INTER-AMERICAN COURT OF HUMAN RIGHTS

CASE OF THE LANDAETA MEJÍAS BROTHERS *ET AL. v*. VENEZUELA

JUDGMENT OF AUGUST 27, 2014
(Preliminary objections, merits, reparations and costs)

In the case of the *Landaeta Mejías Brothers et al.,*

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

Humberto Antonio Sierra Porto, President
Roberto F. Caldas, Vice President
Manuel E. Ventura Robles, Judge
Eduardo Vio Grossi, Judge, and
Eduardo Ferrer Mac-Gregor Poisot, Judge;[*]

also present,

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

pursuant to Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") and Articles 31, 32, 42, 65 and 67 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure"), delivers this judgment structured as follows:

[*] Judges Diego García-Sayán and Alberto Pérez Pérez, excused themselves from the deliberation of this Judgment on preliminary objections, merits, reparations and costs; the former presented his excuses, and the latter for reasons beyond his control.

CASE OF THE LANDAETA MEJÍAS BROTHERS *ET AL. V.* VENEZUELA

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I
INTRODUCTION OF THE CASE AND PURPOSE OF THE DISPUTE

1. *The case submitted to the Court.* On July 10, 2012, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") submitted to the jurisdiction of the Inter-American Court of Human Rights the case of the "Landaeta Mejías Brothers *et al.*" against the Bolivarian Republic of Venezuela (hereinafter "the State" or "Venezuela"). According to the Commission, the case concerns the alleged extrajudicial execution of the brothers Igmar Alexander Landaeta Mejías (hereinafter "Igmar Landaeta") and Eduardo José Landaeta Mejías (hereinafter "Eduardo Landaeta"), 18 and 17 years of age respectively, by officials of the Public Order and Security Corps of the state of Aragua, Venezuela (hereinafter "CSOP"). In this regard, the Commission indicated that "following threats and harassment against him, Igmar Alexander Landaeta Mejías was extrajudicially executed on November 17, 1996, while six weeks later – on December 30, 1996 – his brother, the minor Eduardo José Landaeta Mejías was unlawfully and arbitrarily deprived of liberty and, the following day, during a supposed transfer, he was extrajudicially executed. These facts took place in the context of extrajudicial executions in Venezuela, especially in the state of Aragua. The death of the two brothers remains unpunished. In the case of Igmar Alexander Landaeta Mejías, the criminal proceedings against the authorities culminated in a dismissal, while in the case of Eduardo José Landaeta Mejías, the criminal proceedings are still underway 16 years after his death."

2. *Processing by the Commission.* The process before the Commission was as follows:

a) *Petitions.* On September 20, 2004, the Commission received the initial petition with regard to Igmar Landaeta. On April 24, 2006, the Commission received the initial petition with regard to Eduardo Landaeta. On June 26, 2006, the Commission informed the parties that the petition concerning Eduardo Landaeta had been joindered to the petition concerning Igmar Landaeta. Nevertheless, on January 30, 2007, the Commission advised the parties that, in view of the particularities of each petition, it had decided to separate them in order to analyze compliance with the requirements of admissibility of each one independently.

b) *Admissibility reports.* On March 9, 2007, the Inter-American Commission approved Admissibility Report No. 23/07 with regard to the petition concerning Eduardo Landaeta.[1] Subsequently, on March 20, 2009, the Commission approved Admissibility Report No. 22/09, with regard to the petition concerning Igmar Landaeta.[2]

c) *Merits report.* On March 21, 2012, the Commission approved Merits Report No. 58/12,[3] in accordance with Article 50 of the American Convention (hereinafter "Merits Report" or "Report No. 58/12") in relation to both cases, in which it reached a series of conclusions and made several recommendations to the State.

a. *Conclusions.* The Commission concluded that the State was responsible for the violation of the following rights recognized in the American Convention:

i. The rights to life and humane treatment (Articles 4 and 5 of the Convention) of Igmar Landaeta;

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[1] In this report, the Inter-American Commission declared the petition admissible in relation to the presumed violation of Articles 4, 5, 7, 19, 8 and 25 in relation to Article 1(1) of the American Convention. *Cf.* Admissibility Report No. 23/07, *Eduardo José Landaeta Mejías v. Venezuela*, of March 9, 2007 (file of the procedure before the Commission, folio 1937).

[2] In this report, the Inter-American Commission declared the petition admissible in relation to the presumed violation of Articles 4, 5, 8 and 25, in relation to Article 1(1) of the American Convention, and decided to joinder the petition to the case of Eduardo Landaeta. *Cf.* Admissibility Report No. 22/09, *Igmar Alexander Landaeta Mejías v. Venezuela*, of March 20, 2009 (file of the procedure before the Commission, folio 2314).

[3] *Cf.* Merits Report No. 58/12. Case of 12,606. *Landaeta Mejías Brothers v. Venezuela*, of March 21, 2012 (merits file, folio 6).

ii. The rights to life, humane treatment, personal liberty and special protection due to children (Articles 4, 5, 7 and 19 of the Convention) of Eduardo Landaeta, and

iii. The rights to humane treatment, judicial guarantees and judicial protection (Articles 5, 8 and 25 of the Convention) of María Magdalena Mejías Camero (mother, hereinafter "María Magdalena Mejías"), Ignacio Landaeta Muñoz (father, hereinafter "Ignacio Landaeta"); Victoria Eneri and Leydis Rossimar, both with the last names Landaeta Galindo (sisters, hereinafter "Victoria Landaeta and Leydis Landaeta"), Francy Yellut Parra Guzmán (permanent companion of Igmar Landaeta, hereinafter "Francy Parra"), and Johanyelis Alejandra Parra (daughter of Igmar Landaeta, hereinafter "Johanyelis Landaeta Parra").[4]

b. *Recommendations.* Consequently, the Commission made a series of recommendations to the State:

i. Conduct a complete, impartial, effective and prompt investigation of the human rights violations declared in the Merits Report in order to determine and punish the masterminds and perpetrators of the facts described;

ii. These investigations must be conducted so that they establish the links between each of the events examined in the Merits Report, as well as between these events and the more general context of violence and extrajudicial executions involving the regional police;

iii. Order the corresponding administrative, disciplinary or criminal measures to address the acts or omissions of the State officials that contributed to the denial of justice and the impunity of the facts of the case;

iv. Make adequate pecuniary and non-pecuniary reparation for the human rights violations declared in the Merits Report, and

v. Establish measures of non-repetition that include: (i) training programs on international human rights standards in general, and with regard to children and adolescents, in particular, for the Police of the state of Aragua; (ii) measures to ensure real accountability in the criminal, disciplinary and administrative sphere, in cases of presumed abuse of power by State agents responsible for public security, and (iii) legislative, administrative, and other types of measures in order to investigate with due diligence and in keeping with the relevant international standards the need for and proportionality of lethal use of force by police agents, so that effective protocols exist that allow adequate control and accountability mechanisms to be implemented in response to the actions of these agents.

d) *Notification of the State.* The Merits Report was notified to the State on April 10, 2012, and it was given two month to report on compliance with the recommendations.

e) Submission to the Court. On July 10, 2012, the Commission submitted all the facts and human rights violations described in the Merits Report to the jurisdiction of the Inter-American Court, "owing to the need to obtain justice for the victims in view of the failure to comply with the recommendations by the State of Venezuela."[5]

3. *Requests of the Inter-American Commission.* Based on the foregoing, the Commission asked the Court to declare the international responsibility of the State for the violations described in its Merits Report (*supra* para. 2(c)).

II
PROCEEDINGS BEFORE THE COURT

4. *Notification of the State and the representatives.* The submission of the case by the Commission was notified to the State and the representatives on August 24, 2012.

5. *Brief with motions, arguments and evidence.* On October 26, 2012, the representatives presented their brief with motions, arguments and evidence (hereinafter "motions and arguments brief"). The representatives agreed, in substance, with the

[4] The Inter-American Commission considered as victims the daughter of Igmar Alexander Landaeta Mejías and referred to her as Johanyelis Alejandra Parra. For the effects of this Judgment, the Court will refer to her as Johanyelis Alejandra Landaeta Parra or Johanyelis Landaeta Parra.

[5] The Commission appointed Commissioner Felipe González as its delegate; and Elizabeth Abi-Mershed, Deputy Executive Secretary, and Silvia Serrano Guzmán, Executive Secretariat lawyer, as legal advisers.

Commission's arguments and asked the Court to declare the international responsibility of the State for the violation of the same articles as those alleged by the Commission. In addition, the presumed victims, through their representatives, requested access to the Victims' Legal Assistance Fund of the Inter-American Court (hereinafter "the Court's Assistance Fund" or "the Fund"). Lastly, the representatives asked the Court to order the State to adopt different measures of reparation and to reimburse certain costs and expenses.

6. *Answering brief.* On January 28, 2013, the State submitted to the Court its brief filing preliminary objections, answering the brief submitting the case, and with observations on the motions and arguments brief (hereinafter "answering brief"). In this brief, the State contested the violations alleged by the Commission and the representatives and filed preliminary objections based on the failure to exhaust domestic remedies and on the lack of impartiality of some of the Court's judges and its Secretary. The State appointed Germán Saltrón Negretti as its Agent.

7. On February 12, 2013, the acting President of the Court issued an Order in which, *inter alia,* he decided that the allegation of lack of impartiality presented by the State as a preliminary objection, was unfounded and did not comply with the requirements for a preliminary objection.[6]

8. *Legal Assistance Fund.* In an Order of February 13, 2013, the President of the Court declared admissible the requested filed by the presumed victims, through their representatives, for access to the Legal Assistance Fund, and approved that they be granted the necessary financial assistance for the presentation of a maximum of three statements, by affidavit or at the public hearing.[7]

9. *Briefs with observations on the preliminary objections.* On May 3 and 4, 2013, the representatives of the presumed victims and the Commission, respectively, forwarded their observations on the preliminary objections filed by the State in its answering brief.

10. *Public hearing and additional evidence.* In an Order of the President of the Court of December 26, 2013,[8] the parties were convened to a public hearing for the Court to receive the final oral arguments and observations on the preliminary objections and eventual merits, reparations and costs, and also the testimony of Ignacio Landaeta Muñoz, offered by the representatives, and Yelitza Acacio Carmona, offered by the State. On January 21 and 30, 2014, the State, the Commission and the representatives, respectively, forwarded to the Secretariat the statements requested by affidavit in the Order of the President of December 26, 2013. The hearing took place on February 7, 2014, during the 102nd regular session of the Court, which was held at its seat.[9] During the hearing, the testimony of the persons convened was received, together with the final oral observations and arguments of the Commission, the representatives and the State. Following the hearing, the Court requested the parties to present certain helpful information and documentation.

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[6] *Cf. Case of the Landaeta Mejías Brothers et al. v. Venezuela.* Order of the President of the Inter-American Court of February 12, 2013. Available at: http://www.corteidh.or.cr/docs/asuntos/landaeta_12_02_13.pdf (merits file, folio 482).

[7] *Cf. Case of the Landaeta Mejías Brothers et al. v. Venezuela.* Order of the President of the Inter-American Court of February 13, 2013. Available at http://www.corteidh.or.cr/docs/asuntos/Mej%C3%ADas_fv_13.pdf (merits file, folio 459).

[8] *Cf. Case of the Landaeta Mejías Brothers et al. v. Venezuela.* Order of the President of the Inter-American Court of December 26, 2013. Available at: http://www.corteidh.or.cr/docs/asuntos/landaeta_26_12_13.pdf (merits file, folio 620).

[9] There appeared at this hearing : (a) for the Inter-American Commission, Rosa María Ortiz, Elizabeth Abi-Mershed, Silvia Serrano Guzmán and Jorge Meza Flores; (b) for the representatives of the presumed victims, José Gregorio Guarenas, Luis Manuel Aguilera, Francisco Quintana and Charles Abbott, and (c) for the State of Venezuela, Germán Saltrón Negretti, María Alejandra Diaz Marín and Norevy Cortez.

11. *Final written arguments and observations.* On March 7 and 8, 2014, the representatives and the State, respectively, presented their final written arguments, and on March 7, 2014, the Commission presented its final written observations. In addition, on April 14, 2014, the representatives of the presumed victims presented their observations on the documents submitted by the State with its final written arguments.

