

**REPORT No. XX/18**

**CASO 11.641**

**MERITS**

**PEDRO JULIO MOVILLA GALARCIO AND FAMILY**

**COLOMBIA<sup>1</sup>**

**DATE.**

**I. SUMMARY**

1. On June 17, 1996, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or “the IACHR”) received a petition submitted by the José Alvear Restrepo Lawyer’s Association (*Corporación Colectivo de Abogados “José Alvear Restrepo, CCAJAR*) (hereinafter “the petitioners”) alleging the international responsibility of the Republic of Colombia (hereinafter “the Colombian State, “the State” or “Colombia”) to the detriment of Pedro Julio Movilla Galarcio.

2. The Commission approved admissibility report No. 48/14 on July 24, 2014<sup>2</sup>, which was notified to the parties, being at their disposal in order to reach a friendly settlement. The parties were provided statutory deadlines to present their additional observations about the merits. All the information received was duly distributed between the parties.

3. The petitioners alleged that on May 13, 1993 at 8.00 a.m., Pedro Julio Movilla Galarcio disappeared after leaving his daughter at school. The petitioners blamed the State responsible for the disappearance and indicated that it was triggered by his political and union activities. The petitioners indicated that to date the whereabouts of the alleged victim remain unknown, and also alleged the lack of an effective investigation.

4. The State indicated that it has carried out internal processes for the search of Pedro Julio Movilla Galarcio as well as for the persecution of the perpetrators. It alleged that it is not internationally responsible for the disappearance because there is no sufficient evidence to demonstrate that the victim was last seen in the in the hands of State agents, nor it is responsible for the rest of the violations alleged.

5. Based on factual and legal determinations, the Commission resolved that the Colombian State is responsible for the violation of the rights to juridical personality, life, humane treatment, personal liberty, fair trial, freedom of association and judicial protection set forth at Articles 3, 4.1, 5.1, 7.1, 8.1, 16 and 25.1 in relation to Articles 1.1 and 2 of the same instrument detrimental to the persons indicated throughout this report. Moreover, the Commission concludes that the State is responsible for the violations of Articles I. a) and b) of the Inter-American Convention on Forced Disappearance of Persons (hereinafter “the IACFDP”). The Commission formulated the respective recommendations.

**II. THE PARTIES’ POSITIONS**

**A. The petitioners**

6. The petitioners indicated that Julio Movilla Galarcio was an outstanding union leader, left-wing political supporter and social activist from Colombia. They highlighted that due to his activities, he had to forcefully displace in two occasions, being Bogotá his last place of residence. The petitioners alleged that on May 13, 1993 at 8.00 a.m., Pedro Julio Movilla Galarcio left his home at 8:00 a.m. to leave his daughter at the school’s entrance.

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<sup>1</sup> Pursuant to what is set forth in article 17.2 of the Rules of Procedure, Commissioner Luis Ernesto Vargas Silva of Colombian nationality did not participate in the debate nor in the decision of the present case.

<sup>2</sup> IACHR. Admissibility report No. 48/14. Case 11.641. Pedro Julio Movilla Galarcio. Colombia. July 21, 2014. Articles 3, 4, 5, 7, 8, 16, and 25 of the American Convention and I.b) of the CIDF<sup>^</sup> were declared inadmissible.

7. They indicated that the alleged victim had to pick up his daughter at 11.00 a.m., but he never arrived and since then his whereabouts are unknown. They added that on that same day his wife reported him missing; and that the Association of Relatives of Detainees-Disappeared (*Asociación de familiares de detenidos – desaparecidos*) (hereinafter “the ASFADDES”) initiated particular searches. They indicated that the disappearance is imputable to the State in view of testimonies gathered that confirm the presence of suspicious persons near the place in which Movilla Galarcio was last seen, the military intelligence actions to which him and his family were subjected to due to the alleged connection to the People’s Liberating Army (*Ejército Popular de Liberación*) (hereinafter, “EPL”) and the lack of diligence in the investigations, which remain at the preliminary stage. They added that the disciplinary process before the Office of the Attorney General (*Procuraduría General de la Nación*), (hereinafter “the PGN”) on May 18, 1993, it was provisionally archived a second time on January 2001. The petitioners informed that the action for direct reparation before the contentious-administrative jurisdiction was rejected in the year 2011.

8. They alleged that the State is responsible for the violation to the **rights to juridical personality, life, humane treatment, and personal liberty** of Pedro Julio Movilla Galarcio for his forced disappearance. They indicated the violation to the right to personal integrity of his relatives. The petitioners affirmed that the State violated **the rights to a fair trial and judicial protection** of Pedro Julio Movilla Galarcio and his family given that after more than 20 years, impunity remains. They alleged that the facts were not investigated as a forced disappearance; that there was a refusal to address all the logic lines of investigation; and that limited actions were carried out for the search. They alleged that the relatives have not been heard before an independent and impartial court. They also alleged the violation to the **right to freedom of association** of Pedro Julio Movilla Galarcio due to the lack of guarantees to perform, free from harassment, his labors as union activist and member of the Marxist-Leninist Communist Party (*Partido Comunista Colombiano-Marxista Leninista*) (hereinafter “the PCC-ML”).

## **B. The State**

9. The State alleged that it is not responsible for the violation to the **rights to juridical personality, life, humane treatment and personal liberty** of Pedro Julio Movilla Galarcio given that in the internal processes sufficient evidence has been provided, which does not prove that the events occurred as declared by the petitioners. It indicated the disciplinary process was filed a second time because the PGN considered that the evidence does not even show slight signs of the participation of State agents. It highlighted that in the contentious-administrative jurisdiction, the rejection was based on the lack of evidence.

10. It affirmed that the international responsibility for forced disappearance intends to foist itself solely by means of contextual elements and under an alleged state systematic pattern against social and union leaders that has not been demonstrated. It indicated that the facts are not similar to other contexts of forced disappearances under the notion of “internal enemy” and that the registration of notes about the alleged victim on the part of the National Army does not generate certainty regarding the participation of state agents. The State alleged that there is no evidence that may indicate that the alleged victim was last seen in the hands of the State.

11. It indicated that it is not responsible for the alleged violation to the **right to humane treatment** of the relatives given that the authorities have not been indifferent nor have they omitted they duty to investigate. The State added that it investigated the facts in a criminal and disciplinary way and that the relatives agreed to a direct reparation, besides the unfavorable result. It affirmed that it is not responsible for the alleged violation of the rights to a **fair trial and judicial protection**; even though it recognized that there have been difficulties that have been reflected in the lack of satisfactory results. It alleged that it is not responsible for the alleged violation to the **right to freedom of association of Mr. Movilla Galarcio** given that there is no evidence of the threats or of the aforementioned forced displacement nor of the fact that they might have been a consequence of his union and political activities.

## **III. FACTUAL ANALYSIS**

**A. Context of human rights violations against trade unionists in Colombia and the forced disappearance in the context of the armed conflict**

12. Since the early sixties, the Armed Forces adopted as own the so called “national security doctrine,” which was taken by Decree 3398 of 1965, which subsequently became Law 48 from 1968 named “Organic by-law of National Defense” (*Estatuto Orgánico de Defensa Nacional*).<sup>3</sup> According to a report of the National Centre of Historical Memory, apart from such Law, there were regulations and counter-guerrilla military manuals<sup>4</sup> that constituted a context by which the concept of “internal enemy” (...) thoroughly overtook the spectrum of the guerrilla groups and extended to all sorts of political, social or dissident oppression, including the union movement.<sup>5</sup> This regulation was in force when Pedro Julio Movilla Galarcio disappeared. Moreover, there is information that indicates that, at least in the year 2009, some of these manuals were still applicable.<sup>6</sup>

13. This notion of internal enemy within the doctrine of national security was recognized in 1994 in a Joint Report of two United Nations Special Rapporteurs who after their visit to Colombia indicated the following:

It seems that the armed forces continue implementing an anti-subversive strategy based on the concept of “national security,” by virtue of which every person who is known to be related to the guerrilla, or who is a suspect, is considered as an internal enemy. According to the information received, in the zones qualified as “red zones,” where insurgents act and where armed conflicts take place, the security forces consider that practically all civilians collaborate with subversion (...) The category of “internal enemy” applied to any person considered to support the guerrilla in any or other way (even if the insurgents make use of force to obtain, for example, food or money from civilians) has extended, so it seems, to all those who express dissatisfaction towards the political, social and economic situation, mainly in rural areas. Consequently, the leaders and union members, political parties of the political opposition, human rights organizations, social workers, etc., have been the main victims, together with the rural workers, the main victims of human rights violations in armed conflict zones.<sup>7</sup>

14. In effect, in its Second Report on the *Human Rights Situation in Colombia*, the Commission highlighted that since the creation of the United Workers Trade Union Federation (*Central Unitaria de Trabajadores de Colombia*, CUT) on November 1986 and until May 1990, 538 activists and union members have been murdered and have disappeared.<sup>8</sup>

<sup>3</sup> Tracks and Faces of the Forced Disappearance (1970-2010). Volume II. National Centre of Historical Memory. Case 4. Víctor Manuel Isaza Uribe: Forced Disappearance and Anti-union Repression.

<sup>4</sup> Tracks and Faces of the Forced Disappearance (1970-2010). Volume II. National Centre of Historical Memory. Case 4. Víctor Manuel Isaza Uribe: Forced Disappearance and Anti-union Repression. This report highlights the following: a) Counter-guerrilla combat regulations – EJC 3-10, of the General Command of the Military Forces, Ruling No. 005 from April 9, 1969; b) The Manual of urban guerrilla and counter-guerrilla – EJC 3-18 of the National Army, Ruling No. 00006 from 1977; c) The general instructions for counter-guerrilla operations from the General Command of the Army from 1979; d) The Manual ECJ-3-101 of the General Command of the Army from June 25, 1982; and e) Counter-guerrilla combat regulations – EJC-3-10, from the General Command of the Armed Forces, of 1987.

<sup>5</sup> Tracks and Faces of the Forced Disappearance (1970-2010). Volume II. National Centre of Historical Memory. Case 4. Víctor Manuel Isaza Uribe: Forced Disappearance and Anti-union Repression.

<sup>6</sup> See. Council of State. Contentious-Administrative Chamber. First Section. February 5, 2009. Record 11001-03-15-000-2008-01400-01. Actor, Javier Giraldo Moreno. The following manuals are highlighted by the petitioners: Counter-guerrilla combat regulations – EJC 3-10, of the General Command of the Military Forces, Ruling No. 005 from April 9, 1969; b) The Manual of urban guerrilla and counter-guerrilla – EJC 3-18, of the National Army, ruling No. 00006 from 1977; general instructions for counter-guerrilla operations from the General Command of the Army from 1979; The Manual ECJ-3-101, of the General Command of the Army from June 25, 1982; and Counter-guerrilla combat regulations – EJC-1-10, from the General Command of the Armed Forces, of 1987. Cfr. National Centre of Historical Memory (2013). pp. 133-136. In the same way, they illustrated the statement of the expert Mr. Alberto Yepes proposed by the IACHR at the Hearing of the case Isaza Uribe vs Colombia, dated January 31, 2018.

<sup>7</sup> Tracks and Faces of the Forced Disappearance (1970-2010). Volume II. National Centre of Historical Memory. Case 4. Víctor Manuel Isaza Uribe: Forced Disappearance and Anti-union Repression. Quote. Joint Report of the Special Rapporteur in charge of the torture matter, Mr. Nigel S. Rodley, and of the Special Rapporteur in charge of extrajudicial, summary or arbitrary executions, Mr. Bacre Waly Ndiaye. E/CN.4/1995/111 of January 16, 1995.

<sup>8</sup> IACHR. Second Report on the Human Rights Situation in Colombia. OEA/Ser.L/V/II.84 Doc.39 rev., October 14, 1993, Chap. VIII.

