

## **Inter-American Court of Human Rights**

### **Case of Caballero-Delgado and Santana v. Colombia**

#### **Judgment of December 8, 1995 (Merits)**

In the case of Caballero-Delgado and Santana,

the Inter-American Court of Human Rights, composed of the following judges:

Héctor Fix-Zamudio, President  
Hernán Salgado-Pesantes, Vice President  
Rafael Nieto-Navia, Judge  
Alejandro Montiel-Argüello, Judge  
Máximo Pacheco-Gómez, Judge

also present,

Manuel E. Ventura-Robles, Secretary, and  
Ana María Reina, Deputy Secretary

pursuant to Article 45(1) of the Rules of Procedure (hereinafter "the Rules of Procedure") of the Inter-American Court of Human Rights (hereinafter "the Court"), delivers the following judgment in the instant case.

#### **I**

1. On December 24, 1992, the Inter-American Commission on Human Rights (hereinafter "the Commission" or the "the Inter-American Commission") submitted to this Court a case against the Republic of Colombia (hereinafter "the Government" or "Colombia"). The case originated on April 4, 1989 in a "request for urgent action" sent on that date to the Commission and in a petition (Nº 10.319) against Colombia received at the Secretariat of the Commission on April 5, 1989. The Inter-American Commission appointed Leo Valladares-Lanza as its Delegate before the Court and Edith Márquez-Rodríguez and Manuel Velasco-Clark as Assistants. Moreover, it named as legal counsel Gustavo Gallón-Giraldo, María Consuelo del Río, Jorge Gómez-Lizarazo, Juan E. Méndez and José Miguel Vivanco.

2. The Commission invoked Articles 50 and 51 of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") and Article 26 and following of the Rules of Procedure. The Commission submitted this case to the Court for a decision as to whether Colombia had violated Articles 4 (Right to Life), 5 (Right to Humane Treatment), 7 (Right to Personal Liberty), 8 (Right to a Fair Trial), and 25 (Right to Judicial Protection), all read in conjunction with Article 1(1) of the Convention which establishes the duty to respect and ensure those rights, to the detriment of Isidro Caballero-Delgado and María del Carmen Santana. In addition, "*based on the principle of pacta sunt servanda,*" the Commission alleged that the Government had violated Article 2 of the Convention, by not adopting the domestic legal measures which give effect to those rights, and Article 51(2) in conjunction with 29(b) of the Convention, by not carrying out the recommendations of the Commission. The Commission asked the Court to require the Government to "*institute the investigations necessary to identify the responsible parties and impose punishment . . . inform the relatives of the victims of the latter's whereabouts . . . [declare that] it must remedy the acts committed by government agents and pay fair compensation to the victims' next of kin . . . [and order it] to pay the costs and attorney's fees of these proceedings.*"

3. According to the Commission, on February 7, 1989, Isidro Caballero-Delgado and María del Carmen Santana were captured in the District of Guaduas, in the jurisdiction of the Municipality of San Alberto, Department of El Cesar, Colombia, by a military patrol composed of units of the Colombian Army stationed at the Libano military base (jurisdiction of San Alberto), attached to the Fifth Brigade headquartered in Bucaramanga. The detention took place because of Isidro Caballero's active involvement over an eleven year period as a leader of the Santander Teachers' Union. He had been held previously in the Model Prison of Bucaramanga for the crime of illegally carrying arms and was released in 1986. From that time, however, he was constantly harassed and threatened. María del Carmen Santana, "*about whom the Commission has very little information, [also] was a member of the Movement April 19 (M-19)*" and worked with Isidro Caballero enlisting community participation for the "Meeting for Coexistence and Normalization" which was to be held on February 16, 1989 in the Municipality of San Alberto. This activity had been planned by the "Regional Dialogue Committee" and involved "*organizing meetings, fora, and debates in various regions in an effort to find a political solution to the armed conflict.*"

4. The application alleges that on February 7, 1989, Elida González-Vergel, a peasant woman who was passing the place where the victims were captured, was detained by the same Army patrol and later released. She saw Isidro Caballero-Delgado, wearing a camouflage military uniform, and a woman who was with them. Javier Páez, a resident of that region who served as the victims' guide, was detained by the Army, tortured, and later set free. From the interrogation to which he was subjected and the radio communications of the military patrol that detained him, he learned of the detention of Isidro Caballero-Delgado and María del Carmen Santana. After his release, he notified the unions and political organizations to which they belonged. They, in turn, notified the relatives of the detained individuals.

5. The application adds that Isidro Caballero-Delgado's family and various union and human rights organizations began to search for the detainees at the military facilities. They were told that Isidro Caballero-Delgado and María del Carmen Santana had not been detained. Legal and administrative actions were brought in an attempt to establish the whereabouts of the two persons who had disappeared and

to punish those directly responsible, all to no avail. No reparations were obtained for the damages caused.

6. On April 4, 1989, the Commission, acting on a request for urgent action from a "reliable source" and before receiving a formal communication from the petitioners, *motu proprio* sent the Government the complaint and requested that extraordinary measures be taken to protect the lives and personal safety of the victims. On April 5 of that same year, the Commission received the formal petition from the petitioners, which it processed under N° 10.319. The proceedings before the Commission were concluded on September 25, 1992, with the approval of "final" Report N° 31/92 ratifying Report 31/91, which included the Commission's resolution to submit the case to the Court. The case was submitted on December 24, 1992, pursuant to Article 51(1) of the American Convention.

## II

7. The Court has jurisdiction to hear the instant case. Colombia has been a State Party to the Convention since July 31, 1973 and accepted the contentious jurisdiction of the Court, as set out in Article 62 of the Convention, on June 21, 1985.

## III

8. The application to the Court was transmitted to the Government by the Secretariat of the Court (hereinafter "the Secretariat") on January 15, 1993, after it had been duly examined by the President of the Court (hereinafter "the President").

9. On January 28, 1993, the Government notified the Court of the appointment of Attorney Jaime Bernal-Cuéllar as its Agent, and Attorney Weiner Ariza-Moreno as its Alternate Agent.

10. By order of February 5, 1993, the President granted the Government's request for a forty-five day extension of the time limit established by Article 29(1) of the Rules of Procedure for filing an answer to the application in this case. On February 16, 1993, the Court also granted the Government a fifteen day extension of the deadline to submit its memorial on the preliminary objections.

11. The Government interposed preliminary objections on March 2, 1993, and the Commission responded to them on April 6 of the same year. The answer to the application was submitted on June 2, 1993.

12. On July 12, 1993, Judge Rafael Nieto-Navia was elected President. As the new President is Colombian, by Order of July 13, 1993, he relinquished the presidency for the instant case to Judge Sonia Picado-Sotela, the Vice President. Subsequently, by Order of the President of June 22, 1994 and owing to the Vice President's renunciation of her position as Judge of the Court, the presidency for the consideration of this case was ceded to Judge Héctor Fix-Zamudio.

13. On July 15, 1993, a public hearing was held for the presentation of oral arguments on the preliminary objections interposed by the Government, and on January 21, 1994 the Court delivered its judgment, deciding unanimously to:

1. Rejects the preliminary objections interposed by the Government of Colombia.

...

2. Decides to proceed with the consideration of the instant case.

14. By Order of the President of August 18, 1993, the Government was asked, at the Commission's request, to submit the records of eight different domestic proceedings in Colombia and other documentation related to this case. The Government submitted said documentation by means of communications of November 15 and 19, 1993, and February 7, 1994.

15. By note of March 24, 1994, the Government informed the Court of the protection provided to María Nodelia Parra-Rodríguez, the companion of Isidro Caballero-Delgado, by the Administrative Department of Security (hereinafter "DAS") of Colombia.

16. By means of a note dated April 22, 1994, the Government submitted the list of witnesses to be summoned by the Court to appear at the public hearings on the merits of the case. Later, by note of October 26, 1994, the Government partially modified that list. The Inter-American Commission, by notes of April 27, November 17, and November 28, 1994, submitted the list of its witnesses and requested that the testimony of Rosa Delia Valderrama be taken in Colombia due to her poor state of health. Upon the agreement of the Government, the President, by Order of July 18, 1994, named Professor Bernardo Gaitán-Mahecha as the expert representing the Court. On October 15, 1994, the Professor oversaw the questioning of Mrs. Valderrama which was conducted by representatives of the Government and the Commission.

17. On July 18, 1994, the President summoned the parties to a public hearing, to begin on November 28 of the same year, to receive the testimony of the witnesses named by the parties and the arguments on the merits of the case. That order was partially modified by the President on November 15, 1994 in order to replace two of the proposed witnesses of the Government and to summon the new witnesses named by the Government.

18. From November 28 to December 1, 1994, the Court held public hearings on the merits of the case and heard the closing arguments of the parties.

There appeared before the Court

For the Government of Colombia:

Jaime Bernal-Cuéllar, Agent

Gerardo Barbosa-Castillo, Counsel

Jaime Lombana-Villalba, Counsel

For the Inter-American Commission on Human Rights:

Leo Valladares-Lanza, Delegate

Oscar Luján Fappiano, Member

Manuel Velasco-Clark, Attorney of the Secretariat

Gustavo Gallón-Giraldo, Assistant

Tatiana Rincón, Assistant

José Miguel Vivanco, Assistant

Juan E. Méndez, Assistant

Witnesses presented by the Inter-American Commission on Human Rights:

Zoilo Javier Jerez-Medina

María Nodelia Parra-Rodríguez

Elizabeth Monsalve-Camacho

Elida González-Vergel

Ricardo Vargas-López

Javier Páez

Guillermo Guerrero-Zambrano

Luis Alberto Gil-Castillo

Víctor Enrique Navarro-Jiménez

Witnesses presented by the Government of Colombia:

Armando Sarmiento-Mantilla

Manuel José Cepeda-Espinosa

Hernando Valencia-Villa

Luis Alberto Restrepo-Moreno

Juan Salcedo-Lora.

19. On December 7, 1994, at the request of the Commission, the Court ordered provisional measures requiring that the Government adopt those measures necessary to protect the lives and personal integrity of Gonzalo Arias-Alturo, Javier Páez, Guillermo Guerrero-Zambrano, Elida González-Vergel and María Nodelia Parra-Rodríguez. By means of communications of December 8, 1994, March 7 and 8 and August 11, 1995, the Government informed the Court of the measures taken in compliance with this order.

