <http://www.cidh.org/medidas/1996.sp.htm> (last consulted February 27, 2012). See also: Newspaper article entitled “Protección caso Narcisazo,” published in *El Siglo* on November 22, 1996 (file of attachments to the pleadings and motions brief, attachment 18, folio 5007), and newspaper article entitled “Piden proteger investigadores caso Narcisazo,” published in *El Nacional* on November 22, 1996 (file of attachments to the pleadings and motions brief, attachment 18, folio 5008).

<sup>123</sup> Report of the Joint Board, *supra* note 109, folio 3848.

<sup>124</sup> Cf. Letter of the “Truth Commission” of February 22, 1995 addressed to the Head of the National Police, *supra* note 65, folios 3827 to 3840, and testimony given by Mario José Martín Suriel Núñez before the Inter-American Court during the public hearing held in this case on June 28, 2011.

disappearance of the said university professor.”<sup>125</sup> In response to this instruction, and to comply with the President’s request, an extrajudicial committee was established, known as the “Joint Board,” composed of members of the Armed Forces Secretariat of State, the National Investigations Department (DNI), and the National Police, with the assistance of the Attorney General of the Republic.<sup>126</sup>

112. The Joint Board operated in parallel to the judicial investigation opened in May 1995 before the Seventh Court of the National District (*infra* para. 115).<sup>127</sup>

113. At the beginning of August 1998, the Joint Board delivered a report to President Leonel Fernández and to the Attorney General of the Republic. The President called this report “provisional” or “preliminary.” According to the body of evidence, and taking into account the information included by the State in its answer, the Court understands that the Joint Board concluded its task in August 1998.<sup>128</sup>

114. In its report, the Joint Board evaluated the work of the Police Board, referred to and assessed some of the interviews conducted, but did not come to any conclusions regarding what happened to Mr. González Medina. However, it made the following recommendations:

(a) That this file be forwarded to the President [...] Leonel Fernández Reyna [...] for his information and for the purposes he considers appropriate; (b) That, [...] following the President’s authorization, this file, [...] be forwarded to the Attorney General of the Republic, so that this judicial official may then refer it to the National District Public Prosecutor [...] so that this judicial official may forward it to the competent Investigating Court, for the different elements to be assessed [...] because, in our opinion, they can assist the Investigating Court issue a decision on the “disappearance” of Professor Narciso.<sup>129</sup>

### **B.8) Investigations conducted by the Investigating Court, the Review Chamber, and the Public Prosecution Service**

115. On June 12, 1995, Luz Altagracia Ramírez and her children filed a civil complaint before the Investigating Judge of the National District Seventh Circuit (hereinafter also “Seventh Investigating Court” or “Investigating Court”) for violation of the laws that define

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<sup>125</sup> Report of the Joint Board, *supra* note 109, point a-8, folio 3848. See also: testimony given by Mario José Martín Suriel Núñez before the Inter-American Court during the public hearing held in this case on June 28, 2011; application brief of the Inter-American Commission (merits file, tome I, folio 148, para. 79); the representatives’ pleadings and motions brief (merits file, tome II, folio 351), and the State’s answering brief (merits file, tome II, folio 701, para. 100).

<sup>126</sup> Cf. Report of the Joint Board, *supra* note 109, point a-9, folio 3848.

<sup>127</sup> Cf. Affidavit made by witness Guillermo Moreno García on June 20, 2011 (merits file, tome III, folio 1109).

<sup>128</sup> Cf. Newspaper article entitled “Leonel dara el miércoles informe Narciso,” published in *El Nacional* on August 3, 1998 (file of attachments to the pleadings and motions brief, attachment 19, folio 5032); newspaper article entitled “El informe del caso Narcisazo crea una gran expectativa en la población,” published in *La República* on August 5, 1998 (file of attachments to the pleadings and motions brief, attachment 18, folio 4971); newspaper article entitled “Narcisazo genera expectativa[.] Entrega hoy informe caso,” published in *El Siglo* on August 5, 1998 (file of attachments to the pleadings and motions brief, attachment 18, folio 4972); newspaper article entitled “La Fiscalía ya tiene expediente caso Narcisazo,” published in *Última Hora* on August 6, 1998 (file of attachments to the pleadings and motions brief, attachment 18, folio 4973). In the brief answering the application, the State indicated that “[o]n August 5, 1998, President Leonel Fernández classified the Joint Board’s reports as provisional. Thereafter the investigations have only been conducted by the Public Prosecution Service.” Answering brief (merits file, tome II, folio 701, para. 103).

<sup>129</sup> Report of the Joint Board, *supra* note 109, points 2(a) and 2(b), folios 3849 to 3860.

the crimes of abduction, criminal association, and murder to the detriment of Narciso González Medina.<sup>130</sup>

116. On June 13, 1995, the preliminary investigation was opened.<sup>131</sup> According to the Code of Criminal Procedure in force at that time and up until 2004, the Investigating Judge exercised the control of the investigation and, therefore, had autonomy to conduct it and to gather the probative elements, with the aid of the prosecution.<sup>132</sup> According to the testimony provided to this Court by Eduardo Sánchez Ortiz, the judge in charge of the investigation, the “conclusions of the Joint Board of the Armed Forces and the National Police [...] were forwarded to [him ...] by the National District, Public Prosecutor” and were of a “referential nature” in the judicial investigation. He indicated that “its evidence, proceedings and conclusions [...] did not have to be taken into account; [... because] for the courts [to be able to] give any significance to the statements of those who were questioned, those statements had to be ratified before the court.”<sup>133</sup> It is on record that the Investigating Judge received the reports of the extrajudicial boards created to investigate this case and also that he summoned around 100 people to declare, including most of the approximately 58 individuals who had already testified before the said investigating boards.<sup>134</sup>

117. On January 8 and 28, and March 8, 1999, the Investigating Judge issued “preventive” orders against the General who, at the time of the disappearance of Mr. González Medina had been in charge of intelligence for the Dominican Air Force and a pilot at the service of the President of the Republic; the Lieutenant Colonel who had been the Director of Plans and Operations of the Air Force Intelligence Department (A-2) and the Major General who had been the Armed Forces Secretary of State.<sup>135</sup>

118. On May 25, 2001, the complainants reiterated the civil complaint before the investigating Judge of the National District Seventh Investigating Court.<sup>136</sup>

119. Three months later, on August 24, 2001, the National District Seventh Investigating Court issued decisions Nos. 195/2001 and 110/2001, in which it decided “not to commit [...] to trial” the General who had been in charge of the Intelligence Department of the Dominican Air Force (A-2) or the Lieutenant Colonel who had been the Director of Plans and Operations of the A-2, and decided “[f]irst: to declare [...] that there are grave, serious, precise and consistent indications that implicate the criminal responsibility of the said [Major

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<sup>130</sup> Cf. Civil complaint brief of May 26, 1995, filed before the Seventh Investigating Court on June 12, 1995 (file of attachments to the pleadings and motions brief, attachment 14, folios 4918 a 4934).

<sup>131</sup> Cf. August 24, 2001, ruling of the Investigating Court, *supra* note 105, folio 4314.

<sup>132</sup> Cf. Testimony provided by expert witness Cristóbal Rodríguez Gómez on June 20, 2011, *supra* note 87, folios 1162 a 1165; testimony given by witness Guillermo Moreno García on June 20, 2011, *supra* note 127, folios 1107 and 1108, and testimony given by witness Eduardo Sánchez Ortiz before the Inter-American Court during the public hearing held in this case on June 28, 2011.

<sup>133</sup> Affidavit of Eduardo José Sánchez Ortiz of August 17, 2011 (merits file, tome IV, folios 1656 and 1657).

<sup>134</sup> In its answering brief, the State indicated that, during the criminal proceedings, “numerous individuals were questioned, including those who had testified before the Joint Board.” Cf. Answering brief (merits file, tome II, folio 703, para. 106). In addition, see August 24, 2001, ruling of the Investigating Court, *supra* note 105, folios 4167, 4174 and 4314 to 4534.

<sup>135</sup> Cf. August 24, 2001, ruling of the Investigating Court, *supra* note 105, folios 4462, 4477, 4350, 4534, 4543 and 4555.

<sup>136</sup> Cf. Brief of May 25, 2001, reiterating the civil complaint, filed before the Seventh Investigating Court (file of attachments to the application, attachment 11, folios 3818 a 3825).

General who had been the Armed Forces Secretary of State], as guilty of the violation of article 114 of the Dominican Criminal Code; [...] Second: [...] to] refer him to the criminal courts [...] so that he may be tried in accordance with the law.”<sup>137</sup>

120. On August 27, 2001, both Narciso González Medina’s family and the accused contested decisions Nos. 195/2001 and 110/2001 by filing appeals. Both appeals were decided on December 18, 2002, by the Santo Domingo Review Chamber (hereinafter also the “Review Chamber”), declaring that, since there was insufficient evidence, “the judicial prosecution of [the Major General who had been the Armed Forces Secretary of State] was unfounded” and confirming the “decision of inadmissibility [...] in favor of [...] the General who had been in charge of the A-2] and [the Lieutenant Colonel who had been Director of Plans and Operations of the A-2).”<sup>138</sup>

121. On May 26, 2004, the plaintiffs reiterated their civil complaint before the National District Public Prosecutor.<sup>139</sup> On August 22, 2006, the National District Seventh Investigating Court issued a certification on the status of the proceedings, indicating that, following the ruling of December 18, 2002, delivered by the Santo Domingo Review Chamber, the proceedings had been archived.<sup>140</sup>

122. On May 2, 2007, the State informed the Inter-American Commission of its decision to “reopen the investigation by the Public Prosecution Service in the case of the disappearance of Mr. González, owing to the new Code of Criminal Procedure.”<sup>141</sup> However, as this Court has already indicated (*supra* para. 76), the Dominican Republic has not presented specific detailed information on the “reopening” of the criminal investigation in 2007, or a copy of the corresponding case file, which had been requested, but rather forwarded a five-page report prepared by the National District Public Prosecutor dated September 26, 2011.

123. Based on the statements made by two people who worked on this case as prosecutors in 2007, the National District Public Prosecutor at the time appointed a “committee of prosecutors who were in charge of the investigation relating to the disappearance of Professor Narciso González.”<sup>142</sup> The committee of prosecutors proposed investigating four hypotheses.<sup>143</sup> To investigate these hypotheses, the prosecutors took a

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<sup>137</sup> August 24, 2001, ruling of the Investigating Court, *supra* note 105, folio 4565, and Penal Code of the Dominican Republic (file of attachments to the pleadings and motions brief, attachment 26, folio 5068).

<sup>138</sup> Decision of December 18, 2002 of the Santo Domingo Review Chamber (file of attachments to the application, attachment 15, folios 4568, 4605 and 4606). See also: certifications issued by the Secretary of the Seventh Investigating Court on the remedies of appeal filed on August 27, 2001, against decisions Nos. 195/2001 and 110-2001 (merits file, tome V, folios 1983 a 1986), and appeal brief of October 24, 2001, filed by Constantino Matos Villanueva before the Review Chamber (merits file, tome V, folios 1987 to 2004).

<sup>139</sup> *Cf.* Brief reiterating the civil complaint of May 26, 2004, *supra* note 136, folios 3791 to 3816.

<sup>140</sup> The parties and the Inter-American Commission all affirmed this fact. However, no evidence was provided to the Court of this certification by the Seventh Investigating Court. *Cf.* Application brief (merits file, tome I, folio 152, para. 96); pleadings and motions brief (merits file, tome II, folio 357), and answering brief (merits file, tome II, folio 705, para. 114).

<sup>141</sup> Note MP-RD-OEA 313-07 of May 2, 2007, addressed to the Executive Secretary of the Inter-American Commission and signed by the Ambassador and Permanent Representative of the Dominican Republic to the OAS (file of attachments to the application, attachment 3, folio 1013).

<sup>142</sup> Affidavit made by Francisco José Polanco Ureña on June 22, 2011 (merits file, tome III, folio 1090). Also, *cf.* affidavit made by Dante Castillo Medina on June 22, 2011 (merits file, tome III, folio 1088).

<sup>143</sup> Consisting in: “1. Narciso González was abducted by unknown individuals on May 26, 1994, and subsequently murdered; 2. Narciso was arrested by the National Police or a State security agency owing to his opposition to the Balaguer regime and, owing to his health problems he suffered a crisis and died; 3. Where could the corpse of Narciso González be?; 4. Narciso González committed suicide in a place strategically chosen so that



series of measures, including “interviews” with members of the family and acquaintances of Narciso González Medina, and other persons; the offer of a reward of “one million pesos to anyone providing specific, relevant and useful information” about the case; monitoring the telephone calls received in response to this offer, and the search for a letter with the testimony of Narciso González Medina’s brother in order to validate its content.<sup>144</sup> The above-mentioned report of the Public Prosecutor concludes by indicating that, following these measures, “the Public Prosecutor has found no new elements that would permit it make progress in the investigation into the disappearance of Professor Narciso González.”<sup>145</sup> In addition, in its answering brief, the State indicated that another measure taken during the said reopening was an interview conducted by “the Public Prosecution Service, in collaboration with the FBI.” However, the State did not provide a copy of this interview, but merely attached a copy of the note dated September 17, 2011, addressed to the Embassy of the United States of America, indicating that “members of the Public Prosecution Service need[ed] to travel to Laurence, Massachusetts, to interview [a Dominican citizen who resides legally in the United States of America, because] the investigators have reliable information that [...] he was one of the people who took part in the detention of another Dominican citizen in May 1994, who as of that time is disappeared.”<sup>146</sup>

### **B.9) Regarding the destruction of documents**

124. On January 9, 2008, the Legal Affairs Office of the Dominican Air Force asked the Executive Officer of the Air Force for the “first and last names of the members of this institution who were on duty on May 26, 27 and 28, 1994.”<sup>147</sup> In response to this request, on January 10, 2008, the Executive Officer of the “San Isidro” Air Base of the Dominican Air Force indicated that “routine correspondence dated prior to 2000, including the duty rosters, has been incinerated, because it had accumulated and there was not enough space to keep it.”<sup>148</sup>

### **C) General considerations of the Court**

125. In the instant case, a dispute exists between the parties regarding whether the State is internationally responsible for the presumed forced disappearance of Mr. González Medina. On the one hand, the Inter-American Commission and the representatives argue that the participation of State agents in the alleged forced disappearance of Mr. González Medina has been proved and, on the other hand, the State is emphatic in affirming that the

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his body would never be found.” Report of the National District Prosecutor on the reopening of the investigation into the disappearance of Narciso González dated September 26, 2011 (merits file, tome V, folio 1785). Also, *cf.* testimony given by Dante Castillo Medina on June 22, 2011, *supra* note 142, folio 1088 and 1089.

<sup>144</sup> *Cf.* Report of the National District Prosecutor on the reopening of the investigation, *supra* note 143, folios 1785 to 1789; testimony given by Dante Castillo Medina on June 22, 2011, *supra* note 142, folios 1088 and 1089, and testimony given by Francisco José Polanco Ureña on June 22, 2011, *supra* note 142, folios 1090 and 1091.

<sup>145</sup> Report of the National District Prosecutor on the reopening of the investigation, *supra* note 143, folio 1789.

<sup>146</sup> Letter of the Attorney General of the Dominican Republic of September 17, addressed to the Ambassador of the United States of America to the Dominican Republic (file of attachments to the answering brief, tome II, attachment 14, folio 6398).

<sup>147</sup> Note No. 00010 of January 9, 2008, from the Legal Adviser of the Dominican Air Force to the Executive Official of the Dominican Air Force (file of attachments to the pleadings and motions brief, attachment 15, folio 4937).

<sup>148</sup> Note of January 10, 2008, from the Executive Official of the “San Isidro” Air Base of the Dominican Air Force to the Legal Adviser of the Dominican Air Force (file of attachments to the pleadings and motions brief, attachment 16, folio 4939).

participation or acquiescence of its agents in the disappearance of Mr. González Medina has not been proved, and that it has been diligent in complying with its obligation to guarantee the rights of the said presumed victim, by means of the domestic investigations conducted in this case (*supra* paras. 83 to 85).

126. The Court has established that, in accordance with Article 1(1) of the Convention, States are obliged to respect and ensure the human rights recognized therein.<sup>149</sup> The States have the obligation not to practice or tolerate the forced disappearance of persons in any circumstances, and to punish those responsible for this within their own jurisdiction.<sup>150</sup>

127. The said obligation of guarantee is derived from the general obligation of guarantee indicated in Article 1(1) of the Convention together with the substantive right protected in this treaty that must be safeguarded, protected or guaranteed, and entails the positive obligation of the State to adopt a series of conducts, depending on the specific substantive right that must be guaranteed and the specific situation in question.<sup>151</sup> The Court has established that, in order to comply with this obligation to guarantee effectively the rights to juridical personality, to life, and to personal integrity and liberty, the States must not only prevent, but also have the obligation to investigate any violations of them. Consequently, failure to comply with the obligation to guarantee the rights protected in Articles 3, 4, 5 and 7 of the Convention by a diligent and effective investigation also results in the State's international responsibility.<sup>152</sup>

128. In its case law, the Court has established the continuing or permanent nature of forced disappearance, which encompasses multiple violations (*supra* para. 50). The Court's case law has indicated as concurrent and constituent elements of forced disappearance: (a) the deprivation of liberty; (b) the direct intervention of State agents or their acquiescence, and (c) the refusal to acknowledge the detention and to reveal the fate or whereabouts of the person concerned.<sup>153</sup> This characterization is consistent with other definitions contained in different international instruments,<sup>154</sup> the case law of the European human rights system,<sup>155</sup>

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<sup>149</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*, *supra* note 18, paras. 165 and 166, and *Case of the Barrios Family v. Venezuela*, *supra* note 77, para. 45.

<sup>150</sup> Cf. *mutatis mutandi*, *Case of Anzualdo Castro v. Peru. Preliminary objection, merits, reparations and costs*. Judgment of September 22, 2009. Series C No. 202, para. 60; *Case of Radilla Pacheco v. Mexico*, *supra* note 50, para. 142; *Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia*, *supra* note 49, para. 62; *Case of Gelman v. Uruguay. Merits and reparations*. Judgment of February 24, 2011. Series C No. 221, para. 76, and *Case of Torres Millacura et al. v. Argentina*, *supra* note 52, para. 98.

<sup>151</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*, *supra* note 18, paras. 162, 166 and 176, and *Case of the Barrios Family v. Venezuela*, *supra* note 77, paras. 173 and 174.

<sup>152</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*, *supra* note 18, paras. 162, 166 and 176, and *Case of the Barrios Family v. Venezuela*, *supra* note 77, paras. 173 and 174.

<sup>153</sup> Cf. *Case of Gómez Palomino v. Peru. Merits, reparations and costs*. Judgment of November 22, 2005. Series C No. 136, para. 97, and *Case of Torres Millacura et al. v. Argentina*, *supra* note 52, para. 95.

<sup>154</sup> Cf. Article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance U.N. Doc. A/RES/61/177 of 20 December 2006; article 7.2.i) of the Rome Statute of the International Criminal Court, U.N. Doc. A/CONF.183/9, of July 17, 1998, and preamble of the Declaration on the Protection of All Persons from Enforced Disappearance, U.N. Doc. A/RES/47/133 of 12 February 1993.

<sup>155</sup> In this regard, the following cases of enforced disappearance of persons can be consulted: ECHR, *Cyprus v. Turkey* [GC], No. 25781/94, paras. 132 to 134 and 147 to 148, 2001-IV, and ECHR, *Varnava et al. v. Turkey*, Nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90, paras. 111 to 113, 117 and 118, 133, 138 and 145, 10 January 2008.

the decisions of the Human Rights Committee of the International Covenant on Civil and Political Rights,<sup>156</sup> and decisions of the highest domestic courts.<sup>157</sup>

129. The forced disappearance of persons must be analyzed from an integral perspective owing to the multiple conducts that, combined towards a single purpose, violate permanently, while they subsist, rights protected by the Convention.<sup>158</sup> Thus, the legal analysis of forced disappearance must be consequent with the complex violation of human rights that it entails.<sup>159</sup>

130. The Court has verified the international consensus when examining this crime, which constitutes a grave violation of human rights, given the particular significance of the violations involved and the nature of the rights harmed, that involves an evident abandonment of the essential principles on which the inter-American system is founded;<sup>160</sup> moreover, its prohibition has achieved the status of *jus cogens*.<sup>161</sup>

131. Before beginning to analyze whether what happened to Mr. González Medina constitutes a forced disappearance and its legal consequences, this Court considers it pertinent to recall its case law regarding the criteria applicable to the assessment of the evidence in a case such as this one, owing to certain arguments of the State to the effect that the disappearance must be proved “beyond any reasonable doubt” and that there are no “serious, grave and consistent indications that destroy the presumption of innocence of those presumed to be implicated” under the domestic judicial investigation.

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<sup>156</sup> In this regard, see, *Messaouda Grioua and Mohamed Grioua v. Algeria*, CCPR/C/90/D/1327/2004 (2007), Communication No. 1327/2004, 16 August 2007; *Yasoda Sharma and Surya Prasad Sharma v. Nepal*, CCPR/C/97/D/1469/2006 (2008), Communication No. 1469/2006, 6 November 2008; *Zohra Madoui and Menouar Madoui v. Algeria*, CCPR/C/94/D/1495/2006 (2008), Communication No. 1495/2006, 1 December 2008, and *Nydia Erika Bautista de Arellana v. Colombia*, CCPR/C/55/D/563/1993, Communication No. 563/1993, 13 November 1995.

<sup>157</sup> Cf. *Case of Marco Antonio Monasterios Pérez*, Supreme Court of Justice of the Bolivarian Republic of Venezuela, Judgment of August 10, 2007 (declaring the permanent nature and multiple offenses constituted by the crime of forced disappearance); Supreme Court of Justice of the Nation of Mexico, Judgment: P./J. 87/2004, “Enforced disappearance of persons. The time frame for calculating its prescription does not start until the victim appears or their whereabouts are established” (declaring that forced disappearances are permanent crimes and that prescription should be calculated as of the date perpetration ceases) *Case on the withdrawal of immunity from Pinochet*, Plenary of the Supreme Court of Chile, Judgment of August 8, 2000; *Case of Sandoval*, Court of Appeal of Santiago de Chile, Judgment of January 5, 2004 (all declaring that the crime of enforced disappearance is continuing, a crime against humanity, not subject to the statute of limitations, and not subject to amnesty); *Case of Videla et al.*, the Argentine National Federal Criminal and Correctional Chamber of Appeal of the Capital, Judgment of September 9, 1999 (declaring that enforced disappearances are continuing crimes and crimes against humanity, and are not subject to the statute of limitations); *Case of José Carlos Trujillo*, Constitutional Court of Bolivia, Judgment of November 12, 2001 (declaring that enforced disappearances are continuing crimes and that prescription should be calculated as of the date perpetration ceases), and *Case of Castillo Páez*, Constitutional Court of Peru, Judgment of March 18, 2004 (declaring, as ordered by the Inter-American Court in the same case, that enforced disappearance is a permanent crime until the whereabouts of the victim has been established, and includes multiple offenses).

<sup>158</sup> Cf. *Case of Radilla Pacheco v. Mexico*, *supra* note 50, para. 138, and *Case of Contreras et al. v. El Salvador*, *supra* note 51, para. 80.

<sup>159</sup> Cf. *Case of Heliodoro Portugal v. Panama*, *supra* note 59, para. 112, and *Case of Gelman v. Uruguay*, *supra* note 150, para. 78.

<sup>160</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*, *supra* note 18, para. 158, and *Case of Contreras et al. v. El Salvador*, *supra* note 51, para. 83.

<sup>161</sup> Cf. *Case of Goiburú et al. v. Paraguay. Merits, reparations and costs*. Judgment of September 22, 2006. Series C No. 153, para. 84; *Case of Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil*, *supra* note 53, para. 105, and *Case of Contreras et al. v. El Salvador*, *supra* note 51, para. 83.

132. This Court has indicated since its first litigation that, for an international court, the criteria for assessing evidence are less rigid than under domestic legal systems and has stated that it can assess the evidence freely.<sup>162</sup> The Court must apply an assessment of the evidence that takes into account the gravity of attributing international responsibility to a State and that, despite this, is able to create confidence in the truth of the facts that have been alleged.<sup>163</sup> The Court has also established the criteria with regard to the burden of proof and has emphasized that, in proceedings concerning human rights violations, the State's defense cannot be based on the impossibility of the complainant to provide evidence, when it is the State that controls the means to clarify facts that have taken place on its territory.<sup>164</sup>

133. The international human rights jurisdiction must not be confused with the criminal jurisdiction, because States do not appear before the Court as subjects of a criminal action.<sup>165</sup> To establish that there has been a violation of the rights recognized in the Convention it is not necessary to prove the State's responsibility beyond all reasonable doubt or to identify, individually, the agents to which the violations are attributed;<sup>166</sup> rather it is sufficient to demonstrate that acts or omissions have been verified that have allowed the perpetration of these violations or that a State obligation exists that the State has failed to meet.<sup>167</sup>

134. In addition, the Court considers it pertinent to recall that it is legitimate to use circumstantial evidence, indications and presumptions to found a judgment, provided that conclusions consistent with the facts can be inferred from them.<sup>168</sup> Indicatory or presumptive evidence is of special importance in the case of complaints of forced disappearance, because this type of violation is characterized by the attempt to eliminate any element that would allow the detention, whereabouts, and fate of the victims to be determined.<sup>169</sup>

***D) Determination of the existence of the alleged forced disappearance and its subsistence at the time the State accepted the Court's jurisdiction***

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<sup>162</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*, supra note 18, paras. 127 and 128, and *Case of Rosendo Cantú et al. v. Mexico*, supra note 162, para. 105.

<sup>163</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*, supra note 18, para. 129, and *Case of Vélez Loor v. Panama*, supra note 25, para. 249.