15. In the press release of May 1, 1987, published by *El Colombiano*, it was informed that in the course of a year, 32 union leaders were killed in Colombia. These are events that have allegedly been reported in the V national forum on human rights, which was held in Bogotá, and it was highlighted that “the main directors of the worker unions were threatened with death, at least once, during this last year.”<sup>9</sup>

16. Specifically, regarding the incidence of the forced disappearance in the context of the armed conflict, the IACHR observes that the Observatory of Memory and Conflict (*Observatorio de Memoria y Conflicto*) (hereinafter the “OMC”) of the National Centre of Historical Memory (hereinafter the “CNMH”) has documented 60,630 “forced disappearances” between 1970 and 2015<sup>10</sup>. The profile of the victims of forced disappearances in Colombia, according to the database of the OMC, indicates the roles of the activists or political leaders (576) and the union workers (259), among others<sup>11</sup>. According to the CNMH, these forced disappearances were executed during the implementation of the National Security Doctrine already mentioned in the context in which trade unions fall under the category of “internal enemy.”<sup>12</sup> In its Annual Report from 2016, the IACHR highlighted that the information received regarding the disappearance of more than 60,000 persons in Colombia, registered since 1970, has not been translated into a real, effective and long-lasting response from the State in order to fight impunity, also having a lack of results in relation to the location of remains, whereabouts or destination of the victims.<sup>13</sup>

## **B. Context regarding political violence in Colombia**

17. The IACHR has been monitoring the situation of political violence in Colombia since the eighties. On April 1980, it conducted a visit on site and subsequent successive visits until May 1981.<sup>14</sup> In its Annual Report from 1996, by referring to Colombia’s situation, the IACHR highlighted that the attacks against persons who work on human rights, political parties as an alternative to the traditional ones, and authorities elected at local level, continued in 1996. It notified the following:

Non-governmental forces consider that the 65% of the political killings are responsibility of the armed forces and paramilitary groups. Such sources estimate that the number of violations committed by the security forces of the Colombian State dropped in 1996, constituting approximately from 8% to 18% of all the political killings in which the attackers have been identified. While the number of political killings committed by State forces decreased, the number of such violations committed by paramilitary forces increased. Non-governmental forces state that paramilitaries are responsible for the 48% to 59% of the extrajudicial killings due to political reasons. The Ombudsman in Colombia has informed that the paramilitary activity increased 62% since 1992. These statistics should be analyzed in the context of serious signs that relate the killings committed by paramilitaries with the complicity of individual soldiers or military units that tend to demonstrate that the Government has not acted in an adequate way to control the paramilitaries.<sup>15</sup>

18. In subsequent reports on the Human Rights Situation in Colombia, the IACHR has continued referring to the situation of political violence in the country. In this sense, it affirmed that the magnitude of the violations to the right to life “have been characterized by a clear political orientation, as many of the victims have been persons who supported political positions opposed to the government or who had showed their discrepancy with it in political acts. In violations of the right to life, several methods have been employed, such

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<sup>9</sup> Annex 12. Press release “In the last year, 32 union workers were murdered” published by *El Colombiano* on May 1, 1987. Annex to the communication from the petitioners received on February 18, 1992.

<sup>10</sup> National Centre of Historical Memory (2016), until their finding. The drama of forced disappearance in Colombia, CNMH, Bogotá. p. 74.

<sup>11</sup> National Centre of Historical Memory (2016), *ibid.* p. 86.

<sup>12</sup> National Center of Historical Memory. Forced disappearance Volume II: Tracks and Faces of the Forced Disappearance (1970-2010). Bogotá: National Printing House, 2013. pp. 137.

<sup>13</sup> IACHR. Annual Report of the Inter-American Commission on Human Rights 2016. Chapter V. OEA/Ser.L/V/II. Doc. 2015, March 2017. para. 47.

<sup>14</sup> IACHR, *Second Report on the Human Rights Situation in Colombia*, October 14, 1993.

<sup>15</sup> IACHR, Annual Report of the Inter-American Commission on Human Rights from 1996, OEA/Ser.L/V/II.95. doc. Rev. No. 7 dated March 14, 1997, p.p. 633.

as disappearances, summary executions of persons and groups and other atrocious acts, which are considered in this report.”<sup>16</sup>

19. Regarding the concrete acts of violence against political parties, the IACHR has stated the following:

On the same time, paramilitary groups threatened certain candidates and warned the residents of certain regions of the country to abstain from voting or participating in the elections in any way. The influence of paramilitary groups gained more significance in the region of the Atlantic coast, especially in Urabá, Córdoba, Magdalena and in the south of the Cesar department. The intervention of paramilitary groups blocked almost totally the inscription of left-wing parties in the elections in the regions of Urabá, where, in previous years, members of alternative political parties such as the Patriotic Union had gained notable political influence.

(...)

These incidents are recorded in a history of violence against elected officials which, according to official sources, includes the assassination of 28 mayors between 1995 and 1997. In 1995, 18 mayors were abducted. In 1996, the number rose to 23. Between November 1996 and September 1997, 41 mayors were abducted. Another 40 were victims of threats or aggressions. Between January 1995 and July 1997, 140 members of city councils were killed.

The Commission is worried about the possibility that these constant attacks, which violate the international humanitarian law, may lead to a situation in which the Colombian citizens will be deprived of the effective access to the right to vote and to the direct or representative political participation. The Commission encourages the State to take the necessary measures to guarantee the protection of the rights to political participation, with the objective of making Colombia remain as a fully democratic State.<sup>17</sup>

20. Likewise, several national and international entities have recorded or informed about the situation of political violence in Colombia. In this way, in joint report from 1995 about their visit to Colombia, the United Nations Special Rapporteurs on torture and on extrajudicial, summary or arbitrary executions, highlighted that during the last decades, the persons who have expressed themselves in a critical way about political, economic or social conditions, have been victims of human rights violations.<sup>18</sup> In this sense, they indicated that political dissent has been considered by traditional sectors and drug-trafficking as a threat to their interests, and is considered as a subversive activity not only by the militaries involved in counterinsurgency activities in rural areas, but also by a great number of civil authorities and State institutions.<sup>19</sup> In this way, categorized as “guerrillas” or “internal enemies,” many members of the opposition live under constant threat and the alarming number of assassinations committed against them is really disturbing.<sup>20</sup>

21. For its part, the Colombian Constitutional Court has referred to the appearance of groups, movements and political parties as a result of the demobilization of former members of the guerrilla. It has highlighted that such situation “requires special protection and support by the State.” The institutionalization of the conflict, the abandonment of arms and its substitution by the active exercise of the political-democratic

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<sup>16</sup> IACHR, Second Report on the Human Rights Situation in Colombia, October 14, 1993.

<sup>17</sup> Second Report on the Human Rights Situation in Colombia, OEA/Ser.L/V/II. 102 Doc. 9 rev. 1 dated February 26, 1999, Chapter IX, Freedom of Association and Political Rights, E. Alternative Political Parties, para. 36, 47 y 48.

<sup>18</sup> United Nations, Joint Report of the visit to Colombia of the Special Rapporteur in charge of the torture matter, Mr. Nigel S. Rodley, and of the Special Rapporteur in charge of extrajudicial, summary or arbitrary executions, Mr. Bacre Waly Ndiaye, E/CN.4/1995/111, January 16, 1995.

<sup>19</sup> United Nations, Joint Report of the visit to Colombia of the Special Rapporteur in charge of the torture matter, Mr. Nigel S. Rodley, and of the Special Rapporteur in charge of extrajudicial, summary or arbitrary executions, Mr. Bacre Waly Ndiaye, E/CN.4/1995/111, January 16, 1995.

<sup>20</sup> United Nations, Joint Report of the visit to Colombia of the Special Rapporteur in charge of the torture matter, Mr. Nigel S. Rodley, and of the Special Rapporteur in charge of extrajudicial, summary or arbitrary executions, Mr. Bacre Waly Ndiaye, E/CN.4/1995/111, January 16, 1995.

participation and the withdrawal of violence as a method to archive the social change are alternatives that should be guaranteed by all the authorities to prevent the so called “dirty war” from blocking the possibility to reach a consensus that may reunite all the sectors and allow the peaceful cohabitation.”<sup>21</sup>

**C. Information about Pedro Julio Movilla, his family, activities and events prior to the disappearance.**

22. The petitioners identified Pedro Julio Movilla Galarcio and the following relatives as victims in the present case: Candelaria Nurys Vergara Carriazo (wife); Carlos Julio, José Antonio and Jenny Movilla Vergara (children); Leonor, Erasmo, María de Jesús (deceased), Marta, Rita, Nery del Carmen, all with the surname Movilla (brothers); Erasmo Movilla, Raúl Ramos and the three sons of Nery del Carmen (nephews); Ricardo, Franklyn and Dominga Movilla; and María Isabel Carriazo and José Vergara (deceased parents-in-law).

23. The petitioners indicated that the alleged victim and his family faced a persecution as a result of his union activities and political leadership. They highlighted that in 1974, Pedro Julio Movilla Galarcio was dismissed from his job at the INCORA (Colombian Institute for Agrarian Reform) due to his participation in a protest, which led to his detention in Monteria for a month.<sup>22</sup> Subsequently, he worked as counselor in trade union organizations and was an activist at the Popular Labor Committee (*Comité Obrero Popular*) in Córdoba. The IACHR observes that his wife declared before the General Prosecutor’s Office that the motive of the persecution was “the way in which he thought” adding that “the only two entities with which he had issues were the Government and State bodies.” Ms. Vergara reiterated that, in Monteria, Córdoba, they were victims of harassments without knowing if they came from the “F.2.” (police intelligence body), of the Central Office of the Judicial Police (*Dirección Central de Policía Judicial e Inteligencia*) (hereinafter, “the Dijin”) or the Administrative Department of Security (*Departamento Administrativo de Seguridad*), (hereinafter, the “DAS”). She added that harassment continued in Bogotá, where she worked in the trade union “National Union of Bank Employees,” and described persecutions. Finally, she highlighted that in Monteria, Córdoba, Mr. Movilla Galarcio heard that he was told “be careful, take care of yourself because they are looking for you there.”<sup>23</sup>

24. The Commission observes that Candelaria Vergara also declared before General Prosecutor’s Office that in 1990, already in Bogotá, Pedro Julio Movilla Galarcio was a member of the PCC-ML, an organization that “was negotiating with the government, and as a result, we had to be very careful with persecutions, because at that time they were under that negotiating process and they were following us since then.” Following this line, Ms. Vergara also declared that when visiting their relatives in Monteria, she saw several cars with dark glasses and no licenses parked in front of her house in the neighborhood of Buenavista, in a watchful attitude, which was intimidating to them, given that in Monteria persons close to their family had been murdered.<sup>24</sup> The petitioners alleged that the State did not recognize the complaints filed regarding the continuous aggressions that they were suffering.<sup>25</sup>

25. The IACHR also takes notice of the statement by Humberto Javier Callejas Rua before the PGN, in which he informed that he was a trade union leader, that he had been in prison for six months and that he met Pedro Julio Movilla Galarcio due to his union activities in Medellín. In such statement, Mr. Callejas highlighted that after his detention in Cartagena, he was beaten and interrogated by agents of the Dijin, while they asked them insistently about the alleged victim or about “Milton.” He affirmed that he presumed the interest in finding Pedro Julio Movilla Galarcio was related to his activism in an underground party, as the PCC-

<sup>21</sup> Colombian Constitutional Court, Order T-439 of 1992, July 2, 1992. Reporting Judge Eduardo Cifuentes Muñoz.

<sup>22</sup> On this regard, the Commission identifies what has been observed by the PGN in the records of the DAS, where there is a record of a sentence of 25 days of house arrest issued by inspector 5 of the Police of Monteria to Pedro Julio Movilla Galarcio, dated March 1976. Annex 5. PGN, Record No. 008-139893. Report on the visit carried out at the Office of Specialized Archives of the DAS. August 5, 1993. Annex to the petitioners’ communication of January 28, 2012.

<sup>23</sup> Annex 6. General Prosecutor’s Office, Rad. 096. Procedure of expansion of the statement by Candelaria Nurys Vergara Carriazo. June 7, 2012; Annex 7. General Prosecutor’s Office, Rad. 096. Procedure of expansion of the statement by Candelaria Nurys Vergara Carriazo before the General Prosecutor’s Office. April 13, 1994. Annex to the petitioners’ communication of January 28, 2012.

<sup>24</sup> Annex 8. General Prosecutor’s Office. Rad. 096. Statement by Candelaria Vergara. June 7, 2012. Annex to the petitioners’ communication of January 28, 2012.

<sup>25</sup> Annex 9. Petitioners’ communication of January 15, 2016.