20. By note of December 19, 1994, the Government sent the Court a copy of the records of the proceedings in progress in Colombia concerning the disappearance of Isidro Caballero-Delgado and María del Carmen Santana.

21. The Court, by Order of January 25, 1995, appointed Gabriel Burgos-Mantilla and Bernardo Gaitán-Mahecha as experts to take the testimony in Colombia of Gonzalo Arias-Alturo and Diego Hernán Velandia-Pastrana, who did not testify before the Court. On March 11, 1995 these experts took the testimony of Gonzalo Arias-Alturo. Hernán Velandia-Pastrana could not be questioned as he would not voluntarily appear. The Government, which was the party that named him, did not insist on the testimony, because it did not consider it to be indispensable.

22. On December 1, 1994, in its final brief in this case, the Government stated that:

A. The facts, which have been regarded as true in the application, have not been substantiated with proof that conforms to the standards of sound proof. In effect, the evidence in the case is contradictory and does not effectively demonstrate the participation of Colombian soldiers in the events described, or even the existence of the alleged violation of the provisions of the American Convention on Human Rights.

B. Consequently, the evidence obtained to date cannot lead to an assertion of the responsibility of the Colombian Government, considering that there is no certain knowledge that its agents took part in the events which are the object of the application. Additionally, the decisions made in the judicial proceedings in the investigation of these same events comply with the norms and principles of the substantive and procedural law in force and applicable in the country.

The Government, moreover, requested that the Court, "*render a judgment absolving the Government of Colombia because of the failure of the Inter-American Commission on Human Rights to prove the charges it had formulated . . .*"

23. On February 24, 1995, the Commission submitted its final brief in which it requested that the Court:

1. Declare that the Government of Colombia is responsible for the violations cited [of the rights provided for in Articles 2, 4, 5, 7, 8, and 25 of the Convention, all read in conjunction with Article 1(1)].

2. Declare that based on the principle of *pacta sunt servanda*, in accordance with Article 26 of the Vienna Convention on the Law of Treaties, the Government has violated Articles 51(2) and 44 of the American Convention read in conjunction with Article 1(1) by deliberately failing to comply with the recommendations made by the Inter-American Commission.

3. Require that the Government of Colombia continue the necessary investigations until those responsible have been identified and punished, thereby avoiding the commission of acts of serious impunity that transgress the very bases of the legal system.

4. Require that the Government of Colombia, in conformity with the judgment of the Court in the Velásquez Rodríguez Case, inform the family of the whereabouts of the victims.

5. Declare that the Colombian Government must make reparations and pay compensation to the relatives of the victims for the acts committed by its agents and institutions, in compliance with that established under Article 63(1) of the Convention. For that purpose the Court should enter into the damages phase in which the victims' families can participate.

6. Order the Colombian Government to pay the costs incurred by the counsel of the Commission in assembling the witnesses.

24. As a consequence of the March 11, 1995 deposition of Gonzalo Arias-Alturo in the city of Bucaramanga, Colombia, the Commission asked the Court to request that the Government exhume the bodies of Isidro Caballero-Delgado and María del Carmen Santana and summon qualified experts to collaborate with those named by the Court in order to identify their mortal remains. Likewise, it requested the adoption of "*special security measures*" to avoid unlawful tampering with the graves by those who would like to eliminate all vestiges that would lead to a clarification of the facts. The Commission also requested "*exceptional precautionary measures*" to protect the life and personal safety of Einer Pinzón, "*who is the only survivor that knows exactly where these people are buried.*" The Commission reiterated the request for "*precautionary measures*" on behalf of Gonzalo Arias-Alturo who "*has told the Commission that the measures requested previously on his behalf have not been adequately implemented and that his life is in imminent danger.*"

25. Before acceding to the request of the previous paragraph and for the purpose of gathering more evidence, the Secretariat, following the instructions of the President, requested that the Government submit several documents to which the Commission had not had access. With respect to Einer Pinzón, the Government agreed to receive his testimony in Colombia. On April 26, 1995 the Government sent the remaining documentation.

26. On March 30, 1995, the Commission again requested the adoption of provisional measures on behalf of Gonzalo Arias-Alturo because he had been "*suddenly transferred from the Model Prison of Bucaramanga to the Prison of Armenia-Quindío,*" which in the Commission's judgment "*does not offer guarantees for the case, because his life and personal security . . . would be in imminent danger.*" The following day the President requested information about this move from the Government. By a communication of April 26, 1995, the Government responded that as soon as the Office of the Attorney General of Colombia became aware of this transfer, it immediately asked the General Office of the National Penitentiary Institute (INPEC) "*to order the immediate return of the prisoner to the city of Bucaramanga,*" where he has been since that time.

27. On April 21, 1995, the Government remitted a copy of a report from the National Office of Public Prosecutors of Colombia concerning a judicial inspection conducted by the department in Bucaramanga where, according to information supplied by Gonzalo Arias-Alturo, the remains of Isidro Caballero-Delgado could be found. The Inter-American Commission, by note of May 3, 1995, asserted that this effort had taken place without the presence of the Commission or the representatives of the victims and without the participation of the magistrate commissioned by the Court. The Government responded by means of a communication of May 13, 1995, that the investigation had been conducted by the Office of the Public Prosecutor "*within the autonomy that characterizes it, in accordance with constitutional and legal authority.*"

28. On October 6, 1995, Colombia submitted information on the advances made in the internal criminal investigation conducted by the Regional Office of the Public Prosecutors of Santafé de Bogotá, in which it reported on the resolution of the legal situation of several of those implicated and ordered preventive detention for Gonzalo Arias-Alturo. By communications of November 30 and December 5, 1995 the Government sent new documentation concerning other developments in the investigation.

## IV

29. The Inter-American Commission submitted with its application copies of testimony of witnesses, newspaper clippings, diagrams, maps, and reports.

30. The Government submitted to this Court voluminous records of the proceedings conducted by several civil and military authorities related to the disappearance of Isidro Caballero-Delgado and María del Carmen Santana.

31. Included among these files was the record of an investigative proceeding in the lower criminal court initiated on March 2, 1989, before the Second Mobile Court of Criminal Investigation. That action resulted in an Order of September 20, 1990, which in conjunction with the Order of the 11th of the same month, absolved for lack of evidence all of those charged and ordered their immediate release. Although the case was closed on October 3, 1990, it was reopened as of March 12, 1992 due to the alleged participation of Carlos Julio Pinzón-Fontecha in the events. He was later shown to have died on May 29, 1989. Currently, the investigation has been reopened because of the statement of an official of the Prosecutor's Office. The official who reported that, in an interview undertaken as part of an investigation, Gonzalo Arias-Alturo related facts incriminating himself and others in the commission of the crime under investigation.

32. It has also been confirmed that, from February 27 to June 6, 1989, preliminary proceedings inquiring into those responsible for the kidnapping of Isidro Caballero-Delgado and María del Carmen Santana took place before the 26th Court of Military Criminal Investigation. These proceedings were suspended because, at that time, no member of the Army was connected with the events.

33. In the course of oral arguments this Court heard the testimony of witnesses called by the Commission and the Government. This testimony is summarized in the following paragraphs. Witness Doctor Zoilo Javier Jerez-Medina testified that he is President of the Committee for Human Rights of Santander; that Isidro Caballero-Delgado offered to organize a forum in San Alberto; that he could not be precise as to the date on which he had seen Caballero-Delgado for the last time, but that it was at the end of October, 1988; and that on February 9 or 10, 1989, he found out about his disappearance.

34. Witness María Nodelia Parra-Rodríguez testified that she is an educator, but that, at present, instead of working as a teacher, she is the director of the Teachers' Union of Santander; that she had lived with Caballero-Delgado since 1986; that they are co-owners of an apartment, and that they had a child in 1988; that Caballero-Delgado had many responsibilities in the Teachers' Union; that in 1984 he was arrested for illegally carrying weapons and was sentenced to 36 months in prison but was released in November 1986; that Caballero-Delgado told her that he was a militant member of the M-19 and was afraid; that in December 1987 or January 1988 members of DAS came to the Union looking for him and he also received death threats by telephone; that Caballero-Delgado told her that he was in charge of organizing a Forum for Citizens' Coexistence in San Alberto; that the Laborers' Union of Santander was affiliated with USITRAS, which is the trade union organization of the Department of Santander that sponsored the Forum; that Caballero-Delgado left for San Alberto in the middle of January, because the Forum was going to take place on February 16, and it required preparation; that he called her every week and that he called on Thursday of the week before February 7 and left a message that he