<sup>164</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*, supra note 18, paras. 135 and 136, and *Case of the Barrios Family v. Venezuela*, supra note 77, para. 141. Similarly, see the decisions of the United Nations Human Rights Committee of the International Covenant on Civil and Political Rights, including: *Eduardo Bleier v. Uruguay*, CCPR/C/15/D/30/1978, Communication No. 30/1978, 29 March 1982, para. 13.3, and *Héctor Alfredo Romero v. Uruguay*, U.N. Doc. Supp. No. 40 (A/39/40) in 159 (1984), Communication No. 85/1981, 22 July 1983, para. 12.3.

<sup>165</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*, supra note 18, para. 134, and *Case of Rosendo Cantú et al. v. Mexico*, supra note 162, para. 105.

<sup>166</sup> Cf. *Case of the "White Panel" (Paniagua Morales et al.) v. Guatemala. Merits*, supra note 67, and *Case of the Dos Erres Massacre v. Guatemala. Preliminary objection, merits, reparations and costs*. Judgment of November 24, 2009. Series C No. 21, para. 197.

<sup>167</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*, supra note 18, paras. 172 and 173, and *Case of Kawas Fernández v. Honduras. Merits, reparations and costs*. Judgment of April 3, 2009. Series C No. 196, para. 73.

<sup>168</sup> *Case of Velásquez Rodríguez v. Honduras. Merits*, supra note 18, para. 130, and *Case of the Barrios Family v. Venezuela*, supra note 77, para. 141.

<sup>169</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*, supra note 18, para. 131, and *Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia*, supra note 49, para. 168.

135. Taking into account the said criteria for assessing the body of evidence, the Court will now determine, first, if what happened to Narciso González Medina constitutes a forced disappearance that can be attributed to the State (*infra* paras. 137 to 170), and then rule on the alleged violations of the obligation to respect and ensure the human rights of Mr. González Medina (*infra* paras. 174 to 195).

136. In order to analyze what happened to the presumed victim, the Court will take into account different indicative elements that help determine what happened in the following order: (1) alleged context at the time of the facts; (2) influence of Narciso González Medina on Dominican society and public impact of his speeches and writings; (3) surveillance of Narciso González Medina; (4) statements of those who testified that they had seen Narciso González Medina in State entities, and (5) failure to determine the whereabouts of Narciso González Medina and to clarify the facts. In addition, it will analyze (6) the alleged destruction and alteration of documents as part of the forced disappearance.

#### **D.1) Alleged context at the time of the facts**

137. The Court observes that both the Commission and the representatives described various contextual factors that they considered indications of the forced disappearance of Narciso González Medina. In this regard, during the proceedings before the Court, different testimonial and expert evidence was received, as well as documentary evidence, regarding the alleged context at the time of the alleged disappearance of Narciso González Medina.

138. The Court has verified that, in fact, the political and social context at the time of the events was not the same as that which existed under the Trujillo dictatorship or “the 12 years of Balaguer (*supra* paras. 87 and 88). Witnesses Juan Bolívar Díaz and Huchi Lora, as well as expert witnesses before the Court explained that the repression “did not disappear completely and, at times, there were threats and tensions that affected the exercise of freedom of expression,” and that the case of Mr. González Medina was an exception, because “at that time, the repression was applied in another way, more subtly; [...] it had other characteristics.”<sup>170</sup>

139. Added to this, the Court observes that, at the time of the facts, there was an extremely tense political climate owing to the alleged electoral fraud (*supra* paras. 89, 90 and 91), which was confirmed by senior authorities of the Government of the time, including the Secretary for the Armed Forces and the Head of the National Police who, in statements made during the domestic investigation of this case, noted the climate of political instability and unrest at the time, as well as the rumors of a possible disruption of public order.<sup>171</sup> As a result of this situation of political tension, according to different witnesses before the Court, as well as articles published in the press at the time, over the period from May 16, 1994, until the agreement reached with the opposition parties (several months later), the country

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<sup>170</sup> Testimony given by witness Luis Eduardo Lora Iglesias (Huchi Lora) on June 26, 2011, *supra* note 88, folio 1112. Similarly, *cf.* Testimony provided by expert witness Robert Salvador Ramos Vargas on June 16, 2011, *supra* note 90, folio 1179, and testimony of witness Juan Bolívar Díaz on June 16, 2011, *supra* note 98, folios 1126 and 1127.

<sup>171</sup> *Cf.* Summary of the statement made by Rafael Guerrero Peralta on December 10, 1996, *supra* note 122, folio 4349; statement made by Rafael Guerrero Peralta before the Review Chamber on September 26, 2002, *supra* note 122, folio 1966; undated statement made by Constantino Matos Villanueva before the Joint Board (file of attachments to the application, attachment 13, folio 3866); testimony provided by expert witness Rafael Molina Morillo on June 22, 2011, *supra* note 93, folio 1085; article published in *Rumbo* magazine of July 20 to 26, 1994 entitled “*De jueves a jueves en RD*” (file of attachments to the pleadings and motions brief, attachment 9, folio 4853); newspaper article entitled “*Embrolio electoral apunta hacia crisis política*,” *supra* note 92, folio 4849, and article “*Negotiated elections*,” *supra* note 86, folios 4895 and 4896.

was almost under military control, and repressive methods were used against those who protested.<sup>172</sup> In addition, the Court takes notes of the opinion provided by the historian José Antinoe Fiallo Billini in his expert evidence, explaining that, in the Dominican Republic, even though “the most drastic remedies were not needed” generally to confront “a very extreme situation of crisis of the political power [such as the government was experiencing at that time], it was decided to do this,” because a “single forced disappearance in a context of fraud and repression is extremely relevant as an attempt to send a message of fear and alarm.”<sup>173</sup> According to the evidence provided by the State itself, “[t]he press has been a victim of censure and arbitrary measures during each institutional conflict or threat of Government destabilization.”<sup>174</sup>

140. Moreover, the Court observes that it has received several statements that reveal a pattern of harassment and surveillance of journalists and those who criticized the Government of the time. According to these statements “the exercise of journalism was always a risk, especially at that time.”<sup>175</sup> Moreover, public complaints were made regarding the supposed police harassment and ill-treatment of journalists, including the former Director of the magazine in which Mr. González Medina had published his article on President Balaguer, and by “opposition activists,” regarding whom it was said that their arrests had “become routine.” In addition, there were reports of “beatings and torture against those detained on either political charges or for common offenses.”<sup>176</sup>

141. The evidence provided by the State itself in its defense reveals the harassment and surveillance to which those who criticized the regime or insinuated that fraud had been committed in the 1994 elections were subjected. The conclusions of the Joint Board reveal the arrest, without a court order, of two generals, because “security forces obtained a recording” of a conversation in which one of them criticized Balaguer because he was attempting to ignore the will of the people, and said that this must be avoided and, during this conversation, he mentioned the other general.<sup>177</sup> The Joint Board concluded that a witness who said he had taken part in the operation to arrest Narciso González Medina had, in fact, participated in the detention of two Army generals (*infra* para. 156 and footnote 195). However, the State did not respond to the Court’s request for helpful

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<sup>172</sup> Cf. Testimony given by witness Manuel Jesús de la Rosa Hidalgo on June 16, 2011, *supra* note 100, folios 1139 and 1140; testimony given by witness Luis Eduardo Lora Iglesias (Huchi Lora) on June 26, 2011, *supra* note 88, folio 1117; newspaper article entitled “Nueve días de tensión,” *supra* note 92, folio 4847; newspaper article entitled “Embrollo electoral apunta hacia crisis política,” *supra* note 92, folio 4849, and article published in *Rumbo* magazine of July 20 to 26, 1994 entitled “La represión de moda” (file of attachments to the pleadings and motions brief, attachment 9, folio 4852).

<sup>173</sup> Testimony provided by expert witness José Antinoe Fiallo Billini on June 16, 2011, *supra* note 85, folio 1176.

<sup>174</sup> Book entitled “*Crímenes contra la prensa. Atentados and censuras en República Dominicana, 1844-2007*,” *supra* note 89, folio 6363.

<sup>175</sup> In this regard, the deponent added: “[i]t is the only time I have had a guard at my home and it lasted until the crisis was over.” Testimony given by witness Luis Eduardo Lora Iglesias (Huchi Lora) on June 26, 2011, *supra* note 88, folios 1112 and 1113. Also, cf. Testimony given by witness Juan Bolívar Díaz on June 16, 2011, *supra* note 98, folio 1126, and testimony provided by expert witness José Antinoe Fiallo Billini on June 16, 2011, *supra* note 85, folio 1176.

<sup>176</sup> Testimony provided by expert witness Robert Salvador Ramos Vargas on June 16, 2011, *supra* note 90, folios 1180 and 1185, and newspaper article entitled “*La represión de moda*,” *supra* note 172, folio 4852.

<sup>177</sup> Cf. Statement made by retired Brigadier General Jesús Manuel Mota Henríquez on May 18, 1998, before the Joint Board, included in the statement made by Jesús Manuel Mota Henríquez before the Joint Board on May 22, 1998 (file of attachments to the answering brief, attachment 6, folios 5660 to 5662); Report of the Joint Board, *supra* note 109, folios 3850 and 3856, and statement made by Constantino Matos Villanueva before the Joint Board, *supra* note 171, folio 5636.

evidence asking it to provide a copy of the record of detentions (logbook) in which the detention of one of these generals who, according to the Joint Board, supposedly resembled Mr. González Medina would be recorded, which is an indication that, at the time, arrests were made that were not recorded.

142. The Court observes that, when analyzing this case, to the previous context of political tension and the surveillance of those who opposed or criticized the Government should be added the apparently common practice of illegal detention and cruel, inhuman and degrading treatment or torture by the State's security forces at the time of the facts. Non-governmental and international organizations reported and denounced the continued and common practice of cruel, inhuman or degrading treatment and torture against detainees by State security agents, as well as the routine perpetration of illegal detentions by the National Police and military officials.<sup>178</sup> The State did not provide any evidence to refute this context. In this regard, it should be underscored that, during a site visit made by the Inter-American Commission in 1997, the Attorney General of the Republic recognized that the Police tortured individuals who were being investigated. On that occasion, he was asked whether the Police tortured detainees, and he responded, "yes, they are tortured and also beaten, and we have to end this ...."; at the same time saying that instructions had been given to terminate this practice.<sup>179</sup>

143. In addition, the evidence provided by the State reveals how common the practice of illegal detention was in the Dominican Republic at the time of the facts. In addition to the detention of the Generals described *supra* (para. 141), the investigation reveals the search of the home and the detention, without a court order, of a witness who testified before the authorities in charge of the investigation (*infra* para. 157), without the State offering any explanation in this regard or providing evidence to the contrary.<sup>180</sup>

144. Therefore, contrary to the State's arguments, the Court considers that, at the time of the facts of this case, there was a context of political tension and surveillance of those who opposed or criticized the Government, as well as a practice of illegal detention and cruel, inhuman or degrading treatment and torture by security agencies that, although distinct from the extremely repressive context of previous dictatorial governments, provide an indication in relation to the presumed forced disappearance of Narciso González Medina.

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<sup>178</sup> Cf. Human Rights Watch report of January 1, 1993, entitled "Human Rights Watch World Report 1993-Dominican Republic", at: <http://www.unhcr.org/refworld/docid/467fca64c.html> (last consulted on February 27, 2012); Amnesty International report of March 27, 1992, entitled "Dominican Republic: Torture of Professor Felipe de Jesús Medrano García, Amnesty International (1991)", at: <http://www.amnesty.org/es/library/asset/AMR27/003/1992/es/3cb84734-edc6-11dd-a95b-fd9a617f028f/amr270031992es.html> (last consulted on February 27, 2012); Amnesty International report No. UA 171/91 of May 17, 1991, entitled "Dominican Republic: Torture and III-treatment/Death in Custody: Joubert Pierre", at: <http://www.amnesty.org/es/library/asset/AMR27/002/1991/es/18dcdb6f-ee59-11dd-9381-bdd29f83d3a8/amr270021991es.html> (last consulted on February 27, 2012); Report submitted by the Special Rapporteur [on Torture] Nigel S. Rodley, to the Economic and Social Council on January 12, 1995, in conformity with Resolution 1992/32 of the Commission on Human Rights, Resolution E/CN.4/1995/34, at: <http://www.unhchr.ch/Huridocda/Huridoca.nsf/0/e44b1a47d4f42862802566e3003bfd57?Opendocument> (last consulted on February 27, 2012); Amnesty International report No. AU 326/93 of September 15, 1993, entitled "Dominican Republic: III-treatment: 24 Unnamed Prisoners", at: <http://www.amnesty.org/es/library/asset/AMR27/002/1993/es/e498160d-ecb9-11dd-85fd-99a1fce0c9ec/amr270021993es.html> (last consulted on February 27, 2012); Amnesty International report of January 1, 1994, entitled "Amnesty International Report 1994 – Dominican Republic" at: <http://www.unhcr.org/refworld/docid/3ae6a9efc.html> (last consulted on February 27, 2012); testimony given by witness Manuel Jesús de la Rosa Hidalgo on June 16, 2011, *supra* note 100, folio 1141, and book "Yo fui del servicio secreto de la policía dominicana," *supra* note 85, folio 4655.

<sup>179</sup> Cf. OEA/Ser.L/V/II.104, *supra* note 87, para. 152, folios 3685 to 3690. Similarly, see newspaper article entitled "El Procurador insiste en la DNCD 'se tortura,'" published in *Diario Hoy* on December 31, 1996 (file of attachments to the pleadings and motions brief, attachment 18, folio 5018).

<sup>180</sup> Cf. Report of the Joint Board, *supra* note 109, folio 3852.

## **D.2) Influence of Narciso González Medina on Dominican society and public impact of his speeches and writings**

145. With regard to the State's argument concerning the supposed limited influence of Mr. González Medina (*supra* para. 85), the Court will refer to this because, in the instant case, the determination of this aspect is relevant in order to verify the circumstantial evidence provided by the Commission and the representatives concerning the alleged disappearance of Narciso González Medina.

146. The Court notes that it considered proved that Narciso González Medina was a well-known activist and journalist critical of the Government, with a particular way of writing, using political satire, who stood out owing to his firm and intransigent positions (*supra* para. 94). According to the expert opinions received by the Court, Mr. González Medina "was very well known," because his "radical and popular discourse" was inspired by the experiences of the working classes, and went back to those sectors which, in turn, were inspired by his social and political rebelliousness. In addition, on learning of Narciso González Medina's disappearance, members of civil society and the country's main associations of journalists protested demanding clarification of the facts.<sup>181</sup> In addition, the Court considers that the State's arguments are unfounded, because its own actions and reactions to the disappearance of Mr. González Medina reflect the relevance and impact he had on Dominican society. Following his disappearance, two extrajudicial committees were established to investigate the facts, and the members of his family were received by the President of the Republic at the time, and by the Secretary of the Armed Forces (*supra* paras. 104, 105, 108 and 111).

147. Regarding the impact of his opinions, speeches and writings, the Court notes that the different deponents before the Court, his family and friends indicate as possible reasons for his disappearance, his article published in *La Muralla*, strongly criticizing President Balaguer, or the speech he gave in the UASD one day before his disappearance, when he denounced the electoral fraud and the alleged corruption of senior officials of the State's security forces, calling for civil disobedience (*supra* para. 97). The only evidence provided by the State that includes a different opinion is the book by the journalist Oscar López Reyes in which he states that "[n]either the speech of Narcisazo in the UASD nor his article in *La Muralla* had any public impact," contrary to the "resonance and effects" of the declarations of other journalists at the time concerning the alleged 1994 electoral fraud, without any attempts having been made on their life.<sup>182</sup>

148. Regarding the State's argument about the limited circulation of *La Muralla*, several deponents before this Court explained that, although this magazine was small and had a regional circulation, "it had enormous influence and penetration" and "it was a working tool and an accusatory instrument for many grass-roots groups that was distributed throughout the country." Additionally, the Court takes into account the opinion of expert witness Robert Salvador Vargas that the coalitions of grass-roots organizations, where Mr.

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<sup>181</sup> Cf. Testimony provided by expert witness Robert Salvador Ramos Vargas on June 16, 2011, *supra* note 90, folios 1182 and 1183, and testimony provided by expert witness José Antinoe Fiallo Billini on June 16, 2011, *supra* note 85, folio 1174.

<sup>182</sup> Cf. "Crímenes contra la prensa. Atentados and censuras en República Dominicana, 1844-2007," *supra* note 89, folio 6328.



González Medina exercised significant influence and where this publication was disseminated most widely, were in “the vanguard of the opposition.”<sup>183</sup>

149. Moreover, regarding the speech given at the UASD, expert witness Ramos Vargas explained that the UASD has been “the birthplace of several social protest movements,” which “adds a further element to the threat that [Narciso González Medina’s speech] signified for the Government,” taking into account that “if anything influential occurs in the UASD, [...] the event has repercussions throughout the Nation.” According to two expert opinions provided to the Court, the speech given by Narciso González Medina in the UASD was “fairly inflammatory” in the context of the political crisis of the time and his call for civil disobedience “was not an absurd idea,” so that this speech represented “a very serious problem for the Balaguer government” and “a direct threat to those in power.”<sup>184</sup> Moreover, several deponents underlined as a relevant factor that, in his speech, Mr. González Medina had directly accused specific State officials, and one of them affirmed that “in Dominican Republic, that is the shortest path to them vowing to kill you.”<sup>185</sup>

150. The Court considers that the evidence provided in the proceedings proves that Mr. González Medina was a highly critical journalist with influence on Dominican society and that his speeches and writing had public impact. The evidence provided by the State (*supra* para. 147) is insufficient to disprove the above-mentioned opinions of the witnesses and expert witnesses. Consequently, the Court considers that the State’s arguments on the supposed limited influence of the presumed victim are unfounded.

### **D.3) Surveillance of Mr. González Medina**

151. Before the alleged disappearance of Narciso González Medina, his oldest son, Ernesto González Ramírez, who was 24 years of age at the time, observed that a car with tinted windows was following his father, and the latter told him that he was being “followed [because] they want[ed] to harm [him]” (*supra* para. 96). Following Mr. González Medina’s disappearance, the National Police, the Joint Board and the Investigating Court were informed of these incidents of harassment and possible surveillance, as can be seen from the summary of the statement made by Ernesto González Ramírez before the Police Board, the statement of Luz Altagracia Ramírez before the Joint Board, and the complaint briefs and the reiteration of the complaint before the Investigating Court.

152. Nevertheless, there is no record in either the summary of the proceedings of the Police Board, or in the report of the Joint Board, or in the decisions of the judicial organs that any investigations were undertaken to follow up on this or that any conclusions were reached in this regard. According to the testimony rendered before this Court by Manuel de Jesús de la Rosa, the Police showed some photographs to Ernesto González Ramírez in which he identified the car that he had seen; however, “when the Police handed over the file after Balaguer left the Presidency, those photographs were missing.”<sup>186</sup>

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<sup>183</sup> Testimony provided by expert witness Robert Salvador Ramos Vargas on June 16, 2011, *supra* note 90, folios 1181 to 1183. Also, *cf.* Testimony given by witness Manuel Jesús de la Rosa Hidalgo on June 16, 2011, *supra* note 100, folio 1136.

<sup>184</sup> Testimony provided by expert witness Robert Salvador Ramos Vargas on June 16, 2011, *supra* note 90, folio 1183. Similarly, *Cf.* Testimony provided by expert witness Jose Antioe Fiallo Billini on June 16, 2011, *supra* note 85, folio 1174.

<sup>185</sup> Affidavit of witness Juan Bolívar Díaz of June 16, 2011 (merits file, tome IV, folio 1126)

<sup>186</sup> Testimony given by witness Manuel Jesús de la Rosa Hidalgo on June 16, 2011, *supra* note 100, folio 1140.

153. During the public hearing, the State indicated that, at the time of Narciso González Medina's disappearance, "there was no report, no complaint, at any level of the State, establishing that he had been threatened; that he was being followed; we have looked in all the police stations to see if either he or his family had filed a report before his disappearance, and no complaint had been made up until that time." In this regard, the Court takes note that witness Luis Eduardo (Huchi) Lora Iglesias described that, when he worked with Narciso González Medina, "the threats were frequent. [...] but [their] attitude was not to make a fuss in this regard [...]. [They] did not report the threats [they] received, because [they] understood that this would be giving in to the person who was making the threats, because the intention may have been to make [them] nervous by putting pressure on [them]."<sup>187</sup>

154. Based on the above, the Court concludes that there are strong indications that Mr. González Medina was subject to surveillance before he disappeared, irrespective of the filing of a complaint in this regard.

#### **D.4) Testimony of those who declared that they had seen Narciso González Medina in State entities**

155. The Court observes that, throughout the investigations into what happened to Mr. González Medina different hypotheses and rumors have existed, and around 100 statements were received. The Court has noted the allegation of the Commission and the representatives concerning the existence of six witnesses who testified about the presence of Narciso González Medina in different State entities (military or police facilities) in the days following his disappearance.<sup>188</sup> Four of these individuals testified that they had seen him personally; and one of them subsequently retracted his statement.<sup>189</sup> The other two

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<sup>187</sup> Testimony given by witness Luis Eduardo Lora Iglesias (Huchi Lora) on June 26, 2011, *supra* note 88, folio 1113.

<sup>188</sup> In addition to these six testimonies, one person declared that he had executed Mr. González Medina and thrown his body into a certain river, but subsequently retracted his testimony and indicated that he had received money to testify thus and to incriminate certain officials in the facts. *Cf.* Summary of the testimony given by Ramón López Hidalgo on August 13 and 19, 1997, before the Seventh Investigating Court, cited in the Investigating Court's ruling of August 24, 2001, *supra* note 105, folios 4366 to 4372, and testimony given by witness Guillermo Moreno on June 16, 2011, *supra* note 127, folios 1106 and 1107.

<sup>189</sup> **(1)** An Army Sergeant Major who "worked as a driver" in the Intelligence Division or Directorate of the Armed Forces Secretariat of State (J-2) stated that he taken part in the operation to detain Narciso González Medina, although he later retracted his testimony. *Cf.* Testimony of Juan Dionisio Marte before the Joint Board on May 15, 1998 (merits file, tome V, folios 1974 to 1981), and Testimony of Juan Dionisio Marte before the Seventh Investigating Court on January 12, 1999 (merits file, tome V, folios 1903 and 1904). **(2)** A former Captain in the National Army, declared that, between May 24 and 26, 1994 "he saw when [Narciso González Medina] was taken into [the J-2], but [he] did not recognize him, because [he] did not know him"; however, that evening he had been told that the person concerned was a politician. Statement made by Antonio Quezada Pichardo before the National District Prosecutor on March 12, 1998 (file of attachments to the application, attachment 13, folio 4005). **(3)** A "police informer" of the Theft Department of the National Police testified that "at around 1.30 a.m." on May 27, 1994, when he was in the Homicide Department of the National Police headquarters, he saw when two individuals in civilian clothing took an injured man from a jeep without a license plate, who was later identified as Narciso González. According to his testimony, the work of a police informer is "to keep an eye on individuals who are wanted for any kind of criminal act; in other words [...] he] was in charge of identifying the individual that the Police is seeking in order to point him out and capture him" and he "worked 24 hours a day." Statement made by Junior Sarita Lebrón on August 19, 1998, before the Seventh Investigating Court (merits file, tome V, folios 1830 and 1831). In addition, *cf.* Undated statement made by Junior Sarita Lebrón (where he appears as "Junior Sarita Leonardo") before the Joint Board (file of attachments to the application, attachment 13, folios 4096 and 4099), and statement made by Junior Sarita Lebrón on August 21, 1998, before the Seventh Investigating Court (merits file, tome V, folios 1835 a 1846). **(4)** One person stated that he had seen Narciso González when he was detained in the National Investigations Department "in May 1994." Undated statement made by Fernando Isidro Olivo Sánchez before the Joint Board (file of attachments to the application, attachment 13, folio 4092).

testified that they knew that Mr. González Medina was in specific State entities because they had been informed by people who had supposedly seen him.<sup>190</sup> According to these six statements, Narciso González Medina had been seen in the Intelligence Division or Directorate of the Armed Forces Secretariat of State (J-2), then in the Homicide Department of the National Police, subsequently in the Intelligence Department of the Dominican Air Force (A-2) and, at one point, in the National Investigations Department (DNI). The individuals who testified that they had seen or known of the presence of Mr. González Medina in the National Police and in the A-2 indicated that he was “bathed in blood” or “in a very bad state.”<sup>191</sup>

156. The Court takes note that one of the individuals who testified before the Joint Board that he had seen Narciso González in the J-2 (specifically, a Sergeant Major stated that he had taken part in his detention and had taken him to the J-2), subsequently retracted his testimony before the Investigating Court (indicating that, previously, he had been confused and that, in fact, he had taken part in the detention of a General).<sup>192</sup> However, the Court points out that there is no record in the ruling of the Investigating Court or in the decision of the Review Chamber of any finding or assessment in this regard; or that an attempt was made to verify which version was correct, or to discover whether the deponent had changed his testimony owing to fear or any other motive. When retracting, the deponent indicated that he had detained another person, a General, and that he was changing his testimony because, previously “he was confused,” because he had been arrested after giving his first testimony owing to the investigation of this case and he “was upset at the time because he had never been detained, [...] did not know what [he] was doing, was under great pressure.”<sup>193</sup> However, this Court finds it relevant that: (i) the initial testimony was corroborated by another person;<sup>194</sup> (ii) the deponent had expressed “fear that [he] would be

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<sup>190</sup> (1) A “supplier” to the Armed Forces and the National Police testified that she recalled an occasion when she was in the office of the then Armed Forces Secretary of State, when he received a telephone call and, after hanging up, he mentioned to her that it was “inconvenient” that he had been called with regard to Narciso González Medina’s disappearance, and remarked that he “did not know why they were calling him on this matter, because he knew nothing about it,” and that even though “he had been informed that Professor Narciso González had been detained, [...] he had ordered that [Mr. González] be taken to the Police,” and “that each person should assume his own responsibility. Summary of the statement made by Paulina Alba before the Seventh Investigating Court on February 19, 1999, cited in the Investigating Court’s ruling of August 24, 2001, *supra* note 105, folio 4496. (2) The brother of a deceased Army Captain testified that, before he died, his brother had told him that he had seen Narciso González Medina “in the Air Force A-2 [or] in the *Mercadito*,” after May 26, 1994, “in a very bad condition.” Summary of the testimony given by Carlos Batista Rivas on November 11, 1996, and November 22, 1998, before the Seventh Investigating Court, cited in the Investigating Court’s ruling of August 24, 2001, *supra* note 105, folios 4329 to 4331 and 4441 to 4447. Also *cf.* Statement made by Carlos Batista Rivas before the Joint Board on June 27, 1998 (file of attachments to the application, attachment 13, folio 4067), and summary of the statement made by Carlos Batista Rivas before the Review Chamber on September 20, 2002, cited in the decision of December 18, 2002, of the Santo Domingo Review Chamber (file of attachments to the application, attachment 15, folio 4583).