ML was.<sup>26</sup> Moreover, in the declaration before the General Prosecutor's Office, the witness indicated that he was aware of persecutions and threats carried out against the members of the PCC-ML in the subsequent period to the demobilization in 1991. He highlighted that this also occurred to him, to another activist, Efraín Gómez, in Barranquilla, and to Pedro Julio Movilla Galarcio, and that such actions came from "State agents, the police, the Army."<sup>27</sup>

26. The IACHR also identifies records of Brigade XIII of the Army, which confirm that Pedro Julio Movilla Galarcio was subjected to intelligence activities by the National Army, in which he appeared with the alias of "Milton," and was qualified as "a criminal trainer" of the EPL, "dissident," member of the Central Committee of the PCC-ML and as secretary of the Federation of Workers of Córdoba. A record from 1992 is observed, in which the following was registered: "located on Av. 34 CR. 18, Trade union. Sv. his workplace."<sup>28</sup> This results consistent with what was indicated by his wife, who highlighted that in that time "the army had also identified our workplaces and our home."<sup>29</sup> She warned that, even after the disappearance of Pedro Julio Movilla Galarcio, they continued being harassed and that in one opportunity, their second son was almost taken from the Andrés Bello School. Ms. Vergara indicated the General Prosecutor's Office that her house was being watched and that on May 17, 1993, when she went to her children's school reporting the disappearance of Pedro Julio Movilla Galarcio, they were followed persecuted when they left the school, managing to escape in a taxi towards ASFADDES.<sup>30</sup>

27. The Commission observes that in the context of the investigations of the PGN, a "special visit" was carried out at the office of the Dijin for the visualization of the booklet with information about Pedro Julio Movilla Galarcio, which reveals the following: "height 1,62, dark-skinned, big eyes, wavy hair, big mole on the face (cheek is not specified), thin beard...his mate is called Nurys...she works at the banking union AV-34 Kra 18 after the restaurant 'MI GUITARRA' in Santa Fe, Bogotá...she currently drives a blue Mitsubishi Montero with a white cabin...In Cartagena she frequents a house in the neighborhood of la Popa near Brasilia...In Barranquilla she frequents the house of REINALDO MAZA, first regional secretariat of the coast...She was possible born at MOMIL (Cor.) (...)"<sup>31</sup>

#### **D. The disappearance of Pedro Julio Movilla Galarcio on May 13, 1993**

28. On May 13, 1993, Pedro Julio Movilla Galarcio left his house in the city of Bogotá, accompanied by his wife, who described that he was "dressed in a coffee-colored suit without a tie, pink striped shirt and coffee-colored moccasins." She added that after saying goodbye to her, he went to leave their daughter Jenny at 8:00 a.m. at the entrance of Kennedy School, located at carrera 68 street with Primero de Mayo avenue, and committed to pick her up at 11:00 a.m. Since then, his whereabouts are unknown.

29. The testimonies<sup>32</sup> of people who were close to the school reveal that since early hours of the morning of the disappearance, they noted the presence of motorcycles<sup>33</sup> that did not allow the identification of their licenses. They were driven by armed subjects, who were not identified because they had helmets or

<sup>26</sup> Annex X. PGN, Record No. 008-139893. Declaration of Mr. Humberto Javier Callejas Rua. June 22, 1993. Annex to the petitioners' communication of January 28, 2012.

<sup>27</sup> Annex X. General Prosecutor's Office, Rad. 096. Declaration of Mr. Humberto Javier Callejas Rua. October 25, 2012. Annex to petitioners' communication of January 28, 2012.

<sup>28</sup> Annex X. PGN, Record No. 008-139893. Records from the National Army with general information about Pedro Julio Movilla Galarcio. Issued on May 28, 1993, and signed by Brigadier General Iván Ramírez Quintero, intelligence director of the army. Annex to the petitioners' communication of January 28, 2012.

<sup>29</sup> Annex X. PGN, Record No. 008-139893. Report on the special visit carried out at Dijin's Office. June 2, 1993. Annex to petitioners' communication of January 28, 2012.

<sup>30</sup> Annex X. General Prosecutor's Office, Rad. 096. Procedure of expansion of the statement by Candelaria Nurys Vergara Carriazo. Record 096. June 7, 2012. Annex to petitioners' communication of January 28, 2012.

<sup>31</sup> Annex X. PGN, Record No. 008-139893. Report on the visit carried out at the Office of Dijin. June 2, 1993. Annex to petitioners' communication of January 28, 2012.

<sup>32</sup> Annex X. PGN, Record No. 008-139893. Statement by Germán Chávez Murcia. May 25, 1993; Annex 19. PGN, Record No. 008-139893. Statement by Hugo León Peña. May 25, 1993; Annex 20. PGN, Record No. 008-139893. Statement by Ana Elvina Fernández. May 26, 1993; Annex 21. PGN, Record No. 008-139893. Statement by Olga Inés Galeano. June 18, 1993. Annex to the petitioners' communication of January 28, 2012.

<sup>33</sup> The Commission states that the exact number of motorcycles reported by the witnesses differ between one, two or three.

hoods.<sup>34</sup> They also reveal that in the same place, around 9:00 a.m., a subject dressed in a coffee-colored suit, presumably intoxicated, shot at the air, which made the professors call the Command of Comprehensive Attention (*Comando de Atención Integral*) (hereinafter “the CAI”), who seized the gun and arrested the individual.<sup>35</sup>

30. The events related to the shootings were reported by the PGN in the following way: “pursuant to the special visit carried out at Station 100 of the CDA [Command of National Police (*Comando de Policía Nacional*)] (hereinafter “the CDA”) to the daily summary of news, Mr. Pedro Julián Pabón Díaz was arrested at Primero de Mayo Avenue with Carrera 50. He was seized a Llama 38-caliber revolver, for having fired three shots into the air in an intoxication state, being driven to the XIV police station of the neighborhood of Ricaurte in this city.”<sup>36</sup> Likewise, in the context of the investigations of the PGN<sup>37</sup> of the FGN<sup>38</sup>, the IACHR identifies that it was determined that the gun belonged to lieutenant Ramiro Bohórquez Neuta (active police member at the time of the events).<sup>39</sup>

31. The State indicated that “in the disciplinary process it was established that Mr. Ramiro Bohórquez Neuta does not know Mr. Pedro Julio Movilla, according to the statement given by the Police Officer, and nor does he know Mr. Pedro Julián Pabón.” Likewise, regarding the seized arm, the State indicated that “Mr. Bohórquez reported that approximately a year ago, his gun was lost and that was never able to recover it, therefore, he filed the respective complaint before the disciplinary authority.” The State concluded indicating that “any irregularity alleged by the petitioners regarding the complaint filed for the missing gun (...) does not conform to the records of the criminal and disciplinary investigation.”<sup>40</sup>

## **E. Investigation and proceedings regarding the disappearance of Julio Movilla Galarcio**

32. The case files show that three internal proceedings were carried out: disciplinary, criminal and contentious-administrative. Moreover, on May 18, 1993, the CCAJAR lodged an *habeas corpus* action before the Criminal Court No. 54 of the Bogotá Circuit, which was declared inadmissible on May 19 because the place of capture of the missing person was not indicated in the complaint.<sup>41</sup> Likewise, on September 7, 1993, the Regional Prosecutor’s Office of Medellín, Antioquia, issued a ruling of preliminary investigation<sup>42</sup> due to the complaint filed by the Union Federation of Workers of Antioquia (*Federación Sindical de Trabajadores de Antioquia*) –FESUTRAN-CUT for the same events<sup>43</sup>, which was brought forward for the abduction felony. In this last process, on October 19, 1993, it was ordered to remit the proceedings to another unit due to jurisdiction matters.<sup>44</sup> The IACHR does not have further information regarding these procedures.

### **1. Disciplinary process before the PGN**

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<sup>34</sup> Some testimonies indicate that their face was covered by hoods and others by helmets.

<sup>35</sup> Annex X. PGN, Record No. 008-139893. Evaluation report on investigation proceedings – Conclusions. June 4, 1993. Annex to petitioners’ communication of January 28, 2012.

<sup>36</sup> Annex X. PGN, Record No. 008-139893. Evaluation report on investigation proceedings. June 4, 1993. Annex to the petitioners’ communication of January 28, 2012. Such information refers to the report of the Metropolitan Police of Santa Fe de Bogotá, Station One-hundred, of the Incident of “Illegal possession of weapons” at Primero de Mayo avenue & CR 50 on May 13, 1993: “A llama CASIDI revolver is seized; 38 long, blued, with three cartridges and three cases, No. IM-9753g, carried by Mr. Pedro Luis Pabón Díaz, (...)”

<sup>37</sup> Annex X. PGN, Record No. 008-139893. Report of the special visit at the legal office of the Department for the Control of Arms, Ammunitions and Explosives Trade of Colombia. November 4, 1993. Annex to the petitioners’ communication of January 28, 2012.

<sup>38</sup> Annex X. General Prosecutor’s Office, Rad. No. 096. Report of the Department for the Control of Arms, Ammunitions and Explosives Trade of Colombia. March 2, 2009. Annex to the petitioners’ communication of January 28, 2012.

<sup>39</sup> Annex X. PGN, Record No. 008-139893. Report of the Special Procedures Division officers section. November 8, 1993. Annex to the petitioners’ communication of January 28, 2012.

<sup>40</sup> Annex X. State’s communication of November 16, 2017.

<sup>41</sup> Annex X. Ruling of the Criminal Circuit 54 on the *Habeas Corpus* action in favor of Julio Movilla Galarcio. May 19, 1993. The action is rejected by virtue of Art. 432 of the Code of Criminal Procedure that states that “the request should state the place in which the person is arrested and, possibly, the name of the officer who ordered the arrest.” Annex to the petitioners’ communication of January 28, 2012.

<sup>42</sup> Annex X. Ruling of preliminary investigation of the Prosecutor’s Office of Medellín. September 7, 1993. Annex to the petitioners’ communication of January 28, 2012.

<sup>43</sup> Annex X. Letter from FESUTRAN addressed to PGN. June 10, 1993. Annex to the petitioners’ communication of January 28, 2012.

<sup>44</sup> Annex X. Ruling of preliminary investigation of the Prosecutor’s Office of Medellín. October 19, 1993. Annex to the petitioners’ communication of January 28, 2012.

33. On May 18, 1993, Ms. Vergara filed a complaint before the PGN.<sup>45</sup> On May 20, 1993, the PGN ordered the initiation of the preliminary investigation. The main proceedings carried out in this investigation are summarized below.

34. The circumstances of day and time of the disappearance of the alleged victim were reconstructed from the statement of four testimonies carried out by the PGN, who were taken to four persons who were close to the Kennedy School on May 13, 1993. It is also stated in the file that the PGN carried out several proceedings related to the intelligence actions performed regarding Pedro Julio Movilla Galarcio. The results of these proceedings led the PGN to affirm that the “records registered in the Intelligence Bureau about Pedro Julio Movilla indicate that due to his activity, he was subjected to persecutions by the military intelligence service.”<sup>46</sup> Moreover, on the testimonial level, the PGN took statements from witnesses of the persecution and interest of intelligence bodies on Pedro Julio Movilla Galarcio. The relevant content of this examined evidence has already been referred to in the present report in the description of the facts.

35. The IACHR observes that the petitioners requested the PGN to investigate before the National Army the motives, time and sources of the intelligence reports. However, this request was rejected given that in the disciplinary investigations, the complainant was not considered as a party to the proceedings.<sup>47</sup>

36. In relation to the shootings heard on May 13, 1993, and the arrest of an intoxicated individual who had allegedly fired them, there are several proceedings stated in the record to clarify such events in the terms already described in the present report.<sup>48</sup>

37. The Commission observes that, in this line of investigation, the PGN recorded its visit to the Criminal Court No. 51 and confirmed the existence of a criminal proceeding against Mr. Pabón of the year 1991, which reveals that by February 26, 1991, he was “an informant of the Dijin, of the F-2 (...)” highlighting that “one gains commissions there” and that he worked with captain Ramírez, Chief of the Anti-Kidnapping squad and with Mr. Correa and Mr. Grijalba, of the same group.<sup>49</sup> The petitioners requested the PGN to investigate the officer of Station No. 100 who released Mr. Pabón and who returned the gun to him. However, this request was rejected given that in the disciplinary investigations, the complainant was not considered as a party to the proceedings.<sup>50</sup>

38. The IACHR observes that there are several proceedings carried out by the PGN aimed at identifying the whereabouts of Mr. Pabón. In this sense, the course of the proceedings to the Customs Office<sup>51</sup> and Land Registry<sup>52</sup> are recorded in the file, for example, for the determination of a domicile to which Mr. Pabón can be called to declare. Moreover, it is observed that the interception of his communications (beeper) was ordered in October, 1993.<sup>53</sup>

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<sup>45</sup> Annex X. PGN, Record No. 008-139893. Complaint filed by Candelaria Vegara. May 19, 1995. Annex to the petitioners’ communication of January 28, 2012.