would call her on February 7, but that call never came through; that on February 8 she received word that Caballero-Delgado had been captured the previous day by an Army patrol; that on the 9th she filed a writ of *habeas corpus* in the Superior Court of Bucaramanga and on the 10th she traveled to San Alberto where she met with the leaders of the Union and asked them to join in the search; that they proposed that a committee accompany her the next day to speak with the peasants, look over the farm, take photographs, and find witnesses; that she went to the Libano Mobile Base, and there Sergeant Cárdenas denied that Caballero-Delgado had been captured; that on the same day she went to the Morrison or Morrinson Base where Lieutenant Ríos told her that he had no knowledge of the capture; that three months later she found out that the results of the writ of *habeas corpus* had been negative; that she went to the Mayor's Office in San Alberto, and from there she went with the Municipal Representative, Doctor Isabel Monsalve, to the Guaduas District where they talked with Rosa Delia Valderrama; that Mrs. Valderrama told them that Caballero-Delgado had been detained and recognized him from the photograph they showed her; that both Mrs. Valderrama and her granddaughter rendered testimony before Doctor Monsalve and stated throughout it that the capture had been made by members of the Army who identified themselves as such and dressed in camouflage uniforms; that, subsequently, they went to the Morrison Military Base and there the Commander-in-Chief, Colonel Velandia-Pastrana, denied that Caballero-Delgado had been captured; that Caballero-Delgado was detained in the company of María del Carmen Santana, who the witness did not know; that Doña Rosa and her granddaughter had said that Caballero-Delgado had disappeared in the company of a woman, and María del Carmen Santana is named in the writ of *habeas corpus* and all of the judicial motions; that she requested that a judge be named for the criminal investigation; that some of those responsible were found in the jails, including Gonzalo Pinzón-Fontecha, who was identified in the line-up by one of the witnesses, and Gonzalo Arias-Alturo, who was also identified as being one of the perpetrators; that Captain Héctor Alirio Forero-Quintero could not be identified and it was then that the telephone death threats began and that witness Javier Páez, who was going to identify Captain Forero was also threatened and did not contact her again; that Administrative Judge Blas Almanza told her that Captain Forero, had sent him a threatening letter; that she had received more threats; that she had gone with sixty teachers to the Episcopal Palace to make the authorities pass judgment on the disappearance of Caballero-Delgado; that after these actions almost all of the remedies to establish the whereabouts of Caballero-Delgado were exhausted; that she subsequently continued receiving threats and that since May 1993 she has been guarded by two officials of DAS and one from the Public Prosecutor's Office of Bucaramanga; that she knows that witness Javier Páez and the leader of the Union of San Alberto, Guillermo Guerrero-Zambrano, have been threatened; that twenty teachers have been assassinated in Santander and more than four hundred have been assassinated in the country; that Judge Blas Almanza told her that Gonzalo Arias-Alturo had informed him, off the record, that Caballero-Delgado was dead; that Gonzalo Arias-Alturo, Captain Héctor Alirio Forero-Quintero, and Norberto Báez-Báez had been charged and exonerated, although the proceeding was reopened; that she told the person in charge of the investigation to try to find Arias-Alturo, which was done, and he informed on the persons who had ordered him to execute Caballero-Delgado and told where they had possibly buried him; that Arias-Alturo stated that the persons who participated in the events were members of the Army; that she knows that Arias-Alturo is at liberty; that according to witnesses Rosa Delia Valderrama and Sobeida Quintero, the soldiers had Caballero-Delgado detained from approximately one thirty in the afternoon until four, not in the house but about twenty meters away; that in addition to those witnesses, Elida González saw him

detained; that later the Army went to the house of Carmen Belén Aparicio between four and five in the afternoon; that there were no acts of violence during the interrogation, and that Caballero-Delgado and María del Carmen Santana were taken away separately by Army patrols; that Javier Páez was captured the next day; that Rosa Delia Valderrama identified Caballero-Delgado from a photograph that she showed her; that Doctor Horacio Serpa-Urbe knew Caballero-Delgado and visited him when he was in jail and offered to assist in establishing his whereabouts; that Manuel Salvador Betancourt telephoned the Commander of the Morrison Base in order to make visual inspection; that at the request of the Inter-American Commission, the Government has assigned three persons for her protection; that she is the complainant in the investigative proceeding and acknowledges that the authorities have tried to accumulate the greatest amount of evidence; that she has not submitted a claim against the State for compensation of damages; that she is affiliated with the Ministry of Education, but since 1984 or 1985 has had a union commission; that to continue receiving the salary of a teacher is an exception made on her behalf, and the Government has not withheld her pay; that she does not know what weapon Caballero-Delgado was carrying when he was arrested for carrying weapons illegally; that the M-19 was a clandestine movement that tried to find a political opening, and it is now a legal political movement that is called the Democratic Alliance M-19; that DAS is the Administrative Department of Security and is a civilian organization; that only the Army uses camouflage uniforms; that after the disappearance of Caballero-Delgado, Pinzón-Fontecha and Arias-Alturo were in prison for attacking toll booths, and Captain Forero was also imprisoned for the same reason; and that the threat from Colonel or General Cifuentes was made by means of a politician whose name she withheld.

35. Witness Elizabeth Monsalve-Camacho, attorney, testified that from 1987 to 1989 she worked in the Municipality of San Alberto, initially as the Secretary of Government and later as the Municipal Representative; that in mid-February María Nodelia Parra-Rodríguez and two other persons came to her office to ask her assistance in taking testimony; that she had never known Caballero-Delgado; that they went to the Guaduas District and there took the statements of a woman named Rosa Delia and a girl named Sobeida; that the former testified that some days earlier a group from the Army had come within about fifty meters, and then Caballero-Delgado remained talking with the Army group; that when the photograph of Caballero-Delgado was shown to the declarant, she recognized him, and she stated that those from the Army did not act violently; that they then went to the Líbano Mobile Base and asked if they had detained a man and woman, and they were answered negatively; that next they went to the Morrison Base where Colonel Velandia spoke with them and told them that he did not have anyone detained; that she turned over the original file of the investigation and did not find out anything more about the proceedings; that she left proof of the testimony that she took in the file but not of the inquiry at the Morrison Base; that Rosa Delia Valderrama described Caballero as thin with a mustache, approximately thirty-three years old, and she thought she had said that he was dressed in a red shirt and that the young woman had on blue jeans; that there was no hinderance in the investigation; that it is public knowledge that San Alberto is a guerrilla zone; that it is also public knowledge that the guerrillas at times dress in camouflage, the spotted uniform of the Army; and that she viewed Rosa Delia Valderrama as being mentally sound.

36. Witness Elida González-Vergel testified that she is a cook in Cúcuta and that she does not know how to read or write; that the day of the disappearance of Caballero-Delgado and María del Carmen Santana she was going to visit her sick

mother who lived on the Guaduas District; that for that reason she left San Rafael, where she lived, at about twelve-thirty in the afternoon and arrived in San Alberto at about three; that in route she met a group of about ten army soldiers who searched a bag that she was carrying, and that one soldier from the coast who was swarthy, tall, and husky detained her and did not allow her to continue on her way; that the father of her daughter is a Corporal Second-Class in the Army, and, therefore, she is familiar with soldiers who can be recognized by their haircut and their uniform; that she knew that the group that detained her was Army because they wore the standard uniform boots; that the man who the soldiers called "commander" had little stars, and the soldiers did not have them; that the commander was white, had light colored eyes, a mustache, and wore a thick gold chain; that Caballero-Delgado and his companion were in the group along with the soldiers, and she recognized him because on Sunday when she was at her mother's house, she was introduced to him; that she did not speak with him or greet him; that Caballero-Delgado was dressed in the same Army uniform, but that his companion was totally nude with her hands tied behind her back; that she spent the night in a hut and arrived the following day at her mother's house, where she heard talk that they had captured Caballero-Delgado and his companion; that the guerrillas use rubber boots, have long hair and carry machetes tied with straps, while the Army does not use rubber boots or machetes; that she encountered the military patrol at around five-thirty in the afternoon; that she did not try to converse with Caballero-Delgado; that she has not testified earlier; that she had seen Rosa Delia Valderrama before, but that she did not know her name; that from her mother's house to that of Mrs. Valderrama it is three hours on foot, and from Mrs. Valderrama's to the site where she met the military patrol it is about ten minutes; that Caballero-Delgado had a mustache, straight hair, was tall but not very tall, and had an average build; that she has not commented about what took place to anyone except Mrs. Valderrama; that the woman was tied up, but Caballero-Delgado was not, and that he was standing leaning against a mango tree; that the woman had straight hair with a rounded haircut, brown eyes, and was rather short, about twenty years of age, and that she recognized her by her hair, and because she had seen her in her house on Sunday; that she did not denounce what she had seen to any authority because she was afraid; that she verified that she had not testified before the Court previously, but she had testified in the internal Columbian proceeding, and that her testimony was the same; that she had not received threats, but that the rest of the family had; and that she knows from the neighbors' comments that Caballero-Delgado had been put to death.

37. Witness Ricardo Vargas-López testified that he is a member of the Technical Corps of Investigation of the National Office of the Attorney General; that he retired from the police with the rank of Captain and then joined the Technical Corps of Criminal Investigation in Bucaramanga; that at the end of January 1992 his superior, Doctor Víctor Enrique Navarro-Jiménez, National Sub-director of Criminal Investigations, went to Bucaramanga to investigate the case of Caballero-Delgado and María del Carmen Santana, and he was chosen to work with him; that they went to the San Alberto Zone and took testimony from five or six persons, including Carmen Belén Aparicio, Rosa Delia Valderrama and Javier Páez, who all asserted that members of the Army had captured Isidro Caballero-Delgado and María del Carmen Santana; that those witnesses did not waver in saying that the perpetrators had been members of the Army; that Dr. Navarro returned to Bogotá and turned over the remainder of the investigation to the declarant; that Javier Páez accused two persons, Gonzalo Arias-Alturo and Gonzalo Pinzón-Fontecha, of being part of the group that captured him; that he tried to locate those two persons, and he found out

that Pinzón-Fontecha had died; that he located Arias-Alturo who told him, after the questioner had promised not to make a recording or take written notes, that he and Pinzón-Fontecha had been in the Army and, although they later retired, they continued collaborating and sporadically went on patrol with groups from the Army; that they were patrolling with three members of the Army in the zone of Guaduas when another patrol brought two detained teachers; that they killed them by shooting them with a pistol, buried them in a common grave, had to cut up the bodies, and that a lieutenant, a sergeant, a corporal, and two civilians participated. The witness continued, saying that he had more than three interviews with Arias-Alturo to convince him that he was not going to compromise him, and he made two reports to Doctor Navarro; that from his experience as a professional investigator he did not doubt what Arias-Alturo told him; that Doctor Navarro told him to offer a sum of money to Arias-Alturo in return for a formal statement, but that Arias-Alturo refused and was reticent and did not want to be interviewed by him anymore; that last year the declarant was summoned to the National Office of the Attorney General, and that there he said what he was now saying; that in the interview with Rosa Delia Valderrama she told him that the Army patrol had captured a teacher and his companion, and he found her to be believable; that they took a written affidavit from Mrs. Valderrama, but that he does not remember if they also took one from Javier Páez; that due to his experience in dealing with informers, he believed Arias-Alturo, because his version of the events coincided with that of Javier Páez, he gave an exact description of the site, and he made his statement without pressure and in a spontaneous manner; that one of the reasons for offering money to Arias-Alturo was to find the bodies, but Arias-Alturo refused to accompany them, and in that type of area it is difficult to make a search; that he transmitted the information that he received to his superior and he does not know if it was sent to the judicial authorities; and that from the house of Mrs. Valderrama it is some two thousand five hundred or three thousand meters to the site where the informer said the bodies were buried.