III
COMPETENCE

12. The Inter-American Court is competent to hear this case, in accordance with Article 62(3) of the Convention, because Venezuela has been a State Party since August 9, 1977, and accepted the contentious jurisdiction of the Court on June 24, 1981. On September 10, 2012, Venezuela denounced the American Convention, and its denouncement entered into force on September 10, 2013. According to Article 78(2) of the Convention,[10] the Court is competent to hear this case, because the facts examined occurred prior to the entry into force of the denunciation of the Convention.

IV
PRELIMINARY OBJECTIONS OF FAILURE TO EXHAUST DOMESTIC REMEDIES

13. The State presented the objection of failure to exhaust domestic remedies in relation to the cases of both Igmar Landaeta, and his brother, Eduardo Landaeta. The Court will examine the preliminary objections in the order that the State filed them.

A. Arguments of the parties and of the Commission

14. The State filed the preliminary objection indicating that domestic remedies had not been exhausted in keeping with Article 46(1) of the American Convention and that "the petitioners failed to exercise and exhaust the remedies established in Venezuela laws in order to assert their claims and to obtain judicial protection of the rights they considered were being violated."

15. Regarding Eduardo Landaeta, the State indicated that the domestic proceedings remain ongoing at this time, and observed that the last domestic action was the decision of the Appellate Court of the Criminal Judicial Circuit of the state of Aragua [of October 30, 2012], declaring admissible the remedy of appeal of March 16, 2012, and returning the case to the situation of holding a new oral public trial. The State asserted that, if the judgment in the case was unfavorable to the presumed victims, they could file the appeal for annulment (cassation) and for review of judgment established in the domestic law of Venezuela.

16. In the case of Igmar Landaeta, the State indicated that the last action observed was an order of the Appellate Court of the Criminal Judicial Circuit of the state of Aragua, dated December 22, 2003, ordering that the case be sent to the Central Judicial Archives. This was because no appeal had been filed against the judgment of the same Appellate Court of November 10, 2003, declaring the dismissal of the case, which had therefore become final. The State concluded by pointing out that, in the case of Igmar Landaeta, the remedies granted by the domestic jurisdiction to ensure respect for his rights, such as the appeal for annulment and for review of judgment, had not been filed.

[10] Article 78(2) of the Convention establishes that "[s]uch a denunciation shall not have the effect of releasing the State Party concerned from the obligations contained in this Convention with respect to any act that may constitute a violation of those obligations and that has been taken by that state prior to the effective date of denunciation."

However, during the public hearing, the State indicated that the possibility of filing the appeal for annulment of for constitutional protection (*amparo*) had arisen again for the victim and for the State, because the decision of the Appellate Court [that dismissed the case], had never been notified to them and, in any case, that court should have delivered a conviction or an acquittal, but not a dismissal. Thus, the State emphasized the failure to exhaust domestic remedies.

17. In relation to the filing of the preliminary objection, the State also indicated that "the Commission had already admitted the case [referring to the initial petitions that had been lodged], before the actions of the Venezuelan courts had concluded. […] The Commission cannot argue that this was due to lack of information from the Venezuelan State because written information [was delivered to it] on March 8, 2005; sent to José Zalaquett[,] President of the Commission. Subsequently, a brief [was sent] to Clare K. Roberts[,] President of the Commission, and, finally, information [was sent] […] on November 25, 2009."

18. The Commission indicated that, under the American Convention, it has the initial authority to take decisions on admissibility, and these are taken based on the information available at the time. It therefore considered that the Court should accord a certain deference towards the decisions taken by the Commission in this regard. In addition, it considered that, in relation to the case of Eduardo Landaeta, the preliminary objection should be rejected because: (i) the State's presentation of the preliminary objection was time-barred since it had not communicated with the Commission as regards the admissibility of the petition, and thus the mechanism of the tacit waiver of the right to present an objection came into effect. In this regard, the Commission concluded that the presentation of the objection was inadmissible because it had not been filed at the appropriate procedural moment, and (ii) the Commission also considered that there had been an unjustified delay in the said case, which constituted the exception to the exhaustion of domestic remedies established in Article 46(2)(c) of the American Convention. This was because, in 2007, the domestic proceedings had not advanced beyond the preliminary investigation stage, and are still underway today, even though it is not a complex case.

19. With regard to Igmar Landaeta, the Commission indicated that although the State had "filed the objection of failure to exhaust domestic remedies opportunely," the Commission had analyzed this argument at the admissibility stage and concluded that the appeal for annulment that the State had indicated should be exhausted did not constitute an adequate and effective remedy, because its only purpose was to contest contraventions of the law and not irregularities in the investigation that, owing to their nature, could not be decided by this remedy. In addition, the Commission took note of the "passive attitude of the Public Prosecution Service as regards appeals," because it had not filed remedies to contest the acquittal [in the judgment of November 10, 2003], even though it was authorized to do so, and this was an action that could be implemented *ex officio*, and different contextual factors existed that demanded a more diligent response from the Prosecution. Thus, the Commission indicated that an exception to the exhaustion of domestic remedies had been constituted; specifically the one stipulated in Article 46(2)(a) of the American Convention.

20. The representatives indicated that the objection filed by the State should be rejected because it did not possess either the formal or material requirements to be admissible. Regarding the absence of formal requirements, they indicated that the Court should not re-open the decision on admissibility taken by the Commission, because the State had not argued or substantiated the existence of any serious error or non-observance of procedural guarantees by the Commission that would have impaired its right of defense. Also, with regard to Eduardo Landaeta, the representatives argued that the State had tacitly waived the preliminary objection of exhaustion of domestic remedies in the petition and that, over and above its tacit waiver, the State had not

argued or, in particular, proved that a possible domestic remedy would be appropriate and effective; rather, to the contrary, it had acknowledged that the criminal proceedings remained ongoing.

21. Regarding Igmar Landaeta, the representatives indicated that although there was no dispute about the fact that the special appeal for annulment had not been exhausted, the State had not explained how this remedy would be appropriate and effective; consequently, the Commission had concluded that the exception to the exhaustion of domestic remedies contained in Article 46(2)(a) of the American Convention was applicable. The representatives also argued that, alternatively, if the Court should decide to examine the special appeal for annulment, it did not consist in an appropriate, adequate and effective remedy for this case because, under Venezuelan law, its sole purpose was to contest contraventions of the law by judges owing to failure to apply the law, undue application of the law, or erroneous interpretation of the law; hence, it does not protect the rights in this case adequately.

B. Considerations of the Court

22. Article 46(1)(a) of the American Convention stipulates that, in order to determine that a petition or communication lodged before the Inter-American Commission under Articles 44 or 45 of the Convention is admissible, the remedies under domestic law must have been pursued and exhausted in accordance with generally recognized principles of international law.[11] Nevertheless, this supposes not only that such remedies must exist formally, but also that they must be adequate and effective, owing to the exceptions established in Article 46(2) of the Convention.[12]

23. In this regard, the Court has indicated in its consistent case law that an objection to the exercise of its jurisdiction based on the supposed failure to exhaust domestic remedies must be presented at the appropriate procedural moment;[13] that is, during the admissibility procedure before the Commission.[14] This interpretation, which the Court has made of Article 46(1)(a) of the Convention for more than two decades, is in accordance with international law;[15] accordingly, it is understood that following the said appropriate procedural moment, the principle of procedural preclusion comes into effect.[16]

24. The rule of the prior exhaustion of domestic remedies was conceived in the interest of the State, because its intention is to exempt the State from responding before an international organ for acts attributed to it before it has had the opportunity to remedy them by its own means.[17] However, for a preliminary objection of failure to exhaust domestic remedies to be admissible, the State filing this objection must specify the domestic remedies that have not yet been exhausted, and prove that these remedies

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[11] *Cf. Case of Velásquez Rodríguez v. Honduras. Preliminary objections.* Judgment of June 26, 1987. Series C No. 1, para. 85, and *Case of Brewer Carías v. Venezuela. Preliminary objections.* Judgment of May 26, 2014. Series C No. 278, para. 83.

[12] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits*. Judgment of July 29, 1988. Series C No. 4, para. 63, and *Case of Brewer Carías*, *supra,* para. 83.

[13] *Cf. Case of Velásquez Rodríguez. Preliminary objections, supra,* para. 88, and *Case of Brewer Carías, supra,* para. 77.

[14] *Cf. Case of Velásquez Rodríguez. Preliminary objections, supra,* paras. 88 and 89, and *Case of Brewer Carías, supra,* para. 77.

[15] *Cf. Case of Reverón Trujillo v. Venezuela*. *Preliminary objection, merits, reparations and costs*. Judgment of June 30, 2009. Series C No. 197, para. 22, and *Case of Brewer Carías, supra,* para. 84.

[16] Cf. Case of *Mémoli v. Argentina. Preliminary objections, merits, reparations and costs.* Judgment of August 22, 2013. Series C No. 265, para. 47, and *Case of Brewer Carías, supra,* para. 37.

[17] *Cf. Case of Velásquez Rodríguez. Merits, supra*, para. 61, and *Case of Brewer Carías, supra,* para. 83.

were available and adequate, suitable and effective.[18] Hence, it is not incumbent on either the Court or the Commission to identify *ex officio* the domestic remedies that remain to be exhausted. The Court emphasizes that it is not for the international organs to rectify the lack of precision in the State's arguments.[19]

B.1 Alleged failure to exhaust domestic remedies in the case of Eduardo José Landaeta Mejías

25. In the case of Eduardo Landaeta the initial petition was lodged before the Commission on April 24, 2006,[20] and forwarded to the State on July 26, 2006,[21] when the Inter-American Commission granted the State two months to make the corresponding observations in relation to the admissibility stage of the petition. However, the State did not forward the requested observations, nor did it comment on the admissibility of the said petition, and the respective Admissibility Report was adopted on March 9, 2007.

26. The Court therefore considers that the State did not allege the failure to exhaust domestic remedies during the admissibility stage before the Commission. The Court notes that the briefs mentioned by the State (*supra* para. 17) which date from 2005, refer to the petition concerning Igmar Landaeta and not to the case of his brother, Eduardo Landaeta. The only briefs submitted to the Inter-American Commission by the Venezuelan State in relation to the petition of Eduardo Landaeta are dated March 12, 2008,[22] and November 25, 2009.[23] These briefs correspond to the merits stage before the Commission and, in them, the State merely described the status of the criminal proceedings in relation to his death. Accordingly, the Court notes that the objection of failure to exhaust domestic remedies was filed for the first time in the State's answering brief before this Court, so that it is time-barred. Consequently, the preliminary objection filed by the State is rejected.

B.2 Alleged failure to exhaust domestic remedies in the case of Igmar Alexander Landaeta Mejías

27. The Court notes that, in the case of Igmar Landaeta, the initial petition was lodged before the Commission on September 20, 2004,[24] and was forwarded to the State on December 8 that year under cover of a letter dated December 1, 2004,[25] in order to receive the corresponding observations at the admissibility stage. Thus, the Venezuelan State filed the objection of failure to exhaust domestic remedies in its brief of March 8, 2005; in other words, at the appropriate time during the admissibility stage of the petition before the Commission.[26] In that brief, the State indicated that "[…] at the

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[18] *Cf. Case of Velásquez Rodríguez. Merits, supra,* paras. 88 and 91, and *Case of Brewer Carías, supra,* para. 84.

[19] *Cf. Case of Reverón Trujillo, supra,* para. 23, and *Case of Brewer Carías, supra,* para. 84.

[20] *Cf.* Initial petition lodged before the Commission on April 24, 2006 (file of the procedure before the Commission, folios 1949 to 1997).

[21] *Cf.* Communication of the Inter-American Commission of July 26, 2006 (file of the procedure before the Commission, folio 1945).

[22] *Cf.* Observations on the merits presented by the Venezuelan State on March 12, 2008 (file of the procedure before the Commission, folios 1832 to 1835).

[23] *Cf.* Observations on the merits presented by the Venezuelan State on November 25, 2009 (file of the procedure before the Commission, folios 2213 to 2231).

[24] *Cf.* Initial petition lodged before the Commission on September 20, 2004 (file of the procedure before the Commission, folio 2574).

[25] *Cf.* Communication of the Inter-American Commission of December 1, 2004 (file of the procedure before the Commission, folio 2568). In Admissibility Report No. 22/09, the Commission indicated that the petition had been forwarded to the State on December 1, 2004 (file of the procedure before the Commission, folio 2305).

