INTER-AMERICAN COURT OF HUMAN RIGHTS

CASE OF GARCÍA RODRÍGUEZ ET AL. V. MEXICO

JUDGMENT OF JANUARY 25, 2023

(Preliminary Objections, Merits, Reparations and Costs)

In the case of *García Rodríguez et al. v. Mexico,*

the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court"), composed of the following judges:[*]

Ricardo C. Pérez Manrique, President
Humberto Antonio Sierra Porto, Judge
Nancy Hernández López, Judge
Verónica Gómez, Judge
Patricia Pérez Goldberg, Judge and
Rodrigo Mudrovitsch, Judge

also present:

Pablo Saavedra Alessandri, Registrar
Romina I. Sijniensky, Deputy Registrar,

pursuant to Articles 62(3) and 63(1) of the American Convention on Human rights (hereinafter, "the American Convention" or "the Convention") and Articles 31, 32, 65 and 67 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure"), delivers this judgment, which is structured as follows:

[*] The Vice President, Judge Eduardo Ferrer Mac-Gregor Poisot, a Mexican national, did not take part in the deliberation and signing of this judgment, pursuant to Articles 19(1) and 19(2) of the Court's Rules of Procedure.

GARCÍA RODRÍGUEZ ET AL. V. MEXICO

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I
INTRODUCTION OF THE CASE AND CAUSE OF THE ACTION

1. *The case submitted to the Court.* On May 6, 2021, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") submitted to the jurisdiction of the Inter-American Court the case of "Daniel García Rodríguez and Reyes Alpízar Ortiz against the United Mexican States" (hereinafter "the State" or "Mexico"). According to the Commission, the case refers to the international responsibility of the State for alleged acts of torture and for the violation of the rights to judicial guarantees, the presumption of innocence and personal liberty to the detriment of Daniel García Rodríguez and Reyes Alpízar Ortiz, who were held in pretrial detention for more than 17 years. It is alleged that they were arrested without a previous court order and were only formally notified of the reasons for their arrest when they were brought before a judge, 47 and 34 days later, respectively, after having been deprived of their liberty. In addition, the Commission considered that the application of *arraigo* (confinement or detention for investigative purposes) constituted a punitive rather than a precautionary measure, and was therefore an arbitrary deprivation of liberty that violated the presumption of innocence. It further argued that the pretrial detention subsequent to *arraigo*, which lasted for 17 years, was arbitrary. Furthermore, it considered that the State had violated the rule of exclusion of evidence obtained under coercion, together with the right of defense, the principle of presumption of innocence, and the principle of reasonable time in the context of the criminal proceedings.

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

   a. Petition. On February 16 and April 17, 2007, the Commission received the initial petition submitted by Daniel García Rodríguez.[1]

   b. Admissibility and Merits Reports. On May 25, 2017, and March 3, 2020, the Commission adopted, respectively, Admissibility Report No. 68/17 (hereinafter "the Admissibility Report") in which it concluded that the petition was admissible, and the Report on the Merits No. 13/20 (hereinafter "Merits Report"), in which it reached certain conclusions and made several recommendations to the State.

   c. Notification to the State. On May 6, 2020, the Commission notified Report No. 13/20 to the State, granting it two months to report on its compliance with the recommendations.

3. *Submission to the Court.* On May 6, 2021, the Commission submitted the case to the Court containing the facts and human rights violations set forth in the Merits Report and taking into account the recommendations that were still pending implementation, as well as "the need to obtain justice for the [alleged] victims and the will expressed by the petitioners."

4. *Requests of the Commission.* Based on the foregoing, the Inter-American Commission asked the Court to find and declare the international responsibility of the State for the violation of Articles 5(1), 5(2), 7(1), 7(2), 7(3), 7(4), 7(5), 7(6), 8(1), 8(2), 8(2)(d), 8(2)(e) and 8(2)(f), 8(3), and 25 of the American Convention on Human Rights, in relation to the obligations established in Articles 1(1) and 2 thereof, and Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, to the detriment of the alleged victims. It also requested that various measures of reparation be ordered. This Court notes, with deep concern, that almost 14 years have passed since the presentation of the initial petition to the Commission and the submission of the case before the Court.

[1] The petition was also presented on behalf of Reyes Alpízar Ortiz.

II
PROCEEDINGS BEFORE THE COURT

5. *Notification to the State and the representatives.*[2] The submission of the case was notified to the State and the representatives in a communication dated August 24, 2021.

6. *Brief with pleadings, motions and evidence.* On November 23, 2021, the representatives submitted their brief with pleadings, motions and evidence (hereinafter "pleadings and motions brief"), pursuant to Articles 25 and 40 of the Court's Rules of Procedure. The representatives agreed with the Commission's arguments, complemented its line of reasoning, alleged new violations of the American Convention[3] and proposed specific reparations.

7. *Answering brief.*[4] On March 30, 2022, the State submitted its response to the submission of the case together with observations on the pleadings and motions brief (hereinafter "answering brief") pursuant to Articles 25 and 41 of the Court's Rules of Procedure. In this brief, the State submitted five preliminary objections and rejected the alleged violations and the proposed measures of reparation.

8. *Observations on the preliminary objections.* On May 21, 2022, the representatives and the Commission presented, respectively, their observations on the preliminary objections raised by the State.

9. *Provisional measures.* In an Order of August 25, 2022, the Court denied a request for provisional measures submitted by the representatives of the alleged victims on May 14, 2022.[5]

10. *Supervening evidence.* On August 24, 2022, the representatives forwarded the judgment of the criminal court of the Judicial District of Tlalnepantla, delivered on May 12, 2022, against Daniel García and Reyes Alpízar, as supervening evidence.[6]

11. *Public hearing.* On July 6, 2022,[7] the President of the Court called the parties and the Commission to a public hearing on the preliminary objections and possible merits, reparations and

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[2] The alleged victim was represented by the "Pena Sin Culpa" collective, comprised of Simón Alejandro Hernández León, Daniel García Rodríguez and David Peña Rodríguez.

[3] In particular, they referred to the alleged violations of the right to honor (Article 11 of the American Convention) to the detriment of Daniel García Rodríguez and Reyes Alpízar Ortiz, and to the integrity of their next of kin (Article 5 of the American Convention), to personal liberty, judicial guarantees, honor and judicial protection of the next of kin of the alleged victims (Articles 7, 8, 11 and 25 of the American Convention), and to personal liberty, judicial guarantees and legality and non-retroactivity resulting from a misuse of power (Articles 7, 8 and 25 of the American Convention).

[4] The State appointed as its agents Martha Delgado Peralta, Undersecretary for Multilateral Affairs and Human Rights; Alejandro Celorio Alcántara, legal adviser; Roselia Margarita Barajas and Olea, Mexico's Ambassador to Costa Rica; Cristopher Ballinas Valdés, Director General of Human Rights and Democracy; Salvador Tinajero Esquivel, assistant legal consultant "B"; Alfredo Uriel Pérez Manríquez, Director of International Law IV; Enrique Irazoque Palazuelos, Head of the Unit for the Defense of Human Rights of the Interior Ministry; Marcos Moreno Báez, Coordinator of International Human Rights Affairs; María Dalia Cajero Jacinto, general legal adviser; Fernando Ulises Cárdenas Uribe, Central legal prosecutor, Attorney General's Office of Mexico; Martín Berdeja Rivas, Director General of Human Rights and Gender Equality; Rubén Durán Miranda, General Legal and Advisory Coordinator, and Javier García Molina, Subdirector of Appeals and Human Rights of the Judicial Branch of Mexico.

[5] On May 14, 2022, the representatives submitted a request for provisional measures "for the purpose of preventing the detention and imprisonment of the alleged direct victims in the instant case" following their conviction in a court of First Instance issued on March 12, 2022, in which they were sentenced to 35 years imprisonment for homicide. The full Court decided to deny said request. *Cf. Case of García Rodríguez et al. v. Mexico*. Provisional Measures. Order of the President of the Inter-American Court of Human Rights of August 25, 2022. https://www.corteidh.or.cr/docs/medidas/garciarodriguez_se_01.pdf

[6] *Cf.* Criminal Court of the Judicial District of Tlalnepantla, Judgment of May 12, 2022 (evidence file, folios 70391 et seq.).

[7] Cf. Case of *García Rodríguez et al. v. Mexico.* Call to a public hearing. Order of the President of the Inter-American Court of Human Rights of July 6, 2022. https://www.corteidh.or.cr/docs/asuntos/garcia_rodriguez_y_otro_06_07_22.pdf

costs. The President of the Court also summoned the alleged victim and an expert witness proposed by the representatives to testify at the public hearing.[8] In the same order, he required the affidavits of the other alleged victim, of four of his family members, of two witnesses offered by the State, an expert witness offered by the State and an expert witness offered by the Commission.[9] In an Order of July 27, 2022,[10] the Court changed the format of the expert opinion of Rogelio Arturo Bárcena Zubieta so that it could be received during the public hearing, and ordered that the expert opinion of Jorge Ulises Carmona be received by means of an affidavit.[11] The public hearing was held on August 26, 2022, during the 150th Regular Session of the Court, which took place in the city of Brasilia, Federative Republic of Brazil.[12]

12. *Amici curiae.* The Court received 18 *amicus curiae* briefs presented by: 1) the Federal Public Defense Institute;[13] 2) Alfonso Jaime Martínez Lazcano;[14] 3) Pedro Tamés Fernández;[15] 4) the Mexican Commission for the Defense and Promotion of Human Rights (*Comisión Mexicana de Defensa y Promoción de los Derechos Humanos*) and the Institute of Procedural Criminal Justice A.C. (IJPP);[16] 5) Rommel Sánchez Rodríguez;[17] 6) the Observatory of the Inter-American System

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[8] These persons are: the alleged victim Daniel García Rodríguez, and the expert witness José Ramón Cossío Díaz.

[9] These persons are: the alleged victims Reyes Alpízar Ortiz, Maria Magdalena Perez Sifuentes, Denisse Aribel García Pérez, Laura García Rodríguez, and Guillermina Olivárez Barrera; the witnesses offered by the State, Norma Elvira Trejo Luna and José Alberto Buendía Valverde; the expert witness offered by the State, Rogelio Arturo Bárcena Zubieta; and finally the expert witness offered by the Commission, Víctor Manuel Rodríguez Rescia.

[10] *Cf. Case of García Rodríguez et al. v. Mexico.* Order of the President of the Inter-American Court of Human Rights of July 27, 2022. https://www.corteidh.or.cr/docs/asuntos /garcia_rodriguez_y_otro_27_07_22.pdf

[11] On July 13, 2022, the State requested reconsideration of the terms established in the Order of the President of July 6, 2022 regarding the format of the hearing, so that the public hearing could be held virtually; in addition, it requested the participation of expert witnesses Ulises Carmona Tinoco and Rogelio Arturo Bárcena Zubieta at the public hearing.

[12] The following persons appeared at the hearing: a) for the Inter-American Commission: Esmeralda Arosemena de Troitiño, Commissioner; Jorge Meza Flores and Ignacio Bollier, both advisers of the Commission; b) for the representatives: Simon Alejandro Hernández León and David Peña Rodríguez, and c) for the State: Laura Beatriz Esquivel Valdés, Secretary of Foreign Relations; Alejandro Celorio Alcántara, Legal Adviser; Alfredo Uriel Pérez, Director of International Law; Fabiola Catalina Aparicio Perales, member of the Judiciary Council of the state of Mexico; Joel Alfonso Sierra Palacios, General Legal and Advisory Coordinator of the Judicial Branch of the state of Mexico; Maricela Xiconténcatl Elizaga, Central Legal Prosecutor; Elvira Díaz Salgado, General Coordinator of Litigation; Norma Elvia Trejo Luna, Special Prosecutor for the Investigation of Torture; Leonel Ulises Carrasco Villafuerte, Director of the Human Rights Unit of the Attorney General's Office of the state of Mexico; Martín Berdeja Rivas, Director General of Human Rights and Gender Equality of the Secretariat for Justice and Human Rights of the Government of the state of Mexico and José Ignacio Felipe Martín del Campo Covarrubias, special analyst of the General Directorate of Human Rights and Gender Equality.

[13] The brief signed by Netzaí Sandoval Ballesteros, Director General of the Federal Public Defense Institute, containing an analysis of the conventionality of mandatory pretrial detention.

[14] The brief signed by Alfonso Martínez Lazcano, President of the Latin American Association of Procedural Lawyers, regarding the concept of criminal *arraigo* and mandatory pretrial detention.

[15] The brief signed by Pedro Tamés Fernández, father of María de los Ángeles Tamés Pérez, on the facts contained in the submission of the case, and legal considerations on prolonged pretrial detention.

[16] The brief signed by Lucía G. Chávez Vargas, Executive Director of the Mexican Commission for the Defense and Promotion of Human Rights A.C. and Javier Carrasco Solís, Executive Director of the Institute of Procedural Criminal Justice A.C., on the origin, content, scope and impact of *arraigo* on human rights in Mexico and of mandatory or automatic pretrial detention.

[17] The brief signed by Rommel Sánchez Rodríguez on: a) the nature of Mexico's mandatory pretrial detention; b) the constitutional-conventional antinomy and the prevalence of constitutional restrictions, and c) the rights implicated and the problems of mandatory pretrial detention.

of Human Rights;[18] 7) Renace, San Luis Potosí Chapter A.C.;[19] 8) Sergio Villa Ramos;[20] 9) the Permanent Human Rights Seminar of the Universidad Nacional Autónoma de México[21]; 10) Sofía Margarita Miranda and Jorge Adrián Cruz;[22] 11) Emmanuel Medina Zepeda;[23] 12) *Intersecta Organización para la Igualdad* A.C.[24]; 13) Innocence Project, Argentina;[25] 14) the Human Rights Commission of Mexico City;[26] 15) Minerva Calderón Legal Clinic[27]; 16) *Centro de Intervención Pedagógica para la Justicia Social Margarita Neri* A.C.;[28] 17) Miguel Agustín Pro Juárez Human Rights Center; [29] and 18) Roberto Borges Zurita.[30]

13. *Final written arguments and observations*. On September 29, 2022, the Commission submitted its final written observations, and the State and the representatives forwarded their final written arguments. On October 17, 2022, the representatives submitted their observations on the annexes presented by the State in its final written arguments, the State submitted its observations on the

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[18] The brief signed by María Elisa Franco Martín del Campo, Patricia González Rodríguez, Leici López Villalobos, Luna Mancimi, Roberto Ochoa Romero and Jaime Eduardo Torres, regarding: a) the measure of *arraigo* from the perspective of criminal procedural law; b) the constitutional and legal framework for the recognition of *arraigo* in Mexico, and c) an approach to the concept of *arraigo* in the Mexican amparo system.

[19] The brief signed by José Mario of the Garza Marroquín, president of Renace, San Luis Potosí Chapter A.C., refers to factual and legal considerations in the case of García Rodríguez et al. v. Mexico.

[20] The brief signed by Moisés Augusto Montiel Mogollón, Miguel Ángel Córdova Álvarez, René Cosme Limón, Sergio Villa Ramos and Gabriel José Ortiz Crespo, on legal situations related to constitutional restrictions on human rights recognized by the American Convention on Human Rights and their *de facto* and *de jure* prevalence in Mexico's domestic legal system in breach of the Mexican State's treaty-based obligations of protection and guarantee, based on the constitutional reform of 2011.

[21] The brief signed by Cristian Miguel Acosta García, Britto Maleni Díaz, Jessica Bárcenas Santos, Sandra Espinosa Rizo, Saúl Alarcón Lara Luis, Andrés David Cuellar Lugo, Sara Elena Faur Ramírez, Joaquín Fuentes Jurado, Nuria Gil Serra, Gustavo Gutiérrez Bazán, Jimena Mendoza, Ximena López, Gerardo Mata, Demian Rubio, Karla Sánchez, Alejandra Suárez and Valdespino Saavedra, regarding *arraigo* and mandatory pretrial detention in relation to control of conventionality.

[22] The brief signed by Jorge Adrián Cruz Flores and Sofía Margarita Miranda Espinosa refers to the alleged misuse of power in the case of Daniel García Rodríguez.

[23] The brief signed by Emmanuel Medina Zepeda on the Supreme Court's doctrine refers to the measure of mandatory pretrial detention.

[24] The brief signed by Estefanía Vela Barba, Adriana E. Ortega Arriaga, Regina Isabel Mediana Rosales, María Fernanda Torres Montañez, Haydeé Gómez Avilez, Nicole Huete Guevara, Gabriela García Gorbeta and Elsa Ramos Mecott, regarding: a) the legal framework for mandatory pretrial detention, b) an account of its constitutional history, and c) information on pretrial detention in Mexico, from the most up-to-date State sources on the matter.

[25] The brief signed by Camila Brenda Calvo and Carlos Manuel Garrido regarding the alleged violations of due process committed by the state of Mexico against the victims.

[26] The brief signed by Nashieli Ramírez, President of the Human Rights Commission of Mexico City on the alleged non-conformity with the Convention of *arraigo* and mandatory pretrial detention.

[27] The brief signed by Daniel Torres Parra, Jocelynn Pérez Aldana, Daniela Itzel Jiménez Cortes, Jesús Joaquín Sánchez Cedillo, María del Rosario Arrambide González, María Fernanda Cobo Armijo, Mónica Hernández Frayre and Leilani Hernández, on the system of mandatory pretrial detention in Mexico and the alleged non-conformity with the Convention of its imposition, review and change in the context of the case "García Rodríguez and Reyes Alpízar v. Mexico."

[28] The brief signed by Misael de la Rosa García containing arguments that seek to contribute to a settlement in the case of García Rodríguez and Alpízar Ortiz v. Mexico.

[29] The brief signed by Jorge Santiago Aguirre Espinosa on the obligation of the Mexican authorities to exclude evidence obtained under torture, or cruel and inhuman treatment or other acts of coercion in criminal proceedings, in accordance with domestic rules and standards on the matter.

[30] The brief signed by Roberto Borges Zurita, professor at the Universidad Autónoma de Tlaxcala, on: a) the concept of *arraigo* and mandatory pretrial detention in Mexico; b) certain State practices that he believes should be brought to the attention of the Court, and c) the rights that he considers were violated by the state of Mexico *in the Case of Tzompaxtle Tecpile et al. v. Mexico*, with the aim that this document will provide an *a subsequenti* vision of criminal policy in order to prevent the authorities and state agents from committing human rights violations.

annexes to the final written arguments of the representatives, and the Commission stated that it had no observations regarding the annexes to the final written arguments presented by the parties.

14. *Deliberation of the instant case*. The Court began deliberation of this judgment in a virtual session held on January 23, 2023, during the Court's 155th Regular Session.

III
JURISDICTION

15. The Court has jurisdiction to hear this case pursuant to Article 62(3) of the Convention, given that Mexico has been a State Party to the American Convention since March 24, 1981, and accepted the contentious jurisdiction of this Court on December 16, 1998. Furthermore, Mexico ratified the Inter-American Convention to Prevent and Punish Torture (hereinafter "ICPPT") on February 11, 1987, and deposited the instrument of ratification on June 22, 1987.

IV
PRELIMINARY OBJECTIONS

16. In the case *sub judice*, the ***State*** filed five preliminary objections, two of which will be analyzed in this chapter in the following order: a) preliminary objection regarding international *res judicata*, and b) preliminary objection regarding failure to exhaust domestic remedies. The three remaining objections will be analyzed as preliminary considerations (*infra* Chapter V).

A. Preliminary objection regarding international res judicata

A.1. Arguments of the parties and the Commission

17. The ***State*** referred to Opinion 66/2017 of the United Nations Working Group on Arbitrary Detention (hereinafter "WGAD"), adopted on October 16, 2017. It held that the facts and the active and passive subjects of the instant case are the same as those contemplated in that proceeding. It added that, in response to the WGAD's request to take steps to remedy the situation of Daniel García and Reyes Alpízar, on August 23, 2019, they were released following a decision to commute the precautionary measure of pretrial detention to one of restricted release. Based on the foregoing, it argued that the Court should not examine the violations alleged in the instant case, since they were settled by another international mechanism.

18. In response to this preliminary objection, the ***Commission*** and the ***representatives*** argued that the mandates of the WGAD differ from those of the Inter-American System, that the facts and violations covered are dissimilar, and that the nature of the decisions of both organs is different, since the Court's judgments are binding. They also argued that there are various factual and legal aspects raised by the alleged victims that are not included in the WGAD's decision. Furthermore, they indicated that the Merits Report identified several violations of the alleged victims' rights that occurred after the WGAD issued Opinion 66/2017 which, therefore, were not analyzed by that body.

A.2. Considerations of the Court

19. With respect to the preliminary objection regarding international *res judicata*, the Court recalls that Article 47(d) of the American Convention establishes that: "[t]he Commission shall declare inadmissible any petition or communication presented in accordance with Articles 44 or 45 when: […] d) the petition or communication is substantially the same as one previously studied by the Commission or by another international organization." This Court has established that the

expression "substantially the same" means that there should be identity between the cases. In order for this identity to exist, the presence of three elements is required, namely: that the parties are the same, that the object of the action is the same and that the legal grounds are identical.[31]

20. In this case, the State referred to WGAD Opinion 66/2017, adopted on October 16, 2017, and filed this objection considering that said opinion addresses the same facts and matters as those contained in the instant case.

21. In this regard, the Court notes that: a) the United Nations Working Group on Arbitrary Detention and the Inter-American Court are bodies of a different nature, which make decisions of a different nature, especially in the area of reparations for the damage caused by human rights violations; b) the WGAD's opinion does not have the same factual basis as the one in the instant case. Indeed, some facts alleged by the Commission and the representatives occurred after the WGAD's resolution, and several factual and legal arguments presented by the representatives in this case were not analyzed by the WGAD in Opinion 66/2017[32] (*supra* para. 18), and c) the Court makes its decisions based on the treaties of the Inter-American Human Rights System, while the WGAD analyzes the responsibility of States based on instruments of the United Nations Universal System.[33] Therefore, for these reasons, it follows that the rule on international duplication of proceedings established in Article 47(d) of the American Convention was not violated.

22. In view of the foregoing considerations, the Court dismisses this preliminary objection.

B. Failure to exhaust domestic remedies

B.1. Arguments of the parties and the Commission

23. The ***State*** argued that the alleged victims and their representatives did not exhaust domestic remedies because, in this case, the domestic courts have not ruled on the appeal filed against the conviction of May 12, 2022, handed down against Daniel García Rodríguez and Reyes Alpízar Ortiz (*supra* para. 10). It added that, after exhausting this remedy, the alleged victims would still have the remedy of direct *amparo*. It emphasized that this argument referred to the alleged violations of due process in the criminal proceedings and to the alleged acts of torture. It also pointed out that the delay in the criminal case is not attributable to the State, and therefore there is no exception to the exhaustion of domestic remedies for an unwarranted delay in the decision on the aforementioned remedies.

24. In relation to the Inter-American Convention to Prevent and Punish Torture, it argued that this instrument does not establish exceptions to the rule of exhaustion of domestic remedies, as does the American Convention in Article 46, and that the investigation into alleged acts of torture officially concluded on May 21, 2021, that is, on a date subsequent to the filing of the initial petition and the issuance of the Admissibility and Merits Reports. It pointed out that the Commission failed to take into account that the investigation into the torture allegations was still active and that the alleged victims continued to pursue domestic remedies against the shortcomings in the investigation, even after the decision on the admissibility of the petition.

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[31] *Cf. Case of Baena Ricardo et al. v. Panama. Preliminary objections.* Judgment of November 18, 1999, Series C No. 104, para. 53; *Case of J. v. Peru. Preliminary objection, merits, reparations and costs.* Judgment of November 27, 2013, Series C No. 275, para. 30, and *Case of Members and Militants of the Patriotic Union v. Colombia*. Preliminary objections, merits, reparations and costs. Judgment of July 27, 2022. Series C No. 455, para. 119.

[32] The representatives specifically referred to an argument on the political context and the misuse of power (*infra* para. 45).

[33] In the *case of Tzompaxtle Tecpíle et al. v. Mexico,* the State raised a similar objection in which it also alluded to the WGAD recommendations. However, in the processing of the case it withdrew this preliminary objection. *Cf. Tzompaxtle Tecpíle et al. v. Mexico. Preliminary objection, merits, reparations and costs.* Judgment of November 7, 2022. Series C No. 470, para. 30.

25. The ***Commission*** considered that the exception to the exhaustion of domestic remedies contemplated in Article 46(2)(c) of the American Convention regarding the criminal proceedings[34] and the alleged acts of torture is applicable in this case.[35] As for the violation of the right to personal liberty due to the excessive duration of the pretrial detention, it argued that García Rodríguez and Reyes Alpízar filed numerous appeals against the formal order of imprisonment and also requested a diffuse control of conventionality *ex officio* with respect to the actions of the court and prosecutor's office involved, without such remedies proving effective to resolve their situation.

26. The ***representatives*** asked the Court to dismiss the objection regarding the delay in the proceedings, which the State alleged was due to the procedural conduct of the alleged victims. They considered that this is not only contrary to the criteria established by this Court, but also that such an assertion is not consistent with the truth of the matter and is in itself re-victimizing. They added that the remedies allegedly offered by the State have not been substantively effective, since for 17 years they prevented alternatives to imprisonment, impeded the right to a fair trial – with the guarantees of due process and the exclusion of unlawful evidence - and were not effective or timely in the investigation of torture. In turn, they considered it incongruous that the alleged victims should still have to exhaust other remedies, when it has been demonstrated that, over 20 years, the justice system and the multiplicity of remedies have proven ineffective and inadequate. Regarding the alleged failure to exhaust domestic remedies with respect to the IACPPT, they argued that, according to the Court's consistent case law, the analysis of international responsibility for the violation of personal integrity based on Article 5 of the American Convention, is carried out jointly with Articles 1, 6 and 8 of the IACPPT.

B.2. Considerations of the Court

27. Article 46(1)(a) of the American Convention establishes that, in order to determine the admissibility of a petition or communication submitted to the Commission pursuant to Articles 44 or 45 of this instrument, the remedies under domestic law must have been pursued and exhausted in accordance with generally recognized principles of international law.[36] However, this implies that not only must such remedies formally exist, but they must also be adequate and effective, as is clear from the exceptions provided for in Article 46(2) of the Convention.[37] In particular, the Court recalls that Article 46(2)(c) of the Convention states that the provisions on exhaustion of domestic remedies shall not apply when "there has been an unwarranted delay in rendering final judgment under the aforementioned remedies."

28. Regarding the preliminary objection filed by the State, the Court notes that the first instance judgment against the alleged victims was issued on May 12, 2022, that is, almost 20 years after

[34] The Commission explained that, at the time when the petition's admissibility was being considered, fourteen years had elapsed since the alleged victims had been detained, without a final judgment having been handed down to put an end to the criminal proceedings to which they were linked. It added that according to the information provided by the State, the judicial proceeding is still ongoing, with a first instance decision having been issued on May 12, 2022.

[35] It recalled that, in the case of Reyes Alpízar, even though the facts were promptly denounced shortly after his arrest and the Mexican State was aware of these complaints, the corresponding criminal investigation did not begin until five years later. With respect to García Rodríguez, the Commission noted that, from his initial statement, made on the same day he was arrested, the victim reported that he had been threatened in order to make him incriminate himself in exchange for his family members not being placed in *arraigo*. However, the Commission noted that the first investigative actions, particularly the medical assessments, did not take place until 2015.

[36] *Cf. Case of Velásquez Rodríguez v. Honduras. Preliminary objections.* Judgment of June 26, 1987. Series C No. 1, para. 85; *Case of the Teachers of Chañaral and other Municipalities v. Chile. Preliminary objection, merits, reparations and costs.* Judgment of November 10, 2021. Series C No. 443, para. 24, and *Case of Angulo Losada v. Bolivia. Preliminary objections, merits and reparations.* Judgment of November 18, 2022. Series C No. 475, para. 20.

[37] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits.* Judgment of July 29, 1988. Series C No. 4, para. 63, and *Case of Moya Solís v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of June 3, 2021. Series C No. 425, para. 24.

they were deprived of their liberty. According to the State, this judicial decision would not exhaust domestic remedies, since there would still be the possibility of appeal and, after that, an indirect *amparo* proceeding. Similarly, the investigation into the alleged acts of torture was officially concluded on May 21, 2021 (*supra* para. 24). For this Court, it is evident that, since the domestic authorities have taken two decades to reach a decision in the context of the domestic criminal proceedings against the alleged victims in the case, this constitutes an unwarranted delay under the terms of Article 46(2)(c) of the Convention, which authorizes an exception to the exhaustion of remedies established in Article 46(1)(a) of the same instrument. This is all the more so if one considers that, according to the State, there are still remedies to be exhausted, such as the appeal and, subsequently, the indirect *amparo* (*supra* para. 23).

29. Finally, with regard to the State's argument that the IACPPT does not expressly establish exceptions to the requirement to exhaust domestic remedies, this Court recalls that the American Convention is the instrument that regulates the procedure for a contentious case to be analyzed by the Commission and, eventually, for its submission to the Court within the framework of its contentious jurisdiction. For its part, Article 8 of the IACPPT states: "After all the domestic legal procedures of the respective State and the corresponding appeals have been exhausted, the case may be submitted to the international fora whose competence has been recognized by that State." Furthermore, Article 16 of the IACPPT states: "This Convention shall not limit the provisions of the American Convention on Human Rights, other conventions on the subject, or the Statutes of the Inter-American Commission on Human Rights, with respect to the crime of torture." Thus, the Inter-American Court usually analyzes a State's international responsibility for the violation of personal integrity for alleged acts of torture on the basis of Article 5 of the Convention in conjunction with Articles 1, 6 and 8 of the IACPPT. Accordingly, it is reasonable to infer that the regulation of the contentious procedure before the organs of the Inter-American System to examine possible violations of the IACPPT is provided for in the American Convention, which, naturally, includes the provisions on exhaustion of domestic remedies and the exceptions thereto.

30. In view of the foregoing considerations, the Court dismisses this preliminary objection.

V
PRELIMINARY CONSIDERATIONS

31. The ***State*** filed a preliminary objection regarding the "inadmissibility of the alleged violations against dignity and honor." It argued, in particular, that the Inter-American Commission did not consider that the State had violated these rights in its Merits Report, but that the representatives of the alleged victims had invoked said violation in their pleadings and motions brief. It also submitted preliminary objections on the determination of the possible victims, and another regarding the determination of the facts and other alleged violations.

32. The Court notes that, in accordance with its consistent case law, these arguments do not constitute preliminary objections since their analysis cannot result in the inadmissibility of the case. The Court will now refer to these points in the following order: a) arguments of the State on the admissibility of the violations against honor and dignity; b) determination of the possible victims, and c) the new facts related to the political context.

A. Arguments of the State on the admissibility of the violations against honor and dignity (Article 11 of the American Convention)

A.1. Arguments of the parties and the Commission

33. The ***State*** argued that the Court should not proceed with the analysis of the alleged violations of Article 11 of the American Convention against Daniel García Rodríguez and Reyes Alpízar Ortiz, regarding which the Commission had not found evidence of the probable responsibility of the

Mexican State.

34. The ***Commission*** and the ***representatives*** recalled that the representatives have autonomy with respect to the Admissibility and Merits reports to submit arguments on various human rights violations, as long as these are based on the factual framework of the Merits Report. They understood that the facts invoked as violations of Article 11 of the American Convention are included within the factual framework of the case, as set forth in Merits Report No. 13/20.

A.2. Considerations of the Court

35. In relation to the foregoing, the Court recalls its consistent case law according to which the alleged victims and their representatives may invoke the violation of rights other than those included in the Merits Report, as long as they remain within the factual framework defined by the Commission.[38] In the instant case, the said framework includes facts that support the alleged violations of the right to honor and dignity, contained in Article 11 of the American Convention, to the detriment of the alleged victims; consequently, the State's argument is inadmissible.[39]

B. Determination of possible victims

B.1. Arguments of the parties and the Commission

36. The ***State*** asked the Court not to proceed with the analysis of the violations alleged by the representatives, to the detriment of the persons that the Commission did not identify as victims of the case in the Merits Report. It referred in particular to the examination of possible violations of the right to personal integrity and to honor and dignity of the next of kin of the alleged victims, and of possible violations of the rights to personal liberty, judicial guarantees and judicial protection of Isaías García Godínez, Martín Moreno Rodríguez and Elvia Moreno Rodríguez.

37. The ***representatives*** indicated that the exclusion of these victims was due to a material error on the part of the Commission; they considered that, in this case, the requirements for them to be considered as victims were met. They also requested that the Court review the Commission's decisions regarding the alleged victims in the case. In addition, they noted that the exclusion of alleged victims in the Merits Report does not prevent them from being considered as such in the proceedings before the Court. Furthermore, they mentioned the possibility of recognition of other alleged victims *motu proprio* by the Mexican State, which could occur as a result of the various meetings of dialogue and rapprochement between the representatives and the State, with the aim of reaching agreements related to the substantiation of the case. The ***Commission*** did not present any arguments on this point.

B.2. Considerations of the Court

38. In the instant case, the Court notes that the Commission identified Daniel García Rodríguez and Reyes Alpízar Ortiz as the alleged victims in its Merits Report. For their part, the representatives argued that the next of kin of Daniel García Rodríguez and Reyes Alpízar Ortiz as well as Isaías García Godínez, Martín Moreno Rodríguez and Elvia Moreno Rodríguez would also be victims in the case.

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[38] *Cf. Case of the Pacheco Tineo Family v. Bolivia. Preliminary objections, merits, reparations and costs.* Judgment of November 25, 2013. Series C No. 272, para. 22, and *Case of Moya Solís v. Peru*, *supra*, para. 32.

[39] In particular, the Commission mentioned that the alleged victims were presented to public opinion as being "responsible for the homicide of the mayor," and that this information was published in: a) the press releases issued by the PGJEM, b) extracts of news articles published in the national press, and c) in a government report during the investigation and processing of the criminal proceedings against them in which they were referred to by the Public Prosecution Service (*infra* para. 259).

39. Regarding the identification of the alleged victims, the Court recalls that Article 35(1) of the Court's Rules of Procedure establishes that the case shall be presented to it through the submission of the Merits Report, which must identify the alleged victims. In this regard, it is incumbent upon the Commission to identify precisely, and at the proper procedural opportunity, all the alleged victims in a case before the Court,[40] except in the circumstances contemplated in Article 35(2) of the Court's Rules of Procedure, namely, when it has not been possible to identify one or more alleged victims in cases involving massive or collective violations, in which case the Court will decide whether to consider those individuals as victims, in accordance with the nature of the violation.[41]

40. It is clear to this Court that the facts of this case do not fall within any of the hypotheses established in Article 35(2) of the Rules of Procedure. Moreover, it is on record that, in the course of the admissibility proceedings, all the alleged victims that the representatives seek to add in their pleadings and motions brief were identified.[42]

41. On the other hand, the representatives alleged that the next of kin of Daniel García Rodríguez and Reyes Alpízar Ortiz, that is, Isaías García Godínez, Martín Moreno Rodríguez and Elvia Moreno Rodríguez, were not included in the Merits Report by the Commission due to a material error.

42. In the case *sub judice*, the admissibility report establishes the following in relation to the next of kin of Daniel García Rodríguez and Reyes Alpízar Ortiz, namely, Isaías García Godínez, Martín Moreno Rodríguez and Elvia Moreno Rodríguez:

> As to the requirement of exhaustion of remedies concerning the purported violations against the other alleged victims, the Commission notes that the information filed by the petitioners is general and insufficient to analyze the fulfilment of the instant requirement" (…) Decision. (…) 3. To find the instant petition inadmissible in relation to the pleadings concerning the other alleged victims.

43. Based on the foregoing, there is no possible argument regarding the fact that the Commission justified the non-inclusion of these persons as alleged victims and that, therefore, this was not the result of a material error but, on the contrary, of considerations of the failure to exhaust domestic remedies. For the aforementioned reasons, it is not appropriate to add the next of kin of Daniel García Rodríguez and Reyes Alpízar Ortiz to the alleged victims in the case identified by the Commission in the Merits Report. Consequently, the Court will not analyze the alleged violations against the next of kin of Daniel García Rodríguez and Reyes Alpízar Ortiz, namely Isaías García Godínez, Martín Moreno Rodríguez and Elvia Moreno Rodríguez, since they were not identified as victims by the Commission at the proper procedural moment, and their situation does not fall within any of the exceptions provided for in Article 35(2) of the Rules of Procedure.