38. Witness Javier Páez testified that he belonged to an M-19 Peace Committee in San Alberto; that in 1988 he met Caballero-Delgado who was a member of the same Committee, and the last time that he saw him was February 7 in the zone of Guaduas; that the army captured the declarant, threw him in a ditch, and the Sergeant in command of the group asked him if he was a guerrilla, to which he answered no, that he was a worker; that he had been asked to get a donkey for a peasant, and he left it at the house of an elderly woman to be given to that man, and he went to make some purchases in the market, since Caballero-Delgado could not leave the zone because the presence of the Army made it dangerous; that he left the donkey and went to see Caballero-Delgado, who told him that he was going to San Alberto, and this was the last time that he saw him; that on the eighth the Army captured the declarant at about eight in the morning when he was returning to Guaduas; that there were about five soldiers, and he knows that they were in the army because the guerrillas use a green uniform, rubber boots, and the knapsack is different; that when they captured him there was a peasant who they searched and let go, and they searched him but did not allow him to continue; that he was detained until noon, and while they were interrogating him Mrs. Belén arrived, and they searched her, but she did not see him; that they asked him where the other guerrillas were, and they told him that the day before they had captured two of them; that Gonzalo Pinzón arrived, who he already knew, and that Gonzalo Pinzón also recognized him; that the Líbano Base is not stationary, and that Morrison is; that he saw an emblem on the shoulder of a soldier that read "Santander Battalion"; that they took him to a ditch and put his head in the water and continued asking him

about the guerrillas; that they put a wet rag in his mouth, they threatened to kill him, and they hit him with a rifle; that the Sergeant communicated by radio with the Morrison Base, said that he had captured another, and asked for instructions; that in the end they let him go; that he thinks that Pinzón-Fontecha saved his life; that Pinzón was there with the Army and was a hired assassin, known to be a killer; that in his earlier testimony the declarant had not stated that he was with the M-19, but that now he had because he was amnestied; that a peasant woman, Leonor, told him that a day earlier they had captured Caballero-Delgado and his companion, and the peasants say that they had taken them around the region, and that they had put an Army uniform on Caballero-Delgado, and she was in underwear and barefoot; that on that morning he had seen Caballero-Delgado dressed in a red sweat suit, and the last time that he saw him was before noon on Tuesday the 7th in the house of Mrs. Belén; that it was about ten minutes from there to the house of Mrs. Valderrama; that they call it a camp because the guerrillas gather there; that Caballero-Delgado knew the region; that they captured Caballero-Delgado at a gate alongside a mango tree; that Caballero-Delgado was about 1.72 meters tall, husky, with straight hair, and a mustache; that he knew that those who captured Caballero-Delgado were in the Army because of the way they treated each other and because of the uniform, and that they were from the Morrison Base because they called the Base; that some wore rubber boots and others Army boots; that the donkey belonged to Andrés Ortega, and he did not leave it at Mrs. Valderrama's house because Caballero-Delgado could not get there; that, at that time, the guerrillas of San Alberto were not wearing camouflage uniforms; that he knows that Pinzón was a hired assassin because of what people said; that he, the declarant, currently receives a salary from the Colombian Government, and he was trained and works as a guard; that on the afternoon of February 7 he stayed in the woman's house, and he did not find out that day that they had detained Caballero-Delgado; that Santana also participated in the Dialogue for Peace with the people, and he saw her that same day.

39. Witness Guillermo Guerrero-Zambrano testified that he is a resident of San Alberto and has worked gathering fruit on an African palm plantation for nineteen years; that he met Caballero-Delgado in a Unity and Democracy Seminar; that Unity and Democracy was not only the title of the seminar but also the name of a group of persons that took part in activities such as talking about what is happening to the people; that the union issued invitations to other unions to organize a Forum on Peace, and Caballero-Delgado was the delegate of the Educators' Union of Santander, that he came to San Alberto, and that they became friends; that Caballero-Delgado was involved with the M-19; that the last time that the declarant saw him was February 4, and he accompanied him until he left in a small bus for Guaduas; that he found out about the disappearance of Caballero-Delgado on the same day that it happened from the radio that Caballero-Delgado had given him; that that day they called him at six in the afternoon and told him the news, and he passed it on to friends and the Santander Educators' Union, and that the Union obtained permission for him to miss work and investigate; that on Wednesday afternoon he went alone to Guaduas to the store at the entrance of that path where he had introduced Caballero-Delgado to the woman, and when he returned that woman told him that they had detained Caballero-Delgado and a young woman; that he went to the school, and there was no one there; that then he met Doña Rosa Delia and her granddaughter, and at first she was afraid and said that she didn't know anything, and then she told him that the Army had detained Caballero-Delgado; that the next day several persons stated that they had seen a girl clothed in underwear being taken away by the Army; that he went with Nodelia to the

representative, and later they took testimony from Doña Rosa and her family, and they went to the Líbano Base and later to the Morrison Base and to La Palma; that they were treated badly at the Líbano Base and told that those there did not know anything, and that maybe people at the Morrison Base knew something; that at Morrison they were not allowed to enter, but Colonel Velandia told Nodelia that he did not know anything but that the counter-guerrillas, a special army that combats guerrillas, was around there; that then they went to La Palma, and that they did all of this in only one day; that he continues working in Indupalma, although not in San Alberto, because he has received death threats, and he returned to Bucaramanga; that he was told by the Red Cross that he is on the paramilitary's list of persons who they are going to kill; that previously he had testified that he had not seen Santana; and that Doña Rosa Delia told him that Caballero-Delgado arrived after mid-day.

40. Witness Luis Alberto Gil-Castillo testified that he is a school teacher, activist, and currently the President of the Santander Educators' Union and a Delegate in the Assembly of Santander; that he knew Caballero-Delgado from 1969 to 1970 when he was a student; that they agreed with the democratic ideas of the old M-19; that Caballero-Delgado carried out political activities and was arrested in 1985 for illegally carrying weapons; that later he was elected to the Board of Directors of the Workers' Trade Union of Santander (USITRAS); that in 1985 the disappearances started; that in 1987 there was a strike, and Caballero-Delgado was one of the organizers; that the organizers were thought to be instruments of the guerrillas; that they asked for protection for Caballero-Delgado, but he was only given a union commission; that it fell to Caballero-Delgado to organize the Forums for Peace in Bucaramanga, San Alberto, and Aguachica; that the military command of M-19 advised him of the capture of Caballero-Delgado; that the declarant went to the Morrison Base, and Colonel Velandia denied everything; that one of the points put forward in the negotiations between the Government and the M-19 was the realization of regional forums; and that in 1989 the M-19 was a clandestine movement, and it was risky for him to admit his militancy.

41. Witness Doctor Víctor Enrique Navarro-Jiménez, Sub-Director of the Technical Corps of the National Office of the Attorney General at the time of the events and currently its Director, testified that he had attended four meetings in the Ministry of Foreign Relations about disappearances, and that one had been about the Caballero-Delgado Case; that they had reached an agreement with the Military Prosecutors to send personnel, and he went to Guaduas where they interviewed Carmen Aparicio, and they took photographs of the farm; that that woman was in charge of the El Danubio Farm, and she testified that she had been threatened; that his assistant Ricardo Vargas made contact with one of the paramilitaries, Arias-Alturo, who had just finished serving his time for assault, and with another by the last name of Fontecha who had been identified by a scar; that in this case he could not confirm that they were involved with soldiers; that Arias-Alturo confessed the facts to Vargas but he was afraid, and they offered him money so that he could move to a safe place, and then he disappeared; that all this occurred in 1992; and that they were waiting to detain Caballero-Delgado.

42. Witness Doctor Armando Sarmiento-Mantilla, the National Director of Prosecutors, testified that he coordinated all the investigation policies of the National Office of General Prosecutors, and that the Government had never interfered with his duties; that the Unit of Prosecutors had been created and was dedicated exclusively to the investigation of violations of human rights; that in Santander there was a climate of violence probably due to subversion, drug trafficking, paramilitaries, and

common crime; that he heard about the investigation of the Caballero-Delgado Case through the news media and knows that the National Director of Criminal Investigation ordered the case reopened in 1992; that he had taken the testimony of one witness who will remain unidentified, and that Arias-Alturo, who had been absolved, now is incriminating himself and accusing the Army; that he knows that Arias-Alturo testified that he was with some soldiers from the Morrison Base, they stopped a bus, made Caballero-Delgado and Santana get off, and killed them; and that he is willing to submit a copy of the records of all stages of the proceedings.

43. Witness Manuel José Cepeda-Espinosa testified that he is an attorney, and that he has been Presidential Advisor in all matters related to constituent proceedings; that during the Government of President Barco he drafted legal instruments to facilitate the incorporation of the M-19 into civilian life, and that the M-19 participated in the call of the Constituent Assembly and in the elections of March 1990, winning nineteen of 70 seats in the Constituent Assembly and one in the Presidential Tripartite, and the M-19 has a Minister in the Cabinet; that they have developed protection for human rights and have reformed the institutions of justice; that he knows of the Caballero-Delgado Case only from the newspapers; that the Constituent Assembly limited what can be done by the Public Forces during marshal law; that the Government has issued decrees to eliminate civilian groups carrying weapons; that from 1982 until 1991 Colombia was under marshal law; that the police and soldiers are subjected to civil justice in a wardship proceeding; that no guerrilla group had been incorporated in civilian life for the last six years; that there was a situation of armed conflict and drug trafficking was at its highest level; and that there was no governmental policy to obstruct the actions of unions, nongovernmental organizations, or the administration of justice.

44. Witness Hernando Valencia-Villa testified that he is the Public Prosecutor's Human Rights Delegate in the National Attorney General's Office; that his office has complete autonomy in investigations, and that at present he is investigating around five hundred charges against soldiers; that the Public Prosecutor's Delegate for Military Forces is in charge of the Caballero-Delgado Case because the Human Rights Delegate was created in 1990; that in the Caballero Delgado Case they have not passed the investigatory stage, which means that no one has been charged; that at the end of last year a special agent was appointed from the Ministry for the proceeding in the Regional Prosecutor's Office in Barranquilla; that in eleven years, from 1983 to 1994, there were 1947 forced disappearances attributed to public officials and about 1650 have not been resolved; that disappearances reached their peak in the years 1988, 1989, and 1990; that in recent months there has been recognition of the gravity of the human rights crisis; and that the proposed law on the disappearance of persons had not been approved as of yet.