[26] *Cf.* Observations of the State on Petition No. 908-04, Igmar Alexander Landaeta Mejías (file of the procedure before the Commission, folios 2544 to 2555).

corresponding legal opportunity, the petitioner did not file the remedy established by law to contest the decision dismissing the case, […] the appeal for annulment,[27] and since he did not do this, the judgment became final. […] The case was closed owing to the inactivity of the petitioner, who did not file the legal remedies available to him opportunely, and the State was not obliged to file them subsequently." The Commission issued its Admissibility Report on March 20, 2009, applying the exception established in Article 46(2)(a) of the American Convention.[28] The Commission determined that the State had "filed the objection of failure to exhaust domestic remedies opportunely,"[29] but considered that the appeal for annulment, which the State had indicated should be exhausted, did not constitute an adequate and effective remedy because its purpose was merely to contest contraventions of the law and not irregularities in the investigation.[30]

28. In this regard, the State indicated that, to contest the judgment of the Appellate Court of November 10, 2003, dismissing the case[31] (*infra* para. 93), the appeal for annulment should have been filed, or even the appeal for review,[32] both regulated by domestic law. The State asserted that, owing to the failure to file the remedy, the said judgment became final with the effects of *res judicata*. However, during the hearing of the case before the Court, contrary to its previous arguments, the State indicated that the said appeal for annulment could still be filed owing to the failure to notify the judgment to the parties and because the Appellate Court should deliver a conviction or an acquittal, but never decide the dismissal of a case (*infra* para. 211).

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[27] Article 460 of the Organic Code of Criminal Procedure establishes that "the appeal for annulment may be based on contraventions of the law, owing to failure to apply the law, undue application of the law, or erroneous interpretation of the law. When the legal precept that it is argued has been contravened constitutes a procedural error, the remedy shall only be admissible if the interested party has requested its rectification opportunely, except in cases of infringements of constitutional guarantees or those that have occurred after the deliberations have concluded."

[28] *Cf.* Admissibility Report No. 22/09. Petition 908/04, Igmar Alexander Landaeta Mejías, Venezuela, March 20, 2009, paras. 44 to 53 (file of the procedure before the Commission, folios 2310 to 2312).

[29] Admissibility Report No. 22/09. Petition 908/04, Igmar Alexander Landaeta Mejías, Venezuela, March 20, 2009, para. 44 (file of the procedure before the Commission, folio 2310).

[30] The Commission indicated in its Admissibility Report in relation to Igmar Landaeta that "46. As regulated under Venezuelan law, the purpose of the special appeal remedy [for annulment] mentioned by the State in its argument that domestic remedies were not exhausted is to challenge violations of the law by judges for failure to apply the law, applying it incorrectly, or for erroneous interpretation. […]. 47. […] Furthermore, the Commission has pointed out that, when the petitioners argue that there have been irregularities throughout the different stages of the proceedings, in principle they do not have to exhaust an extraordinary remedy, since such remedies are not designed to correct alleged irregularities during the investigation or indictment phase of criminal proceedings. 48. As noted above, the petitioners argued that there had been a series of irregularities and omissions during the investigative phase of criminal proceedings. In particular, the petitioners submitted arguments aimed at discrediting the investigations conducted by the respective authorities, which, they claimed, were not designed to elicit comprehensive insight into what had happened, taking all possible factors into consideration. For instance, the Commission notes that there were no inquiries into a possible connection between the death of Igmar Alexander Landaeta and that of his brother Eduardo José murdered a few weeks later, allegedly by police officers of the state of Aragua, like Igmar. Accordingly, the Commission considers that the appeal remedy was not the appropriate remedy for addressing the irregularities alleged by the petitioners." *Cf.* Admissibility Report No. 22/09. Petition 908/04, Igmar Alexander Landaeta Mejías, Venezuela, March 20, 2009 (file of the procedure before the Commission, folio 2311).

[31] *Cf.* Judgment of the Incidental Chamber of the Appellate Court of the Criminal Judicial Circuit of the state Aragua of November 10, 2003 (annexes to the answering brief, folios 9830 to 9842).

[32] Article 470 of the Organic Code of Criminal Procedure establishes that "[r]eview of the final judgment shall be admissible always, and in favor of the accused, in the following cases: 1. When, owing to conflicting judgments, two or more persons have been convicted of the same offense, which could only have been committed by one person; 2. When the judgment found proved the murder of a person whose existence after the time of his presumed death has been fully proved; 3. When the evidence on which the conviction was based is found to have been false; 4. When, following the guilty verdict, an act occurs or is discovered, or a document emerges that was unknown during the proceedings, which makes it evident that the act did not exist or that the accused did not commit it; 5. When the guilty verdict was delivered as a result of malfeasance or corruption as regards one or more of the judges who delivered it, the existence of which has been declared in a final judgment, and 6. When a criminal law is enacted that eliminates the criminal nature of the act or reduces the established punishment.

29. The Court recalls that the State must not only specify the domestic remedies that have not been exhausted, but must also prove that these remedies were available, and that they were adequate, suitable and effective.[33] This Court considers that the State should have demonstrated the said adequacy, suitability and effectiveness. However, in its answering brief, the State merely indicated the failure to file the said remedies and their existence in domestic law. Similarly, in its final written arguments, the State merely enumerated the articles relating to the appeals for annulment[34] and for review,[35] without analyzing and proving how they could have protected the rights that are alleged to have been violated. In addition, during the public hearing, both prosecutor Yelitza Acacio Carmona, witness proposed by the State, and the State itself indicated that, since the judgment of November 10, 2003, had not been notified to the parties to the proceedings, and since it had not delivered a conviction or an acquittal, it had not become *res judicata*. Consequently, these statements introduced inconsistencies in the arguments put forward by the State.

30. Based on the above, and on the information presented by the State, the Court does not find that the State has proved the effectiveness or suitability of the remedy that it indicated should be exhausted in order to rectify the presumed irregularities during the investigation stage, and these will be examined when analyzing the merits of the case. Furthermore, based on the State's declarations during the hearing, the Court does not have sufficient evidence to determine the current status of the criminal proceedings; consequently, this preliminary objection is rejected.

V
EVIDENCE

31. Based on the provisions of Articles 46, 47, 48, 50, 51, 57 and 58 of the Rules of Procedure, as well as on its case law concerning evidence and its assessment, the Court will examine and assess the documentary evidence forwarded by the parties on different procedural occasions, the statements, testimony and expert opinions provided by affidavit and during the public hearing, and also the helpful evidence requested by the Court. To this end, it will abide by the principles of sound judicial discretion, within the corresponding legal framework.[36]

32. Regarding reception of evidence, the Court has established that the proceedings before it are not subject to the same formalities as domestic judicial proceedings and that some evidentiary material must be incorporated into the body of evidence paying special attention to the circumstances of the specific case and bearing in mind the limits imposed by respect for legal certainty and the procedural balance of the parties.[37]

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[33] *Cf. Case of Velásquez Rodríguez. Preliminary objections, supra,* paras. 88 and 91, and *Case of Brewer Carías, supra,* para. 84.

[34] The State indicated the articles corresponding to the appeal for annulment established by the amendments to the Organic Code of Criminal Procedure published in Special Official Gazette No. 6,078 on July 15, 2012. These are articles 451 to 460 and Article 462 (merits file, folios 1046 and 1047).

[35] The State indicated the articles corresponding to the appeal for review established by the amendments to the Organic Code of Criminal Procedure published in Special Official Gazette No. 6,078 on July 15, 2012. These are articles 462 to 469 (merits file, folio 1047).

[36] *Cf. Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Merits.* Judgment of March 8, 1998. Series C No. 37, paras. 69 to 76, and *Case of 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. 49.

[37] Cf. Case of Lori Berenson Mejía v. Peru. Merits, reparations and costs. Judgment of November 25, 2004. Series C No. 119, para. 64 and Case of *Gutiérrez and family members v. Argentina. Merits, reparations and costs.* Judgment of November 25, 2013. Series C No. 271, para. 79.

A. Documentary, testimonial and expert evidence

33. The Court received different documents presented as evidence by the Commission, the representatives, and the State attached to their main briefs (*supra* paras. 1, 2(c), 5 and 6). In addition, the Court received the affidavits of María Magdalena Mejías, Leydis Landaeta, Francy Parra, José Pablo Baraybar, Claudia Carrillo and Calixto Ávila, offered by the representatives; Desiree Noelis Boada Guevara, offered by the State, and Hugo Fruhling and Diego Camaño, offered by the Commission. It also received statements without the corresponding authentication from Victoria Landaeta, Magaly Mercedes Vásquez González and Denotilia Hernández, offered by the representatives. Regarding the evidence provided during the public hearing, the Court received the testimony of Ignacio Landaeta offered by the representatives, and Yelitza Acacio Carmona offered by the State.

B. Admission of the evidence

B.1 Admission of the documentary evidence

34. In this case, as in others, the Court admits those documents presented by the parties and the Commission at the appropriate procedural opportunity[38] that were not contested or opposed, and the authenticity of which was not questioned.[39] The documents requested by the Court, which were provided by the parties after the public hearing, are incorporated into the body of evidence in application of Article 58 of the Rules of Procedure.

35. Regarding the newspaper articles presented by the Commission[40] and the representatives,[41] the Court has considered that they may be assessed when they refer to well-known public facts or declarations by State officials, or when they corroborate aspects related to the case; accordingly, the Court decides to admit those documents that are complete or that, at least, allow the source and date of publication to be verified, and will assess them taking into account the whole body of evidence, the observations of the parties, and the rules of sound judicial discretion.[42]

B.1.1 The attachments to the State's final written arguments

36. In a brief of April 14, 2014, the representatives presented their observations on the attachments to the State's final written arguments. In this regard, they argued that "the Baseline Reports concerning the participation of children in armed conflicts and the sale of children, child prostitution and the use of children in pornography, respectively, […] refer to aspects of domestic law on the protection of children that are not relevant for the analysis of this specific case." Also, regarding the Consolidated Report presented to the Committee on the Rights of the Child in July 2012, and the Country Programme

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38 On January 19, 2013, the State sent its answering brief, by error, to the e-mail address of the Commission. Subsequently, on January 28 that year, the State sent its answering brief to the e-mail address of the Court. In this regard, the Court observes that the time frame for the presentation of the State's answering brief expired on January 22, 2014. However, as the State has proved that it committed an involuntary error as regards the e-mail address to which the brief had been sent, the Court considers that this situation did not affect the timely presentation of the brief.

39 Cf. Case of Velásquez Rodríguez. Merits, supra, para. 140, and Case of Norín Catrimán et al. (Leaders, members and activist of the Mapuche Indigenous People), supra, para. 54.

40 The Court has verified that the Commission forwarded 20 newspaper articles (attachments to the Merits Report, folios 9, 22, 24, 26, 28, 29, 30, 32, 33, 34, 35, 1015, 1018, 1019, 1020, 1022, 1024, 1025, 1027, 1028 and 1029).

41 The Court observes that the representatives forwarded seven newspaper articles (annexes to the motions and arguments brief, folios 7013 to 7017).

42 Cf. Case of Velásquez Rodríguez. Merits, supra, para. 146, and Case of Norín Catrimán et al. (Leaders, members and activist of the Mapuche Indigenous People), supra, para. 58.

Action Plan 2009-2013, the representatives indicated that "this is not helpful evidence, because it is not the domestic laws requested by the Court, but rather the State's assessment of those laws. Moreover, it is not supervening evidence that is presented for the first time as an attachment to the State's final arguments. Consequently, [they asked] the Court not to incorporate this attachment into the body of evidence in this specific case."

37. Regarding the Baseline Reports provided by the State, the Court considers that these documents are unrelated to the facts analyzed in this case and, therefore, they will not be admitted. Furthermore, regarding the Consolidated Report presented to the Committee on the Rights of the Child in July 2012, and the Country Programme Action Plan 2009-2013, the Court admits it as information that may be helpful to decide this case.

B.1.2 The helpful evidence requested

38. In communications of February 11 and May 20, 2014, the State was asked to provide documentation as useful evidence pursuant to Article 58(b) of the Court's Rules of Procedure; however, the State only complied partially with the request.[43] Accordingly, the Court will take the pertinent elements of the documentation provided into consideration. In this regard, the Court recalls that the parties must provide all the evidentiary material requested – *ex officio* as helpful evidence, or at the request of a party – so that the Court has the greatest number of probative elements in order to examine the facts and to reason its decisions.[44]

B.2 Admission of the testimonial and expert evidence

39. Regarding the testimony provided during the public hearing and by affidavit, the Court finds it pertinent only insofar as it accords with the purpose defined by the President of the Court in the order requiring it (*supra* para. 10). Also, pursuant to the Court's case law, the statements of the presumed victims cannot be assessed in isolation, but rather within the whole body of evidence in the proceedings, because they are useful to the extent that they can provide additional information on the presumed violations and their consequences.[45]

B.2.1 The State's objections to statements by the presumed victims offered by the representatives

40. In a brief of December 17, 2013, the State raised various objections to the offer by the representatives of the statements of Ignacio Landaeta, María Magdalena Mejías, Victoria Landaeta, Leydis Landaeta and Francy Parra.

