

**INTER-AMERICAN COURT OF HUMAN RIGHTS**

**CASE OF GONZÁLEZ ET AL. V. VENEZUELA**

**JUDGMENT OF SEPTEMBER 20, 2021**

**(Merits and Reparations)**

In the *Case of González et al. v. Venezuela*,

the Inter-American Court of Human Rights (hereinafter also “the Inter-American Court” or “the Court”), composed of the following judges:

Elizabeth Odio Benito, President;  
L. Patricio Pazmiño Freire, Vice President;  
Eduardo Vio Grossi, Judge;  
Humberto Antonio Sierra Porto, Judge;  
Eduardo Ferrer Mac-Gregor Poisot, Judge;  
Eugenio Raúl Zaffaroni, Judge, and  
Ricardo Pérez Manrique, Judge;

also present,

Pablo Saavedra Alessandri, Secretary, and  
Romina I. Sijniensky, Deputy Secretary,

Pursuant to Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter also “the American Convention” or “the Convention”) and with Articles 31, 32, 65 and 67 of the Rules of Procedure of the Court (hereinafter also “the Rules”), delivers this Judgment, which is structured as follows:

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## I

### INTRODUCTION OF THE CASE AND PURPOSE OF THE CONTROVERSY

1. *The case submitted to the Court.* – On August 8, 2019, the Inter-American Commission on Human Rights (hereinafter also “the Inter-American Commission” or “the Commission”) submitted to the jurisdiction of the Court the case of *Olimpiades González et al.* against the Bolivarian Republic of Venezuela (hereinafter “the State” or “Venezuela”). The Commission indicated that the case related to the illegal and arbitrary detentions, by State agents in November 1998 and January 1999, of Olimpiades González, María Angélica González, Belkis Mirelis González, Fernando González, Wilmer Antonio Barliza González and Luis Guillermo González, members of an indigenous Wayú family. The Commission noted that it was not demonstrated that the detentions were carried out as a result of a judicial order or due to the commission of a crime *en flagrante*. It also stated that those persons were preventively detained pursuant to Article 182 of the then Code of Criminal Prosecution (hereinafter the “CCP”), which did not require a procedural purpose to order such a measure. The Commission maintained that the application of that norm was a punitive, and not a precautionary, measure in violation of both the right to personal liberty and to the principle of the presumption of innocence. Finally, it determined that the State is responsible for not preventing the death of Olimpiades González, who was killed in December 2006, as well as for the failure to investigate the killing within a reasonable time. It, therefore, maintained that the rights to life, to personal integrity, to personal liberty, to judicial guarantees and to judicial

protection had been violated.

2. *Procedure before the Commission.* – The procedure before the Commission was as follows:

a) *Petition.* – On January 22, 2004, Olimpiades González and María Angélica González, lodged the initial petition.<sup>1</sup>

b) *Admissibility Report.* – On October 19, 2011, the Commission adopted Admissibility Report No. 121/11, in which it found the petition admissible.

c) *Merits Report.* – On October 5, 2018, the Commission adopted Merits Report No. 117/18 (hereinafter also “Merits Report”), in which it reached a series of conclusions<sup>2</sup> and made several recommendations to the State.

d) *Notification to the State.* – The Merits Report was notified to the State by communication of November 8, 2018. The Commission granted Venezuela two months to report on compliance with the recommendations contained in the Report. It later granted two extensions to the State. As the Commission noted, “the State did not request a new extension nor did it present a report on the current status of compliance with the recommendations.”

3. *Submission to the Court.* – On August 8, 2019, the Commission submitted to the Court “all of the facts and human rights violations” of the case. It indicated that it did so “because of the need to obtain justice and reparation.”<sup>3</sup> The Court notes, with concern, that more than 15 years had elapsed between the lodging of the initial petition before the Commission and the submission of the case to the Court.

4. *Requests of the Commission.* – The Commission requested that the Court conclude and declare the international responsibility of Venezuela for the violations contained in its Merits Report No. 117/18 and that it order that the State implement the measures of reparation included in the Report (*infra* Chapter VIII).

## **II PROCEDURE BEFORE THE COURT**

5. *Suspension of the proceedings.* – After the Commission submitted the case to the Court, its Secretariat, on August 30, 2019, attempted to contact the alleged victims on the basis of the information provided by the Commission in order to request that they inform on their legal representation.<sup>4</sup> It was, however, not possible to contact them. On October 8, 2019, the Commission was requested to provide further information on the

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<sup>1</sup> The Commission later indicated that María Antonia González and Dan William Barliza González were petitioners. Olimpiades González died on December 11, 2006 (*infra* para. 78).

<sup>2</sup> The Commission concluded that the State was responsible for the violation of the following articles of the American Convention: 4(1) (Right to Life); 5(1) and 5(4) (Right to Humane Treatment); 7(1), 7(2), 7(3), 7(5) and 7(6) (Right to Personal Liberty); 8(1) and 8(2) (Right to a Fair Trial) and 25(1) (Right to Judicial Protection), in relation to the obligations established in Articles 1(1) and 2 thereof.

<sup>3</sup> The Commission appointed, as its delegates before the Court, the then Commissioner Francisco Eguiguren Praeli; the then Executive Secretary Paulo Abrão, and Erick Acuña Pereda, as legal advisor.

<sup>4</sup> This communication was repeated on September 13 and 24, 2019.

contacts.<sup>5</sup> The Court's Secretariat again attempted to contact the alleged victims,<sup>6</sup> without receiving a response. On December 19, 2019, the Secretariat reported the Court's decision to suspend further proceedings in the case due to the unsuccessful attempts to communicate with the alleged victims. On June 10, 2020, the Commission was again requested to provide contact information and it responded with new information on June 16. Two days later, the Secretariat contacted the alleged victims and reopened the case. On June 23, the alleged victims requested that the Court appoint the Inter-American Public Defenders, which was done on July 6, 2020.

6. *Notification to the State and to the representatives.* – On July 10, 2020, the submission of the case was notified to the representation of the alleged victims (hereinafter "the representatives" or "the Inter-American Public Defenders") and to the State.<sup>7</sup>

7. *Brief with petitions, motions and evidence.* – On September 9, 2020, the Inter-American Public Defenders presented its brief with petitions, motions and evidence (hereinafter "brief with petitions and motions"), pursuant to Articles 25 and 40 of the Rules. It substantially agreed with the arguments of the Commission and presented additional allegations.<sup>8</sup>

8. *Answering brief.* – On December 1, 2020, the State presented its brief (hereinafter "answering brief") responding to the submission of the case by the Commission and to the brief with petitions and motions. Venezuela disputed the human rights violations alleged by the Commission and the representatives, as well as the requested measures of reparation.

9. *Final written procedure and acceptance of oral evidence.* – By Order of April 14, 2021, the President of the Court, after consulting the other judges, decided that, for reasons of procedural economy and in view of the situation caused by the COVID-19 pandemic, it was not necessary to convoke a public hearing in the present case and, therefore, decided to receive the oral statements by videoconference. On May 7, 2021, the Court confirmed the President's Order after the State had objected on April 30, 2021. The evidentiary phase by videoconference took place on May 14, 2021 (*infra* para. 23).

10. *Final written arguments and observations.* – On July 14, 2021, the Commission, the representatives and the State presented their observations and arguments. The representatives and the State attached documentation to their respective briefs.<sup>9</sup>

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<sup>5</sup> The Commission repeated the contact information that it had sent earlier in the proceedings.

<sup>6</sup> Communications were sent on October 7 and November 7, 2019.

<sup>7</sup> The representation of the alleged victims was provided by the Inter-American Public Defenders Javier Mogrogevo and Renée Mariño Álvarez. In addition, Luis José Gomez Nuñez was named Alternate Inter-American Public Defender. Venezuela was represented by its Agent, Larry Devoe Márquez.

<sup>8</sup> The representatives alleged violations of Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, as well as the violation of the right to personal integrity of the next of kin of Olimpiades González, in relation to his death, and to the alleged lack of an investigation into his death. These infringements to human rights were not mentioned by the Commission.

<sup>9</sup> The final written observations of the Commission and those of the State and the representatives, as well as the annexes of these latter, were communicated to the parties and to the Commission. The Court set July 26, 2021 as a deadline for the Commission and the parties to send, if they deemed it pertinent, their observations to those annexes.

11. *Observations on the attachments to the final written arguments.* – On July 26, 2021, the Commission stated that it did not have any observations on the attachments presented by the parties with their final written arguments. On that same date, the representatives presented their observations on the State’s attachments. The State did not present any observations on the annexes presented by the representatives.

12. The Court deliberated on this Judgment, in a virtual session, on September 20, 2021.<sup>10</sup>

### **III JURISDICTION**

13. Venezuela became a State Party to the American Convention on August 9, 1977 and recognized the contentious jurisdiction of the Court on June 24, 1981. On September 10, 2012, Venezuela denounced the American Convention, which became effective on September 10, 2013. Pursuant to Article 78(2) of the Convention, the Court has jurisdiction to hear the present case since the facts therein took place before the act of Venezuela took effect. Venezuela deposited its instrument of ratification of the Inter-American Convention to Prevent and Punish Torture (hereinafter the “Inter-American Torture Convention”) on August 26, 1991.

### **IV PRIOR CONSIDERATION**

14. The Court notes that the representatives, in their brief with petitions and motions, alleged the violation of the right to personal integrity of the next of kin of Olimpiades González. In doing so, they did not expressly name those persons, although in the same brief they named several persons who were not mentioned in the Merits Report, who they considered should be viewed as “indirect victims” and beneficiaries of the measures of reparation. Those persons are Arianny Yosibel González, Laura Joselin González, Alejandro González, Fernando González (brother of Olimpiades), Doménica Del Carmen Hernández, Yelimar Coromoto Barliza Hernández, Wilder Thomas Castillo Hernández and Dan William Barliza.

15. Pursuant to Article 35(1) of the Rules and to the Court’s consistent case law, the alleged victims must be identified in the Merits Report issued pursuant to Article 50 of the Convention.<sup>11</sup> On some occasions, under the terms of Article 35(2) of the Rules, the Court has admitted, as victims, individuals not included in that Report because of the impossibility of identifying them due to massive or collective violations.<sup>12</sup> The facts in this case do not meet the characteristics defined in Article 35(2) and, therefore, the Court will consider only those persons identified in the Merits Report as alleged victims.

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<sup>10</sup> Due to the exceptional circumstances caused by the pandemic, this Judgment was deliberated and adopted during the Court’s 144th Regular Session, which was held virtually using technological means, in accordance with the Rules of the Court.

<sup>11</sup> *Cf. Case of the Barrios Family v. Venezuela. Merits, Reparations and Costs.* Judgment of November 24, 2011. Series C No. 237, footnote 214 and *Case of Garzón Guzmán et al. v. Ecuador. Merits, Reparations and Costs.* Judgment of September 1, 2021. Series C No. 434, para. 31.

<sup>12</sup> *Cf. Case of the Río Negro massacres v. Guatemala. Preliminary Objection, Merits, Reparations and Costs.* Judgment of September 4, 2012. Series C No. 250, para. 48 and *Case of Garzón Guzmán et al. v. Ecuador*, para. 31.

16. Consequently, the Court will not examine the alleged human rights violations in relation to Arianny Yosibel González, Laura Joselin González, Alejandro González, Fernando González (brother of Olimpiades), Doménica Del Carmen Hernández, Yelimar Coromoto Barliza Hernández, Wilder Thomas Castillo Hernández and Dan William Barliza. Nor will it consider those named as possible beneficiaries of measures of reparation.

## V EVIDENCE

### **A) Admissibility of the documentary evidence**

17. The Court received diverse documents offered, with their principal briefs, as evidence by the Commission and by the representatives (*supra* paras. 3, 7 and 8). As in other cases, the Court admits the documents that were presented opportunistically (Article 57 of the Rules) by the parties and by the Commission, the admissibility of which were neither disputed nor objected to and the authenticity of which was not contested.<sup>13</sup>

18. The Court observes that the State, together with its final written arguments, provided three documents.<sup>14</sup> The representatives, together with their final written allegations, provided diverse documentation joined in one annex.<sup>15</sup> The Commission did not make any observations on the documentation presented by the parties together with their final written allegations nor did the State make any observations. The representatives simply noted that the documentation presented by the State had already been incorporated into the record of the case.

19. The Court notes that the documents provided by the representatives with their final written allegations refer to the accreditation of the expenses relating to the Victims' Legal Defense Fund of the Inter-American Court (*infra* paras. 218 and 219) that were disbursed after the presentation of their brief with petitions and motions. Therefore, it admits that documentation.

20. As to the documents provided by the State together with its final written arguments, the Court notes that two of them have already been incorporated into the evidentiary record and, therefore, it is not necessary or relevant to evaluate their admissibility.<sup>16</sup> The third document, which the State provided as "Annex 2)" to its brief

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<sup>13</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*. Judgment of July 29, 1988. Series C No. 4, para. 140 and *Case of Garzón Guzmán et al. v. Ecuador*, para. 33. Documentary evidence may be presented, in general and in accordance with Article 57(2) of the Rules, together with the brief of submission of the case, the brief with petitions and motions and the answering brief, as applicable. Evidence presented beyond those procedural moments is not admissible, except in situations defined in that article (namely, *force majeure* or serious impediment) or if it concerns a supervening event; that is, one occurring after the aforementioned procedural moments.

<sup>14</sup> They are the following: Decision of the Technical Corps of the Judicial Police Delegation of the State of Zulia of November 23, 1998 (Annex 1); Minutes of the Technical Corps of the Judicial Police Delegation of November 23, 1998 (Annex 2), and Minutes of the Technical Corps of the Judicial Police Delegation of January 29, 1999 (Annex 3).

<sup>15</sup> This document is a receipt of the expenses incurred for the expert opinion of Víctor Velasco Prieto, which accredits his affiliation with the Institute of Social Security of Venezuela and the Sole Registry of Tax Information of that country.

<sup>16</sup> Regarding the decision of the Technical Corps of the Judicial Police Delegation of November 23, 1998 (Annex 1) and the Minutes of the Technical Corps of January 29, 1999 (Annex 3).

with the final arguments, contains the police minutes of November 23, 1998, which are part of the internal file of the case related to the detentions and the criminal proceedings against the alleged victims. Several of the documents that comprise the record were included as annexes to the Merits Report. Bearing this in mind, as well as the usefulness of the document, the Court decides, in exercise of its authority under Article 58(a) of the Rules, to incorporate into the evidentiary record the text of the CCP, in force when the events in this case occurred.<sup>17</sup>

21. On August 5, 2021, on the basis of Article 58(b), the State was requested to provide a copy of the following: Order of the Ninth Criminal Judge of August 16, 1999 and the request for the precautionary measure of the deprivation of liberty of August 2, 1999. The State did not respond. On September 2, 2021, the Commission sent to the Court the aforementioned documentation, which has been incorporated into the record on the basis of the authority set out in Article 58(a) of the Rules.<sup>18</sup>

### **B) Admissibility of the statements offered**

22. The Court deems it pertinent to admit the expert opinions<sup>19</sup> and the statements of the alleged victims and their family members, provided that they meet the object defined in the Orders that received them and that defined the purpose of the present case.<sup>20</sup>

23. The Court also admits the oral statement of Dan William Barliza González, presented in a videoconference, as well as the statement of Fernando González, received by means of a videorecording.<sup>21</sup>

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<sup>17</sup> Available at: [https://nacho20000.tripod.com/ENJUICIAMIENTO\\_CRIMINAL/ENJUICIAMIENTO\\_CRIMINAL.htm.1](https://nacho20000.tripod.com/ENJUICIAMIENTO_CRIMINAL/ENJUICIAMIENTO_CRIMINAL.htm.1) On September 1, 2021, the parties and the Commission were requested, if they deemed it pertinent, to present, no later than September 7, 2021, the observations on the aforementioned document that they believed to be relevant. No observations were received before the deadline.

<sup>18</sup> The representatives, on August 13, 2021, the last day of the period granted to the State to provide that documentation, informed that they did not have it. The documentation provided by the Commission was sent to the representatives and the State, without a response on their part.

<sup>19</sup> Two of the expert opinions, those of Nelson Orlando Mejía Duran and María Lucrecia Hernández Vitar, were offered by the State in its answering brief and were not accepted in the Order of the President of April 14, 2021 (*supra* para. 9). The Court, in its Order of May 7, 2021 (*supra* para. 9), decided to receive those statements as evidence *de oficio*.

<sup>20</sup> The Court received, opportunely and in writing, the statements offered by the representatives of María Angélica González, Laura Joselin González, Arianny Yosibel González González and Belkis Mirelis González González. It also received the expert opinions of Magaly Mercedes Vásquez González, Víctor Velasco Prieto and Alejandra Cristina Sapene Chapellín, offered by the representatives, and of María Lucrecia Hernández Vitar and Nelson Orlando Mejía Durán, ordered *de oficio*.

<sup>21</sup> Note was taken that the State contested the decision of the President of the Court, adopted on April 14, 2021 (*supra* para. 9), to receive the statements by the means described. Venezuela argued that receiving oral statements by videoconference and receiving a statement by videorecording are actions that "have no basis in the rules." The Court confirmed the decision of the President, pointing out that, for the reasons detailed in the Order of May 7, 2021 (*supra* para. 9), "the Rules offer a sufficient legal basis for the use of videoconference be it for hearings or for matters of evidence," and that "the procedural rights of the State have not been affected" by the decision to receive a statement by videorecording," which is "not contrary to the Rules." (*Cf. Caso González et al. v. Venezuela*. Order of the Inter-American Court of Human Rights of May 7, 2021, Considerations 4, 11 and 14.)

## VI FACTS

24. There follow the relevant facts of the present case: i), details on the González family; ii), relevant information on the domestic legal order with respect to the deprivations of liberty suffered by the alleged victims; iii), the deprivation of liberty and the criminal proceedings against members of the González family; iv), facts relating to a request for compensation, presented after the criminal proceedings concluded with the acquittal of the accused, in order to obtain redress for the deprivation of liberty, and v), information on the attacks on Olimpiades González, measures of protection adopted on his behalf, his death and the investigation into his death.

25. It should be noted that the State, in its answer, in general terms, “denied [...] the facts [...] presented by the Commission and the petitioners.” Other than this denial, it did not dispute the facts presented by the Commission or by the representatives, nor did it give its own version of the factual circumstances, although it referred to some of them during the legal arguments on the human rights violations involved in the case. The Court will accredit the facts according to the evidence found in the record and in accordance with sound judicial discretion.

### **A) The González family**

26. The events of the present case begin at the end of 1998 and involve different members of the González family, living in Maracaibo, Zulia. At that time, María Angélica González was 22 years old and worked in a store; her sister Belkis Mirelis González was a year younger and studied philosophy at the University of Zulia; her brother, Olimpiades González, was 25 years old and was a businessman and student. The three lived with their parents, Fernando González and Aura González, who were business people. On the other hand, Luis Guillermo González and Wilmer Antonio Barliza González, cousins of Olimpiades González and his sisters, were 25 and 20 years old and worked as a laborer and bricklayer, respectively.

27. The González family belonged to the indigenous Wayuú people. In 2012, the State maintained before the Commission that “during the past decades,” many members of the Wayuú people emigrated to different cities in Venezuela “in search of better living conditions,” as did the González family.<sup>22</sup>

### **B) Relevant domestic legal order with respect to the deprivation of liberty**

28. With respect to the deprivation of liberty suffered by the alleged victims in this case, which will be detailed later (*infra* paras. 33 to 64), it is necessary to consider the applicable domestic legal order when the acts occurred, which follow:

29. Article 60 of the Venezuela Constitution of 1961 stated the following:

Personal liberty and safety are inviolable, and consequently:

1. No one may be arrested or detained, unless caught *en flagrante*, except by virtue of a written order of an official authorized to decree the detention, in the cases and with the formalities prescribed by law. [...]

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<sup>22</sup> Communication of the State of May 11, 2012 (evidence file, Annex 1 to the Merits Report, fs. 7 to 25).

In the event that a punishable act has been committed, the police authorities may adopt such provisional measures of necessity or urgency, as are essential to ensure investigation of the act and the prosecution of the guilty parties. The law shall fix a brief and peremptory time limit within which the judicial authorities must be notified of such methods, and shall also establish a period during which the latter shall rule on them, it being understood that they have been revoked and are without effect unless confirmed within that period.<sup>23</sup>

30. The Organic Law of Amparo on Constitutional Rights and Guarantees (hereinafter the "Law of Amparo"), establishes in Articles 45 and 46 the following:

-Article 44. Whenever a punishable act has been committed, the police authorities, who in accordance with the law are auxiliaries of the administration of justice, may order, as provisional measures of necessity and urgency, either the detention of the presumed guilty party or his periodic presentation, during the summary investigation, to the respective authority. In either of the two hypotheses, the order must give the grounds and be in writing.