C. New facts related to the political context

C.1. Arguments of the parties and the Commission

44. The ***State*** argued that the representatives included new facts in their pleadings and motions

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[40] *Cf. Case of the Ituango Massacres v. Colombia. Preliminary objection, merits, reparations and costs*. Judgment of July 1, 2006. Series C No. 148, para. 98; *Case of Favela Nova Brasilia v. Brazil*. *Preliminary objections, merits, reparations and costs.* Judgment of February 16, 2017. Series C No. 333, para. 36, and *Case of the Maya Kaqchikel Indigenous Peoples of Sumpango et al. v. Guatemala*. Merits, reparations and costs. Judgment of October 6, 2021. Series C No. 440, para. 22.

[41] *Cf. Case of the Río Negro Massacres v Guatemala. Preliminary objection, merits, reparations and costs*. Judgment of September 4, 2012. Series C No. 250, para. 48; *Case of Favela Nova Brasilia v. Brazil. Preliminary objections, merits, reparations and costs, supra,* para. 36, and *Case of Barbosa de Souza et al. v. Brazil. Preliminary objections, merits, reparations and costs.* Judgment of September 7, 2021. Series C No. 435, para. 38.

[42] *Cf.* Inter-American Commission, Admissibility Report No. 68/17, para. 23 and third operative paragraph (*supra* para. 2. b.).

brief, with respect to the context already outlined and identified by the Commission in the Merits Report, which are outside of the factual framework of the case *sub judice*, and which they seek to include in order to allege supposed new autonomous violations against the alleged victims. Thus, the Mexican State argued that the alleged political context described by the representatives constitutes a new fact, which is outside of the factual framework established by the Commission.

45. For their part, the ***representatives*** stressed the importance that the Court, when analyzing the merits of the alleged violations, should take into account the general and historical context of the facts, in conjunction with the systematic conduct of the ministerial and judicial authorities of the State of Mexico in consummating and perpetuating the alleged human rights violations against Daniel García Rodríguez and Reyes Alpízar Ortiz and their respective families. The ***Commission*** did not comment on this argument.

C.2. Considerations of the Court

46. With regard to this argument, it should be recalled that the Court has established that the factual framework of a case is constituted by the facts contained in the Merits Report, which were submitted to the consideration of the Court. Therefore, it is not admissible to allege new facts other than those set forth in said brief, without prejudice to presenting facts that may explain, clarify or dismiss those mentioned in the Merits Report, or respond to the claims of the Commission (also called "supplementary facts"). The exception to this principle are those facts characterized as supervening, which may be submitted before the Court at any procedural stage prior to the issuance of the judgment.[43]

47. In the instant case, the Court notes that the factual framework of the case established by the Commission does not refer to a political context. The only contextual references made by the Commission in said report are those related to the application of *arraigo* and mandatory pretrial detention. Accordingly, the Court will not include new facts related to the political context presented by the representatives in the factual basis of the case.

VI
EVIDENCE

48. The Court admits the documents submitted at the proper procedural opportunity by the parties and the Commission (Article 57 of the Rules of Procedure), whose admissibility was neither disputed nor challenged and whose authenticity was not questioned.[44] Likewise, the Court finds it pertinent to admit the statements made during the public hearing[45] and by affidavit,[46] insofar as they are in keeping with the purpose defined by the President in the orders requiring them and the purpose of this case.[47] The Court also admits the documents submitted by the representatives

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[43] *Cf. Case of Vera Vera et al. v. Ecuador. Preliminary objection, merits, reparations and costs.* Judgment of May 19, 2011. Series C No. 226, para. 32; *Case of Vera Rojas et al. v. Chile. Preliminary objections, merits, reparations and costs.* Judgment of October 1, 2021. Series C No. 439, para. 38, and *Case of Casierra Quiñonez et al. v. Ecuador. Preliminary objection, merits, reparations and costs.* Judgment of May 11, 2022. Series C No. 450, para. 40.

[44] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits, supra*, para. 140, and *Case of Tzompaxtle Tecpíle et al. v. Mexico*, *supra*, para. 31.

[45] The Court received the statements of Daniel García Rodríguez, José Ramón Cossío Díaz and Rogelio Arturo Bárcena Zubieta.

[46] The Court received the statements provided by affidavit of: Jorge Ulises Carmona Tinoco, José Alberto Buendía Valverde, Norma Elvira Trejos, Denisse Aribel Pérez, Guillermina Trinidad Olivarez, Laura García Rodríguez, María Magdalena Pérez, Reyes Alpízar and Víctor Rodríguez.

[47] The purposes of the statements are established in the Orders of the President of the Court of July 6, 2022 and July 27, 2022 (*supra* para. 11).

together with their final written arguments and the receipts related to the litigation of this case before this Court, insofar as they refer to costs and expenses.[48] Furthermore, the Court admits the supervening evidence submitted by the State together with its final written arguments.[49] Finally, the Court admits the supervening evidence submitted by the representatives in relation to the first instance conviction of May 12, 2022 against the alleged victims.[50]

VII
FACTS

49. In this chapter, the Court will establish the facts that will be considered proven in this case, in accordance with the body of evidence that has been admitted and the factual framework established in the Merits Report. It will also include facts presented by the parties that explain, clarify or reject said factual framework. These will be presented in the following order: a) the relevant regulatory framework; b) regarding Daniel García Rodríguez and Reyes Alpízar Ortiz; c) arrest, *arraigo* and formal order of imprisonment against Daniel García Rodríguez; d) arrest, *arraigo* and formal order of imprisonment against Reyes Alpízar Ortiz; e) criminal proceedings and pretrial detention of Daniel García Rodríguez and Reyes Alpízar Ortiz, and f) alleged acts of torture suffered by Reyes Alpízar Ortiz and Daniel García Rodríguez.

A. Relevant regulatory framework

50. The instant case analyzes two concepts provided for in Mexican law: *arraigo* and preventive or pretrial detention.

51. The concept of *arraigo* was contemplated in the 2000 Code of Criminal Procedure for the state of Mexico. This concept was normatively modified and, as of 2008, was incorporated into the Mexican Constitution (*infra* para. 54).

52. At the time when the facts of this case took place, in 2002, the concept of preventive detention was regulated in the Mexican Constitution and the 2000 Code of Criminal Procedure for

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[48] They submitted the following documents: 1) copies of accommodation vouchers, 2) copies of receipts for the purchase of airline tickets, 3) copies of receipts for land transportation (taxis), and 4) copies of receipts for food expenses (evidence file, folios 70359 et seq.).

[49] The following documents were submitted: 1) medical certificates of Daniel García Rodríguez; 2) receipts for electricity services and drinking water of the Tlalnepantla Penitentiary and Social Reinsertion Center; 3) breakdown of budget items of the Tlalnepantla Penitentiary and Social Reinsertion Center (2017-2022); 4) service contract with a private company in charge of providing food to persons deprived of liberty in prisons of the state of Mexico; 5) photographs of food preparation inside the Tlalnepantla Penitentiary and Social Reinsertion Center; 6) photographs of the installation and supply of drinking water to the Tlalnepantla Penitentiary and Social Reinsertion Center; 7) photographs of delivery of toiletries, tennis shoes and blankets to persons deprived of liberty in the Tlalnepantla Penitentiary and Social Reinsertion Center; 8) Cooperation Agreement for available Specialty and Emergency Medical and Surgical Care, signed by the General Directorate of Prevention and Social Reinsertion with the Institute of Health of the State of Mexico; 9) leaflet listing permitted and prohibited objects, articles and food for entry to prisons in the State of Mexico; 10) photographs of social gatherings for "dropout prevention" purposes, Tlalnepantla Penitentiary and Social Reinsertion Center for persons deprived of liberty; 12) report of the social work department of the of the Tlalnepantla Penitentiary and Social Reinsertion Center regarding family and conjugal visits to Mr. Daniel García Rodríguez; 13) report of the psychology department of the Tlalnepantla Penitentiary and Social Reinsertion Center regarding his refusal to participate in the activities of said department; 14) photographs and statistical report regarding self-employment and unpaid activities at the Tlalnepantla Penitentiary and Social Reinsertion Center; 15) statistical report on the Change of Precautionary Measure issued by FECOR. (2018-2022); 16) shorthand version of the Regular Public Session of the Plenary of the Supreme Court of Justice of the Nation (hereinafter SCJN), held on Monday, September 5, 2022; 17) shorthand version of the Regular Public Session of the Plenary of the SCJN, held on Tuesday, September 6, 2022; 18) shorthand version of the Regular Public Session of the Plenary of the SCJN, held on Thursday, September 8, 2022; 19) amendments to Article 19 of the Constitution regarding mandatory pretrial detention, and 20) amendments to Article 20 of the Constitution regarding mandatory pretrial detention (evidence file, folios 71351 *et seq*.).

[50] *Cf.* Judgment of May 12, 2022 (evidence file, folios 70367 et seq.).

the state of Mexico. Subsequently, in 2009, it was modified in the Code of Criminal Procedure. In 2008, the concept of mandatory pretrial detention was incorporated into the Mexican Constitution. The following paragraphs contain a transcript of the domestic laws referred to above.

A.1. The concept of arraigo

a) The rules in force at the time when the facts of the present case occurred:

53. Article 154 of the 2000 Code of Criminal Procedure for the state of Mexico established that:

> When in the course of a preliminary investigation the Public Prosecutor's Office deems it necessary to place the accused in preventive detention or prohibit him from leaving a geographical area without the authorization of the judicial authority, taking into account the characteristics of the act charged and the personal circumstances of the accused, it shall refer the matter to the court, stating the grounds and reasons for its request, so that it may immediately rule on the appropriateness of the *arraigo* or detention, with supervision of the authority exercised by the Public Prosecutor's Office and its assistants. The accused shall be notified immediately of the *arraigo* or detention order, which shall be extended for the time strictly necessary for the proper conduct of the investigation in question, but shall not exceed thirty days, which may be extended for another thirty days, at the request of the Public Prosecutor's Office.
>
> The judge will decide, after hearing the Public Prosecutor's Office and the affected party, on the continuation or lifting of the *arraigo* or detention.

b) Rules amended or adopted after the time when the facts of the instant case occurred:

54. Article 16 of the Mexican Constitution was amended in 2008 and subsequently in 2019. Its current wording is as follows:

> […] The judicial authority, at the request of the Public Prosecutor's Office and in the case of organized crime offenses, may decree the *arraigo* of a person, with the conditions of place and time specified by law, without exceeding forty days, provided that it is necessary for the success of the investigation, the protection of persons or legal assets, or when there is a well-founded risk that the accused will evade the action of justice. This term may be extended, provided that the Public Prosecutor's Office proves that the causes that gave rise to it still exist. In any case, the total duration of the *arraigo* may not exceed eighty days. […]

A.2. The concept of preventive detention

55. The Mexican Constitution in force at the time of the facts of this case established that:

> Article 19. No detention before a judicial authority may exceed a period of seventy-two hours, from the time that the accused is placed at its disposal, without it being justified by a formal arrest warrant which shall state: the crime with which the accused is charged; the place, time and circumstances of execution, as well as the information provided by the preliminary investigation, which must be sufficient to prove the *corpus delicti* and the probable responsibility of the accused […]

56. Article 19 of the Mexican Constitution was reformed in 2008 with the following wording:

> No detention before a judicial authority may exceed a period of seventy-two hours from the time the accused is placed at its disposal, unless it is justified by an order of committal, which shall state: the offence with which the accused is charged; the place, time and circumstances of execution, as well as the information establishing that an act designated as an offense by law has been committed and that there is a probability that the accused committed it or participated in its commission.
>
> The Public Prosecution Service may request preventive detention from the judge only when other precautionary measures are not sufficient to guarantee the presence of the accused at trial, the development of the investigation, the protection of the victim, witnesses or the

community, as well as when the accused is being prosecuted or has been previously sentenced for the commission of an intentional crime. The judge will also order preventive detention, *ex officio*, in the following cases: organized crime; deceitful homicide; rape; kidnap; trafficking of persons; crimes committed using firearms, explosives or other violent instruments; and serious crimes against national security, the free development of the personality and public health. […]

57. Article 19 was reformed once again in 2019 and currently states the following:

> No detention before a judicial authority may exceed a period of seventy-two hours from the time the accused is placed at its disposal, unless it is justified by an order of committal, which shall state: the offence with which the accused is charged; the place, time and circumstances of execution, as well as the information establishing that an act designated as an offense by law has been committed and that there is a probability that the accused committed it or participated in its commission.
>
> The Public Prosecutor's Office may only request that the judge order preventive prison when other precautionary measures are not sufficient to guarantee the presence of the accused at trial, the development of the investigation, the protection of the victim, witnesses or the community, as well as when the accused is being prosecuted or has been previously sentenced for the commission of an intentional crime. The judge will order mandatory preventive detention in cases of abuse or sexual violence against minors, organized crime, intentional homicide, femicide, rape, kidnapping, human trafficking, housebreaking, use of social programs for electoral purposes, corruption and crimes of illicit enrichment and abusive exercise of functions, theft of cargo transportation in any of its forms, crimes involving hydrocarbons, oil, petroleum or petrochemicals, crimes committed by violent means such as weapons and explosives, crimes involving firearms and explosives for the exclusive use of the Army, the Navy and the Air Force, as well as serious crimes determined by law against national security, the free development of the personality, and health. […]

58. In addition, Article 20. IX of the Mexican Constitution establishes since its reform in 2008, that:

> [p]reventive detention cannot exceed the time stipulated by law as the maximum punishment for the crime in question. In no case, shall preventive prison exceed the term of two years, unless its extension is due to the exercise of the defendant's right to prepare his defense. If upon expiration of this term a sentence has not been delivered, the defendant will be released immediately while the trial continues, without prejudice to the imposition of other precautionary measures.

59. Article 319 of the 2000 Code of Criminal Procedure for the state of Mexico established that:

> From the moment the accused is placed at the disposal of the jurisdictional body, he shall have the right to be provisionally released on bail immediately upon request, if the following requirements are met […]
>
> IV. That the offense in question is not one of the crimes defined as serious under criminal law.

60. Similarly, Article 146 of the 2000 Criminal Procedure Code for the state of Mexico established that:

> During the preliminary investigation, the Public Prosecutor's Office shall grant the accused immediately, upon request, his provisional release on bail, provided that the offenses in question are not serious crimes for which the law expressly prohibits the granting of this benefit; this benefit may also be denied when the accused has been previously convicted of a crime classified by law as serious or when there is reliable information to establish that the release of the accused represents a risk to the offended party or to society, due to his previous conduct, or to the circumstances or characteristics of the crime committed. The amount and form of the bail shall be set in accordance with the provisions of Article 319 of this Code.

61. In addition, Article 9 of the Criminal Code for the state of Mexico of March 20, 2000 established that:

For all legal purposes, the crimes classified as serious are: (…); organized crime, established in Article 178; (…) homicide, contained in Article 241; kidnapping, indicated by Article 259; (…) and those provided for in special laws when the maximum penalty exceeds ten years imprisonment.

62. Article 194 of the Code of Criminal Procedure of the state of Mexico in force at the time of the events, and which was amended in 2009, establishes that:

> Application of Preventive Detention
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> Article 194. Preventive detention is applicable in the following cases:
>
> A. *Ex officio*:
>
> I. In the case of the crimes of intentional homicide, rape and kidnapping, and the attempted commission of said crimes;
>
> II. Crimes committed by violent means, provided that serious harm is caused to the physical integrity of persons, as well as those committed with weapons, explosives or others that by their nature may cause danger; and
>
> III. In the following crimes against the free development of the personality provided for in the State Criminal Code:
>
> a) Article 204, Sections I, II, III;
>
> b) Pornography of minors and disabled persons contained in Article 206, Sections I, II and IV; and
>
> c) Trafficking of persons.
>
> IV. Those classified as serious in the General Laws.
>
> B. At the justified request of the Public Prosecutor's Office in the remaining crimes, when other precautionary measures are not sufficient to guarantee:
>
> I. The appearance of the accused at trial;
>
> II. The development of the investigation;
>
> III. The protection of the victim, witnesses or the community; or,
>
> IV. When the accused is being prosecuted or has been previously sentenced for the commission of an intentional crime.

A.3. Rules relating to the arrest of a person

63. Article 16 of the Mexican Constitution in force at the time of the arrest of the alleged victims established that:

> The authority that executes an arrest warrant shall place the accused at the disposal of the judge, without delay and under his strictest responsibility. Contravention of the foregoing shall be punishable under criminal law. […] In cases of *flagrante delicto*, any person may detain the suspect, placing him immediately at the disposal of the nearest authority and the latter, with the same promptness, shall bring him before the Public Prosecutor's Office.

64. Article 147 of the 2000 Criminal Procedure Code for the state of Mexico established that:

> [w]hen the requirements established in the Constitution of the United Mexican States are met, the court shall immediately issue the arrest warrant requested by the Public Prosecutor's Office against the accused." In addition, Article 142 of the Code refers to *flagrante delicto* in the following terms: "*Flagrante delicto* exists when the person is detained at the moment of committing the offense, or when the suspect is pursued substantively, uninterruptedly and immediately after committing it. […] *Flagrante delicto* is considered to exist when the person is identified as responsible by the victim, an eyewitness of the facts, or by whoever participated with him in the commission of the offense; or when the object, instrument or product of the crime is found in his possession; or when there are signs or indicia that lead to a well-founded presumption of his participation in the crime; provided that it may constitute a serious crime, and that a period of seventy-two hours has not elapsed from the time of the commission of the probable offense.

65. Article 143 of the 2000 Code of Criminal Procedure for the state of Mexico established that:

The Public Prosecutor's Office will order an arrest in an urgent case, in writing, stating the grounds and presenting the evidence that meets the requirements mentioned in the preceding paragraphs. In this case, the Public Prosecutor's Office must have proven the *corpus delicti* and the probable responsibility of the accused.

B. Regarding Daniel García Rodríguez and Reyes Alpízar Ortiz

66. It is an undisputed fact that Daniel García Rodríguez and Reyes Alpízar Ortiz are of Mexican nationality and lived in the municipality of Atizapán de Zaragoza, Mexico City, at the time of their arrest. At the time of the events, Daniel García was a businessman, engaged in business activities "such as restaurants", "raising cattle on a ranch and a farm "[51] and Reyes Alpízar worked as a union representative.[52]

C. Arrest, arraigo and order of imprisonment against Daniel García Rodríguez

67. On September 5, 2001, the mayor of the municipality of Atizapán de Zaragoza, María de los Ángeles Tamés Pérez, was murdered in the street.[53] The Office of the Attorney General of the state of Mexico (hereinafter also "PGJEM"[54]) identified Daniel García Rodríguez and Reyes Alpízar Ortiz, among others, as responsible for the murder.

68. On February 25, 2002, Daniel García was taken by the PGJEM's investigative police to make a statement before the Public Prosecutor's Office. That same day, the Public Prosecutor's Office asked the Duty Criminal Judge in Tlalnepantla to place him in *arraigo* (under preventive detention) at the "Hotel Hacienda" for 30 days.[55] The order was issued that day by the Fifth Criminal Judge without the appearance of the suspect.[56] At 7:30 p.m., Daniel García was taken to the PGJEM and a forensic doctor from the PGJEM was appointed to examine "his psychological and physical state and injuries."[57]

69. On March 22, 2002, the Public Prosecutor's Office requested a 30-day extension of the *arraigo,*[58] which was granted on March 26, 2002 by the Fifth Criminal Judge.[59]

70. On April 8, 2002, the Public Prosecutor's Office asked the judge to issue a detention order against Daniel García for a series of crimes, including aggravated homicide, extortion, fraud and

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51 *Cf.* Statement of Daniel García Rodríguez at the public hearing in this case, on July 26, 2022.

52 *Cf.* Affidavit of Reyes Alpízar Ortiz (merits file, folio 993).

53 *Cf.* Arrest warrant. Fifth Criminal Judge of First Instance of the Judicial District of Tlalnepantla, state of Mexico, April 8, 2002, "Arrest warrant Daniel García" (evidence file, folios 10 to 378).

54 That institution is now called the Attorney General's Office of the state of Mexico. It was created on January 10, 2020 and replaced the Attorney General's Office of the Federal District.

55 *Cf.* Government of the state of Mexico. Attorney General's Office. Motion for *Arraigo* (Daniel García), Tlalnepantla, February 25, 2002 (evidence file, folios 602 to 616).

56 *Cf.* Order of *Arraigo*. Tlalnepantla, Mexico, February 25, 2002 (evidence file, folio 618 to 636).

57 *Cf.* Government of the state of Mexico. Attorney General's Office. Agreement, Tlalnepantla, February 25, 2002, folio 019446. The medical certificate states that the examination was performed at 7:55 p.m., and found that he was "without external injuries at the time of his presentation (evidence file, folio 638), Government of the State of Mexico. Attorney General's Office. General Directorate of Expert Services. Forensic Medical Service. Medical Certificate. Tlalnepantla de Baz Mexico, February 25, 2002, 7:55 p.m. (evidence file, folio 640).

58 *Cf.* Government of the state of Mexico. Attorney General's Office. Official letter 213/300002/176/02. Request for extension of Arraigo (evidence file, folios 642 to 653).

59 *Cf.* Order for Extension of Arraigo. Tlalnepantla, Mexico, March 26, 2002 ("Extension of Arraigo, Daniel García") (evidence file, folios 655 to 689).

organized crime.[60] This request was granted by the Fifth Criminal Judge, based on the written information provided by the Public Prosecutor's Office, from which he extracted certain indications of the probable responsibility of Daniel García.[61] On April 10, 2002, the order was notified to the Public Prosecutor's Office[62] and was executed by transferring Daniel García to a Preventive and Social Re-adaptation Center.[63]

71. On April 11, 2002, Daniel García was presented for the first time before the Fifth Criminal Judge make a preliminary statement.[64] The judge informed him that he was "not entitled to obtain provisional release on bail, since the crime for which [he] is being detained […] is classified as serious by the Criminal Code in force."[65] A defense attorney was appointed and he was informed of the reasons for his arrest and the crimes of which he was accused.[66] That day, Daniel García stated that, when his *arraigo* was ordered, and during its application, he was not informed of the crimes for which he was being investigated, nor did he have a lawyer when he made a statement before the Public Prosecutor's Office. He also denounced that he had been arrested by deception, detained by force and under threat, both by agents of the judicial police and by the Deputy Prosecutor R.F., who allegedly conditioned his release to the signing of prefabricated statements that incriminated a Senator and the Municipal President. He indicated that when he refused to sign these documents, he was threatened and told that he and his family would be accused. He also stated that his wife received calls to convince him to sign so that his daughters would not have "physical problems." His defense attorney challenged the legality of the deprivation of liberty.[67]

72. On April 11, 2002, the Public Prosecutor's Office requested certification of physical injuries and the private defense attorney requested an examination to confirm psychological violence. Both requests were denied by the Fifth Criminal Judge, who did not consider them to be relevant evidence and instead ordered that the medical certificate of admission to the prison be sent. The defense requested that the Deputy Prosecutor be summoned to testify, but the Fifth Criminal Judge refused to admit such evidence because there was no proof "that would confirm […] the assertions made by the accused," and stated that "the investigative actions are covered by the prerogative of having been carried out by a public authority," and therefore they "are reliable unless there is evidence to the contrary."[68]

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60 *Cf.* Arrest warrant. Fifth Criminal Judge of First Instance of the Judicial District Tlalnepantla, state of Mexico, April 8, 2002, "Arrest warrant for Daniel García" (evidence file folios 11 to 378).

61 *Cf.* Notification of arrest warrant, Daniel García (evidence file, folio 691 to 693); Arrest Warrant. Fifth Criminal Court of First Instance of the Judicial District of Tlalnepantla, state of Mexico, April 10, 2002 (evidence file, folio 6995), and Admission Card to the Preventive and Social Readaptation Center, Tlalnepantla, Mexico. April 10, 2002 (evidence file, folio 697).

62 *Cf.* Arrest warrant, Daniel García (evidence file, folios 10 to 378); Notification of arrest warrant. Fifth Criminal Court of First Instance of the Judicial District of Tlalnepantla, state of Mexico, April 10, 2002. Official letter No: 530 ("Notification of Arrest Warrant Daniel García") (evidence file 691 to 693).

63 *Cf.* Notification of arrest warrant Daniel García, (evidence file, folio 691 to 693); Notification of detention. Fifth Criminal Court of First Instance of the Judicial District of Tlalnepantla, state of Mexico, April 10, 2002 , (evidence file, folio 695), and Admission Card to the Preventive and Social Readaptation Center, Tlalnepantla, Mexico. April 10, 2002. (evidence file, folio 697).

64 *Cf.* First hearing and preliminary statement of Daniel García, April 11, 2002 (evidence file folios 583 to 601).

65 *Cf.* Preliminary statement of Daniel García Rodríguez. Fifth Criminal Court of First Instance of the Judicial District of Tlalnepantla, state of Mexico, April 11, 2002 (evidence file folios 583 to 601).

66 *Cf.* Preliminary statement of Daniel García Rodríguez. Fifth Criminal Court of First Instance of the Judicial District of Tlalnepantla, state of Mexico, April 11, 2002 (evidence file folios 583 to 601).

67 *Cf.* Preliminary statement of Daniel García Rodríguez. Fifth Criminal Court of First Instance of the Judicial District of Tlalnepantla, state of Mexico, April 11, 2002 (evidence file folios 583 to 601).

68 *Cf.* Preliminary statement of Daniel García Rodríguez. Fifth Criminal Court of First Instance of the Judicial District of Tlalnepantla, state of Mexico, April 11, 2002 (evidence file folios 583 to 601).

73. On April 16, 2002, the Fifth Criminal Judge issued a formal order of imprisonment against Daniel García Rodríguez for the crimes of extortion, fraud, organized crime and aggravated homicide.[69] His defense filed an appeal, which was admitted without suspensive effects. On August 27, 2002, the appellate court confirmed all aspects of the first instance ruling.[70] After that, the defense filed an indirect *amparo* action, which was rejected on May 31, 2006.[71]

D. Arrest, arraigo and order of imprisonment against Reyes Alpízar Ortiz

74. Reyes Alpízar Ortiz was arrested by agents of the PGJEM's Special Operations Group on October 25, 2002.[72] According to his statement, he was arrested in the street,[73] in a violent manner.[74] However, according to the PGJEM's version, witnesses had identified him as the person responsible for the murder of the mayor, so he was arrested in the street after being asked for his identification and trying to flee.[75] According to this version, at the time of his arrest, Reyes Alpízar indicated that he knew this would happen because he "had participated in the murder of a mayor." The PGJEM agents added that "when he was placed in the vehicle to be taken to the Deputy District Attorney's Office in Tlalnepantla" he had offered them a house and money in exchange for "letting him go free."[76] Consequently, they pointed out that he had been "arrested in *flagrante delicto* for the crime of bribery." That same day, the Public Prosecutor's Office ordered his "legal, formal and material detention […] so that his legal situation could be resolved within the legal term."[77] At 11:50 pm. on October 25, 2002, in the presence of a public defender, Reyes Alpízar made a statement before the Public Prosecutor's Office indicating that he had witnessed the crime and involving Daniel García and his brother in the planning and payment of the perpetrator. Reyes

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69 *Cf.* Information contained in: Second Criminal Collegiate Court of Tlalnepantla, Superior Court of Justice of the state of Mexico. Ruling in indirect *amparo* proceeding 1192/2005-E. Tlalnepantla de Baz, state of Mexico, May 23, 2007(evidence file, folios 710-825).

70 *Cf.* Information contained in: Second Criminal Collegiate Court of Tlalnepantla, Tribunal Superior of Justice of the State of Mexico. Ruling Indirect *amparo* proceeding 1192/2005-E. Tlalnepantla de Baz, state of Mexico, May 23, 2007 (evidence file, folios 710-825).

71 *Cf.* Information contained in: Second Criminal Collegiate Court of Tlalnepantla, Superior Court of Justice of the state of Mexico. Ruling in indirect *amparo* proceeding 1192/2005-E. Tlalnepantla de Baz, state of Mexico, May 23, 2007(evidence file, folios 710-825).

72 *Cf.* Government of the state of Mexico, Attorney General's Office. Special Operations Group. File ATI/II/3672/01. Matter: Person remanded in custody. Tlalnepantla de Baz, October 25, 2002 (evidence file, folios 826-827), and Government of the state of Mexico. Attorney General's Office. Certificate of ratification of remand order. Tlalnepantla de Baz, October 25, 2002 (evidence file, folios 828 to 831).

73 *Cf.* Order, hearing of preliminary statement, November 28, 2002, Fifth Criminal Judge of First Instance of the Judicial District of Tlalnepantla (evidence file, folios 832-844).

74 *Cf.* Statement of Reyes Alpízar Ortiz, dated November 28, 2002, written and signed by hand (evidence file, folios 845 to 848), and file CODHEM/NJ/5088/2002-3, Human Rights Commission of the state of Mexico, Third General Investigative Unit (evidence file, folios 849 to 911).

75 *Cf.* Government of the state of Mexico Attorney General's Office. Special Operations Group. File ATI/II/3672/01. Matter: person remanded in custody. Tlalnepantla de Baz, October 25, 2002 (evidence file, folios 826), and Government of the state of Mexico. Attorney General's Office. Certificate of ratification of remand order. Tlalnepantla de Baz, October 25, 2002 (evidence file, folios 828 to 831).

76 *Cf.* Government of the state of Mexico Attorney General's Office. Special Operations Group. File ATI/II/3672/01. Matter: person remanded in custody. Tlalnepantla de Baz October 25, 2002 (evidence file, folios 826-827), and Government of the state of Mexico. Attorney General's Office. Certificate of ratification of remand order. Tlalnepantla de Baz, October 25, 2002 (evidence file, folios 828 to 831).

77 *Cf.* Government of the state of Mexico. Attorney General's Office. Agreement on detention of Reyes Alpízar Ortiz. Tlalnepantla, state of Mexico, October 25, 2002 (evidence file, folios 912 to 915), and Government of the state of Mexico. Attorney General's Office. Admission form of Reyes Alpízar. Tlalnepantla, State of Mexico, October 25, 2002 (evidence file, folios 916 to 917).

Alpízar expanded his statement on October 28, 2002 at 4:00 p.m.[78]

75. The *arraigo* of Reyes Alpízar was authorized by the Seventh Criminal Judge of First Instance of Tlalnepantla ("Seventh Criminal Judge") on October 28, 2002.[79] That same day, at 11:00 p.m., the Public Prosecutor's Office agreed to release him for the offense of organized crime due to lack of evidence.[80] He was notified of this decision at 11:12 p.m. on October 28, 2002, in the presence of the public defender, where he was orally informed that he was being released for bribery and organized crime, but that he was under *arraigo* (detention) for the murder of the mayor.[81] Reyes Alpízar expanded his statements on October 31 and November 6, 2002.[82]

76. On November 25, 2002, after the public prosecutor brought a criminal action against Reyes Alpízar, the PGJEM asked the First Instance Criminal Judge to issue an arrest warrant against him for the offenses of bribery, organized crime and aggravated homicide.[83] On November 27, 2002, the Fifth Criminal Judge of First Instance of Tlalnepantla Judicial District, issued an arrest warrant against him, due to his probable involvement in the commission of the aforementioned crimes.[84]

77. On November 28, 2002, Reyes Alpízar made a preliminary statement before the Fifth Criminal Judge.[85] A defense attorney was then appointed for him. Reyes Alpízar expressly stated that he did not accept the facts or the statements made during the preliminary investigation, and denounced that was subjected to mistreatment in order to obtain his confession.[86] On November 30, 2002, the judge issued a formal order of imprisonment for the crimes of aggravated homicide, bribery and organized crime. This order was appealed and the appeal was partially upheld on December 17, 2003, modifying the imprisonment order, granting him release for organized crime but maintaining his imprisonment for the crimes of aggravated homicide and bribery.[87]

E. Criminal proceedings and preventive detention of Daniel García Rodríguez and Reyes Alpízar Ortiz

78. Daniel García Rodríguez and Reyes Alpízar Ortiz were deprived of their liberty throughout the criminal proceedings, from the time the *arraigo* measures were decreed in 2002 until August 23, 2019, when they were released and subjected to the tracking and tracing system.

79. On May 12, 2022, the Criminal Court of the Judicial District of Tlalnepantla notified the judgment issued against Daniel García and Reyes Alpízar Ortiz for the crime of homicide with

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78 *Cf.* Extension of statement of Reyes Alpízar (evidence file, folios 70063 to 70067).

79 *Cf.* File CODHEM/NJ/5088/2002-3, Human Rights Commission of the state of Mexico, Third General Investigative Unit (evidence file, 849 to 911).

80 *Cf.* Government of the State of Mexico. Attorney General's Office. Agreement on immediate release and notification of *arraigo* of Reyes Alpízar. Tlalnepantla, State of Mexico, October 28, 2002 (evidence file, folios 937 to 939).

81 *Cf.* Government of the state of Mexico. Attorney General's Office. Personal notification to Reyes Alpízar. Tlalnepantla, state of Mexico, October 28, 2002 (evidence file, folios 940 to 941).

82 *Cf.* Government of the state of Mexico. Attorney General's Office. Statement of Reyes Alpízar. November 6, 2002 (evidence file, folios 1041 to 1043).

83 *Cf.* Government of the state of Mexico. Attorney General's Office. Indictment without detainee. Tlalnepantla, state of Mexico, November 25, 2002 (evidence file, folios 1245 to 1494).

84 *Cf.* Judicial branch of the state of Mexico. Criminal Court of the Judicial District of Tlalnepantla, final judgment final of May 12, 2022, Tlalnepantla de Baz, state of Mexico (evidence file, folios 70391 to 71350).

85 *Cf.* Statement of Reyes Alpízar Ortiz, dated November 28, 2002, written and signed by hand (evidence file, folios 845 to 848).

86 *Cf.* Record of hearing of preliminary statement, November 28, 2002, Fifth Criminal Judge of First Instance of the Judicial District of Tlalnepantla (evidence file, folios 832 to 844).

87 *Cf.* First Criminal Collegiate Court of Tlalnepantla, Superior Court of Justice of the state of Mexico. Decision on Replacement Appeal. Tlalnepantla de Baz, State of Mexico, November 17, 2006 (evidence file, folios 1502 to 1551).

modification (premeditation) to the detriment of María de los Ángeles Tamés Pérez and bribery to the detriment of the Public Administration. In said judgment, they were sentenced to 35 years imprisonment and the ruling also established that the time the defendants had spent in *arraigo* and preventive detention (17 years) during the proceedings should be discounted from their sentence.[88] On May 13, 2022, Daniel García and Reyes Alpízar appealed against the conviction.

80. In the course of the proceedings, the alleged victims filed several motions related to the production of evidence,[89] requests for closure of the investigation,[90] requests for transfer to a prison closer to the place of the trial,[91] motions requesting the exclusion of evidence that had been obtained unlawfully,[92] and motions for review of the detention.[93]

81. On November 16, 2011, Daniel García Rodríguez and Reyes Alpízar asked to be tried through the New Criminal Justice System. The defendants also denounced the continuation of their pretrial detention. On November 24, 2011, the Fifth Criminal Judge indicated that the crime of which they were accused "was and continues to be serious," since the law in force at the time of its commission "legally precludes the granting of provisional release on bail."[94]

82. Subsequently, the defendants filed several *amparos* and requested the intervention of the President and the Justices of the Supreme Court,[95] but all their efforts were unsuccessful.[96]

83. On May 30, 2016, Daniel García and Reyes Alpízar requested the modification of their pretrial detention through the retroactive application of the rules of the Accusatorial Criminal System that had entered into force in 2008.[97] On May 31, 2017, this request was rejected by the First Instance

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88 *Cf.* Judicial branch of the state of Mexico. Criminal Court of the Judicial District of Tlalnepantla. Judgment of May 12, 2022, Tlalnepantla de Baz, state of Mexico (evidence file, folios 70391 to 71350).

89 On March 9, 2004, an order was issued in which it was determined that the Public Prosecutor's Office no longer had the right to continue presenting evidence because the one-year term to try the defendant Reyes Alpízar Ortiz had expired. An indirect *amparo* was filed against this decision, which was granted on October 18, 2006, because said decision lacked grounds and justification, and a new study was ordered. On November 17, 2006, the First Collegiate Criminal Court of Tlalnepantla issued a replacement ruling, maintaining the prison sentence for aggravated homicide and bribery - which, being punishable by imprisonment warranted pretrial detention – and granting release for organized crime. *Cf.* First Criminal Collegiate Court of Tlalnepantla, Superior Court of Justice of the state of Mexico. Ruling on Appeal of Replacement. Tlalnepantla de Baz, State of Mexico, November 17, 2006 (evidence file, folios 1502 to 1551).

90 *Cf.* Evidence hearing, Tlalnepantla, state of Mexico, June 19, 2008 (evidence file, folios 1778 to 1782).

91 *Cf.* Order. Sixth District Judge of the state of Mexico. June 12, 2012 (evidence file, folios 2232 to 2235).