41. In an Order of the President of the Court of December 26, 2013 (*supra* para. 10), it was decided to receive the statements of the presumed victims offered by the representatives, so that the Court could assess their significance in the context of the existing body of evidence and in accordance with the rules of sound judicial discretion.

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[43] In this regard, the State did not forward general and detailed photographs No. 1581 and No. 1582 taken during the site inspection in the case of Igmar Landaeta. Regarding the photographs requested to substantiate autopsies No. 872-96 and No. 1018-96, corresponding to Igmar Landaeta and Eduardo Landaeta, respectively, the State indicated that, when these autopsies were performed, photographs were not taken to corroborate their results (merits file, folios 1249 and 1279).

[44] *Cf. Case of Durand and Ugarte v. Peru. Merits.* Judgment of August 16, 2000. Series C No. 68, para. 51, and *Case of Yvon Neptune v. Haiti. Merits, reparations and costs.* Judgment of May 6, 2008. Series C No. 180, para. 23.

[45] Cf. Case of Loayza Tamayo v. Peru. Merits. Judgment of September 17, 1997. Series C No. 33, para. 43, and Case of Norín Catrimán et al. (Leaders, members and activist of the Mapuche Indigenous People), supra, para. 70.

B.2.2 The unauthenticated statements

42. On January 30, 2014, the representatives of the presumed victims forwarded the testimony required by affidavit. However, the statement of Victoria Landaeta and the expert opinions of Magaly Mercedes Vásquez González and Denotilia Hernández de Hernández, were signed only by the deponents, without the corresponding authentication.

43. In this regard, the representatives indicated that "Venezuelan notaries approached by the witnesses and the expert witnesses refused to certify the statements […] even though these had been requested by an Order of the President of the Court"; consequently, they had recourse to the Costa Rican Consulate in Caracas, Venezuela. However, Victoria Landaeta was unable to travel to Caracas to have her statement certified because, according to the medical certificate provided, she had been ordered to rest as she was 34 weeks pregnant. In addition, the representatives indicated that the Consul had to postpone the certification of the expert opinions of Magaly Mercedes Vásquez González and Denotilia Hernández de Hernández until January 31 or February 3, 2014. They therefore stated that they would try and certify the remaining expert opinions in the Consulate at the first possible moment. However, these were not forwarded to the Court.

44. The Court considers, as it has in other cases,[46] that the statements were presented within the stipulated time frame and that the failure to notarize them responded to an unjustified action by the State. Furthermore, regarding the statement of Victoria Landaeta, the Court takes into consideration that the stage of her pregnancy made it impossible for her to travel to the Costa Rican Consulate in Caracas, Venezuela. Consequently, the Court finds it pertinent to admit the statements made by Victoria Landaeta, Magaly Mercedes Vásquez González and Denotilia Hernández de Hernández.

VI
FACTS

45. In this chapter the Court will establish the facts of this case, based on the factual framework submitted to its consideration by the Commission, taking into account the body of evidence in the case, as well as the arguments of the representatives and the State. The facts will be described in the following sections: (1) the alleged problem of extrajudicial executions committed by police agents in Venezuela; (2) the threats received from police agents; (3) the death of Igmar Landaeta; (4) the arrest and death of Eduardo Landaeta, and (5) the investigations into the deaths of Igmar and Eduardo, both surnamed Landaeta Mejías.

46. First, it should be pointed out that, when the facts analyzed below commenced, Igmar Landaeta was 18 years of age and a third-year high school student; he worked in the same company as his father and lived in the Samán de Güere neighborhood with his mother, María Magdalena Mejías, and his permanent companion, Francy Parra, who was pregnant as a result of this relationship. Meanwhile, Eduardo Landaeta was 17 years of age, he worked in a tire repair shop and planned to enter the Navy. Their parents were María Magdalena Mejías and Ignacio Landaeta and their sisters were Victoria Landaeta, aged 5 years, and Leydis Landaeta, who was 10 months old.

[46] *Cf. Case of Apitz Barbera et al. ("First Contentious Administrative Court") v. Venezuela. Preliminary objection, merits, reparations and costs.* Judgment of August 5, 2008. Series C No. 182, para. 14; *Case of Uzcátegui et al. v. Venezuela. Merits and reparations.* Judgment of September 3, 2012. Series C No. 249, para. 30, and *Case of Castillo González et al. v. Venezuela. Merits.* Judgment of November 27, 2012. Series C No. 256, para. 31.

A. Alleged problem of extrajudicial executions committed by police agents in Venezuela

47. In the instant case, the Inter-American Commission stated that it had closely monitored such cases, and identified how the context in which they occur related to a problem of extrajudicial executions, mainly by members of regional police forces. The problem was structural in nature, resulting from numerous factors, and revealed serious flaws in the institutional design of the police forces, the absence of independent and effective oversight mechanisms, and the acute situation of the impunity of this type of case. This characterization had been confirmed by State authorities, such as the Ombudsman and the Prosecutor General.[47] The representatives made similar observations, indicating that, in Venezuela, there is a "practice of unlawful and arbitrary detention, followed by extrajudicial execution, as well as the excessive use of force by the national and regional police forces."[48] For its part, the State asserted that "[r]egarding the interest of Venezuelan and international NGO's in trying to accuse the Venezuelan State of the existence of extrajudicial executions, in previous cases, [it has been] shown that since Commander Hugo Chávez Frías assumed the Presidency the necessary measures have been taken to reverse this situation" and "that, in Venezuela, it is not a State policy […] to justify extrajudicial executions since President Hugo Chávez Frías came to power in 1999."

48. In the case of the *Barrios Family v. Venezuela*, regarding facts that occurred in the state of Aragua starting in 1998, the Court indicated that "the evidence provided [by the parties] does not include sufficient evidence to allow the Court to rule on the existence of the alleged context of extrajudicial executions in Venezuela or in the state of Aragua."[49] However, in the case of *Uzcátegui v. Venezuela*, relating to facts that occurred as of 2001 in the state of Falcón, the Court indicated that "[it was] an uncontested fact that, at the time the alleged violations of the Convention took place, extrajudicial executions and other abuse by the police forces occurred, in particular by [the] municipal and state police forces."[50]

49. In the instant case, the Court takes note that, in his report of December 7, 1993, the former United Nations Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Bacre Waly Ndiaye, stated that he had received reports concerning human rights violations, including extrajudicial, summary or arbitrary executions in the context of demonstrations, caused by arbitrary and excessive use of force by members of the security forces, in particular the Metropolitan Police (PM), the Criminal Investigations Police (PTJ), the National Guard, the Directorate of Intelligence and Prevention Services

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[47] In this regard, the Commission based itself on the following sources: (1) IACHR Report on the situation of human rights in Venezuela (2003); (2) IACHR Report on democracy and human rights in Venezuela (2009); (3) Report of the United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions (2000); (4) Concluding observations on Venezuela by the Human Rights Committee (2001); (5) Report of the non-governmental organization (hereinafter "NGO") Human Rights Watch (2010); (6) Reports of the NGO Amnesty International (2000 and 2008); (7) Annual Report of the Ombudsman (2001); (8) Annual Report of the Prosecutor General of the Republic (2005); (9) Reports of the NGO *Programa Venezolano de Educación-Acción en Derechos Humanos* (PROVEA) (1996, 1997 and 2007); (10) Overview of the human rights situation in the state of Aragua between July 1996 and March 2003 of the Human Rights, Justice and Peace Commission of the state of Aragua.

[48] In this regard, in addition to the sources indicated by the Commission, the representatives added the following sources: (1) Reports of the United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions (1998, 1999, 2001 and 2003); (2) Reports of the Ombudsman (2002 and 2006); (3) Annual Reports of the Prosecutor General of the Republic (2000 and 2007); (4) Report: Characteristics of the Venezuelan police, by the National Commission for Police Reform (2006); (5) Journal of the Public Prosecution Service (2009); (6) Reports of the NGO *Programa Venezolano de Educación-Acción en Derechos Humanos* (PROVEA) (1994, 1995, 2002, 2008, 2009 and 2010), and (7) Reports of the NGO *Comité de Familiares de las Víctimas de los Sucesos de febrero y marzo de 1989*, COFAVIC (2005).

[49] Case of the Barrios Family v. Venezuela. Merits, reparations and costs. Judgment of November 24, 2011. Series C No. 237, para. 44.

[50] Case of Uzcátegui et al., supra, para. 35.

(DISIP) and the Directorate of Military Intelligence (DIM).[51] Similarly, in her report of January 6, 1997, the UN Special Rapporteur, Asma Jahangir indicated that she had received several allegations of human rights violations in Venezuela involving the extrajudicial killings of minors by members of police forces.[52] In addition, in its report of April 26, 2001, the Human Rights Committee, expressed its deep concern at the reports of torture and excessive use of force by the police and other security forces; the State party's apparent delay in responding to such occurrences, and the absence of independent mechanisms to investigate the reports in question.[53]

50. In this regard, in its Report on the Situation of Human Rights in Venezuela of October 24, 2003, the Inter-American Commission on Human Rights noted the proliferation in different states of death squads [*grupos de exterminio*] with ties to police organizations, whose *modus operandi* consisted in executions in feigned confrontations, or when the victim was arrested and taken to the police detention center, and several days later, over the course of which his whereabouts were unknown, he appeared dead without any plausible explanation.[54]

51. The 2007 report prepared by the Venezuelan National Commission for Police Reform (CONAREPOL) entitled "Characteristics of the Venezuelan Police Forces," indicated:

> "Currently, despite some relevant changes, our police forces retain a strong military component, especially in relation to their structure, tactics and sub-culture. These elements are revealed most clearly in the state police forces. Regarding their relations with the population, the militarized police model involves a warlike rationale, according to which the individual is defined as the enemy, and the manner and strategy of the relationship is regulated by this definition. This results in a high probability of abuse, increased willingness to use physical force, aggressive and inefficient operational patterns to combat crime, distrust of the population, few reports of crime (people only go to the police to denounce serious crimes), limited cooperation between the police and the population, and also higher levels of confrontation and rejection of police presence. […] These types of groups, of a well-defined para-military nature, are entirely ineffective for normal police work; rather, to the contrary, owing to the para-military culture encouraged among their members, the intense corporatism that promotes complicity and concealment, their autonomization from the rest of the police structure, and their immense fire power and training in the use of physical force, is associated with serious cases of abuse, crime and human rights violations."[55]

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[51] *Cf.* United Nations (UN), Commission on Human Rights. *Report of the Special Rapporteur, Mr. Bacre Waly Ndiaye, submitted pursuant to Commission on Human Rights resolution 1993/71,* of 7 December 1993. E/CN.4/1994/7, para. 638. Available at: http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G93/858/09/PDF/G9385809.pdf?OpenElement.

[52] *Cf.* United Nations, Economic and Social Council. Report of the Special Rapporteur, Ms. Asma Jahangir, submitted pursuant to Commission on Human Rights resolution 1998/68, Addendum, Country situations, of 6 January 1999. E/CN.4/1999/39/Add.1. Available at: http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G99/100/26/PDF/G9910026.pdf? OpenElement para. 258.

[53] *Cf.* United Nations, Human Rights Committee. *Concluding observations by the Human Rights Committee: Venezuela,* 26 April 2001. CCPR/CO/71/VEN, para. 8. Available at http://tbinternet.ohchr.org/layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/CO/71/VEN&Lang=Sp

[54] *Cf.* Inter-American Commission on Human Rights. *Report on the Situation of Human Rights in Venezuela* of October 24, 2003. OEA/Ser.L/V/II.118. Available at: http://www.cidh.org/countryrep/Venezuela2003eng/chapter3.htm#B., para. 298, and http://www.cidh.org/countryrep/Venezuela2003 eng/chapter4.htm#C, para. 333.

[55] According to a study prepared by the Committee of the Families of Victims (COFAVIC) on the executions reported from 2000 to 2002 (the so-called "extermination groups"), in most of the cases those responsible or suspected of being responsible belonged to a police command group. *Cf.* National Commission for Police Reform (CONAREPOL). *Características de la Policía Venezolana* (annexes to the motions and arguments brief folios 6201, 6212, 6214).