45. Witness Luis Alberto Restrepo Moreno testified that he was a Jesuit priest and is currently an investigator at the Institute for Political Studies and International Relations at the National University; that in Colombia there has not been a policy against human rights nor interference in the administration of justice; that, from a strictly legal point of view, the only violators of human rights are agents of the State, but he thinks that all armed political actors and, of course, the guerrillas should be considered as such; that there are many problems in exercising justice in Colombia; and that from 1978 to 1982 the Government gave a somewhat free hand to the military forces, and that there were no precautions taken to constrain human rights violations.

46. Witness, General Juan Salcedo Lora testified that he is the Inspector General of the Army; that subversion increased considerably in the Department of El Cesar as of 1987; that groups of paramilitaries are said to help the Government, but in reality they cause very serious problems; that an area of very grave conflicts is centered in San Alberto; that nineteen days before the disappearance of Caballero-Delgado there was a massacre of a group of judges, investigators, and justice officials, and the guerrillas commit all kinds of atrocities; that the M-19, on having submitted to the law, has seats on the councils and in the Chamber and the Senate; that its leader occupies the mayor's office in the capital of one of the departments, and the M-19 members have been sent on diplomatic missions; that the guerrillas take the uniforms from dead soldiers, and there have been cases in which army officials confused guerrillas with their own troops; that the guerrillas have become engaged in drug trafficking for their financing; that the Government has tried to protect human rights by instructing the Armed Forces, creating new institutions, and reforming the Penal Code; that his only relationship to the Caballero-Delgado Case has been in collecting documents; that the investigation has been very difficult, the investigators have run many risks, and the case is in the hands of the Public Prosecutor's Office and the lower courts; that he has offered total cooperation in the exhumation of the bodies if they are able to locate them; that by order of the Command of the Fifth Brigade, the Public Prosecutor's Office began six investigations on February 27; that prison cells for detained civilians in military bases have been prohibited since 1986 or 1987; that in San Alberto there are paramilitary groups, and in that zone there has been some crime committed by the army; that special forces are military organizations with training in counter-guerrilla techniques, and they wear uniforms and cannot operate in civilian clothes; that there have been cases of corruption in the public forces, and they have been processed; that the Rules of Disciplinary Regimen and the Military Penal Code have been in existence since the mid-1980s, and there is no violation of human rights that is not covered therein; that in the investigation of the Caballero Delgado Case some witnesses accused persons who later turned out to be innocent, and there are witnesses that disappear and do not come to appointments; that Captain Héctor Alirio-Forero was discharged from service by means of a disciplinary action; and that the military forces have about 200,000 men and the police have 115,000.

## V

47. Additionally, the following evidence was submitted to the Court during the hearing:

a. Investigator Ricardo Vargas-López personally submitted the report which he had made to Doctor Víctor Enrique Navarro-Jiménez, Director of the Technical Corps of Investigation of the National Office of the Attorney General, dated September 28, 1992. (*supra* para. 37) In the report he states that Gonzalo Arias-Alturo told him:

that he and GONZALO PINZON, after having performed their military service, collaborated with the army as informants. As such they wore camouflage army uniforms and integrated into patrols. On precisely the day of the disappearance of ISIDRO CABALLERO and his companion, he and RODRIGUEZ (*sic*) FONTECHA were with a patrol commanded by CAPTAIN HECTOR ALIRIO FORERO-QUINTERO which was also made up of Sub-officers PLACIDO CHACON-HERNANDEZ and NORBERTO BAEZ. It was this patrol that initially detained JAVIER PAEZ and that later received the detainees ISIDRO CABALLERO and

MARIA DEL CARMEN SANTANA from another detachment in the zone, to later kill them and bury them in a common grave, in a site know by ARIAS-ALTURO, who promised to identify it.

b. The testimony rendered by Gonzalo Arias-Alturo on November 24, 1994 before the Regional Prosecutor of Barranquilla, submitted by the Agent of Colombia. Arias-Alturo testified that there was a meeting of officials at the Morrison Base presided over by General Alfonso Baca-Perillas, Commander of the Army's Fifth Brigade; that there it was decided to authorize Captain Héctor Alirio Forero-Quintero and another captain, whose name he does not remember, to organize a group, of which Arias-Alturo was a member, to capture Isidro Caballero-Delgado; that dressed as guerrillas they stopped a bus and ordered the passengers to get out; that when Caballero-Delgado showed his identification card to Captain Forero he detained him; that the rest of the passengers got back on the bus, but a woman who was with him also stayed; that they turned the two over to the paramilitaries of the Riverandia Farm, who tied them up and put them in a small truck; that they tortured and killed them, and that Gonzalo and Einer offered to dig a grave; that he heard Captain Forero say that Caballero-Delgado and María del Carmen Santana were in a meeting with the guerrillas; that he could find a young man who knows the burial site because he buried them, and that man is Einer, since Gonzalo is dead; that the order came from the Morrison Base, and that the person who fired two shots to the head of each of the detainees is a paramilitary by the name of Segundo who administers the Riverandia Farm; that the other captain who went with them is named Jorge Enrique García-García; that the operation was coordinated by the Fifth Brigade of the Army; and that they did not detain Caballero-Delgado and María del Carmen Santana in the farm of a peasant woman,

they were only checking to see if they were or were not to be found in the area. The troop found out that they were there, because an informant said they were in the area at a meeting in a school, that was located above the farm where they stopped them. They stopped them to verify his identity and to find out where he was going.

c. Witness Juan Salcedo-Lora brought 35 slides and thirteen photographs related to the investigation into the disappearance of Caballero-Delgado and María del Carmen Santana. The slides and photographs were meant to demonstrate, among other things, that on occasion the guerrillas use military uniforms.

d. Witness Hernando Valencia-Villa brought Report III on Human Rights, Colombia 1993-1994, issued by the Attorney General of the Nation.

48. At the Commission's request the Court appointed Colombian jurist, Bernardo Gaitán-Mahecha as expert to take the testimony of Rosa Delia Valderrama in Colombia, who due to her poor state of health could not travel to the seat of the Court (*supra* para. 16). On that occasion, they read her the statements that she had given to the Municipal Representative of San Alberto, the Second Mobile Court of Criminal Investigation of the Judicial District of Valledupar on March 18, 1989, and the National Sub-director of Criminal Investigation and the Technical Corps of the Judicial Police on January 22, 1992. She confirmed them in their entirety. In the first statement, she had testified that on February 7 [1989], at approximately one in the afternoon, an Army group dressed in camouflage was on her farm; that a young man

and woman arrived, and he asked if his godfather Andrés had left a mule, and the declarant answered no; that the Army group captured them, they sat down to talk, and at about four in the afternoon they were taken away; that he was dressed in red pants and a red shirt and she was in blue jeans and a black shirt; and that the persons in the group appeared to be from the National Army. When the witness was shown a photograph of Isidro Caballero-Delgado, she said that he was the person who had been detained. In her second statement she had added that one of the members of the military group was called "my Sergeant" by the others. Moreover, in her third statement the witness added that about ten minutes before the young man and woman arrived, an Army group had arrived and was sitting in a neighboring kiosk near the house. When the young man and woman left, another group of soldiers, who were on a hill about 120 meters from the house, came running down to catch up with them, and those that were in the house joined them. There were about fifteen that came down the hill and about four that were in the house.

49. In addition to confirming her earlier testimony the witness answered the questions put to her by the Government representative. She testified, among other things, that the person who came to her house differed from the photograph that they had shown her in that he did not have a mustache, and that the soldiers who came to her house had their faces covered with a red cloth. On being questioned by the Commission Delegate, she testified that the soldiers arrived at about noon, asked her if she had weapons of the guerrillas, and searched the house.

50. The Government has sent a copy of the testimony, rendered by Gonzalo Arias-Alturo on December 19, 1994 before the Assistant Attorney of the General Office for the Attention and Processing of Complaints of the Public Defender's Office; the declarant testified that on January 3, 1989, two professional counter-guerrilla groups were reunited to organize a special Delfín group, of which he was a member, and that group was attached to the Santander Battalion; that on January 9 they moved to the Morrison Base, and there General Alfonso Baca-Perillas, who coordinated operations in the zone, visited them; that the group was organized in San Alberto under the command of Captain Héctor Alirio Forero-Quintero; that the group moved toward Minas, which is a town on the highway to the coast between San Alberto and Morrison, and Captain Forero-Quintero told them that their mission was to capture a leader of the M-19 named Isidro Caballero-Delgado; that on February 6 they were told that Caballero-Delgado was in the zone and should not be detained in the presence of many people; that at about 4:30 Sergeant Vanegas advised them that he had talked with Caballero-Delgado, who told him that he was going to Bucaramanga; that at about 6:30 the same Sergeant said that Caballero-Delgado had boarded a COOPETRAN bus; that Captain Forero-Quintero set up a road block that detained the bus, and Luis Gonzalo Pinzón-Fontecha boarded the bus and ordered all the passengers to get out and present their identification; that when they identified Caballero-Delgado they detained him together with María Del Carmen Santana who was traveling with him, and they turned them over to the paramilitaries; that at about 11:30 pm he arrived at the Riverandia Farm with Captain Forero-Quintero and others and asked for Captain Jorge Enrique García-García; that they found him with Caballero-Delgado and María del Carmen Santana who were gagged with adhesive tape, and there was also another person detained; that they had pulled out part of Caballero-Delgado's mustache; that Captain Forero said to Segundo, the paramilitary commander whose family name he does not know, that he already knew what they had to do with the detainees; that Segundo called to Vicente Pinzón-Fontecha and Einer Pinzón-Pinzón to take the three detainees, and that the witness also went with them; that they cut off the legs of the detainees so

that they would fit in some holes that Einer had dug, and later they informed Captain Forero-Quintero that they had buried them; that the capture of Caballero-Delgado and María del Carmen Santana was not at the house of a peasant woman but rather in a bus, after Sergeant Vanegas informed them that he had talked with him; that the reason that the peasants say that they captured him there may have been because Vanegas accompanied Caballero-Delgado almost to the highway; that the capture in the bus took place between 6:30 and 7:00 pm; that he asked Segundo about the instructions that Captain Forero had given him, and he answered that they were to kill and disappear the detainees; that he does not know who the third detainee was, but that he is buried with Caballero-Delgado and María del Carmen Santana; that he did not witness the death of the detainees because he was on guard about thirty meters away and only heard the shots, and that the third detainee was killed with a knife; that he can make a sketch of the place of the burial, but that Einer Pinzón is the one who knows the exact place; that the valuables and papers of the detained were given to Captain García-García; that this is the first time that he has testified in a complete form; and that he wants to be given a fair hearing and security for his life and his family. A rough sketch made and signed by the witness is attached to the statement.