<sup>46</sup> Annex X. PGN, Record No. 008-139893. Report on the preliminary observation ordered on June 17, 1993. Annex to the petitioners’ communication of January 28, 2012.

<sup>47</sup> Annex X. PGN, Record No. 008-139893 Communication of April 05, 1995. Annex to the petitioners’ communication of January 28, 2012.

<sup>48</sup> Annex X. PGN, Record No. 008-139893. Office of the Metropolitan Police, Station 100 to the PGN. May 27, 1993. Annex to petitioners’ communication of January 28, 2012; Annex X. PGN, Record No. 008-139893. Evaluation report on investigation proceedings. June 4, 1993. Annex to petitioners’ communication of January 28, 2012; Annex X. PGN, Record No. 008-139893. Sworn statement by Ramiro Bohórquez Neuta. December 15, 1993. Annex to the petitioners’ communication of January 28, 2012.

<sup>49</sup> Annex X. PGN, Record No. 008-139893. Report on the special visit carried out at the Circuit Criminal Court No. 51. Criminal proceeding C-545 against Pedro Julián Pabón Díaz for the crimes of illegal possession of guns, bribery, overtaking of public office and uttering of counterfeit currency. Office of Special Investigations of the PGN. December 14, 1993. Annex to the petitioners’ communication of January 28, 2012.

<sup>50</sup> Annex X. PGN, Record No. 008-139893. Communication of April 05, 1995. Annex to the petitioners’ communication of January 28, 2012.

<sup>51</sup> Annex X. PGN, Record No. 008-139893. Record of the Special Visit to the Office of Division of Documentation, Department of National Tax and Customs for individuals, Santa fe. Bogotá. November 4, 1993. Annex to the petitioners’ communication of January 28, 2012.

<sup>52</sup> Annex X. PGN, Record No. 008-139893. Report on the visit carried out at the Office of Land Registry of the City of Fusagasuga (Cundinamarca). June 18, 1993; Annex 64. PGN, Record No. 008-139893. Notice of appearance to Pedro Julián Pabón Díaz. July 18, 1993; Annex 65. PGN, Record No. 008-139893. Record of the Special Visit to the Office of Files Division of the District of Land Registry. November 5, 1993. Annex to the petitioners’ communication of January 28, 2012.

<sup>53</sup> Annex X. General Prosecutor’s Office, Rad. 096. Order No. 003 of October 29, 1993. Annex to the petitioners’ communication of January 28, 2012.

39. As regards the proceedings for the physical location of the alleged victim, the Commission states that searches of the dactyloscopy records of Pedro Julio Movilla Galarcio were carried out at the National Civil Registry<sup>54</sup>, the National Institute of Legal Medicine and Forensic Sciences<sup>55</sup>, the Criminalistics Division of the Dijin<sup>56</sup>, the Office of Specialized Files of the DAS<sup>57</sup>, National Section N.N and Missing persons of the Criminalistics Division of the Technical Investigation Force of the General Prosecutor's Office<sup>58</sup>, having negative results in all the cases. There is also a report from the Office of Identification and Missing Persons of the National Institute of Legal Medicine and Forensic sciences which states that in the book of reception of corpses, the photograph album of filiation, the file of morphologic descriptions and dental records were analyzed by such entity in the search of coincidences with the description of Pedro Julio Movilla Galarcio, also with negative results. Likewise, it was informed about the periodic visits that Candelaria Vergara carried out to the office to directly revise the photograph album of non-identified corpses, also with negative results.<sup>59</sup> The PGN also carried out visits to the dactyloscopy laboratory of said institute with the aim of establishing a connection between the non-identified persons and corpses placed in the unit of Legal Medicine since May 13, 1993, obtaining negative results.<sup>60</sup> The IACHR observes that the PGN also carried out visits to different detention rooms of the security entities, such as Sijin, Dijin and DAS.<sup>61</sup>

40. On February 17, 1998, the PGN filed the preliminary inquiry, which was appealed and revoked on July 9, 1998. The investigation was filed a second time on January 23, 2001<sup>62</sup> under the argument that "given that the forced disappearance is a conduct of a successive nature, it would proceed to order the provisional file of the proceedings because if any signs are found –in the context of the criminal investigation– by which the responsibility of public officials could be presumed, the evidence would be filed and the investigation would be resumed."<sup>63</sup>

## **2. The criminal investigation - Record No. 096 before the General Prosecutor's Office.**

41. Moreover, after the complaint filed, the General Prosecutor's Office opened the criminal investigation, which was carried out by several units within the General Prosecutor's Office: The National Unit of Prosecutors Against Kidnapping and Extortion, sectional specialized prosecutors and the National Unit on Human Rights and international humanitarian law (hereinafter the "UDH"). The analysis of the criminal record reveals some proceedings carried out in the year 1993<sup>64</sup> and other three proceedings in the year 1994.<sup>65</sup>

<sup>54</sup> Annex X. PGN, Record No. 008-139893. Report on the visit carried out at the Office of Information of the National Registry. July 12, 1993. Annex to the petitioners' communication of January 28, 2012.

<sup>55</sup> Annex X. PGN, Record No. 008-139893. Report of the Office of Identification and Missing Persons of the National Institute of Legal Medicine and Forensic Sciences. July 9, 1993. Annex to the petitioners' communication of January 28, 2012.

<sup>56</sup> Annex X. PGN, Record No. 008-139893. Report on the visit carried out at the Office of Specialized Archives of the DAS. August 5, 1993. Annex to the petitioners' communication of January 28, 2012.

<sup>57</sup> Annex X. PGN, Record No. 008-139893. Record of the special visit carried out at the Unit of Post-Mortem Fingerprinting of Dijin, Criminalistics Division. August 4, 1993. Annex to the petitioners' communication of January 28, 2012.

<sup>58</sup> Annex X. PGN, Record No. 008-139893. Report of the National Section N.N. and Missing Persons of the Technical Investigation Unit, Criminalistics Division of the Prosecutor's Office. August 26, 1993. Annex to the petitioners' communication of January 28, 2012.

<sup>59</sup> Annex X. PGN, Record No. 008-139893. Official communication of the Office of Identification and Missing Persons. Official communication No. 092-93-OPD of July 9, 1993. Annex to the petitioners' communication of January 28, 2012.

<sup>60</sup> Annex X. PGN, Record No. 008-139893. Report of the visit carried out at the Dactyloscopy Laboratory of the National Institute of Legal Medicine and Forensic Sciences. September 1, 1993. Annex to the petitioners' communication of January 28, 2012.

<sup>61</sup> Annex X. PGN, Record No. 008-139893. Report of the inspection to CAI 72. May 20, 1993; Annex 75. PGN, Record No. 008-139893. Report of the special visit in the command of Station 100 "C.A.D" of the National Police, in Santa Fe de Bogotá. May 26, 1993; Annex X. PGN, Record No. 008-139893. Report of the special visit carried out at the detention room of the DAS, Santa Fe de Bogotá D.C. May 28, 1993; Annex 77. PGN, Record No. 008-139893. Report on the visit carried out at the retention room of the Sijin and DAS. May 28, 1993; Annex 78. General Prosecutor's Office, Rad. 096. Report of the General Prosecutor's Office of May 31, 1993. Annex to the petitioners' communication of January 28, 2012.

<sup>62</sup> Annex X. PGN, Record No. 008-139893. Report of the Office of the Inspector General for the Defense of Human Rights on the repeal of the closure decision of March 27, 1998. Notified on August 24, 1998. Annex to the petitioners' communication of January 28, 2012.

<sup>63</sup> Annex X. State's communication of November 16, 2017.

<sup>64</sup> Annex X. General Prosecutor's Office, Rad. 096. Report of the General Prosecutor's Office of May 31, 1993. Two testimonial statements of Candelaria Vergara, Olga Inés Medina, and visits to the facilities of Legal Medicine, Dijin, Sijin, DAS and Military Forces were reported. Annex to the petitioners' communication of January 28, 2012.

<sup>65</sup> Annex X. General Prosecutor's Office, Rad. No. 096. Communication to ASFADDES. February 17, 1994; Annex 81. General Prosecutor's Office, Rad. 096. Official note to the Division of Laboratory and Identification. March 29, 1994; Annex 82. General Prosecutor's Office, Rad. 096. Declaration of Candelaria Vergara. April 13, 1994. Annex to the petitioners' communication of January 28, 2012.

However, the IACHR notices that the investigation was suspended in several occasions. It was suspended for the first time on June 5, 1996, due to the lack of evidence.<sup>66</sup> The file contains the resolution of October 24, 1996, by which the UDC revoked the suspension of the investigation and ordered new proceedings<sup>67</sup>, which were carried out since April, 1997.<sup>68</sup> On December 11, 2001, the UDH ordered once again the suspension of the preliminary investigation due to the impossibility of identifying the persons responsible for the crime<sup>69</sup>. On January 17, 2006, the specialized Prosecutor No. 23 of the UDH resumed the investigation and ordered to carry out proceedings.<sup>70</sup> Likewise, the record contains copies of the actions carried out in the context of the disciplinary investigation incorporated in the criminal investigation on April 15, 1994,<sup>71</sup> on November 14, 1996,<sup>72</sup> and on April 19, 2000.<sup>73</sup>

42. According to the petitioners, the last proceedings were carried out on December 12, 2015, when Deicy Liliana Mondragón was called to declare, who was Mr. Pabón's partner.<sup>74</sup> However, the State indicated that during 2016, the General Prosecutor's Office settled a date and time to take statements and testimonies, as well as the conduction of a judicial inspection.<sup>75</sup> The State does not specify the type of inspection nor the place. The State informed the IACHR that Mr. Pabón made a statement on July 8, 2016, before the General Prosecutor's Office.

43. As regards the constitution of the petitioners as a civil party, the IACHR observes that the General Prosecutor's Office did not accept the requests concluding that "still, the order for opening the evidence period has not been issued, which means that it is still in a preliminary stage, in which case the civil party does not operate (...)."<sup>76</sup> The Commission observes that on January 21, 2003, the petitioners submitted a claim to appear in person as a civil party before the UDH (appealing to the right based on the constitutional jurisprudence of 2002), however, such request was dismissed once again on May 15, 2003, by not proving the determination of heirship of Candelaria Vergara, as stipulated by the procedural criminal law. It was only on September 13, 2011, after their constitution as a civil party in the process,<sup>77</sup> that it agreed to the examination of evidence requested by the petitioners.<sup>78</sup>

44. The proceedings carried out throughout the criminal investigation are summarized below.

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<sup>66</sup> Annex X. Petitioners' communication of June 15, 2016.

<sup>67</sup> Annex X. General Prosecutor's Office, Rad. No. 096. UDH Resolution of October 24, 1996. Annex to the petitioners' communication of January 28, 2012.

<sup>68</sup> Annex X. General Prosecutor's Office, Rad. No. 096. Official note to the Technical Investigation Force by the National Directorate of Prosecutors' Offices, Human Rights Unit. April 8, 1997. Annex to the petitioners' communication of January 28, 2012.

<sup>69</sup> Annex X. General Prosecutor's Office, Rad. No. 096. Resolution of the Specialized Prosecutor U.D.H of December 11, 2001, in which he concluded that "taking into account that until the present date, more than 180 days have passed since the issuance of the resolution to open the proceeding of a preliminary investigation, it results relevant to apply what it is set forth in Article 326 of the C.P.P., since it has not been possible to establish, identify or individualize any person as alleged author or participant in the events." By a clerk's certificate of January 11, 2002, regarding such resolution, the prosecutor overseeing the case was informed that "this resolution was not complied with on the part of the undersigned due to the fact that Art.326 of the C.P.P was declared unconstitutional by the Constitutional Court by judgment C-760 of July 19, 2001. Annex to the petitioners' communication of January 28, 2012.