92 *Cf.* Information contained in: Judgment of appeal of March 28, 2016 issued by the First Criminal Collegiate Court of Tlalnepantla of the Superior Court of the State of Mexico, 460/2015 (evidence file, folios 2699 to 2741).

93 After an appeal for review against the arrest of Daniel García Rodríguez was accepted, on March 30, 2007, a review of the formal arrest warrant was ordered. This was amended on May 23, 2007, ordering his release "for lack of evidence to prosecute with the reservations of the law", with respect to the crimes of extortion, fraud and organized crime." However, for the crime of aggravated homicide, "which, being punishable by imprisonment warrants the pretrial detention of the accused," the detention was upheld. *Cf.* Second Criminal Collegiate Court of Tlalnepantla, Superior Court of Justice of the state of Mexico. Ruling on indirect *amparo* proceeding 1192/2005-E. Tlalnepantla de Baz, state of Mexico, May 23, 2007 (evidence file, folios 710 to 825).

94 *Cf.* Ruling on motion. Tlalnepantla, state of Mexico, November 24, 2011 (evidence file, folios 2762 to 2768).

95 *Cf.* Letter from Daniel García and Reyes Alpízar addressed to Justice Juan N. Silva Meza, President of the Supreme Court of Justice, January 25, 2012 (evidence file, folios 2849 to 2851); Letter from Daniel García and Reyes Alpízar addressed to Justice Arturo Zaldívar Lelo de Larrea, Supreme Court of Justice. January 25, 2012, (evidence file 2855 to 2857),[95] and letter from Daniel García and Reyes Alpízar, requesting an appeal for review before the Supreme Court of Justice. Mexico, April 15, 2012 (evidence file, folios 2923 to 2972.

96 *Cf.* Eighth District Court of the state of Mexico. Ruling on *amparo* proceeding 1551/2011-E. Letter from the secretary of Supreme Court Justice Olga Sánchez. Mexico, DF, February 27, 2012 (evidence file, folios 2899 to 2922).

97 *Cf.* Information contained in the Judgment of January 18, 2018, Second Collegiate Court on Criminal Matters of the Second circuit, Appeal for Review 312/2017 (evidence file, folios 2987 to 3018).

Criminal Judge of Tlalnepantla.[98] In an indirect *amparo* proceeding, on August 24, 2017, the Judge of the Fourth District of Naucalpan ordered the trial judge to process the motion for review of the precautionary measures, a decision that was ratified by the Second Collegiate Court of the Second District on January 18, 2018.[99]

84. On June 13, 2016, the defendants requested the review and suspension of the pretrial detention claiming that had become an anticipated sentence.[100] On July 7, 2016, the Criminal Court of First Instance declared their motion inadmissible, pointing out that the Constitution established preventive detention for serious crimes and that a review of the precautionary measure was not contemplated in the applicable legislation.[101]

85. On October 16, 2017, the First Instance Criminal Judge of the Judicial District of Tlalnepantla, state of Mexico, who was hearing the criminal case, ordered the closure of the investigation and declared the matter ready for the issuance of the corresponding ruling.[102]

86. On January 30, 2018, the First Instance Criminal Judge denied an appeal for review; she indicated that the length of the trial was attributable to the intense activity of the defendants and that there was a risk of flight on the part of Daniel García.[103] His risk of flight was analyzed on January 11, 2018, by the Center for Precautionary Measures and Conditional Suspension of Proceedings, which concluded that Daniel García was a "medium risk" subject, taking into account the 50-year sentence assigned to the crime of homicide.[104] Reyes Alpízar's risk of absconding was not analyzed, since the only time such an assessment was attempted in prison by the State Center for Precautionary Measures, on December 21, 2017, Reyes Alpízar refused the evaluation.[105]

87. On August 23, 2019, the First Instance Criminal Judge of the Judicial District of Tlalnepantla, agreed to replace the mandatory preventive detention with other precautionary measures for Daniel García Rodríguez and Reyes Alpízar Ortiz,[106] in the proceedings against them. That same day they were released,[107] and as of that date they continue to follow their trial in that condition

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98 *Cf.* Information contained in the Judgment of February 1, 2018, Second Collegiate Court on Criminal Matters of the Second circuit, Appeal for Review 312/2017 (evidence file, folios 2987 to 3018).

99 *Cf.* Judgment of February 1, 2018, Second Collegiate Court on Criminal Matters of the Second Circuit, Appeal for Review 312/2017 (evidence file, folios 2987 to 3018).

100 *Cf.* Amparo N. 1613/2017-V. Appeal for Review of precautionary measures, (evidence file, folios 3046 to 3058).

101 *Cf.* Information contained in the Judgment of Appeal, December 12, 2017, First Appeals Court for Criminal Matters of Tlalnepantla, Mexico (evidence file, folios 3061 to 3090).

102 *Cf.* Information contained in the Judgment of June 8, 2018, issued by the Fourth District Judge of the state of Mexico, resolving the indirect *amparo* proceeding number 1813/2017-V (evidence file, folios 2316 to 2332).

103 After analyzing the statements of various witnesses regarding the conduct of Daniel García while he worked as a public servant, the judge in the case affirmed that "it can be established that the accused did not conduct himself with honesty, loyalty or rectitude in the exercise of his duties as private secretary of the Municipal President of Atizapán de Zaragoza, which is why they indicated that he was dismissed from that municipality […]making the risk of the accused escaping justice more likely if the precautionary measure of preventive detention is modified." *Cf.* Ruling on motion of January 30, 2018, First Instance Criminal Judge of the Judicial District of Tlalnepantla, unspecified motion for review and lifting of the precautionary measure of pretrial detention (evidence file, folios 2559 to 2643).

104 *Cf.* Information contained in the ruling of January 30, 2018, First Instance Criminal Judge of the Judicial District of Tlalnepantla, unspecified motion for review and suspension of precautionary measure of pretrial detention (evidence file, folios 2559 to 2643).

105 *Cf.* Ruling on motion, January 30, 2018, First Instance Criminal Judge of the Tlalnepantla Judicial District, unspecified motion for review and suspension of precautionary measure of pretrial detention (evidence file, folios 2559 to 2643).

106 *Cf.* Judicial branch of the state of Mexico. Criminal Court of the Tlalnepantla Judicial District. Judgment of May 12, 2022, Tlalnepantla de Baz, state of Mexico (evidence file, folios 70391 to 71350).

107 *Cf.* Appellate ruling, December 12, 2017, First Court of Appeals in Criminal Matters of Tlalnepantla, state of Mexico (evidence file, folios 3061 to 3090).

and subject to the tracking and tracing system.

F. Complaints regarding acts of torture allegedly suffered by Reyes Alpízar Ortiz and Daniel García Rodríguez

88. Reyes Alpízar Ortiz alleged that he was subjected to severe mistreatment during his period under *arraigo* in order to obtain his confession in relation to the murder of Mayor María de los Ángeles Tamés Pérez.[108] The complaint was filed in the context of the criminal proceedings against him, as part of the preliminary investigation TLA/MR/III/1973/2006, before the PGN and before national and international organizations. For his part, Daniel García Rodríguez filed a complaint in the context of the criminal proceedings and before national and international organizations alleging that he was subjected to mistreatment and coercion in order to obtain his confession. The details of these complaints and the steps taken to process them are described below.

F.1. Regarding the acts of torture allegedly suffered by Reyes Alpízar Ortiz and Daniel García Rodríguez

a) Within the framework of the criminal proceedings

i. Acts of torture allegedly suffered by Reyes Alpízar Ortiz

89. On November 28, 2002, during his first hearing before the Fifth Criminal Judge, Reyes Alpízar made a preliminary statement alleging that he had been subjected to mistreatment in order to obtain his confession while he was under *arraigo*.[109]

90. In this regard, it should be noted that between October 25 and November 27, 2002, Reyes Alpízar underwent several medical examinations,[110] all performed by forensic medical experts assigned to the Deputy District Attorney's Office of Tlalnepantla.[111] The first examination, carried out on October 25 at 10:29 p.m., describes a series of injuries and bruises[112] "which by their nature are not life-threatening, take less than fifteen days to heal, and do not require hospitalization." The following day the same injuries were noted.[113] On October 28, he underwent three examinations.[114] The one performed at 5:20 p.m. or 5:35 p.m. records several "non-recent" injuries but includes others not recorded in previous examinations.[115] However, the third

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108 *Cf.* Statement rendered by affidavit of Reyes Alpízar Ortiz (evidence file, folios 993 et seq.).

109 *Cf.* Statement of Reyes Alpízar Ortiz, November 28, 2002 (evidence file, folios 845 to 848).

110 *Cf.* Medical report from the Institute of Expert Services, Department of Forensic Medicine. Criminal case 88/2002 Tlalnepantla, Mexico, May 3, 2008. Contains Report, annex with informed consent and photographs (36 pages) (evidence file, folios 942-1040); Medical report on Criminal case 88/2002-1 Mexico, Federal District, November 7, 2007. Contains Report, annex of chronology of evolution of injuries and photographs (60 pages) (evidence file, folios 1044 to 1086).

111 *Cf.* Medical report, Institute of Expert Services, Department of Forensic Medicine. Criminal case 88/2002 Tlalnepantla, Mexico, May 3, 2008. Contains Report (Annex of Informed consent and photographs) (evidence file, folios 942 to 1040).

112 *Cf.* Medical report. Criminal case 88/2002-1 Mexico, Federal District, November 7, 2007. Contains Report (42 pages.), Annex of chronology of evolution of injuries and photographs (evidence file, folios 1044 to 1149).

113 *Cf.* Medical report. Institute of Expert Services, Department of Forensic Medicine. Criminal case 88/2002 Tlalnepantla, Mexico, May 3, 2008. Contains Report, Annex of Report consent and photographs (evidence file, folios 942-1040), and Medical report Criminal case 88/2002-1 Mexico, Federal District, November 7, 2007. Contains Report, Annex of chronology of evolution of injuries and photographs (evidence file, folios 1044 to 1149).

114 *Cf.* Medical report. Institute of Expert Services, Department of Forensic Medicine. Criminal case 88/2002 Tlalnepantla, Mexico, May 3, 2008. Report, Annex of Report consent and photographs (evidence file, folios 942 to 1040).

115 *Cf.* Medical report. Institute of Expert Services, Department of Forensic Medicine. Criminal case 88/2002 Tlalnepantla, Mexico, May 3, 2008. Contains Report, annex of informed consent and photographs (evidence file, folios 942

examination on the same day at 10:37 p.m., performed by the same professional who examined him on October 25, repeatedly emphasizes that the injuries referred to are not recent.[116] On October 30, he was examined twice, and the first examination also found injuries not mentioned previously.[117]

91. Upon being transferred to the detention center, Reyes Alpízar was examined by the prison's medical service on November 28 and December 4, 2002, which concluded that, although he mentioned having pain in the anterior thorax, he had no "apparent injuries on his body" and did not present "signs of external injuries."[118]

92. In addition to the complaint made at his first hearing before the Fifth Criminal Judge, during the presentation of evidence, Reyes Alpízar submitted a report dated November 7, 2007, by expert witness Dr. A.R.L, who concluded that he had been a victim of torture and that there was "a firm connection between the physical and psychological evidence that correlates with the statements made by the victim, which shows that the injuries suffered by Reyes Alpízar Ortiz were caused by the traumas described by him and that he was subjected to severe psychological pressure." Regarding the medical examinations carried out during his arrest and *arraigo*, the expert noted a number of injuries that should have been reported but were not recorded or were minimized, and whose sequelae persist. He also mentioned irregularities in the reports, including an emergency hospital admission on October 29, 2002, which was not recorded, and references to Reyes Alpízar being a controlled diabetic, even though he does not suffer from diabetes.[119]

93. The PGJEM objected to this expert opinion, offering additional evidence,[120] which was presented on May 8, 2008.[121] In her report, the medical expert from the Tlalnepantla Deputy District Attorney's Office, who had examined Reyes Alpízar during his *arraigo*, contrasted his allegations with medical certificates issued during the arrest and *arraigo* and a physical examination in February 2008.[122] She stated that Reyes Alpízar presented injuries "from the moment of his arrest and during his *arraigo*. These injuries disappeared as of November 7."[123] For their part, the psychologists A.A.M. and M.C.M.R., of the PGJEM, concluded that "no signs or

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to 1040), and Government of the State of Mexico. Attorney General's Office. Agreement and Ministerial Certificate of psychophysical status of Reyes Alpízar. Tlalnepantla de Baz, Mexico, October 28, 2002 (evidence file, folios 932 to 936).

116 *Cf.* Medical report. Institute of Expert Services, Department of Forensic Medicine. Criminal case 88/2002 Tlalnepantla, Mexico, May 3, 2008. Contains Report, annex of informed consent and photographs (evidence file, folios 942 to 1040).

117 *Cf.* Medical report. Institute of Expert Services, Department of Forensic Medicine. Criminal case 88/2002 Tlalnepantla, Mexico, May 3, 2008. Contains Report, annex of informed consent and photographs (evidence file, folios 942-1040), and Government of the state of Mexico. Attorney General's Office. Agreement and Ministerial Certificate of psychophysical status of Reyes Alpízar. Tlalnepantla de Baz, Mexico, October 28, 2002 (evidence file, folios 932 to 936).

118 *Cf.* File CODHEM/NJ/5088/2002-3, Human Rights Commission of the state of Mexico, Third General Investigative Unit (evidence file, folios 849 to 911).

119 *Cf.* Expert Report (evidence file, folios 1045 to 1149), and Fifth Criminal Court of First Instance. Special Ratification of Expert Opinion. Tlalnepantla, State of Mexico, December 5, 2007 (evidence file, folios 1553 to 1554).

120 *Cf.* Case file: 88/2002. Matter: Offer of Expert Services. Tlalnepantla, Mexico, January 24, 2008 (evidence file, folios 1556 to 1557).

121 *Cf.* Fifth Criminal Court of First Instance. Order. Tlalnepantla, State of Mexico, May 8, 2008, (evidence file, folios 1559 to 1561).

122 *Cf.* Medical report. Institute of Expert Services, Department of Forensic Medicine. Criminal case 88/2002 Tlalnepantla, Mexico, May 3, 2008 (evidence file, folios 942 et seq.), and Fifth Criminal Court of First Instance. Voluntary appearance of expert witness. Tlalnepantla, Mexico, May 8, 2008 (evidence file, folios 1559 to 1561).

123 She stated that, "[b]asically, these consist of simple bruises caused by pressure mechanisms (ecchymosis) and friction (excoriation), during the arrest procedure described by Mr. Reyes Alpízar Ortiz," which "were not life threatening, took less than fifteen days to heal, and did not require hospitalization." This led her to conclude that "there is no connection between the acts of torture described by Reyes Alpízar Ortiz and the injuries documented in the medical certificates issued at the same time and on the date of the present examination performed by the undersigned."

symptoms of post-traumatic stress or depression were detected in Reyes Alpízar Ortiz, or any psychological disorder characteristic of torture cases."[124] In February and March of 2008, Reyes Alpízar denounced irregularities in the PGJEM's expert opinions[125] as well as mistreatment by the psychologists.[126] The judge accepted his statements "as given," and said that these would be considered "at the appropriate procedural moment." On June 5, 2008, the Court ordered the appointment of third party experts.[127]

94. On December 11, 2007, the Human Rights Commission of the state of Mexico (hereinafter "CODHEM") performed a medical examination on Reyes Alpízar.[128] It stated that "from a medical forensic point of view, there are no technical or medical elements that enable us to prove or rule out the allegations made by the victim."[129] This report was endorsed by the PGJEM[130] and, together with the examinations performed by the PGJEM, was contested by the alleged victims for not complying with the Istanbul Protocol.[131]

95. On June 5, 2008, the Fifth Criminal Court of First Instance ordered the appointment of third party experts.[132] The psychologist T.R.S. and the sociologist I.G.R. concluded that Reyes Alpízar presented "signs and symptoms typical of post-traumatic stress disorder (PTSD), lasting personality changes, generalized depression and anguish […] that undoubtedly correspond to cruel and inhuman treatment and punishment characteristic of torture."[133] The psychologist M.E. also found that he "presented signs and symptoms of post-traumatic stress disorder typical of torture."[134] In a hearing on February 17, 2010, the third expert S.L.S.M., indicated that he did not have "technical-scientific elements to support the view that physical torture had occurred in the

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[124] Psychological report. Expert Services, Psychology. Criminal case 88/2002 Tlalnepantla, Mexico, May 7, 2008. Contains 114 pages, page 105 (evidence file, folios 1564 to 1679), and Fifth Criminal Court of First Instance. Voluntary appearance of expert witness. Tlalnepantla, State of Mexico, May 12, 2008 (evidence file, folios 1680 to 1681).

[125] It was alleged that these assessments were carried out by the same professionals who would have checked him during the *arraigo*, with mockery and jeers when he was "without a robe, without a bed or sheet and in the prison yard and without the support of anyone" with "taunts, sarcasm, mockery and comments." Brief of Reyes Alpízar Ortiz. Criminal case 88/02. February 18, 2008 (evidence file, folios 1682 to 1699).

[126] *Cf.* Brief of Reyes Alpízar Ortiz. Criminal case 88/02. March 31, 2008 (evidence file, folios 1700 to 1710).

[127] *Cf.* Fifth Criminal Court of First Instance. Evidence hearing. Tlalnepantla, state of Mexico, June 5, 2008 (evidence file, folios 1774 to 1777), and Fifth Criminal Court of First Instance. Evidence hearing. Tlalnepantla, state of Mexico, June 19, 2008, "Evidence hearing 19.6.2008" (evidence file, folios 1779 to 1782).

[128] *Cf.* Fifth Criminal Court of First Instance. Order. Tlalnepantla, state of Mexico, April 4, 2008 (evidence file, folios 1716 to 1718).

[129] *Cf.* General Inspectorate II Northeast. File. CODHEM/NJ/1413/2007. Official letter No. 400C132300/2200/2008. Certified copy of medical examination. Tlalnepantla de Baz, Mexico, March 26, 2008 (evidence file, folios 1719 to 1721).

[130] *Cf.* Certified copy of medical examination of Reyes Alpízar performed by CODHEM on December 11, 2007 (evidence file, folios 1722 to 1739).

[131] *Cf.* Brief of Daniel García Rodríguez and Reyes Alpízar Ortiz. Criminal case 88/02. October 9, 2008 (evidence file, folios 1740 to 1772).

[132] *Cf.* Fifth Criminal Court of First Instance. Evidence hearing. Tlalnepantla, state of Mexico, June 5, 2008 ("Evidence hearing 19.6.2008", evidence file, folios 1773 to 1782). It should be noted that Article 230 of the 2000 Code of Criminal Procedure for the state of Mexico, established that: When the opinions of the experts are in disagreement, the public servant who carries out the proceedings shall appoint a third expert, ensuring whenever possible that the person appointed is from outside the institution or office of the experts in disagreement, and shall summon them to a meeting, in which they or those who have replaced them and the third party expert shall discuss the points of difference, and the result of the discussion shall be recorded in the minutes.

[133] Psychological report. Criminal case 88/2002. Mexico, Federal District, August 11, 2009. Contains 74 pages, Fifth Criminal Court of First Instance (evidence file, folios 1783 to 1856). Evidence hearing and Board of Experts. Tlalnepantla, state of Mexico, November 20, 2009 ("Evidence hearing and Board of Experts 20.11.2009") (evidence file, 1857-1873).

[134] Psychological expert report. Criminal case 88/2002. Extortion, Fraud, Aggravated Homicide, Others. Toluca, Mexico, October 20, 2009. Contains 14 pages, page 9. Evidence hearing and Board of Experts 20.11.2009 (evidence file, folios 1874-1888).

body of Mr. Reyes Alpízar Ortiz."[135]

96. On September 22, 2010, Reyes Alpízar filed a new motion denouncing acts of torture.[136] On September 24, 2010, the Fifth Criminal Judge dismissed it, pointing out that the torture had been reported on November 28, 2002, but "it is not evident that he had filed a complaint for the crime of torture or any other."[137] This decision was upheld on August 15, 2011.[138]

97. On May 7, 2012, at an evidence hearing, Daniel García asked the Fifth Criminal Judge "to allow the investigating public prosecutor to access" the certificates, evidence, documents and medical examinations related to the acts of torture that Reyes Alpízar claims to have suffered.[139] The judge decided "to follow what was agreed in the order of September 24, 2010 […]."[140]

98. The alleged victims then filed an indirect *amparo*,[141] which was admitted on August 23, 2012, by the Eighth District Court of Naucalpan, with the judge observing that "said decision violated the guarantees of due process and legality […]." Accordingly, he ordered the revocation of the appealed order and ordered the Public Prosecutor's Office to hear the case.[142] There is no record that the Fifth Criminal Judge sent the information to the Public Prosecutor's Office or amended her decisions following these instructions.

ii. Regarding the acts of torture allegedly suffered by Daniel García Rodríguez

99. With regard to Daniel García Rodríguez, it was indicated that on April 11, 2002 he stated that during the period when he was under *arraigo*, he was arrested by deception, detained by force and under threat, and that when he refused to sign prefabricated statements incriminating a Senator and the Municipal President, he was threatened and warned that he and his family members would be accused (*supra* para. 72). On April 11, 2002, the Public Prosecutor's Office requested certification of physical injuries and the private defense attorney requested an examination to verify psychological violence. Both requests were denied by the Fifth Criminal Judge, who did not consider them to be relevant evidence and ordered the medical certificate of admission to the prison to be sent.

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135 Fifth Criminal Court of First Instance. Evidence hearing and Board of Experts. Tlalnepantla, state of Mexico, February 17, 2010 (evidence file, folios 1889-1916).

136 *Cf.* Brief of Reyes Alpízar Ortiz. Unspecified motion filed before the Fifth Criminal Court of First Instance. Case 88/2002. With reception stamp of September 22, 2010 (evidence file, folios 1918 to 2011).

137 He also stated that *"from that date, the complainant alleged, according to his assessment, that the acts constituted torture; since then he has had the right to assert this before the corresponding authority."* Regarding the evidence of alleged torture, he indicated that *"of course, it will be a matter for evaluation and analysis at the moment in which the legal situation is definitively resolved,"* insisting that he had the *"right"* to assert the allegations of torture *"before the corresponding authorities." Cf.* Fifth Criminal Court of First Instance. Ruling on motion. Tlalnepantla, state of Mexico, September 24, 2010 (evidence file, folios 2013 to 2017).

138 *Cf.* Fifth Criminal Court of First Instance. Criminal case: 88/2002. Matter: Report submitted. Official letter: 1010. Tlalnepantla de Baz, Mexico, August 15, 2011 (evidence file, folios 2019 to 2032), and Fifth Criminal Court of First Instance. Criminal case: 88/2002. Matter: Report submitted. Official letter: 1016. Tlalnepantla de Baz, Mexico, August 16, 2011 (evidence file, folios 2034 to 2045).

139 *Cf.* Fifth Criminal Court of First Instance. Criminal case: 88/2002. Matter: Report submitted. Official letter: 1010. Tlalnepantla de Baz, Mexico, August 15, 2011 (evidence file, folios 2019 to 2032), and Fifth Criminal Court of First Instance. Criminal case: 88/2002. Matter: Report submitted. Official letter: 1016. Tlalnepantla de Baz, Mexico, August 16, 2011 (evidence file, folios 2034 to 2045).

140 *Cf.* Fifth Criminal Court of First Instance. Evidence hearing. Tlalnepantla, state of Mexico, May 7, 2012, file 32514-32519 (evidence file, folios 2047 to 2058).

141 *Cf.* Brief of Daniel García Ortiz and Reyes Alpízar Ortiz. Indirect *amparo*. May 14, 2012 (evidence file, folios 2059 to 2100).

142 *Cf.* Eighth District Court of the state of Mexico. Judgment in *amparo* proceeding No. 597/2012-E. Naucalpan de Juarez, Mexico. August 23, 2012 (evidence file, folios 2101 to 2134).

100. It is on record that Daniel García and some of his relatives were implicated by the PGJEM in an alleged network of political espionage, whose discovery by Mayor Tamés was alleged as the motive for her murder, and that they were investigated,[143] arrested,[144] placed in *arraigo*[145] and/or arrest warrants were issued against them in the context of the same process, which did not prosper because their responsibility for the crimes was not proven.[146]

b) Complaints of torture filed with other agencies and authorities in the cases of Daniel García Rodríguez and Reyes Alpízar Ortiz

101. In 2002, Daniel García Rodríguez filed a complaint before the Human Rights Commission of the State of Mexico (CODHEM), alleging arbitrary detention, as a result of which file CODHEM/NEZA/4611/02 was opened. On September 18, 2002, this file was closed after the petitioner withdrew the complaint. In addition, in 2002, Patricia Maya Domínguez filed a complaint before the Human Rights Commission of the state of Mexico, on behalf of Reyes Alpízar Ortiz, alleging acts of torture, as a result of which file CODHEM/NJ/5088/02 was opened. However, the file was closed on January 30, 2003.[147]

102. On November 8, 2002, CODHEM confirmed that Reyes Alpízar, who was being held under *arraigo* at the Hotel San Isidro, presented "bruising on his left arm" and reported that he was "implicated in a problem that I did not commit." He stated that, in the basement of the Deputy District Attorney's Office, he was blindfolded, handcuffed and was told what he had to say with details of what he should testify to, and was coerced, filmed and beaten during his statements, in the presence of the prosecutor and the public defender. On November 9, 2002, CODEHM issued precautionary measures which were accepted by the PGJEM. On November 19, 2002, Reyes Alpízar was visited at the hotel and indicated that "everything has changed, the attention is adequate." Then, when he was visited on December 27, 2002, at the facility where he was held in pretrial detention, Reyes Alpízar insisted that he had not committed the crime, but had no problems, for which reason CODHEM decided to archive the complaint. Three complaints lodged with CODHEM in 2002, 2006 and 2007 were archived as it was determined that these did not involve human rights violations or that the complaint had been resolved through the respective procedure.[148]

103. In 2019, CODHEM opened case file CODHEM/TLAL/114/2019 *ex officio*, in response to the publication of a news article entitled "Daniel and Reyes serve 17 years in preventive detention." The file was closed on June 3, 2019, as it did not involve human rights violations. In 2021, CODHEM opened file CODHEM/NJ/173/2021 *ex officio*, in response to the news report entitled "Inter-American Court in case of Daniel García and Reyes Alpízar," which stated that no evidence offered by the accused was presented, but was archived on August 10, 2021, due to lack of jurisdiction.

104. On August 2, 2004, Reyes Alpízar denounced his situation to the President of the Republic;

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143 *Cf.* Agreement. Public Prosecutor's Office, department of preliminary investigations of Tlalnepantla, March 29, 2000 (evidence file, folios 699 to 700).

144 *Cf.* Detention of Isaías García Godínez. Public Prosecutor's Office, department of preliminary investigations of Tlalnepantla, March 29, 2002 (evidence file, folios 701-703).

145 *Cf. Arraigo* Order. Second Criminal Court of First Instance, Tlalnepantla, state of Mexico. Official letter 679, March 29, 2002 (evidence file, 704-706).

146 *Cf.* Arrest warrant. Fifth Criminal Judge of First Instance of the Judicial District Tlalnepantla, state of Mexico, April 8, 2002, "Warrant for arrest of Daniel García" (evidence file folios 10 to 378), and Government of the state of Mexico. Attorney General's Office. Criminal case 88/2002. Matter: Appeal filed. Tlalnepantla, April 15, 2002 (evidence file, folios 708 a 709).

147 *Cf.* File CODHEM/NJ/5088/2002-3, Human Rights Commission of the state of Mexico, Third General Investigative Unit (evidence file, folios 850 to 911).

148 *Cf.* Human Rights Commission of the state of Mexico. Official letter: 400C130000/294/2010, Toluca de Lerdo, Mexico, September 20, 2010. Official letter CODHEM 20.09. 2010 (evidence file, folios 2141 to 2159).

however, on September 13, 2004, he was informed that "the head of the federal executive is not invested with any legal power to influence or intervene in this matter."[149] In 2007, Daniel García and Reyes Alpízar filed two complaints before the National Human Rights Commission (CNDH), which stated that it did not have jurisdiction in the matter. In the context of another complaint filed in 2008, the CNDH concluded that there were no "external injuries due to the fact that six years have passed and, therefore, at this point the expert physician did not have technical or medical information to confirm or rule out the injuries and torture reported by the victim."[150] On October 16, 2017, the UN Working Group on Arbitrary Detention issued an opinion characterizing the detention of the alleged victims as arbitrary.[151]

F.2. Regarding the acts of torture allegedly suffered by Reyes Alpízar Ortiz

a) Preliminary investigation TLA/MR/III/1973/2006 in the case of Reyes Alpízar Ortiz

105. On December 29, 2006, preliminary investigation TLA/MR/III/1973/2006 was opened, in response to the written statement signed by Reyes Alpízar Ortiz, in which he reported acts that possibly constituted a crime of torture against him.[152]

106. On May 24, 2013, the Third Criminal Judge of First Instance of the Judicial District of Tlalnepantla, ordered an investigation to be opened into the crime of torture, to the detriment of Daniel García Rodríguez, and forwarded a certified copy of the preliminary statement dated April 11, 2002. As a result, preliminary investigation TLA/MR/I/15/2013 was initiated, which was joined to the main investigation TLA/MR/III/1973/2006. This investigation prompted the prosecution service of the Special Prosecutor's Office for Combating Corruption to decide on April 26, 2018, not to prosecute.

107. The State pointed out - without this being contested - that the Special Prosecutor's Office for the Investigation of Torture had carried out more than 500 procedures in the context of the preliminary investigation.[153]

108. On April 27, 2018, the Regional Prosecutor of Tlalnepantla issued a decision in which he confirmed the decision not to prosecute.[154]

109. On April 30, 2018, and May 1, 2018, this decision was notified to Daniel García Rodríguez and Reyes Alpízar Ortiz, respectively, who requested a review of the confirmation of the decision not to prosecute. On October 10, 2018, the preliminary inquiry was referred to the FGJEM, for the substantiation of the review requested by the victims.

110. On October 24, 2018, the General Inspector of the PGJEM confirmed the refusal to prosecute issued by the Regional Prosecutor of Tlalnepantla, and notified this decision to Daniel García Rodríguez and Reyes Alpízar Ortiz on November 16 and 30, 2018, respectively. The complainants filed an *amparo* proceeding 1760/2017 before the Second District Court in the state of Mexico, against the decision of the General Inspector, which confirmed the decision not to prosecute. As a

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149 *Cf.* Transcript of the complaint submitted to the President of the Republic by Reyes Alpízar Ortiz, response and referral (evidence file, folios 2189).

150 *Cf.* National Commission of Human Rights, Mexico. File: OIC/ARIN/51/08, Official letter: OIC/ARIN/627/08, November 11, 2008 (evidence file, folios 2183 to 2184).

151 *Cf.* Human Rights Council, Opinion 66/201 regarding Daniel García Rodríguez and Reyes Alpízar Ortiz (Mexico) (evidence file, folios 20145 to 20155).

152 *Cf.* Judiciary of the state of Mexico. Criminal Court of the Judicial District of Tlalnepantla. Judgment of May 12, 2022, Tlalnepantla de Baz, state of Mexico (evidence file, folios 70437).

153 *Cf.* See page 90 of the answering brief and evidence file (evidence file, folios 23555 to 42505).

154 *Cf.* Order of March 30, 2018, notifying the decision not to prosecute in the preliminary investigation TLA/MR/III/19/3/2006 (evidence file, folio 2139).

result, the petitioners lodged an appeal for review 149/2019, which was filed before the Fourth Collegiate Court for Criminal Matters of the Second Circuit. The judges granted the *amparo* and the protection of the Federal Justice against the decision not to prosecute the case issued in preliminary investigation TLA/MR/III/1973/2006, and ordered several actions to be carried out.

111. On May 26, 2020, the preliminary investigation TLA/MR/III/1973/2006 was referred to the Special Prosecutor's Office for the Investigation of Torture, in order to continue with the processing of the case and carry out the procedures ordered in the *amparo* ruling.

112. On July 8, 2021, an order dated July 7, 2021, was published in relation to the *amparo* proceeding 1760/2017, of the Second District Court of Naucalpan de Juarez, state of Mexico, which considered that the *amparo* ruling had been complied with without excesses or defects. In this regard, said district court considered that a decision was issued on May 3, 2021, in the preliminary investigation TLA/MR/III/1973/2006 by the public prosecutor's agent assigned to the Office of the Special Prosecutor for the Investigation of Torture, with the approval of the Regional Prosecutor of Tlalnepantla, state of Mexico, in which it was determined not to proceed with the criminal action.

b) Complaint before the Attorney General's Office in the case of Reyes Alpízar Ortiz

113. On November 29, 2006, Reyes Alpízar filed a complaint for acts of torture before the Attorney General's Office.[155] On January 2, 2007, the latter responded that it only investigates federal crimes and sent the brief to the PGJEM.[156] This led to a preliminary inquiry by the Office of the Special Anti-Corruption Prosecutor of the PGJEM. On March 30, 2018, the decision by the Public Prosecutor's Office not to prosecute was notified, and was confirmed by the regional prosecutor of Tlalnepantla on April 27, 2018.[157]

VIII
MERITS

114. In the instant case, the Court must analyze the scope of the State's international responsibility for the alleged violation of various conventional rights, due to the arrest and application of the measures of *arraigo* and mandatory pretrial detention, and the alleged acts of torture and criminal proceedings against Daniel García Rodríguez and Reyes Alpízar Ortiz. The Court will now analyze the arguments on the merits in the following order: a) the rights to personal liberty and to the presumption of innocence in relation to the obligation to respect rights and the obligation to adopt provisions of domestic law; b) the right to personal integrity in relation to the obligation to respect rights and Articles 1, 6 and 8 of the IACPPT, and c) the rights to judicial guarantees and judicial protection in relation to the obligation to respect rights.

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155 *Cf.* Acknowledgement of receipt of the brief denouncing acts of torture received in the Attorney General's Office on November 29, 2006 (evidence file, folios 1496 to 1501).

156 *Cf.* Official letter No. 001/07 DAQIDH of January 2, 2007, notifying Reyes Alpízar of the submission of his complaint for acts of torture to the PGJEM (evidence file, folios 2136 to 2137).

157 *Cf.* Order of March 30, 2018, notifying the decision not to prosecute in the preliminary investigation TLA/MR/III/19/3/2006, identified as Official letter No. 21317000 33, 2018 (evidence file, folio 2139).

VIII.1
RIGHTS TO PERSONAL LIBERTY[158] AND TO THE PRESUMPTION OF INNOCENCE[159] IN RELATION TO THE OBLIGATION TO RESPECT RIGHTS[160] AND THE OBLIGATION TO ADOPT PROVISIONS OF DOMESTIC LAW[161]

A. Arguments of the parties and the Commission

115. The Court will now examine the arguments of the parties and the Commission in relation to the State's responsibility for the violation of the rights to personal liberty and to the presumption of innocence.

A.1. The right not to be unlawfully deprived of liberty and the right to be informed of the reasons for the detention.

116. The ***Commission*** and the ***representatives*** stated that the alleged victims were arrested without being presented with a warrant issued prior to their detention and without complying with the provisions of the Code of Criminal Procedure. They added that they only became aware of the charges against them and the reasons for their detention when they were brought before a judge, 47 days after having been arrested in the case of Daniel García Rodríguez, and 34 days in the case of Reyes Alpízar Ortiz. In view of the foregoing, they considered that the State violated Articles 7(1), 7(2) and 7(4) of the American Convention, in relation to Article 1(1) of the same instrument.

117. The ***State*** argued that Daniel García Rodríguez was made aware of all the charges against him when he was arrested. In particular, it maintained that he appeared voluntarily before the Public Prosecutor's Office to testify in relation to the murder of María de los Ángeles Tamés Pérez. Subsequently, and by virtue of his statement, he was placed at the disposal of the Public Prosecutor's Office, and finally that same day, he was notified in writing of the *arraigo* order issued against him. At this time, the detention was formalized and he was informed of all the offenses of which he was accused. As for the situation of Reyes Alpízar Ortiz, it indicated that he was arrested on October 25, 2002, when the Special Operations Group of the PGJEM asked for his identification at a public transportation stop and he tried to flee. After being arrested on the spot, he allegedly stated that he knew that he was being arrested for the murder of Mayor Tamés Pérez. In addition, the State alleged that when he was about to be taken to the Deputy District Attorney's offices in Tlalnepantla, he tried to bribe the agents so that they would let him go. The State argued that at this time he was told that he was being arrested for the crime of bribery committed *in flagrante delicto*. He remained in custody until October 28, when the *arraigo* order was issued against him.