51. The Government also submitted the record of the investigations conducted on the Riverandia Farm on March 11, 1995 by the Criminal Department of the Technical Corps of the National Office of the General Prosecutor of Bucaramanga. According to this investigatory record a probable area was selected where, according to an unnamed witness, the remains of two disappeared persons might be buried; they made four excavations without finding human remains, and observed that the ground was uniformly compact with no sign of disturbance in many years. The attempt was concluded after measuring the area and photographing it. Then, on two later occasions, the Government reported two more unsuccessful attempts to locate these remains.

52. In the deposition taken by the Colombian Jurist Gabriel Burgos-Mantilla, commissioned by this Court, and in which the Delegate of the Inter-American Commission, its Attorneys, and the Government representatives participated (*supra* para. 21), Gonzalo Arias-Alturo gave a different version of the details about the murder of Isidro Caballero-Delgado and María del Carmen Santana.

53. The Court will now specify the relevant facts that it considers proved:

a. That the Municipality of San Alberto (El Cesar), the place where the events under consideration occurred, was at that time a zone of intense army, paramilitary and guerrilla activity (specifically the testimony of Gonzalo Arias-Alturo, Carlos Julio Parra-Ramírez, Elizabeth Monsalve-Camacho, Armando Sarmiento-Mantilla, and Juan Salcedo-Lora).

b. Notwithstanding the fact that much of the testimony rendered before this Tribunal, both at the public hearing and in Colombia, and in the domestic proceedings conducted in that country differs as to details about the place and the hour of detention, there exists sufficient evidence to infer the reasonable conclusion that the detention and the disappearance of Isidro Caballero-Delgado and María del Carmen Santana were carried out by persons who belonged to the Colombian Army and by several civilians who collaborated with them (testimony of Rosa Delia Valderrama, the minor Sobeida Quintero, Elida González-Vergel, Javier Páez, and the declarations of

Gonzalo Arias-Alturo). The fact that more than six years have passed, and there has been no news of Isidro Caballero-Delgado and María del Carmen Santana permits the reasonable conclusion that they are dead.

c. This conclusion is reinforced by data from the criminal action that took place before the Second Judge of the Public Order of Valledupar for the kidnapping of Isidro Caballero-Delgado and María del Carmen Santana. In that case, preventive detention was ordered against Gonzalo Pinzón-Fontecha, Captain Héctor Alirio Forero-Quintero, and Gonzalo Arias-Alturo, as a precaution, because the judge determined that there were factors that raised the presumption of their responsibility for that crime. They were later absolved due to insufficient evidence. The criminal action was ordered reopened, however, because of the subsequent statements of Gonzalo Arias-Alturo.

d. Moreover, one must take into consideration other actions before criminal and military courts, in which those accused and Corporal Norberto Báez-Báez were sentenced for other unlawful acts (aggravated robbery, breach of faith, and illegally carrying weapons) which took place one month after the disappearance of Isidro Caballero-Delgado and María del Carmen Santana. These sentences demonstrate that the soldiers and civilians named acted in concert to commit crimes. The statements given by Captain Forero in that proceeding resulted in his being subjected to psychiatric examinations and to treatment in a military hospital for "*a paranoid mental disorder of a permanent nature*," according to the doctor's examination.

e. Finally, in the Order of April 26, 1990 in the Court of military discipline, Captain Forero was ultimately discharged from the Colombian Army because, "*he did not carry out his obligation of custodian, as guarantor of the life and personal safety of [two] citizens, conduct that lead to the disappearance of those apprehended at the hands of military troops . . .*", an event which took place one year earlier in the region next to that in which the disappearance of Isidro Caballero-Delgado and María del Carmen Santana took place.

f. Conversely, this Tribunal does not find sufficient evidence to demonstrate that Isidro Caballero-Delgado and María del Carmen Santana had been subjected to torture or inhumane treatment during their detention, since that allegation is based solely on the vague testimony of Elida González-Vergel and Gonzalo Arias-Alturo and was not confirmed by the statements of the other witnesses.

## VII

54. Once it has been established that the detention and disappearance of Isidro Caballero-Delgado and María del Carmen Santana was carried out by members of the Colombian Army and civilians who acted as soldiers, it remains to be determined, in accordance with the norms of international law, if the Government is responsible for having violated the Convention.

55. In accordance with Article 1(1) of the Convention, the States Parties are obligated to respect the rights and freedoms recognized in the Convention and to ensure their free and full exercise to all persons subject to their jurisdiction.

56. The Court has interpreted the above-cited Article in the Velásquez Rodríguez and Godínez Cruz Cases as follows:

Article 1(1) is essential in determining whether a violation of the human rights recognized by the Convention can be imputed to a State Party. In effect, that article charges the States Parties with the fundamental duty to respect and guarantee the rights recognized in the Convention. Any impairment of those rights which can be attributed under the rules of international law to the action or omission of any public authority constitutes an act imputable to the State, which assumes responsibility in the terms provided by the Convention. (*Velásquez Rodríguez*, Judgment of July 29, 1988. Series C No. 4, para. 164; *Godínez Cruz Case*, Judgment of January 20, 1989. Series C No. 5, para. 173.)

According to Article 1(1), any exercise of public power that violates the rights recognized by the Convention is illegal. Whenever a State organ, official or public entity violates one of those rights, this constitutes a failure of the duty to respect the rights and freedoms set forth in the Convention. (*Ibid.*, para. 169 and para. 178, respectively.)

Thus, in principle, any violation of rights recognized by the Convention carried out by an act of public authority or by persons who use their position of authority is imputable to the State. However, this does not define all the circumstances in which a State is obligated to prevent, investigate and punish human rights violations, nor all the cases in which the State might be found responsible for an infringement of those rights. An illegal act which violates human rights and which is initially not directly imputable to a State (for example, because it is the act of a private person or because the person responsible has not been identified) can lead to international responsibility of the State, not because of the act itself, but because of the lack of due diligence to prevent the violation or to respond to it as required by the Convention. (*Ibid.* para. 172 and paras. 181-182, respectively.)

57. In the instant case, Colombia has undertaken a prolonged judicial investigation, not free of defects, to find and sanction those responsible for the detention and disappearance of Isidro Caballero-Delgado and María del Carmen Santana, and those proceedings have not been closed.

58. As the Court held in the cases cited above,

[i]n certain circumstances, it may be difficult to investigate acts that violate an individual's rights. The duty to investigate, like the duty to prevent, is not breached merely because the investigation does not produce a satisfactory result. (*Velásquez Rodríguez Case*, *supra* 56, para. 177; *Godínez Cruz Case*, *supra* 56, para. 188.)

Nevertheless, to fully ensure the rights recognized in the Convention, it is not sufficient that the Government undertake an investigation and try to sanction those guilty; rather it is also necessary that all this Government activity culminate in the reparation of the injured party, which in this case has not occurred.

59. Therefore, as Colombia has not remedied the consequences of the violations carried out by its agents, it has failed to comply with the duties that the above-cited Article 1(1) of the Convention imposes on it.

60. As to the responsibility that could fall to the individuals who have been named in the testimony reported above, the Court cannot express any opinion because that is the responsibility of the Colombian authorities. This Tribunal has held:

[a]s far as concerns the human rights protected by the Convention, the jurisdiction of the organs established thereunder refers exclusively to international responsibility of states and not to that of individuals. (International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention (*Arts. 1 and 2 of the American Convention on Human Rights*), Advisory Opinion OC-14/94 of December 9, 1994. Series A No. 14, para. 56.)

## VIII

61. With respect to the violation of other provisions of the Convention which have been imputed to Colombia, this Court determines the following.

62. The Commission alleges that Colombia has violated Article 2 of the Convention. However, this Court does not find that Colombia lacks the legislative or other measures necessary to give effect to the rights and freedoms ensured by the Convention. Consequently, there is no violation of Article 2.

63. Whereas Colombia's responsibility for the illegal detention and presumed death of Isidro Caballero-Delgado and María del Carmen Santana has been established, violations of their rights to personal liberty and to life, as ensured by Articles 7 and 4 of the Convention, are attributable to Colombia.

64. Given the short time that transpired between the capture of the persons named in this case and their presumed death, the Court holds that there was no opportunity for the application of the judicial guarantees contained in Article 8 of the Convention and that, as a result, there is no violation of that Article.

65. Nor does the Court hold that Colombia has violated the right to humane treatment ensured by Article 5 of the Convention, since, in its judgment, there is insufficient proof that those detained were tortured or subjected to inhumane treatment.

66. As to Article 25 of the Convention, which concerns judicial protection, the Court determines that this Article was not violated inasmuch as the writ of *habeas corpus* filed on behalf of Isidro Caballero-Delgado by María Nodelia Parra-Rodríguez was processed by the First Superior Judge of Bucaramanga. The fact that this remedy was not successful, because the Commander of the Fifth Brigade of Bucaramanga, the Director of the Model Prison of Bucaramanga, DAS, and the Judicial Police answered that Isidro Caballero-Delgado was not to be found in those places, does not constitute a violation of the guarantee of judicial protection.

67. In its final pleading, the Commission requested that the Court

declare that based on the principle of *pacta sunt servanda* in accordance with Article 26 of the Vienna Convention on the Law of Treaties, the Government has violated Articles 51(2) and 44 of the American Convention read in

conjunction with Article 1(1), by deliberately failing to comply with the recommendations made by the Inter-American Commission.

In this respect it is enough to state that this Court, in several judgments and advisory opinions has interpreted the meaning of Articles 50 and 51 of the Convention. Article 50 provides for the drafting of a preliminary report that is transmitted to the State so the State may adopt the proposals and recommendations of the Convention. The second provision provides that, if within a period of three months, the matter has not been resolved or submitted for a decision of the Court, the Commission will draw up a final report. Therefore, if the matter has been submitted for a decision of the Court, as it has been in the instant case, there is no authority to draw up the second report.