<sup>70</sup> Annex X. General Prosecutor's Office, Rad. No. 096. Decree/resolution specialized Prosecutor's office No. 23 takes over this case and orders the examination of evidence. January 17, 2006. Annex to petitioners' communication of January 28, 2012.

<sup>71</sup> Annex X. General Prosecutor's Office, Rad. No. 096. Official communication of PGN with certified copy of the record 008-139893. April 15, 1994. Annex to the petitioners' communication of January 28, 2012.

<sup>72</sup> Annex X. General Prosecutor's Office, Rad. No. 096. General communication to PGN requesting copies of the proceedings taking place in the process 008-139893. November 14, 1996. Annex to the petitioners' communication of January 28, 2012.

<sup>73</sup> Annex X. General Prosecutor's Office, Rad. No. 096. Official communication to refer the record by the PGN. December 19, 2000. Annex to the petitioners' communication of January 28, 2012.

<sup>74</sup> Annex X. Petitioners' communication of June 15, 2016.

<sup>75</sup> Annex X. State's communication of November 16, 2017.

<sup>76</sup> Annex X. General Prosecutor's Office, Rad. No. 096. Resolution of the General Prosecutor's Office in response to the right of petition submitted by Reinaldo Villalba Vargas. July 14, 2000. Annex to petitioners' communication of January 28, 2012; in the same sense, Annex 94. General Prosecutor's Office, Rad. 096. Resolution of the General Prosecutor's Office in response to the right of petition submitted by Reinaldo Villalba Vargas. July 3, 2001; Annex 95. General Prosecutor's Office, Rad. 096. Resolution of the General Prosecutor's Office of July 10, 2001. Annex to petitioners' communication of January 28, 2012.

<sup>77</sup> Annex X. General Prosecutor's Office, Rad. No. 096. Resolution of the Specialized Prosecutor's office No. 48 of the UDH of May 26, 2011. Annex to the petitioners' communication of January 28, 2012.

<sup>78</sup> Annex X. General Prosecutor's Office, Rad. No. 096. Decree of examination of evidence by the UDH. September 13, 2011. Annex to the petitioners' communication of January 28, 2012.

45. Regarding the circumstances of disappearance, the record contains the statements by Candelaria Vergara issued in two opportunities<sup>79</sup>, which are consistent with her version before the PGN which highlights the responsibility of the State and the connection with his activities. There is also the statement of a professor of the Kennedy school, which was ratified in her version of having heard shots on the day of the disappearance of Pedro Julio Movilla Galarcio.<sup>80</sup> The General Prosecutor's Office also took a statement from a professor, which indicated that he gathered versions from students' and parents' of the Kennedy school of whom he learnt that "some men driving motorcycles" took a man.<sup>81</sup>

46. As regards the intelligence actions against the alleged victim, a copy of the judicial process and detention of Mr. Callejas were added, as well as the interrogatories related to his activism to the PCC-ML and his alleged connections with the EPL. He was taken testimony once again, in which he provided, one more time, details of the circumstances of his detention.<sup>82</sup> The General Prosecutor's Office also carried out proceedings for the determination of the militaries who participated in the Mr. Callejas' arrest, without getting any clarifications on this point.<sup>83</sup>

47. The General Prosecutor's Office took the statements of the Director of Intelligence of the Army<sup>84</sup> and of an Intelligence Analyst<sup>85</sup> on duty at the time of the events, who reported that they did not know the source of the intelligence records about Pedro Julio Movilla Galarcio, as the sources of intelligence information were varied and did not respond to an order or operation, but that they were part of the consubstantial labors of this kind of service. Moreover, by means of the Human Rights Group of Investigations and Humanitarian International Law<sup>86</sup>, it requested the Dijin<sup>87</sup>, the Military Intelligence Direction<sup>88</sup>, and the Section of Criminal Analysis of the General Prosecutor's Office<sup>89</sup> to inform about the existence of records related to subversive organizations between 1992 and 1994, or any subject identified with the alias "Milton." The Commission notes that the Military Intelligence Direction<sup>90</sup>, as opposed to what was indicated in 1993, informed that it did not find the aforesaid records; and neither did the Section of Criminal Analysis.<sup>91</sup> The IACHR does not observe a response of the part of the Dijin to the request of the General Prosecutor's Office.

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<sup>79</sup> Annex X. General Prosecutor's Office, Rad. No. 096. Declaration of Candelaria Vergara of April 13, 1994 and June 7, 2012. Annex to the petitioners' communication of January 28, 2012.

<sup>80</sup> Annex X. General Prosecutor's Office, Rad. No. 096. Statement by Martha Yolanda Medina de Chaparro, professor of the Kennedy school. April 12, 1996. Annex to petitioners' communication of January 28, 2012.

<sup>81</sup> Annex X. General Prosecutor's Office, Rad. No. 096. Testimony by Carlos Eduardo Otárola García. April 12, 1996. Annex to petitioners' communication of January 28, 2012.

<sup>82</sup> Annex X. General Prosecutor's Office, Rad. No. 096. Declaration of Mr. Humberto Javier Callejas Rua. October 25, 2012. Annex to the petitioners' communication of January 28, 2012.

<sup>83</sup> Annex X. General Prosecutor's Office, Rad.No.096. Report No. 000003 SIA of February 5, 1999. Annex to petitioners' communication of January 28, 2012; Annex x. General Prosecutor's Office, Rad. No.096. Official Communication of the National Armed Forces. Official Communication No. 003/SAYP-N2-SUB-252 of the Department of Intelligence N2-FNA of January 4, 1999. Annex to petitioners' communication of January 28, 2012; Annex x. General Prosecutor's Office, Rad. No.096. Statement by the non-commissioned officer of the National Police, Fanor Rodríguez España of February 7, 2001. Annex to the petitioners' communication of January 28, 2012.

<sup>84</sup> Annex X. General Prosecutor's Office, Rad. No. 096. Statement by Lieutenant Colonel Gilberto Castellanos of September 3, 1999. Annex to the petitioners' communication of January 28, 2012.

<sup>85</sup> Annex X. General Prosecutor's Office, Rad. No. 096. Declaration of the Major General Iván Ramírez Quinteros of October 1, 1999. Annex to the petitioners' communication of January 28, 2012.

<sup>86</sup> Annex X. General Prosecutor's Office, Rad. No. 096. Official communication to the Group of Investigations U.D.H. June 25, 2012. Annex to the petitioners' communication of January 28, 2012.

<sup>87</sup> Annex X. General Prosecutor's Office, Rad. No. 096. Official communication to the Intelligence Direction of the National Police. June 8, 2012. Annex to petitioners' communication of January 28, 2012.

<sup>88</sup> Annex X. General Prosecutor's Office, Rad. No. 096. Official communication to the Military Intelligence Direction. June 8, 2012. Annex to the petitioners' communication of January 28, 2012.

<sup>89</sup> Annex X. General Prosecutor's Office, Rad. No. 096. General communication to the Section of Criminal Analysis of the General Prosecutor's Office. June 8, 2012. Annex to the petitioners' communication of January 28, 2012.

<sup>90</sup> Annex X. General Prosecutor's Office, Rad. No. 096. Report of the Military Intelligence Direction. August 4, 2012. Annex to the petitioners' communication of January 28, 2012.

<sup>91</sup> Annex X. General Prosecutor's Office, Rad. No. 096. Report of the Section of Criminal Analysis. Illegal armed persons. June 25, 2012. Annex to the petitioners' communication of January 28, 2012.

48. Regarding the possible participation of Mr. Pabón Díaz, on April 8, 1997, the UDH ordered to carry out proceedings in order to find him.<sup>92</sup> Likewise, police officer Bohórquez was taken a statement.<sup>93</sup> As regards the alleged loss of the gun, the General Prosecutor's Office carried out proceedings in the visit of 1997 to the Mayor's Office of Kennedy<sup>94</sup> and in 1998 to the Judicial Unit of the town of Kennedy.<sup>95</sup> The IACHR observes that, as opposed to what was indicated by officer Bohórquez before the PGN, the General Prosecutor's Office was not able to confirm that the loss of the gun which was in Mr. Pabón's possession had been duly reported.<sup>96</sup> On December 18, 2008, the DAS informed the General Prosecutor's Office that Mr. Pabón was convicted on the charges of counterfeit of public office and illegal possession of weapons, being released on August 23, 2002.<sup>97</sup> The IACHR understands that it was not possible to ascertain Mr. Pabón's whereabouts.

49. Finally, as regards the search of the alleged victim, the General Prosecutor's Office requested the obtaining of the ten-print card.<sup>98</sup> In 2011, it requested information about a possible exhumation<sup>99</sup> and verified the existence of a missing person form with the information of the alleged victim in the National Institute of Legal Medicine and Forensic Sciences<sup>100</sup>.

50. From the information available to date, the investigation remains at a preliminary stage.

### **3. Action of direct reparation before the Contentious-Administrative jurisdiction.**

51. On May 19, 1995, Ms. Vergara filed an action of direct reparation against the Nation, the Ministry of Defense and the National Army before the Third Section of the Administrative Court of Cundinamarca.<sup>101</sup> Such claim was rejected in the first instance on October 30, 2001, by considering that the forced disappearance by the public authority was not demonstrated<sup>102</sup> and was appealed by the claimants. On June 23, 2011, the Council of State confirmed the first degree judgement because there was not "evidence in the file to establish that the disappearance of Mr. Pedro Julio Movilla Galarcio might have been carried out by members of the accused public entity."<sup>103</sup>

## **IV. LEGAL ANALYSIS**

<sup>92</sup> Annex X. General Prosecutor's Office, Rad. No. 096. Official Communication No. 859. April 8, 1997. Annex to petitioners' communication of January 28, 2012; Annex X. General Prosecutor's Office, Rad. No. 096. Official communication to the Unit of Public Instruments. June 11, 1997; Annex 120. General Prosecutor's Office, Rad. No. 096. Report of the General Prosecutor's Office regarding the proceedings to locate Pedro Pabón Díaz; Annex 121. General Prosecutor's Office, Rad. No. 096. Report on the investigation proceedings of the General Prosecutor's Office. July 11, 2012. Annex to petitioners' communication of January 28, 2012; Annex x. General Prosecutor's Office, Rad. No. 096. Request by the Unit of Judicial Police to the ASOBANCARIA. June 11, 1997. Annex to petitioners' communication of January 28, 2012; Annex x. General Prosecutor's Office, Rad. No.096. Electoral Organization of the National Civil Registry. September 11, 1997. Annex to the petitioners' communication of January 28, 2012.

<sup>93</sup> Annex X. General Prosecutor's Office, Rad. No. 096. Statement by Ramiro Bohórquez. April 15, 1997. Annex to the petitioners' communication of January 28, 2012.

<sup>94</sup> Annex X. General Prosecutor's Office, Rad. No. 096. Report on the vest carried out at the major's office of Kennedy of June 13, 1997. It was verified that from April 26, 1993, to August 9 of the same year, there are no records about the complaint filed for the theft of Mr. Ramiro Bohórquez Neuta's gun. Annex to the petitioners' communication of January 28, 2012.

<sup>95</sup> Annex X. General Prosecutor's Office, Rad. No. 096. Report of the Government Secretariat of Bogotá. January 28, 1997. It highlights that "the complaint filed by Mr. Ramiro Bohórquez Neuta before the judicial unit of said town in the year 1993 was not found." Annex to the petitioners' communication of January 28, 2012.

<sup>96</sup> Annex X. General Prosecutor's Office, Rad. No. 096. Report UNPJ.DH.A. April 17, 1997. Annex to the petitioners' communication of January 28, 2012.

<sup>97</sup> Annex X. General Prosecutor's Office, Rad. No.096. Report of the Security Administrative Department of the DAS. December 18, 2008. Annex to the petitioners' communication of January 28, 2012.

<sup>98</sup> Annex X. General Prosecutor's Office, Rad. No. 096. Judicial inspection proceeding at the National Civil Registry. April 7, 1994. Annex to the petitioners' communication of January 28, 2012.