52. In its 2001 Annual Report, the Office of the Venezuelan Ombudsman, referring to the state of Aragua, indicated that:

> "The most common *modus operandi* is: the person is summoned and comes forward voluntarily in the presence of witnesses; subsequently, he appears dead with several bullet wounds. The autopsies performed on some of the corpses that have been found reveal injuries and visible marks on parts of the body, which indicate the application of some type of physical torture before the individual was arbitrarily executed (*ajusticiado*). Psychological torture, death threats and the subsequent implementation of the threats are also common, together with the harassment of the victim's family. […] Over the period [2000 and 2001], the Ombudsman's Office handled 30 reports of extrajudicial executions that had taken place in presumed "confrontations with the police." In addition, the forced disappearance of two persons was denounced before this Office; at the time the investigation was closed, their whereabouts remained unknown. The police force against which the most reports of presumed extrajudicial executions have been filed is that of the state Aragua, with a total of 23 victims."[56]

53. Also, the 2006 Annual Report of the Prosecutor General, presented to the National Assembly on August 9, 2007, indicated that, over the period 2000 to 2007, there had been 6,405 cases of human rights violations, murders, confrontations or extrajudicial executions, regarding which there had only been 436 indictments.[57]

54. Furthermore, expert witness Calixto Ávila stated that the Human Rights and Policy Commission of the Legislative Assembly of the state Aragua had summoned for questioning the commanders of the police force of the state Aragua owing to more than 40 reports of human rights violations.[58] Also, data collected by the Venezuelan NGO *Programa de Educación-Acción en Derechos Humanos* (PROVEA) indicated that, between October 1994 and September 1996, 272 deaths were recorded as a result of the illegal actions of police agents.[59]

55. Consequently, the Court finds that the reports provided in the context of this case provide clear and convincing evidence that allow it to conclude that, in Venezuela, at the time of the facts of this case, there was an acute problem of police abuse in various states, including the state of Aragua.

B. The threats received from police agents

56. On November 19, 1996, María Magdalena Mejías informed the media that, on one occasion, officer AAC[60] searched her home and told her that he was going to kill one of her sons and did not mind if she denounced him to the prosecutor of the Public Prosecution Service.[61] She reaffirmed this in a statement she made on April 22, 1997, before the Court of the Santiago Mariño and Libertador Municipalities, when she indicated that, on one occasion, agent AAC entered her home bearing a weapon and threatened to kill her son Eduardo Landaeta, alleging that he had been given orders to

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[56] Office of the Venezuelan Ombudsman, Annual Report 2001 (annexes to the motions and arguments brief, folio 3201).

[57] *Cf.* 2007 Annual Report of the Prosecutor General (annexes to the motions and arguments brief, folio 6512).

[58] *Cf.* Testimony of expert witness Calixto Ávila of January 29, 2014 (merits file, folio 891).

[59] *Cf.* Annual Report of PROVEA from October 1994 to September 1996 (annexes to the motions and arguments brief, folios 5938 and 6014).

[60] Hereafter the Court will refer to the persons prosecuted and/or involved as presumably responsible for the death of Igmar Landaeta and for the detention and death of Eduardo Landaeta by their initials, in order to protect their identity. The Court has been unable to discover the identity of AAC; however, from the evidence provided, there seems to have been an error in the name, as it appears to refer to AJCG, who was criminally prosecuted for the death of Igmar Landaeta and acquitted of the perpetration of this crime.

[61] *Cf.* Newspaper article published in "*El Periódico*" on November 19, 1996, entitled "*Suplico de rodillas*" [I beg you on my knees] (attachments to the Merits Report, folio 9).

do so and that if "he felt like it" he would also kill her other son, Igmar Landaeta. The agent also told her that she could report him to anyone she liked, but no one would do anything to him because he was an officer.[62]

57. In addition, on November 20, 1996, María Magdalena Mejías informed the Mariño Police Department that police agents CJZM, GACF and AAC were harassing Eduardo Landaeta because he had witnessed the death of someone in Sorocaima. Also, in the same statement, María Magdalena Mejías indicated that she did not know the whereabouts of Eduardo Landaeta.[63]

58. On January 23, 2014, María Magdalena Mejías Camero stated that she tried to denounce these threats to the San Jacinto Central Command, but no one would listen to her.[64]

C. Death of Igmar Alexander Landaeta Mejías

59. According to the evidence provided by the parties, the Court notes that, on November 17, 1996, Igmar Landaeta died as a result of being shot twice by police agents. However, there are two opposing versions of the circumstances in which the events occurred, which will be described below.

C.1 Version of seven eye witnesses and a doctor[65]

60. At about 3 p.m. on November 17, 1996, on Las Flores street, Samán de Güere district, municipality of Mariño, state of Aragua,[66] Igmar Landaeta was running down the street following by two men[67] in a white vehicle without license plates.[68]

61. Igmar Landaeta fell to the ground[69] and the two men, in plainclothes, got out of the vehicle.[70] One of them fired his gun into the air to disperse the people who were

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62 *Cf.* Statement of María Magdalena Mejías of April 22, 1997 (annexes to the answering brief, folio 9283).

63 *Cf.* Statement of María Magdalena Mejías of November 20, 1996 (annexes to the answering brief, folio 9214). The Court also notes that police agent CJZM denounced María Magdalena Mejías and Eduardo Landaeta before the prosecutor owing to presumed death threats he received following the death of Igmar Landaeta. *Cf.* Statements of CJZM of November 19, 1996, and April 18, 1997 (annexes to the answering brief, folios 9184 and 9280).

64 *Cf.* Sworn statement of María Magdalena Mejías of January 23, 2014 (merits file, folio 773).

65 This version was prepared based on the testimony of the following persons: Yaiskel Elizabeth Garrido Rodríguez, Francisca Acosta Jaspe, Adeisa de la Trinidad Moffi García, Vicmar Loydinet Colmenares Acosta, José Francisco Hernández Ramírez, Jesús Chávez Cristin and Velmar Quintero.

66 *Cf.* Testimony of Yaiskel Elizabeth Garrido Rodríguez of November 17, 1996 (annexes to the answering brief, folio 9118); Testimony of Francisca Acosta Jaspe of November 18, 1996 (annexes to the answering brief, folio 9129); Testimony of Adeisa de la Trinidad Moffi García of November 18, 1996 (annexes to the answering brief, folio 9135); Testimony of Vicmar Loydinet Colmenares Acosta of November 18, 1996 (annexes to the answering brief, folio 9141), and Testimony of José Francisco Hernández Ramírez of November 18, 1996 (annexes to the answering brief, folio 9148).

67 *Cf.* Testimony of Yaiskel Elizabeth Garrido Rodríguez of April 24, 1997 (annexes to the answering brief, folio 9307); Testimony of Francisca Acosta Jaspe of November 18, 1996 (annexes to the answering brief, folio 9129), and Testimony of Jesús Chávez Cristin of September 11, 1997 (annexes to the answering brief, folio 9337).

68 *Cf.* Testimony of Adeisa de la Trinidad Moffi García of November 18, 1996, and April 24, 1997 (annexes to the answering brief, folios 9135 and 9311) and Testimony of Vicmar Loydinet Colmenares Acosta of November 18, 1996 (annexes to the answering brief, folio 9141).

69 *Cf.* Testimony of Yaiskel Elizabeth Garrido Rodríguez of November 17, 1996, and April 24, 1997 (annexes to the answering brief, folios 9118 and 9307), and testimony of Adeisa de la Trinidad Moffi García of November 18, 1996, and April 24, 1997 (annexes to the answering brief, folios 9135 and 9311).

70 *Cf.* Testimony of Adeisa de la Trinidad Moffi García of November 18, 1996 (annexes to the answering brief, folio 9135).

present;[71] the other man pointed his weapon at Igmar Landaeta while the latter was pleading with him "not to kill him."[72]

62. Then, the man who had descended from the left side of the car shot Igmar Landaeta from point blank range. Following this, the man turned him over while a woman who was in the white vehicle told the men that "they had made a mistake," that it was the wrong man, and ran away from the scene of the incident.[73]

63. Subsequently, the men placed Igmar Landaeta's body in the white car and left.[74] The witnesses denied having seen that Igmar Landaeta was armed and stated that they heard around 10 shots.[75]

64. According to the testimony of Dr. Velmar Quintero, at 3.20 p.m., two men came to the Type III Outpatient Clinic of Turmero, state of Aragua (hereinafter "Outpatient Clinic") in a white vehicle without license plates, left Igmar Landaeta's lifeless body in the Emergency Room, and withdrew without identifying themselves.[76].

C.2 Version of two police agents and two eye witnesses[77]

65. On the same date and in the same place indicated previously (*supra* para. 60), police agents GACF and AJCG, were carrying out intelligence work during which they were going to search a building, and were driving around in a private vehicle in plainclothes and unaccompanied. At that time, the agents observed two men who were involved in the hand-over of a weapon; they therefore proceeded to identify themselves, and ordered the men to stop and put their hands up. However, the men fired at them once and ran off. The police agents continued to order them to stop, but the men responded with more shots (three) and hid behind a truck. At that time, the agents took out their service weapons and began to fire in order to repel the attack. According to agent GACF, the police agents knelt down in order to protect themselves and fired from

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71 *Cf.* Testimony of Francisca Acosta Jaspe of November 18, 1996, and April 23, 1997 (annexes to the answering brief, folios 9128 and 9297); Testimony of Adeisa de la Trinidad Moffi García of November 18, 1996 (annexes to the answering brief, folio 9136), and Testimony of José Francisco Hernández Ramírez of November 18, 1996 (annexes to the answering brief, folio 9148).

72 *Cf.* Testimony of Francisca Acosta Jaspe of November 18, 1996, and April 23, 1997 (annexes to the answering brief, folios 9128, 9129 and 9297); Testimony of Adeisa de la Trinidad Moffi García of November 18, 1996 (annexes to the answering brief, folio 9135), Testimony of Jesús Chávez Cristin of September 11, 1997 (annexes to the answering brief, folio 9336), and testimony of Vicmar Loydinet Colmenares Acosta of November 18, 1996, and April 23, 1997 (annexes to the answering brief, folios 9141, 9142 and 9300).

73 *Cf.* Testimony of Adeisa de la Trinidad Moffi García of November 18, 1996, and April 24, 1997 (annexes to the answering brief, folios 9135, 9311 and 9312).

74 *Cf.* Testimony of Yaiskel Elizabeth Garrido Rodríguez of November 17, 1996 (annexes to the answering brief, folio 9119); Testimony of Francisca Acosta Jaspe of November 18, 1996 (annexes to the answering brief, folio 9128); Testimony of Adeisa de la Trinidad Moffi García of November 18, 1996 (annexes to the answering brief, folio 9135); Testimony of Vicmar Loydinet Colmenares Acosta of November 18, 1996 (annexes to the answering brief, folio 9141), and Testimony of Jesús Chávez Cristin (annexes to the answering brief, folio 9336).

75 *Cf.* Testimony of Yaiskel Elizabeth Garrido Rodríguez of November 17, 1996, and April 24, 1997 (annexes to the answering brief, folios 9118, 9119 and 9307); testimony of Francisca Acosta Jaspe of November 18, 1996, and April 23, 1997 (annexes to the answering brief, folios 9129 and 9296); testimony of Adeisa de la Trinidad Moffi García of November 18, 1996, and April 24, 1997 (annexes to the answering brief, folios 9136 and 9312); testimony of Vicmar Loydinet Colmenares Acosta of November 18, 1996, and April 23, 1997 (annexes to the answering brief, folios 9142 and 9301); Testimony of José Francisco Hernández Ramírez of November 18, 1996 (annexes to the answering brief, folio 9149), and Testimony of Jesús Chávez Cristin of September 11, 1997 (annexes to the answering brief, folio 9337).

76 *Cf.* Police record in which agent Idelgar Farrera registered the testimony of Dr. Velmar Quintero of November 17, 1996 (annexes to the answering brief, folio 9111).

77 This version was prepared based on the testimony of the following persons: GACF, AJCG, July Esther Zacarías de Villanueva and José Gregorio del Rosso Dona.

this position to repel the attack. One of the men fell to the ground injured, and the other fled.[78]

66. The agents transported the injured man to the Outpatient Clinic, and he was still alive when they arrived.[79] Subsequently, a doctor advised them that the man, whose name was Igmar Landaeta, had died.[80]

67. In addition, the police agents seized a firearm with four spent cartridges and two cartridges that had not been fired, which were handed in to the Technical Unit of the Judicial Police (hereinafter "CTPJ").[81]

68. Regarding the two versions, the Court notes that they will be assessed as pertinent when examining the merits of the case in this Judgment (*infra* paras. 137 to 142).