In the Court's judgment, the term "recommendations" used by the American Convention should be interpreted to conform to its ordinary meaning, in accordance with Article 31(1) of the Vienna Convention on the Law of Treaties. For that reason, a recommendation does not have the character of an obligatory judicial decision for which the failure to comply would generate State responsibility. As there is no evidence in the present Convention that the parties intended to give it a special meaning, Article 31(4) of the Vienna Convention is not applicable. Consequently, the State does not incur international responsibility by not complying with a recommendation which is not obligatory. As to Article 44 of the American Convention, the Court finds that it refers to the right to present petitions to the Commission, and that it has no relation to the obligations of the State.

68. As the Court has found that there has been a violation of the human rights protected by the Convention, it must rule on the reparation of the consequences of the measure or situation that constituted the violation of those rights and the payment of fair compensation to the injured party, pursuant to Article 63(1) of the Convention.

69. In the instant case, reparations should consist of the continuation of the judicial proceedings inquiring into the disappearance of Isidro Caballero-Delgado and María del Carmen Santana and punishment of those responsible in conformance with Colombian domestic law.

70. As to the costs requested by the Commission, the Court has already stated that:

the Commission cannot demand that expenses incurred as a result of its own internal work structure be reimbursed through the assessment of costs. The operation of the human rights organs of the American system is funded by the Member States by means of their annual contributions. (*Aloeboetoe et al. Case, Reparations (art. 63(1) of the American Convention on Human Rights)*, Judgment of September 10, 1993. Series C No. 15, para. 114; *Neira Alegria et al. Case*, Judgment of January 19, 1995, Series C No. 20, para. 87.)

71. With respect to compensation and the reimbursement of the expenses incurred by the relatives of the victims in their legal actions before the Colombian authorities in relation to this proceeding, the Court holds that those costs should be charged to the State. As the Court lacks the evidence to allow it to fix the amount, the compensation and costs phase is opened.

72. **NOW, THEREFORE,**

**THE COURT**

By fours votes to one

1. Decides that the Republic of Colombia has violated, to the detriment of Isidro Caballero-Delgado and María del Carmen Santana the rights to personal liberty and to life contained in Articles 7 and 4, read in conjunction with Article 1(1) of the American Convention on Human Rights.

Judge Nieto-Navia dissenting.

By four votes to one

2. Decides that the Republic of Colombia has not violated the right to humane treatment contained in Article 5 of the American Convention on Human Rights.

Judge Pacheco-Gómez dissenting

Unanimously

3. Decides that the Republic of Colombia has not violated Articles 2, 8, and 25 of the American Convention on Human Rights, relative to the duty to adopt measures to give effect to the rights and freedoms ensured by the Convention, right to a fair trial, and the judicial protection of rights.

Unanimously

4. Decides that the Republic of Colombia has not violated Articles 51(2) and 44 of the American Convention on Human Rights.

Unanimously

5. Decides that the Republic of Colombia is obligated to continue judicial proceedings into the disappearance and presumed death of the persons named and to extend punishment in accordance with internal law.

By four votes to one

6. Decides that the Republic of Colombia is obligated to pay fair compensation to the relatives of the victims and to reimburse the expenses they have incurred in their actions before the Colombian authorities in relation to these proceedings.

Judge Nieto-Navia dissenting.

By four votes to one

7. Decides that the manner and amount of the compensation and reimbursement of the expenses will be fixed by this Court and for that purpose the corresponding proceeding remains open.

Judge Nieto-Navia dissenting.

Done in Spanish and English, the Spanish text being authentic. Read at the public hearing held at the seat of the Court in San José, Costa Rica, on December 8, 1995.

Héctor Fix-Zamudio  
President

Hernán Salgado-Pesantes  
Navia

Rafael Nieto-

Alejandro Montiel-Argüello

Máximo Pacheco-Gómez

Manuel E. Ventura-Robles  
Secretary

So ordered,

Héctor Fix-Zamudio  
President

Manuel E. Ventura-Robles  
Secretary

## DISSENTING OPINION OF JUDGE NIETO-NAVIA

Although it has not proved that those responsible acted under official orders or that this was a practice of the Colombian Army and, whereas, from the record one can deduce the opposite (apparently those kidnapping the victims were dressed as guerrillas, although the difference between a military and a guerrilla uniform is not clear; and Captain Forero-Quintero was treated for several months in a military hospital for paranoia resulting from psychological trauma caused by the assassination at the hands of the guerrillas of several members of his troop while they were building a highway), the Court has not found it inappropriate to infer that the death and disappearance of Isidro Caballero-Delgado and María del Carmen Santana occurred at the hands of a paramilitary group in collusion with an official and a sub-official of the Army. The undersigned judge understands that, according to modern trends in international law, this could constitute an act of the State, which is not excused by the circumstance that those involved could have acted under their own initiative.

The criminal judge who investigated those implicated absolved them because the evidence used to charge them was weak and circumstantial. That judgment, which is a model of analysis, makes one think that, perhaps, condemning the accused would have violated the procedural rights and presumption of innocence required by Colombian law and the Convention. Except for testimony from the same individuals, which did not always coincide with their initial testimony, and the testimony of Gonzalo Arias-Alturo, which also does not agree with his earlier statements, this Court did not have additional evidence beyond that which was considered by that judge.

However, here, as the Court has stated (*Velásquez Rodríguez Case*, Judgment of July 29, 1988. Series C No. 4, paras. 134 and 135; *Godínez Cruz Case*, Judgment of January 20, 1989. Series C No. 5, paras. 140 and 141), we are dealing with the assumption of international State responsibility for violation of the Convention and not a case of criminal responsibility. Consequently, what must be analyzed is not whether Isidro Caballero-Delgado and María del Carmen Santana were killed under the circumstances accepted as a working hypothesis by the Court, which would produce criminal responsibility in those implicated, but whether Colombia has violated the Convention. That is to say, whether conditions exist under which an act which violates a right recognized in the Convention can be attributed or imputed to that State, thereby establishing its international responsibility. (*Ibid.* para. 160 and para. 169, respectively.) In paragraph 60, the Court cites Advisory Opinion OC-14/94 which fully confirms what I say here. (*International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention (Arts. 1 and 2 of the American Convention on Human Rights)*, Advisory Opinion OC-14/94 of December 9, 1994. Series A No. 14, para. 56.)

In an earlier case, the Court stated that

Article 1(1) is essential in determining whether a violation of the human rights recognized by the Convention can be imputed to a State Party. In effect, that article charges the States Parties with the fundamental duty to respect and ensure the rights recognized in the Convention. Any impairment of those rights, which can be attributed under the rules of international law to the action or omission of any public authority constitutes an act imputable to the State, which assumes responsibility in the terms provided by the Convention. (*Velásquez Rodríguez Case*, para. 164 and *Godínez Cruz Case*, para. 173.)

"The rules of international law" to which the Court refers, are, of course, the principles that regulate the international responsibility of States in general and the subject of human rights in particular.

The theories of international State responsibility are well known to scholars. These theories have been evolving since the **liability for fault theory** of Grotius, in which the psychological elements peculiar to human beings are attributed to the State. This theory resulted from the identification of the State with its ruler, which was in vogue at that time. Then there came the **causal liability theory**, in which the acts which generate responsibility must not only be illicit but also attributable to the State. The **risk theory**, according to which the relationship of causality between the illicit act and the act of State would be sufficient to generate State responsibility is passed over. The codifications of the International Law Commission do not accept this last thesis. They require imputability as a precondition to the attribution of international State responsibility.

In endorsing human rights treaties, States have not reached the stage of accepting that the mere relationship of causality between the act of the State and the violation of the right protected generates international responsibility. For that reason, the analysis of the instant case cannot be separated from the content of these rights and from the duties assumed by the States under Articles 1(1) and 2 of the Convention, as they have been interpreted by this Court when dealing with the application of its international jurisdiction.

It is obvious that certain protected rights are closely linked to the act of the State and cannot be violated except by the State. For example, the promulgation of a law that conflicts with the duties assumed by the State on accepting the Convention is an act of State that violates the Convention, since only States can promulgate laws. But even under this hypothesis, as the Court has already stated, the sole promulgation of a law does not produce international responsibility, rather it must be implemented and it must affect "*the protected rights and freedoms of specific individuals.*" (*International Responsibility For the Promulgation and Enforcement of Laws in Violation of the Convention*, cf. para. 58(1).)

The Court has held, in interpreting Article 1(1) of the Convention, that

[w]hat is decisive is whether a violation of the rights recognized by the Convention has occurred with the support or the acquiescence of the government, or whether the State has allowed the act to take place without taking measures to prevent it or to punish those responsible. Thus, the Court's task is to determine whether the violation is the result of a State's failure to fulfill its duty to respect and guarantee those rights, as required by Article 1(1) of the Convention. (*Velásquez Rodríguez Case*, cf. para. 173 and *Godínez Cruz Case*, cf. para. 183). The State, [the Court added] has a legal duty to take reasonable steps to prevent human rights violations and to use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, to impose the appropriate punishment and to ensure the victim adequate compensation. (*Ibid.* para. 174 and para. 184, respectively.)

The word "reasonable" qualifies the duty of prevention and was explained by the Court when it stated that, "*while the State is obligated to prevent human rights abuses, the existence of a particular violation does not, in itself, prove the failure to take preventive measures.*" (*Ibid.* para. 175 and para. 185, respectively.) It is not enough that there be a violation to say that the State failed to prevent it. To interpret the Convention in this manner obviously goes farther than what the States accepted on subscribing to it, because it would imply that it is sufficient that the act

of State which violates a protected right be present for the State to have to answer for it. This would signify, neither more nor less, that the protective organs, the Commission and the Court, are intrusive, unless their function is limited to pronouncing judgment on whether the act took place. It would also signify that international protection is not subsidiary to domestic protection but that, conversely, it operates automatically. Neither of these two suppositions is true under the American Convention.

For that reason

[t]his duty to prevent includes all those means of a legal, political, administrative and cultural nature that promote the protection of human rights and ensure that any violations are considered and treated as illegal acts, which, as such, may lead to the punishment of those responsible and the obligation to indemnify the victims for damages. (*Ibid.*)

The record of this case does not prove that "reasonable" steps to prevent acts of this nature, do not exist, or if they do exist, that they have not been taken. Conversely, the record gives the impression that the event under consideration was probably due to an official who later was shown to suffer from mental disturbances, which is surely beyond existing contingent measures of protection.