<sup>99</sup> Annex X. General Prosecutor's Office, Rad. No. 096. Report of the proceedings. July 11, 2011. Annex to the petitioners' communication of January 28, 2012.

<sup>100</sup> Annex X. General Prosecutor's Office, Rad. No. 096. Report of the proceedings addressed to the specialized Prosecutor's office 48. February 3, 2009. It is stated that the Institute of Legal Medicine filled the form of the missing person Movilla Galarcio, where they enter data to the Sirdec System with the No. 2008D007280. Annex to the petitioners' communication of January 28, 2012.

<sup>101</sup> Annex X. Action for Direct Reparation Rad. 10896 before the Contentious-Administrative Court of Cundinamarca. May 19, 1995. Record No. 95-D-10896. Annex to the petitioners' communication of January 28, 2012.

<sup>102</sup> Annex 131. Judgment of the Administrative Court of Cundinamarca, Third Section, of October 30, 2001. Annex to the petitioners' communication of January 28, 2012.

<sup>103</sup> Annex 132. Judgment Council of State- Contentious-Administrative Chamber. Third Section-Subsection A, of June 23, 2011. Annex to petitioners' communication of January 28, 2012.

**A. The rights to judicial personality, life, humane treatment, and personal liberty (Articles 3<sup>104</sup>, 4<sup>105</sup>, 5<sup>106</sup>, 7<sup>107</sup>, 1.1<sup>108</sup> and 2<sup>109</sup> of the American Convention and Article I a) of the IACFDP<sup>110</sup>)**

**1. General considerations on forced disappearance of persons**

52. The consistent case-law of the Inter-American system in cases of forced disappearance of persons has indicated that it is an illegal act that generates a multiple and continuous violation of several rights protected by the American Convention and places the victim in a state of complete helplessness, involving other crimes.<sup>111</sup>

53. The States have the obligation of not to practice and not to permit the forced disappearance of persons under any circumstances. Likewise, they shall prevent in a reasonable way the commission of this offense, seriously investigate the events to identify those who committed the offense and to punish them accordingly, and to ensure the victim's adequate compensation.<sup>112</sup> These obligations are expressly set forth in Articles I.a) and I.b) of the Inter-American Convention on Forced Disappearance of Persons.

54. Pursuant to the consolidated case-law, the Commission considers that the forced disappearance is a complex human rights violation that continues because the location of the whereabouts of the victim or his remains are still unknown. The disappearance as such only ceases when the victim appears or when the remains are located.<sup>113</sup>

55. Regarding the rights violated, the forced disappearance violates the right to personal freedom and places the victim in a serious situation of risk of suffering irreparable harm to his rights to life and personal integrity. The Court has indicated that the forced disappearance violates the right to personal integrity given that "the sole fact of the prolonged isolation and incommunicado detention represents a cruel and inhumane

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<sup>104</sup> Regarding this matter, article 3 of the American Convention establishes the following: Every person has the right to recognition as a person before the law.

<sup>105</sup> Regarding this matter, article 4 of the American Convention establishes the following: 1. Every 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>106</sup> Regarding this matter, article 5 of the American Convention establishes the following: 1. Every 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 dignity inherent to the human person.

<sup>107</sup> Regarding this matter, article 7 of the American Convention establishes the following: 1. Every person has the right to personal liberty and security, (...)

<sup>108</sup> Article 1.1 of the Convention establishes: The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

<sup>109</sup> Article 2 of the Convention establishes: Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.

<sup>110</sup> Article I of the IACFDP establishes that: The State Parties to this Convention undertake: a) Not to practice, permit, or tolerate the forced disappearance of persons, even in states of emergency or suspension of individual guarantees; (...).

<sup>111</sup> IACHR. Report 101/01. Case 10.247 and others. Extrajudicial executions and forced disappearance of persons. Peru. October 10, 2001. Para. 178; IACHR. Complaint filed before the Inter-American Court, Case No. 11.324, Narciso González and others, Dominican Republic, May, 2, 2010, para. 103; IACHR. Complaint filed before the Inter-American Court, Case No. 12.517, Gregoria Herminia Contreras and others, El Salvador, June 28, 2010, para. 131; I/A Court H.R., *Case Goiburú and others*. Judgment on Merits, Reparations and Costs. Judgment of September 22, 2006. Series C No. 153. Para. 82; I/A Court H.R., *Case Gómez Palomino*. Judgment of September 22, 2005. Series C No. 136. Para. 92; I/A Court H.R., *Case of the Sisters Serrano Cruz. Preliminary objections*. Judgment of September 23, 2004. Series C No. 118, para. 100 to 106; I/A Court H.R., *Case Molina Theissen*. Reparations (Art. 63.1 American Convention on Human Rights). Judgment of July 3, 2004, Series C No. 108, para. 41.

<sup>112</sup> I/A Court. H.R. Case Velásquez Rodríguez Vs. Honduras. Merits. Judgment of July 29, 1988. Series C No. 4, para. 174; Case Anzualdo Castro Vs. Peru. Preliminary objections, Merits, Reparations and Costs. Judgment of September 22, 2009. Series C No. 202, para. 62; and Case Radilla Pacheco Vs. Mexico. Preliminary objections, Merits, Reparations and Costs. Judgment of September 23, 2009. Series C No. 209, para. 142.

<sup>113</sup> IACHR. Complaint filed before the Inter-American Court, Case No. 12.529, Rainer Ibsen Cárdenas and José Luis Ibsen Peña, Bolivia, May 12, 2009, para. 106.

treatment.”<sup>114</sup> Additionally, the Court has considered that in cases of forced disappearance, considering the multiple and complex nature of this serious human rights violation, its execution generates the violation of the right to recognition as a person before the law.<sup>115</sup> That is because not only that the missing person cannot enjoy or exercise his or her rights, but also because the forced disappearance “is not only one of the most serious forms of placing the person outside the protection of the law, but it also entails to deny that person’s existence and to place him or her in a kind of limbo or uncertain legal situation before the society and the State.”<sup>116</sup>

56. As regards the assessment of the evidence, the Commission highlights that in the cases in which forced disappearance is alleged, the nature of this violation should be considered, whose purpose is to eliminate all the elements of the crime and, generally, is followed by a series of actions and omissions of State officials seeking to cover the event by means of actions that initiate with the refusal to recognize deprivation of liberty, continue with the disinformation or the provision of false information about the whereabouts or destination of the victim, and go to the realization of ineffective and lax investigations that, further from the truth, perpetuate the lack of knowledge regarding what happened to the victim.<sup>117</sup>

57. The Court has indicated that as it is a case of alleged forced disappearance, the circumstantial and prima facie evidence are of special importance as “this form of violation is characterized by procuring the elimination of any element that allows to confirm the detention, the whereabouts and the fate of the victims.”<sup>118</sup> The Court has indicated that it is possible to demonstrate the disappearance of an individual by indirect and circumstantial testimonial evidence, added to logical inferences, as well as the link to a general practice of disappearances.<sup>119</sup>

58. In this way, even before the absence of direct evidence about the deprivation of liberty, the Commission has taken into consideration the circumstances that surround the disappearance, the victims’ profiles and their stigmatization due to their connection with certain institutions or functions, the existence of military or police documents that demonstrate the alleged relationship of the victims with subversive organizations, as well as the fear of being persecuted and followed that the victims communicated to their relatives, thus concluding with the State agents’ responsibility for the disappearance.<sup>120</sup>

59. The IACHR recalls that the concurrent and constitutive elements of the forced disappearance are: i) the privation of liberty; ii) the direct intervention of State agents or their acquiescence; and iii) the refusal to recognize the detention or to reveal the fate or whereabouts of the missing person.<sup>121</sup>

## **2. Analysis of the case**

### **2.1 Regarding deprivation of liberty on the part of State agents**

60. The Commission observes that in this case there is no direct evidence indicating that Pedro Julio Movilla Galarcio was deprived of liberty of the part of State agents. However, from the record, multiple indicative, circumstantial and context elements arise, which result pertinent for the present analysis.

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<sup>114</sup> I/A Court. H.R. Case Chaparro Álvarez and Lapo Iñiguez Vs. Ecuador. Preliminary objections, Merits, Reparations and Costs. Judgment of September 21, 2007. Series C No. 170, para. 171; Case Anzualdo Castro Vs. Peru. Preliminary objections, Merits, Reparations and Costs. Judgment of September 22, 2009. Series C No. 202, para. 85.

<sup>115</sup> I/A Court. H.R. Case Anzualdo Castro Vs. Peru. Preliminary objections, Merits, Reparations and Costs. Judgment of September 22, 2009. Series C No. 202, paragraphs 91-92; Case Radilla Pacheco Vs. Mexico. Preliminary objections, Merits, Reparations and Costs. Judgment of September 23, 2009. Series C No. 209, para. 157.

<sup>116</sup> I/A Court. H.R. Case Anzualdo Castro Vs. Peru. Preliminary objections, Merits, Reparations and Costs. Judgment of September 22, 2009. Series C No. 202, para. 90.

<sup>117</sup> IACHR. Report No. 111/09. Case 11.324. Merits. Narciso González Medina. Dominican Republic. November 10, 2009. Para. 56.

<sup>118</sup> I/A Court. H.R. Case González Medina and family Vs. Dominican Republic. Preliminary objections, Merits, Reparations and Costs. Judgment of July 27, 2012, Series C No. 240, para. 134.

<sup>119</sup> I/A Court. H.R. Case Blake vs. Guatemala. Judgment of September 24, 1998. Series C No. 36, para. 49.

<sup>120</sup> IACHR, Report No. 5 /16, Cases 11.053, 11.054, 12.224, 12.225, and 12.823. Merits. Peru. April 13, 2016, paragraphs. 175 – 179.

<sup>121</sup> I/A Court. H.R. Case Gómez Palomino Vs. Peru. Merits, Preliminary objections, Reparations and Costs. Judgment of September 22, 2005, Series C No. 136, para. 97; Case Ticona Estrada Vs. Bolivia. Merits, Reparations and Costs. Judgment of September 27, 2008. Series C No. 191, para. 55; Case Anzualdo Castro Vs. Peru. Preliminary objections, Merits, Reparations and Costs. Judgment of September 22, 2009. Series C No. 202, para. 60.

61. First, as established before, in the present case at least three relevant contexts for the analysis of the present case converged. On the one hand, the context related to the categorization of trade union workers within the notion of internal enemy in the State manuals of intelligence and counter-guerrilla, which had a direct impact on a high incidence in acts of violence against said persons, including executions and forced disappearances. On the other hand, there is the context related to the political violence in Colombia, whereby alarming numbers were registered regarding executions and forced disappearances of persons related to certain political parties with the characteristics of the PCC-ML. The third context is of a high incidence in the forced disappearance of persons in the context of the armed conflict in Colombia, being such serious human rights violation precisely one of those documented in the framework of the first two contexts referred.

62. Second, the Commission highlights that effectively, Pedro Julio Movilla Galarcio belonged to both groups, in his capacity as trade union worker and due to his political activism in the PCC-ML. The detail of his activities is referred to in the proven events.

63. Third, the Commission highlights the consistent description of Mr. Movilla Galarcio's wife regarding the persecutions prior to the disappearance, which she related to the State's security forces. The Commission highlights the displacement of the alleged victim and his family as a result of these persecution acts, including follow-ups, sighting of unidentified vehicles outside their house, the warnings from strangers on the street addressed to the alleged victim to warn him about his safety, among others. The Commission finds that everything described regarding the aforementioned persecutions is explained and results consistent with the intelligence works carried out against Mr. Movilla Galarcio, indicated as follows.

64. Fourth, there is proof of intelligence activities on the part of security forces of the Colombian State prior to the disappearance of Mr. Movilla Galarcio. The Commission considers particularly relevant that such intelligence activities identified the alleged victim with details of his union activities and of his political activism. Likewise, he is connected to a guerrilla group with records such as "a criminal trainer," "EPL/dissident," or "member of an armed group." The three characterizations in this intelligence reports, pursuant to the contexts already referred, allow confirming that such intelligence works placed Mr. Movilla Galarcio in a position of target to the security State forces at the time of the events. Moreover, the IACHR notices the level of details in the intelligence works, that even specify his home address, his displacements and places that he frequented, even in different cities of Colombia.