D. Detention and death of Eduardo José Landaeta Mejías

69. On December 29, 1996, at approximately 5.10 p.m., Eduardo Landaeta, 17 years of age, was arrested by two police agents near the Matarredonda neighborhood.[82] According to the police record of the arrest, Eduardo was undocumented, he was 18 years of age, and he was connected to "case file E-702.015" of November 18, 1996, which was being investigated by the Mariño Police Department.[83]

70. At around 5.30 p.m. the same day, Eduardo Landaeta advised his parents that he was being held at the "El Cuartelito" Police Station, San Carlos.[84] According to their statements, Eduardo Landaeta's parents went immediately to the Police State and, on arrival, they told a policewoman who was on duty that their son's life was in danger because he had been threatened by police agents on several occasions. The policewoman responded that they should not worry because Central Command had been advised that Eduardo Landaeta was a minor, and that they should come to the Police State next day so that he could be transferred.[85]

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[78] *Cf.* Testimony of agent GACF of November 17 and 21, 1996, April 22, 1997, and March 18, 1998 (annexes to the answering brief, folios 9169, 9217, 9286 to 9289, and 9436); record of handover of November 18, 1996 (annexes to the answering brief, folio 9171); Testimony of July Esther Zacarías de Villanueva of November 19, 1996 (annexes to the answering brief, folio 9180); Testimony of José Gregorio del Rosso Dona of November 21, 1996 (annexes to the answering brief, folios 9222 and 9223); testimony of agent AJCG of November 21, 1996, April 23, 1997, and March 23, 1998 (annexes to the answering brief, folio 9225, 9302, 9303 and 9446).

[79] The Court notes that agent GACF stated that they gave first aid to Igmar Landaeta. *Cf.* Testimony of agent GACF of November 17, 1996 (annexes to the answering brief, folio 9169).

[80] *Cf.* Testimony of agent GACF of November 17 and 21, 1996, and April 22, 1997 (annexes to the answering brief, folios 9169, 9170, 9217 and 9288); Testimony of José Gregorio del Rosso Dona of November 21, 1996 (annexes to the answering brief, folio 9223) and Testimony of agent AJCG of November 21, 1996 (annexes to the answering brief, folio 9225).

[81] *Cf.* Testimony of agent GACF of November 17, 1996, and April 22, 1997 (annexes to the answering brief, folios 9170 and 9289); police logbook for November 17, 1996 (annexes to the answering brief, folio 9205); record of handover of November 18, 1996 (annexes to the answering brief, folio 9171), and Testimony of agent AJCG of November 21, 1996 (annexes to the answering brief, folio 9225).

[82] *Cf.* Police record of December 29, 1996 (annexes to the answering brief, folio 7117).

[83] *Cf.* Police record of handover of an individual of December 30, 1996 (annexes to the answering brief, folio 7111), and police record of December 30, 1996 (annexes to the answering brief, folio 7112).

[84] *Cf.* Testimony of Ignacio Landaeta of February 13, 2004 (annexes to the answering brief, folios 7378), and Testimony of María Magdalena Mejías of February 16, 2004 (annexes to the answering brief, folios 7382).

[85] *Cf.* Testimony of Ignacio Landaeta of February 13, 2004 (annexes to the answering brief, folios 7378 and 7379), and Testimony of María Magdalena Mejías of February 16, 2004 (annexes to the answering brief, folios 7382 and 7383).

71. On December 30, 1996, at approximately 8 a.m., Eduardo Landaeta was transferred to the Central Police Station.[86] According to the testimony of Ignacio Landaeta Muñoz, at around 6.30 p.m., a policewoman advised Eduardo Landaeta's parents that she had seen strange movements and warned them not to leave.[87] Also, María Magdalena Mejías indicated that an agent Requena insistently asked her for Eduardo Landaeta's identity document; accordingly, at 8.30 p.m., she brought a copy of this and a copy of his birth certificate.[88] At 10.30 p.m., Eduardo Landaeta appeared in a window and signaled to his parents that they should leave.[89]

72. On December 31, 1996, in a red Fiat sedan, model one, unit P-66, license plates DAF-91Z, registered to the intelligence unit, driven by agent FABP, with agent CARM sitting in the passenger seat, and agent CARA sitting on the right side of the back seat, Eduardo Landaeta was transferred, handcuffed and in the back seat, to the Mariño Police Department.[90]

73. According to the statements given during the investigation, at around 8.30 a.m., in the Valle Lindo district, the police car was struck from behind by a grey Chevrolet Malibu vehicle, and therefore stopped to verify what had happened. At that moment, four hooded men carrying firearms got out of the grey vehicle, seized the service weapons from the police agents, and began to fire against their car, killing Eduardo Landaeta. Agent CARA fled the scene of the incident in the direction of Urbanización Valle Lindo; agent FABP was injured in the leg by a bullet, and agent CARM remained lying on the ground.[91]

74. After receiving a report of what happened, an operation was organized to try and find the grey vehicle, but this was unsuccessful.[92]

E. Investigation into the death of Igmar Alexander Landaeta Mejías

75. At 4 p.m. on November 17, 1996, the CTPJ Mariño Police Department (hereinafter "Mariño Police Department), received a telephone call from the duty officer of the local police force advising that a police team had been involved in a confrontation with an individual known as Landaeta, on Las Flores street, in the Samán de Güere district, as a

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86 *Cf.* Police record of handover of an individual of December 30, 1996 (annexes to the answering brief, folio 7111), and police record of December 30, 1996 (annexes to the answering brief, folio 7112).

87 *Cf.* Testimony of Ignacio Landaeta of February 13, 2004 (annexes to the answering brief, folios 7378 and 7379), and Testimony of Ignacio Landaeta during the public hearing before the Inter-American Court on February 6, 2014.

88 *Cf.* Police record of December 30, 1996 (annexes to the answering brief, folio 7113) and Testimony of María Magdalena Mejías of February 16, 2004 (annexes to the answering brief, folio 7383).

89 *Cf.* Testimony of Ignacio Landaeta of February 13, 2004 (annexes to the answering brief, folios 7378 and 7379), and Testimony of Ignacio Landaeta during the public hearing before the Inter-American Court on February 6, 2014.

90 *Cf.* Transcript of the logbook of December 31, 1996 (annexes to the answering brief, folio 7105); report of the Central Police State of January 6, 1997 (annexes to the answering brief, folio 7314); police record of December 31, 1996 (annexes to the answering brief, folios 7109 and 7110), and testimony of CARA of December 31, 1996, and August 13, 1997 (annexes to the answering brief, folios 7149 and 7216).

91 *Cf.* Transcript of the logbook of December 31, 1996 (annexes to the answering brief, folio 7105); report of the Central Station of January 6, 1997 (annexes to the answering brief, folio 7314); police record of December 31, 1996 (annexes to the answering brief, folios 7109 and 7110); testimony of CARA of December 31, 1996, and August 13, 1997 (annexes to the answering brief, folios 7149, 7150 and 7216); testimony of CARM of December 31, 1996, July 8, 1997, and September 29, 1998 (annexes to the answering brief, folios 7151, 7152, 7200 and 7305); testimony of FABP of January 6, 1997, July 22 and September 28, 1998 (annexes to the answering brief, folio 7172, 7232, 7233 and 7303); testimony of Yuribet del Valle Rujano Castro of August 19, 1997, April 20, 1999, and January 16, 2004 (annexes to the answering brief, 7218, 7336 and 8061 to 8065), and Testimony of Virginia Hernández de Duarte of April 20, 1999 (annexes to the answering brief, folio 7338).

92 *Cf.* Interview with Yasmira Thais Díaz Guerra of March 30, 2004 (annexes to the answering brief, folio 7507).

result of which the latter had been gunned down and transferred to the Tumero Type III Outpatient Clinic.[93] Accordingly, four police agents went to the scene of the incident to interview the persons who were in the area.[94]

76. In addition, two investigators went to the Outpatient Clinic where they obtained Dr. Velmar Quintero's statement (*supra* para. 64). The investigators went to the morgue where they inspected Igmar Landaeta's corpse, which was then transferred to the Institute of Forensic Medicine of the Judicial Police of the region of Aragua, so that the respective autopsy could be performed.[95]

77. At 7 p.m. the same day, a team from the Mariño Police Department inspected the scene of the events, taking general and detailed photographs, and collecting a sample of cotton with a reddish-brown substance.[96]

78. On November 18, 1996, an investigator received from Ignacio Landaeta and José Francisco Hernández Ramírez (eyewitness) a partially deformed piece of yellow lead and six cartridges that had been collected at the scene of the events by civilians, and forwarded them to the Technical Unit of the Judicial Police.[97]

79. The same day, the Maracay Forensic Medicine Unit performed the autopsy of Igmar Landaeta, determining that the cause of death was severe cerebral contusion resulting from a facio-cranial gunshot wound (*infra* para. 133).[98]

80. On November 19, 1996, the Mariño Police Department carried out an analysis of gunpowder residue on Igmar Landaeta's right hand, with positive results.[99]

81. On November 20, 1996, the Investigation Division of the Mariño Police Department forwarded to the Department's Technical Division a .357 caliber revolver, four spent cartridges and two cartridges that had not been fired (all .357 caliber), and six 9 mm caliber cartridges and a piece of partially deformed lead, so that an expert appraisal could be made.[100] In this regard, in a report of December 5, 1996, the Criminalistics Laboratory confirmed that the .357 caliber cartridges corresponded to the revolver of the same caliber.[101]

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93 *Cf.* Transcript of the logbook of November 17, 1996 (annexes to the answering brief, folio 9100).

94 *Cf.* Testimony of agent Mohamed Roger of November 17, 1996 (annexes to the answering brief, folio 9109).

95 *Cf.* Transcript of the logbook of November 17, 1996 (annexes to the answering brief, folio 9100); Testimony of agent Mohamed Roger of November 17, 1996 (annexes to the answering brief, folio 9109), and Testimony of agent Idelgar Farrera of November 17, 1996 (annexes to the answering brief, folios 9111 and 9112).

96 *Cf.* Testimony of agent Mohamed Roger of November 17, 1996 (annexes to the answering brief, folio 9109), and inspection of November 16, 1996 (annexes to the answering brief, folios 9121 and 9122).

97 *Cf.* Police record of November 18, 1996 (annexes to the answering brief, folios 9132 and 9133); police record of November 18, 1998 (annexes to the answering brief, folio 9145); record of transfer of November 18, 1996 (annexes to the answering brief, folio 9134), and receipt of transfer No. 254-96 of November 18, 1996 (annexes to the answering brief, folio 9147).

98 According to the autopsy, Igmar Landaeta was shot twice, and the bullets had different trajectories: (i) the first with "entry hole [located in] the ninth back left intercostal space towards the internal scapular region [and with] the exit hole [located in] the sixth right parasternal intercostal space, [its] trajectory was from back to front, from above to below, from left to right, and (ii) the second with an "entry hole on the bridge of the nose, with a halo of bruising around it, and a rough, irregular exit hole [in] the right parietal occipital region, [its] trajectory was from front to back, from left to right, from above to below." *Cf.* Autopsy of the corpse of Igmar Landaeta of November 18, 1996 (annexes to the answering brief, folio 9210).

99 *Cf.* Analysis of gunpowder residue of November 19, 1996 (annexes to the answering brief, folio 9322).

100 *Cf.* Memorandum of November 20, 1996, forwarding evidence for forensic testing (annexes to the answering brief, folio 9208).

101 *Cf.* Forensic testing report and comparison of ballistics data of December 5, 1996 (annexes to the answering brief, folios 9257 and 9258).