-Article 46. In the case of the previous article, the detainee must be placed at the order of the competent judge, within a period of eight (8) days.<sup>24</sup>

31. The Code of Criminal Procedure established:

-Article 71: The summary is comprised of the actions directed to discovering and recording the commission of punishable acts, with all of the circumstances that might bear upon its characterization and the guilt of the presumed agents, with the seizure of the persons and the active and passive objects of the commission.<sup>25</sup> [...]

-Article 75: The Judicial Police are subordinated to the Investigative Judges in the exercise of the functions that are attributed to them by this Code and must investigate the crimes, identify and preventively apprehend the presumed guilty persons and safeguard the necessary evidence for the application of the Law. They are also subordinated to the other Criminal Tribunals, when they require technical collaboration for the structuring and conservation of the evidence. The Judicial Police act, depending on the case, on their own initiative, by a complaint or by order of the competent authority.

-Article 75 G: The officials of the Judicial Police must account for the actions taken with an indication of:

1. The place, hour, day, month and year in which the action was taken;
2. The first and last name, category and address of each of the persons who have intervened; the personal data and the addresses of the witnesses;
3. The personal data of the interpreters in the cases included in this Code;
4. The signature of the interveners who knew and were so able and an indication of those who did not sign and the reasons for not doing so.<sup>26</sup>

**C) The detentions and the procedure followed for the presumed victims**

32. On November 23, 1998, the Secretary of the Homicide Brigade certified that, at 2:00 a.m., he received a call from an official of the guard who indicated that beside a house in the Catacumbo neighborhood there was the body of a woman, named C.F., who

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<sup>23</sup> A literal transcription of the Venezuelan Constitution of 1961 was included in the expert opinion of Magaly Mercedes Vásquez González (evidence file, fs. 2769 to 2794).

<sup>24</sup> Articles 45 and 46 of the Law of Amparo were transcribed by the State in its answer.

<sup>25</sup> Article 71 of the Code of Criminal Procedure was transcribed by the State in its answer. Venezuela, in doing so, emphasized the part of the text that indicates "with the seizure of the persons."

<sup>26</sup> The text of Articles 75 and 77 G is included in the Code of Criminal Procedure, which has been incorporated as evidence *de oficio* by the Court (*supra* para. 20).

had died as a result of a gunshot wound. Immediately afterwards, the Technical Corps of the Judicial Police of the State of Zulia (hereinafter the "TJP") sent that information to the Fourth Judge of the First Criminal Instance, who was competent to initiate the investigation.<sup>27</sup> That same day, the TJP sent a communication to the Twenty-fifth Prosecutor of Zulia, informing him that it had initiated "summary discovery [...] F.282.289," for the commission of a "crime against persons" that had occurred the previous day.<sup>28</sup>

33. The woman who was found dead was a member of the M.F. family, with which the González family had had problems for several years.<sup>29</sup> In a statement given to local authorities, Wilmer Antonio Barliza González said that there had "existed bad blood for years" between the families.<sup>30</sup>

#### C.1. Deprivation of liberty of Belkis, María Angélica and Fernando González

34. On November 23, 1998, an inspection was carried out at the scene of the crime. The Police Sub-Inspector and a group of agents of the TJP went to the home of Belkis Mirelis González and María Angélica González, located in the Mamón neighborhood. According to the police account, both persons were detained and, after an inspection of their home, a shotgun was seized.<sup>31</sup>

35. At 4:30 in the afternoon of that day, a police report noted that a policeman A.Q., appeared before the Homicide Brigade and "pursuant to Articles 71 and 75 G of the Code

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<sup>27</sup> These circumstances were reported thusly by the Commission and the representatives and not expressly disputed by the State. On the other hand, it was left clear that, in this Judgment, initials have been used for those persons with respect to whom there is no indication that they had any involvement in the proceedings of the case at the international level; that is, before the Inter-American Commission or the Inter-American Court.

<sup>28</sup> Communication 9700-135-DZ of November 23, 1998 (evidence file, Annex 5 of the Merits Report, fs. 58 and 59).

<sup>29</sup> In its Merits Report, the Commission noted that the State had mentioned that in the proceedings prior to the issuance of the Report. The representatives, in their brief with petitions and motions, also mentioned, as part of the "grounds of the action," what the State had indicated.

<sup>30</sup> Wilmer Antonio Barliza González stated that the confrontation between the families involved the "stealing of a truck," in which he claimed "M.F. was involved" and that later members of that family had threatened Barliza González and killed his brother. Barliza González stated that members of the family of M.F. were in a "gang" of delinquents called the "Zamuros." (Cf. Statement of Wilmer Antonio Barliza of February 10, 1999 (evidence file, Annex 5 of the Merits Report, fs. 134 and 135)). According to the indications of the Commission regarding the State's arguments in the proceedings before the Commission, the confrontations between both families began when a "member of the M.F. family presumably demanded of the González family a monetary compensation for a seizure by the police, for which they blamed the members of the González family and the latter refused to pay the amount demanded." The same was stated by Dan William Barliza González in his oral statement before the Court (*supra* para. 23). María Angélica González, Laura Joselin González and Arianny Yosibel González González made similar statements (cf. Written statements of María Angélica González, Laura Joselin Gonzalez and Arianny Yosibel González González (evidence file, fs. 2736 to 2741, 2742 to 2747 and 2748 to 2753, respectively). Belkis Mirelis González maintained that, on the part of her family, there was no confrontation with the other family (cf. Written statement of Belkis Mirelis González before the Court (evidence file, fs. 2754 to 2767)).

<sup>31</sup> This was contained in the Commission's Merits Report and was not expressly disputed by the State. It also partially appears in the police report of the Homicide Brigade of the TJP of November 23, 1998 (evidence file, Annex 5 of the Merits Report, f. 60). The report stated that it was incomplete regarding the detentions, which makes it difficult to know how the intervening authorities could have reported additional circumstances that, according to them, might have been produced during those acts.

of Criminal Procedure” stated the following: that Fernando González came to the police station

with a red 1976 Ford, model 350, [...] which was mentioned in the report [...] and according to the testimony taken later, it was agreed to leave the vehicle and detain the citizen at the order of the Homicide Brigade in order to conduct the investigations involving the present event.<sup>32</sup>

36. On that same day, with respect to Belkis, María Angélica and Fernando González, the Homicide Brigade issued the following statement:

Inasmuch as this Delegation is conducting a summary investigation and that there is evidence that leads to the presumption of the participation in (the death of Ms. [C.F.]), in the opinion of this Office it is necessary to extend the preventive detention, under the terms of Article 45 of the Organic Law of Amparo on Constitutional Rights and Guarantees, it is decided to maintain [the aforementioned persons] preventively detained for a period not to exceed eight days, pursuant to the terms of Article 75 of the Code of Criminal Procedure.<sup>33</sup>

37. The Brigade issued a preventive detention “ticket” against Fernando González, María Angélica González and Belkis Mirelis González<sup>34</sup>.

38. On December 2, 1998, Fernando González and María Angélica González sent to the First Court of the First Criminal Instance of Zulia (hereinafter the “First Court”) communications in which they requested that, in the event of a “measure of deprivation of liberty,” they be granted the “benefit of being prosecuted or be given provisional liberty under bail.”<sup>35</sup>

39. The Commission and the representatives pointed out that, on December 4, 1998, the First Court held a hearing at which María Angélica, Belkis and Fernando González explained the circumstances of their detentions and manifested that they did not participate in the death of Ms. C.F.

40. That same day, the First Court ordered a lineup for December 8, 1998.<sup>36</sup> On that day, B.M. participated in two lineups and identified María Angélica González and Fernando González as responsible for the death of her mother. B.F. also participated in a lineup and identified Fernando González. Finally, L.F. participated in two lineups and identified Belkis, María Angélica and Fernando González.<sup>37</sup>

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<sup>32</sup> Police report of the Homicide Brigade of November 23, 1999 (evidence file, Annex 5 to the Merits Report, f. 65). The representatives referred to the treatment received by Fernando González upon being detained. These events are not contained in the factual framework of the case (*infra* para. 139) and, therefore, will not be considered.

<sup>33</sup> Decision of the Homicide Brigade of the TJP of November 23, 1998 (evidence file, Annex I to the final written allegations of the State, f. 2902).

<sup>34</sup> Cf. Detention “ticket” of the TJP, Homicide Brigade of November 23, 1998 (evidence file, Annex 5 of the Merits Report, f. 66)

<sup>35</sup> Communications of Fernando González and María Angélica González, of December 2, 1998, to the First Judge of the First Criminal Instance of Zulia (evidence file, Annex 5 of the Merits Report, fs. 89 and 90).

<sup>36</sup> Communication of the First Court of First Criminal Instance of Zulia of December 4, 1998 (evidence file, Annex 5 of the Merits Report, fs. 89 and 90).

<sup>37</sup> Report on the lineup of detainees of the First Court of the First Criminal Instance of Zulia of December 8, 1998 (evidence file, Annex 5 of the Merits Report, fs. 93 to 95).

41. On December 10, 1998, the First Court handed down an order of detention, in which it indicated that “there were well-founded and multiple indicia that implicate” Belkis, María Angélica and Fernando González in the commission of the crime of intentional homicide, as set out in Article 407 of the Criminal Code.<sup>38</sup> The First Court took into account, among other evidence, the statements of family members of Ms. Fernández, as well as the recognition in the lineups. As a result, and under Article 182 of the CCP (*infra* para. 116), the First Court decreed the judicial detention of Belkis, María Angélica and Fernando González and ordered that they be sent to the National Penitentiary of Maracaibo (hereinafter the “National Penitentiary”), where they were not separated from the convicted inmates.<sup>39</sup>

42. On December 14, 1998, the legal representative of Fernando, Belkis and María Angélica González requested that the First Court transfer them to the Center of Arrests and Preventive Detention in El Marite (hereinafter the “El Marite Center”) and indicated:

From information received from persons close to the family of my clients, which has become public, those affected by the death of [C.F.] have made death threats against my clients when they were in the National Penitentiary of Maracaibo, for which reason I write in order to guarantee their physical integrity, I request this Tribunal that they urgently be transferred to the jail of El Marite.<sup>40</sup>

43. That same day, the First Court ordered the Director of the National Penitentiary “to designate a place in the institution for Belkis Mirelis González, María Angélica González and Fernando González, who are indigenous, to protect their personal security and physical integrity.”<sup>41</sup> On December 18, 1998, the First Court requested that the Director report on whether the three alleged victims “have received threats or visits of persons who had verbally threatened their physical integrity.”<sup>42</sup> The Director informed that Belkis and María Angélica “from the time of their entry [...] were placed in a secure section to guarantee their physical integrity.” He added that Fernando González “is in Infirmary 111, Section Los Bonos.”<sup>43</sup> At a later date, Belkis and María Angélica González were placed in a solitary cell so that they would not have contact with their “enemies.”<sup>44</sup>

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<sup>38</sup> Resolution No. 916 of the First Court of the First Criminal Instance of Zulia of December 10, 1998 (evidence file, Annexes 2 and 5 of the Merits Report, fs. 30 to 35 and 102 to 103, respectively).

<sup>39</sup> This was pointed out by the representatives and the Commission and not disputed by the State (*infra* paras. 134, 135 and 137) In addition, it appears in the written and oral statements of María Angélica González and Dan William Barliza González, respectively, before the Court.

<sup>40</sup> Written statement of the accused of December 14, 1998 (evidence file, Annex 5 of the Merits Report, f. 104). Arianny Josibel González González stated, in the same sense, that her family members had received threats while deprived of their liberty (*cf.* Written statement of Arianny Josibel González González before the Court).

<sup>41</sup> Order of the First Court of December 14, 1998 (evidence file, Annex 5 of the Merits Report, f. 107).

<sup>42</sup> Order of the First Court of December 14, 1998.

<sup>43</sup> This was indicated by the Commission in its Merits Report and stems from an order of the penitentiary authorities of July 7, 1999 (evidence file, Annex 5 of the Merits Report, f. 171). In the same document, the authorities of the Maracaibo prison informed the First Judge that Belkis and María Angélica González had “begun to have differences” with others in the section where they were being held and, therefore, the two sisters were transferred to a solitary cell in order to “avoid greater problems.”

<sup>44</sup> Belkis González stated that in the penitentiary, both in the areas for men and those for women, there were “members” of the “gang of delinquents” that she associated with the M.F. family. She also stated that she and her sister were threatened in the penitentiary “by messages that indicated that they were going to be poisoned or were going to be collectively lynched” (*cf.* Written statement of Belkis Mirelis González González before the Court). The precise date on which María Angélica González and Belkis González were transferred to a solitary cell is not clear. They were transferred to the National Penitentiary after December 10, 1999 (*supra*

That cell did not have adequate conditions, as will be subsequently shown (*infra* para. 151).

44. On December 21, 1998, the First Court ordered that Fernando González be transferred to the El Marite Center.<sup>45</sup> Belkis and María Angélica González remained in the National Penitentiary.

45. On January 8, 1999, María Angélica González, Belkis González and Fernando González appeared before the First Court and gave a preliminary statement in which they confirmed their previous statements. At the same time, they filed an appeal of the order of detention of December 10, 1998, alleging that it did not comply with Article 182 of the CCP, which requires the "existence of several indicia of guilt of the crime."<sup>46</sup>

46. On January 28, 1999, the Fourth Superior Criminal Court confirmed the decision of the First Court. The Superior Court based its decisions on the conclusions of the First Court and stressed that that evidence showed that "there were sufficient indicia of the guilt of the accused."<sup>47</sup>

C.2 Deprivation of liberty of Wilmer Antonio Barliza González, Luis Guillermo González and Olimpiades González

47. On January 28, 1999, Wilmer Antonio Barliza González, Luis Guillermo González and Olimpiades González were also detained.<sup>48</sup>

48. The Commission, in its Merits Report, pointed out that the police report stated that three persons were detained because they were involved in an "exchange of shots," which was reported to the police by Olimpiades González. According to Merits Report, when the police arrived at the scene, L.F., daughter of C F., told the police that it was Wilmer Antonio Barliza González and Luis Guillermo González who began to shoot.<sup>49</sup> In

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para. 41). The representatives stated that on May 31, 1999, or after that date, they were placed in a solitary cell. However, Belkis González stated that she and her sister, when "they were taken to the women's annex of the jail," they were there for one day because their presence caused "a disturbance due to the repudiation of those there toward them." She noted that they were then transferred to another section where they remained for one month and that they were later "isolated" in a punishment cell with a woman who had been convicted." (Cf. Written declaration of Belkis Mirelis González González before the Court.)

<sup>45</sup> Cf. Decision No. 931 of the First Court of December 21, 1998 (evidence file, Annex 5 of the Merits Report, f. 115).

<sup>46</sup> Minutes of the statement of the First Court of January 8, 1999 (evidence file, Annex 5 of the Merits Report, f. 117).

<sup>47</sup> Decision No.110 of the Superior Criminal Court of Zulia of January 28, 1999 (evidence file, Annex 7 of the Merits Report, fs. 119 and 120).

<sup>48</sup> Communication OGP.DIP-Nro. 1174, sent January 29, 1999 by the Intelligence Division of the Police of Zulia to the Head of the TJP (evidence file, Annex 5 of the Merits Report, f. 121).

<sup>49</sup> The Commission pointed out that the statements are in a police report of January 28, 1999 and are included on page 132 of Annex 5 of the Merits Report. That page indicates that there is, in effect, a police document but that it is dated January 29, 1999 and it records the detentions of Wilmer Antonio Barliza González, Luis Guillermo González González and Olimpiades González, but not the aforementioned circumstances. It indicates the "referring" to the Head of the TJP of the three "detainees" and the "two firearms and a toy pistol" (*infra*, para. 49). The representatives, in their brief with petitions and motions, noted the detention of the three persons indicated in the terms outlined by the Commission and referred to the same document. The State, for its part, neither accepted nor expressly rejected the claims of the Commission and

a statement given to State authorities, Wilmer Antonio Barliza González stated that, on January 28, 1999, while he was in the street, members of the F. family began to shoot and, therefore, he and the one or more persons who were with him took refuge in the house of his aunt.<sup>50</sup> He added that a woman, L.F., arrived, together with an "Intelligence Commission," who searched the house. He stated that she carried a bag from which she took out two firearms that she planted beside the house and then called the police, indicating the firearms and saying that they belonged to Wilmer Antonio Barliza and the other persons who were with him.<sup>51</sup> Mr. Barliza González did not say precisely who was with him but from the statements that were given, it can be deduced that they were Luis Guillermo González<sup>52</sup> and Olimpiades González.

49. On January 29, 1999, the Intelligence Section of the Police issued a document "referring" Wilmer Antonio Barliza González, Luis Guillermo González and Olimpiades González, as well as the two firearms and a toy pistol, to the Head of the TJP, indicating as "grounds" that the firearms "are related" to file "No. F-282-189, of 23-11-98, for one of the crimes against persons."<sup>53</sup> That same day, the "Investigations Section" of the TJP issued a document indicating that "existing evidence that presumes the participation" of the three detainees in the events relating to the aforementioned file, "in the opinion of this Office," the "preventive detention should be continued" pursuant to Article 45 of the Law of Amparo for a period not to exceed eight days, in view of the terms of Article 75 of the CCP.<sup>54</sup> Neither of those two documents refer to the facts stated in the previous paragraph.

50. On February 5, 1999 Luis Guillermo González, Wilmer Antonio Barliza and Olimpiades González requested that the First Court either prosecute them or release them under bail.<sup>55</sup>

51. On February 9, there was a lineup but there is no detailed information on what occurred.<sup>56</sup>

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the representatives, but in its answering brief, in referring to the detention, acknowledged what was in the other police document, also of January 29, that is indicated later (*infra* para. 49).

<sup>50</sup> According to the statement of Dan William Barliza González, that aunt is the mother of Olimpiades González (*cf.* Oral statement of Dan William Barliza González before the Court).

<sup>51</sup> *Cf.* Statement of Wilmer Antonio Barliza of February 10, 1999.

<sup>52</sup> *Cf.* Minutes of the statement of February 10, 1999 (evidence file, Annex 5 of the Merits Report, fs. 134, 135, 137 and 139).

<sup>53</sup> *Cf.* Communication OGP.DIP-Nr. 1174, sent on January 29, 1999 by the Intelligence Division of the Police of Zulia to the Head of the TJP.

<sup>54</sup> Investigation Section of the TJP, Delegation of Zulia, Minutes of January 29, 1999 (evidence file, Annex 5 of the Merits Report, f. 123).

<sup>55</sup> This fact was pointed out by the Commission and the representatives and not directly disputed by the State. The documentary evidence only contains the request of Olimpiades González (Statement of Olimpiades González before the First Court of February 5, 1999 (evidence file, Annex 5 of the Merits Report, f. 131)).

<sup>56</sup> The document in which this act appears, provided as documentary evidence, is incomplete (*cf.* Minutes of February 9, 1999, evidence file, Annex 5 to the Merits Report, f. 133). The lineup was then "contested" by Olimpiades González, Luis Guillermo González and Wilmer Antonio Barliza González (*cf.* Writ of impugnation, without a date and incomplete, evidence file, Annex 5 of Merits Report f. 136). There is no information on how this was resolved.

52. On February 10, 1999, Wilmer Antonio Barliza, Olimpiades and Luis Guillermo González testified before the court. They stated that they did not participate in the homicide and that L.M. had planted the firearms at the place where they had been detained.<sup>57</sup>

53. On February 12, 1999, the First Court decreed the judicial detention for the crime of intentional homicide and unlawful possession of firearms against Luis Guillermo González, Wilmer Antonio Barliza and Olimpiades González and requested their transfer to the National Penitentiary. The Court based its decision on "substantial and multiple indicia of guilt that imply the criminal responsibility of the accused." The Court took into account, among other elements, the police report of January 28, 1999, as well as the recognition in the lineup.<sup>58</sup>

54. According to the undated assertions of the Commission and the representatives, the mother of Wilmer Antonio Barliza requested the First Court that her son, Olimpiades González, and Luis Guillermo González be transferred from the National Penitentiary to the El Marite Center, due to the enmity with the M.F. family and because of their threats. On the other hand, according to the allegations of the representatives and the Commission and the expert opinion of Víctor Manuel Velazco Prieto, the three detainees were not separated from the convicted inmates at the National Penitentiary (*infra paras. 134, 135 and 147*).