<sup>191</sup> Testimony given by Junior Sarita Lebrón before the Seventh Investigating Court on August 19 and 21, 1998, *supra* note 189, folios 1833, 1836 and 1841, and statement made by Carlos Batista Rivas before the Joint Board on June 27, 1998, *supra* note 190, folio 4068.

<sup>192</sup> During the criminal proceedings, the Sergeant Major (*supra* note 189), who was then retired, retracted the said testimony and indicated that the operation had been “at the time of the elections [...] and that they] went to that place to look for, I believe it was General Mota Henríquez.” Testimony of Juan Dionisio Marte before the Seventh Investigating Court on January 12, 1999, *supra* note 189, folios 1903 and 1904.

<sup>193</sup> Testimony of Juan Dionisio Marte before the Seventh Investigating Court on January 12, 1999, *supra* note 189, folio 1904.

<sup>194</sup> He commented on this information to a Captain who, when testifying, confirmed what he had been told, including “the pressure he was under.” Testimony of Juan Dionisio Marte before the Joint Board on May 15, 1998, *supra* note 189, folio 1978), and similarly, *cf.* statement made by Antonio Quezada Pichardo before the National District Prosecutor on March 12, 1998, *supra* note 189, folios 4005 and 4006.

killed if he testified,” and therefore had not advised his superiors; (iii) the new version he gave is in keeping with the conclusion reached previously by the Joint Board, before the witness retracted;<sup>195</sup> (iv) during his interrogation before the Joint Board, he was shown a photograph of Narciso González Medina and indicated three times that the person they were looking for in the said operation was Mr. González Medina;<sup>196</sup> (v) during the interrogation before the Joint Board, he was shown the General in person, and he indicated that “he was not the persons we went to look for”; (vi) the operation to detain the General took place on May 16, 1994 (the day of the elections), while the alleged disappearance of Narciso González Medina was on May 26, 1994; (vii) there is no record in the report of the Joint Board or in the court decisions that either of these investigative bodies verified detention records to corroborate the alleged confusion, and (viii) the State did not respond to the Court’s request for helpful evidence, asking it to submit a “copy of the record of detentions (logbook) of May 16, 1994, where the detention [of the General] was recorded, as well as explanations on how the conclusion was reached that Mr. González Medina and Mr. Mota Henríquez resembled each other” (*supra* para. 141).

157. Furthermore, the Court notes that the testimony of two witnesses (a former Captain and a “police informer”) who affirmed that they had seen Mr. González Medina personally, one in the J-2 and the other in the Homicide Department of the National Police, were not assessed by either the Joint Board or by the courts in their conclusions or decisions. Regarding the testimony of the former Army Captain, in response to the request for an explanation as helpful evidence (*supra* para. 11 and note 15), when testifying before this Court, the Investigating Judge in charge of the investigation indicated that the said testimony “was not part of the Judiciary’s case file, but was forwarded as part of the report of the Joint Board [...] and, consequently, was considered extrajudicial information, with a referential value for the courts.” However, the Court was not given any reason why the said witness was not summoned a second time to testify before the Investigating Judge. In this regard, the only information provided by the State relates to the measures taken when the investigation was reopened (*supra* paras. 122 and 123), consisting of a request for collaboration of September 17, 2010, addressed to the Embassy of the United States of America by the Attorney General of the Republic, for the Federal Bureau of Investigations (FBI) to accompany members of the Dominican Public Prosecution Service to question the said former Captain, because he resides in the United States of America. In its answering brief and during the public hearing, the State indicated that it had already questioned the former Captain; however, this Court has not received any evidence of this, or the respective results, assessments or conclusions relating to it. However, the testimony of the “police informer” was received by the Joint Board and by the Investigating Court in charge of the investigation and is included among the evidence gathered, but no assessment has been made or conclusion reached with regard to it. The Court underlines this absence of assessment in the case of the “police informer” because, according to the Report of the Joint Board, this deponent had been subjected to detention and a search without a court order and the deponent stated that this was a result of his testimony.<sup>197</sup>

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<sup>195</sup> Based principally on the testimony of other individuals who took part in the operation, the Joint Board reached the “intrinsic belief” that the persons who were transferred during the said operation were retired Brigadier Generals Jesús Mota Henríquez and Felipe Emiliano Rojas López, “an event that occurred at approximately 11 p.m. on May 16, 1994.” Report of the Joint Board, *supra* note 109, folio 3850.

<sup>196</sup> In his testimony, Juan Dionisio Marte stated the first time that, “this was four years ago, but I think I recognize that face, I think it is the same”; the second time, “it could be the same person,” and the third time, “that was the person we went to get.” Testimony of Juan Dionisio Marte before the Joint Board on May 15, 1998, *supra* note 189, folio 1978.

<sup>197</sup> According to his testimony, the said “police informer” appeared before the Investigating Judge in charge of the investigation to give testimony and, when he asked that the Attorney General of the Republic be present, he was informed that he should come back another day, because the Attorney General was not available. However,

158. Regarding the testimony of the former Captain and the police informer, there is no record in either the report of the Joint Board or in the judicial decisions of conclusions to prove that they were assessed in the investigations into the facts, because they are not included in the grounds for the decisions of the courts, or of the report of the Joint Board. Consequently, in particular, there is no record that the credibility of these deponents was questioned by the entities responsible for the investigation. Nevertheless, in general, in the judicial decisions issued in this case, the courts indicated that there was no other testimonies, other than those specifically rejected, that were relevant and needed to be taken into account (*infra* note 272).

159. Additionally, two other deponents stated that they knew that Narciso González Medina had been in State facilities, specifically in the J-2 and the A-2, even though they had not seen him personally. The Court observes that these statements, contrary to the previous ones, were assessed and finally rejected during the judicial proceedings. The testimony of the Armed Forces "supplier" (who testified that she knew that Narciso González had been in the J-2 and that he had then been sent to the National Police), was rejected by the Review Chamber,<sup>198</sup> because there were "contradictions" between her testimony and that of the Armed Forces Secretary of State (who was the person who had allegedly transferred Mr. González Medina to the Police), because her version "has not been confirmed and, in particular, documented, and is totally denied by the accused" and, "from the documents in the case file, as well as from the interrogations conducted, no new relevant findings have been made to compare them or cross-check them with the statements of [the 'supplier'] that would lead us to assume that these were true. [...] In addition to the fact that it has not been possible to establish that Narciso González was really at the headquarters of the J-2, the intelligence branch of the Armed Forces Secretariat of State."<sup>199</sup> In this regard, the Court emphasizes that the Review Chamber did not taken into account that the said deponent had narrated these facts to an Army colonel, to the "Head of the Army" and to the Armed Forces Secretary of State in 1997, always in the same terms, which was taken into account by the Investigating Court in the ruling that

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the following morning his home was searched by National Police officials and he was arrested and remained detained seven days before being released "without any charges having been filed against him." Also, according to the testimony of the said "police informer," when they took Narciso González out of the cell in the National Police Headquarters and individuals known as "*Paleros*" [men with batons] put him in the "station wagon," he "knew why," and therefore noted down the number of the license plate and took "two loose sheets, one for recording entries and the other for recording departures," on which Narciso González Medina's entry into the police headquarters had been recorded, which were found and destroyed by the police officials when they arrested him. Undated statement made by Junior Sarita Lebrón before the Joint Board, *supra* note 189, folios 4096, 4098 and 4101. Also, *cf.* Testimony of Junior Sarita Lebrón before the Seventh Investigating Court on August 19 and 21, 1998, *supra* note 191, folios 1830 to 1846. In its report, the Joint Board indicated that the Major of the National Police who had been in charge of the search, "at first denied emphatically that he had detained the said Carlos Julio Sarita Lebrón and, in particular, that he had taken part in the [said] search [...]; however, despite this, after he had been presented with all the circumstances that proved this statement [...], he admit[ted] that Mr. Sarita Lebrón] had been detained and subsequently released without any charges being filed." Report of the Joint Board, *supra* note 109, folio 3853.

<sup>198</sup> Regarding the said testimony, during the judicial proceedings, the First Instance Court considered "[t]hat there are serious and concurring indications that the Major General [Armed Forces Secretary of State at the time of the disappearance of Narciso González] was aware, not only of the illegal detention of Professor Narciso González, but also [...] ordered that he be transferred to the National Police," based on which it considered that he had "aided in the illegal detention of Professor Narciso González," and therefore decided "to refer him to the criminal courts." August 24, 2001, ruling of the Seventh Investigating Court, *supra* note 105, folios 4564 and 4565.

<sup>199</sup> Decision of December 18, 2002 of the Santo Domingo Review Chamber, *supra* note 138, folios 4601, 4602 and 4606.

was subsequently revoked by the Review Chamber.<sup>200</sup> In addition, the testimony of the brother of a deceased Army Captain (according to which, his brother had seen Narciso González Medina in the A-2 in a very bad condition), was rejected by the Investigating Court, because “the said individual had died, which made it impossible to question him and, consequently, to establish the reliability of this statement,”<sup>201</sup> and because “the senior A-2 officers who gave orders, [...] testified that [...] they were unaware of the facts, and that they were never informed of the presence of Professor Narciso González in the said Department.”<sup>202</sup> Also, the Review Chamber considered that “the said version of the facts could not be proved,” because, *inter alia*, neither the deceased nor the individual providing the information had confided it to a third person, and because “it had not been possible to establish that Narciso González had really been at the A-2 headquarters,” taking into account that the individuals who it was indicated were involved (senior personnel and the “police informer” of the A-2) denied their participation and the presence of Narciso González in the A-2.<sup>203</sup>

160. In this regard, the Court observes that one of the most relevant reasons for rejecting the said statements was that they were denied by the State authorities who could have been involved. Nevertheless, there is no record in the judicial decisions that any additional verification was made in this regard.

161. The Court recalls that, one of the characteristics of forced disappearance is precisely “the refusal to acknowledge the detention and to reveal the fate or whereabouts of the person concerned,” so that it is highly questionable to reject the testimony of witnesses, whether just one or several, based on the denial of the senior officers of the State entity where it is said that the disappeared person was detained. It is neither logical nor reasonable to investigate a forced disappearance and subordinate its clarification to the acceptance or confession of the possible authors or authorities involved, or to the similarity or agreement of their testimony with that of witnesses who state that they were aware of the victim’s presence in State facilities. The Court notes that, in the investigation of an alleged forced disappearance, the State authorities must take into account the elements characteristic of this type of crime (*supra* para. 128 and *infra* para. 221).

162. Lastly, the Court takes note of the testimony of a detainee who stated that he had seen Narciso González, who had been “beaten,” in the National Intelligence Directorate

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<sup>200</sup> According to the said “supplier,” she commented on this episode to a National Army Colonel when they were discussing the news published in the press about the case of Mr. González Medina. This Colonel testified confirming that “at the beginning of 1997,” the “supplier” had told him what has been described above, and he had passed this on to the “Head of the Army,” who, in turn, “advised” the then Armed Forces Secretary of State. The Colonel testified that this woman “repeated the same account that she had given before the two Generals, and also gave the same testimony [before the Joint Board].” Summary of the statement made by Paulina Alba before the Investigating Court on February 19, 1999, *supra* note 190, folio 4497, and summary of the statement made by Reyes Silvero Suárez del Orbe before the Investigating Court on February 26, 1999, cited in the August 24, 2001, ruling of the Investigating Court, *supra* note 105, folio 4499.

<sup>201</sup> The Captain died on June 2, 1994, apparently as the result of a traffic accident. *Cf.* Forensic autopsy Report No. A 870-96 sent to the Attorney General of the Republic on June 23, 1998 (file of attachments to the application, attachment 8, folios 3766 to 3769); summaries of the testimony given by Carlos Batista Rivas on November 22, 1996, and November 11, 1998, before the Seventh Investigating Court, *supra* note 190, folios 4330, 4331, 4441 and 4443; statement made by Carlos Batista Rivas before the Joint Board on June 27, 1998, *supra* note 190, folios 4067 and 4068, and summary of the statement made by Carlos Batista Rivas before the Review Chamber on September 20, 2002, *supra* note 190, folio 4583.

<sup>202</sup> August 24, 2001, ruling of the Seventh Investigating Court, *supra* note 105, folios 4542 and 4543.

<sup>203</sup> *Cf.* Decision of December 18, 2002, of the Santo Domingo Review Chamber, *supra* note 138, folios 4601 and 4602.

(DNI) in "May 1994," and also when they took him away in a car with his eyes covered.<sup>204</sup> His testimony was supported by an acquaintance, who confirmed that the detainee had told him that he had seen Narciso González in the DNI.<sup>205</sup> However, the Court observes that this testimony was rejected by the Joint Board, based on the testimony of the detainee's mother, according to which, the dates and circumstances of his detention did not coincide with the dates of Mr. González Medina's disappearance.<sup>206</sup> Nevertheless, there is no record in the Joint Board's report that it had corroborated the detainee's statement with detention records or any other element, other than the testimony of his mother. The Joint Board assumed that the mother's testimony was true and that the testimony of her son was false, without offering any explanation.

163. Similarly, the Court notes that, in its final written arguments, the State indicated, in general, that the Commission and the representatives founded the alleged disappearance, *inter alia*, on "inconsistent statements by individuals which, when compared with the reality, had to be rejected by the judge." However, the Court was not provided with specific information on the supposed inconsistencies of all the statements described above.

164. Therefore, the Court considers it admissible to consider the testimony of the witnesses who stated that they had seen or that they were aware of the presence of Mr. González Medina in State facilities in the days following his disappearance, as valid and truthful indications of the presumed disappearance of Mr. González Medina. When assessing these indications, the Court will not take into account the statements of the Sergeant Major who retracted his testimony and of the detainee whose mother provided different dates of his detention, because, owing to the State's omissions when investigating these facts, the Court has insufficient information to assess the said statements one way or another, without prejudice to its previous considerations on the said omissions of the State. The foregoing does not eliminate the Dominican Republic's obligation to rectify the said omissions during the investigations, and their legal consequences will be determined in the chapter corresponding to the rights to judicial guarantees and to judicial protection *infra*. Consequently, the Court finds that, at the domestic level, four statements were made according to which Narciso González Medina was in the J-2, in the National Police, and in the A-2 on the day of his disappearance and the following days, in the custody of State authorities, apparently having been beaten and in a bad physical condition in the last two entities, and their authenticity and veracity have not been contested on satisfactory grounds.

#### **D.5) Failure to determine the whereabouts of Mr. González Medina and to clarify the facts**

165. In this case, it has been proved that the State has been unable to clarify and offer a definitive official version of what happened to Mr. González Medina 17 years and 9 months ago. In the proceedings before this Court, the Dominican Republic argued that, "in order to find out precisely what happened to Narcisazo, all the relevant hypotheses proposed must

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<sup>204</sup> This deponent indicated that he had spoken to him, but only realized that the person detained was Narciso González Medina when he had been released, seeing him in the newspapers. *Cf.* Statement made by Fernando Isidro Olivo Sánchez before the Joint Board, *supra* note 190, folio 4091.

<sup>205</sup> *Cf.* Undated statement made by Carlos Rodolfo Cuevas before the Joint Board (file of attachments to the application, attachment 13, folio 4094).

<sup>206</sup> Based on the testimony of the mother of the man who had been detained, the Joint Board "verified," that the dates and circumstances of his detention did not concur with what he had stated, because, according to his mother, he was detained from May "7 to 11," 1994. *Cf.* Report of the Joint Board, point b-11), *supra* note 109, folio 3860.

be examined," and that "one of them is his suicide," giving the greatest weight to the latter. Nevertheless, the State accepted that "to date his exact whereabouts are unknown." The said hypothesis of suicide has not been verified by the State, even though, from the start of the investigation into the facts of this case before the Police Board, aspects of Mr. González Medina's private life were investigated and also the possibility that he had committed suicide.<sup>207</sup> Moreover, this is one of the four hypotheses proposed by the Public Prosecution Service in the investigation reopened four years ago (*supra* paras. 122 and 123 and footnote 143).

166. In addition, this Court considers that the said suicide hypothesis is not supported by evidence that makes it coherent. To the contrary, there is evidence to disprove it. In this regard, the Court takes into account the opinion of the expert witness psychiatrist Secundino Palacios who stated that Narciso González Medina "did not have a medical history of depression" and that, from a clinical point of view, the said hypothesis was inconsistent with a person who "during the days and months before his disappearance, was involved in numerous teaching and political events [... and] has not been asserted in this case by doctors, psychiatrists or neurologists, but only by a few journalists who have no training in the field of emotional or mental health."<sup>208</sup> Similarly, the neurologist who attended Mr. González Medina declared before the Review Chamber, *inter alia*, that he did "not believe the suicide hypothesis was possible; [...] he did not want to kill himself, he was not a depressive, he talked of his plans normally; he was full of life; [...] he was a fighter [...] that hypothesis is a very remote possibility."<sup>209</sup>

167. It should also be stressed that numerous statements exist in both the domestic investigation and in the proceedings before this Court in which friends and acquaintances of Mr. González Medina reject the possibility that he committed suicide.<sup>210</sup> In contrast, the State supported the suicide hypothesis on the basis of a statement made in the domestic investigation by a friend of the presumed victim, two documents that were not admitted by the Court (*supra* paras. 10 and 77), and the conclusions of a journalist.<sup>211</sup> Even though,

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<sup>207</sup> Cf. Testimony of Eduardo Sánchez Ortiz before the Inter-American Court during the public hearing held in this case on June 28, 2011; testimony given by witness Luis Eduardo Lora Iglesias (Huchi Lora) on June 26, 2011, *supra* note 88, folio 1114. In addition, in its answering brief, the State affirmed that "[t]he Police Board conducted investigations into the relations of the victim with his wife, his family, and his friends. It also investigated his personal preferences and other matters related to his private life that might explain his disappearance." The State's answering brief (merits file, tome II, folio 700, para. 97).

<sup>208</sup> Affidavit made by Doctor Secundino Palacios on June 16, 2011 (merits file, tome III, folios 1151 to 1153). During the public hearing before this Court, the State affirmed that psychologists and psychiatrists had been consulted with regard to the document found, which was supposedly related to the hypothesis of suicide. Nevertheless, the State did not offer any evidence to the Court, and there is nothing in the information provided on the investigation reopened in 2007, because it was not mentioned in the Prosecutor's report on the measures taken under investigation reopened in 2007, and the Court was not provided with the complete case file of this investigation, even though the State was asked to provide a copy as helpful evidence (*supra* paras. 76 and 77).

<sup>209</sup> Testimony given by Dr. Valenzuela on September 20, 2002, before the Review Chamber, *supra* note 97, folios 1960 and 1961.

<sup>210</sup> Cf. Summary of the testimony given by Roberto José Santana Sánchez before the Investigating Court, *supra* note 99, folio 4387, where he indicated: "knowing Narcizaso's ideas and achievements, it is difficult to presume suicide or an accident." Also, cf. Testimony provided by expert witness Secundino Palacios on June 16, 2011, *supra* note 208, folios 1151 to 1153; testimony given by witness Luis Eduardo Lora Iglesias (Huchi Lora) on June 26, 2011, *supra* note 88, folio 1114; testimony given by witness Manuel de Jesús de la Rosa Hidalgo on June 16, 2011, *supra* note 100, folios 1138 and 1139, and summary of the statement made by Américo Dante Mejía Lama before the Seventh Investigating Court, cited in the August 24, 2001, ruling of the Investigating Court, *supra* note 105, folios 4521 and 4522.

<sup>211</sup> Cf. "Crímenes contra la prensa. Atentados and censuras en República Dominicana, 1844-2007," *supra* note 89, folio 6328; affidavit made by witness Oscar López Reyes on June 17, 2011 (merits file, tome III, folios 1092 to 1094); testimony given by Jimmy Sierra before the Prosecutor on August 9, 2010 (file of attachments to the



before the Court, the State offered as evidence the sworn written statement of the said friend of Mr. González Medina and of another person, it did not provide them (*supra* para. 76). Moreover, the Dominican Republic did not provide the explanation requested by the Court as to how this hypothesis addressed the absence of the mortal remains (*supra* para. 76 and footnote 15). In addition, the Court notes that, in the instant case, witnesses and family have denounced that they have been harassed and threatened presumably related to the investigation of this case, which has required the Inter-American Commission to adopt precautionary measures and this Court to adopt provisional measures,<sup>212</sup> and this, *prima facie*, is not consequent with the hypothesis of suicide.

168. Furthermore, the Court notes that it is contradictory that the State exempts itself from international responsibility based on what it considers a hypothesis. The Court underscores that two of the prosecutors who took part in the investigation stated that the hypothesis that Mr. González Medina had been detained “by the National Police or another State security agency” was also being investigated (*supra* para. 123 and note 143). In this regard, in the request for collaboration sent to the FBI, the State indicated that “[t]he investigators ha[d] reliable information that [the person it wished to interview] was one of the people who took part in the detention of another Dominican citizen in May 1994.” Consequently, the State’s categorical denial of the forced disappearance does not reflect the reality of the investigations, but constitutes a biased version of what has been investigated, based on some selected pieces of evidence.

169. Moreover, since 17 years and 9 months have passed since the facts, and the State has not provided evidence to the proceedings in this case that would contradict the existence of the forced disappearance of Mr. González Medina, the Court considers it reasonable to accord significance to the evidence and the series of indications that emerge from the case file (*supra* para. 124) concerning the perpetration of the forced disappearance of Mr. González Medina by State authorities. To conclude the contrary would mean allowing the State to shield itself behind the negligence and ineffectiveness of the criminal investigation to evade its international responsibility.<sup>213</sup>

170. Based on all the above considerations, the Court finds that it has been proved sufficiently that Narciso González Medina was forcibly disappeared on May 26, 1994, and that his whereabouts are still unknown at this date, based on: (1) the alleged context at the time of the facts; (2) the influence of Narciso González Medina on Dominican society and the public impact of his speeches and writings; (3) the surveillance to which Narciso González was subject before his disappearance; (4) the testimony of the four individuals who stated that they had seen or were aware of the presence of Narciso González Medina in

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answer to the application, tome II, attachment 10, folios 6016 to 6023), and Prosecutor’s report of September 26, 2011, *supra* note 143, folios 1784 to 1789.

<sup>212</sup> In an Order of August 30, 2011, the Inter-American Court required the State to adopt all necessary measures to protect the life and personal integrity of Mario José Martín Suriel Núñez, who had been a witness before the Court, owing to an alleged car chase he experienced “of such magnitude that it placed his life and personal integrity at grave risk,” alleged surveillance that his neighbors had observed, and anonymous call to his telephone, as well as his consequent decision to abandon his home, which revealed *prima facie* a situation of extreme gravity and urgency that justified the adoption of provisional measures in his favor. On that occasion, “[t]he Court found sufficient reasons to presume that the acts of harassment and the threats against Mr. Suriel Núñez could be related to his participation in this case.” On November 8, 1996, the Inter-American Commission asked the Dominican Republic to adopt urgent precautionary measures to ensure the life and personal integrity of Virgilio Almánzar, Tomás Castro and Luz Altigracia Ramírez and other witnesses in the case submitted to the consideration of the Commission as No. 11,324 (*supra* paras. 63 and 107 and notes 66 and 121).

<sup>213</sup> Cf. *Case of Kawas Fernández v. Honduras*, *supra* note 167, para. 97, and *Case of Rosendo Cantú et al. v. Mexico*, *supra* note 162, para. 104.

State entities, and (5) the State's failure to clarify the facts. For the purpose and effects of this Court's judgment, the findings that emerge from the body of evidence are sufficient to reach the conclusion that Narciso González Medina was forcibly disappeared by the Dominican Republic.

#### **D.6) Alleged destruction and alteration of documents as part of the forced disappearance**

171. Regarding the arguments of the representatives and the Commission concerning the alleged destruction and/or alteration of documents (*supra* paras. 44, 72 and 83), the Court does not have sufficient evidence to determine whether the said alteration or "disappearance" of official documents of the Intelligence Division or Directorate of the Armed Forces Secretariat of State (J-2) and the Intelligence Department of the Dominican Air Force (A-2) really occurred (*infra* para. 234). Nevertheless, the Court considered as proven that "due to accumulation and lack of space," documents of the Dominican Air Force dated prior to 2000, including duty rosters corresponding to the dates of Mr. González Medina's disappearance, had been incinerated (*supra* para. 124).

172. Regarding the argument that the supposed destruction and alteration of official documents forms part of the enforced disappearance (*supra* paras. 83 and 84), the Court takes into account that expert witness Federico Andreu Guzmán explained that the acts that constitute enforced disappearances (the deprivation of liberty and the denial or concealment of the whereabouts or fate of the victim) "can be committed by means of other acts that can themselves be considered separately [as] crimes." The ways that information about the victims is hidden can be complex, and one of those ways is precisely "the destruction of files, the falsification of detention records, the creation of new records, or disinformation, etc."<sup>214</sup>

173. The Court considers that the destruction and/or alteration of official documents in order to deny the detention or to conceal the whereabouts of the victim of forced disappearance can constitute acts relating to the third constituent element of the said violation, namely, the refusal to acknowledge the detention and to reveal the fate or whereabouts of the person concerned (*supra* para. 128). Nevertheless, in the instant case, the Court does not have sufficient evidence to reach the conviction that the incineration of documents sought to prevent the clarification of the disappearance of Narciso González Medina, or that it was done in order to deny or conceal information on his disappearance. Consequently, the Court does not find it proved that the said incineration formed part of the forced disappearance in this case, and does not find it necessary to rule on the alleged violation of Article 13 of the Convention based on these alleged facts.