82. On February 24, 1997, the Ninth Prosecutor formally accused agents GACF and AJCG of the presumed perpetration of first-degree murder and misuse of weapons before the Court of the Santiago Mariño and Libertador Municipalities.[102]

83. On September 12, 1997, the Court of the Santiago Mariño and Libertador Municipalities issued a decision declaring the summary investigation closed, because it had not been proved that an illegal act had been committed, and there was no evidence of the guilt of police agents GACF and AJCG. On September 17, the case file was forwarded to the Sixth Criminal Court of First Instance for the Safeguard of Public Interests of the state of Aragua (hereinafter "the Sixth Court").[103]

84. On September 23, 1997, Josefina Rodríguez de Zavala, Ignacio Landaeta's private lawyer, filed a brief accusing police agents GACF and AJCG of the presumed perpetration of the crime of aggravated homicide.[104]

85. On October 1, 1997, the Sixth Court issued a ruling confirming the decision issued by the Court of the Santiago Mariño and Libertador Municipalities (*supra* para. 83). On October 10, 1997, the Sixth Court forwarded, *ex officio*, the case file to the Third Superior Criminal and Correctional Juvenile Court (hereinafter "the Third Superior Court") for review.[105]

86. On November 11, 1997, the Third Superior Court revoked the judgment delivered by the Court of the Santiago Mariño and Libertador Municipalities, confirmed by the Sixth Court, and consequently ordered the judicial detention of the accused, requiring the Sixth Court to execute the ruling.[106] Accordingly, on January 15, 1998, the Sixth Court issued the orders for the imprisonment of agents GACF and AJCG.[107]

87. On May 21, 1998, the Sixth Prosecutor brought charges against agents GACF and AJCG for the presumed perpetration of the crimes of manslaughter (*homicidio preterintencional*) and misuse of weapons.[108]

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[102] *Cf.* Indictment of the Public Prosecution Service of February 24, 1997 (annexes to the answering brief, folios 9260 to 9263).

[103] *Cf.* Notes transferring the case file of September 17, 1997 (annexes to the answering brief, folios 9362 to 9364).

[104] *Cf.* Accusation filed on September 23, 1997, filed by the legal representative of Ignacio Landaeta Muñoz (annexes to the answering brief, folios 9407 to 9410).

[105] *Cf.* Order of the Sixth First Instance Court of October 10, 1997 (annexes to the answering brief, folio 9367).

[106] According to the Third Superior Court, the way in which the police agents acted when transferring Igmar Landaeta Mejías to the Outpatient Clinic was "not in keeping with the regulations and the functions of a police agent, […] because when an incident in which a human being loses his life occurs, any law enforcement official should wait – either at the scene of the incident or, in this case, at the place where the deceased was left – for the Technical Unit of the Judicial Police, which is a subsidiary organ of the courts of the Republic of Venezuela, in order to initiate the investigations to establish precisely how the events occurred." Furthermore, the said court considered that some of the testimonial statements "reveal strong indications of the guilt and criminal responsibility" of the accused. In addition, the court considered that the autopsy protocol and the topographic survey showed that the shot that Igmar Landaeta Mejías received in the tip of his nose was fired very close to the victim. *Cf.* Ruling of the Third Superior Criminal Court of November 11, 1997 (annexes to the answering brief, folios 9370, 9379, 9381 and 9385 to 9387).

[107] *Cf.* Orders of imprisonment of January 15, 1998 (annexes to the answering brief, folios 9399 and 9402).

[108] In this regard, the prosecutor found that the crime committed was "preter-intentional," and reached this conclusions after considering that "it was clear that the accused in this case did not have the intention of causing the death of [Igmar Landaeta,] but rather, to the contrary, using their service weapons, they were trying to apprehend the men or repel the presumed attack against them, or their intention was to injure the individual who was illegally attacking them, because of their official task due to their functions, but the unlawful intention of killing him was never the main consideration." *Cf.* Indictment brief of the Public Prosecution Service of May 21, 1998 (annexes to the answering brief, folio 9488).

88. Then, in the brief answering the charges, the defense of the accused argued the existence of a confrontation with the deceased and that the facts constituted legitimate defense and/or necessity. In addition, the defense requested the benefit of pre-trial release on bail for the accused, and this was granted on May 26, 1998.[109]

89. On July 21, 1998, the Sixth Court agreed to order a reconstruction of the events of the investigation as helpful evidence.[110] On September 26, 1998, Ignacio Landaeta filed a brief before the Sixth Court requesting that the accused be sentenced for the crimes of first-degree murder and misuse of weapons.[111]

90. On July 1, 1999, the new Organic Code of Criminal Procedure entered into force in Venezuela, establishing a transitory procedural regime that applied to the cases underway at the date of the Code's entry into force. Under the transition regime, the case was forwarded to the Second Court of the Transitory Procedural Regime of the Judicial Circuit of the state of Aragua (hereinafter "the Second Court"). On October 13, 2000, that court delivered a first instance judgment in which it decided the following: (1) to acquit the accused AJCG of the crime of first-degree murder; (2) to sentence the accused GACF to 12 years' imprisonment for the perpetration of the crime of first-degree murder, and (3) to decree the dismissal of the case in relation to the offense of misuse of weapons.[112]

91. On November 7, 2000, the defense counsel of the agent who had been convicted filed a remedy of appeal against the judgment delivered by the Second Court. On April 25, 2002, the Appellate Court delivered judgment in second instance declaring inadmissible the remedy of appeal filed and confirming the sentence imposed on GACF.[113]

92. On June 5, 2002, the defense filed an appeal for annulment arguing that his client had been a victim of erroneous interpretations of the law and that, during the trial, the supposed intention of killing Igmar Landaeta had not been proved.[114] On November 29, 2002, the Supreme Court of Justice, sitting as the Criminal Cassation Chamber (hereinafter "the Cassation Chamber"), issued a ruling annulling the judgment delivered by the Appellate Court and returned the case to that court so that it could decide the remedy of appeal strictly respecting the provisions of the cassation judgment.[115]

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[109] *Cf.* Brief answering the charges and requesting pre-trial release (annexes to the answering brief, folios 9494 and 9495), and release orders of May 26, 1998 (annexes to the answering brief, folios 9515 and 9516).

[110] *Cf.* Order of the Sixth Criminal Court of First Instance of July 21, 1998 (annexes to the answering brief, folio 9537). The Court also notes that, during the processing of the proceedings, 41 statements by witnesses and the accused were received. *Cf.* Statements received during the investigation into the case of Igmar Landaeta (annexes to the answering brief, folios 9109, 9111, 9118, 9128, 9135, 9138, 9141, 9148, 9154, 9169, 9179, 9183, 9212, 9217, 9222, 9225, 9236, 9279, 9282, 9286, 9292, 9296, 9300, 9302, 9307, 9311, 9315, 9328, 9330, 9332, 9435, 9445, 9551, 9553, 9555, 9558, 9561, 9564, 9567, 9570 and 9573).

[111] *Cf.* Brief of Ignacio Landaeta Muñoz of September 26, 1998 (annexes to the answering brief, folios 9576 and 9579).

[112] According to the Second Court, when Igmar Landaeta was on the ground as a result of being hit by the first bullet, he received a second bullet that killed him, which was unnecessary because the first shot had made it impossible for him to continue to confront the police agents. Thus, the Second Court considered that the last shot was fired by agent GACF at a distance of around 60 centimeters, calculating that it was AJCG who was driving the vehicle transporting the police agents. *Cf.* First instance judgment of the Second Court of the Transitory Procedural Regime of the Judicial District of the state of Aragua of October 13, 2000 (annexes to the answering brief, folio 9604 to 9609). The Court notes that the crime for which the accused GACF was sentenced in first instance differed from the crime of which he was accused by the prosecutor: namely manslaughter (*homicidio preterintencional*) (*supra* para. 82).

[113] *Cf.* Appeal brief filed by the defense on November 7, 2000 (annexes to the answering brief, folio 9632) and judgment of the Appellate Court of April 25, 2002 (annexes to the answering brief, folio 9659 and 9677).

[114] *Cf.* Appeal for annulment filed by the defense on June 5, 2002 (annexes to the answering brief, folios 9694 and 9700).

[115] In this regard, the Cassation Chamber considered that "[t]he remedy of appeal exercised against a judgment delivered under the Transitory Procedural Regime […] requires a new examination of the facts that

93. On November 10, 2003, the Appellate Court delivered a new judgment in second instance declaring admissible the remedy of appeal that had been filed and dismissing the case against police agent GACF.[116] The President of the Appellate Court dissented from the judgment handed down.[117]

94. On November 12 and 20, 2003, the Sixth Prosecutor, the defense lawyer, and Ignacio Landaeta, respectively, were notified of the operative paragraphs of the judgment delivered by the Appellate Court.[118]

95. On December 5, 2003, Ignacio Landaeta requested that an administrative investigation be opened against two of the judges of the Appellate Court;[119] however, this Court has no information on that investigation.

96. Lastly, on April 22, 2004, considering that no appeal had been filed against the judgment it had delivered, the Appellate Court forwarded the case to the Central Judicial Archives.[120]

F. Investigation into the death of Eduardo José Landaeta Mejías

97. On December 31, 1996, the Mariño Police Department advised the Ninth Prosecutor of the state of Aragua (hereinafter "the Ninth Prosecutor") of the commencement of the summary investigation into the incident in which Eduardo Landaeta lost his life. Accordingly, five police agents of the Mariño Police Department went to the scene of the incident where they found the vehicle in which Eduardo Landaeta was being transferred guarded by two police agents and, inside it, his lifeless body with numerous gunshot wounds. The investigating team proceeded to interview the police agents and witnesses who were in the area. Subsequently, a team from the Maracay Forensic Medicine Unit and the Ninth Prosecutor arrived to remove the body and to transfer it to the Forensic Medicine Unit of the region of Aragua.[121]

98. The same day, at 11 a.m., a team consisting of seven agents from the Mariño Police Department conducted an inspection of the scene of the incident. Later, at 12 m., two agents of the Mariño Police Department went to the Maracay Central Morgue, where

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are the object of the proceedings. This means that the evidentiary material analyzed by the first instance court must be re-examined and the evidence re-assessed in accordance with the system established by the [Code of Criminal Procedure]." *Cf.* Judgment of the Supreme Court of Justice, sitting as a Criminal Cassation Chamber, of November 29, 2002 (annexes to the answering brief, folios 9732, 9737 and 9739).

116 Thus, the Appellate Court found, among other matters, that the halo of bruising left by the second shot could not indicate that it had been fired at close range – in other words, nearly touching the victim – in which case it would have left a burn mark; also witness testimony corroborated the testimony of the police agents, understanding that the facts occurred in a context of legitimate use of force by the authorities, after using legitimate defense as the only means of subduing the armed attacker so that he would not continue to attack the police agents using a firearm. *Cf.* Judgment of the Incidental Chamber of the Appellate Court of the Criminal Judicial Circuit of the state of Aragua of November 10, 2003 (annexes to the answering brief, folios 9838 and 9841).

117 In this regard, it considered, among other matters, that there were inconsistencies in the testimony of the police agents and the witnesses that supported their version, so that they should have been rejected. *Cf.* Judgment of the Incidental Chamber of the Appellate Court of the Criminal Judicial Circuit of the state of Aragua of November 10, 2003 (annexes to the answering brief, folio 9850, 9855 and 9856).

118 *Cf.* Notification records of November 10, 2003 (annexes to the answering brief, folios 9864, 9868 and 9869).

119 *Cf.* Requests to open an administrative investigation against Judges Attaway Marcano and Alejandro Perillo of December 5, 2003 (file of the procedure before the Commission, folios 1392 to 1397).

120 *Cf.* Order to forward the case to the Central Judicial Archives of April 22, 2004 (annexes to the answering brief, folio 9878).

121 *Cf.* Note of the Mariño Police Department of December 31, 1996 (annexes to the answering brief, folio 7108), and police record of December 31, 1996 (annexes to the answering brief, folios 7109 and 7110).

they carried out two inspections of Eduardo Landaeta's corpse. In addition, during the autopsy performed on the corpse, three bullets were collected and forwarded to the Recovered Objects Room of the Mariño Police Department. The vehicle in which Eduardo Landaeta died was placed in the parking lot of the Mariño Police Department for safekeeping.[122]

99. On January 24, 1997, the Microscopy Unit of the General Police Technical Division analyzed the gunpowder residue on the hands of agents CARM and CARA with positive results.[123]

100. In parallel, on January 7, 1997, the Internal Affairs Department of the Police General Inspectorate opened a preliminary administrative inquiry under the Disciplinary Punishment Regulations of the Public Security Corps of the state of Aragua. The inquiry was declared closed due to lack of sufficient evidence.[124]

101. Continuing the criminal investigation, on January 28, March 10, July 22 and October 22, 1997, the Criminalistics Laboratory of the CTPJ of the region of Aragua performed the hematological and forensic tests on the evidence collected.[125] Also, on July 22, 1998, the Police Technical Section of the CTPJ made an expert appraisal of some of the evidence collected.[126]

102. On July 10, 1997, the Forensic Medicine Unit sent the report of the autopsy performed on Eduardo Landaeta's corpse on December 31, 1996, to the Mariño Police Department. The report indicated that the cause of death was a severe cerebral contusion resulting from two bullets, and thirteen bullet wounds to different parts of the body; other injuries were also observed (*infra* para. 200).[127]

103. On August 27, 1997, the Justice and Peace Human Rights Committee of the state of Aragua, representing María Magdalena Mejías, asked the Ninth Prosecutor to notify the Court of the Santiago Mariño and Libertador Municipalities to open preliminary inquiry into unlawful conduct by a State agent against the police agents who presumably participated in the murder of Eduardo Landaeta. Accordingly, on March 25, 1998, the Ninth Prosecutor asked the Court of the Municipality of Mariño of the state of Aragua to conduct a preliminary inquiry into unlawful conduct by a State agent against police

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122 *Cf.* Inspection of the scene of the incident of December 31, 1996 (annexes to the answering brief, folios 7119 and 7137); inspection of the corpse of Eduardo Landaeta of December 31, 1996 (annexes to the answering brief, folio 7144); inspection of the corpse of Eduardo Landaeta of December 31, 1996 (annexes to the answering brief, folio 7147); record of transfer of December 31, 1996 (annexes to the answering brief, folio 7146), and autopsy report of December 31, 1996 (annexes to the answering brief, folios 7207 to 7210), and police record of December 31, 1996 (annexes to the answering brief, folio 7141).