55. On March 19, 1999, the First Court requested that the Director of the National Penitentiary report on whether Olimpiades González, Wilmer Antonio Barliza and Luis Guillermo González "have received threats or visits of persons who had verbally threatened their physical integrity."<sup>59</sup> Four days later, the report was received that indicated:

The detainees were interviewed [...] and they stated that they had received threats from members of the Zamuros gang; the moment that we entered we received a visit from one of them named Larry [...] who beckoned us and told us that they were waiting for us here in the jail. Where we were placed was not a very secure part and therefore, we asked that we be sent to El Marite.<sup>60</sup>

56. This request of transfer was reiterated on March 2, 1999, with reference to the threats.<sup>61</sup> The same day the First Court ordered their transfer to the El Marite Center, which was carried out immediately.<sup>62</sup>

57. On March 5, 1999, the legal representative of Olimpiades González, Luis Guillermo González and Wilmer Antonio Barliza appealed the decision of the First Court

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<sup>57</sup> Minutes of the statement of February 10, 1999. The statement of Luis Guillermo González, which is incomplete.

<sup>58</sup> Resolution No. 075 of the First Court of February 12, 1999 (evidence file, Annex 2 of the Merits Report, fs. 27 to 29).

<sup>59</sup> Communication of the First Court of February 19, 1999 (evidence file, Annex 5 of the Merits Report, f. 147).

<sup>60</sup> Report of the Director of the National Penitentiary of February 23, 1999 (evidence file, Annex 5 of the Merits Report, f. 149).

<sup>61</sup> Brief of the legal representatives of March 2, 1999 (evidence file, Annex 5 of the Merits Report, f. 150).

<sup>62</sup> Communication of the El Marite Center of March 4, 1999 (evidence file, Annex 5 of the Merits Report, f. 151).

of February 12, 1999 (*supra* para. 53). The appeal indicated that “there are no eyewitnesses who can state with certainty that the detainees were involved in the incident.” It also alleged that the lineup resolved nothing.<sup>63</sup>

58. On April 21, 1999, the Ninth Superior Criminal Court lifted the order of detention of Olimpiades González and Luis Guillermo González and confirmed the preventive detention of Wilmer Antonio Barliza. With respect to Olimpiades González and Luis Guillermo González, the Court indicated that the witnesses did not identify them as being armed during the death of C. F. With respect to Wilmer Antonio Barliza, that court maintained that there were witnesses who saw him at the scene of the crime and who identified him in the lineup and, thus, “the requirements of Article 182 of the Code of Criminal Procedure are met.”<sup>64</sup> That same day, release “tickets” were issued for Olimpiades González and Luis Guillermo González.<sup>65</sup>

### C.3 Continuation and finalization of the criminal proceedings

59. On July 1, 1999, the new Organic Code of Criminal Procedure (hereinafter “the COPP”) entered into force.<sup>66</sup>

60. On July 30, 1999, the Fourth Prosecutor of the Public Ministry filed charges against Wilmer Antonio Barliza González, Fernando González, María Angélica González and Belkis Mirelis González for the crimes of homicide and the unlawful possession of firearms, pursuant to Articles 407 and 278 of the Criminal Code.<sup>67</sup>

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<sup>63</sup> Communication of the detainees to the First Judge of the First Court of March 5, 1999 (evidence file, Annex 5 of the Merits Report, fs. 152 to 154).

<sup>64</sup> Decision of the Ninth Superior Criminal Court of April 21, 1999 (evidence file, Annex 9 of the Merits Report, f. 264 to 268). See also: Annex 5 of the Merits Report, fs. 160 and 161.

<sup>65</sup> Release “tickets” of the Ninth Superior Criminal Court of April 21, 1999 (evidence file, Annex 5 of the Merits Report, fs. 162 and 163).

<sup>66</sup> *Cf.* Written expert opinion of Magaly Mercedes Vásquez González. She stated that the new legislation “was inspired by the principles of hearings, equality, decisions de oficio and as basic principles of procedure, in oral proceedings, immediacy, unification of procedures and publicity; the exercise regarding criminal actions has been given to the Public Ministry; the role of the defense has been strengthened and the victim has been recognized as an active participant.” She added that “the figure of the Control Judge has been created.” She noted that in March 1998 “three institutions of the new Code had entered into force,” but did not say which. She also explained that the Commission that drafted the reform noted that it could not be implemented without the “modification of the collateral normative framework” and for that to occur the “laws of the Public Ministry, the Judiciary, the Judicial Career, the Code of Military Justice and the law that governs the attributes of the police” were amended. She noted that these modifications also entered into force on July 1, 1999. The expert also mentioned that, on December 30, 1999, a new Constitution entered into force that “included several principles contemplated” in the new legislation on criminal procedure. This legislation, according to the expert was then amended in November 2001, modifying provisions regarding the “restriction of liberty, [...] not only of the accused but also of the convicted.” She informed that other reforms were made in October 2006, August 2008, September 2009 “and the most recent in force as of June 12, 2012.” The expert Nelson Orlando Mejía Durán stressed that “until 1999, the Venezuelan criminal procedural legislation was governed by an inquisitive system (Code of Criminal Procedure), in which one person, the judge, had the authority to conduct the investigation” and that this changed at the beginning of that year when it became a “mixed accusatory” system that, in the opinion of the expert, allowed the González family a process “more in line with due process” (*cf.* Written expert opinion of Nelson Orlando Mejía Durán (evidence file, fs. 2725 to 2734).

<sup>67</sup> Accusation of the Fourth Prosecutor of the Public Ministry of the Criminal Judicial Circuit of Zulia of July 30, 1999 (evidence file, Annex 5 of the Merits Report, fs. 180 to 182).

61. On August 2, 1999, the legal representative of the four persons filed a request for alternate precautionary measures alleging that the Prosecutor had not presented an accusation within the procedural moment established in Article 259 of the COPP and the absence of a “danger of fleeing and obstruction,” pursuant to Articles 260 and 261 of the COPP.<sup>68</sup> On August 16, 1999, the legal representative reiterated, in a hearing, the request made on the 2nd, and, on the same 16th, the Ninth Enforcement Court accepted the accusation presented by the Fourth Prosecutor of the Public Ministry and resolved to continue the preventive detentions, by claiming that “they met the provisions established” in Article 259<sup>69</sup> of the COPP.<sup>70</sup> The resolution did not contain the grounds that led to such a conclusion.

62. On September 29, 1999, the Mixed Tribunal of the First Court ordered the immediate release of Fernando González, María Angélica González, Belkis Míreles González and Wilmer Antonio Baliza González. With respect to the statements of the witnesses who accused the alleged victims, the Tribunal indicated that “there were contradictions that impact on the certainty and the veracity of the statements.” As to Fernando González, the Tribunal considered that it was not logical “to think that a person involved in a crime would present himself before a court with the material evidence that involves and compromises himself.”<sup>71</sup> The same day, the Tribunal issued the release “tickets.”<sup>72</sup>

63. On October 20, 1999, the Second Trial Court of the Criminal Judicial Circuit held the judgment to be final since the period to present an appeal had passed.<sup>73</sup>

64. The facts demonstrate that María Angélica González, Belkis González and Fernando González were deprived of their liberty for a period of close to ten months;

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<sup>68</sup> Cf. Communication of August 2, 1999 (evidence incorporated *de officio, supra* para. 21; evidence file, fs. 2910 to 2912).

<sup>69</sup> “Article 259. Proceedings. The judge [...] at the request of the Public Ministry, may decree the deprivation of liberty of the accused provided that there is proof of:

1. A punishable act that merits the deprivation of liberty and whose criminal action is not obviously prescribed;
2. Substantive grounds of conviction to believe that the accused has been the perpetrator or accomplice in the commission of the punishable act;
3. A reasonable presumption, in view of the circumstances of the specific case, of a danger of flight or obstruction in the search for truth with respect to the specific act of the investigation;

In the event that the accused is apprehended, he must be placed at the order of the judge so that the judge might decide, after hearing him, within the following forty-eight hours, on release or preventive detention, when the Public Ministry requests the application of this measure.

Having decreed the judicial preventive detention during the preparatory stage, the prosecution must accuse, request the acquittal or, if pertinent, close the case, no later than twenty days following the judicial decision

When this period has elapsed without the prosecutor presenting the accusation, the detainee shall be released, by a decision of the control judge, who can apply an alternate measure.” (The text of Article 259 was transcribed by the representatives in their brief with petitions and motions.)

<sup>70</sup> Cf. Decision of the Ninth Criminal Judge of August 16, 1999 (evidence incorporated *de officio, supra* para. 21; evidence file, fs. 2907 to 2909).

<sup>71</sup> Minutes of the debate of the Mixed Tribunal of the Judicial Circuit of Zulia of September 28-29, 1999 (evidence file, Annex 11 of the Merits Report, fs. 273 to 287).

<sup>72</sup> Cf. Communication No. 115-99 sent to the person in charge of the release “ticket” of the Director of the National Penitentiary (evidence file, Annex 5 of the Merits Report, f. 235).

<sup>73</sup> Cf. Decision of the Second Trial Judge of October 20, 1999 (evidence file, Annex 5 of the Merits Report, f. 238).

that Wilmer Barliza González was detained for a period of close to eight months, and that Luis Guillermo González and Olimpiades Gonzalez were in the same situation for approximately three months.

**D) The request for compensation**

65. On the basis of the brief of May 24, 2001, filed with the Second Trial Tribunal of the Criminal Judicial Circuit of Zulia by María Angélica González, Wilmer Barliza González and Belkis González, they, as well Fernando González, requested compensation, alleging that they suffered an arbitrary deprivation of liberty during their criminal proceedings.<sup>74</sup>

66. On August 24, 2001, the Second Trial Tribunal decided in favor of those four persons, ordering that the Office of the General Prosecutor pay a monetary sum, the calculation of which would take into account the days of deprivation of liberty.<sup>75</sup>

67. On October 29, 2001, the Office of the General Prosecutor appealed the decision, alleging that the Tribunal made an erroneous interpretation of the law and that the Public Ministry is not responsible for presumed judicial errors.<sup>76</sup> On November 26, 2001, the Third Chamber of the Court of Appeals annulled the decision of the Second Tribunal, holding that it had erroneously interpreted the procedural norms on "compensation, reparation and restitution."<sup>77</sup> The Court of Appeals ordered "the absolute nullification of the proceedings and the appealed decision."

68. On June 13, 2002, the Chamber of Criminal Cassation of the Supreme Tribunal of Justice declared inadmissible an appeal of cassation presented by the presumed victims.<sup>78</sup>

69. On May 29, 2003, María Angélica González, Wilmer Barliza González, Belkis González and Fernando González filed an extraordinary appeal of review against the decision of November 26, 2001, which was declared without grounds on July 30, 2003.<sup>79</sup>

70. According to the Commission and the representatives, on January 21, 2004, María Angélica González, Wilmer Barliza González, Belkis González and Fernando González requested that the Chamber of Criminal Cassation interpret several articles of the COPP relating to the clauses on compensation when: i) there is a judgment that absolves the accused and ii) an individual has suffered the deprivation of liberty during the proceedings and his or her participation in the act was not proved. The Commission and

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<sup>74</sup> Cf. Decision No.024-01 of the Second Trial Tribunal of the Criminal Judicial Circuit of Zulia, of August 24, 2001 (evidence file, Annex 12.1 of the Merits Report, fs. 289 to 300).

<sup>75</sup> Cf. Decision No.024-01 of the Second Trial Tribunal of the Criminal Judicial Circuit of Zulia, of August 24, 2001 (evidence file, Annex 12.1 of the Merits Report, fs. 289 to 300).

<sup>76</sup> Cf. Decision No. 440 of the Third Chamber of the Court of Appeals of the Criminal Judicial Circuit of Zulia of November 26, 2001 (evidence file, Annex 12.2 of the Merits Report, fs. 302 to 313).

<sup>77</sup> Cf. Decision No. 440 of the Third Chamber of the Court of Appeals of the Criminal Judicial Circuit of Zulia of November 26, 2001 (evidence file, Annex 12.2 of the Merits Report, fs. 302 to 313).

<sup>78</sup> Cf. Decision of the Chamber of Criminal Cassation of June 13, 2002 (evidence file, Annex 13.1 of the Merits Report, fs. 315 to 317).

<sup>79</sup> Cf. Decision of the Constitutional Chamber of the Supreme Tribunal of Justice of July 30, 2003 (evidence file, Annex 13.1 of the Merits Report, fs. 319 to 322).

the representatives also pointed out that, on October 5, 2004, the Chamber held the request inadmissible since the appellants did not indicate the alleged confusion or lack of precision of the mentioned norms “that implies a reasonable doubt on their interpretation or origin.”

**E) Olimpiades González**

71. On September 19, 2001, Olimpiades González was the victim of an attempt on his life. The Commission and the representatives indicated that, when Mr. González was on his way to the Office of the Prosecutor to request a response to his compensation claim, an unidentified person shot at him three times. They added that Mr. González denounced what occurred to the Office of the Prosecutor and requested that he be granted protective measures.

72. On November 26, 2001, the Fifth Tribunal of Control of the Criminal Justice Circuit of Zulia ordered police protection for Olimpiades González for two months. The State, while the case was before the Inter-American Commission, indicated that this measure was implemented by police rounds near his home.<sup>80</sup> The representatives maintained, however, that the policemen did not comply with the hours assigned for the rounds.

73. On December 14, 2001, Olimpiades González requested that the Fifth Tribunal of Control extend the protective measure and reported that the police were not complying with the assigned rounds. On January 15, 2002, the Tribunal held a public hearing in which Mr. González manifested that the police rounds did not comply with what had been established and that one of the policemen threatened to arrest him if he complained. At the same hearing, the policeman in charge of the protection of Mr. González testified that it was not possible to use 12 policemen to protect one person. He added that “the police function is not to maintain a special vigilance for one person” since “the work of the police is not that of a bodyguard.”<sup>81</sup>

74. The State, before the Commission, pointed out that, on June 13, 2002, the Public Ministry “decided” to close the investigation, since it could not identify the perpetrator of the incident.<sup>82</sup>

75. On July 12, 2002, the Eleventh Court of Control of the Criminal Judicial Circuit of Zulia denied the request of Mr. González to extend the protective measure, because the judicial decision of November 2001 (*supra* para. 72) established that the protective

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<sup>80</sup> Communications of the “petitioning party” and of the State of January 22, 2004 and February 17, 2015, respectively (evidence file, Annex 15 of the Merits Report, fs. 330 to 336 and 337 to 344, respectively). With regard to the adoption of protective measures, the Court noted that the expert María Lucrecia Hernández Vitar pointed out that it was contemplated among the “rights of the victim” in the COPP, published in the Official Gazette of January 23, 1998, and that later the Law on the Protection of Victim Witnesses and other Procedural Persons, promulgated on October 6, 2006, was also contemplated; in the Organic Law of the Public Ministry, published on March 19, 2007, as well as “in more specific terms” in other legislation: “Organic Law on the Protection of Children and Adolescents of 1998 amended in 2006 and the Organic Law on the Right of Women to a Life Free of Violence of 2007 with its last modification in 2014.” The expert also referred to the Organic Law of the National Police and the Police Service and considered that there “exists a broad normative framework that governs protective measures.” (*Cf.* Written expert opinion of María Lucrecia Hernández Vitar (evidence file, fs. 2714 to 2723).)

<sup>81</sup> *Cf.* Minutes of the hearing of the Fifth Control Court of the Criminal Judicial Circuit of Zulia of January 15, 2002 (evidence file, Annex 16.1 of the Merits Report, fs. 346 and 347).

<sup>82</sup> *Cf.* Communication of the State of February 17, 2015.

measures would have a duration of two months. The Court also indicated that Mr. González was not now considered a victim since the investigation of the attempt on his life had been closed.<sup>83</sup>

76. On March 30, 2004, Mr. González requested that the investigation be reopened and indicated that one of the persons responsible for the events of September 2001 was R.M. On July 28, 2004, an arrest warrant was ordered for Mr. R.M.<sup>84</sup>

77. In his statement before the Court, Belkis González asserted that, on December 21, 2004, Olimpiades González was attacked at gunpoint "by the [M.F.]."<sup>85</sup>

78. The Commission and the representatives pointed out that, at approximately 5 p.m. on December 11, 2006, Olimpiades González, after having been in the offices of the Public Ministry for reasons having to do with his situation, was returning home on public transportation. After getting off the bus, Mr. González entered a restaurant to order some food and a person named H.F. entered the restaurant and shot him three times in the back. Mr. González was taken to the Hospital Universitario, where he died.<sup>86</sup>

79. That same day, the Seventeenth Prosecutor's Office on the National Level with Full Competence and the Eleventh of the Judicial Section of Zulia initiated an investigation into the death of Mr. González. During December 2006 and January 2007, various phases of the investigation were conducted.<sup>87</sup>

80. On March 16, 2007, the Prosecutor's Office ordered several actions intended to clarify the events, such as: i) obtaining the autopsy of the deceased; ii) ordering and obtaining the medico-legal information; iii) conducting a ballistics test; iv) obtaining certified copies of his medical history; v) obtaining the bullets removed from the corpse, and vi) interviewing the witnesses.<sup>88</sup> María Angélica González stated that she and members of her family "went to the Public Ministry to give their statements" and that

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<sup>83</sup> Cf. Order 468-02 of the Eleventh Control Court of the Criminal Judicial Circuit of Zulia of July 12, 2002 (evidence file, Annex 16.2, fs. 349 to 351).

<sup>84</sup> Cf. Communication of the State of February 17, 2015.

<sup>85</sup> Cf. Written statement of Belkis Mirelis González before the Court. In his statement, referring to that and other events, he expressed that they "were some of the files that his brother was seeking."

<sup>86</sup> Arianny Yosibel González described the events already related. She explained that the restaurant was only a few blocks from her home. She stated that the police arrived after the shots and tried to prevent her from going to her brother's aid with the explanation that she should wait until the ambulance arrived, which she ignored. She stated that Olimpiades Gonzalez died on the operating table. (Cf. Written statement of Arianny Yosibel González González). Dan William Barliza González, in his oral testimony before the Court, as well as before the Commission (Communication of Dan William Barliza González of March 25, 2011, evidence file, Annex 17 of the Merits Report, fs. 353 to 355), described the events in a similar fashion. In his statement, Mr. Bariliza González informed that Maria Angélica González and Arianny Yosibel González were witnesses to what occurred.

<sup>87</sup> Cf. Report of the General Prosecutor of the Bolivarian Republic of Venezuela, Office of Fundamental Rights, of February 29, 2012 (evidence file, Annex 19 of the Merits Report, fs. 357 to 364).

<sup>88</sup> Cf. Report of the General Prosecutor of the Bolivarian Republic of Venezuela, Office of Fundamental Rights, of February 29, 2012.

later “they heard nothing more about the case.”<sup>89</sup> Arianny Yosibel González’s statement was in the same sense, asserting that “they never received the hoped-for responses.”<sup>90</sup> Belkis González stated, in relation to the investigation into the death of Olimpiades Gonzalez, that his family decided “not to bother anymore,” because “it did not have the economic resources to continue” and because “their hope for justice had died.”<sup>91</sup>

81. The State informed that it had been able to identify the person possibly responsible, but that person was at large. It did not present any information as to when that person fled. Venezuela maintained that the case remains open and that it was continuing “to take the actions that will lead to the arrest of the [presumed guilty person], such as the request on migratory movements and the request to the court handling the case to request the apprehension to the International Organization of Criminal Police (INTERPOL).”

## **VII MERITS**

82. This case involves the detentions and preventive deprivations of liberty suffered by members of the González family beginning in November 1998 in relation to criminal proceedings. It also involves certain aspects relating to the present conditions of those who were deprived of their liberty. In addition, the circumstances that the Court must examine involves an unsuccessful claim for compensation made by some of the alleged victims regarding their deprivation of liberty. The case also deals with the threat to the life of Olimpiades González and his death in 2006, as well as with the corresponding investigations. It can be demonstrated from the circumstances that the State violated the rights to personal liberty, to personal integrity, to life, to judicial guarantees and to judicial protection.

83. In view of the information provided by the Commission and the alleged victims, the Court must observe that it lacks the anthropological-cultural information that would have allowed it to have a better sense of the context of the events that have been presented to it. Thus, it is not known whether both families in the conflict belonged to the same ethnic group and, if so, the eventual impact of the traditional guidelines of conflict resolution, as well as the possible effect of the urbanization on one or both families. In short, the Court regrets the lack of data that would have permitted it to frame the case in a more precise context.

84. The Court will now analyze the alleged violations with respect to: a) the rights to personal liberty, to judicial guarantees and to judicial protection, in relation to the initial detentions and preventive deprivations of liberty suffered by the alleged victims; b) the right to personal integrity, with respect to the deprivations of liberty; c) the right to judicial protection, in relation to the request for compensation, and d) the rights to life, to personal integrity and to judicial guarantees, with respect to the attacks on Olimpiades González after his release, his death and the investigation into his death.