The duties of the State are not limited to prevention but also include investigation of the facts so that "[i]f the State apparatus acts in such a way that the violation goes unpunished and the victim's full enjoyment of such rights is not restored as soon as possible, the State has failed to comply with its duty to ensure the free and full exercise of those rights to the persons within its jurisdiction." (*Ibid.* para. 176 and para. 187, respectively.) The Court has stated that

[i]n certain circumstances, it may be difficult to investigate acts that violate an individual's rights. The duty to investigate, like the duty to prevent, is not breached merely because the investigation does not produce a satisfactory result. Nevertheless, it must be undertaken in a serious manner and not as a mere formality preordained to be ineffective. An investigation must have an objective and be assumed by the State as its own legal duty, not as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof, without an effective search for the truth by the government. This is true regardless of what agent is eventually found responsible for the violation. Where the acts of private parties that violate the Convention are not seriously investigated, those parties are aided in a sense by the government, thereby making the State responsible on the international plane. (*Ibid.* para. 177 and para. 188 respectively.)

In this case, the Government submitted to the Court copies of more than one thousand pages of records of investigations, now reopened based on the testimony of Gonzalo Arias-Alturo, which are precisely what have allowed this Court to infer that the violation of human rights was committed at the hands of those persons implicated and discussed therein.

Based on these documents, the internal procedures have included the following:

a. Writ of *habeas corpus*:

Was interposed on February 10, 1989, before the First Superior Court of Bucaramanga by María Nodelia-Parra, companion of Caballero-Delgado. On that same date and after having obtained information "in the institutions and organizations of the State where a person can be detained for several causes," the judge concluded that Caballero was not deprived of his liberty by

institutions of the State. Moreover, according to the judge, a writ of *habeas corpus* should be interposed before the criminal judge of the closest municipality, in accordance with the Code of Criminal Procedure. The petitioner, therefore, should have resorted to another authority such as the Regional or General Office of the Public Prosecutor of the Nation. Nevertheless, the judge himself sent all the documentation to the Office of the Public Prosecutor for action. (p. 392, Penal Statute I)

b. Investigation in the lower criminal court of justice:

On March 2, 1989, in view of the oral complaint of María Nodelia-Parra, a criminal proceeding was opened before the Second Mobile Court of Criminal Investigation, although there was no party directly accused at that time. In line-ups which took place on July 12, 1989 and April 4, 1990, Javier Páez, one of the alleged witnesses to the disappearance of Caballero-Delgado and Santana, identified Luis Gonzalo Pinzón-Fontecha, who he already knew as they were natives of the same region. He also identified Gonzalo Arias-Alturo after initially confusing him with someone else. Both of these men had been captured together with Captain Forero-Quintero and Sergeant Báez for assaulting several gas stations and highway toll booths.

The Second Court of Public Order of Valledupar rendered a court order for the investigation of the crime on August 1, 1989. Considering that Pinzón-Fontecha had been captured in another case with Captain Héctor Alirio Forero-Quintero, Corporal Second-Class Norberto Báez-Báez, and Gonzalo Arias-Alturo, the Court linked them with the disappearance of Isidro Caballero-Delgado and rendered an order of detention against all of them except Norberto Báez-Báez.

By decisions of September 11 and September 20, 1990, all those implicated in this proceeding were absolved and their immediate freedom was ordered. The case was closed on October 3, 1990.

On March 12, 1992, the criminal investigation was reopened, this time against Carlos Julio Pinzón-Fontecha, who had been accused by his brother, Gonzalo Pinzón-Fontecha, in an unsworn statement made on October 17, 1989. According to information in the file, Carlos Julio Pinzón-Fontecha had died on May 29, 1989.

On November 4, 1994, the complainant requested that the case be reopened based on testimony rendered before the Public Prosecutor's Delegate for the Military Forces by an official of the General Prosecutor of the Nation, Doctor Ricardo Vargas-López. He reported that, as part of an investigation he conducted as Chief of the Investigation Section, he interviewed Gonzalo Arias-Alturo, who told him facts which incriminated him and others in the commission of the crimes of the kidnapping and disappearance of Isidro Caballero-Delgado and María del Carmen Santana. The Regional Prosecutor's Office, which is in charge of the investigation, rendered an order of detention on May 19, 1995 against Gonzalo Arias-Alturo. It abstained from issuing an order against the others who were implicated. The Court continued gathering evidence and in so doing made a new attempt to find the bodies at the site described by Arias-Alturo. That attempt was also unsuccessful.

c. Military Criminal Process

On February 27, 1989, preliminary proceedings of inquiry before 26th Court of Military Criminal Investigations were initiated to determine those responsible for kidnapping Isidro Caballero-Delgado and María del Carmen Santana. This investigation was initiated under orders from Lieutenant Colonel Diego Velandia, Commander of the Santander Infantry Battalion, because of the publication of newspaper articles which "*directly and in a general manner accuse soldiers of the Morrison Base of having apprehended Isidro Caballero-Delgado and María del Carmen Santana on February 7, 1989 in the District of Guaduas. They remain disappeared.*"

As part of this investigation, personnel from the base who were in service on the day of the events, were questioned. Several inspections were also conducted to determine if, on February 7, 1989, operations by a troop from the Morrison Base had been ordered and executed. María Nodelia Parra was summoned to render sworn testimony about the events investigated, but she did not appear. They also requested and added to the file those documents relating to investigations completed by the Office of Criminal Investigation of Valledupar and the Municipal Representative of San Alberto.

On June 6, 1989, the 26th Court mentioned above, decided to suspend the preliminary investigation into the disappearance of Caballero-Delgado and Santana and to close the proceedings provisionally, without prejudice, so that if a person were later accused it could continue the investigation.

One cannot attribute to the Republic of Colombia negligence or indolence in the investigation. Moreover, the fact that those implicated have been absolved in the first proceeding does not signify that there is "collusion" between them and the Public Power given that the rules that criminal judges must apply require that doubts be resolved in favor of the accused. Nor has it been demonstrated that the judges were not independent.

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Except in reference to the duty to make reparations, this judgment of the Court lacks legal analysis proving that the Republic of Colombia violated the Convention. That is to say that the Court has made a pure and simple application of the **risk theory** which goes beyond not only what the States accepted on giving their consent to the Convention but also the previously cited case law of the Court.

The duty to make reparations is not autonomous in either the domestic or the international order. That is to say, to impose reparations it is first necessary to demonstrate a violation of the Convention. The Court has already stated in the Velásquez Rodríguez and Godínez Cruz Cases that "[t]he State has a legal duty to take reasonable steps to prevent . . . to carry out a serious investigation . . . to identify those responsible, to impose the appropriate punishment and to ensure the victim adequate compensation." (*Ibid.*, para. 174 and para. 184, respectively.) This sequence is not accidental.

Therefore, there cannot be a violation of the Convention due to the failure to make reparation, unless that reparation arises from an injury due to another violation. Article 63(1) of the Convention recognizes it in this way and provides that:

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

The reasoning of the Court on the subject of reparations is even weaker as it continues. Paragraph 69 of this Judgment states that "*[i]n the instant case reparations should consist of the continuation of the judicial proceedings for the clarification of the disappearance of Isidro Caballero-Delgado and María del Carmen Santana and punishment in conformance with Colombian domestic law,*" which it then orders in the Resolutions of the Court. Interpreted strictly, one must conclude that the Court charges the Colombian Government with violation of the Convention because the internal proceedings have not yet been concluded, even though, as the Court itself sets forth (paragraph 58 of this Judgment) in citing its earlier case law, the duty to investigate is a means and not an end. In this Judgment, the Court has not imputed to Colombia a violation of the articles that provide for the fair administration of justice.

\* \* \*

As sound rules of interpretation require, legal norms in treaties should be interpreted in such a way that they have an effect, and not so that they have none. In criminal law, if a person is killed by a dagger it is obvious that he was also the victim of lesions. However, the crime that was committed is murder, and no judge will interpret the norms in such a way that the dead person was the victim of "murder and lesions." It is the same in the matter of violations of human rights. The Commission does not appear to understand this point, because it claims a series of violations which are connected but absorbed in others, so that they can not be duly sustained. The Court cannot fall into the same error.

This is not to say that in the matter of human rights, several violations can not be committed simultaneously or successively, as in the Velásquez Rodríguez and Godínez Cruz Cases, in which the Court held proved prolonged detention without benefit of law with presumed torture before death. The instant case, nevertheless, does not present the same situation. According to the records, the two persons were apparently detained at about 7:00 pm and killed before midnight, so that, although it is true that the proceedings in Colombia were for kidnapping, here what is being dealt with is the violation of the right to life (Article 4), since the Court did not find proof of torture. In the Gangaram Panday Case, the Court found that

it [is] impossible to establish the responsibility of the State in the terms described above because, among other things, the Court is fixing responsibility for illegal detention by inference but not because it has been proved that the detention was indeed illegal or arbitrary or that the detainee was tortured. (*Gangaram Panday Case*, Judgment of January 21, 1994. Series C No. 16, para. 62.)

If the earlier case law of the Court is of value, the Tribunal should be consistent with it.

For the above reasons I dissent, respectfully but firmly, from the conclusions of the Court stated in resolutory part 1 and in those resolutions that derive therefrom.

Rafael Nieto-Navia  
Judge

Manuel Ventura-Robles  
Secretary

## **DISSENTING OPINION OF JUDGE MAXIMO PACHECO-GOMEZ**

For the following reasons, I dissent from the majority opinion with respect to resolutory part 2 of the judgment, in which the Court decided that the Republic of Colombia has not violated the Right to Humane Treatment of Isidro Caballero-Delgado and María del Carmen Santana:

1. Article 5 of the American Convention on Human Rights establishes that

1. Every person has the right to have his physical, mental, and moral integrity respected.

2. No person shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.

. . .

2. The statements of witnesses Elida González and Gonzalo Arias-Alturo have convincingly shown that Isidro Caballero-Delgado and María del Carmen Santana were not treated with the respect owed to their dignity as human beings.

3. For these reasons I believe that the Republic of Colombia has violated, to the detriment of Isidro Caballero-Delgado and María del Carmen Santana, the right to humane treatment as guaranteed by Article 5 of the American Convention on Human Rights.

Máximo Pacheco-Gómez  
Judge

Manuel E. Ventura-Robles  
Secretary