#### **E) Alleged violations of Articles 7, 5(1), 5(2), 4(1) and 3 of the American Convention owing to the forced disappearance of Narciso González Medina**

174. Having determined the existence of the forced disappearance of Mr. González Medina and that it continued to exist at the date the State accepted the Court's jurisdiction, the Court will now examine the violations of the American Convention that have been alleged in this regard.

175. This Court recalls that, when analyzing an alleged forced disappearance, it must be taken into account that the individual's deprivation of liberty should be understood as

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<sup>214</sup> Testimony given by Federico Andreu Guzmán before the Inter-American Court during the public hearing held in this case on June 28, 2011.

merely the beginning of the constitution of a complex violation that is prolonged over time until the victim's fate and whereabouts are known. The analysis of a possible forced disappearance should not focus in an isolated, divided and fragmented manner only on the detention, or the possible torture, or the risk of loss of life, but rather on all the facts that are present in the case being considered by the Court, taking into account the Court's case law when interpreting the American Convention.<sup>215</sup>

176. Regarding Article 7 of the American Convention, the Court has reiterated that any restriction of the right to personal liberty must only occur for the reasons and under the conditions previously established by the Constitution or by laws enacted in keeping with the Constitution (substantive aspect), and also, strictly subject to the procedures objectively defined in it (formal aspect).<sup>216</sup>

177. Regarding the right to personal liberty and persons deprived of liberty, the Court has recognized that the State is in a special position as guarantor of the rights of those detained,<sup>217</sup> so that the deprivation of liberty in legally-recognized centers and the existence of records of detainees constitute fundamental safeguards, *inter alia*, against forced disappearance.<sup>218</sup>

178. Based on Article 7 of the American Convention, the Court has considered that any detention, irrespective of the reason or duration, must be duly recorded in the pertinent document indicating clearly, at least, the reasons for the arrest, who made it, the date and time of arrest, and the date and time of release, as well as proof that the competent judge was informed, in order to provide protection against any illegal or arbitrary interference with physical liberty.<sup>219</sup> Otherwise, the rights established in Article 7(1) and 7(2) of the American Convention, in relation to Article 1(1) of this instrument are violated.<sup>220</sup>

179. The deprivation of liberty which initiates a forced disappearance, whatever the form it takes, is contrary to Article 7 of the American Convention. In the instant case, the Court has verified that Narciso González Medina was detained on May 26, 1994, and, that night and the days following his disappearance, he was in the State's custody (*supra* para. 164), which entailed a violation of his liberty in the most extensive sense of Article 7(1) of the Convention; also that, 17 years and 9 months after his detention, his whereabouts remain unknown.

180. Regarding Article 5 of the American Convention, this Court has stated that forced disappearance violates the right to humane treatment, because "the mere fact of prolonged isolation and compulsory solitary confinement, represents cruel and inhuman treatment [...]"

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<sup>215</sup> Cf. *Case of Heliodoro Portugal v. Panama*, *supra* note 59, para. 112, and *Case of Contreras et al. v. El Salvador*, *supra* note 51, para. 84.

<sup>216</sup> Cf. *Case of Gangaram Panday v. Suriname. Merits, reparations and costs*. Judgment of January 21, 1994. Series C No. 16, para. 47, and *Case of Fleury et al. v. Haiti*, *supra* note 67, paras. 57 and 59.

<sup>217</sup> Cf. *Case of Neira Alegría et al. v. Peru. Merits*, *supra* note 56, para. 60, and *Case of Fleury et al. v. Haiti*, *supra* note 67, para. 84.

<sup>218</sup> Cf. *Case of Anzualdo Castro v. Peru*, *supra* note 150, para. 63, and *Case of Torres Millacura et al. v. Argentina*, *supra* note 52, para. 99.

<sup>219</sup> Cf. *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of November 21, 2007. Series C No. 170, para. 53, and *Case of Torres Millacura et al. v. Argentina*, *supra* note 52, para. 76.

<sup>220</sup> Cf. *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador*, *supra* note 219, para. 54, and *Case of Torres Millacura et al. v. Argentina*, *supra* note 52, para. 76.

contrary to paragraphs 1 and 2 of [Article 5 of the Convention],” so that “it is evident that, in a forced disappearance, every dimension of the personal integrity of the victim is violated.”

181. The Court has also recognized that submitting those detained to official law enforcement units, State agents, or individuals acting with their acquiescence or tolerance, who commit acts of torture and murder with impunity represents, in itself, a breach of the obligation to prevent violations to personal integrity and to life, even if it is not possible to prove such violations in the specific case.<sup>221</sup>

182. In this case, the Court finds that it has been proved that a practice existed of illegal detention and cruel treatment or torture by security forces (*supra* paras. 142 to 144) in the Dominican Republic at the time of the facts. In addition, the body of evidence reveals that: (i) one of the witnesses who saw Narciso González Medina in the National Police declared that he was “bathed in blood” “on his face and body,” and that he had been handed over to agents of the National Police who were “known as ‘paleros’, in other words they beat people” (*supra* paras. 155 and 157), and (ii) that Mr. González Medina suffered from “refractory epilepsy,” which was very difficult to control, that caused him to have convulsions every so often, and for which he had to take medication every day (*supra* para. 92). According to his doctor, Mr. González Medina was “a permanent candidate for an epileptic fit, a condition brought on by not taking his medication, or by fever, trauma, or great emotional tension, which could lead to his death owing to non-stop convulsive crises, which facilitated cerebral hypoxia, constant crises, and death within hours.”<sup>222</sup> The same doctor testified before the Review Chamber during the domestic judicial proceedings, that “the individual who has crises tends to react when his is mistreated, [...] and only urgent attention for 48 hours can help him survive functionally; but many people die, even if they receive attention in time; imagine being in prison; the prisoner would hurt himself owing to an epileptic fit, because of his illness.”<sup>223</sup>

183. The Court considers it reasonable to presume, based on the body of evidence, that Mr. González Medina was subjected to physical and mental ill-treatment while he was in the State’s custody, which was exacerbated by the fact that he suffered from epilepsy, since he was probably prevented from accessing the medication he required. In addition, the Court considers that, very possibly Mr. González Medina’s health deteriorated rapidly and fatally owing to the lack of medical attention, as well as because of the anxiety resulting from a situation such as that of forced disappearance, as explained by his neurologist (*supra* para. 182). In this regard, the Court notes that the refusal of the authorities to acknowledge the said deprivation of liberty, and to provide information on the whereabouts or fate of the victim, despite the steps taken by his family, placed him in a situation of extreme vulnerability that exacerbated the suffering he endured and prevented Mr. González Medina from receiving the support of his family and his neurologist when he was very probably suffering a serious deterioration of his health. Several deponents before this Court indicated that, when they began the search for Mr. González Medina, his family and friends feared that his absence was related to a crisis related to his illness (*supra* para. 101). His wife, Luz Altigracia Ramírez, declared before this Court that, when she went to the State agencies

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<sup>221</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*, *supra* note 18, para. 175, and *Case of Contreras et al. v. El Salvador*, *supra* note 51, para. 85.

<sup>222</sup> Report of Dr. Santiago Valenzuela Sosa, *supra* note 97, folio 3759.

<sup>223</sup> Testimony given by Doctor Valenzuela, *supra* note 97, folio 1960.

she “took a bottle of Epamin, which is the medication he took, in case [she] found him, so that [she] could give him the pill that [she] knew he needed.”<sup>224</sup>

184. Based on the foregoing, the Court finds that Narciso González Medina suffered cruel, inhuman and degrading treatment when he was in the State’s custody and, consequently, this constitutes a violation of Article 5(1) and 5(2) of the American Convention, in relation to Article 1(1) of this instrument. In addition, it considers that the argument of the representatives concerning the classification of this treatment as torture refers to effects that were examined under the right to humane treatment and the prohibition of cruel, inhuman or degrading treatment established in Article 5(2) of the Convention; consequently, it finds it unnecessary to make an additional ruling in this regard.

185. Regarding Article 4 of the American Convention, the Court has considered that, owing to the nature of forced disappearance, the victim is in an aggravated situation of vulnerability, which gives rise to the risk of the violation of several rights, including the right to life. In addition, the Court has established that forced disappearance has frequently included the execution of those detained, in secret and without any type of trial, followed by the concealment of the corpse in order to erase any material trace of the crime and to ensure the impunity of those who committed it, which signifies a violation of the right to life, recognized in Article 4 of the Convention.<sup>225</sup>

186. With regard to the Dominican Republic’s request to exclude the alleged violation of Article 3 of the American Convention (*supra* para. 85), the Court notes that, according to its most recent case law, given the multiple and complex nature of this grave human rights violation, in the *case of Anzualdo Castro v. Peru*, this Court reconsidered its previous position and found it possible that forced disappearance can entail a specific violation of the said right because the refusal to acknowledge the deprivation of liberty or the whereabouts of the individual, together with all the other elements of the disappearance, results in the “removal of the protection of the law”<sup>226</sup> or the violation of the personal safety and legal certainty of the individual, and this directly prevents the recognition of juridical personality.<sup>227</sup> This reasoning has been applied by the Court in its latest decisions relating to forced disappearances.<sup>228</sup>

187. The Court has considered that the inherent content of the right to recognition of juridical personality is, precisely, that the individual is recognized, anywhere, as a subject of rights and obligations, with the right to enjoy the fundamental civil rights, and this implies the capacity to be the possessor of rights (capacity and enjoyment) and obligations. The

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<sup>224</sup> Statement made by Luz Altagracia Ramírez before the Inter-American Court during the public hearing held in this case on June 28, 2011.

<sup>225</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*, *supra* note 18, para. 157, and *Case of Gelman v. Uruguay*, *supra* note 150, para. 96.

<sup>226</sup> Cf. *Case of Anzualdo Castro v. Peru*, *supra* note 150, para. 86. Similarly, cf. *Caso Ibsen Cárdenas and Ibsen Peña v. Bolivia*, *supra* note 49, paras. 98 and 99.

<sup>227</sup> Cf. *Case of Bámaca Velásquez v. Guatemala. Merits*, *supra* note 56, para. 180, and *Case of Chitay Nech et al. v. Guatemala*, *supra* note 52, para. 99.

<sup>228</sup> Cf. *Case of Anzualdo Castro v. Peru*, *supra* note 150, paras. 90 to 101; *Case of Radilla Pacheco v. Mexico*, *supra* note 50, para. 157; *Case of Chitay Nech et al. v. Guatemala*, *supra* note 52, para. 102; *Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia*, *supra* note 49, paras. 98 to 102; *Case of Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil*, *supra* note 53, para. 122; *Case of Gelman v. Uruguay*, *supra* note 150, para. 92; *Case of Torres Millacura et al. v. Argentina*, *supra* note 52, para. 106, and *Case of Contreras et al. v. El Salvador*, *supra* note 51, para. 88.

violation of that recognition entails categorically denying the possibility of being the possessor of the fundamental civil rights and obligations.<sup>229</sup>

188. This right is a parameter for determining whether or not an individual is the possessor of the rights in question, and whether he can exercise them,<sup>230</sup> so that the violation of this recognition renders the individual vulnerable before the State or private individuals.<sup>231</sup> Thus, the content of the right to recognition of juridical personality refers to the corresponding general obligation of the State to provide the legal means and conditions to ensure that this right can be exercised freely and fully by its possessors or, as applicable, the obligation not to violate this right.<sup>232</sup> Over and above the fact that the disappeared person cannot continue enjoying and exercising others and, eventually, all the rights which he also possesses, his disappearance seeks not only one of the most severe ways of removing an individual from the whole sphere of law, but also denies his very existence and leaves him in a sort of limbo or situation of legal indetermination before society and the State.<sup>233</sup> In this case, the Court considers that Narciso González Medina was placed in a situation of legal indetermination, which prevented him from possessing or exercising effectively his rights in general, which resulted in a violation of his right to recognition of juridical personality.

189. The representatives also alleged that the forced disappearance involved a violation of Mr. González Medina's right of "access to justice," because the definition of the crime of forced disappearance includes preventing the victim from the "exercise of the pertinent legal remedies and procedural guarantees." Therefore, they indicated that "the disappearance of Narciso González meant that he could not have recourse to the effective legal remedies that corresponded to him to protect himself from the violations to which he was subjected."

190. In this regard, the Court reiterates that, in cases of forced disappearance of persons, the victim is left in a situation of legal indetermination that obstructs and annuls his possibility to possess his rights in general, and to exercise them effectively, and this constitutes one of the most serious forms of non-compliance with the State's obligation to respect and guarantee human rights.<sup>234</sup> The Court has recognized that forced disappearance is a practice with the deliberate intention of removing the individual from the exercise of the pertinent legal remedies and procedural guarantees. This means that the person cannot exercise his right to be heard, the guarantee of judicial control of detention, and access to an effective remedy should his rights be violated. This violation makes it impossible to exercise other rights, whether civil or political<sup>235</sup> so that, in fact, the disappeared person

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<sup>229</sup> Cf. *Case of Bámaca Velásquez v. Guatemala. Merits*, supra note 56, para. 179, and *Case of Torres Millacura et al. v. Argentina*, supra note 52, para. 104.

<sup>230</sup> Cf. *Case of the Sawhoyamaya Indigenous Community v. Paraguay. Merits, reparations and costs*. Judgment of March 29, 2006. Series C No. 146, para. 188, and *Case of Torres Millacura et al. v. Argentina*, supra note 52, para. 105.

<sup>231</sup> Cf. *Case of the Yean and Bosico Girls v. Dominican Republic. Preliminary objections, merits, reparations and costs*. Judgment of September 8, 2005. Series C No. 130, para. 179, and *Case of Torres Millacura et al. v. Argentina*, supra note 52, para. 105.

<sup>232</sup> Cf. *Case of Radilla Pacheco v. Mexico*, supra note 50, para. 156, and *Case of Torres Millacura et al. v. Argentina*, supra note 52, para. 105.

<sup>233</sup> Cf. *Case of Anzaldo Castro v. Peru*, supra note 150, para. 57, and *Case of Torres Millacura et al. v. Argentina*, supra note 52, para. 105.

<sup>234</sup> Cf. *Case of Anzaldo Castro v. Peru*, supra note 150, para. 101, and *Case of Torres Millacura et al. v. Argentina*, supra note 52, para. 106.

<sup>235</sup> Cf. *Case of Chitay Nech et al. v. Guatemala*, supra note 52, para. 100, and *Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia*, supra note 49, para. 100.

cannot continue enjoying and exercising all the other rights that he also possesses. However, this does not mean that forced disappearance, as a multiple and complex violation, entails the violation of all the rights that the disappeared person is unable to exercise. The Court considers that these arguments of the representatives refer to supposed effects that will be examined in the chapter corresponding to the investigation of the facts, so that it does not find it necessary to make an additional ruling in that regard.

191. In addition, the Court takes note that the Commission and the representatives argued that the reason for Narciso González Medina's forced disappearance was an "autonomous and direct" violation of his freedom of expression, because it was a result of his criticism of President Balaguer and the 1994 electoral process. The Commission indicated that the violations inherent in forced disappearance, such as the one that can be inferred from its motives, "acquire a permanent and continuing nature," because they continue to be constituted until the forced disappearance ceases, since the presumption of death cannot be applied to counter the rights of the victim. For their part, the representatives indicated that the violation of his freedom of expression is not an incidental consequence of the disappearance, but was the main reason for it, so that it was a twofold violation derived from the same single act, because all the violations that can be attributed to the crime of forced disappearance constitute a single act of a continuing nature that persists over time until the victims' whereabouts are known. Consequently, they asked the Court to determine that the forced disappearance of Narciso González Medina "violated his right to freedom of expression directly and independently." In this regard, the State argued that it had never been reported that the victim had received threats related to the exercise of his right to freedom of expression and that Mr. González Medina had a limited ability to influence public opinion. Thus, it denied that the supposed disappearance of Narciso González Medina had resulted from his declarations contesting the results of the election. Consequently, it asked the Court to declare that the State had not violated Article 13 of the Convention, to the detriment of Narciso González Medina.

192. Regarding the alleged violation of freedom of expression of Mr. González Medina owing to the reason for his forced disappearance, the Court recalls that, on previous occasions, it has recognized that when the purpose of the violation of the rights to life, and to personal liberty or integrity is to impede the legitimate exercise of another right protected by the Convention, such as freedom of association,<sup>236</sup> political rights,<sup>237</sup> and freedom of expression,<sup>238</sup> there is also an autonomous violation of these rights protected by the American Convention. However, a particularity of this case is that the beginning of the forced disappearance was prior to the acceptance of the Court's jurisdiction. Therefore, the Court lacks competence to examine the alleged violation of the freedom of expression of Narciso González Medina as an autonomous violation. Contrary to other cases of forced disappearance in which the Court has declared a violation of the right whose limitation motivated the disappearance, the Dominican Republic has not acquiesced to the facts or acknowledged the violations alleged by the Commission and the representatives. When a State acquiesces to facts that preceded its acceptance of the Court's compulsory jurisdiction, it waives any temporal limitation to the exercise of the Court's jurisdiction and,

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<sup>236</sup> Cf. *Case of Huilca Tecse v. Peru. Merits, reparations and costs*. Judgment of March 3, 2005. Series C No. 121, paras. 66 and 75; *Case of Cantoral Huamani and García Santa Cruz v. Peru. Preliminary objection, merits, reparations and costs*. Judgment of July 10, 2007. Series C No. 167, paras. 146 and 147; *Case of Kawas Fernández v. Honduras*, *supra* note 167, para. 150, and *Case of Manuel Cepeda Vargas v. Colombia. Preliminary objections, merits, reparations and costs*. Judgment of May 26, 2010. Series C No. 213, para. 172.

<sup>237</sup> Cf. *Case of Manuel Cepeda Vargas v. Colombia*, *supra* note 236, para. 172, and *Case of Chitay Nech et al. v. Guatemala*, *supra* note 52, paras. 116 and 117.

<sup>238</sup> Cf. *Case of Manuel Cepeda Vargas v. Colombia*, *supra* note 236, paras. 176 and 177.

thus, accepts its competence to examine all the facts that occurred and rule on all the violations that are constituted in that case.<sup>239</sup>

193. In addition, the Court considers that the circumstance that a forced disappearance was perpetrated in order to impede the legitimate exercise of a right does not mean that the consequent violation of this right is of a permanent nature. The fact that the persons is currently unable to exercise the right whose exercise it was intended to prevent, does not mean that the violation has been prolonged continuously over time, as a single and constant violation.<sup>240</sup> In addition, since motive is not one of the elements that constitute forced disappearance, it does not acquire the latter's permanent nature. Consequently, the Court is not competent to rule in this regard in the instant case.

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194. Lastly, based on all the above findings, the Court concludes that the Dominican Republic incurred international responsibility for the forced disappearance of Narciso González Medina, which began on May 26, 1994, without his whereabouts being known to date, so that it violated the rights recognized in Articles 7, 5(1), 5(2), 4(1) and 3 of the American Convention, in relation to Article 1(1) thereof, to the detriment of Narciso González Medina.

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195. In this chapter, the Court has declared the international responsibility of the Dominican Republic for non-compliance with the obligation to respect the rights to personal liberty, personal integrity, life and juridical personality of Narciso González Medina (*supra* paras. 170 and 174 to 194). The assessment of the obligation to guarantee the said rights by means of a diligent and effective investigation of the facts will be made in Chapter VIII of this judgment.

## **VIII RIGHTS TO JUDICIAL GUARANTEES AND TO JUDICIAL PROTECTION, IN RELATION TO ARTICLES 7, 5, 4, 3, 1(1) AND 2 OF THE AMERICAN CONVENTION TO THE DETRIMENT OF NARCISO GONZALEZ MEDINA AND HIS FAMILY**

### ***A) Introduction***

196. In this chapter, the Court will summarize the arguments of the Inter-American Commission and the parties, and will then rule on the merits of the case in relation to the alleged violations of Articles 8(1) and 25(1) of the American Convention, and Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture. In addition, the Court will also rule in this chapter on the alleged violations of Articles 2 and 13 of the American Convention.

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<sup>239</sup> Cf. *Case of Ticona Estrada et al. v. Bolivia. Merits, reparations and costs*. Judgment of November 27, 2008. Series C No. 191, para. 30, and *Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia*, *supra* note 49, para. 22.

<sup>240</sup> Regarding the characteristics of a permanent violation, cf. *Case of Blake v. Guatemala. Preliminary objections*, *supra* note 49, paras. 39 and 40; *Case of Alfonso Martín del Campo Dodd v. Mexico. Preliminary objections*. Judgment of September 3, 2004. Series C No. 113, para. 78; *Case of Radilla Pacheco v. Mexico*, *supra* note 50, para. 22, and *Case of Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil*, *supra* note 53, para. 17.



197. Regarding the facts analyzed in this chapter, the Court refers back to the facts relating to the investigations that it found established in the previous chapter (*supra* paras. 99 to 123). In keeping with the decision taken with regard to its competence *ratione temporis* (*supra* paras. 45 to 61), the Court can rule on the facts that occurred as of March 25, 1999. The facts that took place before that date will be taken into account as background information to the case; however, the Court is unable to determine any legal consequences in relation to the alleged international responsibility with regard to them.

### **B) Arguments of the parties and of the Inter-American Commission**

198. The Commission argued that the State “had not conducted a diligent investigation, within a reasonable time and in keeping with the guarantees of due process, into the victim’s forced disappearance as a means of guaranteeing the rights to life, personal integrity and personal liberty of Narciso González Medina, as well as to ensure the rights to truth, justice and reparation of his family.” In addition to arguing violations arising from the proceedings of the Police and Joint Boards, regarding the judicial investigation, it stated, *inter alia*, that: the said proceedings “did not constitute an effective remedy either”; “some of the acts and omissions [...] allow it to determine” that due diligence was not respected, and “logical lines of inquiry were not pursued or evidence examined that, at a glance, would have been able to shed light on the facts of the case and, in particular, resolve several of the inconsistencies and alleged contradictions argued by the judicial authorities in first and second instance.” In its final arguments the Commission added that another factor that had contributed to impunity was the failure to define forced disappearance as a crime. It indicated that the guarantee of a reasonable time had been violated, and that “there had been periods of inactivity that the State has been unable to justify.” It also argued that “no specific measures were adopted to establish the fate or whereabouts of Narciso González or of his mortal remains.”

199. In addition to alleging violations arising from the investigations conducted by the Police and Joint Boards, the representatives affirmed that the facts have remained in impunity and argued the ineffectiveness and lack of diligence of the criminal judicial investigations, indicating the supposed acts and omissions of the State authorities in this regard. They also referred to “other actions designed to conceal the authorship of the disappearance,” and affirmed that the guarantee of a reasonable time had been violated. In addition, they alleged the violation of Articles 1, 6 and 8 of the Inter-American Convention against Torture and the violation of the right to the truth, “protected by Articles 1(1), 8, 13 and 25 [of the American Convention] taken as a whole,” to the detriment of Mr. González Medina’s family. The representatives asked the Court to “determine that, in view of the failure to specifically define the crime, including the minimum elements established by case law, [...] the absence of appropriate investigation protocols, and an adequate punishment that permits the eradication of the forced disappearance of persons in the Dominican Republic, the State has violated the obligations contained in Articles 2 and 1(1) of the American Convention.”

200. Both the Inter-American Commission and the representatives argued that the State had violated Article 13 of the American Convention to the detriment of the family of Mr. González Medina owing to the alleged lack of access to information related to his detention and subsequent disappearance. In the application, the Commission based its arguments on the alleged destruction and alteration of records of the individuals detained in official facilities to which Narciso González Medina could have been taken. The representatives indicated that the Dominican Republic had never provided the victim’s family with a copy of the investigation conducted by the Police Board, or of the definitive investigation carried out

by the Joint Board, or of the judicial case files and the files of the investigation reopened by the Public Prosecution Service in 2007.

201. The State responded that it had complied with its obligation to investigate the facts of the case and that “[t]he investigations undertaken [...] responded to criteria of impartiality, objectivity, and the search for the truth.” It referred to the establishment of the Police Board and the Joint Board and to their investigations. In addition, it described the decisions adopted in the judicial proceedings and indicated that “[t]he investigation was reopened on May 2, 2007,” and referred to two measures taken following the said reopening. In addition, it affirmed that it had not violated the principle of reasonable time, because the complexity of the case must be taken into account, owing to the uncertainty with regard to the whereabouts of the presumed victim, the number of defendants and the rights that it was alleged had been violated, as well as the supposed “limited procedural activity of the family,” and the context in which the facts occurred. Regarding the alleged violation of Article 13 to the detriment of Mr. González Medina’s family, the Dominican Republic indicated that “it had not restricted the right of the family [...] apart from matters that could hinder the investigation. The State maintained that it had not violated Article 2 of the American Convention, but failed to submit any specific arguments in this regard.

### **C) General considerations of the Court**

202. The Court will now rule on the State’s alleged responsibility in relation to the members of Narciso Gonzalez Medina’s family, for the alleged failure to conduct a diligent and effective investigation into his forced disappearance, observing the guarantees of due process. In addition, the Court will determine whether the State complied with the obligation to guarantee Mr. Gonzalez Medina’s rights to personal liberty, personal integrity, life, and recognition of juridical personality by means of the said investigation.

203. The Court has established that the obligation to investigate is an obligation of means rather than results, which must be assumed by the State as an inherent legal obligation and not as a mere formality preordained to be ineffective, or as a measure taken by private interests that depends on the procedural initiative of the victims or of their family or on their production of probative elements.<sup>241</sup> The State’s obligation to investigate must be fulfilled diligently to avoid impunity and the repetition of this type of act. In this regard, the Court recalls that impunity encourages the repetition of human rights violations.<sup>242</sup>

204. In light of this obligation, once the State authorities have become aware of the act, they must begin, *ex officio* and without delay, a serious, impartial and effective investigation using all available legal means and designed to determine the whereabouts of the victim and the truth, and to pursue, capture, prosecute and eventually punish all the authors of the facts, especially when State agents are or may be involved.<sup>243</sup>

205. In addition, the Court takes into account that the Inter-American Convention against Torture, ratified by the Dominican Republic on January 29, 1987, establishes the State’s

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<sup>241</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*, *supra* note 18, para. 177, and *Case of the Barrios Family v. Venezuela*, *supra* note 77, para. 175.