A.2. The right to be brought promptly before a judge

118. The ***Commission*** and the ***representatives*** noted that Daniel García Rodríguez was arrested on February 25, 2002, and that Reyes Alpízar Ortiz was detained on October 25, of the same year. On the very day that Daniel García was arrested, the Fifth Criminal Judge ordered his *arraigo*. In the case of Reyes Alpízar, the *arraigo* was decreed on October 28. The Commission and the representatives held that the alleged victims appeared before a judge on April 11 and November 28, 2002, respectively - that is, 47 and 34 days later. They added that the *arraigo* order is not equivalent to the judicial control stipulated in Article 7(5), since there is no record that the alleged victims appeared before a judicial authority in the prescribed terms. Thus, they concluded that the

158 Article 7 of the American Convention.

159 Article 8(2) of the American Convention.

160 Article 1(1) of the American Convention.

161 Article 2 of the American Convention.

State violated the right established in Article 7(5) of the American Convention.

119. For its part, the ***State*** did not present a specific argument on this point.

A.3. Application of the measure of arraigo and the subsequent pretrial detention

120. The ***Commission*** and the ***representatives*** recalled that at the time of the facts, *arraigo* (preventive detention) was provided for by the legislation of the State of Mexico, which granted the Public Prosecutor's Office, in the context of an investigation, the power to detain individuals for a maximum of 60 days for the processing of the inquiry before formally charging them with any crime. They noted that both Daniel García and Reyes Alpízar were held under *arraigo* for 47 and 34 days, respectively. They also alleged that they were deprived of their liberty based on alleged suspicions and on the presumption that they had committed a serious crime, which does not justify the deprivation of liberty of a person who should be fully protected by the principle of presumption of innocence. Consequently, they concluded that the application of *arraigo* to the alleged victims was a punitive and not a precautionary measure, in violation of Articles 7(1), 7(3) and 8(2) of the American Convention in relation to Article 1(1) and 2 of the same instrument.

121. With regard to pretrial detention, the ***Commission*** and the ***representatives*** indicated that the legislation applicable at the time of the facts authorized preventive or pretrial detention for crimes punishable by imprisonment and did not allow provisional release for serious crimes. In this case, the arrest warrants and formal orders of imprisonment were issued based on the type of crime prosecuted and the indications of responsibility. There is no record of a specific analysis of the procedural objectives. They added that when Daniel García was brought before the judge, the latter merely indicated that he was not entitled to request provisional release because the crime of which he was accused was serious. They indicated that in this case the imposition of pretrial detention operated as a form of advance punishment. They also alleged that there is no information to show that, during the more than 17 years that the alleged victims were deprived of their liberty, their detention was periodically reviewed for procedural purposes.

122. Thus, they concluded that the deprivation of liberty of the alleged victims was arbitrary and constituted an advance punishment, and that they did not have access to an effective remedy to analyze its reasonableness, in accordance with procedural objectives. Consequently, they considered that the State violated Articles 7(1), 7(3), 7(5), 7(6), 8(2) and 25 of the American Convention in relation to Articles 1(1) and 2 of the same instrument.

123. The ***State*** argued that the petitioners' *arraigo* did not reflect the philosophy of 'detention for investigative purposes' (detaining to investigate). In particular, it argued that the *arraigo* of Daniel García and Reyes Alpízar was essentially due to two concurrent factors. On the one hand, it argued that there was sufficient evidence to reasonably assume that they had participated in the crime under investigation and, on the other hand, there were facts and information that led to the presumption of a procedural risk. The State also emphasized that the appeals filed since 2011 to request the substitution of the custodial measure had culminated with the release of the defendants in 2019.

124. Regarding the preventive detention, the State argued that it began with the execution of the arrest warrants for the crime of homicide and that the laws of criminal procedure in force at the time of the facts required the imposition of pretrial detention, without allowing provisional release under any precautionary measure. The State added that at the time of the facts there was no alternative precautionary measure to prevent the risk of flight and threats against the family of Mayor María de los Ángeles Tamés Pérez. Likewise, it considered that, although the pretrial detention imposed on both defendants was carried out in accordance with the *ex officio* procedure, there were reasons that justified its use in the criminal proceedings for the aggravated homicide of Mayor María de los Ángeles Tamés Pérez, for which reason it is not possible to infer that its application in the present case would have been unlawful and, therefore, that the State is responsible for an alleged violation of the right to personal liberty.

B. Considerations of the Court

125. This section will analyze the aforementioned arguments in the following order: a) the right not to be unlawfully deprived of liberty and the right to be informed of the reasons for the detention; b) the right to be brought promptly before *"a judge or other officer authorized by law to exercise judicial functions"*; c) the application of the measure of *arraigo* and the subsequent preventive detention of Daniel García Rodríguez and Reyes Alpízar Ortiz, and d) conclusion.

B.1. The right to not be unlawfully deprived of liberty and the right to be informed of the reasons for detention

a) Regarding the legality of the detentions of Daniel García Rodríguez and Reyes Alpízar Ortiz

126. It should be recalled that Article 7(2) of the American Convention establishes that "[n]o one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the Constitution of the State Party concerned, or by a law established pursuant thereto." The Court has held that a State's Constitution, as well as the laws established "pursuant thereto," must be examined to determine whether they are compatible with Article 7(2) of the American Convention. This entails an analysis of compliance with the requirements established as precisely as possible and "beforehand" in said laws regarding the "reasons" and "conditions" for depriving a person of physical liberty. If domestic provisions have not been observed, either materially or formally, when a person is deprived of his liberty, such deprivation will be unlawful and contrary to the American Convention,[162] in light of Article 7(2).[163]

127. On the other hand, the Court finds that Article 16 of the Mexican Constitution in force at the time of the arrest of the alleged victims stated that "[t]he authority that executes an arrest warrant shall place the accused at the disposal of the judge, without delay and under his strictest responsibility. Failure to comply with this provision shall be punished under criminal law. […]In cases of *flagrante delicto*, any person may detain the suspect, placing him immediately at the disposal of the nearest authority and the latter, with the same promptness, shall bring him before the Public Prosecutor's Office."

128. Similarly, Article 147 of the 2000 Code of Criminal Procedure Code for the state of Mexico provides that "[w]hen the requirements established in the Constitution of the United Mexican States are met, the court shall immediately issue the arrest warrant requested by the Public Prosecutor's Office against the accused." Furthermore, Article 142 of said Code refers to *flagrante delicto* in the following terms: "*Flagrante delicto* exists when the person is detained at the moment of committing the offense, or when the suspect is pursued materially, uninterruptedly and immediately after the offense has been committed. […] *Flagrante delicto* is considered to exist when the person is identified as being responsible by the victim, an eyewitness of the facts, or by whoever participated with him in the commission of the crime; or when the object, instrument or product of the crime is found in his possession; or when there are signs or indications that lead to a well-founded presumption of his participation in the crime; provided that it may constitute a serious crime, and that a period of seventy-two hours has not elapsed from the time of the

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[162] *Cf. Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of November 21, 2007, Series C No. 170, para. 57; *Case of Carranza Alarcón v. Ecuador. Preliminary objections, merits, reparations and costs.* Judgment of February 3, 2020. Series C No. *399,* para. 61, and *Case of Cortez Espinoza v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of October 18, 2022. Series C No. 468, para. 121.

[163] *Cf. Case of Argüelles et al. v. Argentina. Preliminary objections, merits, reparations and costs*. Judgment of November 20, 2014. Series C No. 288, para. 116; *Case of Women Victims of Sexual Torture in Atenco v. Mexico. Preliminary objection, merits, reparations and costs.* Judgment of November 28, 2018. Series C No. 371, para. 230, and *Case of Cortez Espinoza v. Ecuador, supra*, para. 121.

commission of the probable offense." Likewise, Article 143 of the Code establishes that "[t]he Public Prosecutor's Office will order the arrest in urgent cases, in writing, stating the grounds and the evidence that certify the requirements mentioned in the preceding paragraphs. In this case, the Public Prosecutor's Office must have proven the *corpus delicti* and the probable responsibility of the accused."

i. The case of Daniel García Rodríguez

129. With respect to the argument regarding the legality of the detention of Daniel García Rodríguez, the Court notes that there is no dispute over the fact that, in the morning hours, he was taken by agents of the PGJEM to make a statement before the Public Prosecutor's Office (*supra* para. 68). In this regard, the State explained that Daniel García Rodríguez had been summoned to testify before the Public Prosecutor's Office, and that the procedural legislation in force at the time provided that in cases where there was a well-founded fear that summons would be disobeyed, the persons summoned to testify could be brought in by the police.

130. On this point, the Court notes that the summons issued to Daniel García Rodríguez ordering him to appear before the Public Prosecutor's Office, as mentioned by the State, was not presented to this Court, nor was there any clear reference to the law under which said summons would have been issued.

131. Based on the foregoing, the "accompaniment" of Daniel García Rodríguez by PGJEM police officers to ensure that would go to testify before the Public Prosecutor's Office, constituted an arrest that should have complied with the requirements stipulated in domestic law, that is, an arrest warrant should have been issued (Article 16 of the Constitution and Article 147 of the 2000 Code of Criminal Procedure for the state of Mexico). Moreover, in the case of Daniel García Rodríguez there is no dispute between the parties over the fact that none of the elements of *flagrante delicto* (Article 16 of the Constitution and Article 142 of the 2000 Criminal Procedure Code for the state of Mexico) are present. Furthermore, the domestic authorities did not obtain an arrest warrant from the Public Prosecutor's Office in the urgent case provided for in Article 143 of the 2000 Code of Criminal Procedure for the state of Mexico.

132. Consequently, the detention of Daniel García Rodríguez did not comply with any of the norms established in domestic law, and therefore violated Article 7(2) of the American Convention to his detriment.

ii. The case of Reyes Alpízar Ortiz

133. Regarding the detention of Reyes Alpízar, there is no dispute over the fact that he was arrested after he allegedly attempted to flee from an identity check, on October 25, 2002 (*supra* para. 74). On this point, the State indicated in its answering brief that "from the criminal proceedings described in the police report" it appears that "in the course of the investigation," he was "located," "tried to flee" and that "at the time of his arrest," Reyes Alpízar stated that he "knew that at any moment he was going to be arrested for having been involved in the death of a mayor." In addition, "he justified, at that moment, his change of address and physical appearance, because he knew that they were looking for him, and he also offered them money and a house so that they would let him go." According to the State, these circumstances legally justified his presentation before the Public Prosecutor's Office, "which determined that he was in *flagrante delicto* and ordered his legal detention for the crime of bribery because there were indications that he occasionally met with other persons to commit serious crimes." Moreover, in its brief of final arguments, the State indicated, in relation to this same point, that Reyes Alpízar was being investigated for the murder of María de los Ángeles Tamés Pérez and that, in this context, the Special Operations Group of the PGJEM "identified him" at a public transportation stop. Subsequently, they asked him to "identify himself" after which Reyes Alpízar allegedly tried to escape. According to the agents of the PGJEM's Special Operations Group who made the arrest,

when the detainee was placed in the vehicle to be transferred to the Deputy District Attorney's Office after his arrest, he tried to bribe them.[164]

134. Based on the foregoing, the Court notes that there is no dispute that the arrest of Reyes Alpízar Ortiz was carried out without a warrant. However, from the State's argument it appears that Reyes Alpízar Ortiz was already the subject of an inquiry and that, "while conducting an investigation," the Special Operations Group of the PGJEM "located" or "identified" him, and it is only after this that they would have carried out an identity check. In this regard, it is clear that, according to the information provided by the State, there is no real hypothesis of a random identity check because the "localization" occurred as part of a criminal investigation. As for the alleged bribery, which would have been the in *flagrante delicto* that served as the basis for the arrest of Reyes Alpízar Ortiz, the Court notes that it would have occurred after his arrest, after he was "located" by the authorities and detained.

135. Therefore, given that the initial arrest of Reyes Alpízar Ortiz was carried out without a warrant and without the hypothesis of *flagrante delicto* at the time, under the terms of Articles 16 of the Mexican Constitution and Articles 147 and 142 of the 2000 Code of Criminal Procedure for the state of Mexico, this Court finds that the State violated Article 7(2) of the American Convention to the detriment of Reyes Alpízar Ortiz.

b) The right to be informed of the reasons for detention

136. Article 7(4) of the American Convention refers to two guarantees for the person who is being detained: i) oral or written information on the reasons for the detention, and ii) notification of the charges, which must be in writing.[165] The information on the "reasons" for the detention must be provided "at the time of the arrest," as a mechanism to prevent unlawful or arbitrary detentions from the very moment of the deprivation of liberty and, also, to ensure the individual's right of defense.[166] The Court has also indicated that the agent who makes the arrest must provide information in simple, jargon-free language of the essential facts and legal grounds on which the detention is based. Thus, Article 7(4) of the Convention is not satisfied if only the legal basis is mentioned.[167]

137. It is an uncontested fact that Daniel García Rodríguez was not informed of the reasons for his arrest at the time he was detained by the police and taken to the Public Prosecutor's Office to make a statement (*supra* para. 68). The State explained that it was only when he was notified in writing of the *arraigo* order issued against him by the Fifth Criminal Judge of First Instance of the Tlalnepantla Judicial District on February 25, 2002, that Daniel García Rodríguez was informed of the reasons for his detention. It should be recalled that, at this point, Daniel García had been detained for several hours. Thus, it is clear that the State violated the right to be informed in a timely manner of the reasons for detention contained in Article 7(4) of the Convention, to the detriment of Daniel García Rodríguez.

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164 *Cf.* Government of the state of Mexico. Attorney General's Office. Special Operations Group. File ATI/II/3672/01. Matter: Person remanded in custody. Tlalnepantla of Baz, October 25, 2002 (evidence file, folio 827).

165 *Cf. Case of Cabrera García and Montiel Flores v. Mexico*. *Preliminary objection, merits, reparations and costs.* Judgment of November 26, 010. Series C No. 220, para. 106; *Case of Women Victims of Sexual Torture in Atenco v. Mexico, supra*, para. 246, and *Case of Aroca Palma et al. v. Ecuador. Preliminary objection, merits, reparations and costs.* Judgment of November 8, 2022. Series C No. 471, para. 81.

166 *Cf. Case of Juan Humberto Sánchez v. Honduras. Preliminary objection, merits, reparations and costs.* Judgment of June 7, 2003. Series C No. 99, para. 82, and *Case of Dial et al. v. Trinidad and Tobago. Merits and reparations.* Judgment of November 21, 2022. Series C No. 476, footnote 70.

167 *Cf. Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador. Preliminary objections, merits, reparations and costs.* Judgment of November 21, 2007. Series C No. 170, para. 71, and *Case of Dial et al. v. Trinidad and Tobago. Merits and reparations, supra*, para. 52.

138. As regards the case of Reyes Alpízar Ortiz, the State affirmed that, at the time of his arrest on October 25, 2002, he was informed that he had been detained for the offense of bribery in *flagrante delicto*, although it is not clear whether he was given information about the other crimes for which he was arrested. Similarly, Reyes Alpízar Ortiz stated that he was arrested "without a word, without a summons or arrest warrant when he was on [his] way home" and that he was "put into private vehicles by several armed individuals dressed in civilian clothes."[168] Furthermore, the agents of the PGJEM's Special Operations Group who made the arrest did not mention in their statements the fact that Reyes Alpízar Ortiz had been informed of the reasons for his arrest.[169] In view of this, the Court concludes that the State violated the right to be informed of the reasons for detention recognized in Article 7(4) of the Convention to the detriment of Reyes Alpízar Ortiz.

B.2. The right to be brought promptly before "a judge or other official authorized by law to exercise judicial functions"

139. With respect to the alleged violation of the right to be brought promptly before a judicial authority, the Court recalls that Article 7(5) of the Convention requires that a detained person "be brought" before "a judge or other officer authorized by law to exercise judicial power." This implies that the judge must hear the detainee in person and consider all the explanations provided by the latter, in order to decide whether to release him or to maintain the deprivation of liberty.[170] On this point, it should be recalled that immediate judicial oversight is a measure designed to prevent arbitrary or unlawful detentions, bearing in mind that in a State governed by the rule of law it is the responsibility of the judge to guarantee the rights of the detained person, authorizing the adoption of precautionary or coercive measures when strictly necessary and, in general, ensuring that the accused is treated in a manner consistent with the presumption of innocence.[171]

140. In the instant case, the State did not dispute the fact that Daniel García Rodríguez was brought before a judicial authority for the first time on April 11, 2002, that is, 47 days after his arrest on February 25, 2002. Likewise, the State did not deny the fact that Reyes Alpízar Ortiz was brought before a judicial authority for the first time on November 28, 2002, that is, 31 days after his arrest on October 28, 2002 (*supra* para. 77).

141. Therefore, in the opinion of this Court, Daniel García Rodríguez and Reyes Alpízar Ortiz were brought before a judge for the first time on terms that do not comply with the provisions of Article 7(5) of the American Convention, which clearly requires that a detained person "be brought promptly before a judge or other officer authorized by law to exercise judicial power" to determine their situation. Given that it is not reasonable to infer that 47 days and 31 days in detention without being brought before a judge complies with this provision of the American Convention, the Court finds that Article 7(5) of the American Convention was violated to the detriment of Reyes Alpízar Ortiz and Daniel García Rodríguez.

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168 Affidavit rendered by Reyes Alpízar Ortiz (evidence file, folios 993 et seq.).

169 *Cf.* Government of the state of Mexico. Attorney General's Office. Special Operations Group. File ATI/II/3672/01. Matter: Person remanded in custody. Tlalnepantla de Baz, October 25, 2002 (evidence file, folio 827).

170 *Cf. Case of Chaparro Álvarez and Lapo Iñiguez v. Ecuador. Preliminary objections, merits, reparations and costs, supra*, para. 85, and *Case of Villarroel Merino et al. v. Ecuador. Preliminary objections, merits, reparations and costs.* Judgment of August 24, 2021. Series C No. 430, para. 105.

171 *Cf. Case of Chaparro Álvarez and Lapo Iñiguez v. Ecuador*, *Preliminary objections, merits, reparations and costs, supra,* para. 81, and *Case Pollo Rivera v. Peru. Merits, reparations and costs.* Judgment of October 21, 2016. Series C No. 319, para. 103.

B.3. The application of "arraigo" and the subsequent pretrial detention imposed on Daniel García Rodríguez and Reyes Alpízar Ortiz

142. The representatives and the Commission have argued that the concept of *arraigo* established in Article 154 of the 2000 Code of Criminal Procedure for the state of Mexico, which was applied in the instant case, is not compatible with the content of the American Convention and that it violates the rights to personal liberty and to the presumption of innocence as well as the obligation to adopt provisions of domestic law (Articles 7 and 8(2)). They also reached similar conclusions with respect to the preventive detention that was applied in this case. Therefore, it is appropriate to examine these rules and determine whether they are contrary to the right to personal liberty and to the presumption of innocence in light of the American Convention.

143. In order to carry out this analysis, the Court recalls that Article 2 of the American Convention requires the States Parties to adopt, in accordance with their constitutional procedures and the provisions of the Convention, such legislative or other measures as may be necessary to give effect to the rights and freedoms protected by the Convention.[172] This duty implies the adoption of measures of two kinds: on the one hand, the elimination of rules and practices that in any way violate the guarantees provided under the Convention,[173] either because they disregard those rights or freedoms or impede their exercise.[174] And, on the other hand, the promulgation of laws and the development of practices conducive to the effective observance of those guarantees.[175]

144. As this Court has pointed out on other occasions, the provisions of domestic law adopted for such purposes must be effective; this means that the State has the obligation to enshrine and adopt in its domestic legal system all the necessary measures to ensure that the provisions of the American Convention are actually complied with and put into practice.[176] In this sense, the Court has indicated that States not only have the positive obligation to adopt the necessary legislative measures to ensure the exercise of the rights enshrined therein, but they must also avoid enacting laws that impede the free exercise of these rights and, at the same time, avoid suppressing or modifying the laws that protect them.[177]

145. The Court will now analyze the compatibility of the concepts of *arraigo* and pretrial or preventive detention with the American Convention in the following order: a) the concept of *arraigo* in Article 154 of the 2000 Code of Criminal Procedure for the state of Mexico; b) pretrial detention in the 2000 Code of Criminal Procedure for the state of Mexico and in Article 19 of the Mexican Constitution, and c) the application of *arraigo* and pretrial detention in the specific case.

a) The concept of arraigo in Article 154 of the 2000 Code of Criminal Procedure for the state of Mexico

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172 *Cf. Case of Gangaram-Panday v. Suriname. Preliminary objections*. Judgment of December 4, 1991. Series C No. 12, para. 50; *Case of Granier et al. (Radio Caracas Television) v. Venezuela. Preliminary objections, merits, reparations and costs.* Judgment of June 22, 2015. Series C No. 293, para. 389, and *Case of Dial et al. v. Trinidad and Tobago, supra,* para. 49.

173 *Cf. Case of Castillo Petruzzi et al. v. Peru. Merits, reparations and costs.* Judgment of May 30, 1999. Series C No. 52, para. 207, and *Case of Tzompaxtle Tecpile et al. v. Mexico, supra*, para. 116.

174 *Cf. Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago. Merits, reparations and costs.* Judgment of June 21, 2002. Series C No. 94, para. 113, and *Case of Tzompaxtle Tecpile et al. v. Mexico, supra*, para. 116.

175 *Cf. Case of Castillo Petruzzi et al. v. Peru. Merits, reparations and costs, supra*, para. 207, and *Case of Tzompaxtle Tecpile et al. v. Mexico, supra*, para. 116.

176 *Cf. Case of "The Last Temptation of Christ" (Olmedo Bustos et al.) v. Chile. Merits, reparations and costs.* Judgment of February 5, 2001. Series C No. 73, para. 87, and *Case of Tzompaxtle Tecpile et al. v. Mexico, supra*, para. 117.

177 *Cf. Case of Castillo Petruzzi et al. v. Peru, supra, para. 207,* and *Case of Tzompaxtle Tecpile et al. v. Mexico, supra*, para. 117.

146. Regarding the concept of *arraigo*, this Court recalls that in the judgment in the case of *Tzompaxtle Tecpile et al. v. Mexico,* it indicated that, in general terms, any pre-procedural measure that restricts a person's liberty in order to investigate a crime that he or she allegedly committed is intrinsically contrary to the provisions of the American Convention and clearly violates the rights to personal liberty and to the presumption of innocence.[178]

147. In relation to the arguments on this issue, the Court notes that the State indicated, during the public hearing in this case, that the practice of *arraigo* no longer exists in all the states and, therefore, the procedural code does not contemplate it at the state level.[179] Accordingly, it affirmed that no state imposes a precautionary measure without a dispute between the parties, since *arraigo* is an exceptional measure for organized crime at the federal level, which is established in Article 16 of the Constitution.[180] Similarly, with regard to the alleged inadequacy of the legal framework, the State referred to the legislative, executive and judicial mechanisms to reform and adopt the legal measures necessary to prevent similar events from occurring in the future. Specifically, it pointed out that if the same facts of the instant case were to occur today, the *arraigo* measure imposed on the alleged victims would not be appropriate, and that the law has gradually been reformed, "permeating fundamental rights," such as the right to liberty.[181] The State added that there is currently a process to "move toward conventionality, toward a greater alignment to ensure that not only the measures of *arraigo* and mandatory pretrial detention, but any other restriction to a human right - for example freedom of movement, which is restricted to administrative or judicial limitations - are applied in a legal, proportionate, necessary and exceptional manner." However, in response to a specific question at the hearing, the State acknowledged that *arraigo* continues to be applied today at the federal level, in cases of organized crime.[182]

148. The *arraigo* measure that was applied to the alleged victims in the instant case was contained in a different rule from those analyzed by the Court in the case of *Tzompaxtle Tecpile et al. v. Mexico*. According to the rulings of February 25, 2002, of the Duty Criminal Judge in Tlalnepantla and of October 28, 2002, of the Seventh Criminal Judge of First Instance of Tlalnepantla (*supra* paras. 68 and 75), the *arraigo* applied against Daniel García Rodríguez and Reyes Alpízar Ortiz was established in Article 154 of the 2000 Code of Criminal Procedure for the state of Mexico.

149. In this regard, the Court recalls that the content of the rule applied in the instant case is as follows:

> When in the course of a preliminary investigation the Public Prosecutor's Office deems it necessary to place the accused in preventive detention or prohibit him from leaving a geographical area without the authorization of the judicial authority, taking into account the characteristics of the act charged and the personal circumstances of the accused, it shall refer

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178 *Cf. Case of Tzompaxtle Tecpile et al. v. Mexico, supra,* paras. 156 and 157.

179 During the public hearing in this case the State indicated that: "Basically, it is already in place, the concept of *arraigo* has ceased to exist in all the states, the procedural codification does not contemplate that measure. We refer to the states, no state imposes a precautionary measure without a dispute existing between the parties, the defense must be present, the Public Prosecution Service must be present and justify the precautionary measures; there is already a robust catalog of precautionary measures, and it is the judge who determines the *arraigo* as such. In the states it cannot be applied and it is exceptional for organized crime. So, at this moment there could not be *arraigo* for Mr. Daniel and for Mr. Reyes."

180 In the Case of *Tzompaxtle Tecpile et al. v. Mexico* the Court was able to confirm that *arraigo* is still in force in Article 12 of the Federal Law against Organized Crime. *Cf. Case of Tzompaxtle Tecpile et al. v. Mexico*, *supra,* paras. 40 and 41.

181 During the public hearing in this case, the State indicated: "We can observe that the law has been gradually changing, permeating fundamental rights, such as freedom; in this sense it is also evident that as the years have passed there are rules that allow us [to act] in a specific case, as the national code has already standardized the way in which a precautionary measure should be imposed, which favors the adversarial principle."

182 *Cf.* Answer to questions raised by the representatives of the State during the public hearing in the instant case.

> the matter to the court, stating the grounds and reasons for its request, so that it may immediately rule on the appropriateness of the *arraigo* or detention, with supervision of the authority exercised by the Public Prosecutor's Office and its assistants. The accused shall be notified immediately of the *arraigo* or detention and it shall be extended for the time strictly necessary for the proper conduct of the investigation in question, but shall not exceed thirty days, which may be extended for another thirty days, at the request of the Public Prosecutor's Office.
>
> The judge shall decide, after hearing the Public Prosecutor's Office and the affected party, on the continuation or the lifting of the *arraigo* or detention.

150. Article 154 of the 2000 Code of Criminal Procedure for the state of Mexico presented several of the problems that were highlighted by this Court in relation to Article 12 of the 1996 Federal Law Against Organized Crime, as well as Article 133 *bis* of the 1999 Federal Code of Criminal Procedure, which were analyzed in the case of *Tzompaxtle Tecpile et al. v. Mexico*. In particular, the *arraigo* contemplated in Article 154 of the 2000 Code of Criminal Procedure for the state of Mexico: a) consisted of a pre-procedural measure that sought to restrict a person's liberty in order to investigate crimes allegedly committed by that person and, in that sense, was intrinsically contrary to the provisions of the American Convention and clearly violated the rights to personal liberty and the presumption of innocence; b) it did not allow the person under *arraigo* to be heard by a judicial authority before the measure that restricted his personal liberty or his freedom of movement was decreed; and c) the objective of the measure restricting liberty was not compatible with the legitimate purposes for the restriction of personal liberty since it was essentially for investigative purposes.

151. For all the above reasons, this Court finds that Article 154 of the 2000 Code of Criminal Procedure for the state of Mexico, referring to the concept of *arraigo* and applied in the instant case (*supra* para. 148), contained clauses that, *per se*, are contrary to several rights established in the American Convention, namely: the rights not to be arbitrarily deprived of liberty (Article 7(3)); to judicial oversight of the deprivation of liberty and the reasonableness of the term of pretrial detention (Article 7(5)); to be heard (Article 8(1)); and to the presumption of innocence (Article 8(2)). To that extent, the Court concludes that the State violated these rights in relation to the obligation of adopt domestic provisions of law established in Article 2 of said treaty, to the detriment of Daniel García Rodríguez and Reyes Alpízar Ortiz.

b) Pretrial detention in Article 19 of the Mexican Constitution and in the 2000 Code of Criminal Procedure for the state of Mexico

152. The representatives and the Commission argued that the mandatory pretrial detention that was applied in the instant case was contrary *per se* to the American Convention and violated the rights to personal liberty (Article 7 of the American Convention) and to the presumption of innocence (Article 8(2) of the Convention).

153. The Court will now analyze these arguments in the following order: a) general aspects of pretrial detention, the right to personal liberty and to the presumption of innocence; b) the compatibility of the concept of pretrial detention contained in the 2000 Code of Criminal Procedure for the state of Mexico and in Article 19 of the Mexican Constitution with the American Convention, and c) conclusion.

i. General aspects of pretrial detention, the right to personal liberty and to the presumption of innocence

154. First of all, it should be recalled that States have the obligation to ensure security and maintain public order within their territory and must therefore employ the necessary means to combat the phenomena of delinquency and organized crime, including measures involving restrictions on, or even deprivation of, personal liberty. Nevertheless, the State does not have

unlimited power to achieve these ends, regardless of the seriousness of certain actions and the guilt of their alleged perpetrators. In particular, the authorities may not violate the rights recognized in the American Convention, such as the rights to the presumption of innocence, to personal liberty, to due process, and may not carry out unlawful or arbitrary detentions, among others.[183] Pretrial detention in itself is not contrary to international human rights law and is a measure that the States may adopt as long as it complies with conventional requirements.

155. Regarding the arbitrariness referred to in Article 7(3) of the American Convention, the Court has established that no one shall be subject to arbitrary arrest or imprisonment based on reasons and methods that – even though they are classified as legal - may be considered incompatible with respect for the fundamental rights of the individual because they are, among other things, unreasonable, unforeseeable or disproportionate.[184] Moreover, the domestic laws, the applicable procedures and the corresponding general principles, expressed or tacit, must also be compatible with the Convention. Thus the concept of "arbitrariness" should not be equated with "against the law," but should be interpreted more broadly to include elements of inappropriateness, injustice and unpredictability."[185] Article 8(2) also refers to the right to the presumption of innocence.

156. The Court has considered that for a precautionary measure restricting liberty not to become arbitrary and not to affect a defendant's right to the presumption of innocence, it is necessary that: a) material assumptions related to the existence of an unlawful act and the link of the person being prosecuted to that act are present; b) the measure complies with the four elements of the "proportionality test", in other words, the purpose of the measure must be legitimate (compatible with the American Convention),[186] suitable to achieve the objective sought, necessary and strictly proportionate,[187] and c) the decision to impose it must be based on sufficient grounds to allow for an assessment of whether it complies with the above conditions.[188]

157. Regarding the "proportionality test", the Court has stated that it is up to the judicial authority to conduct an assessment of proportionality when ordering a measure that deprives a person of liberty. The Court has also considered that pretrial detention is a precautionary measure rather than a punitive measure,[189] which should be applied exceptionally as it is the most severe punishment that can be imposed on the accused for an offense for which he or she is entitled to

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183 *Cf. Case of Tzompaxtle Tecpile v. Mexico, supra,* para. 95.

184 *Cf. Case of Gangaram Panday v. Suriname. Merits, reparations and costs.* Judgment of January 21, 1994. Series C No. 16, para. 47; *Case of Amrhein et al. v. Costa Rica. Preliminary objections, merits, reparations and costs.* Judgment of April 25, 2018. Series C No. 354, para. 355; *Case of Romero Feris v. Argentina. Merits, reparations and costs*. Judgment of October 15, 2019. Series C No. 391, para. 91; *Case of Tzompaxtle Tecpile et al. v. Mexico, supra*, para. 96, and *Case of Villarroel Merino et al. v. Ecuador. Preliminary objections, merits, reparations and costs.* Judgment of August 24, 2021. Series C No. 430, para. 86.

185 *Cf. Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador*, *Preliminary objections, merits, reparations and costs, supra,* para. 92; *Case of Amrhein et al. v. Costa Rica*, *supra,* para. 355, and *Case of Romero Feris v. Argentina, supra*, para. 91, and *Case of Tzompaxtle*, *Tecpile et al. v. Mexico, supra*, para. 96.

186 *Cf. Case of Servellón García et al. v. Honduras. Preliminary objection, merits, reparations and costs. Judgment of September 21, 2006. Series C No. 152, para. 89; Case of Women Victims of Sexual Torture in Atenco v. Mexico, supra*, para. 251; *Case of Romero Feris v. Argentina, supra,* para. 92, and *Case of Tzompaxtle Tecpile et al. v, Mexico, supra*, para. 97.

187 *Cf. Case of Palamara Iribarne v. Chile. Merits, reparations and costs*. Judgment of November 22, 2005. Series C No. 135, para. 197; *Case of Women Victims of Sexual Torture in Atenco v. Mexico, supra,* para. 251; *Case of Romero Feris v. Argentina, supra,* para. 92, and *Case of Tzompaxtle Tecpile v. Mexico, supra,* para. 96.

188 *Cf. Case of García Asto and Ramírez Rojas v. Peru. Preliminary objection, merits, reparations and costs.* Judgment of November 25, 2005. Series C No. 137, para. 128; *Case of Romero Feris v. Argentina, supra,* para. 92, and *Case of Tzompaxtle Tecpile v. Mexico, supra*, para. 96.

189 *Cf. Case of López Álvarez v. Honduras. Merits, reparations and costs*. Judgment of February 1, 2006. Series C No. 141, para. 69, and *Case of Tzompaxtle*, *Tecpile et al. v, Mexico, supra*, para. 104.

the presumption of innocence.[190] The Court has indicated in other cases that the deprivation of liberty of a person who has been accused or indicted for an offense cannot be based on general preventive or special preventive purposes that could be attributed to the punishment.[191] Therefore, it has emphasized that pretrial detention, being the most severe measure, should be applied exceptionally and that the rule must be the defendant's liberty while a decision is made regarding his criminal responsibility.[192]

158. In view of the above, the judicial authority can only impose measures of this nature when it is shown that: a) the purpose of the measures that deprive or restrict liberty is compatible with the Convention; b) that the measures adopted are appropriate to achieve the stated objective; c) that they are necessary; in other words, that they are absolutely essential to achieve the desired purpose and that, among all possible measures, there is no less burdensome one in relation to the right involved that would be as suitable to achieve the proposed objective, and d) that they are strictly proportionate, so that the sacrifice inherent in the restriction of the right to personal liberty is not exaggerated or excessive compared with the advantages obtained by such restriction and the achievement of the purpose sought.[193]

159. Regarding the first point, the Court has indicated that this measure should be imposed only when it is necessary to satisfy a legitimate purpose, namely, to ensure that the accused does not hinder the development of the proceedings or evade justice.[194] It has also emphasized that risks to the proceedings should not be presumed, but must be verified in each case, based on real and objective circumstances relating to the specific case.[195] The requirement of such purposes is based on Articles 7(3), 7(5) and 8(2) of the Convention. In this regard, it should be recalled that the United Nations Human Rights Committee has indicated that pretrial detention cannot be mandatory for every type of crime, but must be analyzed according to the circumstances of each case and that it must be determined on a case-by-case basis when the measure is reasonable and necessary.[196]

160. With regard to necessity, the Court finds that, since deprivation of liberty is a measure that implies the restriction of the individual's freedom of action, the judicial authority must be required to impose such a measure only when it considers that the other mechanisms provided by law,

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190 *Cf. Case of Tibi v. Ecuador. Preliminary objections, merits, reparations and costs.* Judgment of September 7, 2004. Series C No. 114, para. 106; *Case of Romero Feris v. Argentina, supra,* para. 97, and *Case of Tzompaxtle Tecpile v. Mexico, supra*, para. 104.

191 *Cf. Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador*. *Preliminary objections, merits, reparations and costs, supra,* para. 103; *Case of Romero Feris v. Argentina. Merits, reparations and costs, supra,* para. 97, and *Case of Tzompaxtle Tecpile v. Mexico, supra*, para. 104.

192 *Cf. Case of López Álvarez v. Honduras, supra,* para. 67; *Case of Barreto Leiva v. Venezuela. Merits, reparations and costs*. Judgment of November 17, 2009. Series C No. 206, para. 121; *Case of Romero Feris v. Argentina, supra*, para. 97, and *Case of Tzompaxtle Tecpile v. Mexico, supra*, para. 104.

193 *Cf. Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador. Preliminary objections, merits, reparations and costs, supra,* para. 93; *Case of Amrhein et al. v. Costa Rica, supra,* para. 356; *Case of Romero Feris v. Argentina, supra*, para. 98, and *Case of Tzompaxtle Tecpile v. Mexico, supra*, para. 105.

194 *Cf. Case of Suárez Rosero v. Ecuador. Merits.* Judgment of November 12, 1997. Series C No. 35, para. 77; and *Case of Amrhein et al. v. Costa Rica*, *supra,* para. 357; *Case of Romero Feris v. Argentina, supra*, para. 99, and *Case of Tzompaxtle Tecpile v. Mexico, supra*, para. 106.