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<sup>89</sup> She added that she and her family members “totally [abandoned] their efforts for fear that what happened to their brother would happen to them.” (Written statement of María Angélica González before the Court, evidence file, fs. 2735 to 2740).

<sup>90</sup> Written statement of Arianny Yosibel González González before the Court.

<sup>91</sup> Written statement of Belkis Mirelis González González before the Court.

**VII.1**  
**RIGHTS TO PERSONAL LIBERTY, TO JUDICIAL GUARANTEES AND TO JUDICIAL PROTECTION<sup>92</sup>**

**A) Arguments of the Commission and of the parties**

85. *Initial detentions.* – The **Commission** and the **representatives** alleged that the detentions of the alleged victims were unlawful, in violation of Article 7 (1) and (2) of the Convention, since the domestic legislation required a judicial order or an *en flagrante* crime in order for there to be a deprivation of liberty<sup>93</sup> and that in no case is it shown that these two requirements were met.

86. *Preventive deprivations of liberty.* – The Commission and the representatives also argued that the decisions of preventive detention are based on Article 182 of the CCP, which only required indicia of criminal responsibility for a crime punishable with deprivation of liberty. They, therefore, maintained that the alleged victims were preventively deprived of their liberty without considering the danger of fleeing or of obstructing the investigations and, thus, the preventive deprivations were arbitrary and punitive, and not precautionary, measures. They, therefore, asserted that the deprivations of liberty infringed the presumption of innocence. They concluded that the State was responsible for the failure to observe Articles 7(1), 7(3) and 8(2) of the Convention, in relation to Articles 1(1) and 2 thereof.<sup>94</sup>

87. *Duration of the preventive deprivations of liberty.* – The Commission and the representatives argued that the duration of the preventive deprivations of liberty of four of the alleged victims (10 months in the cases of María Angélica, Belkis and Fernando González and eight in the case of Wilmer Barliza) was unreasonable because of the lack of a periodic review of valid treaty-based grounds to maintain the measure. Therefore, they considered that Venezuela violated, to the detriment of those four persons, Articles 7(1), 7(5) and 8(2) of the Convention, in relation to Articles 1(1) and 2 thereof.

88. *Right to appeal the detention.* – The Commission and the representatives argued that the alleged victims filed: a) a request for alternative measures to preventive detention that they claim did not receive a response from the State and b) another request of a precautionary measure rather than preventive detention, filed when that measure was already ordered, which was rejected without an examination of the arguments alleging the lack of evidence of a possible flight or the obstruction of the investigations. They also alleged that the orders of their detention were not duly

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<sup>92</sup> Articles 7, 8 and 25 of the American Convention on Human Rights.

<sup>93</sup> The Commission argued the following: "The legislation in Venezuela that governs detentions during a criminal investigation was examined by the Inter-American Court in the case of *Barreto Leiva v. Venezuela*, where it indicated that, according to the Constitution and the Code of Criminal Procedure, in order that a detention be lawful under the American Convention a judicial order is necessary, unless the person had been detained *en flagrante*."

<sup>94</sup> The representatives also emphasized that the deprivations of liberty were arbitrary even though they were related to an investigation, since there was no procedural purpose that would justify them. They maintained that the State "did not provide any evidence that would justify that the [alleged] victims could interfere in the investigation or that there was a risk of fleeing."

substantiated, which hindered the possibility of questioning them.<sup>95</sup> They argued, therefore, that the remedies presented were not appropriate nor effective to obtain judicial protection and, therefore, violated the rights established in Articles 7(6) and 25(1) of the Convention.<sup>96</sup>

89. *Initial detentions.* - The **State** denied responsibility for the alleged unlawfulness of the detentions. It explained that the detentions were carried out "by the then Technical Corps of the Judicial Police by means of orders from that institution and that they were based on the provisions of Article 71 of the Code of Criminal Prosecution,<sup>97</sup> in concurrence with Articles 45 and 46 of the Organic Law of Amparo on Constitutional Rights and Guarantees."

90. Venezuela also pointed out that, in addition to the aforementioned provisions, the orders of November 23, 1998 and February 28, 1999 of the TJP, that decreed the "continuation" of the "preventive detentions" of María Angélica González and Belkis González, in the first case, as well as those of Wilmer Antonio Barliza González, Luis Guillermo González and Olimpiades González, in the second, refer to Article 75 of the CCP. The State cited those orders that indicate that the detentions were due to the existence of "evidence" that leads to the "presumption" of the "participation" of the detainees in criminal acts. As to the detention of Fernando González, Venezuela referred to the police minutes of November 23, 1998, which indicated that he appeared at the police station with a vehicle that "appeared mentioned in the orders" and that he was detained "in order to continue the investigations." The State added that all of the detentions were later confirmed judicially on December 10, 1998 and February 12, 1999, respectively, on the basis of Article 182 of the CCP.<sup>98</sup>

91. *Preventive deprivations of liberty.* - The State denied that the preventive detentions were arbitrary since they were "legitimate and proportionate" in relation to the crime that was being investigated, which was homicide. It manifested that the "first evidence" suggested the participation of the persons who were deprived of their liberty. It argued that these measures were not unreasonable but, on the contrary, were due to the "compliance of the duty to protect the security of persons," and were the result of

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<sup>95</sup> The Court notes that the representatives referred to the requests of the alleged victims that were made after the judicial decisions of December 10, 1998 and February 12, 1999 and that, depending on the cases, confirmed the deprivations of liberty ordered by the police. The Commission, which also pointed out the two types of requests of the alleged victims with respect to their deprivation of liberty, appears not to refer to the same two named by the representatives. Its Merits Report, in the relevant part, refers to a first group of requests of alternative measures of preventive detention that were never answered, and to another that was denied because it was held that there was a failure to comply with the provisions of Article 259 of the New Organic Code of Criminal Procedure. The facts show that the requests related to the deprivation of liberty formulated after December 10, 1998 and February 12, 1999 were answered and, thus, the first claim of the Commission appears to refer to requests prior to those dates.

<sup>96</sup> The Commission clarified that Olimpiades and Luis Guillermo González were released when the Public Ministry decided not to accuse them and not as a consequence of the effectiveness of the remedies.

<sup>97</sup> The State emphasized that the CCP governed the criminal procedure in Venezuela until it was replaced by the COPP on July 1, 1999.

<sup>98</sup> Venezuela stated that that provision "clearly" determined the "circumstances that should be taken into account to order the deprivation of liberty of any person, namely: i) the commission of a punishable act; ii) that the crime committed merits corporal punishment; iii) that the criminal act had not been prescribed, and iv) that there are sufficient and substantiated grounds of the guilt of a person." It expressed that "all of the foregoing must be established by the court by means of a duly substantiated act" and that this was done in this case

legal “evidence of the investigation” and respectful of human rights and due process and were “adjusted to the law” and confirmed judicially.

92. *Length of the preventive deprivations of liberty.* – The State also denied responsibility with respect to the length of the preventive deprivations of liberty. It argued that, in the first place, at 10 months or less according to the case, they could not be considered unreasonable or disproportionate since during this lapse the criminal proceedings continued. In the second place, it pointed out that, after the presentation of the remedies and requests of the alleged victims, the decisions to maintain them in preventive detention were reviewed in every case.<sup>99</sup> Therefore, it claimed that it had complied with the review of the measure.

93. *Right to appeal the detention.* – Venezuela asserted that, as regards the right to appeal the detention, remedies against the measures of preventive detention were exercised, that they were duly resolved and that the fact that the claims of the alleged victims had not been accepted in every case does not imply that the remedies were not effective. It emphasized that, in any event, in the cases of Olimpiades González and Luis Guillermo González, their release was ordered when their appeal was resolved. The State maintained, therefore, that Article 7(6) of the Convention was not infringed.<sup>100</sup>

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

94. The Court has held that the essential content of Article 7 of the Convention is the protection of an individual’s liberty against any unlawful or arbitrary interference of the State<sup>101</sup> The Court has also held that this article is regulated both generally and specifically. The general part is found in 7(1), while the specific is set out in 7(2) through 7(7). Any violation of these clauses necessarily results in the violation of Article 7(1) of the Convention.<sup>102</sup>

95. The illegality of a deprivation of liberty violates Article 7(2) of the Convention and occurs when the applicable domestic legal order is not observed.<sup>103</sup> The Court has explained that restricting the right to personal liberty “is only permissible for the reasons

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<sup>99</sup> The State stressed that Belkis González, María Angélica González and Fernando González appealed the order of their detention on January 8, 1999 and that the appeal was denied on January 28. It also noted that on August 2, 1999 they requested an “alternate precautionary measure” that was denied by a decision on August 6, which confirmed the preventive deprivation of liberty. Venezuela also pointed out that, on March 5, 1999, Olimpiades González and Luis Guillermo González appealed the order of detention of February 12, and that their request was resolved on April 21, 1999 with the ordering of their release. It indicated, lastly, that the deprivation of liberty of Wilmer Barliza was confirmed and that on August 8, 1999, the request of an alternate precautionary measure was reviewed and denied, confirming the preventive detention.

<sup>100</sup> The State did not include, with respect to the right to appeal the detention, an express reference to Article 25(1) of the Convention.

<sup>101</sup> Cf. *Case of Juan Humberto Sánchez v. Honduras. Preliminary Objection, Merits, Reparations and Costs.* Judgment of June 7, 2003. Series C No. 99, para. 84 and *Case of Villarroel Merino et al. v. Ecuador. Preliminary Objections, Merits, Reparations and Costs.* Judgment of August 24, 2021. Series C No. 430, para. 84.

<sup>102</sup> Cf. *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador. Preliminary Objections, Merits, Reparations and Costs.* Judgment of November 21, 2007. Series C No. 170, para. 54 and *Case of Villarroel Merino et al. v. Ecuador*, para. 84.

<sup>103</sup> Cf. *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador*, para. 57 and *Case of Guerrero, Molina et al. v. Venezuela. Merits, Reparations and Costs.* Judgment of June 3, 2021. Series C No. 424, para. 104. In the same sense, *Case of Villarroel Merino et al. v. Ecuador*, para. 84.

and under the conditions previously established by the Constitution or by a law established pursuant thereto (material aspect) and also strictly subject to the procedures objectively defined in the law (formal aspect)”<sup>104</sup>

96. With respect to the requirement of legality and the police powers to detain, the Court believes it relevant to recall that wrongful action by the police represents “one of the main threats to the right of personal liberty.”<sup>105</sup> Therefore, the rules that determine police powers to prevent and investigate crimes must include specific and clear references to parameters that avoid arbitrary or unconstitutional detentions.<sup>106</sup> The detentions that occur without being *en flagrante* or without a judicial order must be exceptional<sup>107</sup> and the lawfully established police powers must be interpreted restrictively. In order that a detention by the police without a judicial order be exceptional and strictly lawful, there is a legal obligation that the intervening officials clearly indicate the grounds and motives that, in applying the law, have justified the detention.<sup>108</sup>

97. It must be noted that the arbitrariness of a deprivation of liberty, which is protected by Article 7(3) of the Convention, is not only unlawful, but is also broader in that it includes elements of impropriety, injustice and unpredictability. Thus, the deprivation of liberty for “for grounds and by methods that, while classified as legal, could be deemed to be incompatible with the respect for the fundamental rights of the individual because it was, among others, unreasonable, unforeseeable or lacking in proportionality, would be arbitrary.”<sup>109</sup>

98. The Court has also pointed out that under Article 7 of the Convention in order that a preventive measure of deprivation of liberty related to a criminal proceeding is not arbitrary, the following parameters must be observed:

- i) that there are elements to formulate charges or to prosecute: there must exist sufficient indicia that allow the reasonable assumption that an unlawful act has occurred and that the person brought to trial

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<sup>104</sup> Cf. *Case of Gangaram Panday v. Suriname. Merits, Reparations and Costs*. Judgment of January 21, 1994. Series C No. 16, para. 47 and *Case of Fernández Prieto and Tumbeiro v. Argentina. Merits and Reparations*. Judgment of September 1, 2020. Series C No. 411, para. 66. In the same sense, *Case of Villarroel Merino et al. v. Ecuador*, para. 84. As has been stated, the Court, in order to rule on the conventionality of a deprivation of liberty, must analyze whether the requirement of legality has been complied with. In doing so, the Court must rule in accordance with the Convention, since it is the Convention that refers to the domestic law. The Court is not conducting a control of constitutionality or of legality, but only of conventionality (*Case of Azul Rojas Marín et al. v. Peru. Preliminary Objections, Merits, Reparations and Costs*. Judgment of March 12, 2020. Series C No. 402, para. 110 and *Case of Fernández Prieto and Tumbeiro v. Argentina*, para. 66).

<sup>105</sup> *Case of Servellón García et al. v. Honduras*. Judgment of September 21, 2006. Series C No. 152, para. 86 and *Case of Fernández Prieto and Tumbeiro v. Argentina*, para. 64.

<sup>106</sup> Cf. In the same sense, *Case of Fernández Prieto and Tumbeiro v. Argentina*, para. 90. In this case, the Court indicated that “those provisions that include and enable conditions that permit a detention without a court order or *in flagrante delicto*, in addition to meeting the requirements of legitimate purpose, appropriateness and proportionality, must establish the existence of objective elements so that it is not mere police intuition or subjective criteria, that cannot be verified, that are the reasons for a detention.”

<sup>107</sup> Cf. *Case of Fernández Prieto and Tumbeiro v. Argentina*, para. 92.

<sup>108</sup> Cf. In the same sense, *Case of Fernández Prieto and Tumbeiro v. Argentina*, para. 97.

<sup>109</sup> *Case of Gangaram Panday v. Suriname*, para. 47 and *Case of Villarroel Merino et al. v. Ecuador*, para. 86.

might have participated in the act;<sup>110</sup> ii) that the purpose is compatible with the Convention;<sup>111</sup> that is, to ensure that the accused will not obstruct the proceedings or evade justice<sup>112</sup> and that the measures are appropriate, necessary and strictly proportionate to that end<sup>113</sup> and iii) that the decision contains sufficient grounds that would permit its evaluation on whether it adjusts to the indicated conditions.<sup>114</sup> Any restriction to liberty that is not based on a justification that will allow an assessment of whether it is adapted to the conditions set out above will be arbitrary and will, thus, violate Article 7(3) of the Convention.<sup>115</sup>

99. On the other hand, in order to guarantee that a preventive deprivation of liberty is not arbitrary, it "should be subject to periodic review so that it does not continue when the reasons for its adoption no longer exist. [...] Similarly, with every request for the release of the detainee, the judge must explain, even minimally, the reasons for which he considers that the preventive detention should be maintained."<sup>116</sup>

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<sup>110</sup> The Court has clarified that "this must not be, per se, an element that can negatively affect the principle of the presumption of innocence established in Article 8(2) of the Convention. On the contrary, it is an additional element to the other requirements. This decision must not have any effect on the judge regarding the responsibility of the accused. The suspicion must be based on specific acts and be articulated, that is, not on mere conjecture or abstract intuition. That means that the State cannot detain in order to later investigate, but rather it is only authorized to deprive the liberty of an individual when there is sufficient reason to prosecute him" (cf. *Case of Servellón García et al. v. Honduras*, para. 90 and *Case of Carranza Alarcón v. Ecuador. Preliminary Objections, Merits, Reparations and Costs*. Judgment of February 3, 2020. Series C No. 399, para. 75 and footnote on page 44).

<sup>111</sup> Cf. *Case of Servellón García et al. v. Honduras*, para. 90 and *Case of Villarroel Merino et al. v. Ecuador*, para. 87.

<sup>112</sup> Cf. *Case of Suárez Rosero v. Ecuador. Reparations and Costs*. Judgment of January 20, 1999. Series C No. 44, para. 77 and *Case of Villarroel Merino et al. v. Ecuador*, para. 88.

<sup>113</sup> Cf. *Case of Tibi v. Ecuador. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 7, 2004. Series C No. 114, para. 106 and *Case of Carranza Alarcón v. Ecuador*, para. 75. In the same sense, the *Case of Villarroel Merino et al. v. Ecuador*, para. 87. The characteristics that a measure of deprivation of liberty must meet are the following: "i) *appropriateness*: the propensity of the means to achieve the end pursued; ii) *necessity*: that the measure must be absolutely essential to achieve the purpose sought and that, among all possible measures, there is no less burdensome one in relation to the right involved that would be suitable to achieve the proposed objective, and iii) *strict proportionality*: that the sacrifice inherent in the restriction of the right to liberty is not exaggerated or excessive compared to the advantages obtained from this restriction and the achievement of the purpose sought." (cf. *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador*, para. 92 and *Case of Carranza Alarcón v. Ecuador*, footnote on page 47).

<sup>114</sup> Cf. *Case of García Asto and Ramírez Rojas v. Peru. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 25, 2005. Series C No. 137, para. 128 and *Case of Villarroel Merino et al. v. Ecuador*, para. 87. The Court has made clear that "the requirement of a motive is related to judicial guarantees (Article 8(1) of the Convention. In addition, in order that the presumption of innocence is respected (Article 8(2) in ordering precautionary measures that restrict liberty, it is necessary that the State clearly substantiate and accredit, according to each specific case, the existence of the requirements established by the Convention" (cf. *Case of Carranza Alarcón v. Ecuador*, footnote on page 48).

<sup>115</sup> Cf. *Case of García Asto and Ramírez Rojas v. Peru*, para. 128 and *Case of Carranza Alarcón v. Ecuador*, para. 75. In the same sense, *Case of Villarroel Merino et al. v. Ecuador*, para. 91.

<sup>116</sup> Cf. *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador*, paras. 107 and 117 and *Case of Carranza Alarcón v. Ecuador*, para. 83. See also, *Case of Villarroel Merino et al. v. Ecuador*, para. 92. The Court in the latter case held that "the judge must periodically evaluate whether the reasons, necessity and proportionality of the measure exist and whether the period of detention has surpassed the limits imposed by the law and by reason. An order of release must be decreed whenever the preventive detention does not satisfy these conditions. In evaluating the continuation of the measure, the authorities must give sufficient grounds that would allow knowing the reasons for which the restriction of liberty has been maintained, which, in order that it be compatible with Article 7(3) of the Convention, must be based on the necessity of ensuring that the detainee will not obstruct the efficient development of the investigations or evade the actions of justice."

100. The guarantee of judicial control set out in Article 7(5) of the Convention establishes that in order to be an effective safeguard against unlawful or arbitrary detentions, they must be carried out “without delay.”<sup>117</sup> The same provision also establishes that a detainee must be “judged with a reasonable time” or “released” even though the proceedings may continue. The rationale of this norm is that measures depriving liberty during criminal proceedings are treaty-based, provided that they have a precautionary purpose; that is, that they are a means to offset procedural risks, especially the norm that applies to a person who does not appear in order to be tried.<sup>118</sup>

101. In addition to the foregoing, Article 7(6) of the Convention protects the right of anyone deprived of his or her liberty to appeal the lawfulness of the detention before a competent court or judge so that the lawfulness may be decided without delay and, if applicable, to have his or her release ordered.<sup>119</sup> The Court has specified that the available remedies available to comply with this guarantee “must not only exist formally in the legislation but they must also be effective; that is, they comply with the objective of obtaining a decision without delay on the legality of the arrest or the detention.”<sup>120</sup>

102. In some aspects, the judicial guarantees established in Article 8 of the Convention may be seen as strictly related to the right of personal liberty. Thus, it is relevant for the effects of the case to point out that since preventive detention is a precautionary, and not a punitive, measure<sup>121</sup> its application is limited by the principle of the presumption of innocence found in Article 8(2) of the Convention, according to which a person is presumed innocent until proven guilty. Therefore, the appropriateness or the legitimacy of the preventive deprivation of liberty cannot be presumed but must be grounded on the objective and clear circumstances of the specific case that apply to the person being criminally prosecuted, and cannot only be grounded on the personal characteristics of the alleged perpetrator nor the gravity of the crime of which he has been charged.<sup>122</sup> The preventive deprivation of liberty must observe the above-mentioned purposes and precautions (*supra* paras. 98 to 100). To maintain a person deprived of his liberty beyond a reasonable time to comply with the valid purposes that the measure might pursue would be the equivalent of a punishment in advance,<sup>123</sup> “which would not only be contrary to the right of personal liberty, but also contrary to the presumption of innocence established in Article 8(2) of the Convention.”<sup>124</sup>

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<sup>117</sup> Cf. *Case of Chaparro Álvarez and Lapo Iñiguez v. Ecuador*, para. 81 and *Case of Guerrero, Molina et al. v. Venezuela*, para. 105.