<sup>242</sup> Cf. *Case of the Ituango Massacres v. Colombia. Preliminary objection, merits, reparations and costs*. Judgment of July 1, 2006. Series C No. 148, para. 319, and *Case of the Barrios Family v. Venezuela*, *supra* note 77, para. 175.

<sup>243</sup> Cf. *Case of the Pueblo Bello Massacre v. Colombia. Merits, reparations and costs*. Judgment of January 31, 2006. Series C No. 140, para. 143, and *Case of the Barrios Family v. Venezuela*, *supra* note 77, para. 176.

obligation to investigate any report or justified reason to believe that torture or cruel, inhuman or degrading treatment has been committed.

206. Furthermore, the Court has observed that this obligation to investigate remains in effect “whatsoever the identity of the agent to whom the violation may eventually be attributed, even private individuals, because, if their acts are not investigated seriously, they would, to a certain extent, be supported by the public authorities, which would involve the international responsibility of the State.”<sup>244</sup>

207. The Court also recalls that, based on the protection granted by Articles 8 and 25 of the Convention, States are obliged to provide effective judicial remedies to the victims of human rights violations, which must be substantiated in accordance with the rules of due process of law.<sup>245</sup> The Court has also indicated that, from Article 8 of the Convention, it is evident that the victims of human rights violations, or their family, must have ample possibilities of being heard and acting in the respective proceedings, both to try and clarify the facts and to punish those responsible, as well as to seek due reparation.<sup>246</sup>

208. In keeping with this Court’s case law, the family of the victims have the right to, and the States have the obligation to ensure, an effective investigation into what happened to the latter by the State authorities; that a trial be held against those allegedly responsible for the unlawful acts; that the pertinent punishments be imposed, as appropriate, and that the damage that the family has suffered be repaired.<sup>247</sup> In addition, the Court reiterates that, in cases of forced disappearance, the purpose of which includes the prevention of the exercise of the pertinent legal remedies and procedural guarantees, if the victim himself cannot accede to the available remedies, it is essential that the family or other next of kin can accede to prompt and effective judicial remedies or procedures as a means of determining the victim’s whereabouts or state of health, or to identify the authority who ordered or carried out the deprivation of liberty.<sup>248</sup>

209. In addition, in cases of forced disappearance, the investigation will have certain specific connotations that arise from the nature and complexity of the act investigated; in other words, the investigation must include taking all the necessary measures to determine the victim’s fate and whereabouts.<sup>249</sup> The Court has already clarified that the obligation to investigate facts of this nature subsists while the uncertainty remains about the final fate of the disappeared person, because the right of the victim’s family to know his fate and, if applicable, the location of his remains, represents a justified expectation that the State must satisfy with all the means available to it.<sup>250</sup>

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<sup>244</sup> *Case of Velásquez Rodríguez v. Honduras. Merits*, *supra* note 18, para. 177, and also *cf. Case of the Barrios Family v. Venezuela*, *supra* note 77, para. 177.

<sup>245</sup> *Cf. Case of Velásquez Rodríguez v. Honduras. Merits*, *supra* note 18, para. 91, and *Case of Fleury et al. v. Haiti*, *supra* note 67, para. 105.

<sup>246</sup> *Cf. Case of the “Street Children” (Villagrán Morales et al.) v. Guatemala. Merits*. Judgment of November 19, 1999. Series C No. 63, para. 227, and *Case of the Barrios Family v. Venezuela*, *supra* note 77, para. 178.

<sup>247</sup> *Cf. Case of Durand and Ugarte. Merits*. Judgment of August 16, 2000. Series C No. 68, para. 130, and *Case of the Barrios Family v. Venezuela*, *supra* note 77, para. 179.

<sup>248</sup> *Cf. Case of Anzualdo Castro v. Peru*, *supra* note 150, para. 64, and *Case of Torres Millacura et al. v. Argentina*, *supra* note 52, para. 114.

<sup>249</sup> *Cf. Case of Ticona Estrada v. Bolivia*, *supra* note 239, para. 80, and *Case of Contreras et al. v. El Salvador*, *supra* note 51, para. 129.

<sup>250</sup> *Cf. Case of Velásquez Rodríguez v. Honduras. Merits*, *supra* note 18, para. 181, and *Case of Contreras et al. v. El Salvador*, *supra* note 51, para. 129.

210. In brief, owing to the nature and seriousness of the facts, States are obliged to conduct an investigation with the above-mentioned characteristics and to ensure that the criminal responsibilities are determined by the competent judicial authorities, rigorously meeting the requirements of due process established in Article 8 of the American Convention.<sup>251</sup>

211. The Court has also made it clear that, under the international jurisdiction, the parties and the subject of the dispute are, by definition, different from those of the domestic jurisdiction.<sup>252</sup> As it has indicated on other occasions,<sup>253</sup> when examining possible violations of the rights established in Articles 8(1) and 25 of the American Convention, the Court has powers, not to investigate and punish the individual conduct of the State's agents, but to establish the international responsibility of the State based on the alleged violation of the said rights.

212. In the instant case, the State's investigation of what happened to Mr. González Medina was entrusted to two extrajudicial committees or boards composed of members of the State's security forces. In addition, in the criminal jurisdiction, an investigation was conducted that lasted seven years and six months and more than four years and nine months ago the investigation was reopened, and is still underway at this stage. These investigations have not determined what happened to Mr. González Medina 17 years ago, located his whereabouts, or determined any of those responsible.

213. To decide whether the Dominican Republic has complied with its obligation to investigate effectively and in keeping with the guarantees of due process, the Court must examine the domestic investigations,<sup>254</sup> conducted by the Investigating Court, the Review Chamber, and the Public Prosecution Service (*supra* paras. 115 to 123), as of the date on which the Dominican Republic accepted this Court's jurisdiction, and verify whether they have been an effective means to guarantee the rights of Mr. González Medina as well as an effective remedy to ensure the rights of access to justice, truth and reparation of his family.

***D) Background: investigations conducted by the Police Board and the Joint Board***

214. The Court observes that the first investigations conducted by the State into what happened to Mr. González Medina began seven days after his wife filed a complaint (*supra* paras. 102 and 108) and were conducted by a Police committee or board, established on the orders of the Head of the Police, and composed of two colonels and a lieutenant (*supra* para. 108). Three and a half years after the Police Board concluded its investigation a Joint Board of the Armed Forces and the National Police was set up to investigate what had happened to Mr. González Medina in response to a request of the President of the Republic (*supra* para. 111). This Joint Board was composed of members of State security entities

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<sup>251</sup> Cf. *Case of Huilca Tecse v. Peru*, *supra* note 236, para. 106, and *Case of Contreras et al. v. El Salvador*, *supra* note 51, para. 130.

<sup>252</sup> Cf. *Case of Cesti Hurtado. Preliminary objections*. Judgment of January 26, 1999. Series C No. 49, para. 47, and *Case of the Dismissed Congressional Employees (Aguado Alfaro et al.) v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of November 24, 2006. Series C No. 158, para. 107.

<sup>253</sup> Cf. *Case of 19 Tradesmen v. Colombia. Merits, reparations and costs*. Judgment of July 6, 2004. Series C No. 109, para. 181, and *Case of the Serrano Cruz Sisters v. El Salvador. Merits, reparations and costs*. Judgment of March 1, 2005. Series C No. 120, para. 56.

<sup>254</sup> Cf. *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits*, *supra* note 246, para. 222, and *Case of the Barrios Family v. Venezuela*, *supra* note 77, para. 181.

(the Armed Forces Secretariat of State, the National Police, and the National Investigations Department) with the “assistance” of the Attorney General of the Republic. The Joint Board began and conducted its investigation when an investigation under the criminal jurisdiction was underway (*supra* para. 112).

215. The Court has noted that the Police and Joint Boards entrusted with the investigation of the forced disappearance of Mr. González Medina conducted their investigations without the guidance of the Investigating Judge or the leadership of the Public Prosecution Service and were composed of members of the State’s security entities to which the individuals belonged who, among others, should have been investigated for the disappearance of Mr. González Medina. A necessary line of inquiry into what happened to Mr. González Medina should have focused on investigating the possible participation of senior members of the security forces and other State agents in the facts relating to the disappearance, as well as the indications that Mr. González Medina’s disappearance could have been perpetrated owing to his criticisms and accusations (*supra* paras. 94 to 98 and 150). The Court has verified that several statements made before the said extrajudicial boards provided elements that should have been investigated in relation to the possible detention of Narciso González Medina in the Armed Forces Secretariat of State, the National Police, the National Investigations Department, and in Air Force facilities (*supra* paras. 155 to 164). This meant that the investigators should have made an effort to take all necessary measures to clarify whether Mr. González Medina had been detained in the State’s security agencies for which they worked and whether their own colleagues and superiors had taken part in his disappearance.

216. In this regard, this Court has noted that the alleged relations of hierarchic subordination and dependence between those investigating the forced disappearance and those they should have been investigating could have led to constraints in the investigation. In this regard, the Joint Board itself stated that the Police Board had faced significant constraints to conduct the investigation, indicating, *inter alia*, the “impossibility of questioning certain ranks of the police and the military authorities to whom responsibility was attributed in the disappearance [...], because this was subject to obtaining due authorization, specifically from those members of the military and/or members of the National Police of a higher rank.”<sup>255</sup>

217. The reference to these constraints also emerges, *inter alia*, from the testimony given before the Investigating Court by the person in charge of the Secret Service of the National Police in 1994.<sup>256</sup> This person was a member of the Police Board and, when he was asked who headed the investigations of the said Board, he responded that the members “always met with the then Head of the Police to share impressions and inform him of the status of the investigations and, on some occasions, he gave [them] guidance on the steps to take.” He also stated that the Police Board was faced with the “difficulty” that it could not investigate “the Chiefs of Staff of each of the military institutions,” because “it was impossible that [...] a board composed of three colonels had the authority and power to investigate these individuals.” Moreover, the deponent added that they did not investigate the Chief of Staff of the Air Force because “he was a Major General and, when the Head of the Police was consulted about this, he told [them] that it was not necessary to investigate him, because the only purpose of that was to harm reputations.”

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<sup>255</sup> Report of the Joint Board, *supra* note 109, folio 3849.

<sup>256</sup> Cf. Testimony given by Luis Manuel Tejada Fernández before the Investigating Court on September 9, 1998 (merits file, tome V, folios 1853, 1855, 1856).

218. It should be recalled that the Court has emphasized that the prompt and immediate actions of the judicial and legal authorities is essential, ordering opportune and necessary measures to determine the victim's whereabouts or the place where he or she may be deprived of liberty.<sup>257</sup> The rights involved in the investigation render it obligatory to make every effort in the measures that must be taken to comply with its objective, because the passage of time bears a directly proportionate relationship to the constraints to – and, in some cases, the impossibility of – obtaining evidence and/or testimony, complicating and even making ineffective or useless, the implementation of probative measures to clarify the facts investigated, identify the possible authors and participants, and determine the eventual criminal responsibilities.<sup>258</sup>

219. Even though, owing to its competence *ratione temporis*, the Court cannot derive juridical consequences from the actions of the said boards, it is essential to mention that the omissions in which these boards could have incurred conditioned or limited the subsequent judicial investigation of the Public Prosecution Service. This could be particularly serious, when it is considered that the Police Board was in charge of the investigation during the four months following Mr. González Medina's disappearance and that the investigation in the criminal jurisdiction was only initiated one year after the disappearance had commenced.

***E) Lack of due diligence in the investigations conducted by the Investigating Court, the Review Chamber, and the Public Prosecution Service***

220. The Court will examine the effectiveness of these investigations based, above all, on verifying compliance with the obligation to investigate with due diligence. According to this obligation, the organ that investigates a human rights violation must use all available means to carry out, with a reasonable time, all those actions and inquiries required in order to try and obtain the result sought.<sup>259</sup> This obligation to investigate with due diligence acquires special intensity and significance in view of the seriousness of the crimes committed and the nature of the rights violated.<sup>260</sup>

221. This Court finds it appropriate to reiterate that, since this is a case of forced disappearance, it is necessary to apply an integral perspective in the investigation of this act, owing to the multiple conducts that, combined towards a single objective, violate permanently while they subsist, rights protected by the Convention (*supra* para. 129). In other words, the domestic organs must act with due diligence in an integral investigation of the elements that constitute the forced disappearance (*supra* para. 128).

222. In this regard, the Court reiterates that the multiple violations and the permanent or continuing nature of forced disappearance of persons have been consistent criteria of the Court's case law since its first cases in 1988, according to which, the act of disappearance and its execution start with the person's deprivation of liberty and the subsequent absence of information about their fate, and subsists while the whereabouts of the disappeared person are unknown or until their remains are identified with certainty (*supra* para. 50).

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<sup>257</sup> Cf. *Case of Anzualdo Castro v. Peru*, *supra* note 150, para. 134, and *Case of Contreras et al. v. El Salvador*, *supra* note 51, para. 145.

<sup>258</sup> Cf. *Case of Heliodoro Portugal v. Panama*, *supra* note 59, para. 150, and *Case of Contreras et al. v. El Salvador*, *supra* note 51, para. 145.

<sup>259</sup> Cf. *Case of Gómez Palomino v. Peru*, *supra* note 153, para. 80, and *Case of the La Rochela Massacre v. Colombia. Merits, reparations and costs*. Judgment of May 11, 2007. Series C No. 163, para. 156.

<sup>260</sup> Cf. *Case of La Cantuta v. Peru. Merits, reparations and costs*. Judgment of November 29, 2006. Series C No. 162, para. 157, and *Case of the La Rochela Massacre v. Colombia*, *supra* note 259, para. 156.

223. In this regard, in his testimony, expert witness Federico Andreu Guzmán stated that the different acts involved in forced disappearance “must be approached not as isolated and independent unlawful acts, but as constituent elements of a greater crime, [... because dealing with this series of lesser offenses in isolation and independently results in the denial of their *ratio essendi*, namely, the perpetration of the crime of forced disappearance.”<sup>261</sup>

### ***E.1) Investigation by the Investigating Court and the Santo Domingo Review Chamber***

224. The criminal investigation conducted by the Seventh Investigating Court of the National District Circuit began in June 1995 and concluded with the second instance decision issued by the Santo Domingo Review Chamber in December 2002, revoking the ruling issued by the Investigating Judge declaring the absence of grounds to prosecute one of the accused and confirming that ruling as regards the absence of grounds to prosecute the other two accused (*supra* paras. 116 and 120). The Court has competence to rule on this investigation as of March 25, 1999; in other words, with regard to the last three years and nine months of the investigation.

225. During this investigation under the criminal jurisdiction only three people, who had occupied senior positions in the State’s security forces at the time of Mr. González Medina’s disappearance, were considered suspects (*supra* paras. 117 and 119). However, none of them was charged when the investigation was ended by the Review Chamber. The Investigating Judge in charge of the investigation had decided to press charges against the person who had been the Armed Forces Secretary of State for the offense of illegal detention, and to forward the investigation “to the criminal court” so that he could be tried. However, this decision was revoked by the Santo Domingo Review Chamber because it found that there was insufficient evidence to prosecute the said former Armed Forces Secretary of State (*supra* para. 120). Regarding the criminal norms applied during the investigation and in the said judicial decisions, the Court has verified that these were the offenses of abduction, deprivation of liberty, homicide and criminal association, defined in a law and in the Criminal Code and that forced disappearance is not defined as a crime in the Dominican Republic.

226. From an analysis of the decisions issued by both judicial organs, it can be verified that they did not understand the complexity of conducts that, accumulatively, allow the act of forced disappearance to be constituted. These omissions and lack of understanding resulted in the failure to follow logical lines of inquiry appropriate for a case of forced disappearance, which resulted in the ineffectiveness of the investigation and the consequent failure to identify and punish those who, in different ways, could have taken part in this crime. Regarding the lack of due diligence in the investigation, the Court will now analyze these two aspects and then rule on the alleged violation of Article 2 of the American Convention because, in this case, it is related to this analysis of lack of due diligence.

#### ***E.1.a) Lack of due diligence in the integral investigation of the elements that constitute forced disappearance***

227. In this regard, it is worth noting the assertion of the Investigating Judge in his ruling of August 24, 2001, when he stated that “in order to charge any individual, or those

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<sup>261</sup> Written summary of the expert opinion provided by Federico Andreu Guzmán during the public hearing before the Court (merits file, tome IV, folio 1748, paras. 27 and 28).

accused, with the death or disappearance" of Mr. González Medina, it is a "condition *sine qua non* to establish that he is disappeared," and this had not been established either legally or judicially. According to this judge, the result of this is "the absence of evidence or indications that prove a violation which can be attributed to them, when the disappearance of his life has not been established."<sup>262</sup> Similarly, he stated that "the possible establishment of the juridical concept of murder in the first degree or assassination is improbable in a proceeding where not even the disappeared status of Professor Narciso González has been established, because, in order for this legal concept to exist, not only is the pre-existence of a human life essential, but also that this has been destroyed, and that someone has been accused of this, a situation that has not been possible in this proceeding."<sup>263</sup>

228. As can be seen, the said reasoning of the Investigating Judge reveals the failure to understand the phenomenon of forced disappearance and, consequently, the logical lines of investigation that should have guided his inquiries. It should be recalled that one of the elements of forced disappearance is precisely the refusal to acknowledge the deprivation of liberty or provide information on the whereabouts. In addition, this Court has established that the alleged victims' next of kin are not obliged to file domestic remedies that are inadequate to determine the whereabouts of the disappeared person, clarify the facts, and establish the individual responsibilities deriving from them,<sup>264</sup> which is applicable to the exercise of a civil action to declare that someone is a "disappeared person." The Court considers that subordinating the attribution of criminal responsibilities to the prior filing of a civil action to declare Mr. González Medina a "disappeared person" constituted an obstacle to the effective investigation of what happened and the identification and punishment of those responsible.

229. Other considerations of the Investigating Judge that reveal the absence of due diligence in the investigation are evident when he referred to the reasons why the crime of abduction could not be attributed, stating that:

[...] The investigation does not reveal indications that the accused [...] ordered the detention of Professor Narciso González, in order to ask for a reward or ransom consisting in a sum of money from the victim, family or authorities.

[...] that, in the investigation it has not been shown that the accused [...] abducted Professor Narciso González in the conditions established by law.

[...] That, to the foregoing is added that the family and plaintiffs have not advised this Court that, following the disappearance of Professor Narciso González, they were required to pay sums of money for the release of Professor Narciso González.<sup>265</sup>

230. These findings by the Investigating Judge reveal the lack of understanding of the nature of forced disappearance. It should be recalled that one of the elements that distinguishes forced disappearance from other crimes, such as abduction, is the refusal to acknowledge the deprivation of liberty or to provide information on the victim's whereabouts, so that, evidently, its purpose is not to ask for a reward as a requirement for releasing the person.

231. In addition, it is worth underlining that, in the said ruling of August 2001, the Investigating Judge concluded that the person who had been the Armed Forces Secretary of

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<sup>262</sup> August 24, 2001, ruling of the Investigating Court, *supra* note 105, folios 4541 and 4542.

<sup>263</sup> August 24, 2001, ruling of the Investigating Court, *supra* note 105, folio 4558.

<sup>264</sup> *Cf. Case of Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil, supra* note 53, para. 46.

<sup>265</sup> August 24, 2001, ruling of the Investigating Court, *supra* note 105, folio 4548.



State in May 1994 when Mr. González Medina disappeared should be tried for having “participated in his illegal detention,” an offense that was punished with “civil demotion.”<sup>266</sup> When analyzing forced disappearance, it is appropriate to consider that those who participate in it do not necessarily do so from the start, as occurred with this attribution of responsibility when the Judge took into account that, according to the probative elements, the accused was not the person who first ordered the detention of Mr. González Medina, but that he had taken part in the deprivation of his liberty subsequently. However, the Court finds that the mere attribution of responsibility to a person for the said deprivation of liberty does not involve the determination of responsibilities for other conducts, or for the continuing violation that was being perpetrated during the seven years that had elapsed at that time with no knowledge of the whereabouts of Mr. González Medina.

*E.1.b) Omission in following up on logical lines of inquiry and in gathering evidence*

232. The Court reiterates that in cases of forced disappearance it is of vital importance that the authorities in charge of the investigation pay special attention to the circumstantial evidence, indications and presumptions (*supra* para. 134), thus avoiding omissions in gathering evidence and following up on logical lines of investigation.<sup>267</sup>

233. In this regard, the Court finds that the fact that not all the elements of the forced disappearance were taken into considered is also reflected in the absence of logical lines of investigation into Mr. González Medina’s forced disappearance that followed up on probative elements and indications of decisive importance that pointed to the participation of State agents in his disappearance, his detention in several State security agencies, and that official documents relevant for the investigation had been lost, destroyed or altered. In addition, the Court notes that there were omissions in the collection of evidence that related to relevant aspects to determine what happened to Mr. González Medina, and in an inclusive assessment of all the probative elements and indications that could have been useful to clarify what happened to him.

234. First, the Court has noted<sup>268</sup> the absence of a line of inquiry that would have followed up on the indications of loss, alteration and destruction of official documents that emerged from several statements made before the Joint Board and in the judicial investigation,<sup>269</sup> as

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<sup>266</sup> August 24, 2001, ruling of the Investigating Court, *supra* note 105, folio 4537.

<sup>267</sup> *Cf. Case of the Serrano Cruz Sisters v. El Salvador. Merits, reparations and costs, supra* note 253, paras. 88 and 105, and *Case of Contreras et al. v. El Salvador, supra* note 51, para. 146.

<sup>268</sup> The Court made this finding based on the judicial decisions provided. The case file of the judicial investigation was not provided to the body of evidence.

<sup>269</sup> Different statements made before the Joint Board and before the Investigating Judge contain elements indicating that duty rosters corresponding to the Intelligence Division or Directorate of the Armed Forces Secretariat of State (J-2) and the Air Force Intelligence Department (A-2) “disappeared” or were altered at the onset of Mr. González Medina’s disappearance. In this regard, the Court has verified the existence of the following statements: (a) testimony of Antonio Quezada Pichardo of March 12, 1998, before the National District Prosecutor, *supra* note 189, folios 4014 and 4016. The testimony of Mr. Quezada Pichardo was not assessed in the Joint Board’s report and he was not summoned to appear in the investigation conducted before the Seventh Investigating Court or by the Review Chamber; (b) Testimony of June 2, 1998, given by Leonardo A. Reyes Bencosme before the Joint Board (file of attachments to the application, attachment 13, folios 3885 to 3887), and summary of testimony of January 10, 1997, given by Leonardo Alcides Reyes Bencosme before the Investigating Court, cited in the August 24, 2001, ruling of the Investigating Court (file of attachments to the application, attachment 14, folio 4361); (c) Testimony of January 27, 1999, given by Manuel Concepción Pérez Vólquez before the Seventh Investigating Court (merits file, tome V, folios 1933 to 1934), and (d) Testimony of March 23, 1999, given by Francisco Dolores Estevez Ramírez before the Seventh Investigating Court (merits file, tome V, folio 1948).

well as the fact that Air Force documents were incinerated (*supra* para. 124). In addition, the State did not respond to the question that the Court asked in order to obtain helpful information (*supra* para. 11 and note 15) regarding whether, during the domestic criminal proceedings, a line of investigation had been followed concerning the probative elements provided by the testimony of individuals who stated that they had witnessed, known of, or verified the destruction or alteration of official documents that could have been relevant for the investigation of what happened to the presumed victim and, if appropriate, the conclusions that were reached.

235. This above is especially serious in the case of a forced disappearance, precisely because it is “characterized by trying to eliminate any element that would allow the abduction, the whereabouts, and the fate of the victims to be proved” (*supra* para. 134). The information that should be registered in the archives, logbooks, rosters and any other document recording information of the State’s security agencies is valuable and necessary to identify those who were detained on the dates of Narciso González Medina’s disappearance, and the State agents who were on duty those days. The follow-up on this information could be extremely useful to determine Mr. González Medina’s whereabouts and clarify the facts investigated.

236. In this regard, the Court considers that, even though the Investigating Judge asked questions about the loss of duty rosters or their possible incineration, the judicial decisions of August 2001 and December 2002 (*supra* paras. 119 and 120) do not contain any assessment of the said probative elements, or whether they had been followed up on to determine what really happened, and the connection to Narciso González Medina’s disappearance. In addition, if the deponents had really contradicted each other, as the State indicated before the Court, it also corresponded to the judicial authorities to investigate this and make the inquiries and conduct the expert appraisals necessary to clarify any discrepancies that existed, and there is no record that this was done.

237. Furthermore, there is no record that the judges in charge of the judicial investigation developed a line of inquiry about the reason why two deponents retracted their testimony.<sup>270</sup> The possibility that they had changed their testimony owing to fear or threats was not investigated, and this is particularly serious taking into account that one of them stated that he had taken part in the operation to arrest Mr. González Medina and had taken him to the Intelligence Division or Directorate of the Armed Forces Secretariat of State (J-2) (*supra* para. 156). In his first statement, this deponent testified that he had not advised his superiors for “fear that [he] would be killed if he testified.” However, when retracting his statement before the Investigating Judge, the latter merely reminded the deponent that, previously, he had stated the contrary. There is no reference to or assessment of this in the decisions of the Investigating Judge and of the Review Chamber (*supra* paras. 119 and 120), merely a simple summary of the testimony.