195 *Cf. Case of Amrhein et al. v. Costa Rica, supra,* para. 357; *Case of Romero Feris v. Argentina, supra*, para. 99, and *Case of Tzompaxtle Tecpile v. Mexico, supra*, para. 106.

196 *Cf.* United Nations Human Rights Committee, General Comment No. 35, Liberty and Security of Person, CCPR/C/GC/35 (2014), para. 38.

which imply a lesser degree of interference with individual rights, are not sufficient to satisfy the procedural objectives of the case.[197]

161. Likewise, the Court has held that alternative measures should be available and that measures that restrict liberty may only be imposed when it is not possible to use other measures to guarantee a defendant's appearance at trial.[198] In the Universal System for the Protection of Human Rights, the United Nations Standard Minimum Rules for Non-Custodial Measures refer to pretrial detention as a last resort and clarify that "pre-trial detention shall be used as a means of last resort in criminal proceedings, with due regard for the investigation of the alleged offence and for the protection of society and the victim." The Rules add that "alternative measures to pre-trial detention shall be employed at as early a stage as possible."[199] In a recent case, the European Court of Human Rights held that pretrial detention is a serious interference with fundamental rights and is only justified when the courts have considered and deemed insufficient other less harmful measures.[200]

162. Similarly, the Inter-American Court has held that, in cases of deprivation of liberty, Article 7(5) imposes limits on its duration and, therefore, when the period of pretrial detention exceeds a reasonable time, the liberty of the accused must be restricted by other less harmful measures that would assure his appearance at trial. The standards that should be borne in mind to determine the reasonableness of the time must be closely related to the specific circumstances of the case. In view of the above, and in accordance with Articles 7(3), 7(5) and 8(2) (principle of the presumption of innocence), the Court considers that the domestic authorities must tend toward the imposition of alternative measures to pretrial detention, so as not to distort its exceptional nature.[201] On this point, it should be recalled that the Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas (III) establish that: a) the deprivation of liberty of persons shall be applied for the minimum time necessary; b) the rule is the freedom of the accused and the exception is pretrial detention; c) in certain cases, when it is prolonged excessively, the requirements that are considered normal or sufficient to justify it become insufficient and a greater argumentative effort is required, and d) it must be substantiated and justified in the specific case.

163. The Court has also considered that any restriction of liberty that lacks sufficient justification (Article 8(1)) to allow an assessment of whether it meets the aforementioned conditions would be arbitrary and, therefore, would violate Article 7(3) of the Convention. Thus, in order to respect the presumption of innocence (Article 8(2)) when ordering precautionary measures that restrict liberty, the State must provide a clear and reasoned justification and evidence, according to each specific case, of the existence of the requirements established in the Convention.[202]

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197 *Cf. Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador*, *Preliminary objections, merits, reparations and costs, supra,* para. 93; Case *of Amrhein et al. v. Costa Rica, supra,* para. 356, and *Case of Tzompaxtle Tecpile et al. v. Mexico, supra,* para. 110.

198 *Cf. Case of Romero Feris v. Argentina, supra*, para. 107, and *Case of Tzompaxtle Tecpile et al. v. Mexico, supra,* para. 111.

199 United Nations General Assembly, United Nations Standard Minimum Rules for Non-custodial Measures (Tokyo Rules), Resolution 45/110, December 14, 1990, Rules 6(1) and 6(2), and *Case of Romero Feris v. Argentina, supra*, para. 108. See also, *Case of Tzompaxtle Tecpile et al. v. Mexico, supra,* para. 110.

200 *Cf.* ECHR. *Case of Selahattin Demirtas v. Turkey.* Judgment of December 22, 2020, Application No. 14305/17, para. 347.

201 *Cf. Case of Bayarri v. Argentina. Preliminary objection, merits, reparations and costs.* Judgment of October 30, 2008. Series C No. 187 para. 70; *Case of Romero Feris v. Argentina, supra*, para. 109, and *Case of Tzompaxtle Tecpile et al. v. Mexico, supra,* para. 112.

202 *Cf. Case of Argüelles et al. v. Argentina. Preliminary objections, merits, reparations and costs.* Judgment of November 20, 2014. Series C No. 288 para. 120; *Case of Women Victims of Sexual Torture in Atenco v. Mexico, supra,*

ii. Compatibility of the concept of preventive detention in Article 19 of the Mexican Constitution and in the 2000 Code of Criminal Procedure for the state of Mexico with the American Convention

164. The Court notes that in the instant case, preventive detention was applied in accordance with the provisions of the Mexican Constitution and the 2000 Code of Criminal Procedure for the state of Mexico. In this sense, the formal order of imprisonment issued on April 16, 2002, by the Fifth Criminal Judge that ordered the pretrial detention of Daniel García Rodríguez, as well as the ruling of November 30, 2002, of the same court which ordered the pretrial detention of Reyes Alpízar Ortiz, were based on Article 19 of the Constitution in force in 2002 and on the 2000 Code of Criminal Procedure for the state of Mexico, which provided for the possibility of provisional release of the accused person on bail, except in cases of "serious crimes" (Article 319). Other subsequent decisions that reviewed these precautionary custodial measures were also based on the revised version of Article 19 of the Mexican Constitution, which provides for the so-called mandatory pretrial detention (for example the decision of November 24, 2011, of the Fifth Criminal Court of First Instance, *supra* para. 81). Therefore, this Court must analyze the compatibility of the concept of preventive detention contained in Article 19 of the Mexican Constitution - both in the wording it had when the alleged victims were subject to the precautionary measure, and in the amended wording of 2008 - with the American Convention. In addition, it is pertinent to analyze the concept of preventive detention in the 2000 Code of Criminal Procedure for the state of Mexico.

165. It has been mentioned that the Mexican Constitution in force at the time of the facts of this case established in Article 19 that "[n]o detention before a judicial authority may exceed a period of seventy-two hours from the time the accused is placed at its disposal, without being justified by a formal arrest warrant in which the following shall be stated: the crime with which the accused is charged; the place, time and circumstances of execution, as well as the information provided by the preliminary investigation, which must be sufficient to prove the *corpus delicti* and the probable responsibility of the accused."

166. Similarly, the wording of Article 19 of the Constitution after the reform of 2008 added a second paragraph after the one mentioned above, which states that the "Public Prosecutor's Office may only request the judge to order preventive prison when other precautionary measures are not sufficient to guarantee the presence of the accused at trial, the development of the investigation, the protection of the victim, witnesses or the community, as well as when the accused is being prosecuted or has been previously sentenced for the commission of an intentional crime. The judge will also order preventive detention, *ex officio*, in the following cases: organized crime; deceitful homicide; rape; kidnap; trafficking of persons; crimes committed using firearms, explosives or other violent instruments; and serious crimes against national security, the free development of the personality and public health."

167. For its part, Article 319 of the 2000 Code of Criminal Procedure for the state of Mexico, in force at the time of the facts, established that: "From the moment the accused is placed at the disposal of the jurisdictional body, he shall have the right to be provisionally released on bail immediately upon request, if the following requirements are met […] IV. That the offense in question is not one of the crimes defined as serious under criminal law." In turn, Article 9 of the Criminal Code for the state of Mexico, of March 20, 2000, established that: "For all legal purposes, the offenses classified as serious crimes are: (…) organized crime, established in Article 178; (…) homicide, contained in Article 241; kidnapping, provided for in Article 259; (…) and those provided for in the special laws when the maximum penalty exceeds ten years of imprisonment."

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para. 251, *Case of Jenkins v. Argentina. Preliminary objections, merits, reparations and costs.* Judgment of November 26, 2019. Series C No. 397, para. 71, and *Case of Tzompaxtle Tecpile et al. v. Mexico, supra,* para. 113.

168. With respect to the deprivation of liberty without a conviction in the context of a criminal proceeding, as established in Article 319 of the 2000 Code of Criminal Procedure for the state of Mexico, the Court notes that this rule only refers to the concurrence of the material assumptions, that is to say, to the punishable act and the participation of the accused, as well as the seriousness of the crime with which he is charged. It does not refer to the purpose of pretrial detention, nor to the procedural risks that it seeks to prevent, nor to the requirement to analyze the need for the measure in comparison with others that are less harmful to the rights of the defendant, such as alternative measures to deprivation of liberty. Therefore, as it is conceived, pretrial detention has no precautionary purpose whatsoever and becomes an anticipated punishment.

169. Similarly, this Court notes that the amended Article 19 of the Mexican Constitution, which establishes that the judicial authority "shall order mandatory pretrial detention" for certain crimes, suffers from the same problems that were pointed out for Article 319 of the 2000 Code of Criminal Procedure for the state of Mexico.

170. In both legal provisions, the precepts of the law also limit the role of the judge, affecting his independence (because there is no margin for judicial discretion) and implies an act that is exempt from any real control, since it is based on the mere application of the constitutional norm, preventing the accused from disputing the facts or challenging the grounds.

171. In sum, from a reading of Article 319 of the 2000 Code of Criminal Procedure for the state of Mexico, and Article 19 of the Constitution, when a criminal proceeding involves a crime that entails custodial penalties, it would seem that that, once the material assumptions have been proven, it is sufficient to verify that the statement was taken from the defendant (or that it is recorded that he refused to testify) for preventive detention to be applied. Thus, the aforementioned article prescriptively establishes pretrial detention for crimes of a certain gravity once the material assumptions have been established, without any analysis of the need for the precautionary measure in light of the particular circumstances of the case. Ultimately, we are faced with an automatic or *ex officio* preventive detention when certain crimes are alleged without the authorities having the ability to determine the purpose, necessity or proportionality of the precautionary measure in each case.[203]

172. On the other hand, one could also analyze whether the mandatory pretrial detention established in Article 19 of the Constitution violates the principle of equality and non-discrimination established in Article 24 of the American Convention, since it introduces a different treatment between persons accused of certain crimes with respect to others. In this regard, the Court has established that the States must refrain from actions that are in any way aimed, directly or

[203] It should be recalled that José Ramón Cossío Díaz, who testified as an expert witness in the instant case, explained that "the concepts of *arraigo* and mandatory pretrial detention provided for in the Mexican Constitution are not compatible with inter-American standards on personal liberty, judicial protection, judicial guarantees and presumption of innocence. Both constitutional measures are inadequate to comply with the purpose they seek to achieve and are disproportionate in that they unduly restrict the right to liberty with respect to the advantages that could be obtained from them." The expert added that "since the entry into force of the reforms to Article 19 of the Constitution that establish the *ex officio* or automatic nature of pretrial detention, depending on the crime for which the accusation is made and the charges are brought, the exceptional nature of pretrial detention was eliminated." Similarly, Rogelio Arturo Bárcena Zubieta, an expert witness offered by the State, declared during the public hearing that "mandatory preventive detention is not only contrary to inter-American standards, but it is also […] contrary to the Constitution itself, because it is true that the Constitution says that it can be ordered, that judges must order mandatory detention for certain crimes. But they forget to read that above that phrase, the Constitution also establishes that precautionary measures must comply with precautionary objectives, […], clearly, there is a problem […], of tension or direct violation of what is established in international standards, even with the division of powers, because if one interprets mandatory pretrial detention, as it has been interpreted in practice, it implies that the judges, [...], cannot exercise jurisdiction, because the lawmakers have already told them that what they have to do [...]." Written version of the expert opinion of José Ramón Cossío Díaz during the public hearing in this case (merits file, folio 1252); expert opinion of José Ramón Cossío Díaz during the public hearing in this case, and expert opinion of Rogelio Arturo Bárcena Zubieta during the public hearing in this case.

indirectly, at creating situations of *de jure* or *de facto* discrimination.[204] Likewise, when the discriminatory treatment refers to the unequal protection of domestic law or its application, this must be analyzed in light of Article 24 of the American Convention[205] in relation to the categories protected by Article 1(1) of the Convention. The Court recalls that a difference in treatment is discriminatory when it has no objective and reasonable justification, [206] that is, when it does not pursue a legitimate end and there is no reasonable relationship of proportionality between the means used and the purpose pursued.[207]

173. In the case of mandatory pretrial detention, the differentiated treatment can be verified in the fact that those accused of committing certain crimes will not have the possibility of having control over or adequately defending themselves from the measure, since there is a constitutional mandate that imposes the preventive measure of deprivation of liberty. On this point, it is important to recall that Article 8(2) of the Convention stipulates that, during the proceedings, every person is entitled, with full equality, to various minimum guarantees of due process. For this Court, it is clear that the automatic application of mandatory pretrial detention without considering the specific case and the legitimate purpose for restricting a person's liberty, as well as his specific situation with respect to others who, when also charged with crimes, are not covered by Article 19 of the Mexican Constitution, necessarily implies a breach of the right to equality before the law, in violation of Article 24 of the American Convention, and to enjoy, with full equality, certain guarantees of due process, in violation of Article 8(2) of said instrument.

174. For the above reasons, this Court finds that Article 319 of the 2000 Code of Criminal Procedure for the state of Mexico and Article 19 of the Constitution as amended in 2008, which were applied in the instant case (*supra* para. 164), contained - and continue to contain clauses in the case of Article 19 of the Constitution - that, *per se*, are contrary to various rights established in the American Convention. These rights are: the right not to be deprived of liberty arbitrarily (Article 7(3)), the right to have judicial control over the deprivation of liberty (Article 7(5)), the right to presumption of innocence (Article 8(2)), and the right to equality and non-discrimination (Article 24). Accordingly, the Court concludes that the State violated these rights, in relation to the obligation of adopt provisions of domestic law established in Article 2 of said treaty, to the detriment of Daniel García Rodríguez and Reyes Alpízar Ortiz.

c) Regarding the application of arraigo and pretrial detention in the specific case

175. In the previous sections, the Court has determined that both the concept of *arraigo* contained in Article 154 of the 2000 Code of Criminal Procedure for the state of Mexico and the concept of pretrial detention contained in Article 319 of said Code and in Article 19 of the Constitution as amended in 2008, were contrary to the American Convention, since they violated the rights not to be deprived of liberty arbitrarily (Article 7(3); to judicial control of the deprivation of liberty (Article 7(5)); to be heard (Article 8(1)); and to the presumption of innocence (Article 8(2)). Moreover, with respect to *arraigo*, the Court concluded that it also violated the right to be

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[204] *Cf. Juridical Condition and Rights of Undocumented Migrants*. Advisory Opinion OC-18/03 of September 17, 2003. Series A No. 18, para. 103, *Case of Ramírez Escobar et al. v. Guatemala. Merits, reparations and costs.* Judgment of March 9, 2018. Series C No. 351, para. 270.

[205] *Cf. Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela. Preliminary objection, merits, reparations and costs.* Judgment of August 5, 2008. Series C No. 182, para. 209; *Case of Ramírez Escobar et al. v. Guatemala, supra*, para. 272, and *Case of Montesinos Mejía v. Ecuador, supra,* para. 115.

[206] *Cf. Juridical Condition and Human Rights of the Child.* Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, para. 46, *Case of Flor Freire v. Ecuador. Preliminary objection, merits, reparations and costs.* Judgment of August 31, 2016. Series C No. 315, para. 125, and *Case of Guevara Díaz v. Costa Rica. Merits, reparations and costs*. Judgment of June 22, 2022. Series C No. 453, para. 49.

[207] *Cf. Case of Norín Catrimán et al. (Leaders, Members and Activist of the Mapuche Indigenous People) v. Chile. Merits, reparations and costs.* Judgment of May 29, 2014. Series C No. 279, para. 200; *Case of Flor Freire v. Ecuador, supra,* para. 125, and *Case of Guevara Díaz v. Costa Rica, supra*, para. 49

heard (Article 8(1) of the American Convention), and that mandatory pretrial detention also violated the right to equality and non-discrimination (Article 24 of the American Convention). All of these rights were violated in relation to the obligation to adopt provisions of domestic law established in Article 2 of the American Convention.

176. The foregoing is even more problematic due to the jurisprudence of the Mexican Supreme Court in the *Contradicción de tesis* 293/2011[208] (contradiction of thesis) whereby it accepted that the specific restrictions contained in the National Constitution displaced international standards, among them those of the American Convention and other constituent parts of the Inter-American Human Rights System.[209] In this regard, according to the expert witness José Ramón Cossío Díaz, "the judges and magistrates of the Federal Judicial Branch are obliged to abide by the decisions contained in the *Contradicción de tesis* 293/2011 and in various files 1396/2011, under penalty of being sanctioned, without being able to express their disagreement or question the criteria of the Plenary or the chambers of the Supreme Court itself." Moreover, according to this expert witness, by accepting that constitutional restrictions prevail over conventional rights and the jurisprudence and rulings of the Inter-American Court of Human Rights, "the possibility of advancing toward criteria that would strengthen the *pro-persona* principle is rendered null and void. […] This means that the scope of judicial protection in Mexico in terms of mechanisms for the control of detention, review by ordinary means and *amparo* proceedings regarding custodial measures imposed under the concepts of *arraigo* and mandatory pretrial detention, are ineffective because it is not possible to adequately apply the *pro-persona* principle."[210] In this sense, and in accordance with this interpretation,[211] the Mexican State could be in breach of the international obligations that it undertook to comply with by signing and ratifying international instruments such as the American Convention and the decisions of the Inter-American Court, which are binding on the States Parties.

177. In this regard, the Court has reiterated that the different State authorities have an obligation to exercise *ex officio* control of conventionality between domestic norms and practices and the American Convention, within the framework of their respective jurisdictions and of the corresponding procedural regulations. To carry out this task, the domestic authorities must take

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208 See the written version of the expert opinion of Rogelio Arturo Bárcena Zubieta during the public hearing in this case (merits file, folio 1238). The declarant recalled that the "constitutional reform in matters of human rights of June 10, 2011, required all judicial operators and specifically the SCJN to rethink the hierarchical position of human rights from international sources in Mexico. In that context, the *Contradicción de tesis* 293/2011 represents a landmark ruling and watershed in this matter, since it is the first judgment of the SCJN Plenary which, in a manner binding for all the country's judges, established that (i) based on the aforementioned reform, human rights norms from international sources are part of the parameter of constitutional rules in Mexico, so they are no longer related to constitutional norms in hierarchical terms, but are based on the *pro persona* principle and (ii) the jurisprudence of the Inter-American Court is binding for all the country's judges, provided that it is more favorable to individuals."

209 Written version of the expert opinion rendered by José Ramón Cossío Díaz during the public hearing in this case (merits file, folio 1268).

210 Written version of the expert statement of José Ramón Cossío Díaz during the public hearing of the instant case (merits file, folio 1269).

211 Other interpretations of the *Contradicción de tesis* 293/2011, such as that of expert witness Bárcena, consider that although it is true that a majority of Justices decided to incorporate the "express constitutional restrictions" in the judgment, "it is questionable that this is a truly binding criterion or that constitutes *ratio decidendi* because, as shown, (i) this issue was not among the points of disagreement, since neither the contending courts, nor the SCJN when settling the *litis*, made any statement or even mentioned it, and (ii) the judgment did not give content to the phrase "express constitutional restrictions," nor did it clarify its possible terms of application *vis-à-vis* human rights from a conventional source. For this reason, as was stated, such considerations could actually be understood as *obiter dicta*, that is to say, a non-binding or non-obligatory criterion for the country's judicial operators." The expert witness added that "since the resolution of this precedent, the SCJN has used the human rights standards contained in international treaties as a parameter for constitutional control, in spite of their possible tension or contradiction with the Constitution." Written version of the expert opinion of Rogelio Arturo Bárcena Zubieta rendered during the public hearing of this case (merits file, folios 1239 and 1940).

into account not only the treaty, but also the interpretation thereof by the Court, which is the final interpreter of the American Convention.[212]

178. The representatives and the Commission argued that, in addition to the existence of rules that restrict liberty that were *per se* incompatible with the American Convention, in breach of the obligation to adopt provisions of domestic law contained in Article 2, in this case the action by the judicial authorities who applied said rules also violated rights to personal liberty and to the presumption of innocence recognized in Articles 7 and 8(2) of the American Convention in relation to the obligation to respect contained in Article 1(1) thereof, to the detriment of Daniel García Rodríguez and Reyes Alpízar Ortiz who were deprived of their liberty under the measure of *arraigo*, for 47 and 31 days, respectively, and for almost 17 years under the measure of mandatory pretrial detention.

179. This Court has no doubt that, by applying measures that *per se* are contrary to the American Convention, the domestic authorities violated the rights to personal liberty and the presumption of innocence to the detriment of Daniel García Rodríguez and Reyes Alpízar Ortiz, in breach of their obligation to respect the rights established in Article 1(1) of the American Convention. It should be recalled, for example, that on November 24, 2011, the Fifth Criminal Judge justified the continuation of their pretrial detention based on the seriousness of the crime; on that occasion, the judge indicated that the crime of which they were accused "was and continues to be serious," given that the law in force at the time of its commission "legally precludes the granting of provisional release on bail" (*supra* para. 81).

180. Furthermore, on January 30, 2018, the First Instance Criminal Judge denied an appeal for review. In her decision, she stated that the length of the trial was attributable to the intense activity of the defendants and decided that Daniel García was a flight risk. Moreover, she assessed the defendant's flight risk based on subjective criteria such as the defendant's honesty, loyalty or rectitude, instead of analyzing elements that would make it possible to objectively determine the likelihood of that procedural risk materializing. Thus, in her decision, the judge stated that after analyzing the statements of various witnesses regarding the conduct of Daniel García while he was a public servant, "it can be established that this defendant did not conduct himself with honesty, loyalty or rectitude in the exercise of his duties as private secretary of the Municipal President of Atizapán de Zaragoza, which was the reason given for his dismissal from said municipality […] and this increases the likelihood that the accused will evade justice in the event that the precautionary measure of pretrial detention is modified" (*supra* para. 86).

181. Regarding the prolongation of the pretrial detention, the Court confirms that, since its reform in 2008, Article 20. IX of the Mexican Constitution establishes that "[p]retrial detention may not exceed the maximum term established by law as punishment for the crime in question and in no case may it exceed two years, unless its extension is due to the defendant's exercise of his right of defense. If upon expiration of this term a sentence has not been delivered, the defendant shall be released immediately while the proceedings continue, without this precluding the imposition of other precautionary measures."

182. Thus, Article 20. IX of the Constitution mandates the release of persons in pretrial detention who have remained in this situation for more than two years, unless the prolongation of the process is due to their defense strategy. In this regard, the Court notes that Daniel García Rodríguez and Reyes Alpízar Ortiz filed several appeals for a review based on the fact that this had become an anticipated sentence; however, their requests were rejected on the grounds that criminal law did not allow for provisional release due to the seriousness of their crime and that the criminal procedure applied to them did not contemplate a review of precautionary measures (*supra* paras. 81, 83, 84, and 86). In these decisions, no analysis was made in light of the provisions of Article

[212] *Cf. Case of Almonacid Arellano et al. v. Chile. Preliminary objections, merits, reparations and costs*. Judgment of September 26, 2006. Series C No. 154, para. 124, and *Case of Tzompaxtle Tecpile et al. v. Mexico, supra*, para. 219.

20. IX of the Constitution. This occurred even though the alleged victims who filed the appeals requested a control of conventionality of the legislation or the retroactive application of the rules of the criminal procedure system in force as of 2008. This means that, in the instant case, the provisions of Article 19 of the Constitution on mandatory pretrial detention were interpreted, by the authorities that heard these appeals, as an exception to the provisions of Article 20.IX of said Constitution on the maximum duration of this measure. As a result, according to this interpretation, for the crimes listed in Article 19 of the Constitution there would be no possibility of release after two years as established in Article 20.IX of the Constitution, nor would there be a need for periodic review of the precautionary measure. This is because, in the case of mandatory pretrial detention, it is sufficient to be charged with such a crime in order for it to be applicable, a situation that continues until the sentence is handed down, without it being possible, in each case, to determine whether the precautionary measure is appropriate, necessary or proportionate. In these circumstances, the principle of presumption of innocence is devoid of content.

183. The Court also notes that the periodic reviews of the appropriateness of continuing the pretrial detention of Daniel García Rodríguez and Reyes Alpízar Ortiz were always carried out at the request of the interested party, and never as an *ex officio* review by the judicial authorities.

184. On this last point, the Court has held that pretrial detention must be subject to periodic review and should not be continued when the reasons for its adoption no longer exist.[213] Specifically, it has stated that the judge does not have to wait until an acquittal is delivered for a person who has been detained to recover his freedom, but should periodically assess whether the grounds for the measure remain, whether the measure continues to be necessary and proportionate, and whether the duration of detention has exceeded legal and reasonable limits. Therefore, whenever it appears that pretrial detention does not meet these criteria, release should be ordered, without prejudice to the continuation of the respective proceedings.[214]

185. Finally, it is clear to this Court that the prolongation of pretrial detention for more than 17 years meant, in practice, that the defendants were subjected to a covert punishment without a conviction, since it constituted a punitive measure without a prior trial, without proper guarantees, and for an unreasonable period of time, since it corresponded to approximately half of the sentence handed down in the conviction judgment (*supra* para. 10). On this point, it should be recalled that the Human Rights Committee has stated that this regimen cannot be used as a way to circumvent the limits and guarantees of the criminal justice process or to impose a sentence without a trial.[215] In this sense, it is clear that Article 8(2) of the American Convention, which establishes that every person accused of a crime has the right to be presumed innocent until his guilt is legally established, was flagrantly and factually violated.

B.4. Conclusion

186. Based on the foregoing, this Court finds that the State is responsible for the violation of the right to personal liberty recognized in Articles 7(1), 7(2), 7(4), and 7(5) of the American Convention on Human Rights, in relation to the obligation to respect the rights established in Article 1(1) thereof, to the detriment of Daniel García Rodríguez and Reyes Alpízar Ortiz, due to their unlawful detention, the lack of information on the reasons for said detention and for not having been brought promptly before a judicial authority after their arrest (*supra* paras. 132, 135, 138 and 141).

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213 *Cf. Case of Bayarri v. Argentina, supra,* para. 74, and *Case of Tzompaxtle Tecpile et al. v. Mexico, supra*, para. 114.

214 *Cf. Case of Argüelles et al. v. Argentina. Preliminary objections, merits, reparations and costs, supra,* paras. 121 and 122, and *Case of Tzompaxtle Tecpile et al. v. Mexico, supra*, para. 114.

215 *Cf.* Human Rights Committee, General Comment No. 35. Liberty and security of person, UN Doc. CCPR/C/GC/35 (2014) Para. 14.

187. In addition, the State is responsible for the violation of the right to personal liberty contained in Articles 7(1), 7(3) and 7(5) of the American Convention on Human Rights, the right to be heard and the presumption of innocence recognized in Articles 8(1) and 8(2), in relation to the obligation to respect and ensure the rights established in Article 1(1) of the Convention, as well as the obligation to adopt provisions of domestic law established in Article 2 of said instrument, for the application of the concept of *arraigo*, contained in Article 154 of the 2000 Code of Criminal Procedure for the state of Mexico, to the detriment of Daniel García Rodríguez and Reyes Alpízar Ortiz (*supra* paras. 151 and 179).

188. Finally, the State is responsible for the violation of the right to personal liberty contained in Articles 7(1), 7(3), and 7(5) of the American Convention on Human Rights, the right to the presumption of innocence recognized in Article 8(2) of the same instrument, and the right to equality before the law established in Article 24 of said treaty, all of these rights in relation to the obligation to respect and guarantee the rights established in Article 1(1) of the Convention, as well as the obligation to adopt provisions of domestic law contained in Article 2 thereof, for the application of mandatory pretrial detention, established in Article 19 of the Mexican Constitution and in the 2000 Code of Criminal Procedure for the state of Mexico, to the detriment of Daniel García Rodríguez and Reyes Alpízar Ortiz (*supra* paras. 174, 179 and 185).

VIII.2
THE RIGHT TO PERSONAL INTEGRITY[216] IN RELATION TO THE OBLIGATION TO RESPECT RIGHTS[217] AND ARTICLES 1, 6 AND 8 OF THE INTER-AMERICAN CONVENTION TO PREVENT AND PUNISH TORTURE

A. Arguments of the parties and the Commission

189. The ***Commission*** and the ***representatives*** alleged that Daniel García and Reyes Alpízar were subjected to physical and psychological violence during their detention, interrogation and *arraigo*. In view of these allegations, they noted that, through their internal mechanisms, both in terms of medical checks or examinations, as well as in the investigation of the complaints made, no conclusions have been reached to refute the petitioners' claims and the respective evidence. They also noted that a series of expert assessments carried out in the course of the criminal proceedings show that the majority opinion among the experts was that Reyes Alpízar had been a victim of physical and psychological torture. Furthermore, they argued that the State has not provided a satisfactory explanation to refute these allegations or to disprove the evidence of their occurrence. Therefore, bearing in mind that these actions would have been intended to break the alleged victims' psychological resistance and force them to incriminate themselves or implicate certain individuals in criminal actions, they considered that the alleged victims were subjected to acts of torture. In view of the foregoing, they concluded that Mexico violated the right to personal integrity of Daniel García Rodríguez and Reyes Alpízar Ortiz, in accordance with Article 5(1) and 5(2) of the American Convention.[218] They also argued that the failure to investigate the complaints

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216 Article 5 of the American Convention.

217 Article 1(1) of the American Convention.

218 The representatives added that Daniel García Rodríguez reported that when he was under *arraigo* in a hotel, police officers of the state of Mexico came in to order him to watch television on a certain channel, where news related to the arrest of his father, Isaías García Godínez, as well as his brother Isaías García Rodríguez, and his cousins Martin Moreno Rodríguez, Elvia Moreno Rodríguez and Francisco Javier Sánchez García, was being broadcast at different times. They alleged that the threat to gradually arrest his family members - a threat that was carried out - as well as forcing him to watch images on television in which their arrests, names and the alleged crimes of which they were accused were publicly exhibited, constitute, in the opinion of the representatives, a form of "extended" psychological torture, given that the feeling of impotence, frustration, pain and psychological suffering inflicted upon García Rodríguez was not an instantaneous

of torture constituted a violation of the obligations established in Articles 8 and 25 of the American Convention, and in Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture.

190. The ***State*** denied the alleged acts of torture. Among other arguments, it held that the Commission and the representatives based their claims of acts of torture against Reyes Alpízar Ortiz taking into consideration only some of the expert opinions of the forensic doctors assigned to the former PGJEM, and also alleged a lack of independence on the part of the PGJEM's forensic doctors when the results were found to be negative to any possible act of torture. The State emphasized the total independence of the forensic medical unit attached to the then PGJEM, which was guaranteed through the oversight mechanisms and the legal framework applicable at the time of the events. Regarding the alleged acts of torture against Daniel García Rodríguez, it argued that the medical certificates do not show any physical injury during his *arraigo*, so there are no elements that meet the criteria developed by the Court to consider them as torture. As for the possible mental suffering, the State understood that, from the evidence gathered in the context of the investigation, it was concluded that there was no such intense mental suffering either, and that the alleged threats were unfounded. Likewise, with regard to the alleged acts of torture against Reyes Alpízar Ortiz, it indicated that the expert certifications issued during his *arraigo* showed natural physical injuries caused at the time of his arrest on October 25, 2002, which had disappeared completely as of November 11, 2002. Regarding the possible mental suffering, from the tests carried out in the context of the investigation, it was concluded that there was no such suffering.

191. Regarding the investigations into the alleged acts of torture, the ***State*** argued that the Commission failed to analyze the investigation carried out by the State and did not take into account the procedural activity of the alleged victims from 2011 to 2018; nevertheless, the Commission concluded that there was an unwarranted delay. The State also referred to the 536 procedures carried out by the Office of the Special Anti-corruption Prosecutor based in Tlalnepantla, as part of the investigation into alleged acts of torture. These procedures included, *inter alia*, the expert opinions rendered at the time in 2002, as well as new expert evidence and the search for and rendering of testimonies of persons who witnessed the events at the time.[219]

B. Considerations of the Court

192. According to Article 5 of the American Convention, every person deprived of liberty has the right to live in conditions compatible with his or her personal dignity. In this regard, the Court has indicated that the injuries, suffering, damage to health or harm suffered by a person while deprived of liberty may constitute a form of cruel punishment when, due to the conditions of confinement, there is a deterioration in the person's physical, mental and moral integrity, strictly prohibited by Article 5(2) of the Convention, which is not a natural and direct consequence of the deprivation of liberty itself. As for the conditions of the facilities in which persons deprived of liberty are held, keeping a detainee in overcrowded conditions, lacking natural light and ventilation, without a bed

act, but rather the effects were "extended" for an indeterminate period. Hence, they considered that the Court should also recognize this type of psychological torture as another form of violation of Article 5 of the Convention.

[219] The State argued that the investigation carried out complied with the Court's own standards, and guaranteed the right of the alleged victims to offer evidence and object to the decisions with which they disagreed. It also indicated that the alleged victims did not challenge the decision not to prosecute, issued on May 3, 2021, nor the authorization of the Regional Prosecutor of Tlalnepantla of May 18, 2021, which was duly notified to the alleged victims through their legal counsel on May 21, 2021. This, despite the fact that the representatives of the alleged victims had legal remedies (appeals) available to them, so it is understood that they accepted and agreed with the results of the investigation.

to rest on or adequate hygiene conditions, in isolation and incommunicado or with undue restrictions to the system of visits, constitutes a violation of the right to humane treatment.[220]

193. Also, while Article 5(1) of the Convention establishes in general terms the right to personal integrity –physical as well as psychological and moral–, Article 5(2) establishes more specifically the absolute prohibition of subjecting anyone to torture or cruel, inhuman or degrading treatment or punishment. The Court has pointed out that the violation of a person's right to physical and psychological integrity has different connotations of degree, and that it ranges from torture to other types of cruel, inhuman or degrading treatment or abuse, whose physical and mental consequences vary in intensity according to endogenous and exogenous factors of the person (duration of the treatment, age, sex, health, context, vulnerability, among others) that must be analyzed in each specific situation. The Court also recalls that the absolute prohibition of torture, both physical and psychological, is now part of international *jus cogens*.[221]

194. Since Article 5(2) of the American Convention does not specify what should be understood as "torture," the Court has had recourse to Article 2 of the IACPPT, as well as to other definitions contained in international instruments that prohibit torture, to arrive at the elements that constitute torture. Based on these instruments, it has determined that torture is present when the ill-treatment: a) is intentional; b) causes severe physical or mental suffering, and c) is committed with any objective or purpose.[222]

195. The Court has also reiterated that, in accordance with the American Convention, the States Parties must provide effective judicial remedies to the victims of human rights violations (Article 25), remedies that must be substantiated in accordance with the rules of due process of law (Article 8(1)), all within the general obligation of the States to guarantee the free and full exercise of the rights recognized by the Convention to all persons under their jurisdiction (Article 1(1)).[223]

196. The Court has clarified that there is access to justice when the State guarantees, within a reasonable time, the right of the alleged victims or their next of kin to have all the measures carried out to learn the truth of what happened and, if appropriate, to punish those possibly responsible.[224] In this regard, the Court recalls that Articles 8 and 25 of the Convention also establish the right to obtain a response to the claims and petitions submitted to the judicial authorities, since the effectiveness of the remedy implies a positive obligation to provide a response within a reasonable period of time.[225]

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220 *Cf. Case of Tibi v. Ecuador, supra*, para. 150; *Case of the Miguel Castro Castro Prison v. Peru. Merits, reparations and costs*. Judgment of November 25, 2006. Series C No. 160, para. 315: *Case of Hernández v. Argentina. Preliminary objection, merits, reparations and cost*. Judgment of November 22, 2019. Series C No. 395, para. 60, and *Case of Dial et al. v. Trinidad and Tobago, supra,* para. 73.

221 *Cf. Case of Maritza Urrutia v. Guatemala*. Merits, reparations and costs. Judgment of November 27, 2003. Series C No. 103, para. 92; *Case of Bedoya v. Colombia. Merits, reparations and costs.* Judgment of August 26, 2021. Series C No. 431, para. 100, and *Case of Dial et al. v. Trinidad and Tobago, supra,* para. 63.

222 *Cf. Case of Bueno Alves v. Argentina. Merits, reparations and costs.* Judgment of May 11, 2007. Series C No. 164, para. 79, and *Case of Bedoya v. Colombia*, *supra,* para. 101.

223 *Cf. Case of Velásquez Rodríguez v. Honduras. Preliminary objections*, *supra*, para. 91; *Case of Digna Ochoa and Family Members v. Mexico. Preliminary objections, merits, reparations and costs*. Judgment of November 25, 2021. Series C No. 447, para. 98, and *Case of Aroca Palma et al. v. Ecuador, supra,* para. 103.

224 *Cf. Case of Bulacio v. Argentina. Merits, reparations and costs.* Judgment of September 18, 2003. Series C No. 100, para. 114, *Case of the Workers of the Fireworks Factory in Santo Antônio de Jesus and their Families v. Brazil. Preliminary objections, merits, reparations and costs.* Judgment of July 15, 2020. Series C No. 407, para. 217, and *Case of Sales Pimenta v. Brazil. Preliminary objections, merits, reparations and costs*. Judgment of June 30, 2022. Series C No. 454, para. 83.