<sup>118</sup> Cf. *Case of Romero Feris v. Argentina. Merits, Reparations and Costs*. Judgment of October 15, 2019. Series C No. 391, para. 100 and *Case of Carranza Alarcón v. Ecuador*, para. 64.

<sup>119</sup> Cf. *Habeas Corpus in Emergency Situations (arts. 27(2), 25.1 y 7.6 American Convention on Human Rights)*. *Advisory Opinion OC-8/87* of January 30, 1987, para. 33 and *Case of Villarroel Merino et al. v. Ecuador*, para. 110.

<sup>120</sup> Cf. *Case of Acosta Calderón v. Ecuador. Merits, Reparations and Costs*. Judgment of June 24, 2005. Series C No. 129, para. 97 and *Case of Villarroel Merino et al. v. Ecuador*, para. 110.

<sup>121</sup> Cf. *Case of Pollo Rivera et al. v. Peru. Merits, Reparations and Costs*. Judgment of October 21, 2016. Series C No. 319, para. 122 and *Case of Villarroel Merino et al. v. Ecuador*, para. 89.

<sup>122</sup> Cf. *Case of Amrhein et al. v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of April 25, 2018. Series C No. 354, para. 357 and *Case of Carranza Alarcón v. Ecuador*, para. 67. See also, *Case of Villarroel Merino et al. v. Ecuador*, para. 93.

<sup>123</sup> Cf. *Case of Suárez Rosero v. Ecuador. Merits*. Judgment of November 12, 1997. Series C No. 35, para. 77 and *Case of Carranza Alarcón v. Ecuador*, para. 67.

<sup>124</sup> Cf. *Case of Carranza Alarcón v. Ecuador*, para. 67.

103. With respect to those rights, the State has the obligations set out in Article 1(1) of the Convention to respect and guarantee their exercise. In addition, Article 2 of the Convention obligates the States Parties to adopt, in accordance with the provisions of its Constitution and those of the Convention, the legislative or other measures that are necessary to give effect to the rights and liberties protected by the treaty.<sup>125</sup> That obligation implies the adoption of measures in two senses. On the one hand, the elimination of any norms and practices that would lead to a violation of the guarantees established in the Convention,<sup>126</sup> either because they ignore those rights or liberties or because they obstruct their exercise.<sup>127</sup> On the other hand, the duty to issue norms and the development of practices that lead to the effective observance of such guarantees.<sup>128</sup>

104. On the basis of the foregoing, and in the more specific guidelines that will be expressed later, the Court will analyze the facts in the case and the allegations of the parties and the Commission. It will examine: i) the lawfulness of the initial detentions of the alleged victims; ii) whether the preventive deprivations of liberty to which those persons were submitted were arbitrary and affected the presumption of innocence, and iii) the right to appeal the detention. The Court will then offer its conclusion.

#### *B.1 Initial detentions*

105. The facts of the case demonstrate that:

- a) Belkis and María Angélica González were detained on November 23, 1998 in their home by means of a decision adopted by police authorities, based on their presumption that the detainees had been involved in an unlawful act, the homicide of Mrs. C.F.;
- b) Fernando González was detained the same day by police authorities, when he went to the police station with a vehicle mentioned in the events to which his daughters were linked, and
- c) Wilmer Antonio Barliza González, Luis Guillermo González and Olimpiades González were detained on January 28, 1999 after an exchange of shots by the police, who arrived at a residence where they found them and also two firearms that the authorities thought to be related to the investigations into the homicide of C.F., believing also that there existed evidence to presume the participation of the three detainees in that criminal act (*supra* paras. 48 and 49).

106. The police stated that they based the detentions described in sections a) and c) of the previous paragraph on Article 45 of the Law of Amparo and on Article 75 of the CCP and the section b) to Articles 71 and 75 G of the CCP (*supra* paras. 30, 31, 36 and

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<sup>125</sup> Cf. *Caso Gangaram Panday v. Suriname*, para. 50 and *Case of Villarroel Merino et al. v. Ecuador*, para. 142.

<sup>126</sup> Cf. *Case of Castillo Petruzzi et al. v. Peru. Merits, Reparations and Costs*. Judgment of May 30, 1999. Series C No. 52, para. 207 and *Case of the Buzos Miskitos (Lemoth Morris et al.) v. Honduras*. Judgment of August 31, 2021. Series C No. 432, para. 45.

<sup>127</sup> Cf. *Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago. Merits, Reparations and Costs*. Judgment of June 21, 2002. Series C No. 94, para. 113 and *Case of the Buzos Miskitos (Lemoth Morris et al.) v. Honduras*, para. 45.

<sup>128</sup> Cf. *Case of Castillo Petruzzi et al. v. Peru*, para. 207 and *Case of the Buzos Miskitos (Lemoth Morris et al.) v. Honduras*, para. 45.

49). The State, in its arguments, also mentioned, as a normative basis for the detentions, Article 46 of the Law of Amparo (*supra* para. 89).

107. In accordance with the aforementioned domestic normative (*supra* paras. 29 to 31) and as explained by the expert Vásquez González,<sup>129</sup> at the time of the events of the present case the Venezuelan legal order contemplated the possibility of the detention of a person under the following conditions: a) *en flagrante* crime; b) order of the competent authority, and c) by the police for reasons of “necessity and urgency.”

108. Therefore, the assertion of the Commission and the representatives that the applicable domestic legal order exclusively required a judicial order or a crime *en flagrante* to proceed to the deprivation of liberty is not exact (*supra* para. 85).<sup>130</sup> On the other hand, neither the facts of the case nor the arguments of the parties and the Commission show that either of those two reasons were relevant in the circumstances examined. Therefore, it is necessary to examine the third cause, which refers to police action for reasons of necessity and urgency, which was argued by the State as a legal basis for the detentions.

109. As the expert Vásquez González explained, Article 60 of the Constitution in force at the time of the events permitted the police authorities, in the case of the commission of a punishable act, to adopt the “necessary and urgent provisional” measures that are “indispensable” to “ensure the investigation of the facts and the prosecution of the guilty.” The expert stated that “the breadth of the constitutional provision [...] enables the detention by the police,” and that it was made “explicit” in the Law of Amparo.<sup>131</sup>

110. In effect, Article 45 of that Constitution did state what was expressed (*supra* para. 30). A literal reading of its text shows that the “detention of the presumed guilty person” was a possibility for the police who operated in cases of “necessity and urgency.” Therefore, the detention ordered and implemented directly by the police must be “substantiated and be in writing.”

111. The police who were involved in the detentions of Belkis González, María Angélica González, Fernando González, Wilmer Antonio Barliza González, Luis Guillermo González and Olimpiades Gonzales reported that the detentions were based on Article 45. The facts show that the police took into account the existence of a punishable act and that they asserted that they had the evidence to consider the possible relation of the six persons with the act. However, it is not shown from the actions of the police that they substantiated that they were presented with a situation of necessity or urgency that would necessitate the detentions.<sup>132</sup>

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<sup>129</sup> Cf. Written statement of the expert Magaly Mercedes Vásquez González.

<sup>130</sup> The Commission maintained that the Inter-American Court in the *Barreto Leiva v. Venezuela* case had stated that “according to the Constitution and the Code of Criminal Prosecution in order that a detention be legal [...] a judicial order is necessary unless the person was apprehended *en flagrante*” (*supra* footnote on page 93). However, in the Court’s Judgment in that case, there is no such holding (cf. *Case of Barreto Leiva v. Venezuela. Merits, Reparations and Costs*. Judgment of November 17, 2009. Series C No. 206).

<sup>131</sup> Cf. Written statement of the expert Magaly Mercedes Vásquez González.

<sup>132</sup> Note should be taken that this was not clear from the facts, nor was it argued by the State. As to the detentions of Wilmer Antonio Barliza González, Luis Guillermo González González and Olimpiades González, although they occurred after the police became aware of the gunfight, it does not show from the actions of the police that the detentions were due to that circumstance, but rather because of the presumed relation of those persons to a criminal act and because of the discovery of firearms. On the other hand, the authorities, as a basis for the detention of the five detentions, referred to Article 74 of the former Procedural Code. The

112. In the cases of Belkis González, María Angélica González and Fernando González, the intervening police also referred to Article 71 of the CCP. That provision, as has already been mentioned (*supra* para. 31), empowered the “seizure” of persons within the framework of “summary” actions leading to “the discovery” of the perpetrator of [...] punishable actions.” Notwithstanding the interpretation and determination of the scope of the article, the Court observes that, in any case, Article 60 of the Constitution of Venezuela in force at the moment of the events required that the detentions ordered by the police occur in cases of “necessity and urgency” and when they are “essential” to investigate a punishable act. The actions of the police that account for the detention of Fernando González do not appear to demonstrate that those requirements were complied with.<sup>133</sup>

113. Therefore, the Court concludes that the initial acts of detention of Belkis González, María Angélica González, Fernando González, Wilmer Antonio Barliza González, Luis Guillermo González and Olimpiades González were unlawful. The State, to their detriment, violated Article 7(1) and (2) of the Convention, in relation to Article 1(1) thereof.

#### *B.2 Preventive deprivations of liberty*

114. In view of the foregoing, (*supra* paras. 98 to 100), in order that a measure of the preventive deprivation of liberty not be arbitrary and that it be compatible with Article 7(3) of the Convention, it must observe several conditions: that it is substantiated not only on indicia of criminal responsibility, but it is also justified by legitimate purposes compatible with the treaty; that it seek that the accused will not obstruct the proceedings nor evade justice. The measure must also, among other conditions, be subject to periodic review.

115. After the police ordered the deprivations of liberty of Fernando González, María Angélica González and Belkis González on November 23, 1998, the first two filed before the judicial authority on December 2, 1998 a request that alternative measures of the deprivation of liberty be ordered in their favor. Then, on January 29, 1999 the police ordered the deprivation of liberty of Luis Guillermo González, Wilmer Antonio Barliza and Olimpiades González, and they, on February 5, 1999, requested the judicial authority that they be granted alternative measures. The judicial body confirmed, on December 10, 1998 and February 12, 1999, the deprivation of liberty of Belkis González, María Angélica González and Fernando González, in the first case, and of Luis Guillermo González, Wilmer Antonio Barliza and Olimpiades González, in the second. In both cases, the decision was taken in the belief that there were “indicia that showed the criminal responsibility” of those persons, and on the basis of the provisions of Article 182 of the CCP.

116. The relevant parts of Article 182, in force at the time of the events, indicated that: “provided that it is fully proved that there has been committed a punishable act

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State also referred to Article 46 of the Law of Amparo. In view of the conclusion on the illegality of the detentions, it is not necessary to examine whether those articles were observed.

<sup>133</sup> In view of this conclusion, it is not necessary to analyze whether Article 75 of the former Procedural Code, indicated by the intervening authorities in their actions relating to the detention, was obeyed (*supra* paras. 31 and 35). Nor is it necessary to analyze compliance of Article 46 of the Law of Amparo, mentioned by the State (*supra* paras. 30 and 89).

that merits corporal punishment, without the corresponding criminal act being obviously prescribed and the indicia of the guilt of a person appear substantiated, the Investigating Tribunal shall decree the detention of the accused, by a substantiated decision [...]"<sup>134</sup>

117. The Court, in a prior case, in analyzing that provision, concluded that "the State failed to comply with its obligation embodied in Article 2 of the Convention, insofar as its domestic legislation did not establish sufficient guarantees of the right to personal liberty, since it allowed imprisonment based only on 'indications of criminal responsibility,' without establishing, also, that it is necessary for the measure to serve a legitimate purpose."<sup>135</sup>

118. The Court notes that Article 182 was applied to the facts of this case and that the judicial decisions of December 10, 1998 and February 12, 1999 only considered, in ordering the preventive deprivations of liberty, the existence of indicia of the participation of the persons accused of the unlawful act being investigated.<sup>136</sup> It does not appear that those decisions had as their object to achieve the valid purposes of preventive detention; that is, to ensure that such persons do not obstruct the development of the proceedings or that they do not evade the action of justice (*supra* para. 98). Nor does it show that those decisions examined the requests for alternate measures of the deprivation of liberty.

119. Consequently, in applying Article 182, the intervening judicial authority did not offer sufficient grounds regarding the attainment of a legitimate purpose, compatible with the Convention, with respect to the preventive deprivations of liberty ordered in this case. Nor do the facts show that there was a judicial periodic review of the appropriateness of the preventive detentions. According to the explanation of the expert Vásquez González, the domestic legal order in force when the orders were issued, and during most of the time of the criminal proceedings of the victims, such a periodic review was not guaranteed.<sup>137</sup> Therefore, to the detriment of the persons who had been preventively detained, the State violated the right not to be submitted to arbitrary detention, enshrined in Article 7(3) of the Convention. This infringement, with respect

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<sup>134</sup> The text of Article 182 of the CCP in force at the time of the events was included in the written expert opinion of Magaly Mercedes Vásquez González.

<sup>135</sup> Cf. *Case of Barreto Leiva v. Venezuela*, para. 116.

<sup>136</sup> The Court notes that the expert Nelson Orlando Mejía Duran stated that there was an obligation to "substantiate" in order to decree preventive detention and that this "imposes the necessity to clearly indicate the grounds and the procedural basis of the restriction, so that in order to safeguard the presumption of innocence the detention would not be imposed arbitrarily." The expert added that the restriction of liberty by means of an order of detention does not lose its instrumental nature with respect to the proceedings and, in the event of a precautionary measure, the case should continue until a final decision is reached." (Cf. Written expert opinion of Nelson Orlando Mejía Duran.) The Court notes that the expert opinion refers to the obligation that the acts that order the preventive deprivation of liberty contain the rationale, which must be based on the applicable domestic legal order. This requirement, however, does not refer to the compatibility of such applicable domestic legislation with the American Convention.

<sup>137</sup> The expert stated that "on July 1, 1999, the new Code fully entered into force (in March 1998, three of its institutions had earlier entered into force)." The expert did not identify which three institutions. From what the expert stated, it can be understood that the review of preventive detention could take place beginning with the remedies presented to question the measure, but not on its own. She pointed out that "the procedural order in force on the date on which the members of the González family were deprived of their liberty did not guarantee [...] the periodic review of measures of detention. Since the appeal was filed against the decision that declared it unfounded, the judge of the case could not, due to a lack of functional competence, review the measure that he ordered in order to terminate it." (Cf. Written expert opinion of Magaly Mercedes Vásquez González).

to events before July 1, 1999, is related not only to the failure to observe Article 1 of the Convention, but also to the duty to adopt provisions of domestic law, established in its Article 2. The events appear to show that, after the date mentioned, even when the defense of the four persons who remained deprived of their liberty requested their release in the understanding that there was no danger of fleeing nor of obstructing the proceedings, that request was denied without offering grounds that would contradict the assertions of the defense. Therefore, the continued deprivation of liberty was arbitrary, in violation of Article 7(3) of the Convention, in relation to Article 1(1) thereof, to the detriment of Wilmer Antonio Barliza González, Fernando González, María Angélica González and Belkis Mirelis González.

120. On the other hand, given the presumption of innocence, a guarantee found in Article 8(2) of the Convention, there is a general rule that the accused should not be detained when involved in a criminal proceeding.<sup>138</sup> It has already been stated that maintaining a person deprived of his liberty longer than a reasonable time for procedural reasons that justify detention for precautionary reasons is the equivalent of a punishment in advance, which is contrary to the presumption of innocence (*supra* para. 102). As long as preventive deprivations of liberty are ordered and maintained without complying with the aforementioned procedural purposes, they are contrary to that guarantee, from their beginning and during all of the time that they are in force.

121. Therefore, since the preventive deprivations of liberty were not based on legitimate procedural grounds, but on indicia of alleged criminal responsibility, they are a punishment in advance, in violation of the presumption of innocence, which is an infringement of Article 8(2), to the detriment of each of the victims preventively detained. While, before July 1, 1999, the lack of legitimate grounds was related to the domestic legal order in force at the time of the events, based on the application of Article 182 of the CCP, this violation of Article 8(2) is the failure to adopt provisions of domestic law, established in Article 2 of the Convention, in addition to being related to the failure to comply with the duty to respect the treaty-based rights, established in Article 1(1) of the treaty.

122. The Court observes that the representatives and the Commission also alleged the violation of Article 8(2) of the Convention, as well as Article 7(5), with respect to the length of the preventive deprivations of liberty of María Angélica González, Belkis González, Fernando González and Wilmer Barliza González, which was around 10 months in the first three cases and eight months in the fourth (*supra* para. 87).<sup>139</sup> They alleged that the lengths of the deprivations of liberty were excessive given the lack of a periodic review of the substance of the valid treaty-based grounds for maintaining the measure. This aspect, the lack of a judicial periodic review of the measures of the preventive deprivation of liberty, has already been analyzed in relation to Article 7(3) of the Convention, relative to the arbitrariness of the deprivations of liberty and it was also

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<sup>138</sup> Cf. *Case of López Álvarez v. Honduras. Merits, Reparations and Costs*. Judgment of February 1, 2006. Series C No. 141, para. 67 and *Case of Carranza Alarcón v. Ecuador*, para. 89.

<sup>139</sup> The judicial decisions that ordered the preventive detentions were issued on December 10, 1998, in the first three cases, and on February 12, 1999, in the fourth. On January 8, 1999, the first three persons appealed their deprivation of liberty and the appeal was denied on January 28, 1999. Wilmer Barliza González appealed the decision of his preventive detention on March 5, 1999 and the appeal was resolved by confirming the measure of preventive detention on April 21, 1999. On August 2, 1999, the representatives of the four victims requested an alternate measure of deprivation of liberty, based on the new Procedural Code, which was denied on August 16, 1999. The deprivations of liberty were extended until September 29, 1999, when the accused were acquitted.

determined how such arbitrariness implied a violation of the presumption of innocence during those measures. Therefore, the question has already been analyzed by the Court and it is not relevant to examine it in relation to Article 7(5) of the Convention.

123. In view of the foregoing, the Court concludes that, with regard to the preventive measures of deprivation of liberty, the State violated the right to personal liberty, recognized in Article 7(1) and (3) of the Convention, as well as the right to judicial guarantees, for contravening the principle of the presumption of innocence, established in Article 8(2), in relation to the obligations established in Articles 1(1) and 2 thereof, to the detriment of Belkis González, María Angélica González, Fernando González, Luis Guillermo González, Wilmer Antonio Barliza and Olimpiades González.

### *B.3 Right to appeal the detentions*

124. The Commission and the representatives alleged that the State violated the right of the victims to have appropriate and effective legal remedies to protect their right to personal liberty (*supra* para. 88). The Court finds it appropriate to examine this question on the basis of Article 7(6) of the Convention, which is the specific provision in the treaty on the judicial oversight of personal liberty. Therefore, the Court does not consider it necessary to analyze the allegations and facts relating to Article 25 of the Convention.<sup>140</sup>

125. The facts of the case indicate that, on December 2, 1998, Fernando González and María Angélica González, while detained, requested that the intervening judicial body grant them an alternative measure of preventive detention, as did Luis Guillermo González, Wilmer Antonio Barliza and Olimpiades González on February 5, 1999, after they had been detained. The judicial decisions that confirmed the deprivations of liberty ordered by the police occurred, respectively, on December 10, 1998 and February 12, 1999. On January 8, 1999, Belkis González, María Angélica González and Fernando González appealed their deprivations of liberty and the appeal was rejected on January 28, 1999. Wilmer Barliza González, Luis Guillermo González and Olimpiades González appealed the decision of their preventive detentions on March 5, 1999 and the appeal was resolved on April 21, 1999, confirming the measure of the first and revoking it with respect to the other two. On August 2, 1999, the representatives of the four persons who remained deprived of their liberty requested an alternate measure of deprivation of liberty, based on the COPP. That request was repeated on August 16, 1999 and denied the same day.

126. The Court must now evaluate whether the State observed Article 7(6) of the Convention with respect to three groups of facts: a) the requests of alternative measures of preventive detention filed on December 2, 1998 and February 5, 1999; b) the appeals of the decisions of preventive deprivations of liberty filed on January 8 and March 5, 1999, and c) the request for alternative measures of deprivation of liberty filed on August 2, 1999 and repeated on August 16.

127. In the first place, with regard to the requirements of alternative measures of the deprivation of liberty formulated before the judicial decisions that confirmed the detentions, the Court notes that they were not directed to question the legality of the measures. In effect, a reading of those requests shows that what was being asked was that, in the event that the detentions were lawful, alternate measures be ordered.

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<sup>140</sup> Cf. *Case of Anzualdo Castro v. Peru. Preliminary Objection, Merits, Reparations and Costs*. Judgment of September 22, 2009. Series C No. 202, para. 77 and *Case of Villarroel Merino et al. v. Ecuador*, para. 109.