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<sup>270</sup> One of these deponents was a Major of the National Police who, two months after he had stated that he remembered “perfectly” having witnessed the destruction of May 26, 1994, duty rosters by two Majors of the National Police, retracted, indicating that his “eyes had possibly deceived [him].” Testimony of Damián Enrique Arias Matos of June 15, 1998, before the Joint Board (file of attachments to the application, attachment 13, folio 3988), and testimony of August 10, 1998, given by Damián Enrique Arias Matos before the Seventh Investigating Court (merits file, tome V, folio 1860). The other deponent who retracted was a military official, a Sergeant Major, who initially stated before the Joint Board that he taken part in the operation to arrest Narciso González Medina and who, eight months later, before the Investigating Court, retracted this testimony and indicated that the operation had been to locate another person (*supra* notes 189 and 192). Cf. Testimony of May 15, 1998, given by Juan Dionisio Marte before the Joint Board (*supra* note 189, folios 1974 to 1981), and testimony of Juan Dionisio Marte of January 12, 1999, before the Seventh Investigating Court, *supra* note 189, folio 1903.

238. Even though dozens of people were questioned during the judicial investigation,<sup>271</sup> this Court considers that those efforts were insufficient to ensure due diligence in an investigation of forced disappearance, because it is necessary to investigate the elements that emerge from the said statements so that a more thorough investigation is conducted.

239. Furthermore, the Court notes that the judicial decisions did not take into account the different testimonies affirming the participation of State agents in Mr. Gonzalez Medina's disappearance and his detention in several State security agencies (*supra* paras. 155 to 164), without including any grounds for not considering them important or reliable.<sup>272</sup> The only analysis the Investigating Court made of any element of evidence that it did not consider reliable is that of the testimony given by the brother of a Captain who had seen Narciso González Medina in the Intelligence Department of the Dominican Air Force (A-2). The two main reasons why the domestic judicial organs doubted the "veracity and credibility" of this testimony were: (a) the denial by the State authorities who could have been involved, and (b) the fact that the deponent had not been an eye witness, and his statement could not be confirmed owing to the death of his brother who was the eyewitness. Regarding the first of these reasons, the Court refers back to its previous findings (*supra* para. 161).<sup>273</sup> In addition, the Court notes that, by using this judicial reasoning that doubts the "veracity and credibility" of the testimony of the deceased brother of that Captain because it contradicts the statements of senior officials who could have been involved, the judge is indirectly granting full credibility to the statements of those superior officials without motivating his assessment and without any record in the judicial decisions that he had made any additional verification in this regard. Regarding the fact that the brother of the deceased Captain was not an eyewitness, this Court notes that the said deponent gave reasons why he suspected that his brother's death was not due to a car accident, but rather he could have been killed because he had seen Mr. González Medina in the A-2. The Court has verified that a series of circumstances relating to the death of his brother were not examined such as the place of the accident and the vehicles involved, which could have been investigated<sup>274</sup> to clarify or reject the relationship of this fact with the forced disappearance of Mr. González Medina.

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<sup>271</sup> Witness Eduardo Sánchez Ortiz, who was the Investigating Judge of the investigation as of April 1998, emphasized that all those involved in the complaint were questioned and other persons, and that "each person was questioned about their version of the disappearance of Professor Narciso González [...]." Testimony given by witness Eduardo Sánchez Ortiz before the Inter-American Court during the public hearing held in this case on June 28, 2011.

<sup>272</sup> The Investigating Court concluded that it had "no knowledge of the location of Professor Narciso González, or his corpse, and no one has provided reliable testimony about where he is, or that they saw him at the time of his disappearance or subsequently, which would provide any idea about his whereabouts or the presumed destruction of his life." The said court also stated that "there [was] no reliable witness to confirm the abduction and its circumstances and, during the investigation, only one piece of information was given and it cannot be confirmed." For its part, the Review Chamber affirmed that "from the analysis of the documents in the case file, and from examining the answers given by the other deponents to the questions of the Investigating Court, in the capacity in which they were summoned, it is understood that it is not necessary to question them before this jurisdiction, in the understanding that they did not provide any new element or indication that would change the status of the proceedings." *Cf.* August 24, 2001, ruling of the Investigating Court, *supra* note 105, folio 4542, 4548 and 4549, and decision of December 18, 2002 of the Santo Domingo Review Chamber, *supra* note 138, folio 4603.

<sup>273</sup> In this regard, the Court also refers to similar considerations expressed in relation to the Review Chamber's analysis of the testimony of a "supplier" of the Armed Forces (*supra* paras. 159 to 161).

<sup>274</sup> This Court has specified the guiding principles that must be observed in an investigation into a violent death. According to the Inter-American Court's case law, the State authorities that conduct an investigation of this type must try, at least, *inter alia*: (a) to identify the victim; (b) to recover and preserve the probative material related to the death in order to assist any potential criminal investigation of those responsible; (c) to identify possible witnesses and obtain their statements in relation to the death investigated; (d) to determine the cause, manner, place and time of death, as well as any pattern or practice that could have caused the death, and (e) to distinguish between natural death, accidental death, suicide and murder. In addition, it is necessary to investigate the scene of the crime thoroughly; and autopsies and analyses of human remains must be conducted rigorously, by

240. This Court's attention is also drawn to the fact that, in their decisions of 2001 and 2002, the domestic judicial organs failed to take into account or assess the elements provided by the testimony given before the Investigating Court by an individual who worked as a "police informer" of the Theft Department of the National Police (*supra* paras. 157 and 158). This deponent stated that he had seen Narciso González Medina, injured, in the Homicide Department of this State entity in the early morning hours of May 27, 1994, and had witnessed when he was taken from that place by two people, who he identified, in a vehicle, whose license plate number he noted down, and that his home was searched and he had been subjected to illegal detention presumably related to the information he possessed about the case of Mr. González Medina.

241. Since this was an investigation of forced disappearance, the Court considers that, to comply satisfactorily with the obligation to investigate, the State authorities should have assessed, as a whole, the testimony given by several witnesses, as well as other probative elements and indications that pointed to the fact that Narciso González Medina had been detained in several State entities and that official documents had been lost, destroyed or altered (*supra* para. 234), in order to investigate thoroughly what happened to Mr. González Medina, rather than merely trying to determine whether there was sufficient evidence to charge the three individuals considered suspects (*supra* paras. 117 and 119).

#### *E.1.c) Domestic Legal Effects (Article 2 of the American Convention)*

242. The Court will proceed to analyze the alleged violation of Article 2 of the Convention (*supra* para. 199), because the alleged victims and their representatives are allowed to invoke the violation of rights other than those included in the application, provided these violations are related to the facts contained in the said document, because the alleged victims possess all the rights embodied in the Convention.<sup>275</sup>

243. Article 2 (Domestic Legal Effects) of the American Convention establishes the general obligation of the States Parties to adapt their domestic law to the provisions of the Convention in order to guarantee the rights embodied therein. The Court has established that this obligation entails the adoption of measures of two kinds. On the one hand, the elimination of norms and practices of any kind that involve the violation of the guarantees established in the Convention. On the other hand, the enactment of laws and the implementation of practices leading to the effective observance of the said guarantees.<sup>276</sup>

244. Consequently, in compliance with the said Article 2, the State must ensure that the application of the existing provisions of domestic law allow a satisfactory investigation of forced disappearance to be conducted and, if they are insufficient, adopt the legislative, administrative, judicial or other measures that will be effective to guarantee protection against the said violation. It is incumbent on the State to adapt the functioning of its institutions in order to guarantee an investigation of forced disappearance in all its

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competent professionals, using the most appropriate procedures. *Cf. Case of Juan Humberto Sánchez v. Honduras. Preliminary objection, merits, reparations and costs.* Judgment of June 7, 2003. Series C No. 99, para. 127, and *Case of the Barrios Family v. Venezuela*, *supra* note 77, para. 235.

<sup>275</sup> *Cf. Case of Five Pensioners v. Peru. Merits, reparations and costs.* Judgment of February 28, 2003. Series C No. 98, para. 155, and *Case of Barbani Duarte et al. v. Uruguay. Merits, reparations and costs.* Judgment of October 13, 2011. Series C No. 234, para. 36.

<sup>276</sup> *Cf. Case of Five Pensioners v. Peru. Merits, reparations and costs.* Judgment of February 28, 2003. Series C No. 98, para. 155, and *Case of Barbani Duarte et al. v. Uruguay. Merits, reparations and costs.* Judgment of October 13, 2011. Series C No. 234, para. 36.

dimensions with due diligence, rather than analyzing its constituent elements piecemeal (*supra* paras. 129 and 221). In the investigation of a forced disappearance, the States Parties to the Convention must take into account the characterization of this violation that the Court has affirmed in its consistent case law since 1988 (*supra* para. 50).

245. In the instant case, the Court has verified that the State did not conduct an effective and diligent investigation into the forced disappearance of Mr. González Medina. By investigating based on the crimes defined in its domestic law (abduction, deprivation of liberty, homicide, and criminal association), the judicial authorities did not take into account the elements that constitute forced disappearance of persons or their extreme gravity, which warrants appropriate punishment (*supra* paras. 128 to 130). The investigation before the Investigating Court and the Review Chamber committed the grave omission of failing to adopt the necessary measures to reveal the different elements that make up this grave human rights violation. An analysis of the decisions issued by both judicial organs confirms that they did not understand the complexity of conducts that accumulatively constitute forced disappearance (*supra* paras. 226 to 241).

246. The Court concludes that the failure to make an adequate use of norms or practices that guarantee an effective investigation taking into account the complexity and extreme gravity of forced disappearance entailed non-compliance with the obligation established in Article 2 of the American Convention to adopt the domestic provisions required to guarantee the rights protected in Articles 7, 5(1), 5(2), 4(1) and 3 of the Convention by the investigation of the forced disappearance of Narciso González Medina and the identification, prosecution and, as appropriate, punishment of those responsible.

#### **E.2) Reopening of the investigation by the Public Prosecution Service**

247. First, the information in the body of evidence reveals that, since the reopening of the investigation was ordered more than four years and nine months ago (*supra* para. 122), no specific results have been achieved as regards determining what happened, none of the possible authors has been identified, and the whereabouts of Mr. González Medina have still not been discovered.

248. In addition, the Court notes that the State did not present a complete version of the information requested by the Court concerning the reopening of the criminal investigation or a copy of the corresponding case file (*supra* paras. 76 and 77). To the contrary, the limited documentation that the Dominican Republic has provided with regard to the said investigation that is underway has consisted of selected pages from the file, mainly related to the hypothesis that Mr. González Medina committed suicide (*supra* para. 77). The Court has established that the State provided those documents alone, without forwarding the other probative elements obtained during the investigation or a complete copy of the file (*supra* para. 77). The Court finds it inadequate that the State's representatives in these proceedings have chosen to forward only those items of evidence designed to support the said hypothesis when two prosecutors who took part in the investigation have explained to this Court that other possible hypothesis were also being investigated (*supra* paras. 123 and 168).

249. Consequently, the State has not provided this Court with the probative elements to prove that it has acted with due diligence in the investigation underway, reopened more than four years and nine months ago.

*Lack of access to the file of the investigation*

250. In their final written arguments, in response to the request for helpful evidence,<sup>277</sup> the representatives indicated, *inter alia*, that the State had restricted the access of Narciso González Medina's family to the file of the investigation reopened in 2007. For its part, the State indicated that it had provided Mr. González Medina's family with "unrestricted access" to all the information relating to the investigation, "except for information that could limit the effectiveness of the investigation, because it has not yet concluded." It specified that it had not limited the right of the alleged victim's family "apart from matters that could hinder the investigation," and that its action was "protected by the General Law on Free Access to Public Information."

251. The Court recalls that, in accordance with the right recognized in Article 8(1) of the American Convention, in relation to Article 1(1) thereof, the States have the obligation to guarantee the right of the victims or their family to take part in all stages of the respective proceedings, so that they can make proposals, receive information, provide evidence, formulate arguments and, in brief, assert their interests and rights.<sup>278</sup> The purpose of this participation should be access to justice, learning the truth of what happened, and the award of just reparation.<sup>279</sup> In this regard, the Court has established that domestic law must organize the respective proceedings in accordance with the American Convention.<sup>280</sup>

252. Although the State affirmed that the family had been given unrestricted access to the investigation reopened in 2007, the Court notes that the Dominican Republic expressly indicated that this access has been limited by supposed "procedural confidentiality." In addition, the Court notes that, in the proceedings before this Court, the State failed to submit a copy of the corresponding file, despite the Court's express request (*supra* paras. 11, 12 and 76 and footnote 15).

253. The Court has established that access to the case file is a requirement *sine qua non* of the procedural intervention of the victim in any case in which he or she is an additional party or complainant under domestic law.<sup>281</sup> Although the Court has considered it admissible that, in certain cases, the measures taken during the preliminary investigation in the criminal proceedings may be kept confidential in order to ensure the effectiveness of the administration of justice,<sup>282</sup> this confidentiality may never be invoked to prevent the victim from having access to the file of a criminal case. The State's powers to avoid the dissemination of the content of the proceedings, if appropriate, must be guaranteed by taking measures that are compatible with the exercise of the victim's procedural rights.<sup>283</sup>

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<sup>277</sup> As helpful evidence (*supra* para. 11 and note 15), the Court asked the State and the presumed victims' representatives to provide: "information on the access of Mr. González Medina's family to the investigation and the criminal proceedings before the National District Seventh Investigating Court and the Santo Domingo Review Chamber, as well as the investigation reopened in 2007. In particular, the representatives were asked to indicate what they know about the said reopening of the investigation."

<sup>278</sup> Cf. *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits*, *supra* note 246, para. 227; and *Case of Radilla Pacheco v. Mexico*, *supra* note 50, para. 247.

<sup>279</sup> Cf. *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits*, *supra* note 246, para. 227; and *Case of Radilla Pacheco v. Mexico*, *supra* note 50, para. 247.

<sup>280</sup> Cf. *Case of Valle Jaramillo et al. v. Colombia*, *supra* note 279, para. 233, and *Case of Radilla Pacheco v. Mexico*, *supra* note 50, para. 247.

<sup>281</sup> Cf. *Case of Radilla Pacheco v. Mexico*, *supra* note 50, para. 252.

<sup>282</sup> Cf. *Case of Barreto Leiva v. Venezuela. Merits, reparations and costs*. Judgment of November 17, 2009. Series C No. 206, para. 45, and *Case of Radilla Pacheco v. Mexico*, *supra* note 50, para. 252.

<sup>283</sup> Cf. *Case of Barreto Leiva v. Venezuela. Merits, reparations and costs*. Judgment of November 17, 2009. Series C No. 206, para. 45, and *Case of Radilla Pacheco v. Mexico*, *supra* note 50, para. 252.

254. Hence, this Court considers that, by limiting the family's access to the case file reopened by the Public Prosecution Service in 2007, for whatever reason, despite their status as victims, the State has failed to comply with its obligation to respect their right to take part in the proceedings. Consequently, the Court finds that the Dominican Republic violated the right of Mr. González Medina's family to participate fully in the criminal investigation into the facts of this case and, therefore, violated Article 8(1) of the American Convention, in relation to Article 1(1) of this instrument.

#### **F) Reasonable time of the investigations**

255. This Court has indicated that the right of access to justice must ensure, within a reasonable time, the right of the alleged victims or their family that everything necessary is done to discover the truth of what happened and to punish those responsible.<sup>284</sup> In this regard, the Court has considered 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,<sup>285</sup> and (d) the effects on the legal situation of the person involved in the proceedings.<sup>286</sup>

256. The Court has verified that, since the date that the Dominican Republic accepted the Court's jurisdiction (*supra* para. 62) up until the date that this judgment is delivered, the investigations have lasted approximately 12 years and 11 months, during which no progress has been made in the inquiries or in the pre-trial investigation stage. In addition, during this period the investigations were archived for approximately four years and five months, from December 2002 to May 2007 (*supra* paras. 121 and 122).

257. The Court considers that, in principle, a prolonged delay, such as the one in this case, in itself constitutes a violation of judicial guarantees.<sup>287</sup> Nevertheless, the lack of reasonableness can be contested by the State if it explains and proves that the delay is directly related to the complexity of the case or the conduct of the parties to the case.

258. Based on the background information described when determining the proven facts, the Court recognizes that the matter under investigation by the competent authorities in this case is complex; owing partly to the many individuals possibly responsible and also to the inherent characteristics of forced disappearance (*supra* paras. 129 and 209), and this must be taken into consideration to assess the reasonableness of the time.

259. Regarding the second element, Luz Altagracia Ramírez and her children assumed an active position, with the collaboration of the "Truth Commission," from the time Mr. González Medina disappeared and, particularly, with regard to the judicial investigation following the filing of the complaint that resulted in the opening of this investigation. Even though Mrs. Ramírez filed a complaint two days after Mr. González Medina's disappearance, the judicial investigation resulting from the filing of this complaint did not start until a year later. Moreover, in May 2001, through their lawyer, Luz Altagracia Ramírez and her children

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<sup>284</sup> Cf. *Case of Bulacio v. Argentina. Merits, reparations and costs*. Judgment of September 18, 2003. Series C No. 100, para. 114, and *Case of the Barrios Family v. Venezuela, supra* note 77, para. 273.

<sup>285</sup> Cf. *Case of Genie Lacayo v. Nicaragua. Merits, reparations and costs*. Judgment of January 29, 1997. Series C No. 30, para. 77, and *Case of the Barrios Family v. Venezuela, supra* note 77, para. 273.

<sup>286</sup> Cf. *Case of Valle Jaramillo et al. v. Colombia, supra* note 279, para. 155, and *Case of the Barrios Family v. Venezuela, supra* note 77, para. 273.

<sup>287</sup> Cf. *Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago. Merits, reparations and costs, supra* note 44, para. 145, and *Case of Contreras et al. v. El Salvador, supra* note 51, para. 145.

filed a brief before the Investigating Judge, presenting a “reiteration of the complaint,” in which they emphasized items of evidence which they considered should be analyzed in the investigation. Three months later, the Investigating Court issued the decisions that concluded the pre-trial investigation for which it was responsible (*supra* paras. 118 and 119). In addition, the said judicial decisions and the report of the National District Prosecutor reveal that, on numerous occasions, Luz Altagracia Ramírez and her children came forward to give testimony in the said investigation and in its reopening by the Public Prosecution Service.

260. Regarding the conduct of the authorities, this Court has already established the lack of due diligence of the judicial authorities in the development of these investigations (*supra* paras. 220 to 249). In addition, the State has not proved that the prolonged delay of 12 years and 11 months cannot be attributed to the conduct of its authorities. To the contrary, when testifying at the public hearing before this Court, the Investigating Judge Eduardo Sánchez Ortiz explained that, when he was responsible for the investigation of the case of Narciso González Medina, “during the year [...] he] had, for example, 300 or 500 cases; [...] I had to investigate those 500 cases in addition to this one.”<sup>288</sup>

261. Regarding the fourth element, which refers to effects on the legal situation of those involved owing to the duration of the proceedings, the Court considers, as it has previously,<sup>289</sup> that it is not necessary to analyze this in order to determine the reasonableness of the time taken by the investigations referred to above.

262. Consequently, the Inter-American Court concludes that the investigations by the Investigating Court, the Review Chamber, and the Public Prosecution Service have exceeded a reasonable time, which violates the right to judicial guarantees established in Article 8(1) of the American Convention, in relation to Article 1(1) of this instrument.

### **G) Right to know the truth**

263. The Court recalls that, basically, the right to know the truth is subsumed in the right of the victims or their family to obtain from the State’s competent organs the clarification of the acts that violate the Convention and the corresponding responsibilities by the investigation and prosecution as established in Articles 8 and 25 of the Convention,<sup>290</sup> which also constitutes a form of reparation.<sup>291</sup> Consequently, in this case, the Court will not make an additional ruling with regard to the alleged violation of the right to the truth presented by the representatives.<sup>292</sup>

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<sup>288</sup> In its August 24, 2001, ruling the Seventh Investigating Court indicated that, even though the time frame established by law to terminate the pre-trial investigation is 60 days, “for complex cases such as this one [...], a specific, definite time frame for the duration of the criminal proceedings cannot be established.” August 24, 2001, ruling of the Investigating Court, *supra* note 105, folio 4551.

<sup>289</sup> Cf. *Case of Garibaldi v. Brazil. Preliminary objections, merits, reparations and costs*. Judgment of September 23, 2009. Series C No. 203, para. 138, and *Case of the Barrios Family v. Venezuela*, *supra* note 77, para. 284.

<sup>290</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*, *supra* note 18, para. 181, and *Case of the Barrios Family v. Venezuela*, *supra* note 77, para. 291.

<sup>291</sup> Cf. *Case of Gómez Palomino v. Peru*, *supra* note 153, para. 78, and *Case of the Barrios Family v. Venezuela*, *supra* note 77, para. 291.

<sup>292</sup> Cf. *Case of the Barrios Family v. Venezuela*, *supra* note 77, para. 291. In the case of *Gomes Lund et al.*, the right to know the truth corresponded to Article 13, because the Court observed that, according to the relevant facts, the right to know the truth was related to an action filed by the family to have access to specific information corresponding to the access to justice and to the right to seek and receive information.



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264. Based on all the above, the Inter-American Court concludes that the investigations conducted by the Investigating Court, the Review Chamber, and the Public Prosecution Service were neither diligent nor effective to determine the whereabouts of Mr. González Medina, to establish what happened, and to identify and punish those responsible; moreover, they did not respect the guarantee of a reasonable time. The Court also concludes that the right of the family to have access to the file of the investigation reopened in 2007 by the Public Prosecution Service was violated. In addition, the Court finds that the State failed to comply with the obligation established in Article 2 of the American Convention to adopt the necessary domestic provisions to guarantee the rights protected in Articles 7, 5(1), 5(2), 4(1), and 3 of the American Convention to the detriment of Mr. González Medina.

265. Consequently, the State failed to comply with its obligation to guarantee the rights embodied in Articles 7, 5(1), 5(2), 4(1) and 3 of the American Convention by investigating the forced disappearance, in relation to Articles 1(1) and 2 thereof and to Articles 1, 6 and 8 of the Inter-American Convention against Torture, to the detriment of Narciso González Medina. In addition, the Court concludes that, owing to the absence of an effective investigation into the facts, and the prosecution and punishment of those responsible, the State violated the rights to judicial guarantees and to judicial protection established in Articles 8(1) and 25(1) of the American Convention, in relation to Article 1(1) thereof and to Articles 1, 6 and 8 of the Inter-American Convention against Torture, to the detriment of Luz Altagracia Ramírez and of Ernesto, Rhina Yocasta, Jennie Rosanna and Amaury, all González Ramírez.

266. Finally, regarding the alleged violation of Article 13 of the Convention in relation to access to information, to the detriment of Mr. González Medina's family, the Court analyzed the alleged facts and the relevant arguments of the Commission and the representatives, in accordance with its competence *ratione temporis*, when ruling on the violation of Articles 8(1) and 25(1) of the American Convention (*supra* paras. 233 to 236 and 250 to 254). The Court refers back to its analysis of the facts relating to the incineration and possible lost and alteration of official documents and their juridical consequences made in this chapter in relation to the lack of due diligence in the investigation of what happened to Mr. González Medina (*supra* paras. 233 to 236), as well as this Court's ruling on the violation to the detriment of his family owing to their lack of access to the case file of the investigation reopened in 2007 (*supra* paras. 251 to 254). Likewise, the Court notes that, according to the body of evidence, the proven fact regarding the incineration of documents (*supra* para. 124) and the alleged facts about a possible lost and alteration of documents do not involve requests to state authorities for information by the family and, also, they would have happened before the Dominican Republic recognized the Court's jurisdiction. Therefore, it is not incumbent on this Court to analyze them autonomously in order to determine whether they constitute violations of Article 13 of the Convention to the detriment of Mr. González Medina's family.

## IX

### **RIGHT TO PERSONAL INTEGRITY, IN RELATION TO THE OBLIGATION TO RESPECT AND GUARANTEE THE RIGHTS OF NARCISO GONZÁLEZ MEDINA'S FAMILY**

#### ***A) Arguments of the parties and of the Inter-American Commission***

267. Both the Commission and the representatives argued the violation of the right to personal integrity<sup>293</sup> of Narciso González Medina's wife and children, namely: Luz Altagracia Ramírez, and Ernesto, Rhina Yokasta, Jennie Rossana and Amaury González Ramírez. In particular, they indicated that the disappearance of Mr. González Medina, the absence of a diligent investigation into the facts, the uncertainty about his whereabouts, the line of inquiry relating to suicide, and the impunity of the case caused intense suffering to Narciso González Medina's family.

268. The representatives added that the State had failed to comply with its obligation to protect the family, based on Article 17<sup>294</sup> of the American Convention, because the disappearance of Narciso González Medina and the absence of the truth "particularly affected their family life and the family life project."

269. The Dominican Republic responded that "from the investigations conducted by the State, it has not been determined that Mr. González was subjected to forced disappearance"; consequently "it could not be held responsible with regard to the family either." In addition, it denied that it had violated Article 17 of the American Convention to the detriment of Narciso González Medina's family, without submitting any specific arguments in this regard.

### **B) Considerations of the Court**

270. In numerous cases, the Court has considered that the family of the victims of certain human rights violations may, in turn be victims of the violation of the right to personal integrity.<sup>295</sup> In particular, in cases involving the forced disappearance of persons, it can be understood that the violation of the right to mental and moral integrity of the victim's family is a direct result of this phenomenon, which causes them severe suffering owing to the act itself, which increases, among other factors, due to the constant refusal of the State authorities to provide information on the victim's whereabouts or to conduct an effective investigation in order to clarify what happened.<sup>296</sup> Furthermore, this Court has established that the denial of the truth about the whereabouts of a victim of forced disappearance entails a form of cruel and inhuman treatment for the closest family members,<sup>297</sup> which leads to the presumption of harm to their mental and moral integrity.<sup>298</sup> This presumption is established *juris tantum* with regard to mothers and fathers, daughters and sons, spouses, and permanent companions, provided this corresponds to the specific circumstances of the case.<sup>299</sup> This presumption has not been invalidated by the Dominican Republic in this case.

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<sup>293</sup> Article 5 of the American Convention, *supra* note 81.

<sup>294</sup> Article 17(1) of the Convention stipulates that "[t]he family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

<sup>295</sup> *Cf. Case of Castillo Páez v. Peru. Merits.* Judgment of November 3, 1997. Series C No. 34, fourth operative paragraph, and *Case of the Barrios Family v. Venezuela, supra* note 77, para. 301.