65. Fifth, the IACHR highlights the statement by Humberto Javier Callejas Rúa, who affirmed that while in prison, he was beaten and interrogated about the activities of Mr. Movilla Galarcio. This statement results consistent with the fact that the victim was effectively being followed and watched by the State, as mentioned in two previous points.

66. Sixth, the Commission observes that there is one more suggestion of the State's participation in the disappearance of Mr. Movilla Galarcio consisting of the shots fired into the air by Mr. Pabón on the day of the events by means of a gun that belonged to a police officer. As results from the evidence, even though said police officer affirmed that he had filed a complaint for the loss of the gun, that could not be verified by the General Prosecutor's Office and the State has not managed to explain this situation in a satisfactory way.

67. Finally, the Commission observes that by the existence of all the above- mentioned elements that suggest the deprivation of liberty on the part of State agents, the State did not provide an alternative hypothesis based on an effective and diligent investigation. As it will be subsequently analyzed, the State did not duly investigate all the elements mentioned so far, and to date it has not managed to clarify what happened to Pedro Julio Movilla Galarcio. This situation, attributable to the State, grants probative value to the signs of State participation mentioned before.

68. In view of the foregoing, the Commission considers that there are sufficient elements that, as a whole, allow concluding that the deprivation of liberty of Pedro Julio Movilla Galarcio was executed by State agents.

## **2.2 The refusal to recognize the detention or to reveal the fate or whereabouts of the person.**

69. Regarding this point, the IACHR considers pertinent to take into account the State's response before the lodging of the *hábeas corpus* action, the visits to the detention centers for the physical location of the alleged victim, the explanations regarding the previous intelligence actions and other search works.

70. Pedro Julio Movilla Galarcio disappeared on May 13, 1993, and the first claim filed for his search was an *hábeas corpus* on May 18, 1993. However, it was rejected on the following day, given that the place of detention was not indicated. On this regard, the Commission observes that the *hábeas corpus* is the appropriate procedural mechanism to initiate the search of a missing person, especially in situations of complete lack of awareness of his or her fate. In these terms, the premature rejection of the *hábeas corpus* for said reason and without starting with search works, in the circumstances of the case corresponded to the refusal to establish the detention and whereabouts of Mr. Movilla Galarcio.

71. The State carried out three search visits at three detention centers on the days 20, 26 and 28 of May, 1993. In other words, the State carried out three visits during the first ten subsequent days to the complaint filed for the disappearance, in the context of the disciplinary investigation. The same occurred in the context of the criminal investigation, as it is understood from a report of May 31, 1993, in which the General Prosecutor's Office confirms the visits carried out at the legal medicine facilities and official notifications to the Dijin, Sijin, DAS and Military Forces. The Commission finds that these search actions were not sufficient to reveal the fate or whereabouts of Pedro Julio Movilla Galarcio. The following actions carried out to find Pedro Julio Movilla Galarcio date back to the year 2008, fifteen years later, which allows affirming that in the circumstances of the present case, the omission to duly find the alleged victim contributed to the concealment of his detention and whereabouts.

72. Additionally, the Commission observes that the State has not managed to explain the nature of the persecutions and intelligence records of Pedro Julio Movilla Galarcio and their relation to their disappearance, which contributes to the uncertainty and concealment of the events.

73. By virtue of the previous considerations, the IACHR understands that the second and third elements of the forced disappearance are sufficiently proven.

## **3. Conclusion**

74. The Commission resolves that what occurred to Pedro Julio Movilla Galarcio constituted forced disappearance and, therefore, the Colombian State is responsible for the violation of the rights to juridical personality, life, humane treatment and personal liberty set forth in Articles 3, 4, 5, and 7 of the American Convention in relation to the obligations established in Articles 1.1 and 2 of the same instrument, to the detriment Pedro Julio Movilla Galarcio. Moreover, taking into account that to the effective date of the IACFPD for Colombia<sup>122</sup> the forced disappearance was still being committed, the IACHR concludes that the State also violated Article I a) of said instrument.

### **B. Right of freedom of association (articles 16.1<sup>123</sup>, 1.1 and 2 of the American Convention)**

75. The American Convention protects the right to freely associate for ideological purposes. On this regard, the Inter-American Court has indicated that such right entails two dimensions, an individual dimension and a collective dimension. In its individual dimension, "those who are under the Convention's protection have the right and freedom to freely associate with other persons without the intervention of public authorities that may limit or impede said association." In the collective dimension, "freedom of association is a

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<sup>122</sup> Colombia lodged the instrument of ratification of the IACFPD before the General Secretariat of the OAS on April 12, 2005.

<sup>123</sup> Article 16 of the American Convention establishes the following: 1. Everyone has the right to associate freely for ideological, religious, political, economic, labor, social, cultural, sports, or other purposes.

means that allows the members of a group or collectivity to jointly reach certain objectives and to benefit from them.”<sup>124</sup>

76. As established before, the forced disappearance of Pedro Julio Movilla Galarcio answered to his alleged connection to a subversive organization which, without a non-appealable criminal sentence, was a result of the social leadership of the alleged victim and his belonging to trade unions and political organizations of left-wing ideologies. For the Commission, this interrelationship established by the organs of military intelligence is framed in the context in which the events described in this report took place, and responds to a selective logic of the national security operations that criminalized the participation of Pedro Julio Movilla Galarcio in trade union and political organizations.

77. By virtue of the former considerations, the Commission concludes that taking into account the motive and the selective nature of the forced disappearance, the Colombian State is also responsible for the violation of the right to freedom of association set forth in Article 16 of the American Convention, in relation to Articles 1.1 and 2 of the same instrument.

**C. Right to a fair trial and judicial protection (Articles 8.1<sup>125</sup>, 25.1<sup>126</sup> and 1.1 of the American Convention and I. b of the IACFDP)<sup>127</sup>**

78. The Inter-American case law sets forth that when filing a complaint for a missing person, there is an inseparable bond between the government response and the protection of the life and integrity of the person reported missing. The nature of the government response must be immediate and exhaustive, disregarding if the disappearance was forced by an individual or state officials. The Commission reaffirms that whenever there is reasonable cause to believe a person was forced to disappear, is it essential that the prosecution and judicial authorities act actively and immediately by taking the appropriate and necessary measures in order to discover the whereabouts of the victim of the place where the person could be held deprived of freedom.<sup>128</sup>

79. In this regard, the Court has set forth that the duty to investigate implies that once the authorities become aware of the fact, they must initiate, *ex officio* and without delay, a serious, unbiased and effective investigation using all legal resources available and directed to the discovery of the truth and the persecution, capture, prosecution and possible punishment of every perpetrator of the fact,<sup>129</sup> especially when state officials are or could be involved.<sup>130</sup> This duty constitutes an obligation to use all resources available and not to obtain results, which must be assumed by the State as a judicial duty and not a simple formality deemed beforehand to have no success, or a mere management of individual interests, and which relies on the initiative

<sup>124</sup> I/A Court. H.R. Case Huilca Tecse Vs. Peru. Preliminary objections, Merits, Reparations and Costs. Judgment of March 3, 2005, para. 71; I/A Court. H.R. Case Lagos del Campo Vs. Peru. Preliminary objections, Merits, Reparations and Costs. Judgment of August 31, 2017. Para. 23.

<sup>125</sup> Article 8 from the American Convention sets forth where relevant: 1. Every person has the right to be heard, with the respective guarantees and within reasonable time, by an independent and unbiased competent judge or court, previously designated by law, in connection to any formal criminal accusation filed against him or her, or in order to determine his civil, labor and prosecution rights and obligations or any other rights and obligations.

<sup>126</sup> Article 25 from the American Convention sets forth where relevant: 1. Every person has the right to a simple and rapid action or any other effective action before the competent judges or courts, which protects him or her from acts that violate the fundamental rights set forth by the Constitution, the law or this Convention, even if such violation was committed by persons performing their official functions.

<sup>127</sup> Article I.b of the IACFDP sets forth where relevant: b. to punish, within the scope of their jurisdiction, every perpetrator, accomplice and accessory after the fact of the forced disappearance of persons, and even for attempted commission.

<sup>128</sup> IACHR. Report No. 111/09. Case 11.324. Merits. Narciso González Medina. Dominican Republic. November 10, 2009. Para. 225; I/A Court of H.R. Case Anzualdo Castro Vs. Peru. Preliminary Objection, Merits, Reparation and Costs. Judgement of September 22, 2009. Series C No. 202, para. 134; Case Radilla Pacheco Vs. Mexico. Preliminary Objection, Merits, Reparation and Costs. Judgment of November 23, 2009. Series C No. 209, para. 221; I/A Court of H.R., Case Ibsen Cárdenas and Ibsen Peña Vs. Bolivia. Merits, Reparation and Costs. Judgment of September 1, 2010. Series C No. 217, para. 167. See I/A Court of H.R., Subject Natera Balboa. Provisional Measures regarding Venezuela. Judgment of the Court of February 1, 2010. Whereas thirteenth and Subject Guerrero Larez. Provisional Measures regarding Venezuela. Judgment of the Court of August 29, 2013. Whereas sixth.

<sup>129</sup> I/A Court of H.R. Case Velásquez Rodríguez. Vs. Honduras. Merits. Judgment of July 29, 1988. Series C No. 1, para. 177; and Case Veliz Franco and others Vs. Guatemala. Preliminary Objection, Merits, Reparation and Costs. Judgment of May 19, 2014. Series C No. 277, para. 183.

<sup>130</sup> I/A Court of H.R. Case Myrna Mack Chan Vs. Guatemala. Merits, Reparation and Costs. Judgment of November 25, 2003. Series C No. 101, para. 156; and Case of the Displaced Afro-descendant Communities from Cuenca del Río Cacarica (Genesis Operation) Vs. Colombia. Preliminary Objection, Merits, Reparation and Costs. Judgment of November 20, 2013. Series C No. 270, para. 371.

of the victims or their families to carry out a procedure or on the private contribution of elements of evidence.<sup>131</sup> The obligation of the State to investigate must be dutifully accomplished in order to avoid impunity and to prevent these types of events to happen again.<sup>132</sup>

80. In addition, regarding due diligence during the development of the investigation, the Commission and the Inter-American Court have established that “every state proceeding that is part of the process of investigation, as well as the complete investigation itself, must be oriented to a specific purpose, the discovery of the truth and the investigation, persecution, capture, prosecution and, when appropriate, the punishment of the persons responsible for the facts”.<sup>133</sup> In this regard, the State must prove that it has carried out an immediate, exhaustive, serious and unbiased investigation,<sup>134</sup> which has to be oriented to study every possible line of investigation.<sup>135</sup> The State could be held responsible for the failure to “gather, practice or value evidence” which could be essential for the proper clarification of the facts.<sup>136</sup>

81. In line with the foregoing, the Court has reaffirmed the importance, specifically in the Colombian case, for investigations of these type of responsibilities to be conducted in the scope of the criminal jurisdiction mainly and for other types of adjunct enquires, as the ones carried out by the General Prosecutor’s Office in the scope of the disciplinary processes, to be able to complement, but never substitute, the criminal aspect of the investigations on serious violations of human rights.<sup>137</sup>

82. In addition, the Court has established the State’s duty to investigate the facts as long as there is uncertainty over the whereabouts of the missing person and to provide a simple and rapid action for the case, with the corresponding guarantees.<sup>138</sup> The Commission wants to remind that in this sense all States must guarantee the right to the truth for the victim or his or her family through the investigation and prosecution mentioned in Articles 8 and 25 of the Convention.<sup>139</sup>

83. Ultimately, regarding the beginning of the reasonable time referred to in Article 8.1 of the American Convention, the Inter-American Court has established that it is precise to consider three elements in order to determine the reasonableness of the period of time during which a procedure is carried out: a) the complexity of the issue, b) the procedural activity of the interested party, and c) the judicial authorities’ behavior.<sup>140</sup> In addition, the Commission and the Court have also considered the interest of the affected party.<sup>141</sup>

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<sup>131</sup>I/A Court of H.R. Case Velásquez Rodríguez Vs. Honduras. Merits. Judgment of July 29, 1988. Series C No. 1, para. 177; and Case Veliz Franco and others Vs. Guatemala. Preliminary Objections. Merits, Reparation and Costs. Judgment of May 19, 2014. Series C No. 277, para.183.