225 *Cf. Case of Cantos v. Argentina. Merits, reparations and costs.* Judgment of November 28, 2002. Series C No. 97, para. 57; *Case of the Workers of the Fireworks Factory in Santo Antônio de Jesus and their Families v. Brazil. Preliminary objections, merits, reparations and costs, supra*, para. 218, and *Case of Sales Pimenta v. Brazil, supra*, para. 83.

197. Similarly, Article 1 of the Inter-American Convention to Prevent and Punish Torture establishes that "[t]he State Parties undertake to prevent and punish torture in accordance with the terms of this Convention." Article 6 of the Convention establishes that "[i]n accordance with the provisions of Article 1, the States Parties shall take effective measures to prevent and punish torture within their jurisdiction." Article 8 of this Convention stipulates that "if there is an accusation or well-grounded reason to believe that an act of torture has been committed within their jurisdiction, the States Parties shall guarantee that their respective authorities will proceed properly and immediately to conduct an investigation into the case and to initiate, whenever appropriate, the corresponding criminal process."

198. The arguments of the parties will be analyzed below in the following order: a) the alleged torture suffered by Daniel García Rodríguez and Reyes Alpízar Ortiz, and b) the investigations into the alleged acts of torture.

B.1. Alleged torture suffered by Daniel García Rodríguez and Reyes Alpízar Ortiz

199. The arguments of the Commission and the representatives regarding the alleged acts of torture to the detriment of Daniel García and Reyes Alpízar are based on the following elements: a) the statements of the alleged victims who stated on several occasions that they were subjected to physical and psychological violence during their arrest, interrogation and *arraigo* (detention); b) no conclusions have been reached to refute the petitioners' allegations and the evidence obtained from the respective medical checks or examinations; c) a series of expert reports prepared in the course of the criminal proceedings show that the opinion of several experts was that Reyes Alpízar had been the victim of physical and psychological torture; and d) the State has not provided a satisfactory explanation to refute, through adequate evidence, the claims of the alleged victims and the proof of their occurrence.

200. The Court will now analyze the alleged acts of torture against each of the alleged victims separately.

a) Regarding the alleged acts of torture to the detriment of Reyes Alpízar Ortiz

201. In order to establish whether acts of torture occurred to the detriment of Reyes Alpízar Ortiz, the Court will seek to determine, first, whether he was subjected to mistreatment by public servants during the time he was under the control of the State. Secondly, the severity of this mistreatment and its intentionality will be evaluated.

202. As a starting point, it should be recalled that Reyes Alpízar Ortiz was arrested on October 25, 2002 and, since then, remained in State custody until 2019, either giving statements to the Public Prosecutor's Office, or being held in *arraigo* or in a prison on remand.

203. At this point it is useful to reiterate that under Articles 5(1) and 5(2) of the American Convention, the State must guarantee the right to life and personal integrity of persons deprived of liberty, since it is in a special position of guarantor with respect to such persons, because the prison authorities exercise total control over them.[226] Likewise, the Court has pointed out that, from the general obligations to respect and guarantee human rights established in Article 1(1) of the American Convention, special obligations are derived that are determined based on the particular needs for protection of the subject of law, either because of his personal situation or

[226] *Cf. Case of Neira Alegría et al. v. Peru. Merits*. Judgment of January 19, 1995. Series C No. 20, para. 60; *Case of Pacheco Teruel et al. v. Honduras. Merits, reparations and costs.* Judgment of April 27, 2012 Series C No. 241, para. 63, and *Case of Aroca Palma et al. v. Ecuador*, *supra*, para. 88.

because of the specific situation in which he finds himself.[227] Similarly, in the case of those who have been deprived of their liberty, the State is in a special position of guarantor, since the prison authorities exercise a strong control or dominion over the persons in their custody.[228]

204. Thus, it has been established that whenever a person is deprived of liberty in a normal state of health and subsequently appears with health problems, it is incumbent upon the State to provide a satisfactory and convincing explanation of this situation and to refute the allegations of its responsibility though adequate evidence. The Court considers that the lack of an explanation leads to the presumption of State responsibility for such injuries.[229]

205. At this point, it should be recalled that since his first statements in 2002, Reyes Alpízar Ortiz denounced that he had been subjected to severe mistreatment to obtain his confession of his alleged participation in the murder of María de los Ángeles Tamés Pérez. Also, before this Court, he stated that:

> […] when they took me to the Deputy District Attorney's Office they tied my hands, they threw me on the floor, they kicked me and poured water in my mouth and nose, they hit me with their fists all over my body, they made me feel like a blender (they moved my head around in circles and pulled my hair), they kept asking me where Jaime was (the person they said fired the gun against the mayor). I couldn't answer because they stuffed my mouth with sanitary towels.
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> They had me tied by the hands, and began to wrap my body and eyes and only left my nose and mouth uncovered, and kept asking me where Jaime was. I couldn't speak, they punched me in the stomach to take the air out of me and at the same time poured water in my mouth. […]
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> They also beat me like a *cazuelita* and with their hands, cupped in the shape of a shell - on my ears and my eyes, also with the cattle prod - they put it everywhere and gave me shocks- and when the current ran out they kicked me, and more blows […] I experienced a sensation of separation from my body, I urinated and defecated, I saw my body from outside while they were hitting me.
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> They stamped on me, kicked me, as if I were an animal, and pulled my arms up a lot so I could catch my breath and they could keep beating me.[230]

206. With regard to the medical or psychological examinations performed on Reyes Alpízar, this Court notes the following: a) on October 25, 2002, he was examined for the first time after his arrest. On that occasion, a number of injuries and bruises were found, "which by their nature are not life-threatening, take less than fifteen days to heal, and do not require hospitalization" (*supra* para. 90); b) the same conclusions were reached in the medical examination performed on October 26, 2002; c) on October 28, 2002, he underwent three medical examinations. The first of these revealed several "non-recent" injuries, but others were also found that were not recorded in previous examinations. However, the third medical examination carried out that day by a different physician, emphasized that the injuries referred to were not recent; d) on October 30, 2002, another medical examination was performed, which also revealed injuries not previously reported;

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227 *Case of the Pueblo Bello Massacre v. Colombia. Merits, reparations and costs.* Judgment of January 31, 2006. Series C No. 140, para. 111; *Case of Díaz Peña v. Venezuela. Preliminary objection, merits, reparations and costs.* Judgment of June 26, 2012. Series C No. 244, para. 137, and *Case of Guevara Díaz v. Costa Rica, supra*, para. 53.

228 *Cf. Case of Neira Alegría et al. v. Peru. Merits, supra,* para. 60; *Case of Vélez Loor v. Panama. Preliminary objections, merits, reparations and costs*. Judgment of November 23, 2010. Series C No. 218, para. 198; *Case of López et al. v. Argentina. Preliminary objections, merits, reparations and costs.* Judgment of November 25, 2019. Series C No. 396, para. 23, and *Case of Guachalá Chimbo et al. v. Ecuador. Merits, reparations and costs*. Judgment of March 26, 2021. Series C No. 423, para. 90.

229 *Cf. Case of Isaza Uribe v. Colombia. Merits, supra,* para. 88; and *Case of Juan Humberto Sánchez v. Honduras. Preliminary objection, merits, reparations and costs.* Judgment of June 7, 2003. Series C No. 99, paras. 100 and 111, and *Case of Mendoza et al. v. Argentina. Preliminary objections, merits and reparations.* Judgment of May 14, 2013 Series C No. 260, para. 203.

230 Affidavit rendered by Reyes Alpízar Ortiz (merits file, folios 993 *et seq.*).

e) the examination performed on November 28, 2002, stated that although Reyes Alpízar referred to pain in the anterior thorax, he had no "apparent bodily injuries" and had no "signs of external injuries"; and f) the examination performed on December 4, 2002, showed similar results to those carried out on November 28 (*supra* paras. 90 and 91).

207. This Court notes that a few years later, in a report dated November 7, 2007, a medical expert indicated that Reyes Alpízar had been a victim of torture and that there was "a strong connection between the physical and psychological evidence that correlates with what was reported by the victim, which shows that the injuries suffered by Reyes Alpízar Ortiz were caused by the traumas described by him and that he was subjected to severe psychological pressures." The expert found a number of injuries that should have been reported but were not recorded or were minimized, and whose sequelae persist. He also noted various irregularities in the reports, including an emergency hospital admission on October 29, 2002, which was not recorded (*supra* para. 92).

208. In addition, CODHEM carried out a medical examination of Reyes Alpízar on December 11, 2007, and concluded that "from a forensic medical point of view, there are no technical or medical elements that allow us to prove or rule out the allegations made by the victim" (*supra* paras. 94).

209. Likewise, a medical report dated May 8, 2008, performed by the medical expert of the Tlalnepantla Deputy District Attorney's Office, who had inspected Reyes Alpízar during his *arraigo*, contrasted the allegations with medical certificates issued during the arrest and *arraigo* and a physical examination carried out in February 2008, and concluded that Reyes Alpízar had injuries "from the moment of his arrest and during his *arraigo*. These injuries had disappeared as of November 7." In addition, two PGJEM psychologists concluded that "no signs or symptoms of post-traumatic stress or depression, or of any psychological disorder characteristic of torture cases, were detected in Reyes Alpízar Ortiz." (*supra* para. 93).

210. In view of these contradictions, on June 5, 2008, the Fifth Criminal Court of First Instance ordered the appointment of third party experts. Accordingly, two psychologists examined Reyes Alpízar. The examination of the first expert psychologist concluded that Reyes Alpízar presented "signs and symptoms characteristic of post-traumatic stress disorder (PTSD), lasting personality changes, general depression and anguish […which] undoubtedly correspond to cruel and inhuman treatment and punishment typical of torture." The second psychologist indicated that "he presents signs and symptoms of post-traumatic stress disorder of the torture type." Finally, on February 17, 2010, a third expert indicated that he did not find "technical or scientific elements to support the existence of physical torture on the body of Reyes Alpízar Ortiz" (*supra* para. 95).

211. The Court notes that, since his arrest, Reyes Alpízar has undergone numerous medical and psychological examinations (the State indicated that there were 54 medical examinations), and that several of them are contradictory. Thus, while some of the examinations performed concluded that he was subjected to torture or appeared with injuries that he did not have at the time of his arrest, others refer to injuries that predated his detention. Similarly, some psychological assessments indicate that he has post-traumatic stress disorder due to cruel and inhuman treatment and punishment characteristic of torture, while others affirm the opposite (*supra* para. 95).

212. For this Court, it is evident that the State has not provided a plausible and satisfactory explanation to resolve these contradictions between the examinations carried out and the testimony of Reyes Alpízar denouncing the mistreatment to which he was allegedly subjected. The fact that Reyes Alpízar was under the total control of State authorities during the period in which these contradictions in the examinations occurred is even more relevant when analyzing the State's responsibility. The Court also notes that some of the results of the medical examinations are consistent with the statements made by Reyes Alpízar, who indicated from his first statement that he had been subjected to mistreatment and coercion to obtain his confession for his alleged participation in the murder of the mayor. Therefore, it is not surprising that Reyes Alpízar signed

confessions and identified others as being responsible for this act, precisely during the periods in which he claims to have been subjected to such treatment, and that he subsequently refused to ratify those statements (*supra* para. 77).

213. It should also be recalled that this event occurred in a context in which individuals under *arraigo* were frequently subjected to torture or coercion in order to obtain their confessions for the criminal acts under investigation. On this point, the United Nations Human Rights Committee has warned that "people detained under *arraigo* are exposed to ill-treatment."[231] Similarly, the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, noted that "of all the reports of abuse heard by the delegation during its visit, the most alarming allegations came from people held under *arraigo* (investigative or pre-charge detention)." It also found that "although this form of detention is intended to be the least restrictive of liberty, it is in fact - since persons detained under this arrangement have not yet been formally investigated - the form of detention that is most restrictive of the liberty of the individual. People under *arraigo* are at times held completely incommunicado and neither their families nor their lawyers have any information about their whereabouts. Such situations can render the individual defenseless against situations of torture and cruel, inhuman or degrading treatment. The delegation interviewed persons detained under *arraigo* in all the states visited." Thus, it concluded that "the practice of *arraigo* may be conducive to torture owing to the lack of supervision and to the vulnerability of individuals held under *arraigo*, whose legal status is unclear and therefore their ability to exercise their right to defense is compromised."[232]

214. Therefore, based on the foregoing, this Court finds sufficient grounds to conclude that Reyes Alpízar was subjected to mistreatment by the authorities who were interrogating him. Furthermore, there is no doubt about the extreme severity of such mistreatment nor about the purpose pursued by those who inflicted it on him. All of this leads to the conclusion that Reyes Alpízar was subjected to torture by the authorities of the Public Prosecutor's Office of the State of Mexico. Accordingly, the Court concludes that the State is responsible for the violation of the right to personal integrity and the right not to be subjected to torture recognized in Article 5(1) and 5(2) of the American Convention, in relation to Article 1(1) of the same instrument, and Articles 1 and 6 of the IACPPT, to the detriment of Reyes Alpízar Ortiz.

b) Regarding the alleged acts of torture to the detriment of Daniel García Rodríguez

215. With regard to Daniel García Rodríguez, it is on record that he was arrested on February 25, 2002, by police agents of the PGJEM. From then on, he was in the State's custody until 2019 and made statements to the Public Prosecutor's Office, a situation that continued during the period in which he was held in *arraigo* (*supra* para. 68).

216. According to the information contained in the case file, during his first appearance before the Fifth Criminal Judge, Daniel García Rodríguez stated that he had been arrested by deception, detained by force and under threat, both by agents of the judicial police and by the Deputy Prosecutor, who allegedly conditioned his release to the signing of prefabricated statements in which he incriminated himself and other persons. He stated that when he refused to sign, he was threatened and told that he and his family members would be accused, and that his wife had received phone calls to convince him to sign so that his daughters would not have "physical problems" (*supra* para. 71).

217. The facts of the case show that the Public Prosecutor's Office requested certification of physical injuries and the private defense attorney requested an examination to confirm

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231 *Cf.* United Nations, Concluding Observations of the Human Rights Committee, Mexico (April 7, 2010), UN Doc. CCPR/C/MEX/CO/5, para. 15.

232 *Cf.* United Nations, Report on the Visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Mexico (May 31, 2010), UN Doc. CAT/OP/MEX/1, paras. 142, 217 and 238.

psychological abuse. Both requests were denied by the Criminal Judge. The defense counsel also requested that the Deputy Prosecutor, who had allegedly been involved in the mistreatment and coercion of Daniel García, be summoned to testify. However, the Fifth Criminal Judge did not admit this request stating that there was no evidence "that would allow [him] to verify […] the assertion made by the accused," considering that "the judicial actions are covered by the prerogatives of public authority" and are therefore "reliable unless there is evidence to the contrary." (*supra* para. 72).

218. During the public hearing of the case, Daniel García Rodríguez described to the Court the threats and mistreatment to which was allegedly subjected while under *arraigo*:

> […] I was chained there, in that place of *arraigo* and in the early morning a person who said he was the deputy prosecutor came and woke me up. He told me that I would have to sign documents accusing people that although I knew, I did not have proof of any criminal act. He insisted that if I didn't do it, my relatives would be arrested and accused of crimes and said that he was sure that one day I would sign […] because he was going to detain [my relatives] until the moment he arrived with a family member that would hurt me the most. He followed through, and began to arrest my close relatives, first my two siblings, Martín Moreno Rodríguez and Elvia Moreno Rodríguez. I found out about this on television - the police officers knew it was going to happen because they turned on the television and at that moment I saw the search in my aunt's house. I immediately thought it was unbelievable, because I knew perfectly well about my relatives' activities and the news reported about alleged espionage activities and said that there was a sophisticated system to spy on municipal officials and directly accused the municipal president and me of that responsibility. Days later, they arrested my father, Isaías García Godínez, they tortured him and put him in *arraigo* with me, and then he was sent to prison, just like me. They also issued an arrest warrant for my brother Isaías García Rodríguez and a cousin, Francisco Javier Sánchez García, and persecuted other close family members. Every time this happened, this official would come to me […] to see if the arrest of my relatives was hurting me […].

219. Daniel García Rodríguez also alleged before the Court that:

> […] the then governor […] and the [then] prosecutor […]publicly exhibited anyone they could think of as criminals, promoting themselves as leaders who would not hesitate to exercise justice […], this served them politically […] one of their public phrases […] was that human rights were not for rats […].

220. On this point, the Court has established that, under Article 1(1) of the American Convention, the obligation to guarantee the rights recognized in Articles 5(1) and 5(2) of the Convention implies the duty of the State to investigate possible acts of torture or other cruel, inhuman or degrading treatment, as specified in Articles 1, 6 and 8 of the IACPPT.[233] In this regard, the Court has pointed out that Article 8 of the IACPPT clearly states that "if there is an accusation or well-grounded reason to believe that an act of torture has been committed within their jurisdiction, the States Parties shall guarantee that their respective authorities will proceed, *ex officio* and immediately, to conduct an investigation into the case and to initiate, whenever appropriate, the corresponding criminal proceedings.[234]

221. In this sense, the judge responsible for deciding on the legal situation of the detainee or defendant, on whether to release him or to order precautionary measures - as the first impartial

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[233] *Cf. Case of Gutiérrez Soler v. Colombia. Preliminary objections, merits, reparations and costs.* Judgment of September 12, 2005. Series C No. 132, para. 54; *Case of Ximenes Lopes v. Brazil. Merits, reparations and costs.* Judgment of July 4, 2006. Series C No. 149, para. 147; *Case of Montesinos Mejía v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of January 27, 2020. Series C No. 398, para. 151; *Case of Olivares Muñoz et al. v. Venezuela. Merits, reparations and costs.* Judgment of November 10, 2020. Series C No. 415, para. 134, and *Case of Valencia Campo v. Bolivia. Preliminary objection, merits, reparations and costs*. Judgment of October 18, 2022. Series C No. 469, para. 266.

[234] *Cf. Case of Gutiérrez Soler v. Colombia, supra*, para. 54, *Case of Olivares Muñoz et al. v. Venezuela*, para. 134; *Case of Azul Rojas Marín et al. v. Peru*, *supra*, para. 174, and *Case of Valencia Campo v. Bolivia*, *supra,* para. 266.

authority with whom detainees have contact- must be the guarantor of compliance with the duty to investigate established in the Inter-American Convention to Prevent and Punish Torture. Consequently, in cases in which there is a complaint or suspicion that a detained person has been subjected to torture, the judge must immediately refer the detained person to the competent authority for a medical examination in order to gather the necessary evidence, in a timely manner, and eventually initiate the *ex officio* procedure. Likewise, the judge must ensure that the detained person who claims to have been tortured or is suspected of having been tortured, is assessed by a physician who can provide immediate health care. The examination for the purpose of documenting physical injuries must be carried out by a physician who has no links with the detention facilities or the prison authorities. In this sense, a judge cannot disregard a complaint of torture, in the face of which he acts as guarantor for the person subject to the process.

222. In sum, it is clear to this Court that Daniel García Rodríguez reported that he was subjected to severe physical and psychological mistreatment during the time he was under *arraigo*, and that there is no record that his complaints were investigated. The psychological abuse described by Daniel García is extremely severe, as it consisted of threatening and detaining his family members and loved ones. In addition, these actions had a specific purpose, which was to obtain his confession and make him sign documents implicating other persons. Moreover, Daniel García's complaints were brought to the attention of the competent authorities but were not investigated by them, and the Fifth Criminal Judge did not even admit said evidence because he considered that "judicial actions are covered by the prerogatives of having been carried out by a public authority" (*supra* para. 72). Thus, the State did not refute these allegations or provide a plausible explanation for them. The above occurred in the context of *arraigo,* a situation in which he was vulnerable to acts of torture, as mentioned in the previous section (*supra* para. 213). To this must be added the fact that he was kept in chains during the period in which he was under *arraigo*, which was not refuted by the State. For all these reasons, it may be concluded that was subjected to mistreatment and psychological torture by the authorities of the Public Prosecutor's Office of the state of Mexico. Consequently, this Court concludes that the State is responsible for the violation of the right to personal integrity (humane treatment) and the right not to be subjected to torture contained in Article 5(1) and 5(2) of the American Convention in relation to Article 1(1) thereof, and in Articles 1 and 6 of the IACPPT, to the detriment of Daniel García Rodríguez.

B.2. Investigations into the alleged acts of torture

223. As noted above, the authorities did not investigate the mistreatment that may have constituted torture, which was denounced by Daniel García Rodríguez on April 11, 2002, when was brought before a judge for the first time (*supra* para. 72).

224. Regarding the investigations into the acts of torture denounced by Reyes Alpízar on October 25, 2002, it is on record that a preliminary investigation was not opened until December 29, 2006, that is, nearly four years later. The State pointed out, without being challenged, that in the context of this investigation, more than 500 procedures were carried out (*supra* para. 107). In addition, as noted in the chapter on facts, the investigation culminated on May 3, 2021, with the decision not to proceed with a criminal prosecution (*supra* para.112).

225. In turn, within the framework of the criminal proceedings, starting in 2007, the torture allegedly suffered by Reyes Alpízar, which had been reported in 2002, was investigated. In that regard, faced with the contradictory expert opinions, the court ordered the appointment of third party experts (*supra* para. 210). However, although these third-party expert opinions were submitted, along with two psychological expert assessments confirming that Reyes Alpízar was suffering from post-traumatic stress disorder typical of the consequences of torture, which are particularly relevant to acts of torture that occurred a long time ago, there is no indication that they were taken into account by the competent court to continue with the investigation.

226. Consequently, based on the foregoing considerations, this Court finds that the State is responsible for the violation of its obligation to investigate with due diligence, pursuant to Articles 8 and 25 of the American Convention and Articles 1, 6, and 8 of the IACPPT, acts of torture to the detriment of Daniel García Rodríguez and Reyes Alpízar Ortiz.

VIII.3
RIGHT TO JUDICIAL GUARANTEES[235] IN RELATION TO THE OBLIGATION TO RESPECT RIGHTS[236]

A. Arguments of the parties and the Commission

A.1. The rule of exclusion of evidence obtained under coercion (Article 8(3) of the American Convention)

227. The ***Commission*** and the ***representatives*** argued that Daniel García and Reyes Alpízar testified before the PGJEM during the time when it has been determined that they were subjected to pressure and mistreatment for such purposes. The complaint regarding this abuse was lodged by each one of them when they were brought before a judge, and subsequently through various appeals that they filed; however, these remedies did not prove effective. They noted that their statements were not only excluded from the criminal proceedings, but were used as the central element of conviction to support the formal order of imprisonment against the alleged victims and are included in the case file as evidentiary elements that have a bearing on their possible responsibility and involvement in the case.[237]

228. In relation to this point, the representatives added that the conviction judgment of May 12, 2022, contains a section on evidence obtained under coercion, "although it does not meet the criteria for exclusion of evidence." They added that a "reason for supervening and aggravated liability is that the judgment refers in a fragmented manner to the exclusion of some evidence obtained during the period of *arraigo*, using only a temporal criterion during which said measure was applied, but does not consider arbitrary detention and torture as sources of unlawfulness, as sources related but differentiated from *arraigo* and which, due to their magnitude and seriousness, generated a continuous and permanent cycle of unlawfulness based on the arbitrary detentions, aggravated with acts of torture." In view of the failure to exclude such evidence until it had been duly investigated and disproved, they concluded that the State violated Article 8(3) of the American Convention in relation to Article 1(1) of the same instrument.

229. The ***State*** reiterated its arguments concerning the non-existence of acts of torture against Daniel García Rodríguez and Reyes Alpízar Ortiz. In this regard, it held that it was not possible to presume a failure to exclude evidence when the existence of acts of torture had not been proven. It added that, without prejudice to the foregoing, and taking into account that the criminal proceedings have not yet concluded, it would be up to the judge in the case to grant evidentiary value and decide on the exclusion of evidence. It further indicated that it would be up to the First Instance Criminal Judge of the Judicial District of Tlalnepantla to determine the exclusion of evidence when delivering the judgment in criminal case 236/2012. Consequently, it argued that the Court cannot establish non-compliance with the rule of exclusion of evidence obtained under

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235 Article 8 of the American Convention.

236 Article 1(1) of the American Convention.

237 They held that the same occurs with the statement of Raúl Loyola Malagón, who claimed that he was forced to make a false statement, and the disputed statements of Francisco Javier Pereira Solache and Francisco Pérez Mendoza, who did not appear to ratify their statements during the criminal proceedings, despite having been summoned to appear on several occasions.

coercion on the part of the Mexican State, since the authority responsible has not yet reached a decision in this regard.

A.2. Right to defense (Article 8(2) (d), (e) and (f) of the American Convention)

230. The ***Commission*** and the ***representatives*** argued that, from the moment of his arrest and throughout the time he was in *arraigo,* and when giving statements to the Public Prosecutor's Office, Daniel García did not receive legal assistance. It was only when was brought before a judge for the first time that he was assigned a public defender. For his part, Reyes Alpízar stated that, when he made the statements that he alleged were obtained under duress before the Public Prosecutor's Office, he was assigned "a judicial [officer]" as public defender. The Court of Appeals, the First Collegiate Criminal Chamber of Tlalnepantla, when issuing the formal order of imprisonment, stated that the appointed defense attorney was indeed "assigned to the investigating body." They noted that, in addition to the fact that the defense counsel did not have the necessary independence– which they considered especially relevant given the allegations that he had participated in the acts of coercion against Reyes Alpízar – the State had also failed to prove that said defense attorney had duly advised him on his legal situation, or that he had taken steps to defend him, such as questioning the legality or arbitrariness of the detention.

231. On the other hand, they indicated that, in his first hearing before the Fifth Criminal Judge, Daniel García's defense counsel requested that the Deputy Prosecutor, Rogelio Figueroa, be summoned to testify, in order to "demonstrate the facts to which the accused has linked him." However, the judge not only denied this request, but also indicated that the judicial actions were sufficient evidence, since they were covered by ministerial authority. They added that in the criminal proceeding the defendants had not been able to present essential exculpatory evidence offered on their behalf and that the judge in the case had not taken steps to compel the submission of information or the appearance of the witnesses necessary to discover the truth. Consequently, they concluded that the State violated the right to defense in breach of Article 8(2) d), (e) and (f) of the American Convention.

232. The ***State*** emphasized that the public defender assigned to Reyes Alpízar belonged to the Public Defender's Office of the state of Mexico, which was not part of the PGJEM, but of the *Secretaría General de Gobierno* (General Secretariat of Government), as established in the Public Defender Law of the state of Mexico, applicable at the time of the facts. Regarding Daniel García Rodríguez, it indicated that as a result of the summons of February 25, 2002, and based on the procedural law in force at that time, which provided that in those cases in which there was a well-founded fear that the summons would be disobeyed, a person could be presented by the police, he made his statement freely, spontaneously and without any pressure, since he did not incriminate himself in any of the questions that he was asked. On the contrary, he categorically denied his involvement in the facts. Therefore, the State considered that Daniel García exercised his right to a technical defense in a personal manner. It added that, throughout his criminal trial, Daniel García Rodríguez had 14 private defense lawyers and 12 public defenders, while Reyes Alpízar Ortiz has had seven private attorneys and 14 public defenders.

233. Regarding the alleged violation of the right of the defense to question and obtain the appearance of other persons who could shed light on the facts, which embodies the principles of adversarial proceedings and procedural equality, the State argued that the judge's refusal was not aimed at hindering Daniel García's right to question the witnesses against him, as the Inter-American Commission is erroneously trying to make it appear; rather, the judicial proceedings did not reveal any alleged acts of torture and, therefore, his statement was not considered pertinent. The failure of the Deputy Prosecutor to appear was remedied through the defense motions filed by the alleged victims, which gave rise to the investigation into the alleged acts of torture, and included the testimony of the then Deputy Prosecutor.

A.2. The right to the presumption of innocence (Article 8(1) of the American Convention)

234. The ***Commission*** and the ***representatives*** pointed out that, according to dozens of press releases issued by the PGJEM, hundreds of news reports published in the national press (citing the PGJEM as the information source) and a government report, during the investigation and prosecution of the criminal case against them and without having been convicted in a final judgment, Daniel García and Reyes Alpízar were presented by the Public Prosecutor's Office as among those "responsible" for the murder of the mayor. Similarly, Daniel García and his family members were portrayed as being part of a network of criminals and political spies. This created an impression of guilt in the public opinion, even though their responsibility had not been proven or determined in the criminal proceedings. Consequently, they considered that the State violated the right to the presumption of innocence established in Article 8(2) of the American Convention.

235. The ***representatives*** argued that, in addition to having violated the defendants' right to the presumption of innocence, the authorities of the state of Mexico were building the idea of guilt in the collective imagination, directly impacting the right to dignity and honor recognized in Article 11 of the American Convention, to the detriment of the alleged victims and their close family members.

236. The ***State*** argued that "the alleged media campaign is based on highly questionable evidence" since the publications referred to are electronic documents that not only lack official identification or the institutional logo of the justice institutions of the state of Mexico, but also contain inaccurate information. It also pointed out that the news articles published by different media in the course of the investigation do not concern the State but only the media outlet that publishes them.[238] It added that a government report is mentioned in a generic manner, without providing details that would allow the identification of the document, or the specifying the content of the supposed comments that would have affected the alleged victims.[239] Therefore, the State concluded that there were no grounds for declaring the State's responsibility for the violation of the presumption of innocence of the alleged victims Daniel García Rodríguez and Reyes Alpízar.

A.4. The principle of reasonable time (Article 8(1) of the American Convention)

237. The ***Commission*** and the ***representatives*** considered that the State has not complied with its obligation to try Daniel García Rodríguez and Reyes Alpízar Ortiz within a reasonable time, in violation of Article 8(1) of the Convention. They referred to the unreasonable length of the criminal proceedings against García Rodríguez and Reyes Alpízar and, in particular, to the unjustified duration of the pretrial detention to which they were both subjected. They recalled that the criminal proceedings against both of them are still ongoing, with a first instance conviction having been handed down on May 12, 2022, two decades after the process was initiated.

238. As for the elements used to determine the issue of reasonable time of the proceedings, they argued that although the investigation concerns the murder of a political figure, it does not appear from the case file that it was of particular complexity in terms of the charges against the alleged victims. They added that the latter have actively contributed to the proceedings, providing

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238 It added that these press articles cover a multitude of events related to the homicide of the mayor, and the proceedings and actions carried out as follow-up to this event, in other words, the articles were intended to report on the case, and were not aimed at creating a certain image of Daniel García Rodríguez or Reyes Alpízar Ortiz. It added that this is a case of public interest as it involves the murder of a public official, so it should not be surprising that the national press has sought to give extensive coverage to the facts. The coverage given to the case cannot be considered the responsibility of the Mexican State, for the simple reason that it was carried out by entities separate from it, which were not acting under its direction, control, with its support, or on its behalf.

239 Regarding the government report of the then governor the state of Mexico, it insisted that it does not presume the guilt of the detainees nor does it characterize them in any way beyond their status as defendants. In this sense, the citation cannot be used to confirm the existence of a media campaign with a purpose other than that of reporting on a case of obvious interest to the community.

and requesting the inclusion of evidence and promoting the investigation of facts relevant to the determination of their responsibility. They also noted that the authorities that heard the case from the beginning kept the alleged victims in a situation of unlawful and arbitrary deprivation of liberty for more than 17 years, despite the fact that such a measure should be exceptional. They further argued that the judge in this case did not adopt measures that would have helped to avoid excessive delays in the proceedings. Finally, they mentioned that the impact on the victims' legal situation in this case has been disproportionate, since they have been subject to criminal proceedings without conviction or acquittal for more than 17 years, have been held in pretrial detention for practically this entire period and are currently under other precautionary measures.

239. The ***State*** indicated that, depending on the circumstances of each case, the full satisfaction of the requirements of justice prevails over the guarantee of reasonable time. In this sense, "the duration of the proceeding has been due to the respect for and guarantee of the right to defense and truth of the alleged victims." It added that "based on this, and once the closing of the investigation stage of criminal case 236/2012 has been decreed, the State undertakes to resolve the case within a short period of time."

B. Considerations of the Court

240. The Court will now analyze the alleged violations of judicial guarantees and judicial protection, as well as of Articles 1, 6 and 8 of the IACPPT, in the following order: a) the rule of exclusion of evidence obtained under coercion (Article 8(3) of the American Convention); b) the right to defense (Article 8(2)(d), (e) and (f) of the American Convention); c) the right to the presumption of innocence (Article 8(2) of the American Convention); d) the principle of reasonable time of the proceedings (Article 8(1) of the American Convention); and (e) conclusion.

B.1. The rule of exclusion of evidence obtained under coercion (Article 8(3) of the American Convention)

241. In the instant case, it is alleged that Daniel García and Reyes Alpízar testified before the PGJEM during the time they were subjected to pressures and mistreatment in order to obtain their confessions, and that a complaint regarding these abuses was lodged by each of them when they were brought before the judge, and subsequently through various appeals filed (*supra* paras. 88 to 113). They indicated that these statements were not only not excluded from the criminal proceedings, but were also used as the central element of conviction to support the formal orders of imprisonment against them and were included in the case file as evidence that had a bearing on the possible responsibility and involvement of the alleged victims in the case (*supra* paras. 227 and 228).

242. With respect to these arguments, the Court recalls that Article 8(3) of the American Convention establishes that "[t]he confession of the accused is only valid if it is made without coercion of any nature." On this point, the Court has held that "whenever it is proven that any form of duress has interfered with the spontaneous expression of a person's will, this necessarily implies the obligation to exclude that evidence from the judicial proceedings. The annulment of such evidence is a necessary means to discourage the use of any form of coercion."[240] On the other hand, statements obtained under duress are seldom truthful, because the person tries to say whatever is necessary to make the cruel treatment or torture stop. Accordingly, the Court considers that accepting or granting evidentiary value to statements or confessions obtained by coercion, which affect the person or a third party, constitutes, in turn, an infringement of a fair trial. Similarly, the Court has indicated that the absolute nature of the exclusionary rule is reflected in the prohibition on granting probative value not only to evidence obtained directly by coercion,

[240] *Cf. Case of Herrera Espinoza et al. v. Ecuador. Preliminary objections, merits, reparations and costs.* Judgment of September 1, 2016. Series C No. 316, para. 193, and *Case of Montesinos Mejía v. Ecuador*, *supra*, para. 197.

but also to evidence derived from such action.[241] Furthermore, the Court has held that the annulment of procedural documents resulting from torture or cruel treatment is an effective measure to halt the consequences of a violation of judicial guarantees.[242]

243. In Chapter VIII.2.B.1 of this judgment, the Court concluded that Daniel García Rodríguez and Reyes Alpízar Ortiz were subjected to acts of torture in order to obtain their confessions or statements against third parties when they were arrested and then held in *arraigo*. These acts were brought to the attention of the competent courts in the criminal proceedings that were being – and continue to be – brought against them. Similarly, these acts of torture were not investigated immediately by the authorities, but rather, several years later (*supra* Chapter VIII.2.B.2). In the context of the criminal proceedings against them, evidence gathered through methods of coercion was used, particularly in the formal orders of imprisonment[243] (*supra* paras. 73 and 78).

244. Without prejudice to the foregoing, the Court notes that, although in the conviction judgment of May 12, 2022, against Daniel García and Reyes Alpízar by the Criminal Court of the Judicial District of Tlalnepantla, their statements of February 25, 2002 and October 25, 2002 were excluded from the body of evidence, this was not because they were obtained under duress, but rather because they were excluded "taking into account that [they had been] obtained during the preventive detention ordered against the [defendants]."[244]

245. Based on the foregoing, the Court notes that the statements of Daniel García Rodríguez and Reyes Alpízar Ortiz, obtained under coercion and torture, have been used in different procedural acts in criminal case 88/2002, particularly in the decisions ordering the preventive detention of the alleged victims. Therefore, far from being excluded from the body of evidence - since there was a veil of suspicion about the manner in which they were obtained, which had been denounced and was belatedly investigated – they became part of the procedural elements taken into account for their preventive incarceration, which lasted for more than 17 years. Consequently, for the reasons indicated, the State is responsible for the violation of its obligation to exclude statements obtained under duress, in breach of Article 8(3) of the American Convention, to the detriment of Daniel García Rodríguez and Reyes Alpízar Ortiz.