Therefore, although it was a question of petitions to avoid the deprivation of liberty, they did not directly question the lawfulness. Therefore, it is not appropriate to analyze them in relation to Article 7(6) of the Convention.<sup>141</sup>

128. Secondly, the appeals regarding the preventive deprivations of liberty, filed on January 8 and March 5, 1999, were based on a failure to comply with the provisions of Article 182 of the CCP, namely, the allegation that there were insufficient elements of guilt (*supra* paras. 45 and 57). On January 28 and April 21, 1999, the judicial authority resolved those appeals after examining that argument and rejected the appeals with respect to the four of the accused and revoked the deprivation of liberty of the other two (*supra* paras. 46 and 58). The foregoing shows that the remedies of appeal were effective inasmuch the judicial body examined the legality of the deprivations of liberty based on the allegations of the accused and answered them effectively without an excessive delay being shown or alleged. Therefore, there was not, with respect to those remedies of appeal, an infringement of Article 7(6) of the Convention.

129. Finally, it is now necessary to analyze the requests for an alternate measure of deprivation of liberty filed on August 2 and 16, 1999, that is, after the modification of the criminal procedural order in Venezuela (*supra* paras. 59 and 61), on behalf of Wilmer Antonio Barliza González, Fernando González, María Angélica González and Belkis Mirelis González, and denied on the latter date (*supra* para. 61).

130. The facts show that the defense of the four persons requested their release with the argument that there was no danger of flight nor of obstructing the proceedings. The intervening judicial body, on August 16, 1999, rejected the defense's petition, asserting that those reasons did exist. However, it did not give the grounds for the assertion.

131. Bearing this in mind, it must be concluded that the judicial authority did not adequately examine the allegations regarding the lack of evidence of a possible flight or the obstruction of the investigations. This lack of adequate grounds implied a denial of the right to appeal the detentions since that requires that the judicial authorities adequately analyze the legality of the deprivation of liberty and the mere invocation of a legal provision does not satisfy this requirement. The Court concludes that the victims were not granted an effective remedy that would safeguard their right to personal liberty.

132. Therefore, regarding the request for an alternate measure of deprivation of liberty presented on August 2, 1999, the Court holds that the State, to the detriment of Wilmer Antonio Barliza González, Fernando González, María Angélica González and Belkis Mirelis González, violated Article 7(6) of the Convention, in relation to Article 1(1) thereof.

#### B.4 Conclusion

133. Pursuant to the above, the Court declares that the State violated the right to personal liberty, recognized in Article 7 (1) and (2) of the American Convention on Human Rights, in relation to Article 1(1) thereof, as well as Article 7 (1) and (3) and the right to judicial guarantees, with respect to the presumption of innocence, recognized in Article 8(2) of the Convention, in relation to Articles 1(1) and 2 thereof, to the detriment of Belkis González, María Angélica González, Fernando González, Wilmer Antonio Barliza González, Luis Guillermo González and Olimpiades González. The State also violated the

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<sup>141</sup> It is to be noted, on the other hand, that the implication of the failure to consider such requirements by the judicial authority was already examined in relation to Article 7(3) of the Convention (*supra* para.118).

right to personal liberty, with respect to the right to appeal the detentions so that their legality be decided, as established in Article 7(6) of the Convention, in relation to Article 1(1) thereof, to the detriment of Wilmer Antonio Barliza González, Fernando González, María Angélica González and Belkis Mirelis González.

## **VII.2 RIGHT TO PERSONAL INTEGRITY AND THE PROHIBITION OF TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT<sup>142</sup>**

### ***A) Arguments of the Commission and of the parties***

134. The **Commission** noted that the “petitioner” claimed that the six alleged victims who were deprived of their liberty were placed with convicted inmates during their preventive detention and that the State did not present any information to the Commission that would contradict this claim. Therefore, the Commission concluded that Venezuela had infringed Article 5(1) and (4) of the Convention, relating to the right to personal integrity.

135. The **representatives** agreed with the Commission’s allegations, pointing out that the placing of the victims with convicted inmates occurred during their deprivation of liberty in the National Penitentiary.

136. The representatives also alleged that there were “acts of physical and psychological torture suffered by the [alleged] victims [who were deprived of their liberty]” and that they were subjected to “inhuman conditions of incarceration.” They believed that this, in addition to their placing with convicted inmates, as well as the “context of harassment and violence suffered, demonstrated that the State was responsible for the violation of Articles 1, 5 and 8 of the Inter-American Convention to Prevent and Punish Torture.” In support of their claim, in addition to what has already been stated, they maintained that the alleged victims who were deprived of their liberty “received continual death threats and harassment by other inmates friendly with members of the [M.F.] family.”

137. The **State** denied that it was responsible for the violation of Article 5(4) of the Convention. In its argument, it did not refer to the facts of the case, but rather it “reported on the change in the penitentiary system in Venezuela.” It claimed that the new penitentiary regime is a guarantor of human rights that has enabled substantive improvement, such as “greater control,” construction and the reconditioning of “appropriate spaces,” reduction in violence, reduction in the rate of deprivation of liberty and increase in the “installed capacity.”

138. Venezuela, in addition, denied its responsibility for “alleged tortures and cruel treatments.” It argued that “at no time during the criminal proceedings against the alleged victims was that situation denounced.” It added that “the record only shows the request for a change of place of incarceration because of threats, which was resolved in a timely fashion by the trial court.” It concluded that “the infringement of a right that was never denounced for being violated in the domestic legal proceedings should never be invoked.”

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

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<sup>142</sup> Article 5 of the American Convention on Human Rights and Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture

139. In the first place, it must be noted that part of the allegations of the representatives is based on their claims regarding the general conditions in the National Penitentiary where the alleged victims were being held. Those aspects will not be considered because they are not included in the factual framework contained in the Commission's Merits Report.<sup>143</sup>

140. In the second place, it must be noted that a violation of the Inter-American Torture Convention has been claimed by the representatives and not by the Commission. The Court has held that the representatives of the alleged victims "may assert the violation of rights other than those included in the Merits Report, provided that they are within the factual framework defined by the Commission."<sup>144</sup>

141. In view of the above, the Court will examine the allegations of the Commission and of the parties. In order to do so: a) it will give a general guideline on the right to personal integrity, the separation of persons being prosecuted and those convicted and the prohibition of torture and other cruel treatment; b) it will analyze the facts of the case that are related to the placing of the presumed victims with convicted prisoners, the conduct of the State with respect to the threats received by the alleged victims and the placing of María Angélica González and Belkis González in solitary confinement, and c) finally, it will give its conclusion.

*B.1 General guidelines on the right to personal integrity, the separation of persons being prosecuted from those already convicted and the prohibition of torture and other cruel treatment*

142. The Court recalls that "detainees have the right to live in conditions of detention that are compatible with their personal dignity" and the State must guarantee this right, which is established in Article 5(1) of the American Convention.<sup>145</sup>

143. One of the safeguards to that effect is provided by Article 5(4) of the Convention that "imposes on the States the obligation to establish a system for classifying prison inmates, in order to ensure that those who are being prosecuted are separated from those who have been convicted, and that the former are treated in a way that is appropriate to their status as persons who have not been convicted."<sup>146</sup> It also

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<sup>143</sup> The Court reminds that the factual framework is composed of the facts contained in the Merits Report submitted to its consideration. Therefore, allegations of facts distinct from those presented in the Report are not admissible, except for those that might be considered complementary, that is, that explain, clarify or reject those that are mentioned in Report or, if applicable, respond to claims made by the parties or the Commission. (Cf. *Case of Vera Vera et al. v. Ecuador. Preliminary Objection, Merits, Reparations and Costs*. Judgment of May 19, 2011. Series C No. 226, para. 32 and *Case of Bedoya Lima et al. v. Colombia. Merits, Reparations and Costs*. Judgment of August 26, 2021. Series C No. 431, para 16). The facts mentioned by the representatives cannot be considered complementary. Since those facts will not be considered, the arguments in support of them will not be taken into account.

<sup>144</sup> *Case of the "Five Pensioners" v. Peru. Merits, Reparations and Costs*. Judgment of February 28, 2003. Series C No. 98, para. 155 and *Case of Garzón Guzmán et al. v. Ecuador*, para. 22.

<sup>145</sup> Cf. *Case of Bulacio v. Argentina. Merits, Reparations and Costs*. Judgment of September 18, 2003. Series C No. 100, paras. 126 and 138 and *Case of Mota Abarullo et al. v. Venezuela. Merits, Reparations and Costs*. Judgment of November 18, 2020. Series C No. 417, para. 88.

<sup>146</sup> *Case of Tibi v. Ecuador*, para. 158 and *Case of J. v. Peru. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 27, 2013. Series C No. 275, para. 380. See also, *Case of Mota Abarullo et al. v. Venezuela*, para. 96.

establishes that “the separation of accused persons from convicted persons, requires not only keeping them in different cells, but also that these cells be located in different sections within a detention center, or in different institutions if that is possible.”<sup>147</sup>

144. The Court has noted that the guarantee set out in Article 5(4) can be understood as a “corollary of the right of the person who is being prosecuted to the presumption of innocence until his or her guilt has been established legally, which is recognized in Article 8(2) of the Convention,”<sup>148</sup> since placing a person being prosecuted with those convicted implies giving the former a treatment corresponding to those whose criminal responsibility has been legally determined. While Article 8(2) of the Convention was not alleged by the parties or the Commission, the Court considers it pertinent to take into account, on the basis of the principle of *iura novit curia*.<sup>149</sup>

145. The Court has explained that a violation of the right to personal integrity can have a distinct gradation and can be produced by the commission of different types of harassment, which range from torture to other kinds of acts or treatments that may be cruel, inhuman or degrading. Torture and the other types of illtreatment are prohibited by Article 5(2) of the American Convention.<sup>150</sup>

146. The Court has also held that the general obligations arising from Article 5 of the American Convention are “reinforced by the specific obligations” that can be found in the Inter-American Torture Convention. Articles 1 and 6 of that treaty reinforce the absolute prohibition of torture and the obligation of the State to prevent and punish all acts or attempts of torture and other cruel, inhuman and degrading treatment within its jurisdiction.<sup>151</sup> Article 8 of the Inter-American Torture Convention, for its part, refers to the duty to examine complaints of torture, as well as the duty to investigate and initiate criminal proceedings when presented with such complaints or with the grounds to believe that acts of torture have been committed.

## B.2 Analysis of the facts of the case

147. *Failure to separate the persons being prosecuted and those convicted.* - It should be noted that the State has not disputed the claim of the representatives and the Commission that, in the National Penitentiary, the alleged victims were housed with convicted prisoners. This was confirmed by the expert Víctor Manuel Velazco Prieto, who

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<sup>147</sup> *Case of Yvon Neptune v. Haiti. Merits, Reparations and Costs.* Judgment of May 6, 2008. Series C No. 180, paras. 146 and 147 and *Case of Mota Abarullo et al. v. Venezuela*, para. 96.

<sup>148</sup> *Case of J. v. Peru*, para. 380.

<sup>149</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*, para. 163 and *Case of Guachalá Chimbo et al. v. Ecuador. Merits, Reparations and Costs.* Judgment of March 26, 2021. Series C No. 423, para. 110. The principle alluded to allows the Court “to analyze the possible violation of the norms of the Convention that have not been alleged, provided that the parties have had the opportunity to express their respective positions in relation to the facts on which they are based” (*Case of the Indigenous Community of the Lhaka Honhat Association (Our Land) v. Argentina. Merits, Reparations and Costs.* Judgment of February 6, 2020. Series C No. 400, para. 200).

<sup>150</sup> Cf. *Case of Loayza Tamayo v. Peru. Merits.* Judgment of September 17, 1997. Series C No. 33, paras. 57 and 58 and *Case of Guerrero, Molina et al. v. Venezuela*, para. 112. Article 5(2) was not expressly invoked by the parties or by the Commission, but the Court believed that it should apply *iura novit curia* (*supra* footnote on page 149).

<sup>151</sup> *Case of Azul Rojas Marín et al. v. Peru*, para. 143 and *Case Guerrero, Molina et al. v. Venezuela*, para. 114.

stated that in that penitentiary, at the time of the events, the “proper classification between the convicted and those being prosecuted” was not observed and that the penitentiary was designed to hold only convicted inmates and conditions did not exist to separate the convicted and those preventively deprived of their liberty.<sup>152</sup> Therefore, Venezuela did not comply with the terms of Article 5(4) of the Convention. This transgression also violated the presumption of innocence, a principle recognized in Article 8(2) of the Convention, for the reasons already stated (*supra* para. 144). This failure is not sufficient to hold that the victims suffered cruel, inhuman or degrading treatment or acts of torture.

148. *State conduct with respect to threats.*- With respect to the claims of threats received by the alleged victims while they were in the National Penitentiary, the Court recalls that the State has the duty to prevent violations of human rights of persons under its custody.<sup>153</sup> On December 14, 1998, the lawyer of Fernando González, Belkis González and María Angélica González informed the judicial authorities of the threats received by his clients and requested their transfer to another establishment. On that same day, the judicial authority requested the director of the penitentiary to designate a place for those three persons in view of their personal security and physical integrity and later the director informed that Fernando González had been placed in the infirmary and Belkis and María Angélica in “a secured section.” On December 21, 1998, a judicial order transferred Fernando González to the El Marite Center.

149. On the other hand, Luis Guillermo González, Wilmer Antonio Barliza and Olimpiades González were detained in the National Penitentiary and the mother of the former requested the transfer of all three to another establishment. On February 23, 1999, the three detainees reported that they had been threatened and, on March 2, they were transferred to the El Marite Center.

150. The above demonstrates that, due to the reported threats, the State adopted actions to protect the personal integrity of the alleged victims. Therefore, it is not appropriate to declare an infringement to the right of personal integrity for the threats or for the failure to adopt the respective measures.

151. *Retaining María Angélica and Belkis González in solitary confinement.* – In spite of what was recently stated, the Court notes that María Angélica and Belkis González remained several months in solitary confinement. The latter declared that she and her sister shared a cell with a convicted prisoner (*supra* footnote at page 44). María Angélica stated that the cell lacked space, that there was not sufficient access to water since they were given “non-treated” water once a week and they had “to learn how to collect that water so that it would last the week” and that they were not provided with medical service while they were there.<sup>154</sup> The expert Alejandra Sapene Chapellín stated that the “deplorable conditions” in which Belkis and María Angélica González were deprived of their liberty created in them “a persistent traumatic memory that alters their reasoning and their emotions.”<sup>155</sup>

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<sup>152</sup> Written expert opinion of Víctor Manuel Velazco Prieto (evidence file, fs. 2836 to 2894).

<sup>153</sup> Cf. *Case of the “Juvenile Reeducation Institute” v. Paraguay. Preliminary Objections, Merits, Reparations and Costs.* Judgment of September 2, 2004. Series C No. 112, para. 152 and *Case of Mota Abarullo et al. v. Venezuela*, para. 88.

<sup>154</sup> Written statement of María Angélica González before the Court.

<sup>155</sup> Written expert opinion of Alejandra Sapene Chapellín (evidence file, fs. 2795 to 2834).

152. The Court notes that the State must avoid that the protective measures that it was eventually compelled to adopt to protect the persons under its custody result, in and of themselves, in a violation of their rights. The SubCommittee for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment has expressed that "solitary confinement, isolation and administrative segregation are not appropriate methods of managing the security of persons [...] and can be justified only if used as a last resort, under exceptional circumstances, for the shortest possible time and with adequate procedural safeguards."<sup>156</sup> The isolation or segregation of a person deprived of his liberty, even with the purpose of granting him protection, may, depending on the circumstances, be an infringement of the prohibition against torture and illtreatment.<sup>157</sup>

153. The Court holds that the prolonged stay of various months in an isolated cell was a treatment that is contrary to personal integrity, a conclusion that was confirmed and reinforced by the statements of María Angélica and Belkis Gonzalez, as well as by the expert Sapene Chapellín. The Court, in view of the facts alluded to, concludes that María Angélica and Belkis González suffered cruel or inhuman treatment in contravention of their prohibition established in Article 5(2) of the American Convention and Article 6 of the Inter-American Torture Convention. Articles 1 and 8 of the latter Convention refer to the prevention, punishment and investigation of acts of torture and the Court is of the opinion that, given the circumstances of the case, they have not been violated.

### *B.3. Conclusion*

154. In view of the above considerations, the Court concludes that the State violated the right to personal integrity, recognized in Article 5 (1) and (4) of the American Convention, as well as the presumption of innocence recognized in Article 8(2), in relation to the obligation to respect the rights set out in Article 1(1), to the detriment of Fernando González, Belkis González, María Angélica González, Luis Guillermo González, Wilmer Antonio Barliza and Olimpiades González.

155. In addition, Venezuela violated the right to personal integrity, recognized in Article 5(1) and (2) of the American Convention, in relation to Article 1(1) thereof, and Article 6 of the Inter-American Convention to Prevent and Punish Torture, to the detriment of María Angélica González and Belkis González, for the cruel or inhuman treatment to which they were subjected.

156. The State is not responsible for the violation of Articles 1 and 8 of the Inter-American Convention to Prevent and Punish Torture.

## **VII.3 RIGHT TO JUDICIAL PROTECTION**

### ***A) Arguments of the Commission and of the parties***

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<sup>156</sup> Ninth Annual Report of the SubCommittee for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment of March 22, 2016. Document CAT/C/57/4, para. 78.

<sup>157</sup> Cf., In the same sense, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment of January 5, 2016. Doc. A/HRC/31/57, para. 35.

157. The **Commission** noted that the request for compensation for the alleged victims was rejected because the domestic judicial bodies did not consider that the deprivations of liberty to which they were subjected was due to a “judicial error,” which was a requirement of the domestic law. It noted that the claim was the only apparent domestic channel available to obtain reparation for violations to personal liberty and, therefore, the judicial rejection led to a situation of defenselessness. Thus, it argued that the State had violated Article 25(1) of the Convention. The **representatives** offered similar arguments.

158. The **State** maintained that the facts show that the alleged victims had a multiplicity of remedies available to them to obtain the compensation and they also had “the guarantee of their exercise and resolution.” It pointed out that the fact that the judicial decisions were not favorable to the victims does not imply the violation of any right.

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

159. The Court has noted that “Article 25(1) of the Convention contemplates the duty of the States Parties to ensure to all persons subject to their jurisdiction an effective recourse against acts that violate their fundamental rights.”<sup>158</sup> It has also held that “it is not sufficient that [the remedy] is established in the Convention or the law or that it be formally admissible” but it must be “appropriate” to establish the violation and to provide the necessary means to redress it. Remedies cannot be considered effective if they are “illusory.”<sup>159</sup>

160. The Court has also noted that “the treaty-based rights entail the State’s obligation to make the reparation of the violation of those rights possible” and that, thus it is necessary that the States provide the “legal and institutional means that allow those affected to claim reparations. This generally relates to obligation to make reparation to the existence of appropriate administrative or judicial mechanisms and, therefore, to the right of the victims to have access to justice.”<sup>160</sup>

161. On the basis of the above guidelines, in order to declare, if applicable, the violation of Article 25 mentioned by the Commission and the representatives, it is necessary to evaluate whether it is possible to determine, in accordance with the facts in the case, whether Venezuela provided adequate and effective judicial mechanisms to the victims to obtain an appropriate reparation for the violation of their right to personal liberty, already declared in the Judgment (*supra* para. 133).

162. The facts in the case show that, on May 24, 2001, Fernando González, María Angélica González, Wilmer Barliza and Belkis González filed a request for compensation,

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<sup>158</sup> Cf. *Case of Mejía Idrovo v. Ecuador. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 5, 2011, Series C No. 228, para 95 and *Case of Cordero Bernal v. Peru. Preliminary Objection and Merits*. Judgment of February 16, 2021. Series C No. 421, para. 100.

<sup>159</sup> The illusory nature of a remedy may be caused by “the general situation of the country or even for the particular circumstances of any given case,” for example, when its futility has been shown in practice because the jurisdictional body lacks the means to implement its decision or for any other situation in which justice is being denied. (Cf. *Case of Las Palmeras v. Colombia. Merits*. Judgment of December 6, 2001. Series C No. 90, para. 58 and *Case of Cordero Bernal v. Peru*, para. 100).

<sup>160</sup> *Case of García Lucero et al. v. Chile. Preliminary Objection, Merits and Reparations*. Judgment of August 28, 2013. Series C No. 267, para 182.

alleging that they had been subjected to the arbitrary deprivation of liberty during the criminal proceedings in which they were acquitted. This request was, in the first place, favorably accepted by the Second Trial Court of Maracaibo, which ordered that the Prosecutor General of the Nation should pay compensation. After that body appealed the decision, it was left without effect by a decision of November 26, 2001, when the Court of Appeals ordered "the absolute nullification of the proceedings and the appealed decision" (*supra* paras. 65 to 67).