<sup>132</sup> I/A Court of H.R. Case of the Ituango Massacres Vs. Colombia. Judgment of July 1, 2006, Series C No. 148, para. 319; Case Veliz Franco and others Vs. Guatemala. Preliminary Objection, Merits, Reparation and Costs. Judgment of May 19, 2014. Series C No. 277, para. 183; and Case Landaeta Mejías Brothers and others Vs. Venezuela. Preliminary Objection, Merits, Reparation and Costs. Judgment of August 27, 2014. Series C No. 281, para., 216.

<sup>133</sup> I/A Court of H.R. Case Cantoral Huamaní and García Santa Cruz Vs. Peru. Preliminary Objection, Merits, Reparation and Costs. Judgment of July 10, 2007. Series C No. 167, para. 131; I/A Court of H.R., Case Kawas Fernández Vs. Honduras. Merits, Reparation and Costs. Judgment of April 3, 2009, Series C No. 196, para. 101; IACHR, Report No. 85/13, Case 12.251, Admissibility and Merits, Vereda la Esperanza, Colombia, November 4, 2013, para. 242.

<sup>134</sup> IACHR, Merits Report No. 55/97, Juan Carlos Abella and Others (Argentina), November 18, 1997, para. 412.

<sup>135</sup> IACHR, Report No. 25/09 Merits (Sebastião Camargo Filho) Brasil, March 19, 2009, para. 109. See also, IACHR, Access to Justice for Women Victims of Violence in the Americas, OEA/Ser. L/V/II. doc.68, January 20, 2007, para. 41.

<sup>136</sup> I/A Court of H.R. Case of the “Children in the Street” (Villagrán Morales and others) Vs. Guatemala. Judgment of November 19, 1999. Series C No. 63, para. 230. See also, IACHR, Access to Justice for Women Victims of Violence in the Americas, OEA/Ser. L/V/II. doc.68, January 20, 2007, para. 41.

<sup>137</sup> I/A Court of H.R. Case of La Rochela’s Massacre Vs. Colombia. Interpretation of the Judgment on Merits, Reparation and Costs. Judgment of January 28, 2008. Series C No. 175; Case of the Ituango Massacres, para. 333; and Case of Pueblo Bello’s Massacre, para. 203.

<sup>138</sup> I/A Court of H.R., Case Bámaca Velásquez Vs. Guatemala. Merits. Judgment of November 25, 2000. Series C No. 70, para. 197.

<sup>139</sup> IACHR. Right to the Truth in the Americas. OEA/Ser.L/V/II.152. Doc. 2. August 13, 2014. Para. 13.

<sup>140</sup> I/A Court of H.R. Case Vargas Areco Vs. Paraguay. Judgment of September 26, 2006. Series C No. 155, para. 196; Case of the Ituango Massacres Vs. Colombia. Judgment of July 1, 2006, Series C No. 148, para. 289; and I/A Court of H.R. Case Baldeón García Vs. Peru. Merits, Reparation and Costs. Judgment of April 6, 2006. Series C No. 147, para. 151.

<sup>141</sup> I/A Court of H.R. Case Valle Jaramillo and others Vs. Colombia. Merits, Reparation and Costs. Judgment of November 27, 2008. Series C No. 192, para. 155.

84. The Commission will analyze below the due diligence of the investigation of Pedro Julio Movilla Galarcio's forced disappearance, considering the lines of investigation studied, the handling of the investigation and the participation of the family in the proceedings.

85. First, the Commission finds that the purposes of the investigation were the discovery of Pedro Julio Movilla Galarcio's whereabouts and the identification of the responsible persons. In this regard, the Commission acknowledges that, after the complaint was filed, several procedures were carried out, during the time close to the disappearance, focused on discovering if Mr. Movilla Galarcio was being held and on identifying possible witnesses of his disappearance. However, these proceedings were carried out during a few days and afterwards fifteen years went by before any search efforts were made again.

86. Second, the IACHR finds that the State did not make due efforts in order to identify the selective nature of Pedro Julio Movilla Galarcio's disappearance and its connection both with the union and politic activities he carried out and with the intelligence records. In this regard, the Commission observes a lack of clarification of the grounds of such notes, and that few proceedings of investigation were carried out with this purpose. The IACHR considers that this line of investigation, which was essential taking into account the already described consistent evidence, was not encouraged nor completely exhausted by the State. Instead, the General Prosecutor's Office accepted the former intelligence officials' statements although they did not provide satisfactory and clear explanations about the intelligence efforts for the victim. There is no record of any proceedings directed to studying the victim's activities and the interests they could be affecting, nor their connection with the general scopes already mentioned in this report.

87. Third, there is no record of the State having clarified the shots fired into the air in the surroundings of the place of disappearance, made by a person armed with a gun that belonged to a police lieutenant. The IACHR observed that although this lieutenant stated he had reported having lost the gun, the General Prosecutor's Office could not verify such report and the proper organization and exhaustion of a line of investigation related to this issue is not observed and remains unclear.

88. Fourth, the Commission finds that the investigation was separately developed by the PGN and the General Prosecutor's Office and, although they communicated their progress to each other, a fragmentation of the proceedings is observed, leading to the repetition of many of them in both processes, impacting the delay of the investigations. The Commission observes that even in the same prosecution investigation there was dispersion in its development, given that the proceedings were carried out by multiple units within the General Prosecutor's Office, until their last location at the Prosecutor's Office No. 12 of the National Unit on Human Rights and International Humanitarian Law in 2013. In addition, the IACHR notices that during the first stage of the investigation, most proceedings were carried out by the PGN, while as mentioned above, in these types of investigations the criminal jurisdiction should intervene.

89. Fifth, the Commission finds that the participation of the family during the investigation of the facts was limited and restricted for several years, by rejecting their attempts to become a civil party on the process, which did not happen until 2011.

90. Sixth, the Commission wants to remind that the *hábeas corpus* was declared inadmissible through a formal requirement, inconsistent with the essential reason and purpose of the action.

91. Ultimately and in connection to the reasonable time, the Commission takes notice that the PGN investigation was developed during almost 8 years (1993 – 2001) and that the General Prosecutor's Office investigation during almost 25 years (1993 – 2018). Specially referring to the criminal investigation, it has been delayed for more than 25 years and is still on its preliminary stage. Regarding the complexity of the issue, the Commission observed that the State has declared that "there are difficulties that reflected in the failure to get satisfactory results from the time when the facts were performed, which they have tried to overcome through the measures taken". In this regard, for the complexity argument to be in order, it is not enough that the States explain the complexity of the issue in general terms, but it is necessary to present specific information which

connects this complexity with the delay in every instance<sup>142</sup>, which was not made in this case. In connection to the proceedings carried out by the interested party, the Commission observes that there is no record of any information indicating that the alleged victims obstructed the investigations. Regarding the behavior of the state authorities, the Commission abides to everything mentioned in this section. In addition, the IACHR observes that there were periods of time when the State was inactive without justification, especially in connection to filing, closing and reopening the investigations.

92. Pursuant to the foregoing, the Commission concludes that the Colombian State did not fulfill its duty to investigate, judge and punish, within a reasonable time and with due diligence, the forced disappearance analyzed in this report. Consequently, the Commission concludes that the Colombian State is responsible of the violation of the rights to a fair trial and judicial protection established in Articles 8.1 and 25.1 of the American Convention, in connection to the obligations established in Article 1.1 of the same instrument, to the detriment of Pedro Julio Movilla Galarcio and the members of his family, identified in this report. In addition, the Colombian State is responsible for the violation of Article I. b) of the IACFDP.

#### **D. Rights the personal integrity of the family members (Articles 5.1 and 1.1 of the Convention)**

93. Regarding the family of the victims that suffered certain violations of human rights, the Commission and the Inter-American Court have indicated that they can be considered, as well, as victims.<sup>143</sup> In this regard, the Court has established that their psychical and moral integrity could be affected as a result of the particular situations that the victims endured, as well as the subsequent proceedings or omissions of the internal authorities before the facts<sup>144</sup>.

94. In this case, the Commission established that Pedro Julio Movilla Galarcio was forced to disappear in unclear circumstances which were not duly investigated. These circumstances constitute an independent source of suffering and impotence to his family, which to this date have no certainty about the cause and circumstances of his whereabouts. In these type of circumstances, the Court has indicated that: [...] the absence of a complete and effective investigation over the facts constitutes an additional source of suffering and distress for the victims and their families, who have the right to discover the truth about the events. This right to the truth requires the procedural determination of the most complex historical truth possible, which includes the judicial determination of the patterns of joint performance of action and of all the persons that took part in such violations and their respective responsibilities.<sup>145</sup>

95. The Commission considers that the disappearance of a loved one, the uncertainty about his fate or whereabouts, as well as the absence of truth and justice, caused suffering and distress to Pedro Julio Movilla Galarcio's family, in violation of their right to psychical and moral integrity, established in Article 5.1 of the American Convention in connection to Article 1.1 of the same instrument.

### **V. CONCLUSIONS AND RECOMMENDATIONS**

96. The Commission concludes that the Colombian State is responsible for the violation of the rights to the recognition as a person before the law, life, personal integrity, personal freedom, judicial

<sup>142</sup> IACHR. Report No. 34/14. Case 12.492. Merits. Carlos Escaleras Mejía and family, para. 172.

<sup>143</sup> IACHR. Report No. 11/10. Case 12.488. Merits. Barrios Family Members. Venezuela. March 16, 2010. 91. IACHR. Report on Terrorism and Human Rights. Para. 227; I/A Court of H.R. Case Cantoral Huamaní and García Santa Cruz Vs. Peru. Preliminary Objection, Merits, Reparation and Costs. Judgment of July 10, 2007. Series C No. 167. para. 112; and Case Bueno Alves Vs. Argentina. Merits, Reparation and Costs. Judgment of May 11, 2007. Series C No. 164. para. 102.

<sup>144</sup> I/A Court of H.R. Case Cantoral Huamaní and García Santa Cruz Vs. Peru. Preliminary Objection, Merits, Reparation and Costs. Judgment of July 10, 2007. Series C No. 167. para. 112; and Case Vargas Areco Vs. Paraguay. Judgment of September 26, 2006. Series C No. 155. para. 96.

<sup>145</sup> I/A Court of H.R. Case Valle Jaramillo and others Vs. Colombia. Merits, Reparation and Costs. Judgment of November 27, 2008. Series C No. 192, para. 102; Case of La Rochela's Massacre Vs. Colombia. Merits, Reparation and Costs. Judgment of May 11, 2007, Series C No. 163, para. 195; and Case Heliodoro Portugal Vs. Panama. Preliminary Objection, Merits, Reparation and Costs. Judgment of August 12, 2008. Series C No. 186, para. 146.

guarantees, freedom of association and judicial protection established in Articles 3, 4.1, 5.1, 7.1, 8.1, 16 and 25.1 in connection to Articles 1.1 and 2 of the same instrument to the detriment of the persons mentioned throughout this report. In addition, the Commission concludes that the State is responsible for the violation of Articles I.a) and b) of the Inter-American Convention on Forced Disappearance of Persons.

**THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS RECOMMENDS THAT THE STATE OF COLOMBIA COMPLY WITH THE FOLLOWING RECOMENDATIONS,**

1. Repair comprehensively the violations of human rights stated in this report both in the material and immaterial aspect. The State shall apply monetary compensation and take satisfaction measures.

2. Provide the necessary physical and mental health assistance for the rehabilitation of Pedro Julio Movilla Galarcio's family in a concerted manner if this is their will.

3. Investigate Pedro Julio Movilla Galarcio's fate or whereabouts and, if needed, take the necessary measures to identify and hand to his family his bodily remains, if any.

4. Conclude the criminal investigation with due diligence, effectively and within the reasonable time with the purpose of clarifying the facts completely, identifying all possible responsibilities and establish the corresponding punishments in connection to the violations of human rights mentioned on this report.

5. Offer non-repetition mechanisms which include: i) the derogation of the military regulations and manuals mentioned in this report and others that could be identified, ii) the instruction by the military and police high commands to all the lower levels about the inability to apply the military regulations and manuals indicated due to their incompatibility with the American Convention; iii) the interruption of all practices installed due to the performance of such regulations and manuals and the notion of "internal enemy" through the incorporation of this case to the trainings related to human rights which aimed at police and army officers and intelligence bodies.