B.2. The right to defense (Article 8(2)(d), (e) and (f) of the American Convention)

246. The Court has pointed out that paragraphs (d) and (e) of Article 8(2) state that the accused has the right to defend himself personally or to be assisted by legal counsel of his own choosing and, if he does not do so, he has the inalienable right to be assisted by legal counsel provided by the State, paid or not according to domestic law. In these terms, a defendant may conduct his

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[241] *Cf. Case of Montesinos Mejía v. Ecuador, supra,* para. 199, *Case of Grijalva Bueno v. Ecuador. Preliminary objection, merits, reparations and costs*. Judgment of June 3, 2021. Series C No. 426, para. 124, and *Case of Cabrera García and Montiel Flores v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of November 26, 2010. Series C No. 220, para. 167.

[242] *Cf. Case of Bayarri v. Argentina, supra,* para. 108; *Case of Herrera Espinoza et al. v. Ecuador, supra,* para. 224, and *Case of Montesinos Mejía v. Ecuador, supra,* para. 197.

[243] *Cf.* Second Criminal Collegiate Court of Tlalnepantla, Superior Court of Justice of the state of Mexico. Ruling in indirect *amparo* proceeding 1192/2005-E. Tlalnepantla de Baz, state of Mexico, May 23, 2007 (evidence file, folios 710 to 825).

[244] In this decision, the Criminal Court recalled the judgment of the Supreme Court of Justice which determined the unconstitutionality of the *arraigo* provided for in the Code of Criminal Procedure of Chihuahua as well as the position expressed by different international bodies on the concept of pre-procedural *arraigo* in Mexico. *Cf.* Criminal Court of the Tlalnepantla Judicial District. Judgment of May 12, 2022 (evidence file, folio 70448). Furthermore, it is on record that in said decision, the arguments regarding the alleged torture suffered by the victims was analyzed, comparing all the expert reports produced in relation to that matter. As a result of this cross-checking of information, the judge did not consider proven the hypothesis of torture, although as mentioned, the statements obtained under coercion were excluded for other reasons not directly related to those provided for in Article 8(3) of the American Convention. *Cf.* Criminal Court of the Judicial District of Tlalnepantla. Judgment of May 12, 2022 (evidence file, folio 70367 et seq.).

own defense, although it must be understood that this is valid only if the domestic law allows it. Thus, the Convention guarantees the right to legal assistance in criminal proceedings.[245] The Court has indicated that the defense provided by the State must be effective, for which purpose the State must take all appropriate measures. The Court has also stated that the person under investigation must have access to a technical defense when he makes his first statement. Preventing a defendant from receiving assistance from his defense attorney severely limits the right to defense, which causes a procedural imbalance and leaves the individual without protection against the exercise of punitive power.[246]

247. The Court has considered that appointing a public defender for the sole purpose of complying with a procedural formality would be tantamount to not having a technical defense; therefore, it is imperative that the defense counsel act diligently in order to protect the procedural guarantees of the accused and thus prevent his rights from being violated and the relationship of trust from being broken. To this end, it is necessary that the institution of public defense, as a means through which the State guarantees the inalienable right of every person accused of a crime to be assisted by legal counsel, be provided with sufficient guarantees in terms of effective access to justice on an equal footing with the prosecutorial power. The Court has recognized that in order to fulfill this duty, the State must adopt all appropriate measures, including having suitable and trained defense lawyers that can act with operational autonomy.[247]

248. Article 8(2)(f) of the Convention enshrines the "minimum guarantee" of the "right of the defense to examine witnesses present in court and to obtain the appearance, as witnesses or experts, of other persons who can shed light on the facts," thus giving effect to the principles of adversarial proceedings and procedural equality. The Court has pointed out that, among the guarantees recognized to those who have been accused, is the right to examine witnesses, both against them and in their favor, under the same conditions, in order to exercise their defense. [248]

249. In the instant case, the right to defense is alleged to have been violated for the following reasons: a) Daniel García did not receive legal assistance at the time of his arrest, throughout the period when he was under *arraigo* or when he made statements before the Public Prosecutor's Office; b) the public defender assigned to Reyes Alpízar was "attached to the investigating body"; c) the State has not demonstrated that Reyes Alpízar's defense attorney had duly advised him on his legal situation, or that he had taken steps aimed at his defense, such as questioning the legality or arbitrariness of his detention, and d) in his first hearing before the Fifth Criminal Judge, Daniel García's defense counsel requested that the Deputy Prosecutor be summoned to testify, in order to "demonstrate the facts to which the accused has linked him." However, the judge not only denied this request, but also indicated that the "judicial actions were sufficient, since they were covered by ministerial authority."

250. Regarding the lack of legal counsel provided to Daniel García from the moment of his arrest, during part of the time that he was under *arraigo*, and when he made statements before the Public

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[245] *Cf. Exceptions to the Exhaustion of Domestic Remedies (Arts. 46(1), 46(2)(a) and 46(2)(b), American Convention on Human Rights).* Advisory Opinion OC-11/90 of August 10, 1990. Series A No. 11, para. 25, and *Case of López et al. v. Argentina. Preliminary objections, merits, reparations and costs.* Judgment of November 25, 2019. Series C No. 396, para. 202.

[246] *Cf. Case of Barreto Leiva v. Venezuela, supra,* para. 62; *Case of Rosadio Villavicencio v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of October 14, 2019. Series C No. 388, para. 143, and *Case of Dial et al. v. Trinidad and Tobago*, *supra*, para. 59.

[247] *Cf. Case of Cabrera García and Montiel Flores v. Mexico*, supra, para. 155; *Case of Ruano Torres et al. v. El Salvador. Merits, reparations and costs.* Judgment of October 5, 2015. Series C No. 303, para. 157, and *Case of Manuela et al. v. El Salvador. Preliminary objections, merits, reparations and costs*. Judgment of November 2, 2021. Series C No. 441, para. 122.

[248] *Cf. Case of Castillo Petruzzi et al. v. Peru. Merits, reparations and costs, supra,* para. 154, *and Case of Grijalva Bueno v. Ecuador. Preliminary objection, merits, reparations and costs.* Judgment of June 3, 2021. Series C No. 426, para. 107.

Prosecutor's Office, this Court notes that there is no dispute on this matter. Daniel García stated during the public hearing that he only had access to a lawyer five or six days after he was placed in *arraigo*.[249]

251. The State argued that, during these stages, Daniel García exercised his own technical defense and that did not incriminate himself in any of his statements. In this regard, although it is undeniable that Article 8(2)(d) and (e) of the American Convention grants the accused the right to defend himself in criminal proceedings, the relevant point here is that Daniel García was not given the opportunity to have a defense counsel of his choice from the moment he was detained. On this point, the Court recalls that the right to defense must be exercised "from the moment a person is accused of being the perpetrator or participant of an illegal act."[250] It is also important to recall that, as noted previously (*supra* para. 131), the act whereby Daniel García was accompanied by judicial police of the PGJEM in order to make a statement before the Public Prosecutor's Office, on February 25, 2002, constituted an arrest. Moreover, Daniel García did not receive legal assistance during his *arraigo*, which lasted 47 days (*supra* para. 71).

252. As for the public defender assigned to Reyes Alpízar, the Court notes that the Commission based its argument regarding the alleged lack of independence of the appointed defense counsel on the fact that the First Collegiate Chamber of Tlalnepantla, when issuing a formal order of imprisonment, stated that the assigned defense counsel was "attached to the investigative body." However, the State emphasized that the Public Defense Office of the state of Mexico was not part of the PGJEM, as claimed by the representatives and the Commission, but rather of the General Secretariat of Government, pursuant to the Law of the Public Defense Office of the state of Mexico, applicable at the time of the facts. Consequently, it is not clear to this Court if the expression "attached to the investigative body" refers to a relationship of dependence or whether, as the State suggests, it refers to a public defender who is attached to the Public Defense Office of the state of Mexico and is assigned to the agencies of the Public Prosecutor's Office.

253. On the other hand, the Commission did not mention any particular procedural act that was not carried out by the assigned defense counsel on behalf of his client Reyes Alpízar. The Commission indicated, in general terms, that the State has not shown that Reyes Alpízar's defense counsel had duly advised him on his legal situation, or that he had taken steps to defend him, such as questioning the legality or arbitrariness of his detention. Nevertheless, during the public hearing, Daniel García explained that "eighty per cent of the appeals [he presented] are signed only by [him] and Reyes Alpízar, [since] the public defense never filed a single appeal and […] there is not a single motion signed or requested by the public defense counsel in the criminal case, everything was [done] by Reyes Alpízar and [him]."[251] This information was not disputed by the State. Moreover, Reyes Alpízar denounced that his public defender was present during the acts of torture to which he was subjected and was also present when he was forced to sign documents.[252]

254. In relation to the foregoing, this Court notes that indeed, some of the appeals filed and the procedural actions were initiated directly by the alleged victims.[253] However, neither the

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249 *Cf.* Statement of Daniel García Rodríguez during the public hearing in this case.

250 *Cf. Case of Barreto Leiva v. Venezuela, supra,* para. 29, and *Case of Cortez Espinoza v. Ecuador*, supra, para. 95.

251 *Cf.* Statement of Daniel García Rodríguez during the public hearing in this case.

252 *Cf.* Letter from Reyes Alpízar Ortiz requesting a hearing, addressed to the Agent of the Public Prosecutor's Office before the Fifth Criminal Court of First Instance. Criminal case 88/2002. With reception stamp of September 22, 2010 (evidence file, folios 1550 et seq.).

253 See for example: Brief of Reyes Alpízar Ortiz, Request for Hearing addressed to Agent of the Public Prosecutor's Office before the Fifth Criminal Court of First Instance. Criminal case 88/2002. With date of receipt stamp of September 22, 2010 (evidence file, folios 1150 et seq.); Brief of Reyes Alpízar Ortiz. Criminal case 88/02. February 18, 2008 (evidence file, folios 1682 et seq.); Brief of Reyes Alpízar Ortiz, March 31, 2008 (evidence file, folios 1700 et seq.), Brief of Daniel García Ortiz and Reyes Alpízar Ortiz. Criminal case 88/02. October 9, 2008 (evidence file, folios 1740 et seq.), Evidence hearing and Board of Experts. Tlalnepantla, state of Mexico, February 17, 2010 (evidence file, folios 1889 et seq.); Brief of Reyes Alpízar Ortiz, unspecified motion before the Fifth Criminal Court of First Instance. Case 88/2002. With date of

Commission nor the representatives explained why the fact that the alleged victims filed those remedies directly resulted in an infringement of their right to defense. Nor did they explain why the actions of the public defenders assigned to them constituted inexcusable negligence or a manifest failure in the exercise of the defense that had, or may have had, a decisive effect against the interests of the accused.[254] As for the alleged participation of the public defender in the acts of coercion against Reyes Alpízar, the Court finds that this aspect should be taken into account by the authorities when investigating the alleged acts of torture; however, in the absence of other additional elements of proof, it does not in itself constitute evidence of a possible violation of Reyes Alpízar's right to defense.

255. Therefore, taking into account the above considerations, this Court finds that the State violated the right to defense contained in Articles 8(2)(d) and (e) of the American Convention to the detriment of Daniel García, inasmuch as he did not have a defense counsel during the initial stages of his arrest and *arraigo*. However, the Court lacks sufficient evidence to issue a ruling on the alleged violation of the right of defense to the detriment of Reyes Alpízar.

256. Regarding the alleged violation of the right of the defense to question and obtain the appearance of other persons who could shed light on the facts, the Commission and the representatives indicated that, in his first hearing before the Fifth Criminal Judge, Daniel García's defense counsel requested that the Deputy Prosecutor R.F. be summoned to testify, in order to "demonstrate the facts to which the accused has linked him." However, the Fifth Criminal Judge did not admit said request, stating that there was no evidence "that would allow [him] to verify […] the assertion made by the defendant", considering that "the judicial actions are covered by the prerogatives of having been carried out by a public authority." Thus, they are "reliable unless there is evidence to the contrary." On this point, the State indicated that the failure of the Deputy Prosecutor to appear was remedied through the defense motions filed by the alleged victims, which gave rise to the investigation into the alleged acts of torture, and included the testimony of the then Deputy Prosecutor.

257. In relation to the above, it should be recalled that Daniel García Rodríguez stated that he was coerced during the time he was under *arraigo* in the presence of the Deputy Prosecutor. Likewise, the mistreatment and acts of torture he suffered were addressed in this judgment and were proven (*supra* Chapter VIII.2.B.1). In this sense, it is reasonable to assume that Daniel García Rodríguez requested the testimony of the Deputy Prosecutor within the framework of the criminal proceedings against him to prove the coercion to which he was subjected during the period of his *arraigo*. Therefore, this Court finds that the State also violated the right of the defense to question the witnesses present in court and to obtain the appearance, as witnesses or experts, of other persons who may shed light on the facts, as established in Article 8(2)(f) of the American Convention, to the detriment of Daniel García Rodríguez.

B.3. The right to the presumption of innocence (Article 8(2) of the American Convention)

258. Regarding the right to the presumption of innocence, Article 8(2) of the American Convention states that every person accused of a criminal offense has the right to be presumed innocent until his guilt is legally established. The Court has been consistent in pointing out that this "requires that the State does not unofficially condemn a person or pass judgment before society, thus contributing to the formation of public opinion, as long as the criminal responsibility of that person has not been proven in accordance with the law." Therefore, the judicial authorities in charge of the proceedings and other authorities must be "discreet and prudent when making public statements about a criminal case, before the person has been tried and convicted." Indeed,

receipt stamp of September 22, 2010 (evidence file, folios 1917 et seq.), Evidence hearing. Tlalnepantla, state of Mexico, May 7, 2012 (evidence file, folios 2046 et seq.).

[254] *Cf. Case of Ruano Torres et al. v. El Salvador, supra,* para. 164.

the fact that a person is referred to by state agents in the media as the perpetrator of a crime when he has not yet been legally tried or convicted may constitute a violation of Article 8(2) of the Convention.[255]

259. In the instant case, the Commission and the representatives argued that this right had been violated because the alleged victims were presented to public opinion as being among those "responsible" for the murder of the mayor. This information was allegedly published in: a) press releases issued by the PGJEM; b) news articles published in the national press; and c) a government report, issued during the investigation and prosecution of the criminal case against them, in which they were mentioned by the Public Prosecutor's Office.

260. On this matter, the Court agrees with the State when it affirms that information published in news articles by various media outlets cannot, in principle, be attributable to the State. This is even more important when the victim of a homicide is a public figure. In order to prove such points, evidence must be provided to corroborate that these media reports responded to requests from State authorities or that the information was maliciously forwarded to the media so that it could be published.

261. On the other hand, with respect to these press releases and news articles, it should be recalled that Article 8(5) of the American Convention establishes that "[t]he criminal proceedings shall be public, except insofar as may be necessary to protect the interests of justice." This Court has indicated that one of the main features that a criminal trial must have during its substantiation is its public nature, which is an essential element of the accusatorial system of criminal procedure in a democratic State. This is guaranteed by holding an oral stage in which the accused is able to have direct access to the judge and to the evidence, and which also facilitates access to the public. The right to a public trial is protected by several international instruments as an essential element of judicial guarantees.[256] The public nature of the trial has the function of proscribing the secret administration of justice, subjecting it to the scrutiny of the parties and the public, and is related to the need for transparency and impartiality in the decisions taken. It is also a means of promoting confidence in the courts of justice. Public proceedings specifically refer to access to information on the proceedings by the parties and even by third parties.[257]

262. Regarding the press releases issued by the PGJEM, the Court notes that the State disputes their authenticity alleging that: a) they lack official identification or the institutional logo of the justice institutions of the state of Mexico, and b) they contain inaccurate information. The Court was unable to verify the origin of these newsletters. In fact, the newsletters submitted by the Commission as annexes to the Merits Report are press releases that contain the following annotations at the end: "Copyright Grupo Reforma news service." Moreover, these notes do not contain the PGJEM's reference numbers or cover pages. Thus, it cannot be reliably concluded that these news items are official press releases or newsletters of the PGJEM.[258] As for the news items submitted by the Commission in another annex to its Merits Report entitled "[e]xtracts of news articles included in the national press, citing the PGJEM as an information source,"[259] the Court notes that these are not official newsletters of the PGJEM, but rather news items from the press that would have consulted, as the case may be, sources from the PGJEM. With regard to the press

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255 *Cf. Case of Pollo Rivera et al. v. Peru, supra,* para. 177, and *Case of Acosta et al. v. Nicaragua. Preliminary objections, merits, reparations and costs*. Judgment of March 25, 2017. Series C No. 334, para. 190.

256 *Cf. Case of Palamara Iribarne v. Chile, supra*, para. 166.

257 *Cf. Case of Palamara Iribarne v. Chile, supra*, para. 168; *Case of J. v. Peru. Preliminary objection, merits, reparations and costs, supra*, para. 217, and *Case of Girón et al. v. Guatemala. Preliminary objection, merits, reparations and costs*. Judgment of October 15, 2019. Series C No. 390, para. 120.

258 *Cf.* "Press releases issued by the PGJEM", Annex 2, Merits Report (evidence file, folios 379 to 457).

259 *Cf.* "Extracts of news items included in the national press, citing the PGJEM as the information source" (evidence file, folios 458 to 581).

releases submitted by the representatives together with their closing arguments,[260] the Court notes that these do not have any official letterhead of the PGJEM, so it is not possible to unequivocally verify their source. Nor did the representatives provide additional evidence to help identify their origin. Furthermore, these press releases, for the most part, provide detailed information on the different procedural acts that took place in the context of criminal case 88/2002. Finally, regarding the government report mentioned by the Commission, this was not submitted as evidence by the Commission or the representatives, so it is not possible for this Court to verify the allegations in this regard.

263. Consequently, the Court lacks sufficient elements to determine the violation of the right to the presumption of innocence of Daniel García Rodríguez and Reyes Alpízar Ortiz due to the publication of the press releases or articles mentioned above.

264. As for the representatives' argument concerning the violation of the right to dignity and honor of Daniel García Ortiz and Reyes Alpízar Ortiz due to these same statements (Article 11 of the American Convention), the Court finds that the analysis of the violation of this right is subsumed in the considerations on the violation of the presumption of innocence due to the official public statements emanating from the press releases of the PGJEM. Therefore, the Court will not make any additional observations in this regard.

B.4. The principle of reasonable time of the proceedings (Article 8(1) of the American Convention)

265. The Court has established that the analysis of reasonable time must be carried out in each specific case, in relation to the total duration of the process and its particular characteristics, which may also include the execution of the final judgment. Thus, it has considered four elements to determine whether the guarantee of reasonable time has been met, namely: a) the complexity of the matter; b) the procedural activity of the interested party; c) the conduct of the judicial authorities, and d) the effects on the legal situation of the alleged victim. The Court recalls that it is incumbent upon the State to justify, based on these criteria, the reason why it has required the time elapsed to process the case and, if it fails to do so, the Court has broad powers to form its own opinion in this regard. The Court also reiterates that that it is necessary to consider the total duration of the proceedings, from the initial procedural act until the final judgment is handed down, including any appeals that may be filed.[261]

266. Regarding the first element, this Court has taken into account several criteria to determine the complexity of a case, including: a) the complexity of the evidence;[262] b) the number of parties involved in the proceedings[263] or the number of victims;[264] c) the time elapsed since the alleged

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260 *Cf.* "Press releases regarding the arrest of Reyes Alpízar Ortiz" (evidence file, folios 21905 to 21909) and "Media exposé of Reyes Alpízar Ortiz as a murderer" (evidence file, folios 21910 to 21911).

261 *Cf. Case of Suárez Rosero v. Ecuador. Merits.* Judgment of November 12, 1997. Series C No. 35, para. 71; *Case of Olivares Muñoz et al. v. Venezuela, supra,* para. 123; *Case of Digna Ochoa and Family Members v. Mexico, supra,* para. 131, and *Case of Angulo Losada v. Bolivia. Preliminary objections, merits and reparations.* Judgment of November 18, 2022. Series C No. 475, para. 126.

262 *Cf. Case of Genie Lacayo v. Nicaragua. Merits, reparations and costs*. Judgment of January 29, 1997. Series C No. 30, para. 77; *Case of Villamizar Durán et al. v. Colombia. Preliminary objection, merits, reparations and costs.* Judgment of November 20, 2018. Series C No. 364, para. 166, and *Case of Angulo Losada v. Bolivia, supra,* para. 126.

263 *Cf. Case of Acosta Calderón v. Ecuador. Merits, reparations and costs.* Judgment of June 24, 2005. Series C No. 129, para. 106; *Case of Villamizar Durán et al. v. Colombia, supra,* para. 166, and *Case of the National Federation of Maritime and Port Workers (FEMAPOR) v. Peru. Preliminary objections, merits and reparations*. Judgment of February 1, 2022. Series C No. 448, para. 91.

264 *Cf. Case of Furlan and Family v. Argentina. Preliminary objections, merits, reparations and costs*. Judgment of August 31, 2012. Series C No. 246, para. 156; *Case of Carvajal Carvajal et al. v. Colombia. Merits, reparations and costs.* Judgment of March 13, 2018. Series C No. 352, para. 107, and *Case of Amrhein et al. v. Costa Rica*, supra, para. 424. Also, see the *Case of Baldeón García v. Peru. Merits, reparations and costs*. Judgment of April 6, 2006. Series C No. 147,

criminal act came to light;[265] d) the characteristics of the remedies available under domestic law;[266] and e) the context in which the facts occurred.[267] The second element requires the Court to determine whether the interested parties made the interventions that were reasonably required of them at the different procedural stages.[268] As for the conduct of the judicial authorities, the Court has understood that, as the ones in charge of the proceedings, they have the duty to direct and guide the judicial process so as not to sacrifice justice and due legal process in favor of formalism.[269] In relation to the fourth element, that is, the effects on the legal situation of the persons involved in the proceeding, the Court has established that the authorities must act with the utmost diligence in those cases where the protection of other rights of the parties involved in the process depends on the duration of the proceedings. [270]

267. The Court notes that in the instant case, the domestic authorities conducted investigations and judicial proceedings in criminal case 88/2002 related to the murder of Mayor María de los Ángeles Tamés Pérez, in which Daniel García Rodríguez and Reyes Alpízar Ortiz appear as the alleged perpetrators. The Court confirms that the alleged victims in the case were linked to the proceedings as soon as they were arrested, on February 25, 2002, in the case of Daniel García Rodríguez and on October 25, 2002, in the case of Reyes Alpízar Ortiz. Both recovered their "ambulatory" release on August 23, 2019, the date on which non-custodial precautionary measures were ordered for them (*supra* para. 87). However, the criminal proceedings continued until May 12, 2022, when the first instance conviction was handed down, which was subsequently appealed (*supra* para. 79). The Court concludes that more than 20 years have passed -17 of which the alleged victims have spent in custody, deprived of their liberty - since the beginning of the proceedings against Daniel García Rodríguez and Reyes Alpízar Ortiz, without a final judicial decision being reached.

268. In the Court's opinion, this criminal case did not present any major complexities since it involved the murder of one person, with two defendants, without a large number of investigative hypotheses to be exhausted, and with much of the testimonial and expert evidence gathered during the first months of the investigation.

269. With respect to the second element of the analysis of reasonable time, the Court notes that the alleged victims did indeed avail themselves of a significant number of remedies in the course of their defense. All these procedural acts consisted of interventions that were reasonably required of them at the various procedural stages. On this point, the Court recalls that the use of legal

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para. 152; *Case of Members and Militants of the Patriotic Union v. Colombia*, *supra*, para. 473; *Case of Vargas Areco v. Paraguay. Merits, reparations and costs*. Judgment of September 26, 2006. Series C No. 155, para. 103, and *Case of Villamizar Durán et al. v. Colombia, supra,* para. 166.

265 *Mutatis mutandis, Case of Heliodoro Portugal v. Panama*. *Preliminary objections, merits, reparations and costs.* Judgment of August 12, 2008. Series C No. 186, para. 150, and *Case of Villamizar Durán et al. v. Colombia*, *supra,* para. 166.

266 *Cf. Case of Salvador Chiriboga v. Ecuador. Preliminary objection and merits*. Judgment of May 6, 2008. Series C No. 179, para. 83, and *Case of Villamizar Durán et al. v. Colombia, supra,* para. 166.

267 *Cf. Case of Furlan and Family v. Argentina*, para. 156; *Case of Villamizar Durán et al. v. Colombia, supra,* para. 166, and *Case of Members and Militants of the Patriotic Union v. Colombia*, *supra*, para. 473.

268 *Cf. Case of Fornerón and Daughter v. Argentina. Merits, reparations and costs.* Judgment of April 27, 2012. Series C No. 242, para. 69; *Case of Villamizar Durán et al. v. Colombia, supra,* para. 166; *Case of Díaz Loreto et al. v. Venezuela. Preliminary objections, merits, reparations and costs*. Judgment of November 19, 2019. Series C No. 392, para. 117; and *Case of Members and Militants of the Patriotic Union v. Colombia*, *supra*, para. 474.

269 *Cf. Case of Myrna Mack Chang v. Guatemala. Merits, reparations and costs*. Judgment of November 25, 2003. Series C No. 101, para. 211; *Case of Villamizar Durán et al. v. Colombia, supra,* para. 166, and *Case of Members and Militants of the Patriotic Union v. Colombia*, *supra*, para. 475.

270 *Cf. Case of Valle Jaramillo et al. v. Colombia. Merits, reparations and costs.* Judgment of November 27, 2008. Series C No. 192, para. 155; *Case of Furlan and Family v. Argentina, supra,* para. 202, and *Case of Villamizar Durán et al. v. Colombia, supra,* para. 166.

remedies recognized by the national legislation in order to protect the appellants' procedural rights and interests cannot be used against them.[271] In this sense, the State's argument that the procedural conduct of the alleged victims is responsible for the prolongation of the judicial proceedings is not acceptable.

270. Regarding the third element, the Court notes that it is clear from the analysis of the facts of the case, and as mentioned in the conviction of May 12, 2022, that much of the investigative activity was carried out during the first years of the proceedings, and that subsequently there were periods of procedural inactivity, specifically in relation to case 88/2022, and the determination of responsibility for the murder for which the alleged victims in this case were being prosecuted.

271. Finally, regarding the degree of impact on the legal situation of the alleged victims, it is evident that the extraordinary length of the criminal proceedings had a significant impact on the prolongation of the precautionary measure restricting their liberty, which lasted for approximately 17 years. Furthermore, it should be recalled that the precautionary measures restricting their liberty continue to this day, pending a final decision in the criminal proceedings against them (*supra* para. 87).

272. In view of the foregoing, the delay of more than 21 years in the investigation and trial since the murder of Mayor María de los Ángeles Tamés Pérez in 2001, and more than 20 years since the alleged victims were linked to this case, cannot be explained by the complexity of the proceedings or by the conduct of the alleged victims, but rather by the dilatory conduct attributable to the State. Therefore, the Court finds grounds to conclude that the principle of reasonable time established in Article 8(1) of the Convention was violated to the detriment of Daniel García Rodríguez and Reyes Alpízar Ortiz, due to the excessive duration of the proceedings in which they were involved.

B.5. Conclusion

273. In conclusion, this Court finds that the State is responsible for the violation of the principle of reasonable time, and the rule of exclusion of evidence obtained under coercion, contained in Articles 8(1) and 8(3) of the American Convention, in relation to Article 1(1) thereof, to the detriment of Daniel García Rodríguez and Reyes Alpízar Ortiz. Finally, the State is also responsible for a violation of the right to defense, and the right to question witnesses and obtain their appearance contained in Articles 8(2)(d), 8(2)(e), and 8(2)(f) of the American Convention, in relation to Article 1(1) of the same instrument, to the detriment of Daniel García Rodríguez.

IX
REPARATIONS[272]

274. Based on the provisions of Article 63(1) of the American Convention, the Court has indicated that any violation of an international obligation that has caused harm entails the obligation to make adequate reparation, and that this provision reflects a customary norm that constitutes one of the fundamental principles of contemporary international law on State responsibility.[273]

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271 *Cf. Case of Mémoli v. Argentina. Preliminary objections, merits, reparations and costs*. Judgment of August 22, 2013. Series C No. 265, para. 174, and *Case of Jenkins v. Argentina*, *supra*, para. 117.

272 Application of Article 63(1) of the American Convention.

273 *Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and costs.* Judgment of July 21, 1989. Series C No. 7, paras. 24 and 25, and *Case of Bissoon et al. v. Trinidad and Tobago*, para. 53.

275. Reparation for the harm caused by the breach of an international obligation requires, whenever possible, full restitution (*restitutio in integrum*), which consists of reestablishing the situation prior to the violation. If this is not feasible, as occurs in the majority of cases of human rights violations, the Court may order measures to protect the rights that have been violated and repair the harm caused.[274] Accordingly, the Court has considered the need to provide different types of reparation in order to fully redress the damage; therefore, in addition to pecuniary compensation, other measures such as satisfaction, restitution, rehabilitation, and guarantees of non-repetition have special relevance owing to the severity of the harm caused.[275]

276. The Court has also established that reparations must have a causal nexus with the facts of the case, the violations declared, the damage proven, and the measures requested to redress the respective harm. Consequently, the Court must analyze the concurrence of these factors in order to rule appropriately and according to the law.[276]

277. Therefore, taking into account the considerations on the merits and the violations of the American Convention declared in this judgment, the Court will now examine the claims presented by the Commission and the representatives of the victims, as well as the corresponding observations of the State, in light of the criteria established in its case law concerning the nature and scope of the obligation to make reparation, for the purpose of ordering measures to redress the harm caused.[277]

A. Injured party

278. Pursuant to Article 63(1) of the Convention, this Court considers as injured party anyone who has been declared a victim of the violation of any right recognized therein. Therefore, this Court considers as "injured party" Daniel García Rodríguez and Reyes Alpízar Ortiz who, as victims of the violations declared in Chapter VIII, will be considered as beneficiaries of the reparations ordered by this Court.

279. The representatives requested pecuniary and non-pecuniary reparations in favor of third parties. Based on the conclusions reached in the chapter on Preliminary Considerations (*supra* Chapter V), these persons are not victims in this case and therefore cannot be beneficiaries of the reparation measures ordered by this Court. Accordingly, the Court will not include the requests of the representatives that refer to these persons.

B. Obligation to investigate

280. The ***Commission*** and the ***representatives*** requested that the State be ordered to "[c]onclude promptly and as soon as possible the criminal proceedings against the victims in this case, in accordance with the rules of due process guaranteed by the American Convention." Similarly, they called for "a thorough, diligent and effective investigation, within a reasonable time, to investigate the acts of torture, identify those responsible and impose the appropriate sanctions."

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274 *Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and costs, supra*, para. 24, and *Case of Bissoon et al. v. Trinidad and Tobago, supra,* para. 54.

275 *Cf. Case of the Dos Erres Massacre v. Guatemala. Preliminary objection, merits, reparations and costs.* Judgment of November 24, 2009. Series C No. 211, para. 226, and *Case of Dial et al. v. Trinidad and Tobago, supra*, para. 81.

276 *Cf. Case of Ticona Estrada et al. v. Bolivia. Merits, reparations and costs.* Judgment of November 27, 2008. Series C No. 191, para. 110, and *Case of Dial et al. v. Trinidad and Tobago, supra*, para. 152.

277 *Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and costs, supra,* paras. 25 and 26, *Case of Leguizamón Zaván et al. v. Paraguay. Merits, reparations and costs.* Judgment of November 15, 2020. Series C no. 473, para. 92, and *Case of Baraona Bray v. Chile. Preliminary objections, merits, reparations and costs*. Judgment of November 24, 2022. Series C No. 481, para. 157.

They also asked the Court to order "investigative measures to establish the corresponding responsibilities."

281. With respect to the request to conclude the criminal proceedings against the alleged victims as soon as possible, the ***State*** argued that "it is evident that jurisdictionally and legally, the judge has no legal mechanisms that would allow him to comply with the recommendation to conclude the proceedings in the brief period of time indicated by the Inter-American Commission, because said procedural act does not depend on the will of the judge, but on the way in which the procedural acts are carried out, a decision that also depends on Mr. García Rodríguez and Mr. Reyes Alpízar." However, aware of the importance of the matter, it indicated that it is committed to "issuing the corresponding judgment as soon as possible, and with full respect for the right to defense of the alleged victims."

282. In relation to the request for a thorough, diligent and effective investigation, within a reasonable time, to investigate the acts of torture, the State indicated that "regarding the alleged acts of torture denounced […], the Special Prosecutor's Office for the Investigation of Torture carried out more than 500 procedures, all of them in accordance with inter-American standards on torture, as well as those contained in the Istanbul Protocol." It added that "the judicial authority decided not to bring a criminal action in the preliminary investigation TLA/MR/III/1973/2006, issued on May 3, 2021. This decision was confirmed on May 18 of the same year by the Regional Prosecutor of Tlalnepantla, state of Mexico, and notified to the alleged victims" and that "the alleged victims did not object to this decision." Accordingly, the State explained that it had "fulfilled its obligation to conduct a thorough, diligent and effective investigation, within a reasonable time, to investigate the acts of torture, in compliance with the parameters of due diligence established in the inter-American standards on the matter […]." To that extent, it "consider[ed] satisfied this recommendation" of the Commission contained in the Merits Report.

B.1. Conclusion of the criminal case against Daniel García Rodríguez and Reyes Alpízar Ortiz

283. The ***Court*** recalls that in the context of the proceedings against Daniel García Rodríguez and of Reyes Alpízar Ortiz, the principle of reasonable time was breached since the victims were deprived of their liberty preventively for 17 years, and continue to this day with measures that restrict their liberty through a tracking and localization system (*supra* para. 87). Thus, the prolongation of the proceedings along with the uncertainty that this entails for the victims in this case continues to be a factor of anguish that affects their life plans. This may have been exacerbated since the first instance conviction was issued on May 12, 2022 (*supra* para. 10).

284. The use of torture as a mechanism to obtain confessions or incriminating evidence from a defendant cannot have any consequence other than the exclusion of the evidence. Otherwise, the prohibition of torture would be devoid of content, becoming a merely formal right without any practical effects. In view of the fact that the proceedings are still at the appeal stage, the competent authorities must, *ex officio,* exclude all incriminating evidence obtained under coercion or torture when ruling on the appeal and in other procedural acts, in order to determine whether or not there are still grounds to establish the criminal responsibility of the accused. Owing to the extreme delay in these proceedings, this Court deems it imperative that the final decision in this case be reached as soon as possible, in strict compliance with the guarantees of due process contained in the American Convention. Within the framework of the process of monitoring compliance with this judgment, the Court will determine whether the authorities excluded the incriminating evidence obtained under duress in all the procedural acts related to this case.

285. Likewise, although the victims in this case were released from prison in 2019, they continue to suffer measures that restrict their personal liberty and freedom of movement to this day, because, as an alternative precautionary measure to imprisonment, they are obliged to wear electronic geolocation devices (bracelets) at all times until the end of the criminal proceedings. Taking into account the continuation of these restrictions on their freedom, as well as the State's

obligation to periodically review such measures (*supra* para. 184), this Court orders the domestic authorities to evaluate, within one month from notification of this judgment, the relevance of maintaining the precautionary measures against the defendants. To this end, they must take into account the standards mentioned in this judgment regarding the legitimate purposes of a restriction of liberty (danger of flight and preservation of evidence), the appropriateness of the measure as well as its necessity and strict proportionality (*supra* paras. 154 to 163). Furthermore, all incriminating evidence obtained under coercion or torture must be excluded when adopting and reviewing the precautionary measures for Daniel García Rodríguez and Reyes Alpízar Ortiz.

B.2. Duty to investigate, prosecute and punish those responsible for the acts of torture to the detriment of Daniel García Rodríguez and Reyes Alpízar Ortiz

286. The Court recalls that in the instant case it concluded that the State was responsible for acts of torture against Daniel García Rodríguez and Reyes Alpízar Ortiz during the period that they were under *arraigo* (*supra* Chapter VIII.2.B.1). Therefore, the State must, within a reasonable time and with due diligence, investigate, prosecute and, if applicable, punish those responsible for the acts of torture to the detriment of Daniel García Rodríguez and Reyes Alpízar Ortiz. To this end, the State may reopen preliminary investigation TLA/MR/III/1973/2006 (*supra* paras. 105 to 112) or initiate a new investigation.

B.3. Duty to investigate, prosecute and punish other human rights violations to the detriment of Daniel García Rodríguez and Reyes Alpízar Ortiz

287. The Court was able to establish that Daniel García and Reyes Alpízar: a) were unlawfully arrested; b) were not informed of the reasons for their detention; c) were not promptly brought before a judge; d) did not have access to a technical defense in the first days following their detention, and e) were arbitrarily deprived of their liberty through the application of mandatory pretrial detention. As a result, their rights to personal liberty, personal integrity, judicial guarantees, and privacy were violated to their detriment.