163. A reading of the decision of November 26 shows that the Court of Appeals held that the Second Court did not respect due process because it incorrectly applied procedural norms. The Court of Appeals explained that the provisions that were applied by the Second Court provided for an action of compensation in cases of convictions and that those provisions were considered erroneously by the Second Court in a case in which there was no conviction, but rather an acquittal (*supra* para. 67).

164. In the first place, it should be noted that it is not for the Inter-American Court to evaluate whether the decision of November 25 is or is not in accord with the applicable domestic law of Venezuela. In the second place, it should be pointed out that it is not evident from that decision, nor from the other facts in this case, that the Venezuelan legal system obstructed access to justice for attempts to claim measures of reparation for the deprivation of liberty in violation of the American Convention. The Court neither affirms nor denies that it was so, only that it has not been proven in this case. There are no elements that would permit the assertion that the victims had been blocked from other possible judicial or other actions or that the Second Court could not have accepted their request on the basis of different legal grounds. In other words, the facts examined allow establishing that the victims' claim of compensation was not satisfied, but not that the State, through its domestic legal order or for other reasons, blocked their access to remedies.

165. As to the remedies filed by the victims against the decision of the Court of Appeals, there are no allegations of violations to provisions of the Convention and that the remedies were rejected on the basis of provisions of domestic law, which is not for this Court to analyze.<sup>161</sup>

166. The Inter-American Court, therefore, concludes that the State is not responsible for the violation of Article 25(1) of the American Convention.

**VII.4**  
**RIGHTS TO LIFE,<sup>162</sup> TO PERSONAL INTEGRITY<sup>163</sup> AND TO JUDICIAL**  
**GUARANTEES<sup>164</sup> IN RELATION TO THE ATTACKS AGAINST OLIMPIADES**  
**GONZÁLEZ AND HIS DEATH**

**A) Arguments of the Commission and of the parties**

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<sup>161</sup> Cf., In the same sense, *Case of the Indigenous Community of the Lhaka Honhat Association (Our Land ) v. Argentina*, para. 304.

<sup>162</sup> Article 4 of the American Convention on Human Rights.

<sup>163</sup> Article 5 of the American Convention on Human Rights.

<sup>164</sup> Article 8 of the American Convention on Human Rights.

167. The **Commission** claimed that the State infringed “the duty to guarantee in its component of prevention” the rights to personal integrity and to life of Olimpiades González. It explained that the State had left him in a “defenseless position” and, in that framework, there was an attempt that claimed his life in 2006.

168. The Commission explained why it believed that the State had left Olimpiades González defenseless in the following terms: it had not duly investigated the attempt on the life of Mr. Gonzalez in 2001 and, as a consequence, the request to extend the police protection that had been ordered (the compliance of which, in addition, was faulty) was denied. The Commission maintained that, if an effective investigation had been carried out, the State could have designed protective measures regarding personal integrity in line with the specific threats, but that was not done. It added that the State before 2001 was aware of the conflict between the González and M.F. families and that in 2004 Mr. González informed the authorities that the person who had made an attempt on his life in 2001 was a member of the rival family. In view of this situation, the State did not inform on i) the steps taken in the investigation; ii) the studies of risk and iii) the protective measures.

169. The Commission concluded, therefore, that the State violated Articles 4(1) and 5(1) of the Convention, to the detriment of Olimpiades González.

170. The Commission, when it issued its Merits Report, noted that the investigation into the death of Olimpiades González had been prolonged for more than 10 years. It believed that “from the available information it was evident that the State had not complied with the duty to investigate with due diligence and within a reasonable time.” Therefore, it maintained that Venezuela violated Article 8(1) of the Convention.<sup>165</sup>

171. The **representatives** agreed with the arguments of the Commission. They expressed that Venezuela “had not been able to shed its responsibility for the death of Olimpiades González [...] since it had not presented sufficient evidence in this respect nor did it dispute the facts surrounding the event, as detailed in the Merits Report [...], the conclusions of which they fully shared.” They asserted that the lack of a diligent investigation “in spite of [...] the existence of an important and longstanding risk that was opportunely denounced,” was in violation of the right to personal integrity and that the lack of protective measures, despite the State being aware of the risk to Olimpiades González, resulted in the violation of his right to life. They added that this right was also infringed by the lack of a timely investigation into his death.

172. On the other hand, the representatives argued that the family members of Olimpiades González suffered great anguish and profound suffering because of his death and that such sentiments were “perpetuated for years” because of the lack of an investigation and the impunity.<sup>166</sup>

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<sup>165</sup> The Commission, in its Merits Report, in concluding that there was a violation of a reasonable time, did not indicate who it considered to be its victim. Later, in the same document, in arriving at its conclusions, it stated that the State responsibility, for this and other violations, concerned the persons indicated in the [...] Merits Report.” These persons are Olimpiades González and his family members María Angélica González, Belkis Mirelis González, Fernando González, Luis Guillermo González, Wilmer Antonio Barliza González and Aura González, mother of Olimpiades.

<sup>166</sup> While the representatives, in making the allegation in their brief with petitions and motions, did not expressly indicate to which family members it referred, they did present it in such a manner as to allude to all of the family members of Olimpiades González that they mentioned (*supra* para. 14). As indicated (*supra* paras. 15 and 16), the Court will only examine the infringement of the right to personal integrity in relation to those persons who have been determined to be alleged victims in the case. The Commission did not claim this

173. The **State** claimed that the protective measure ordered in favor of Olimpiades Gonzalez was effective while it was in force, which guaranteed his personal integrity. It added that the death of Mr. González occurred when those measures were no longer in force and five years after the event that originated the order. In addition, it denied that there was "a causal relation" between the attempt against Mr. González in 2001 and that in 2006, which ended in his death. Therefore, it maintained that there was no violation, on the part of the State, to his rights of personal integrity and to life.

174. Venezuela added that there was no violation to the right to life for the failure to investigate. It claimed that it initiated an investigation immediately after the death of Olimpiades González, that it took diverse steps and that it identified the person who might be responsible and ordered his arrest. It asserted that the process had been paralyzed because of the "failure to appear" of the alleged perpetrator. It reminded that there is no trial in absentia in Venezuela. It stressed that the Public Ministry continues to take steps to arrest the accused "such as the request of migratory movements and that before the trial court to request the arrest before the International Organization of Criminal Police (INTERPOL)."

175. The State also denied its responsibility with respect to the alleged harm to the personal integrity of the family members of Olimpiades González in relation to his death and the later actions. It argued that a) there was no indication of a violation of the personal integrity of the family members of Olimpiades González, and b) there being no violation of the right to his life, it cannot be said that there was a violation of the personal integrity of his family members.

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

176. The Court notes that the parties presented arguments on the investigation into the death of Olimpiades González related to his right to life. The Court believes it pertinent to examine those allegations with respect to judicial guarantees. Therefore, it will first analyze the rights to personal integrity and to life with respect to Mr. González, considering the arguments concerning the attempt on his life in 2001, his situation of risk, the measures adopted in that respect and the circumstances of his death. It will then examine the right to judicial guarantees, in relation to the investigation into his death. Finally, it will refer to the allegations on the harm to the personal integrity of family members of Mr. González.

### ***B.1 Right to life and to personal integrity***

177. Following the Court's case law on activities to prevent violations to the right to life or to personal integrity in order to establish State responsibility for not complying with that duty in a specific case, the following must be verified: i) that the State authorities knew, or should have known, of the existence of a real or immediate risk to the life and/or personal integrity of an individual or of a group of individuals and ii) that those authorities did not adopt the necessary measures within the scope of their

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violation. Nonetheless, as was pointed out, the Court can analyze arguments of law presented by the representatives that are distinct from those presented by the Commission, provided that they are based on the factual framework of the case (*supra* para. 147).

authority that could reasonably be expected to prevent or avoid such risk.<sup>167</sup> On the other hand, the Court has asserted that, “depending on the case, the obligation to investigate cases of violations of a certain substantive right may be a means to safeguard, protect or ensure that right.”<sup>168</sup>

178. The facts show that after September 19, 2001, when there was an attempt on the life of Olimpiades González, the State ordered police protection for him (*supra* paras. 71 and 73). That measure was effectively implemented. The Court does not have elements to determine whether there were faults in the implementation of the protective measure that ended in harm to the personal integrity of Mr. González. The scant information presented to the Court on the complaints of Mr. González in this respect is not sufficient to make that analysis and, in addition, it is not obvious, per se, that the such faults would have caused harm to his personal integrity.

179. It has also been claimed that the lack of a diligent investigation into the attack against Mr. González in September 2001 was related to the failure to design and implement adequate measures of protection. However, there are no details on that investigation in the factual framework contained in the Merits Report. The Commission’s Report only mentions that, on June 13, 2002, the investigation was closed and was then reopened in 2004.

180. The Court finds it impossible, therefore, to evaluate the due diligence of the investigation. Neither can it rule on the alleged relation that the manner in which these actions were conducted might have had on the adoption of protective measures on behalf of Mr. González. Therefore, it is not possible to conclude that the denial, in July 2002, of the request of Mr. González that the protective measures be extended in his favor is contrary to his rights under the Convention.

181. There is no information on the investigation between 2004 and 2006. Nor is there any information to show that, between those years, the State authorities were aware of the attempts against Mr. González or of events that signified a risk to him. Nor is there any information that would indicate that, when Mr. Gonzalez requested in 2004 that the investigation be reopened into the attack of 2001, he required protective measures.

182. Mr. González died after the attack on December 11, 2006 by an individual who shot him in the back. This occurred more than five years after the first attack against him and more than four years after the protective measures were lifted.<sup>169</sup> The Court has not received any information that would indicate that, after latter date, the State

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<sup>167</sup> Cf. *Case of the Sawhoyamaya Indigenous Community v. Paraguay. Merits, Reparations and Costs.* Judgment of March 29, 2006. Series C No. 146, para. 155 and *Case of López Soto et al. v. Venezuela. Merits, Reparations and Costs.* Judgment of September 26, 2018. Series C No. 362, para. 140.

<sup>168</sup> *Case of Perozo et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs.* Judgment of January 28, 2009. Series C No. 195, para. 298 and *Case of Villaseñor Velarde et al. v. Guatemala. Merits, Reparations and Costs.* Judgment of February 5, 2019. Series C No. 374, para. 110.

<sup>169</sup> The expert María Lucrecia Hernández stated that “there exists a considerable lapse of time between the Tribunal’s rejection of an extension of the protective measure and the lamentable fact of his death (four years), during which there was nothing new that merited the granting of another protective measure by the judicial body, nor is there any indication of a request for a protective measure by the victim or a family member and, therefore, it can be presumed that during that time there was no real and imminent danger that merited the granting *de oficio* of a measure by the judicial bodies” (written expert opinion of María Lucrecia Hernández).

authorities were given notice of a situation of risk to Mr. González.<sup>170</sup> Even if the reopening of the investigation in 2004 could have been seen as an element in this sense, two more years elapsed without news of acts that could have been considered a risk.

183. Given the above (*supra* para. 177), in order to determine State responsibility for the failure to prevent violations of the rights to personal integrity and to life, it must be demonstrated that the State authorities knew, or should have known, of the existence of a real and immediate risk to those rights. This cannot be considered proved in this case and, thus, it cannot be concluded that the State has failed to observe its obligations in relation to the rights to personal liberty and to life of Olimpiades González.

184. Thus, the Court concludes that the State is not responsible for the violation of the rights to life and to personal liberty, recognized, respectively, in Articles 4 and 5 of the American Convention on Human Rights.

### *B.2 Right to judicial guarantees*

185. The Court has held that a prolonged delay in a proceeding may be, in and of itself, a violation of judicial guarantees.<sup>171</sup> The evaluation of a reasonable time should be analyzed in each case, in relation to the total length of the proceeding, from the first procedural act to the final sentence, including any appeals that might be filed.<sup>172</sup>

186. The investigation into the death of Olimpiades González began on December 11, 2006, the day of his death. In March 2007, various investigative steps were taken (*supra* para. 80). According to information provided by the State, the investigation is still open because the person allegedly responsible for the homicide is a fugitive from justice.

187. The Court notes that more than 15 years have elapsed since the beginning of the investigation without it having concluded. In view of this delay that at first glance appears excessive, the State has not provided information that would demonstrate that it is acting diligently. Nothing in the factual framework, nor in the arguments of the State, details the steps of the investigation that would permit an evaluation of its status. The information that the alleged perpetrator is a fugitive from justice; that information has been collected on his migratory movements, and that the trial court requested his arrest from the International Organization of Criminal Police (INTERPOL) are not sufficient to conclude that the State has acted properly with respect to the right of victims to judicial action within a reasonable time. Other than the actions to locate and arrest the fugitive, the State has not indicated actions that were directed opportunely to locate the alleged perpetrator so that he could be prosecuted.<sup>173</sup>

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<sup>170</sup> The references made by Belkis González with respect to what occurred on December 21, 2004 were not precise enough to prove that the State was aware of a situation of an attack or risk on that date (*supra* para. 77). In addition, it should be noted that, in any case, the reference made by Belkis González refers to circumstances some two years before the death of Olimpiades González.

<sup>171</sup> Cf. *Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago*, para. 145 and *Case of Ríos Avalos and another v. Paraguay. Merits, Reparations and Costs*. Judgment of August 19, 2021. Series C No. 429, para. 166.

<sup>172</sup> Cf. *Case of Suárez Rosero v. Ecuador. Merits*, para. 71 and *Case of Ríos Avalos et al. v. Paraguay*, para. 166.

<sup>173</sup> The expert Magaly Mercedes Vázquez González related that "despite eyewitnesses to the event who pointed out H.F. as the alleged perpetrator, barely three [...] months after the homicide the prosecutor ordered various steps pertaining to the investigation." The expert concluded that, considering the time that had elapsed

188. In view of the above, the Court concludes that the State, for the failure to actively investigate the death of Olimpiades González within a reasonable time, has violated the right to judicial guarantees, recognized in Article 8(1) of the Convention, in relation to Article 1(1) thereof, to the detriment of María Angélica González, Belkis Mirelis González, Fernando González, Luis Guillermo González, Wilmer Antonio Barliza González and Aura González.

*B.3. Right to personal integrity of the family members of Olimpiades González*

189. The Court has pointed out that the family members of the victims of violations of human rights can be, in turn, victims. According to the circumstances of a case, the Court has held the right to personal integrity of some family members to be violated for the suffering caused by the particular circumstances of violations perpetrated against their loved ones and because of the posterior actions of State authorities regarding the events.<sup>174</sup>

190. The representatives have claimed that the family members of Olimpiades González believe that their personal integrity was harmed because of his death. It has been determined that the State is not responsible for this circumstance. Therefore, it is not appropriate to conclude who is responsible for the impact that the death might have had on the personal integrity of the family members of Mr. González.

191. The representatives have also manifested that the failure to investigate and the existing impunity “perpetuated” the suffering caused by the death of Mr. González. They claim that the harm to personal integrity is related to his death. It is not possible to determine that the manner in which the investigation has been conducted necessarily produced, in and of itself, harm to personal integrity.

192. The evidence includes a psychological study regarding Belkis González and María Angélica González by the expert Alejandra Cristina Sapene Chapellín.<sup>175</sup> This study, although it takes into account the harm to the personal integrity of the alleged victims, relates the harm to diverse intertwined factors, centrally related to the deprivation of liberty, whose consequences on personal liberty have already been analyzed (*supra* paras. 139 to 155); to the death of Mr. González, and to the current or persistent threats and violence that are not related to the State responsibility analyzed in this case. The study does not show that, in the harm to the personal integrity of the alleged victims, the investigation into the death of Mr. González can be considered autonomously, but rather it is related to other aspects that are central and dominant. The Court considers that, in the specific circumstances of this case, the impact on the victims due to the manner in which the respective actions were conducted into the death of Mr. González are part of the violation to the right to judicial guarantees, which has already been examined (*supra* paras. 185 to 188).

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without an end to the investigation, “there has been a lack of the due diligence required by the laws in force at the time of the event, which laws have been maintained in the successive reforms undergone by the code, which governs criminal procedure in Venezuela.” (Cf. Written expert opinion of Magaly Mercedes Vázquez González.)

<sup>174</sup> Cf. *Case of Blake v. Guatemala. Merits*. Judgment of January 24, 1998. Series C No. 36, para. 114 and *Case of Guachalá Chimbo et al. v. Ecuador*, para. 217.

<sup>175</sup> Cf. Written expert opinion of Alejandra Cristina Sapene Chapellín.

193. Thus, the Court holds that, with respect to the death of Olimpiades Gonzalez and the corresponding investigation, the State is not responsible for the violation of Article 5(1) of the Convention, to the detriment of María Angélica González, Belkis Mirelis González, Fernando González, Luis Guillermo González, Wilmer Antonio Barliza González or Aura González.

## **VIII REPARATIONS**

194. On the basis of Article 63(1) of the American Convention, as well as in relation with its Article 28, the Court has indicated that any violation of an international obligation that has caused harm entails the duty to make adequate reparation and that this provision reflects a customary norm that constitutes one of the fundamental principles of contemporary international law on State responsibility.<sup>176</sup> The Court has considered the need to provide different types of reparation so as to fully redress the damages. Therefore, in addition to pecuniary measures, other measures such as satisfaction, restitution, rehabilitation, and guarantees of non-repetition have special relevance.<sup>177</sup> It has also established that the reparations must have a causal nexus with the facts of the case, the violations declared and the proven damages, as well as the measures requested to redress them.<sup>178</sup>

195. Bearing in mind the violations to the American Convention, the Court will analyze the claims presented by the Commission and the representatives, as well as the arguments of the State. With respect to the position of Venezuela, it must be mentioned that it did not refer in a timely fashion to all of the requested measures of reparations. The State requested, in its answering brief, that the Court “declare as inappropriate the request for reparations and compensation of the Commission and the representatives.”

### **A) Injured parties**

196. The Court considers an “injured party” to be, in the terms of Article 63(1) of the Convention, anyone who has been declared a victim of a violation of a right recognized in the Convention. Therefore, it considers the injured parties to be Olimpiades González, María Angélica González, Belkis Mirelis González, Fernando González, Luis Guillermo González, Wilmer Antonio Barliza González and Aura González. According to information provided by the representatives, in addition to Olimpiades González, Wilmer Antonio Barliza González are deceased.

### **B) Obligation to investigate**

197. The **Commission** requested that the Court order the State “to make available the necessary measures to investigate exhaustively, diligently and in a timely fashion all of the responsibilities arising from the death of Olimpiades González.”

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<sup>176</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and Costs*. Judgment of July 21, 1989. Series C No. 7, para. 25 and *Case of Garzón Guzmán et al. v. Ecuador*, para. 95.

<sup>177</sup> Cf. *Case of the Las Dos Erres Massacre Vs. Guatemala, Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 24, 2009. Series C No. 211, para. 226 and *Case of Ríos Avalos et al. v. Paraguay*, para. 179.

<sup>178</sup> Cf. *Case of Ticona Estrada et al. v. Bolivia. Merits, Reparations and Costs*. Judgment of November 27, 2008. Series C No. 191, para. 110 and *Case of Ríos Avalos et al. v. Paraguay*, para. 179.

198. The **representatives** asked that the Court order the State “to investigate in a diligent, exhaustive and timely fashion, the facts regarding the killing of Olimpiades González.” It also asked that it “ensure the full access and the participation of family members of the victim at every step of the investigation, as established in the American Convention.”

199. The **Court** held that the State violated the right to judicial guarantees due to a failure to investigate the death of Olimpiades González within a reasonable time (*supra* para. 188). The Court, therefore, orders that the State continue and conclude, within a reasonable time, the corresponding investigations and criminal proceedings in order to prosecute and, if applicable, punish those responsible of the death of Mr. González, in accordance with the domestic law. The State must also ensure full access and capacity to act for the family members of Mr. González at every step of the investigations, pursuant to the domestic law and the norms of the American Convention.<sup>179</sup>

### **C) Measures of rehabilitation**

200. The **Commission** asked that the State be ordered “to fully repair the consequences of the violations declared in the present case.” The **representatives** maintained that Venezuela should be ordered to provide “the specialized psychiatric and psychological treatment that the victims and their family members may require, with their prior consent.”

201. The **Court** has established harm to personal integrity suffered by the victims in the present case because of the deprivation of liberty to which they were subjected (*supra* paras. 154 and 155). Therefore, the Court considers that it is necessary to order a measure of reparation that would grant adequate attention to the physical, psychological and/or psychiatric ailments suffered by those persons and would treat their particularities and histories.<sup>180</sup> Consequently, the Court orders the State to pay a monetary amount so that María Angélica González, Belkis Mirelis González, Fernando González and Luis Guillermo González are able to defray the costs of the necessary treatments. The amount shall be defined in the paragraphs on compensation for pecuniary and non-pecuniary damages (*infra* para. 217).