<sup>296</sup> *Cf. Case of Blake v. Guatemala. Merits.* Judgment of January 24, 1998. Series C No. 36, para. 114, and *Case of the Barrios Family v. Venezuela, supra* note 77, para. 301.

<sup>297</sup> *Cf. Case of Trujillo Oroza v. Bolivia, Merits.* Judgment of January 26, 2000. Series C No. 64, para. 114, and *Case of Contreras et al. v. El Salvador, supra* note 51, para. 123.

<sup>298</sup> *Cf. Case of Valle Jaramillo et al. v. Colombia, supra* note 279, para. 119, and *Case of Gelman v. Uruguay, supra* note 150, para. 133.

<sup>299</sup> *Cf. Case of Blake v. Guatemala. Merits, supra* note 296, para. 114, and *Case of the Barrios Family v. Venezuela, supra* note 77, para. 302.

271. In addition, in the instant case, the statements made before the Court allowed it to verify that Luz Altagracia Ramírez and her children have endured great uncertainty and profound suffering and anguish to the detriment of their physical, mental and moral integrity as a result of the forced disappearance of Narciso González Medina and to the actions of the State authorities in relation to the investigation into what happened.<sup>300</sup> These effects were produced not only at a personal level, but also entailed a serious impairment of family life. In this regard, the Court has taken into account the opinion of the psychiatrist Secundino Palacios, who has treated them for approximately 17 years, according to which the disappearance of Narciso González Medina “has been extremely traumatic” for the whole family, and they have suffered “all the clinical symptoms characteristic of patients with depression, as well as problems due to anxiety.”<sup>301</sup>

272. The Court recalls that it has considered the constant refusal of the State authorities to provide information on the whereabouts of victims or to open an effective investigation to clarify what happened to be a cause of increased suffering to the family.<sup>302</sup> In this regard, the Court has verified the additional suffering caused to Mr. González Medina’s wife and children owing to the absence of an effective and diligent investigation, as well as to the uncertainty concerning the facts and the whereabouts of their husband and father.<sup>303</sup> In addition, the Court takes note of the opinion of expert witness Palacios, that “[o]ne of the factors that, from a cognitive point of view, causes the greatest feelings of helplessness and the most damage and social harm is impunity.”

273. The Court also emphasizes that the testimony of the alleged victims,<sup>304</sup> and the expert psychiatric opinion<sup>305</sup> presented reveal that the State’s actions, in the context of the

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<sup>300</sup> In his statement, Ernesto González Ramírez indicated that he “experiences great anguish, and therefore [...] avoid[s] the issue” and added that he has “had to remain strong outwardly, [...] because [he thinks about his] mother, that if she sees [him] like that, she will break down if [he does].” For her part, Jennie Rosanna González Ramírez described an intense depression owing to the disappearance of her father with episodes of insomnia, crying, frustration and anxiety, that “with time have decreased, but have not gone away.” Rhina Yokasta González Ramírez declared that she “has emotional crises, and had to be interned each month”; in addition, currently she suffers from asthmatic crises when faced with strong emotional situations. In this regard, Luz Altagracia Ramírez declared before the Court that “the family became totally disrupted,” and her children told of the absence of family celebrations since the disappearance of their father. *Cf.* Statements made by Ernesto, Jennie Rosanna and Rhina Yokasta González Ramírez on June 15 and 16, 2011, *supra* notes 99, 106 and 111, folios 1101, 1102, 1119, 1120, 1123, 1132, and statement made by Luz Altagracia Ramírez before the Inter-American Court during the public hearing held in this case on June 28, 2011.

<sup>301</sup> In this regard, he stressed that “they suffered from all the clinical symptoms [anxiety, fatigue, insomnia, sadness, depresión, lethargy, agitation and others] and are still suffering from them.” He indicated that Mr. González Medina’s family have revealed changes in the four clinical areas: in their feelings, and in their motor, somatic and cognitive functions. In particular, he described the clinical histories of each of the victims, underlining that they all suffered from depression, and also the effects on their academic performance, and their workplace and social relations. Testimony provided by expert witness Secundino Palacios on June 16, 2011, *supra* note 208, folios 1146 to 1150.

<sup>302</sup> *Cf. Case of Blake v. Guatemala. Merits, supra* note 296, para. 114, and *Case of Contreras et al. v. El Salvador, supra* note 51, para. 123.

<sup>303</sup> Rhina Yokasta González Ramírez declared that since her father’s disappearance she has “not had any peace or stability,” “this anguish, this uncertainty is horrible,” and she added that “at times, [she had] had nightmares and could not sleep, [...] imagining torture, like a film of what they were doing to [her] father.” Also, Jennie Rosanna González Ramírez stated that “[t]he worst part of this situation is that [...] the anguish never ends. As if one cannot finish something; one is always waiting for something.” Statements made by Rhina Yokasta and Jennie Rosanna González Ramírez on June 16, 2011, *supra* notes 99 and 111, folios 1120, 1131 and 1132.

<sup>304</sup> *Supra* note 300.

<sup>305</sup> In this regard, the expert witness and family psychiatrist indicated that the “public declarations [of the State concerning the case of Mr. González Medina] are inconsiderate, outrageous and offensive, for [Luz] Altagracia and her children; all of which, has had negative emotional consequences that have affected their physical and mental well-being.” Statement by expert witness Secundino Palacios on June 16, 2011, *supra* note 208, folio 1153.

investigation of this case, have exacerbated the adverse effects on Mr. González Medina's family, especially since the said family members have been actively involved in the search to obtain justice in the case from the start of Mr. González Medina's disappearance.<sup>306</sup>

274. Regarding the alleged violation of the protection of the family, the Court reiterates that the alleged victims and their representatives may invoke the violation of rights other than those included in the application (*supra* para. 242). The Court considers that the arguments submitted by the representatives refer to alleged harm that, in substance, was examined by the Court in this chapter, and therefore does not find it necessary to make an additional ruling in this regard.

275. Based on the above, the Court concludes that the State has violated the right to personal integrity recognized in Article 5(1) and 5(2) of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of Luz Altagracia Ramírez, Ernesto González Ramírez, Rhina Yokasta González Ramírez, Jennie Rossana González Ramírez and Amaury González Ramírez.

## X REPARATIONS (*Application of Article 63(1) of the American Convention*)

276. Based on the provisions of Article 63(1) of the American Convention,<sup>307</sup> the Court has indicated that any violation of an international obligation that has caused damage entails the obligation to repair this adequately,<sup>308</sup> and that this provision reflects a customary norm that constitutes one of the basic principles of contemporary international law on State responsibility.<sup>309</sup>

277. The reparation of the damage caused by the violation of an international obligation requires, whenever possible, full restitution (*restitutio in integrum*), which consists in the re-establishment of the previous situation. If this is not feasible, as in most cases of human rights violations, the Court will determine measures to guarantee the rights that have been violated, repair the consequences of those violations, and establish compensation for the damage caused.<sup>310</sup> Hence, the Court has found that it is necessary to award different measures of reparation in order to redress the damage integrally. Consequently, in addition

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<sup>306</sup> Cf. Statement made by Luz Altagracia Ramírez before the Inter-American Court during the public hearing held in this case on June 28, 2011, and affidavits made by Ernesto, Jennie Rosanna and Rhina Yokasta González Ramírez on June 15 and 16, 2011, *supra* notes 99, 106 and 111, folios 1100, 1121 and 1129.

<sup>307</sup> Article 63(1) of the Convention establishes that "[i]f 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."

<sup>308</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and costs*. Judgment of July 21, 1989. Series C No. 7, para. 25, and *Case of Fontevecchia and D'Amico v. Argentina*, *supra* note 70, para. 97.

<sup>309</sup> Cf. *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Reparations and costs*. Judgment of May 26, 2001. Series C No. 77, para. 62, and *Case of Fontevecchia and D'Amico v. Argentina*, *supra* note 70, para. 97.

<sup>310</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and costs*, *supra* note 308, para. 26, and *Case of Fontevecchia and D'Amico v. Argentina*, *supra* note 70, para. 98.

to the pecuniary compensation, measures of restitution and satisfaction, and guarantees of non-repetition have special relevance in relation to the damage caused.<sup>311</sup>

278. This Court has established that the reparations must have a causal connection to the facts of the case, the violations that have been declared, the damage that has been proved, and also the measures requested to repair the respective damage. Consequently, the Court must observe the concurrence of these elements in order to rule appropriately and in keeping with law.<sup>312</sup>

279. Based on the violations of the American Convention declared in the preceding chapters, the Court will proceed to analyze the claims presented by the Commission and the representatives, as well as the arguments of the State, in light of the criteria established in the Court's case law concerning the nature and scope of the obligation to repair,<sup>313</sup> in order to establish measures addressed at repairing the damage caused to the victims.

280. Before determining the measures of reparation, the Court notes that, in its answering brief, the State, in general and "subsidiarily," asked the Court not to admit the reparations requested by the representatives, although it did not refer specifically to the requests for reparation, with the exception of its observations on the requests for compensation for non-pecuniary damage (*infra* para. 318). In addition, the State submitted observations with regard to costs and expenses after its answering brief, which were admitted by the Court (*supra* para. 71). In its final written arguments, the State introduced some new arguments, which are inadmissible as they are time-barred; hence, the Court will not take them into account when examining the measures of reparation requested.

#### **A) Injured party**

281. The Court reiterates that, under Article 63(1) of the Convention, it considers the injured party to be the person who has been declared a victim of the violation of any right recognized in the Convention. Therefore, this Court considers that Narciso González Medina and his wife Luz Altigracia Ramírez de González, and also their children: Ernesto, Rhina Yokasta, Jennie Rosanna and Amaury, all González Ramírez are the "injured party" and, as victims of the violations declared in Chapters VII, VIII and IX, they will be considered beneficiaries of the reparations ordered by the Court.

#### **B) Obligation to investigate the facts that gave rise to the violations and to identify, prosecute and, as appropriate, punish those responsible, as well as to determine the whereabouts of the victim**

##### **B.1) Obligation to investigate the facts, prosecute and, as appropriate, punish all the masterminds and perpetrators**

282. The Commission asked the Court to order the State "to conduct an impartial, diligent and effective investigation [...] into the circumstances surrounding his forced disappearance, in order to identify those responsible and impose the corresponding punishments." The Commission also asked that the State be ordered "to investigate the acts or omissions of

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<sup>311</sup> Cf. *Case of Cantoral Benavides v. Peru. Reparations and costs*. Judgment of December 3, 2001. Series C No. 88, paras. 79 to 81, and *Case of Barbani Duarte et al. v. Uruguay*, *supra* note 275, para. 240.

<sup>312</sup> Cf. *Case of Ticona Estrada v. Bolivia*, *supra* note 239, para. 110, and *Case of Fontevecchia and D'Amico v. Argentina*, *supra* note 70, para. 99.

<sup>313</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and costs*, *supra* note 308, paras. 25 to 27, and *Case of López Mendoza v. Venezuela*, *supra* note 68, para. 208.

State officials that contributed to the concealment, the denial of justice, and the impunity of the facts of the case, and to impose the legal consequences.”

283. The representatives asked the Court to order the State to guarantee an impartial, independent and competent investigation to prosecute, diligently and within a reasonable time, the person or persons who were the authors, accomplices and accessories after the fact to the forced disappearance of Narciso González Medina. In this regard, they described the criteria that it asked the Court to order the State to observe in the conduct of this investigation and its results.

284. In Chapter VIII of this judgment, the Court declared the violation of the rights to judicial guarantees and judicial protection owing to the lack of due diligence in the investigations conducted by the Investigating Court and by the Public Prosecution Service, and also for the violation of the guarantee of a reasonable time in the said investigations and for the lack of access to the file of the investigation reopened in 2007. The Court determined that the investigations carried out and underway have not constituted effective remedies to determine the victim’s whereabouts, clarify the facts, and guarantee the rights of access to justice and judicial protection, through the investigation and eventual punishment of those responsible, and the integral reparation of the consequences of the violations. In addition, the Court recalls that one of the basic factors that influenced the lack of due diligence in the instant case, was the failure to make adequate use of norms and practices that would have ensured an effective investigation of the forced disappearance, taking into account all its elements so that it was not examined piecemeal.

285. Taking the above into account, as well as its case law,<sup>314</sup> the Court orders that the State must continue the investigation that is underway, effectively and with the greatest possible diligence, in order to identify, prosecute and, as appropriate, punish all those responsible for the forced disappearance of Narciso González Medina. This obligation must be fulfilled within a reasonable time in order to establish the truth of the facts and to determine any possible criminal responsibilities, considering the indicated criteria concerning investigations in cases of forced disappearance,<sup>315</sup> and removing all the obstacles that maintain impunity<sup>316</sup> in this case. Due diligence in the investigation means that all the State authorities are obliged to collaborate in the collection of evidence; consequently, they must provide the judge, prosecutor or any other judicial official with all the information requested and abstain from acts that obstruct the progress of the investigation. In particular, the State must:

- a) Conduct the pertinent investigation or investigations concerning the facts of this case, so that these investigations and the proceedings are conducted taking into consideration the complexity of the facts and the context in which they occurred, and avoiding omissions in the collection of evidence and in following logical lines of inquiry;
- b) Investigate the elements that constitute forced disappearance with due diligence and with an integral approach, as established in paragraphs 128 to 130, 209, 221, 222 and 226 to 246 of this Judgment;

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<sup>314</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*, supra note 18, para. 174, and *Case of the Barrios Family v. Venezuela*, supra note 77, para. 322.

<sup>315</sup> Cf. *Case of Anzaldo Castro v. Peru*, supra note 150, para. 181, and *Case of Contreras et al. v. El Salvador*, supra note 51, para. 185.

<sup>316</sup> Cf. *Case of Myrna Mack Chang v. Guatemala. Merits, reparations and costs*. Judgment of November 25, 2003. Series C No. 101. para. 277, and *Case of Contreras et al. v. El Salvador*, supra note 51, para. 185.

- c) Identify and individualize the masterminds and perpetrators of the victim's forced disappearance.
- d) Ensure that the competent authorities conduct the corresponding investigations *ex officio*, and, to this end, that they have and use all the necessary scientific and logistic resources to collect and process the evidence and, in particular, that they have the authority to access the pertinent documentation and information to investigate the facts denounced, and to take those actions and make those inquiries promptly that are essential to clarify what happened to the disappeared person in this case;
- e) Since this case relates to a grave violation of human rights, and taking into consideration the continuing or permanent nature of forced disappearance the effects of which do not cease until the fate or whereabouts of the victim are established or his remains are identified, the State must abstain from using mechanisms such as amnesty to benefit the authors, or any other similar provision, such as prescription, non-retroactivity of the criminal law, *res judicata*, *ne bis in idem* or any similar grounds for exemption of responsibility to avoid this obligation,<sup>317</sup> and
- f) Guarantee that the investigation into the facts that constitute forced disappearance in this case always remain in the ordinary jurisdiction.

286. The State must ensure full access and capacity to act to the victims or their family at all stages of the investigation and prosecution of those responsible, which includes access to the case file (*supra* paras. 251 to 254). The purpose of this participation must be access to justice, knowledge of the truth of what happened, and the award of just reparation. In addition, the results of the corresponding proceedings must be published so that Dominican society can know the facts that are the purpose of this case, as well as the identity of those who were responsible.<sup>318</sup>

## **B.2) Determination of the whereabouts of Narciso González Medina**

287. The Commission and the representatives asked the Court to order the State to conduct an impartial, diligent and effective investigation into the fate or whereabouts of Narciso González Medina. Moreover, the representatives asked that, should he be deceased, his mortal remains be identified, either during the criminal investigation or by another adequate and effective procedure. In addition, if his mortal remains are found, they asked that: (a) they be delivered to his family as soon as possible, "after DNA testing with positive results," without any cost and covering the burial expenses, and (b) the family be provided with the required medical and psychological care.

288. In this case, it has been established that the whereabouts of Narciso González Medina remain unknown, so that he continues to be disappeared. The Court underscores that the victim disappeared 17 years and nine months ago, so it is reasonable that his

<sup>317</sup> Cf. *Case of Barrios Altos v. Peru. Merits*. Judgment of March 14, 2001. Series C No. 75, para. 41, and *Case of Contreras et al. v. El Salvador*, *supra* note 51, para. 185.d).

<sup>318</sup> Cf. *Case of El Caracazo v. Venezuela. Reparations and costs*. Judgment of August 29, 2002. Series C No. 95, para. 118, and *Case of Contreras et al. v. El Salvador*, *supra* note 51, para. 187.

family hopes that his whereabouts will be discovered, which would constitute a measure of reparation and, therefore, entails the corresponding obligation of the State to satisfy it.<sup>319</sup>

289. The return of the body of a forcibly disappeared person is extremely important for the family, because it allows them to bury him or her in accordance with their beliefs, and to bring closure to the process of mourning they have been experiencing all these years.<sup>320</sup> In addition, the Court considers that the remains are evidence of what happened and, together with the place where they are found, can provide valuable information concerning the authors of the violations or the institution to which they belonged.<sup>321</sup>

290. Consequently, the State must conduct a serious search using the appropriate judicial or administrative channels, in which every effort is made to determine the whereabouts of Narciso González Medina as soon as possible. This search must be carried out rigorously and systematically, be provided with the adequate and appropriate human, technical and scientific resources and, if necessary, the cooperation of other States should be requested. The family must be informed of these measures and, insofar as possible, their presence ensured.<sup>322</sup>

291. If, following the measures taken by the State, it is found that the victim is deceased, the mortal remains must be delivered to his family, following positive DNA testing, as soon as possible and without any cost to them. Also, the State must cover the funeral expenses, as appropriate, by mutual agreement with his family.<sup>323</sup>

**C) Other measures of integral reparation: rehabilitation, satisfaction and guarantees of non-repetition**

**C.1) Rehabilitation: medical and psychological care for the victims**

292. The Commission asked the Court to order measures of rehabilitation for the members of Narciso González Medina's family who are alive. The representatives asked that the State ensure medical and psychological treatment by competent professionals, including the provision of any medicines required. In addition, they asked that the State assume other expenses that arise in relation to the treatment, such as transport.

293. The Court considers, as it has in other cases,<sup>324</sup> that it is necessary to order a measure of reparation that provides appropriate care for the physical and psychological problems suffered by the victims as a result of the violations established in this judgment (*supra* para. 270 to 275). Therefore, having verified the violations and the harm suffered by

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<sup>319</sup> Cf. *Case of Neira Alegría et al. v. Peru. Reparations and costs*. Judgment of September 19, 1996. Series C No. 29, para. 69, and *Case of Contreras et al. v. El Salvador*, *supra* note 51, para. 190.

<sup>320</sup> Cf. *Case of the Dos Erres Massacre v. Guatemala*, *supra* note 166, para. 245, and *Case of Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil*, *supra* note 53, para. 261.

<sup>321</sup> Cf. *Case of the Dos Erres Massacre v. Guatemala*, *supra* note 166, para. 245, and *Case of Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil*, *supra* note 53, para. 261.

<sup>322</sup> Cf. *Case of Contreras et al. v. El Salvador*, *supra* note 51, para. 191.

<sup>323</sup> Cf. *Case of Anzualdo Castro v. Peru*, *supra* note 150, para. 185, and *Case of Contreras et al. v. El Salvador*, *supra* note 51, para. 192.

<sup>324</sup> Cf. *Case of Cantoral Benavides v. Peru. Reparations and costs*, *supra* note 311, para. 57, and *Case of Contreras et al. v. El Salvador*, *supra* note 51, para. 199.



the victims,<sup>325</sup> the Court finds it necessary to determine that the State has the obligation to provide, free of charge, through its specialized health care institutions, immediate, adequate and effective medical and psychiatric or psychological treatment to the victims, following their informed consent, including the supply without charge of any medication they may eventually require based on their medical problems. If the State cannot provide the said treatment through its public institutions, it must have recourse to private or civil society institutions. Furthermore, the respective treatment must be provided, insofar as possible, in the centers closest to their places of residence<sup>326</sup> in the Dominican Republic for as long as necessary. In addition, when providing the psychiatric or psychological treatment, the specific circumstances and needs of each victim must be considered, so that they are provided with family or individual treatment, as agreed with each of them following individual evaluation.<sup>327</sup> The victims who request this measure of reparation, or their legal representatives, have six months as of notification of this judgment to advise the State of their intention to receive medical, psychiatric or psychological treatment.<sup>328</sup>

## C.2) Satisfaction

### *C.2.a) Publication and dissemination of the Judgment*

294. The Commission asked that the State be ordered to publish the pertinent parts of this Judgment. The representatives asked the Court to order the publication of “the section on proven facts and the operative paragraphs of the Judgment in the Official Gazette and in another national daily newspaper.”

295. The Court decides, as it has in other cases,<sup>329</sup> that the State must publish, within six months of notification of this Judgment: (a) the official summary of the Judgment prepared by the Court, once, in the Official Gazette; (b) the official summary of the Judgment prepared by the Court, once, in a national newspaper with widespread circulation, and (c) the entire Judgment, available for one year, on an official web site.

### *C.2.b) Public act to acknowledge international responsibility*

296. The Commission and the representatives asked the Court to order the State to make a public acknowledgment of its international responsibility. The representatives asked the Court to establish “clearly and specifically, the terms and conditions” of this act.

297. As it has in other cases,<sup>330</sup> the Court finds it necessary, in order to repair the harm caused to the victims and to avoid the repetition of facts like those of the instant case,<sup>331</sup> to

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<sup>325</sup> In this regard, the Court takes note of the opinion of the family’s psychiatrist that Mr. González Medina’s family had to receive neuropsychopharmacological treatment, psychotherapy and some of them also had to receive psychoeducational care. Cf. Opinion provided by expert witness Secundino Palacios Carpio on June 16, 2011, *supra* note 208, folios 1148, 1149 and 1151.

<sup>326</sup> Cf. *Case of the Dos Erres Massacre v. Guatemala*, *supra* note 166, para. 270, and *Case of Contreras et al. v. El Salvador*, *supra* note 51, para. 200.

<sup>327</sup> Cf. *Case of 19 Tradersmen v. Colombia. Merits, reparations and costs*, *supra* note 253, para. 278, and *Case of Contreras et al. v. El Salvador*, *supra* note 51, para. 200.

<sup>328</sup> Cf. *Case of Fernández Ortega et al. v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of August 30, 2010. Series C No. 215, para. 252, and *Case of Contreras et al. v. El Salvador*, *supra* note 51, para. 200.

<sup>329</sup> Cf. *Case of Cantoral Benavides v. Peru. Reparations and costs*, *supra* note 311, para. 79, and *Case of Fontevecchia and D’Amico v. Argentina*, *supra* note 70, para. 108.

<sup>330</sup> Cf. *Case of Cantoral Benavides v. Peru. Reparations and costs*, *supra* note 311, para. 81, and *Case of Contreras et al. v. El Salvador*, *supra* note 51, para. 206.

require the State to carry out a public act to acknowledge its international responsibility with regard to the facts of this case. During this act, it must refer to the human rights violations declared in this Judgment. In addition, the act must be carried out by means of a public ceremony in the presence of senior State officials and the victims in this case. The State must reach agreement with the victims or their representatives on how the public act of acknowledgement should be organized, as well as details such as the respective place and date.<sup>332</sup> To this end, the State has one year from notification of this Judgment.

### **C.3) Measures to commemorate and honor the victim**

#### *C.3.a) Commemorative plaque in the Narciso González Cultural Center*

298. Both the Inter-American Commission and the representatives asked the Court to order the State to restore the memory of Narciso González Medina, and the representatives indicated specific measures in this regard.

299. The testimony of the victims reveals that the State has inaugurated a cultural center, situated in the Villa Juana sector of Santa Domingo, named after Narciso González Medina. The Court assesses positively the effort made by the State to preserve the victim's memory by inaugurating this cultural center. However, it notes from the testimony of the victims that the State did not ask them to take part in its planning, although they were invited to the center's inauguration.

300. Notwithstanding the foregoing, in order to ensure a greater impact and recognition of the victim's memory and of the facts that occurred in this case, the Court finds it appropriate to order the State to place a commemorative plaque in the cultural center alluding to this judgment, the facts of the case and the circumstances in which they occurred. This will contribute to raising the public's awareness in order to avoid the repetition of facts such as those that occurred in this case. This must be done within one year of notification of this Judgment.

#### *C.3.b) Production of a documentary on Narciso González Medina's life*

301. The Commission referred, in general, to the adoption of measures to recover the historical memory of Narciso González Medina. The representatives asked that the Court order the State to make a documentary on the life, work and contribution of Narciso González Medina, to be produced in close collaboration with his family and the "Truth Commission." They indicated that, when this documentary was completed, it should be: (a) shown on a State television channel that broadcasts nationally; (b) shown during a public act in Santo Domingo, either a specific act or during the act of acknowledgement of responsibility, and (c) distributed as widely as possible among the victims, their representatives and the national universities for its subsequent promotion and projection.

302. Given the circumstances of this case, the Court finds it extremely important to recover the memory and dignity of Narciso González Medina. The Court considers that the request made by the representatives is pertinent, because such initiatives are significant both for preservation of the memory and satisfaction of the victims, and for the recovery

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<sup>331</sup> Cf. *Case of Carpio Nicolle et al. Merits, reparations and costs*. Judgment of November 22, 2004. Series C No. 117, para. 136, and *Case of the Serrano Cruz Sisters v. El Salvador. Merits, reparations and costs*, supra note 253, para. 194.