288. In this regard, the Court has no doubt that these facts were attributable to the State due to the actions and omissions of several police officers and judicial authorities, which resulted in the international responsibility of the State. Therefore, the Court deems it appropriate to order the State to undertake, in accordance with applicable domestic law, the pertinent disciplinary, administrative or other proceedings, in order to investigate, prosecute and punish those responsible for the human rights violations declared in this case.

C. Guarantees of non-repetition

C.1. Legislative reforms

289. The ***Commission*** and the ***representatives*** requested that the State be ordered to adapt "the domestic legal system, including the constitutional and legal norms that maintain the concept of *arraigo*, in order to definitively eliminate it." While this occurs, it should "ensure that the judicial authorities required to apply the measure of *arraigo* cease to apply it through a proper control of conventionality, in light of the corresponding inter-American standards."

290. For their part, the ***representatives*** requested that the State be ordered to "eliminate from the domestic legal system the concept of preventive detention for serious crimes and the constitutional concept of automatic or mandatory pretrial detention." In addition, they requested that "the judicial authority should periodically and *ex officio* review the measures restricting personal liberty, whenever the circumstances that gave rise to their imposition change or when they are no longer necessary and proportionate, and should also provide *ex officio* the reports of the Precautionary Measures Units for the technical assessment of the review."

291. The ***State***, requested that the Court take into account the progress made in the legal framework and institutional structure since the time of the facts and up to the present, and that it be allowed to continue improving its judicial and administrative procedures in the application of the concept of *arraigo* and, at the same time, continue with its internal democratic processes for the evaluation of mandatory pretrial detention.

292. The ***Court*** notes that the request for reparation submitted by the representatives and the Commission, related to a legal reform, refers both to the concept of *arraigo* and to the concept of mandatory pretrial detention. In this regard, the Court recalls that in Chapter VIII.1 of this judgment, it concluded that the State was responsible for the violation of the rights to personal liberty and the presumption of innocence, in relation to its obligation to adopt provisions of domestic law contained in Article 2 of the American Convention, to the detriment of Daniel García Rodríguez and Reyes Alpízar. This is because the legal concepts of *arraigo* and mandatory pretrial detention, regulated in Article 19 of the Mexican Constitution after it was reformed in 2008, as well as in Articles 154 and 319 of the 2000 Code of Criminal Procedure for the state of Mexico, were applied to them and were, *per se*, contrary to the American Convention (*supra* paras. 187 and 188).

293. However, as noted in the chapter on Facts (*supra* Chapter VII.A), the content of these norms has been reformed since the events of this case occurred. The Court will now analyze the current legal provisions and compare them with those that were in force at the time of the facts to determine whether the problems arising from the regulations that were applied in this specific case were corrected or whether they are still present, both in the reformed norms and in others that have been introduced subsequently in the legal system.

a) The concept of arraigo

294. The Court confirms that the 2000 Code of Criminal Procedure for the state of Mexico no longer contains provisions on *arraigo* as a pre-procedural measure to restrict liberty. Nevertheless, as of 2008, the concept of *arraigo* as a precautionary measure of a pre-procedural nature has been incorporated into the Federal Constitution of Mexico which, in its current version, establishes in Article 16 that:

> The judicial authority, at the request of the Public Prosecutor's Office and in the case of organized crime offenses, may decree the *arraigo* of a person, with the conditions of place and time specified by law, without exceeding forty days, provided that it is necessary for the success of the investigation, the protection of persons or legal assets, or when there is a well-founded risk that the accused will evade the action of justice. This term may be extended, provided that the Public Prosecutor's Office proves that the causes that gave rise to it still exist. In any case, the total duration of the *arraigo* may not exceed eighty days. […]

b) Mandatory pretrial detention

295. With regard to mandatory pretrial detention, Article 19 of the Mexican Constitution, which incorporated the concept of mandatory pretrial detention in 2008, was amended in 2019 to include more crimes in the list of offenses for which this measure should be applied. Its current wording is as follows:

> […]The Public Prosecutor's Office may only request the judge to order preventive prison when other precautionary measures are not sufficient to guarantee the presence of the accused at trial, the development of the investigation, the protection of the victim, witnesses or the community, as well as when the accused is being prosecuted or has been previously sentenced for the commission of an intentional crime. The judge will order mandatory preventive detention in cases of abuse or sexual violence against minors, organized crime, intentional homicide, femicide, rape, kidnapping, human trafficking, housebreaking, use of social programs for electoral purposes, corruption involving the crimes of illicit enrichment and abusive exercise of functions, theft of cargo transportation in any of its modalities, crimes involving hydrocarbons,

oil, petroleum or petrochemicals, crimes committed by violent means such as weapons and explosives, crimes involving firearms and explosives for the exclusive use of the Army, the Navy and the Air Force, as well as serious crimes determined by law against national security, the free development of the personality, and health.

296. In this regard, the Court notes that some of the aspects contrary to the American Convention that had been pointed out in the chapter on the Merits (*supra* paras. 164-174), still persist and were even expanded in subsequent legislation. These aspects are: a) no reference is made to the purposes of preventive detention, nor to the procedural risks that it seeks to prevent; b) it does not allow the possibility of analyzing the application of this precautionary measure through an assessment of its necessity in relation to other measures less harmful to the rights of the defendant, such as alternative measures to deprivation of liberty, and c) the application of preventive detention is mandatory for certain crimes considered serious once the material assumptions have been established, without any analysis of the need for precautionary measures in light of the particular circumstances of the case.

297. As for the regulations related to provisional release and release on bail contained in Article 319 of the 2000 Code of Criminal Procedure for the state of Mexico, these have been reformed and, instead, Article 194 of the current Code of Criminal Procedure for the state of Mexico (reformed in 2009), establishes that:

> Article 194. Pretrial detention is applicable in the following cases:
>
> A. *Ex officio*:
>
> I. In the case of the crimes of intentional homicide, rape and kidnapping, and the attempted commission of said crimes;
>
> II. Crimes committed by violent means, provided that serious harm is caused to the physical integrity of persons, as well as those committed with weapons, explosives or others that by their nature may cause danger; and
>
> III. In the following crimes against the free development of the personality provided for in the State Criminal Code:
>
> a) Article 204, Sections I, II, III;
>
> b) Pornography of minors and disabled persons contained in Article 206, Sections I, II and IV; and
>
> c) Trafficking of persons.
>
> IV. Those classified as serious in the General Laws. […].

c) Conclusion

298. Based on the foregoing, although the regulations through which *arraigo* and mandatory pretrial detention were applied to the facts of the case have changed, this Court has no doubt that the aspects that make them incompatible with the Convention, as indicated above, persist in their current wording. These aspects have led this Court to declare that the rules that include the concepts of *arraigo* (Article 154 of the 2000 Code of Criminal Procedure for the state of Mexico) and mandatory pretrial detention (Article 154 of the 2000 Code of Criminal Procedure for the state of Mexico as well as Article 19 of the Mexican Constitution after it was reformed in 2008) were contrary to the American Convention and to the State's obligation to adapt the provisions of domestic law as established in Article 2 of the American Convention.

299. The Court recalls that according to Article 2 of the American Convention, the general obligation of the State includes the adoption of measures to eliminate norms and practices that in any way violate the guarantees established in the Convention, and the promulgation of norms and the development of practices conducive to the effective observance of those guarantees.[278]

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[278] *Cf. Case of Castillo Petruzzi et al. v. Peru. Merits, reparations and costs, supra,* para. 207; *Case of Durand and Ugarte*. Judgment of August 16, 2000. Series C. No. 68, para. 137; *Case of the "Juvenile Reeducation Institute" v.*

300. As mentioned above, and in relation to the concept of *arraigo* as a pre-procedural measure that restricts liberty for investigative purposes, the Court understands that this is incompatible with the American Convention, since the principles that define its inherent characteristics are not compatible with the rights to personal liberty, to be heard and to the presumption of innocence. Consequently, the Court considers that the State must repeal, in its legal system, all regulations, including constitutional regulations, related to *arraigo* as a pre-procedural measure that restricts liberty for investigative purposes.

301. With regard to the concept of mandatory pretrial detention, this Court orders the State, as it has done in other cases,[279] to adapt its legal system, including its constitutional provisions, so that it is compatible with the American Convention. For such purposes, the State must take into consideration the provisions of paragraphs 154-163 and 184 of this judgment, which establish the requirements that such measures must satisfy in order to be compatible with said treaty.

302. Furthermore, it is not only the elimination or adaptation of norms in domestic laws that guarantee the rights contained in the American Convention, in accordance with the obligations established in Article 2 of said instrument. It also requires the development of State practices conducive to the effective observance of the rights and freedoms enshrined therein, since the existence of a rule does not in itself guarantee its effective application. In this sense, it is necessary that the application of the norms or their interpretation, as jurisdictional practices and expressions of the State's public order, be adjusted to the same ends pursued by Article 2 of the Convention.

303. Accordingly, the Court recalls that the domestic authorities, when applying the concepts of *arraigo* or pretrial detention, must exercise an adequate control of conventionality so that they do not affect the rights contained in the American Convention of the persons investigated or prosecuted for a crime, in line with the *pro persona* principle. In this regard, it reiterates that when a State has ratified an international treaty such as the American Convention, all its organs, including its judges, are subject to it; this obliges them to ensure that the effects of the provisions of the Convention are not diminished by the application of norms contrary to its object and purpose, whether they are of a constitutional or a legal nature. Therefore, within the framework of their respective jurisdictions and the corresponding procedural regulations, the judges and organs linked to the administration of justice at all levels are obliged to exercise *ex officio* a control of conventionality between domestic norms and the American Convention. In this task, they must take into account not only the treaty, but also the interpretation made of it by the Inter-American Court, the final interpreter of the Convention.

C.2. Training program for officials of the Deputy Prosecutor's Office of Tlalnepantla

304. The ***Commission*** requested that the Court order the State to provide "officials of the Deputy Prosecutor's Office of Tlalnepantla with appropriate training on the absolute prohibition of torture and cruel, inhuman and degrading treatment in the investigation of all crimes, including those related to organized crime, and to implement a simple and easily accessible system for reporting such acts." The ***representatives*** did not refer to this measure of reparation.

305. The ***State*** referred to the training courses that it is currently implementing. It described in detail the following programs: a) Course on "Absolute prohibition of torture and cruel, inhuman and degrading treatment in the investigation of all crimes, including those related to organized

Paraguay. Preliminary objections, merits, reparations and costs. Judgment of September 2, 2004. Series C No. 112, para. 206; *Case of "The Last Temptation of Christ" (Olmedo Bustos et al.) v. Chile, supra,* para. 85; and *Case of Tzompaxtle Tecpile et al. v. Mexico*, *supra*, para. 215.

279 *Cf. Case of the Former Employees of the Judiciary v. Guatemala. Preliminary objections, merits and reparations.* Judgment of November 17, 2021. Series C No. 445, para.144; and *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Reparations and costs*. Judgment of May 26, 2001. Series C No. 77, para. 98, and *Case of Tzompaxtle Tecpile et al. v. Mexico*, *supra*, para. 217.

crime"; b) Course on "Prevention of Torture"; c) Course for the Attorney General's Office of the state of Mexico. Training Course Report No. 13 of the IACHR, Case 13.333. Merits Report, Daniel García Rodríguez and Reyes Alpízar Ortiz; d) Courses on the "American Convention on Human Rights", "Right to Equality and Dignified Treatment" and "Charter on the Rights of Detainees"; e) Course on the "Istanbul Protocol" and "Human Rights and the Prison System"; and f) Annual Training Program of the FGJEM. In view of the foregoing, the State considered that it has complied with the recommendation of the Inter-American Commission, and expressed its willingness to continue with the aforementioned training courses for officials of the Deputy Prosecutor's Office of Tlalnepantla.

306. The ***Court*** appreciates the State's comments regarding the training it is currently implementing and its willingness to continue with the aforementioned training courses for the officials of the Deputy Prosecutor's Office of Tlalnepantla. Nevertheless, given the nature of the facts that gave rise to the human rights violations established in the instant case, this Court orders the State to include in the Annual Training Program of the FGJEM, within one year, training courses on the absolute prohibition of torture and cruel, inhuman and degrading treatment in the investigation of all crimes. This training should be allocated the respective budget.

D. Measure of satisfaction

307. The ***representatives*** requested that the State be ordered to publish "the summary of the judgment handed down in the instant case in the Official Gazette and in another newspaper with national circulation. They also requested that it publish the judgment in its entirety, for at least one year, on an appropriate official website of the State, taking into account the content of the publication ordered." The ***Commission*** did not refer to this measure of reparation.

308. The ***State*** indicated that in the event that the Court should issue a judgment, it "undertakes […] to take the necessary steps to publish and disseminate it." The Court also notes that the Memorandum of Understanding stipulates that the State agrees to publish the summary of the Merits Report in two newspapers with national circulation, and to publish the full document on the websites of the ministries proposed by the representatives."

309. Therefore, the ***Court*** orders, as it has done in other cases,[280] that the State publish, within six months from notification of this judgment, in a legible and adequate font size: a) the official summary of this judgment prepared by the Court, once, in the Official Gazette; b) the official summary of this judgment prepared by the Court, once, in a newspaper with wide national circulation, and c) this judgment in its entirety, available for one year on an official website of the Government of the state of Mexico, in a manner accessible to the public and from the home page of the website. The State shall immediately inform this Court once it has made each of the publications ordered, regardless of the one-year term for submitting its first report as provided for in the nineteenth operative paragraph of this judgment.

E. Measures of rehabilitation

310. The ***Commission*** requested that the Court order "measures of rehabilitation with physical or mental health care for the victims in the case." The ***representatives*** requested that the State be ordered to provide "specialized medical treatment and psychosocial assistance to the family members of García Rodríguez and Reyes Alpízar, taking into account the individual conditions of each of the victims and their particular ailments." They also specified that such assistance "should be provided for as long as necessary and should include the cost of any medications that are part of the treatment. The medical center that provides such physical and psychosocial care should be

[280] *Cf. Case of Cantoral Benavides v. Peru. Reparations and costs*. Judgment of December 3, 2001. Series C No. 88, para. 79, and *Case of Baraona Bray v. Chile, supra*, para. 169.

chosen by mutual agreement with the beneficiaries, taking into account the circumstances and particular needs of each case."

311. The ***State*** referred to the support provided to the victims "through the Executive Commission for Attention to Victims of the State of Mexico, as described in the report submitted to the Human Rights Commission on October 23, 2020, who were included in the State Register of Victims with the numbers REV-059-2019-RDH (Reyes Alpízar Ortiz) and REV-060-2019-RDH (Daniel García Rodríguez)." It also referred in detail to the psychological care provided in the post-traumatic stress clinics in Tlalnepantla to Daniel García Rodríguez and Reyes Alpízar Ortiz, as well as to their families, by the Social Work Unit and the Psychosocial Care Unit. The State also reiterated its willingness "to provide medical services to the beneficiaries, through referrals to the public health services they require, based on their individual diagnoses."

312. In the instant case, the ***Court*** has determined the harm caused to the personal integrity of Daniel García Rodríguez and Reyes Alpízar Ortiz due to acts of torture (*supra* Chapter VIII.2.B.1). Therefore, this Court deems it necessary to order a measure of reparation that ensures adequate treatment for the psychological and/or psychiatric ailments suffered by these two victims. Consequently, the Court orders the State to provide them with the medical, psychological and/or psychiatric treatment they may require, in accordance with the guidelines set forth in the following paragraphs.

313. Treatment should be provided to the victims free of charge and as a matter of priority, and should include the provision of any medications that may be necessary and, where appropriate, transportation and other directly related and necessary expenses. Treatment should be provided, to the extent possible, at the health centers nearest to the beneficiaries' places of residence, for as long as necessary. When providing treatment, the particular circumstances and needs of each victim should be considered, as agreed with that victim and after an individual assessment.[281]

314. The beneficiaries have six months from notification of this judgment to inform the State of their desire to receive medical, psychological and/or psychiatric care.[282] In turn, the State shall have a maximum term of six months from receiving said request, to provide the treatment requested. In any case, regardless of these time limits, the State must comply with the measure as soon as possible. If the beneficiaries do not communicate their intention to receive medical, psychological and/or psychiatric care within the established term, the State is exempted from providing it.

F. Other measures requested

315. The ***representatives*** requested that the State be ordered to offer "a public apology to the victims and to carry out a public act of acknowledgement of responsibility for the facts of this case in the Municipality of Atizapán de Zaragoza, where Daniel García Rodríguez was arrested, held in *arraigo* and exhibited as a criminal. They argued that said act should take place within one year of notification of this judgment and that representatives of the highest level of the Federal Government and of the Government of the state of Mexico should participate in it. The organization and other details of this public ceremony must be discussed previously with members of the García Rodríguez family, whose expenses for attending the ceremony must be covered by the State." The

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281 *Cf. Case of the Dos Erres Massacre v. Guatemala, supra,* para. 270; *Case of Poblete Vilches et al. v. Chile. Merits, reparations and costs.* Judgment of March 8, 2018. Series C No. 349, para. 231, and *Case of Garzón Guzmán et al. v. Ecuador. Merits, reparations and costs.* Judgment of September 1, 2021. Series C No. 434, para. 114.

282 *Cf. Case of Rosendo Cantú et al. v. Mexico. Preliminary objection, merits, reparations and costs.* Judgment of August 31, 2010. Series C No. 216, para. 253, and *Case of Garzón Guzmán et al. v. Ecuador, supra,* para. 114.

representatives did not mention Reyes Alpízar in their request. The ***Commission*** did not refer specifically to this measure.

316. The ***State*** reiterated its willingness, in the event that this Court should determine its international responsibility, to carry out an act of acknowledgement and public apology regarding the possible human rights violations against Daniel García Rodríguez and Reyes Alpízar Ortiz, in order to eradicate the social perception of their guilt in relation to the facts under investigation. It also indicated that the format of the act of acknowledgement and public apology would be agreed with the petitioners and their representatives.

317. In addition, the ***representatives*** requested that a statement be addressed "to the Mexican State to promote the enactment of effective laws and practices to combat impunity in the face of the unlawful actions of the Public Prosecutor's Office, its agents and assistants in the conduct of investigations and in the application of procedural protocols, especially where there is tampering with the chain of custody, fabrication of evidence or clues or manipulation of evidence or proof, with the aim of utilizing the institutions to allege false crimes."

318. In response to this request for reparation, the ***State*** pointed out that "the Commission at no time mentioned the possible fabrication of the crime of aggravated homicide to the detriment of María de los Ángeles Tamés, and therefore this request goes beyond the scope of the present case. Moreover, the representatives of the alleged victims based this request for reparation on facts other than those in the factual framework established by the […] Commission in its Merits Report."

319. The ***representatives*** also requested that "the necessary steps be taken to identify the perpetrators and the masterminds, prosecute and punish all officials responsible for the investigation, the fabrication of false accusations, the manipulation of witnesses, torture, the denial of access to adequate and effective legal remedies, as well as those responsible for obstructing the effective judicial protection of the State." In this regard, the ***State*** affirmed that it was not responsible "for the alleged fabrication of false accusations, witness tampering, torture, denial of access to adequate and effective judicial remedies, or for obstructing the State's effective judicial protection. Furthermore, it argued that "the petition is far removed from the issue at hand" and that "even if it were proven that there were omissions that resulted in violations of the American Convention, this does not imply the intention to make false accusations, tamper with witnesses, commit torture, deny access to adequate and effective judicial remedies, or obstruct the State's effective judicial protection."

320. With regard to the request for a public act of acknowledgement of responsibility, the ***Court*** considers that the measures of reparation ordered in this judgment are sufficient and therefore it does not find it appropriate to order said measure. As for the other measures requested, the Court finds that they do not have a causal nexus with the violations declared in this judgment, and therefore does not consider it appropriate to order them.

G. Compensation

321. The ***Commission*** requested that the Court order "pecuniary compensation and measures of satisfaction, including compensation for the pecuniary and non-pecuniary damage caused as a consequence of the declared violations, as well as rehabilitation measures with physical or mental health treatment for the victims in this case, and an investigation to establish the corresponding responsibilities." The ***representatives*** requested "comprehensive reparation in the form of an indemnity for Daniel García, Reyes Alpízar and their families, taking into account consequential damages, loss of earnings, measures of restitution for contributions, and moral or non-pecuniary damage."

322. In this regard, the representatives claimed: a) the payment of USD$150,000 (one hundred and fifty thousand United States dollars) to Daniel García Rodríguez, for expenses incurred in the

instant case; b) the payment of USD$150,000 (one hundred and fifty thousand United States dollars) to Daniel García Rodríguez for expenses incurred to provide him with food, clothing, toiletries, health care, means of communication (telephone cards) and transportation for visits, during the 17 years that he was deprived of liberty; c) the payment of USD$50,000 (fifty thousand United States dollars) to Reyes Alpízar Ortiz for expenses incurred to provide him with food, clothing, toiletries, health care, means of communication (telephone cards) and transportation for visits, during the 17 years that he was deprived of liberty; d) the sum of USD$2,000,000 (two million United States dollars) for loss of earnings in favor of Daniel García Rodríguez;[283] e) the sum of USD$ 150,000 (one hundred and fifty thousand United States dollars) for loss of earnings in favor of Reyes Alpízar Ortiz;[284] f) the sum of USD$ 300,000 (three hundred thousand United States dollars) for damage to the family assets of Daniel García;[285] g) to order the Mexican State to send the pertinent communications to the domestic federal, state and municipal authorities, so that in accordance with their internal procedures and based on the applicable legislation, they may determine the annulment, waiver or administrative cancellation of any pending payment of duties or contributions, as well as any type of tax credit derived from non-compliance with federal, state and municipal obligations corresponding to the victims;[286] h) the payment of USD$100,000 (one hundred thousand United States dollars) to Daniel García Rodríguez for non-pecuniary damage, and i) the payment of USD$100,000 (one hundred thousand United States dollars) to Reyes Alpízar for non-pecuniary damage.

323. The ***State*** indicated that, in the reports submitted to the Commission, it had explained that "the Executive Commission for Attention to Victims of the State of Mexico (CEAVEM) conducted a study on comprehensive reparation for the human rights violations suffered by each of the alleged victims recognized by the Inter-American Commission, and proposed the sum of $110,000.00 United States dollars per victim, as part of the comprehensive reparation for the damage caused." It also held that, to date, this amount "is maintained" and "is consistent with the criteria already used in cases whose facts coincide with the one at hand." It added that "it is important to point out that, according to this Court, compensation is an element of integral reparation as it is aimed at repairing the harm caused to the victim based on a prudent assessment of the damage and the principle of equity."

324. This ***Court*** has established in its case law that pecuniary damage encompasses the loss of or detriment to the victims' income, the expenses incurred as a result of the facts and the consequences of a pecuniary nature that have a causal nexus with the facts of the case.[287] Likewise, the Court has developed the concept of non-pecuniary damage and has established that this may include both the suffering and distress caused to the direct victims and their next of kin, the impairment of values that are very significant to them, as well as changes of a non-pecuniary nature in the living conditions of the victim or his family. However, since it is not possible to assign

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283 They indicated that this amount was based on the income from his commercial activities, including the breeding and raising of livestock and his bakery, which he had ceased to receive during the time he remained in prison. They presented account statements, records, declarations. Note: attached are receipts that serve as references for the financial projections. Financial information of Daniel García in 2002 (evidence file, folios 23226 *et seq.*).

284 They indicated that this amount was based on his work as a union representative, where he earned 700 pesos per day, which he did not receive during the time he remained in prison.

285 They indicated that Daniel García's family members were adversely affected and were forced to sell part of their assets in order to cover expenses arising from the judicial proceedings. They also had to make financial efforts to be able to cover the cost of basic goods to support Daniel's children and help him subsist in prison.

286 They explained that this situation is due to the fact that the illegal deprivation of liberty to which the alleged victims were subjected, resulted in non-compliance with their tax obligations that could not be covered during the entire time they were illegally deprived of their liberty. Therefore, such noncompliance (with the accompanying surcharges and updates) is due to the detrimental effect generated by the deprivation of freedom, since they had no possibility of continuing with their lives and receiving financial benefits from their economic activities to allow them to meet those obligations.

287 *Cf. Case of Bámaca Velásquez v. Guatemala. Reparations and costs*. Judgment of February 22, 2002. Series C No. 91, para. 43, and *Case of Digna Ochoa and Family Members v. Mexico*, *supra*, para. 181.

a precise monetary value to non-pecuniary damage, this can only be compensated, for the purposes of comprehensive reparation to victims, through the payment of a sum of money or the delivery of goods or services that can be estimated in monetary terms, as prudently determined by the Court, applying judicial discretion and the principle of equity.[288]

325. In view of the circumstances of this case, the Court considers it reasonable to order the State to pay compensation for consequential damages and loss of earnings in favor of Daniel García Rodríguez and Reyes Alpízar Ortiz who were deprived of liberty and were unable to pursue their professional or business activities. Taking into account the facts examined in this case, the Court sets in equity the amount of USD$ 50,000.00 (fifty thousand United States dollars) in favor of Daniel García Rodríguez and USD$ 50,000.00 (fifty thousand United States dollars) in favor of Reyes Alpízar Ortiz.

326. In addition, having regard to the nature and seriousness of the violations committed in the instant case, the suffering caused to the victims, the acts of torture, the arbitrary deprivation of liberty for 17 years, and the time elapsed from the time of the facts, the Court deems it appropriate to order in equity the payment of USD$ 50,000.00 (fifty thousand United States dollars) as compensation for non-pecuniary damage in favor of Daniel García Rodríguez and of Reyes Alpízar.

H. Costs and expenses

327. The ***representatives*** requested payment of the "expenses incurred for legal fees at the different stages of the proceedings, including expenses of the procedural stage over 20 years, and the acknowledgement of the costs incurred by the team of lawyers who have participated in the litigation of this case." They also requested "that the judgment issued in this case provide an amount to cover the expenses of the monitoring compliance stage in the terms indicated above."[289]

328. The ***State*** noted that the representatives included travel expenses for Denisse Aribel García Pérez, daughter of Daniel García, to participate in the public hearing in this case, despite the fact that the Court called her to testify by means of an affidavit. In this regard, it considered that the expenses related to her attendance at the hearing in Brasilia, Brazil should not be included in the costs and expenses.[290]

329. The ***Court*** recalls that, in accordance with its case law, costs and expenses are part of the concept of reparation, because the activities carried out by the victims in order to obtain justice, at both the national and the international level, imply expenditures that must be compensated when the international responsibility of the State is declared in a judgment. Regarding the reimbursement of costs and expenses, it is for the Court to prudently assess their scope, including the expenses incurred before the authorities of the domestic jurisdiction and those incurred during the proceedings before the inter-American system, taking into account the circumstances of the

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288 *Cf. Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Reparations and costs.* Judgment of May 25, 2001. Series C No. 76, para. 84; *Case of Cuya Lavy et al. v. Peru.* Preliminary objections, merits, reparations and costs. Judgment of September 28, 2021. Series C No. 438, *supra*, para. 223, and *Case of Dial et al. v. Trinidad and Tobago*, *supra*, para. 99.

289 In particular, they requested payment of "35,000 dollars in benefit of the *Asociación Civil Pena sin Culpa* and 35,000 dollars to cover the costs of the team of lawyers who acted in the defense of this case." They also requested payment of 25,000 dollars for expenses in favor of Daniel García and Reyes Alpízar, respectively, for the participation of their families in the litigation of the case. In their final arguments, they updated these amounts adding the cases which they have litigated since they submitted the pleadings and motions brief, which must be paid to the *Pena sin Culpa* organization. This additional sum totals 112,212 Mexican pesos [Note: 5610 US dollars].

290 The State also noted that the representatives requested that these expenses and costs be reimbursed directly to the *Pena Sin Culpa* organization, but emphasized that "according to the practice of the Inter-American Court, the possible payments resulting from the participation of the representatives in the public hearing, must be made to the Victims' Legal Assistance Fund of the Inter-American Court." However, it should be recalled that in this case the Court did not order assistance from the said Fund, so it would be impossible for the payment of these expenses to be charged to the Fund.

specific case and the nature of the international jurisdiction for the protection of human rights. This assessment may be made based on the principle of equity and taking into account the expenses indicated by the parties, provided that their *quantum* is reasonable.[291]

330. This Court has indicated that the claims of victims or their representatives with regard to costs and expenses, and the supporting evidence, must be presented to the Court at the first procedural opportunity granted to them, that is, in the pleadings and motions brief, without prejudice to such claims being subsequently updated, in accordance with the new costs and expenses incurred in the proceeding before this Court.[292] The Court also reiterates that it is not sufficient merely to forward probative documents; rather, the parties are required to include arguments that relate the evidence to the facts that they represent and, in the case of alleged financial disbursements, clearly specify the items and their justification.[293]

331. Taking into account the amounts requested by the representatives and the receipts submitted for expenses, the Court sets in equity the payment of USD $30,000.00 (thirty thousand United States dollars) in favor of *Asociación Civil Pena sin Culpa*, and USD $25,000.00 (twenty-five thousand United States dollars) as payment to cover costs of the team of lawyers who have participated in the litigation of this case, namely Sergio Armando Villa Ramos, Simón Alejandro Hernández León and David Peña Rodríguez. Said amount shall be delivered directly to the representatives. At the stage of monitoring compliance with this judgment, the Court may order the State to reimburse the victims or their representatives for any reasonable expenses incurred during this procedural stage.[294]

I. Method of compliance with the payments ordered

332. The State shall make the payments of the compensation ordered for pecuniary and non-pecuniary damage and to reimburse costs and expenses as established in this judgment directly to the persons and the organization indicated herein, within one year of notification of this judgment, or it may bring forward full payment, pursuant to the following paragraphs.

333. In the event that the beneficiaries have died or die before they receive the respective compensation, this shall be delivered directly to their heirs, in accordance with the applicable domestic law.

334. The State shall comply with its monetary obligations by payment in United States dollars, or the equivalent in national currency, using for the respective calculation the market exchange rate published or calculated by the relevant banking or financial authority on the date closest to the day of payment.

335. If, for reasons that can be attributed to the beneficiaries of the compensation or their heirs, it is not possible to pay the amounts established within the time frame indicated, the State shall deposit said amounts in their favor in an account or certificate of deposit in a solvent Mexican financial institution, in United States dollars, and on the most favorable financial terms permitted by banking law and practice. If the corresponding compensation is not claimed within ten years, the amounts shall be returned to the State with the accrued interest.

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291 *Cf. Case of Garrido and Baigorria v. Argentina. Reparations and costs.* Judgment of August 27, 1998. Series C No. 39, paras. 82, and *Case of Baraona Bray v. Chile, supra*, para. 187.

292 *Cf. Case of Garrido and Baigorria v. Argentina. Reparations and costs, supra,* para. 79, and *Case of Baraona Bray v. Chile, supra*, para. 188.

293 *Cf. Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador. Preliminary objections, merits, reparations and costs*, para. 277, and *Case of Manuela et al. v. El Salvador*, *supra*, para. 318.

294 *Cf. Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia. Merits, reparations and costs.* Judgment of September 1, 2010. Series C No. 217, para. 29, and *Case of Digna Ochoa and family members v. Mexico*, *supra*, para. 193.

336. The amounts awarded in this judgment as compensation for pecuniary and non-pecuniary damage and to reimburse costs and expenses shall be paid in full, directly to the persons and the organization indicated, without any deductions arising from possible taxes or charges.

337. If the State should fall into arrears, it shall pay interest on the amount owed corresponding to banking interest on arrears in the United Mexican States.

X
OPERATIVE PARAGRAPHS

338. Therefore,

THE COURT

DECIDES,

Unanimously:

1. To reject the preliminary objection regarding international *res judicata*, pursuant to paragraphs 19 to 22 of this judgment.

2. To reject the preliminary objection regarding the failure to exhaust domestic remedies, pursuant to paragraphs 27 to 30 of this judgment.

DECLARES,

Unanimously, that:

3. The State is responsible for the violation of the right to personal liberty contained in Article 7(1), 7(2), 7(4) and 7(5) of the American Convention on Human Rights, in relation to the obligation to respect the rights established in Article 1(1) of the same instrument, to the detriment of Daniel García Rodríguez and Reyes Alpízar Ortiz, pursuant to paragraphs 126 to 141 and 186.

4. The State is responsible for the violation of the rights to personal liberty, to be heard, and to the presumption of innocence, recognized in Articles 7(1), 7(3), 7(5), 8(1) and 8(2) of the American Convention on Human Rights, in relation to the obligation to respect and guarantee the rights established in Article 1(1) thereof, as well as the obligation to adopt provisions of domestic law contained in Article 2, due to the application of the concept of *arraigo* to the detriment of Daniel García Rodríguez and Reyes Alpízar Ortiz, pursuant to paragraphs 146 to 151, 179 and 187 of this judgment.

5. The State is responsible for the violation of the rights to personal liberty, to the presumption of innocence, and to equality before the law recognized in Articles 7(1), 7(3), 7(5), 8(2) and 24 of the American Convention on Human Rights, all in relation to the obligation to respect and guarantee the rights established in Article 1(1) of the Convention, as well as the obligation to adopt provisions of domestic law contained in Article 2 thereof, due to the imposition of mandatory pretrial detention to the detriment of Daniel García Rodríguez and Reyes Alpízar Ortiz, pursuant to paragraphs 152 to 185, and 188 of this judgment.

6. The State is responsible for the violation of the right to personal integrity, recognized in Articles 5(1) and 5(2) of the American Convention on Human Rights, in relation to the obligation to respect rights established in Article 1(1) thereof, and Articles 1 and 6 of the Inter-American Convention to Prevent and Punish Torture, for acts of torture perpetrated to the detriment of Daniel García Rodríguez and Reyes Alpízar Ortiz, pursuant to paragraphs 201 to 222.

7. The State is responsible for the violation of the principle of reasonable time and the rule of exclusion of evidence obtained under torture, contained in Articles 8(1) and 8(3) of the American Convention on Human Rights, in relation to the obligation to respect the rights established in Article 1(1) thereof, to the detriment of Daniel García Rodríguez and Reyes Alpízar Ortiz, pursuant to paragraphs 241 to 245, and 265 to 272. In addition, the State is responsible for the violation of its obligation to investigate with due diligence contained in Articles 8 and 25 of the American Convention, in relation to the obligation to respect the rights established in Article 1(1) of this treaty, and Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture, for the acts of torture committed against Daniel García Rodríguez and Reyes Alpízar Ortiz, pursuant to paragraphs 223 to 226.

8. The State is responsible for the violation of the right to judicial guarantees, contained in Articles 8(2)(d),(e) and (f), of the American Convention on Human Rights, in relation to the obligation to respect the rights established in Article 1(1) thereof, to the detriment of Daniel García Rodríguez, pursuant to paragraphs 246 to 251, 256, and 257.

AND ESTABLISHES:

Unanimously, that:

9. This judgment constitutes, *per se,* a form of reparation.

10. The State shall conclude the criminal proceedings pursuant to paragraphs 283 and 284.

11. The State shall review the relevance of maintaining the precautionary measures and shall exclude all incriminating evidence obtained under coercion or torture in all procedural acts, pursuant to paragraph 285.

12. The State shall carry out the investigations indicated in paragraphs 286 to 288.

13. The State shall repeal in its domestic legislation the provisions relating to pre-procedural *arraigo*, pursuant to paragraphs 292 to 294, 298 to 300, and 302 to 303.

14. The State shall adapt its domestic legal system in relation to mandatory pretrial detention, pursuant to paragraphs 292 and 293, 295 to 299 and 301 to 303.

15. The State shall implement training programs, in accordance with paragraph 306.

16. The State shall make the publications indicated in paragraph 309 of this judgment, within six months of its notification.

17. The State shall provide, free of charge, adequate and preferential medical, psychological or psychiatric treatment, as appropriate, in accordance with paragraphs 312 to 314.

18. The State shall pay the amounts specified in paragraphs 324 to 326 for pecuniary and non-pecuniary damage, and the amounts stipulated in paragraphs 329 to 331 for costs and expenses, pursuant to paragraphs 332 to 337.

19. The State shall provide the Court with a report, within one year of notification of this judgment, on the measures adopted to comply with it.

20. The Court will monitor full compliance with this judgment, in exercise of its authority and in fulfillment of its obligations under the American Convention on Human Rights, and will close this case when the State has complied fully with its provisions.

DONE, at San José, Costa Rica, on January 25, 2023, in the Spanish language.

I/A Court HR. *Case of García Rodríguez et al. v. Mexico. Preliminary Objections, Merits, Reparations and Costs*. Judgment of the Inter-American Court of Human Rights of January 25, 2023.

Ricardo C. Pérez Manrique
President

Humberto Antonio Sierra Porto

Nancy Hernández López

Verónica Gómez

Patricia Pérez Goldberg

Rodrigo Mudrovitsch

Pablo Saavedra Alessandri
Registrar

So ordered,

Ricardo C. Pérez Manrique
President

Pablo Saavedra Alessandri
Registrar