### **D) Measures of satisfaction**

202. The **representatives** requested that the State publish “the official summary of this Judgment in the Official Gazette” and “in another newspaper of widespread circulation in the city of Maracaibo.” They also requested that “the complete Judgment be published on the official site of the State” and that “the contents of the Judgment in the Wayúú and in the Spanish languages” be broadcast on a “station of widespread transmission among the members of the Community, at least four times in a period of two weeks each one.”

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<sup>179</sup> Cf., in the same sense, *Case of Guerrero, Molina et al v. Venezuela*, para. 169.

<sup>180</sup> Cf. *Case of Barrios Altos v. Peru. Reparations and Costs*. Judgment of November 30, 2001. Series C No. 87, paras. 42 and 45 and *Case of Garzón Guzmán et al. v. Ecuador*, para. 114.

203. The **Court** orders, as it has in other cases,<sup>181</sup> that the State publish, within six months of notification of this Judgment, in a legible and adequate font: a) the Court's official summary of this Judgment, once, in the Official Gazette; b) the Court's official summary of this Judgment, once, in a newspaper of widespread national circulation, c) the complete Judgment, available for one year, on an official Web site of the National Government.

204. The Court also considers it relevant, as it has in other cases,<sup>182</sup> that the State broadcast on a radio station of widespread coverage that reaches all points of the city of Maracaibo in the State of Zulia, the official summary of the Judgment, in the Spanish language and, with the prior consensus of the representatives, in the Wayú language. The radio transmission should be made on four occasions, with a space of two weeks between them, after 8:00 a.m. and before 10:00 p.m. The State should comply with this measure within a period of six months of the notification of this Judgment. Venezuela must immediately inform the Court when it has made each of the transmissions ordered in the paragraph and the publications ordered in the above paragraph.

#### **E) Other measures requested**

205. The **Commission** requested, in submitting the case to the Court, that Venezuela be ordered "to make available the mechanisms of non-repetition that include:"

- i) The necessary measures in order that the figure of preventive detention, in practice, be the exception and not the rule and that the standards contained in the [Merits Report] be consistently applied and
- ii) The necessary measures so that there are appropriate and effective remedies to obtain reparation for the violations of human rights arising from the improper use of preventive detention.

206. The **representatives** believe that the State should: i) "proceed to drafting and adopting the necessary domestic norms to adapt State laws to the Convention" and "to the standards of the inter-American system on [...] preventive detention, reasonable time, conditions of detention" and ii) "train its officials and agents to know and respect human rights and [...] the standards of incarceration, especially the police, the prison staff and the administrative personnel of the National Guard." In addition, they requested that there be "a public act of apology to the victims for the violations suffered."

207. The **Court** notes, in the first place, that Article 182 of the CCP applied in this case, which the Court considered to be in violation of the American Convention (*supra* paras. 121, 123 and 133), was not in force at the time of the delivery of this Judgment.<sup>183</sup>

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<sup>181</sup> Cf. *Case of Cantoral Benavides v. Peru. Reparations and Costs*, para. 79 and *Case of Garzón Guzmán et al. v. Ecuador*, para. 117.

<sup>182</sup> Cf. *Case of the Yakye Axa Indigenous Community v. Paraguay. Merits, Reparations and Costs*. Judgment of June 17, 2005. Series C No. 125, para. 227 and *Case of the Indigenous Community of the Lhaka Honhat Association (Our Land) v. Argentina*, para. 349.

<sup>183</sup> In deciding a prior case, the Court stated that "the domestic rules that [...] are based solely on the existence of "indications of criminal responsibility" to order the arrest, which were declared to be incompatible with Article 2 of the Convention [...] have been modified as of the year 1999" and, for that reason" it was considered inappropriate to order measures of adaptation of the domestic law. Those domestic norms refer to Article 182 of the CCP (Cf. *Case of Barreto Leiva v. Venezuela*, paras. 112 to 116 and 135). In addition, the criminal procedural legislation, as well as the constitutional, has been modified, as noted by the expert Magaly Mercedes Vásquez González (*supra* para. 59). That modification has also been referred to by the expert Nelson Orlando Mejía Durán, who stated that "the change in the procedural system in Venezuela initiated a total transformation of the justice system" (cf. Written expert opinion of Nelson Orlando Mejía Durán). The Court

Therefore, it is not appropriate to order measures of non-repetition in relation to the application of preventive detention in Venezuela.

208. On the other hand, the Court notes that the human rights violations relating to the deprivation of liberty suffered by the victims are mainly based on the application of a legal order that is no longer in force and it is not apparent from the facts that those human rights violations, or others declared in this Judgment, have a causal nexus, principally or with a relevant body, with the individual conduct of officials who, by violating human rights, do not fulfill their functions or do not obey their legal mandates. Therefore, it is not appropriate to order measures of training.

209. In addition, the Court did not find a lack in the internal legal order of Venezuela of appropriate and effective remedies to obtain reparation for the human rights violations arising from the improper use of preventive detention (*supra* paras. 159 to 166). Therefore, it is not appropriate to order that Venezuela adopt measures in this area.

210. Lastly, the Court considers that the delivery of this Judgment and the measures of satisfaction already ordered, together with the other reparations that have been ordered in the Judgment, are sufficient and adequate to remedy the violations suffered by the victims. Therefore, it does not deem it necessary to order a public act of apology.

#### **F) Compensation**

211. The **Commission** requested that the human rights violations be fully repaired pecuniarily and non-pecuniarily, by means of measures of economic compensation.

212. The **representatives** asked that the Court determine:

a) As to *pecuniary damages*, in equity, "the funeral expenses of [Olimpiades González]" in the total amount of US\$ 3,000. Referring to "the judicial activity of the victims at the domestic level," they asked that the Court determine, in equity, the sum of US\$ 22,000. As to the medical expenses, the representatives requested, in equity, the sum of US\$ 5,000 each for Belkis, María Angélica and Aura.<sup>184</sup> They also requested, in equity, reparation for the concept of "family patrimonial" damages in the amount of US\$ 15,000 "for each of the parents, Aura and Fernando González." They also asked that Court to set a compensation for lost wages, in equity, in the amount of US\$ 150,000 in favor of each of the parents of Olimpiades, Fernando and Aura. As to the lost wages "for the period of arbitrary detention of liberty," they asked,

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notes that Ms. Vásquez González considered that the current legal order is incompatible with the Constitution with respect to the manner in which it was adopted, as well as that "it openly limits the right to being tried while in liberty." She did not mention the current norms, similar to Article 182 applied in this case, that are considered contrary to the American Convention by the Court, but her assertion was based on another aspect of current legislation. It is not for the Court, in the context of the present case, to evaluate current legislation adopted after the events examined and that are not related to them or to the human rights violations declared in this Judgment.

<sup>184</sup> The representatives indicated, with respect to María Angélica and Belkis Mirelis, "the psychological torture, the continual harassment, discrimination and violence by the police and their "enemies" that continued during all of these years." They specifically stated that María Angélica suffered from "diabetes and nervous problems, among some of the sequelae" and that Belkis Mirelis suffered from "chronic stress, caused by the great suffering and anguish, which have caused fears, tremors, social isolation and a difficulty to join the labor market." They added that "she suffers from diabetes and arrhythmia as a consequence of [...] what they had lived through." They also pointed out that Aura, the mother of María Angélica, Belkis and Olimpiades, developed "diabetes and as a result one of her legs was amputated."

in the case of Fernando, María Angélica and Belkis Mirelis González “for almost 11 months of detention,” the sum of US\$ 16,500 for each one and for Wilmer Barliza González, “for 8 months of detention,” US\$ 12,000.

b) As to *non-pecuniary damages*, in equity, for the death of Olimpiades González “a compensation of US\$ 150,000 for each of the parents Fernando and Aura, in addition to the sum of US\$ 20,000 for each of his siblings María Angélica, Belkis, Arianny, Laura Joselin, Alejandro and Fernando González (jr.)” For the arbitrary detentions and “the shameful conditions endured,” they requested in favor of Fernando, María Angélica and Belkis Mirelis González the sum of US\$ 30,000 for each one, for Wilmer Antonio Barliza US\$ 21,000 and for Luis Guillermo González US\$ 8,000.

213. The **Court** has noted that pecuniary damages presuppose the loss or detriment to the income of the victims, the expenses due to the events and the monetary consequences that have a causal nexus with the events of the case.<sup>185</sup> It has also established that non-pecuniary damages may include both the suffering and the afflictions caused to the direct victims and their relatives and the impairment of values of great significance for the individual, as well as alterations of a non-pecuniary nature in the living conditions of victims and their families.<sup>186</sup>

214. The Court believes that, given the nature of the events and the violations declared in this Judgment, the victims have suffered pecuniary and non-pecuniary damages that should be compensated.<sup>187</sup> However, it is not appropriate to order pecuniary or non-pecuniary damages to those individuals who were not declared victims (*supra* para. 16). Nor is it appropriate to order compensation for damages arising from the death of Olimpiades González since the State was not found responsible for his death. On the other hand, there is no evidence of a causal nexus between the declared violations in this Judgment and harm to the health of the victims mentioned by the representatives in their petition for pecuniary damages. It is also to be noted that the consequences on the personal integrity of the victims who were deprived of their liberty has been taken into consideration with respect to the measures of rehabilitation that have been ordered in this Judgment (*supra* para. 201 and *infra* para. 217). Finally, note should be taken that the representatives requested the setting of the monetary amounts, “in equity,” but did not provide sufficient evidence with respect to the monetary amount of the pecuniary damage that they allege.

215. In view of the foregoing, the Court deems it appropriate to determine, in equity, and in order to repair in a unified or joint manner the pecuniary and non-pecuniary damages, as compensation and in consideration of the different violations of human rights suffered by the victims, the following monetary amounts in favor of each of the victims and beneficiaries of reparations as indicated below:

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<sup>185</sup> Cf. *Case of Bámaca Velásquez v. Guatemala. Reparations and Costs*. Judgment of February 22, 2002. Series C No. 91, para. 43 and *Case of Garzón Guzmán et al. v. Ecuador*, para. 130.

<sup>186</sup> Cf. *Case of the “Street Children” (Villagrán Morales et al.) v. Guatemala. Reparations and Costs*. Judgment of May 26, 2001. Series C No. 77, para. 84 and *Case of Garzón Guzmán et al. v. Ecuador*, para. 132.

<sup>187</sup> Fernando González, in his statement before the Court by videorecorder, stated that “he had to sell everything” to pay the expenses arising from the events of the case, although he did not expressly refer to which events caused those expenses. Similarly, Laura Joselin González, referring to the deprivations of liberty suffered by her family members, stated that the family had expenses “of food and transfer to the different areas of the penitentiary and the El Marite Center.” She also informed that her cousins Wilmer Antonio Barliza González and Luis Guillermo González had lost their jobs. (Cf. Written statement of Laura Joselin González before the Court.)

- a) Olimpiades González: US\$ 10,000.00 (ten thousand United States dollars)
- b) María Angélica González: US\$ 30,000.00 (thirty thousand United States dollars)
- c) Belkis Mirelis González: US\$ 30,000.00 (thirty thousand United States dollars)
- d) Fernando González: US\$ 25,000.00 (twenty-five thousand United States dollars)
- e) Luis Guillermo González: US\$ 7,500.00 (seven thousand five hundred United States dollars)
- f) Wilmer Antonio Barliza González: US\$ 20,000.00 (twenty thousand United States dollars)
- g) Aura González: US\$ 5,000.00 (five thousand United States dollars)

216. The amounts assigned to Olimpiades González and to Wilmer Antonio Barliza González should be delivered to their heirs, pursuant to the applicable domestic law.

217. Similarly, the Court orders the State to pay the sum of US\$ 6,000.00 (six thousand United States dollars) to each of the declared victims in this Judgment who were deprived of their liberty and with respect to whom there is no indication that they have died, namely, María Angélica González, Belkis Mirelis González, Fernando González and Luis Guillermo González in order that they might defray the expenses of the necessary physical, psychiatric and/or psychological treatment (*supra* para. 201). That monetary sum should be paid to the beneficiaries by the State without any condition or under any obligation to account for it. The State must make the payment as soon as possible and before one year has elapsed of the notification of this Judgment. If, for reasons proven attributable to the beneficiaries, the payment was not possible, the State will be exempt from such payment.

### **G) Victims' Legal Assistance Fund of the Court**

218. It should be noted that in the Order of April 14 2021 (*supra* para. 9), the President ordered that, "pursuant to Article 4 of the Rules of the Victims' Legal Assistance Fund, [...] the Secretariat shall open a file in which it shall document each of the disbursements that are made in relation to the Fund."<sup>188</sup>

219. In view of the expenses duly accredited by the representatives and the vouchers provided by them, the Court orders the State to reimburse the cost of the expert opinion of Víctor Velasco Prieto, which is the sum of US\$ 650.00<sup>189</sup> (six hundred fifty United States dollars). This amount must be reimbursed within six months of the date of the notification of this Judgment.

### **H) Method of compliance**

220. The State shall pay the compensations for the concept of pecuniary and non-pecuniary damages established in this Judgment directly to the persons indicated, within one year of notification of this Judgment, although it may advance the full payment, in the terms of the following paragraphs.

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<sup>188</sup> The President ordered that the economic assistance be assigned to cover "the reasonable expenses of notarization and sending of the affidavits of the persons" that the Order of April 14, 2021 ordered to provide a written statement, all proposed by the representatives; the statement of Fernando González, which will be given by videorecording, and the other reasonable and necessary expenses that the Inter-American Public Defenders have or might have incurred. The representatives informed the Court in their final allegations that "they had not incurred reimbursable expenses" other than the expert opinion of Mr. Velasco Prieto.

<sup>189</sup> The representatives pointed out that the amount corresponds to the honorarium of the expert Víctor Velasco Prieto for his expert opinion.

221. Should a beneficiary die before he or she receives the respective compensation, it shall be delivered directly to that beneficiary's heirs, in accordance with the applicable domestic law.

222. With respect to the monetary compensation, the State shall comply with its monetary obligations by payment in United States of America dollars or, if that is not possible, in the equivalent in Venezuelan currency, using the highest and most beneficial rate for the victims allowed by domestic law in force at the time of the payment. During the stage of monitoring compliance with this Judgment, the Court may make a prudent readjustment of the equivalent of the respective sums in the currency of Venezuela in order to avoid exchange variations that substantially affect their purchasing power.

223. If, for causes that can be attributable to the beneficiaries of the compensation or their heirs, it is not possible to pay the amounts established within the indicated time frame, the State shall deposit such amounts in their favor in an account or certificate of deposit in a solvent Venezuelan financial institution, in United States dollars, and in the most favorable financial conditions permitted by the legislation and banking practices. If the corresponding amount is not claimed after 10 years, the amounts shall be returned to the State with the interest accrued.

224. The amounts allocated in this Judgment as compensation shall be delivered in full to the persons indicated, as established in this Judgment, without any deductions arising from possible taxes and charges.

225. If the State should fall into arrears, including the reimbursement to the Victims' Legal Assistance Fund of the Court, it shall pay interest on the amount owed, corresponding to banking interest on arrears in the Bolivarian Republic of Venezuela.

## **IX OPERATIVE PARAGRAPHS**

226. Therefore,

### **THE COURT**

### **DECLARES,**

Unanimously, that:

1. The State is responsible for the violation of the right to personal liberty, recognized in Articles 7(1) and 7(2) of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of Belkis González, María Angélica González, Fernando González, Wilmer Antonio Barliza González, Luis Guillermo González and Olimpiades González, pursuant to paragraphs 94 to 96, 105 to 113 and 133 of this Judgment.

2. The State is responsible for the violation of the rights to personal liberty and to judicial guarantees, the former recognized in Article 7(1) and 7(3) of the American Convention on Human Rights, and the latter in Article 8(2) of the Convention, in relation to Articles 1(1) and 2 thereof, to the detriment of Belkis González, María Angélica González, Fernando González, Wilmer Antonio Barliza González, Luis Guillermo González

and Olimpiades González, pursuant to paragraphs 94, 97 to 99, 102, 103, 114 to 121, 123 and 133 of this Judgment.

3. The State is responsible for the violation of the right to personal liberty, recognized in Article 7(1) and 7(6) of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of Wilmer Antonio Barliza González, Fernando González, María Angélica González and Belkis Mirelis González, in the terms of paragraphs 94, 101, 124 to 126 and 129 to 133 of this Judgment.

4. The State, in relation to the conditions of detention suffered by the victims, is responsible for the violation of the rights to personal integrity and to judicial guarantees, the former recognized in Article 5(1) and 5(4) of the American Convention on Human Rights, and the latter in Article 8(2) of the Convention, in relation to Article 1(1) thereof, to the detriment of Fernando González, Belkis González, María Angélica González, Luis Guillermo González, Wilmer Antonio Barliza y Olimpiades González, pursuant to paragraphs 142 to 144 and 147 to 154 of this Judgment.

5. The State, in relation to the conditions of detention suffered by the victims, is responsible for the violation of the right to personal integrity, recognized in Article 5(1) and 5(2) of the American Convention on Human Rights, in relation to Article 1(1) thereof, and Article 6 of the Inter-American Convention to Prevent and Punish Torture, to the detriment of Belkis González and María Angélica González, pursuant to paragraphs 142, 145, 146, 151, 153 and 155 of this Judgment.

6. The State is responsible for the violation of the right to judicial guarantees, recognized in Article 8(1) of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of María Angélica González, Belkis Mirelis González, Fernando González, Luis Guillermo González, Wilmer Antonio Barliza González and Aura González, pursuant to the paragraphs 185 to 188 of this Judgment.

7. The State is not responsible for the violation of Articles 1 and 8 of the Inter-American Convention to Prevent and Punish Torture, in the terms of paragraphs 140, 146, 153 and 156 of this Judgment.

8. The State is not responsible for the violation of Article 25(1) of the American Convention on Human Rights, in the terms of paragraphs 159 to 166 of this Judgment.

9. The State, in relation to the attacks and death suffered by Olimpiades González after his release, as well as in relation to the investigation into his death, is not responsible for the violation of the rights to life and to personal integrity, recognized, respectively, in Articles 4 and 5 of the American Convention on Human Rights, in the terms of paragraphs 177 to 184 and 189 to 193 of this Judgment.

**AND ORDERS:**

Unanimously, that:

10. This Judgment is, per se, a form of reparation.

11. The State shall continue and shall conclude, within a reasonable time, the investigations and corresponding criminal proceedings with the purpose of judging and, if applicable, punish the persons responsible for the death of Olimpiades González, in the terms of paragraph 199 of this Judgment.

12. The State shall pay the amounts designed to provide adequate medical attention for the physical, psychological and/or psychiatric ailments suffered by María Angélica González, Belkis Mirelis González, Fernando González, Luis Guillermo González and Wilmer Antonio Barliza González, in the terms of paragraphs 201 and 217 of this Judgment.

13. The State shall issue the publications and order the radio transmissions indicated in paragraphs 202 and 204 of this Judgment, within six months of its notification, in the terms ordered in those paragraphs.

14. The State shall pay the amounts set in paragraph 215 of this Judgment, for the concept of pecuniary and non-pecuniary damages, in the terms of paragraphs 216 and 220 to 225 of this Judgment.

15. The State shall reimburse the Victims' Legal Assistance Fund of the Inter-American Court the amount disbursed during the proceedings of the present case, in the terms of paragraphs 219 and 225 of this Judgment.

16. The State shall provide the Court with a report, within one year of the date of notification of this Judgment, on the measures adopted to comply with it, notwithstanding the established in paragraph 204 of this Judgment.

17. The Court shall monitor the full compliance of this Judgment, in exercise of its attributes and in compliance with its obligations under the American Convention on Human Rights and shall close this case when the State has fully complied with what it ordered in it.

DONE, at San José, Costa Rica, on September 20, 2021, in the Spanish language.

I/A Court HR. *Case of González et al. v. Venezuela. Merits and Reparations.* Judgment of September 20, 2021.

Elizabeth Odio Benito  
President

L. Patricio Pazmiño Freire

Eduardo Vio Grossi

Humberto Antonio Sierra Porto

Eduardo Ferrer Mac-Gregor Poisot

Eugenio Raúl Zaffaroni

Ricardo C. Pérez Manrique

Pablo Saavedra Alessandri  
Secretary

So ordered,

Elizabeth Odio Benito  
President

Pablo Saavedra Alessandri  
Secretary