<sup>332</sup> Cf. *Case of Kawas Fernández v. Honduras*, supra note 167, para. 202, and *Case of Contreras et al. v. El Salvador*, supra note 51, para. 206.

and re-establishment of the historical memory in a democratic society.<sup>333</sup> In this regard, the Court underlines the observations of Mr. González Medina's family regarding the importance of recovering their father's name and persona.<sup>334</sup>

303. Consequently, this Court finds it appropriate that the State make an audiovisual documentary on the life of Narciso González Medina, in which reference is made to his journalistic, literary and creative work, and also to his contribution to Dominican culture, the content of which must be agreed previously with the victims and their representatives. The State must assume all the expenses arising from the production, screening and distribution of this video. The documentary video must be shown on a State television channel that broadcasts nationally, once, and the family and representatives must be given sufficient notice of the timing of this broadcast. In addition, the State must show the video during a public act in Santo Domingo, either in a specific act or during the act of acknowledgement of responsibility (*supra* para. 297). The said act must be organized with the participation of the victims or their representatives. In addition, the documentary must be distributed as widely as possible among the victims, their representatives, and the country's main universities in order to promote it. The State has two years, from notification of this Judgment, to make the documentary, and show and distribute it.

#### **C.4) Guarantee of non-repetition: adoption of domestic legal provisions to ensure effective investigation of forced disappearance**

304. In its final written arguments, the Commission observed that it had been proved that "the Dominican legal framework was inadequate to investigate what happened to Narciso González as a forced disappearance of persons with all its constituent elements," and "the Court should take this into account specifically" when establishing the reparations.

305. The representatives asked the Court to order the State to make forced disappearance an autonomous crime in accordance with the relevant international standards, in particular Article II of the Inter-American Convention on Forced Disappearance of Persons. Additionally, they indicated that the Court should ask the Dominican State to consider ratifying this instrument.

306. The Court concludes that the State failed to comply with the obligation established in Article 2 of the American Convention to adopt the necessary domestic measures and provisions to ensure an effective investigation of the forced disappearance of Narciso González Medina and the identification, prosecution and, as appropriate, punishment of those responsible (*supra* paras. 242 to 246). Consequently, the Court decides that, within a reasonable time, the Dominican Republic must ensure that the application of the norms of its domestic law and the functioning of its institutions permit conducting an adequate investigation of forced disappearance and, should the said norms be insufficient, it must make the legislative reforms or adopt the necessary administrative, judicial or other measures to achieve this goal.

#### **C.5) Other measures requested**

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<sup>333</sup> Cf. *Case of Radilla Pacheco v. Mexico*, *supra* note 50, para. 356, and *Case of Manuel Cepeda Vargas v. Colombia*, *supra* note 236, para. 228.

<sup>334</sup> Cf. Statement made by Jennie Rosanna González Ramírez on June 16, 2011, *supra* note 99, folio 1122, and statement made by Luz Altigracia Ramírez before the Inter-American Court during the public hearing held in this case on June 28, 2011.

307. The representatives asked the Court to order the State “to adopt domestic measures that grant practical effects to the right to juridical personality that was violated with regard to Narciso González by his forced disappearance.”<sup>335</sup> In addition, they requested the adoption of other measures of reparation relating to non-repetition, as well as reparations regarding the alleged violation of access to information, as did the Inter-American Commission.<sup>336</sup>

308. Regarding the request for measures relating to the right to juridical personality of Narciso González Medina, the Court observes that the representatives did not indicate the specific measures required when making this request for reparation and, above all, did not describe the rights and obligations possessed by Mr. González Medina that his family have been prevented from exercising on his behalf. Therefore, the Court considers that the representatives did not provide grounds for the specific need for the requested measures of reparation, so that, as it has in another case,<sup>337</sup> the Court finds them inadmissible.

309. Moreover, regarding the other measures of reparation requested, the Court considers that the delivery of this Judgment and the reparations ordered in this chapter are sufficient and adequate to remedy the violations suffered by the victims and does not find it necessary to order the said measures.<sup>338</sup>

## **D) Compensation**

### **D.1) Pecuniary damage**

310. In its case law, the Court has developed the concept of pecuniary damage and the situations in which it must be compensated. This Court has established that pecuniary damage supposes “the loss or harm to the income of the victims, the expenses incurred owing to the facts, and the consequences of a pecuniary nature that have a causal connection to the facts of the case.”<sup>339</sup>

311. The Commission asked the Court to establish, in equity, the amount of compensation corresponding to the pecuniary damage resulting from the violations alleged in the application.

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<sup>335</sup> In particular, the representatives indicated that, in order to repair “the damage” caused by the violation of Article 3 of the American Convention, the State should be ordered to take “the procedural measures and the civil remedies necessary to rectify the ‘legal limbo’ of the rights and obligations possessed by Narciso González, in order to protect the rights of his family as well as of other families of individuals who have been victims of forced disappearance.”

<sup>336</sup> The representatives requested the “adoption of adequate protocols to identify the osseous remains, as well as psychological counseling for the family in the procedures for the identification of corpses”; the “creation of special units of the Public Prosecution Service and the Judiciary to investigate complaints of grave human rights violations and the assignment of adequate resources”; “public access to State archives in keeping with the relevant international standards”; the “adoption of a public and accessible mechanism to register detainees in the places where those who are accused of an offense are detained before being brought before the competent judge,” and the “establishment of a lecture hall in the Universidad Autónoma de Santo Domingo, as well as the creation of a grant, in memory and recognition of the work of Narciso González.” For its part, the Commission asked the Court to order the Dominican State “to organize the State apparatus to comply with the requirements of the right to information,” which involves “promoting a culture of transparency and guaranteeing the effectiveness of the remedies to make it possible to demand the right of access to information.”

<sup>337</sup> Cf. *Case of Torres Millacura et al. v. Argentina*, *supra* note 52, para. 205.

<sup>338</sup> Cf. *Case of Radilla Pacheco v. Mexico*, *supra* note 50, para. 359, and *Case of Contreras et al. v. El Salvador*, *supra* note 51, para. 220.

<sup>339</sup> *Case of Bámaca Velásquez v. Guatemala. Reparations and costs*. Judgment of February 22, 2002. Series C No. 91, para. 43; and *Case of Fontevecchia and D’Amico v. Argentina*, *supra* note 70, para. 114.

312. For their part, the representatives asked that the Court order payment for Mr. González Medina's loss of income, taking into consideration that, at the time of his disappearance: (a) "he probably had another 19 years of life before him," according to life expectancy in the Dominican Republic; (b) he was a UASD professor, and (c) in addition, "he carried out a series of other professional activities that [...] increased his annual income considerably." In this regard, the representatives provided a table, without vouchers, where they calculated the income that Mr. González Medina had failed to receive between 1995 and 2010, as US\$178,745.09 (one hundred and seventy-eight thousand seven hundred and forty-five United States dollars and nine cents).<sup>340</sup> Regarding the additional income, the representatives indicated that "they could not include an exact calculation." Furthermore, as consequential damage, the representatives asked the Court to order the corresponding amount, in equity, taking into account "the harm and prejudice to personal wealth" suffered by Narciso González Medina's family in their search for justice, as well as the medical expenses they have had to incur as a result of the disappearance.

313. Regarding the income that Mr. González Medina failed to receive, the Court observes that the representatives did not provide evidence that would allow the Court to verify the amount indicated as corresponding to his salary in 1994, based on which they made the calculations that they submitted to this Court. However, taking into account the victim's age at the time of his disappearance,<sup>341</sup> the date of the Dominican Republic's acceptance of the Court's jurisdiction, the elements in the case file, and based on the principle of equity, the Court decides to establish the sum of US\$50,000.00 (fifty thousand United States dollars) for Mr. González Medina's loss of earnings. Half of this amount must be given to Luz Altagracia Ramírez, and the other half must be shared in equal parts between Mr. González Medina's children: Ernesto, Rhina Yokasta, Jennie Rossana and Amaury González Ramírez. This amount must be paid within one year of notification of this Judgment.

314. Regarding consequential damage, the Court notes that, according to the expert medical opinion of Secundino Palacios Carpio, the González Ramírez family has been undergoing medical treatment for approximately 17 years. In addition, Jennie Rosanna González Ramírez, Rhina Yokasta González Ramírez and Luz Altagracia Ramírez have had to be hospitalized as a result of the psychological ailments they have suffered as a result of Mr. González Medina's disappearance, and they have also been on medication.<sup>342</sup> In addition, the Court considers that the actions and measures taken by Mr. González Medina's family to find him gave rise to expenses that must be considered as circumstantial damage. Consequently, the Court establishes, in equity, the sum of US\$20,000.00 (twenty thousand United States dollars) for circumstantial damage, which must be given to Luz Altagracia Ramírez so that she may distribute it as appropriate, according to the expenses that were assumed by her children.

## **D.2) Non-pecuniary damage**

315. International case law has repeatedly established that the judgment can constitute

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<sup>340</sup> This table is based on the UASD salary of Mr. González Medina in 1994, which allegedly was 216.000,00 Dominican pesos, taking into account the annual rate of inflation and exchange rate.

<sup>341</sup> Regarding the life expectancy of Mr. González Medina, the State affirmed that Mr. González Medina had chronic clinical symptoms owing to a brain tumor. However, the Court notes that, contrary to the State's assertion, the neurologist who treated Mr. González Medina indicated that "he did not have a tumor, [...] but rather] a lesion in the left parietal bone." Testimony given by Doctor Valenzuela on September 20, 2002, before the Review Chamber, *supra* note 97, folio 1960.

<sup>342</sup> *Cf.* Testimony provided by expert witness Secundino Palacios Carpio on June 16, 2011, *supra* note 208, folios 1145 and 1146.

*per se* a form of reparation.<sup>343</sup> However, in its case law, the Court has developed the concept of non-pecuniary damage and has established that this “can include the suffering and distress caused to the direct victim and his family, the impairment of values that are of great significance to the individual, as well as the changes, of a non-pecuniary nature, in the living conditions of the victims or their family.”<sup>344</sup>

316. The Commission asked the Court to establish, in equity, the amount of the compensation corresponding to the non-pecuniary damage resulting from the violations alleged in the application.

317. The representatives indicated that, taking into account the circumstances of the case and the violations to the personal integrity of Narciso González Medina, the Court should order the State to pay the sum of US\$100,000.00 (one hundred thousand United States dollars) as compensation in his favor for non-pecuniary damage. They also asked that the Court order the State to repair the damage suffered by Narciso González Medina’s family, owing to: (a) the anguish caused by his forced disappearance and the impunity, and (b) the re-victimization to which the family of Narciso González Medina were subjected owing to the accusations made by the State that the González Ramírez family was “deliberately” concealing information related to the hypothesis of Mr. González Medina’s suicide. Therefore, they asked that the Court establish, in equity: (a) the sum of US\$50,000.00 (fifty thousand United States dollars) for Ernesto, Rhina Yokasta, Jennie Rosanna and Amaury, all González Ramírez, and (b) the sum of US\$60,000.00 (sixty thousand United States dollars) for Luz Altagracia Ramírez, taking into account the additional element “of her active participation in all the measures to clarify the forced disappearance of her husband and the emotional burden she has had to bear as sole head of the household and source of the family’s subsistence.”

318. In its answering brief, the State asked the Court to reject the arguments of the representatives and, in particular, considered that “the appraisal of the possible non-pecuniary damage [...] is exaggerated.” Accordingly, it asked the Court to determine this compensation “in accordance with the consistent criteria developed in its case law in this type of case.”

319. Considering the circumstances of the case *sub judice*, the sufferings that the violations committed caused to the victims, as well as the changes in their living conditions, and the other consequences of a non-pecuniary nature that they suffered, the Court finds it pertinent to establish an amount, in equity, as compensation for non-pecuniary damage.

320. Based on the compensation ordered by the Court in other cases of forced disappearance of persons, and considering the circumstances of the instant case, the significance, nature and seriousness of the violations committed, the sufferings caused to the victim, the time that has elapsed since the onset of the disappearance, and the denial of justice, the Court finds it pertinent to establish, in equity, the sum of US\$80,000.00 (eighty thousand United States dollars) in favor of Narciso González Medina, as compensation for non-pecuniary damage. Also, for the same concept, the Court establishes, in equity, compensation of US\$50,000.00 (fifty thousand United States dollars) for Luz Altagracia Ramírez, as well as compensation of US\$40,000.00 (forty thousand United States dollars), for each of Mr. González Medina’s children; namely, Ernesto, Rhina Yokasta, Jennie Rossana

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<sup>343</sup> Cf. *Case of El Amparo v. Venezuela. Reparations and costs*. Judgment of September 14, 1996. Series C No. 28, para. 35, and *Case of Contreras et al. v. El Salvador*, *supra* note 51, para. 227.

<sup>344</sup> *Case of the “Street Children” (Villagrán Morales et al.) v. Guatemala. Reparations and costs*, *supra* note 309, para. 84, and *Case of Fontevecchia and D’Amico v. Argentina*, *supra* note 70, para. 120.

and Amaury González Ramírez, since the effects of the facts of this case on their personal integrity have been proved, and also their efforts to discover the whereabouts of their husband and father, respectively. These sums must be paid within one year of notification of the Judgment.

### **E) Costs and expenses**

321. As the Court has indicated on previous occasions, costs and expenses are included in the concept of reparation established in Article 63(1) of the American Convention.<sup>345</sup>

322. The Commission asked the Court that, after it had heard the representatives, it order the State to pay the costs and expenses arising from the processing of this case both in the domestic sphere and before the inter-American human rights system.

323. The representatives asked the Court to order the State to reimburse, in equity, costs and expenses to the "Truth Commission" and to the lawyer, Tomás Castro Monegro, for a total of US\$30,000.00 (thirty thousand United States dollars) for "the costs arising from their professional services during 15 years," and taking into account that they "have not kept receipts for most of the expenses incurred." In addition, they asked that the Court establish, in equity, the expenses incurred by the Center for Justice and International Law (CEJIL) at US\$25,000.00 (twenty-five thousand United States dollars) for representing the victim and his family in the international proceedings since 1996. In its final arguments, CEJIL updated the amounts of the expenses incurred in the litigation before the Court, which include "the travel and additional expenses incurred for the representatives to attend the public hearing, as well as expenditure to obtain evidence," requesting an additional payment of US\$9,228.02 (nine thousand two hundred and twenty-eight United States dollars and two cents) for a total of US\$34,228.02 (thirty-four thousand, two hundred and twenty-eight United States dollars and two cents).

324. The State contested various vouchers forwarded by the representatives in relation to its requests concerning costs and expenses.

325. The Court reiterates that, according to its case law,<sup>346</sup> costs and expenses are part of the concept of reparation, because the activity deployed by the victims to obtain justice at both the national and the international level, entails expenditure that must be compensated when the State's international responsibility is declared in a judgment against it. Regarding reimbursement, the Court must assess prudently their scope, which includes the expenses arising before the authorities of the domestic jurisdiction, and also those incurred in the course of the proceedings before this Court, taking into account the circumstances of the specific case and the nature of the international jurisdiction for the protection of human rights. This assessment may be made based on the principle of equity and taking into account the expenses indicated by the parties, provided that the amount is reasonable.

326. The Court has indicated that "the claims of the victims or their representatives with regard to costs and expenses, and the evidence authenticating them, must be submitted to the Court at the first procedural moment granted them, which is in the pleadings and motions brief. Nevertheless, these claims may be updated subsequently, in accordance with the new costs and expenses that they have incurred owing to the proceedings before this

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<sup>345</sup> Cf. *Case of Garrido and Baigorria v. Argentina. Reparations and costs*. Judgment of August 27, 1998. Series C No. 39, para. 79, and *Case of Fontevecchia and D'Amico v. Argentina*, *supra* note 70, para. 124.

<sup>346</sup> Cf. *Case of Garrido and Baigorria v. Argentina. Reparations and costs*, *supra* note 345, para. 79, and *Case of Fontevecchia and D'Amico v. Argentina*, *supra* note 70, para. 124.

Court.”<sup>347</sup> In addition, the Court reiterates that it is not sufficient merely to submit probative documents, but rather the parties must also provide arguments that relate the evidence to the fact that it represents and, in the case of financial disbursements, that the items and their justification are clearly established.<sup>348</sup>

327. In this case, the Court has verified that some of the vouchers forwarded by the representatives do not correspond to the processing of this case; others are illegible or unrelated to the case. Consequently, these expenses will not be taken into account when establishing the respective costs and expenses. In addition, as it has in other cases, the Court can infer that the representatives incurred expenses when processing the case before the inter-American human rights system. Furthermore, the Court notes the observations of the representatives concerning expenses incurred by Mr. González Medina’s family to attend the hearings before the Inter-American Commission; accordingly, the Court considers that it is also appropriate to order the payment of an amount for this concept directly to Luz Altagracia Ramírez.

328. Regarding the State’s request, that the Court determine a single amount for costs and expenses to be given to Luz Altagracia Ramírez, the Court finds no reason to deviate from its consistent practice of ordering the said payment in favor of the individuals or organizations for which it is expressly requested in the corresponding briefs. The State has offered no justification for this request, so the Court does not find it admissible.

329. Consequently, the Court determines, in equity, that, for costs and expenses, the State must deliver the sum of US\$3,200.00 (three thousand two hundred United States dollars) to Luz Altagracia Ramírez de González; the sum of US\$15,000.00 (fifteen thousand United States dollars) to the civil organization “Truth Commission,” and the sum of US\$15,000.00 (fifteen thousand United States dollars) to the Center for Justice and International Law (CEJIL). At the stage of monitoring compliance with this judgment, the Court may order the State to reimburse the victims or their representatives subsequent reasonable and duly authenticated expenditure.

#### ***F) Reimbursement of expenses to the Victims’ Legal Assistance Fund***

330. In 2008, the General Assembly of the Organization of American States created the Legal Assistance Fund of the Inter-American Human Rights System, “to facilitate access to the inter-American human rights system by persons who currently lack the resources needed to bring their cases before the system.”<sup>349</sup> In the instant case, the victims were granted the financial assistance required to present the testimony of one alleged victim and one witness during the public hearing held in Costa Rica from the Court’s Legal Assistance Fund (*supra* paras. 7, 9 and 11).

331. In accordance with article 5 of the Rules of Procedure of the Legal Assistance Fund, on September 29, 2011, the State was given the opportunity to present its observations on

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<sup>347</sup> *Case of Chaparro Álvarez and Lapo Íñiguez. v. Ecuador*, *supra* note 219, para. 275, and *Case of Fontevecchia and D’Amico v. Argentina*, *supra* note 70, para. 127.

<sup>348</sup> *Cf. Case of Chaparro Álvarez and Lapo Íñiguez*, *supra* note 219, para. 277, and *Case of Contreras et al. v. El Salvador*, *supra* note 51, para. 233.

<sup>349</sup> AG/RES. 2426 (XXXVIII-O/08), Resolution adopted by the thirty-eighth OAS General Assembly during its fourth plenary session held on June 3, 2008, “*Establishment of the Legal Assistance Fund of the Inter-American Human Rights System*,” operative paragraph 2(a), and CP/RES. 963 (1728/09), Resolution adopted on November 11, 2009, by the OAS Permanent Council, “*Rules of Procedure for the Operation of the Legal Assistance Fund of the Inter-American Human Rights System*,” Article 1(1).



the expenditure made in this case, which amounted to US\$2,219.48 (two thousand two hundred and nineteen United States dollars and forty-eight cents). However, the Dominican Republic did not submit observations in this regard. In application of the said provision, the Court must evaluate the appropriateness of ordering the defendant State to reimburse the expenditure incurred to the Legal Assistance Fund.

332. Based on the violations declared in this judgment, the Court orders the State to reimburse the said Fund the sum of US\$2,219.48 (two thousand two hundred and nineteen United States dollars and forty-eight cents) for the expenses incurred for the presentation of the testimony of one alleged victim and one witness during the public hearing in this case. This amount must be reimbursed within 90 days of notification of this Judgment.

### ***G. Method of complying with the payments ordered***

333. The State must pay the compensation for pecuniary and non-pecuniary damage, and the reimbursement of costs and expenses established in this Judgment directly to the individuals and organizations indicated in it, within one year of notification of the Judgment, as indicated in the following paragraphs.

334. If the beneficiaries are deceased or die before the respective compensation is delivered to them, it shall be delivered directly to their heirs, pursuant to the applicable domestic law. In this regard, the Court has taken note that Amaury González Ramírez died in 2005.<sup>350</sup>

335. The State must comply with its financial obligations by payment in United States dollars or the equivalent in Dominican pesos, using the exchange rate in force in the Central Bank of the Dominican Republic the day before payment to make the respective calculation.

336. If, for reasons that can be attributed to the beneficiaries of the compensation or their heirs, it is not possible to pay the amounts established within the indicated time frame, the State shall deposit the said amounts in an account or certificate of deposit in their favor in a solvent Dominican financial institution in United States dollars, and in the most favorable financial conditions allowed by law and banking practice. If the corresponding compensation is not claimed within 10 years, the amounts shall revert to the State with the accrued interest.

337. The amounts allocated in this judgment as compensation and as reimbursement of costs and expenses must be delivered integrally to the persons and organizations indicated, as established in this judgment, without any reductions derived from possible taxes or charges.

338. If the State falls in arrears, it must pay interest on the amount owed corresponding to banking interest on arrears in the Dominican Republic.

## **XI OPERATIVE PARAGRAPHS**

339. Therefore,

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<sup>350</sup> Cf. Application brief of the Commission (merits file, tome I, folio 173, para. 43), and pleadings and motions brief of the representatives (merits file, tome II, folio 361).

## **THE COURT**

### **DECIDES,**

unanimously,

1. To reject the preliminary objection filed by the State regarding the preliminary objection filed by the State on lack of competence *ratione temporis* in relation to the forced disappearance and the alleged violations to the detriment of Narciso González Medina, and to accept partially this preliminary objection in relation to the alleged violations to the detriment of his family, for facts that occurred prior to the State's acceptances of the binding jurisdiction of the Court, in the terms of paragraphs 45 to 54 and 58 to 61 of this Judgment.

2. To reject the other preliminary objections filed by the Dominican Republic, in accordance with paragraphs 19 to 24, 28 to 35 and 38 to 41 of this Judgment.

### **DECLARES,**

unanimously that:

1. The State is responsible for the forced disappearance of Narciso González Medina and, consequently, for the violation of the rights to personal liberty, personal integrity, life, and recognition of juridical personality protected in Articles 7, 5(1), 5(2), 4(1) and 3 of the American Convention, in relation to Article 1(1) thereof, to the detriment of Narciso González Medina, as of the date that the Dominican Republic accepted the jurisdiction of this Court, in the terms of paragraphs 137 to 194 of this Judgment.

2. The State is responsible for failing to comply with its obligation to ensure the rights indicated in the first declarative paragraph, in relation to Articles 1(1) and 2 of the American Convention and to Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, to the detriment of Narciso González Medina, owing to the absence of an effective investigation into the forced disappearance, as established in paragraph 265 of this Judgment.

3. The State is responsible for the violation of the rights to judicial guarantees and judicial protection established in Articles 8(1) and 25(1) of the American Convention, in relation to Article 1(1) thereof and to Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, to the detriment of Luz Altagracia Ramírez, Ernesto González Ramírez, Rhina Yokasta González Ramírez, Jennie Rosanna González Ramírez and Amaury González Ramírez, in the terms of paragraphs 220 to 262 and 264 to 265 of this Judgment.

4. The State is responsible for the violation of the right to personal integrity protected by Article 5(1) and 5(2) of the American Convention, in relation to Article 1(1) thereof, to the detriment of Luz Altagracia Ramírez, Ernesto González Ramírez, Rhina Yokasta González Ramírez, Jennie Rosanna González Ramírez and Amaury González Ramírez, as established in paragraphs 270 to 275 of this Judgment.

5. It is not appropriate to issue a ruling on the alleged violations of the right to freedom of expression established in Article 13 of the American Convention on Human Rights, in the terms of paragraphs 192, 193 and 266 of this Judgment.

6. It is not appropriate to issue a ruling on the alleged violations of the right to the protection of the family established in Article 17 of the American Convention on Human Rights, in accordance with paragraph 274 of this Judgment.

**AND DETERMINES:**

unanimously that:

1. This Judgment constitutes *per se* a form of reparation.
2. The State must continue and undertake the necessary investigations and proceedings, within a reasonable time, in order to establish the truth of the facts, as well as to determine and, as appropriate, punish those responsible for the forced disappearance of Narciso González Medina, as established in paragraphs 284 to 286 of this Judgment.
3. The State must conduct, as soon as possible, a genuine search making every effort to determine the whereabouts of Narciso González Medina, as established in paragraphs 288 to 291 of this Judgment.
4. The State must provide, immediately, the medical and psychological or psychiatric treatment to the victims who request this, as established in paragraph 293 of this Judgment.
5. The State must make the publications indicated in paragraph 295 of this Judgment, within six months of its notification.
6. The State must organize a public act to acknowledge its international responsibility for the facts of this case, as established in paragraph 297 of this Judgment.
7. The State must place a commemorative plaque in the Narciso González Cultural Center that alludes to this Judgment, to the facts of the case, and to the circumstances in which they occurred, as established in paragraph 300 of this Judgment.
8. The State must make an audiovisual documentary on the life of Narciso González Medina, in which reference is made to his journalistic, literary and creative work, as well as to his contribution to Dominican culture, as established in paragraphs 302 and 303 of this Judgment.
9. The State must, within a reasonable time, ensure that the application of the provisions of its domestic law and the functioning of its institutions permit an adequate investigation of forced disappearance and, should they be insufficient, make the legislative reforms or adopt the necessary administrative, judicial or other measures to achieve this goal, in the terms of paragraph 306 of this Judgment.
10. The State must pay the amounts established in paragraphs 313, 314, 320 and 329 of this Judgment as compensation for pecuniary and non-pecuniary damage, and reimbursement of costs and expenses, in the terms of the said paragraphs, and reimburse the Victims' Legal Assistance Fund the amount established in paragraph 332 of this Judgment.
11. The State must, within one year of notification of this Judgment, submit a report to the Court on the measures adopted to comply with it.

12. The Court will monitor full compliance with this Judgment, in exercise of its attributes and in compliance with its obligations under the American Convention on Human Rights, and will consider this case concluded when the State has complied fully with its provisions.

Diego García-Sayán  
President

Manuel Ventura Robles

Leonardo A. Franco

Margarette May Macaulay

Alberto Pérez Pérez

Eduardo Vio Grossi

Pablo Saavedra Alessandri  
Secretary

So ordered,

Diego García-Sayán  
President

Pablo Saavedra Alessandri  
Secretary