123 *Cf.* Analysis of gunpowder residue on January 24, 1997 (annexes to the answering brief, folios 7183 and 7184).

124 *Cf.* Note of the National Police Headquarters of January 7, 1997 (annexes to the answering brief, folio 7444), and undated certification of the Investigation Division of the Police General Inspectorate (annexes to the answering brief, folio 7417).

125 *Cf.* Report of forensic tests and hematological appraisals of January 28, 1997 (annexes to the answering brief, folios 7185 and 7186); report of forensic tests and hematological appraisals of March 10, 1997 (annexes to the answering brief, folios 7187 and 7188); report of forensic tests and hematological appraisals of March 10, 1997 (annexes to the answering brief, folios 7189 to 7191); report of forensic tests and hematological appraisals of July 22, 1997 (annexes to the answering brief, folios 7211 and 7212), and report of forensic tests and hematological appraisals of October 22, 1997 (annexes to the answering brief, folio 7225 and 7526).

126 *Cf.* Report of forensic tests of July 22, 1998 (annexes to the answering brief, folios 7229 and 7230). The elements subject to this forensic test were: five bullets; nine 7.65 mm shells that formed part of the body of a bullet; a pair of handcuffs normally used in police work, and also by the Armed Forces; two women's rings, and a pair of rubber sandals.

127 *Cf.* Autopsy report of July 10, 1997 (annexes to the answering brief, folios 7209 and 7210).

agents CARA, CARM and FABP for the crimes of the murder of, and misuse of weapons against, Eduardo Landaeta. The requested investigation commenced on May 14, 1998.[128]

104. On February 8, 1999, the Ninth Prosecutor filed a formal complaint against police agents CARA, CARM and FABP for the presumed perpetration of the crimes of aggravated homicide and misuse of weapons to the detriment of Eduardo Landaeta.[129]

105. Owing to the entry into force of the new Organic Code of Criminal Procedure (*supra* para. 90), on January 7, 2000, the Second Court of the Transitory Procedural Regime of the state of Aragua (hereinafter "the Second Court") received Eduardo Landaeta's case file from the Court of the Santiago Mariño and Libertador Municipalities. On October 30, 2003, the Prosecutor of the Transitory Procedural Regime of the state of Aragua (hereinafter "the Prosecutor") resumed the investigation into the case by requesting that several measures be taken in order to clarify the facts.[130]

106. Between January and June 2004, the Mariño Sub-Delegation interviewed seven persons and inspected the vehicle in which Eduardo Landaeta died. Also, the Criminalistics and Criminal Scientific Investigations Unit advised the Prosecutor that the roll of film with the photographs of Eduardo Landaeta's corpse had become hazy and the Maracay Medical Center advised that it had no information concerning the medical records of FABP, because the five-year period during which it kept its records had expired.[131]

107. On July 17, 2004, the Prosecutor requested the dismissal of the case owing to the absence of sufficient evidence to indict the police agents investigated for committing the murder of Eduardo Landaeta.[132] Accordingly, on August 25, 2004, Ignacio Landaeta filed a brief with observations on the request to dismiss the case, in which he indicated that the Prosecutor had not taken several pieces of evidence into account, and asked that new measures be taken.[133] On November 9, 2004, the No. 4 First Instance Criminal Court with Oversight Functions (hereinafter "the First Instance Court") decided to refuse

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128 *Cf.* Brief of the Justice and Peace Human Rights Committee of the state of Aragua of August 27, 1997 (annexes to the answering brief, folio 7083); brief of the Ninth Prosecutor of March 25, 1998 (annexes to the answering brief, folio 7082), and order of the Court of the Santiago Mariño and Libertador Municipalities of May 14, 1998 (annexes to the answering brief, folio 7086).

129 *Cf.* Formal complaint of the Public Prosecution Service of February 8, 1999 (annexes to the answering brief, folio 7097 and 7098).

130 *Cf.* Note of the Second Court of January 7, 2000 (annexes to the answering brief, folio 7341), and note of the Prosecutor of October 30, 2003 (annexes to the answering brief, folio 7347).

131 *Cf.* Testimony of Yuribet del Valle Rujano Castro January 16, 2004 (annexes to the answering brief, folio 7362); Testimony of Ignacio Landaeta of February 13, 2004 (annexes to the answering brief of February 13, 2004, folios 7378 to 7381); Testimony of María Magdalena Mejías of February 16, 2004 (annexes to the answering brief, folio 7382); Testimony of Yasmira Thais Díaz Guerra of March 30, 2004 (annexes to the answering brief, folio 7507); Testimony to AJCG of April 17, 2004 (annexes to the answering brief, folio 7511); Testimony of Francisco Alberto Castillo Matute of May 14, 2004 (annexes to the answering brief, folio 7528); Testimony of Hector Eduardo Padilla Gorrin of June 22, 2004 (annexes to the answering brief, folio 7574); record of police technical inspection of April 16, 2004 (annexes to the answering brief, folio 7531); note of the Mariño Sub-Delegation of April 16, 2004 (annexes to the answering brief, folio 7410), and Note of the Maracay Medical Center of May 28, 2004 (annexes to the answering brief, folio 7413).

132 *Cf.* The Prosecutor's request to dismiss the case of July 17, 2004 (annexes to the answering brief, folios 7582 and 7622 and 7623).

133 Among others: (1) reconstruction of the incident; (2) reasons why Eduardo Landaeta's body revealed a partial peeling of the skin of the right gluteal region, with the same characteristics on both elbows, circular marks on both wrists and bruising on his lower lip; (3) ballistics appraisal of the three bullets extracted from Eduardo Landaeta's body, and (4) determination of whether the vehicle which was transferring Eduardo Landaeta really had bullet holes in the back seat or on the inner side of the back doors. *Cf.* Brief of August 25, 2004, with observations on the request to dismiss the case (annexes to the answering brief, folios 7679 to 7688).

the Prosecutor's request to dismiss the case, because all the investigation measures had not been concluded.[134]

108. On July 13, 2005, the Superior Prosecutor of the state of Aragua agreed to forward the case to another prosecutor of the Public Prosecution Service for the Transitory Procedural Regime to continue the investigation or to issue the corresponding order to close it.[135]

109. From September 2005 to June 2006, the prosecutor made several requests in order to gather evidence, in particular the request for the logbook for December 29, 1996, of the San Carlos Police Station; the request for information on the weapons carried by the police agents investigated; an expert appraisal of the ballistics trajectory, and the expansion of the autopsy report.[136]

110. On July 3, 2006, the prosecutor requested the exhumation of Eduardo Landaeta's corpse in order to extract a bullet that had supposedly remained in his body. The exhumation was carried out on August 9, 2006, but the body did not contain the internal organs, which were presumably extracted in the funeral home for the viewing. Despite this, according to the testimony of one of the gravediggers, when they were throwing away the waste matter from the coffin, he found a bullet which he gave to Ignacio Landaeta on November 1, 2006. Mr. Landaeta Muñoz handed the bullet over to the prosecutor so that he could forward it to the Criminalistics Department of the Aragua State Delegation, for forensic and hematological testing. However, it was not possible to obtain the required evidence because there were residues of cement on the bullet.[137]

111. On April 18, 2008, the prosecutor requested that a hearing be held to reconstruct the incident, and this was held on June 4, 2008, with the participation of a judge, two prosecutors, the three accused, the private defense counsel, Ignacio Landaeta and a secretary.[138]

112. On December 15, 2008, the prosecutor brought charges against police agents FABP, CARM and CARA for the crime of complicity to commit aggravated first degree murder. According to the prosecutor, the accused had simulated that they had been intercepted while they were transferring Eduardo Landaeta.[139]

113. On May 4, 2009, the court established the date of June 15, 2009, for the opening of the oral public trial.[140] However, since it was postponed and rescheduled 12 times,[141] the trial began on January 31, 2011.[142]

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134 *Cf.* Decision of the First Instance Court of November 9, 2004 (annexes to the answering brief, folios 7706 and 7707).

135 *Cf.* Decision of the Superior Prosecutor of the state of Aragua of July 13, 2005 (annexes to the answering brief, folios 7758 and 7786).

136 *Cf.* Note of the prosecutor of November 21, 2005 (annexes to the answering brief, folio 7805); Note November 21, 2005 (annexes to the answering brief, folio 7807); Note of the prosecutor of April 29, 2006 (annexes to the answering brief, folio 7825), and Note of the prosecutor of April 29, 2006 (annexes to the answering brief, folio 7826).

137 *Cf.* Exhumation request of July 3, 2006 (annexes to the answering brief, folio 7861 and 7832); exhumation record of August 9, 2006 (annexes to the answering brief, folio 7877); Testimony of Jesús Delfín Martínez of December 12, 2006 (annexes to the answering brief, folio 7926), and brief of Ignacio Landaeta of November 1, 2006 (annexes to the answering brief, folio 7921), note of the prosecutor of November 2, 2006 (annexes to the answering brief, folio 7923), and report of May 17, 2007 (annexes to the answering brief, folio 7974 and 7975).

138 *Cf.* Note 05FT-0188-08 of April 18, 2005 (annexes to the answering brief, folio 8017 and 8020), and record of reconstruction of the incident of June 4, 2008 (annexes to the answering brief, folio 8061).

139 *Cf.* Indictment of the Prosecutor of December 15, 2008 (annexes to the answering brief, folios 8097 and 8128).

140 *Cf.* Order of May 4, 2009 (annexes to the answering brief, folio 8206).

114. Between January and December 2011, the court held 25 hearings to receive evidence and the arguments of the parties.[143]

115. On December 16, 2011, the Court delivered its judgment, in which it decided to acquit the three accused. Consequently, on March 16, 2012, the prosecutor filed a remedy of appeal against the first instance judgment, based on the failure to provide the reasoning for it, and owing to flaws in some notifications.[144]

116. On October 30, 2012, the Appellate Court decided to annul the appealed judgment and to order that a new oral trial be held, considering that the First Instance Court had dispensed with the statements of six persons opportunely proposed by the Public Prosecution Service without the lower court judge giving any reasons for dispensing with the said testimony.[145] The Court has no further and more up-to-date information in this regard.

117. On February 28, 2013, Ignacio Landaeta filed a brief before the General Inspectorate of Courts requesting the opening of a disciplinary administrative case against the first instance judge Nelson Alexis García Morales. This request was admitted on May 31, 2013, by the General Inspectorate of Courts;[146] however, the Court has no information on the investigations conducted in this regard.

VII
MERITS

118. Based on the rights of the Convention that have been alleged in this case, the Court will make the following analysis: (1) the rights to life and to humane treatment with regard to Igmar Landaeta; (2) the rights to personal liberty, to life, to humane treatment, and the rights of the child with regard to Eduardo Landaeta; (3) the rights to

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141 *Cf.* Attestation of November 10, 2009, indicating that the hearing was not held because there was no place to hold it (annexes to the answering brief, folio 8234); attestation of December 14, 2009, indicating that the hearing was not held because the prosecutor failed to appear (annexes to the answering brief, folio 8247); attestation of February 8, 2010, setting a new date for March 17, 2010 (annexes to the answering brief, folio 8262); attestation of March 19, 2010, indicating that the hearing was not held because there was no place to hold it (annexes to the answering brief, folio 8273); attestation of March 29, 2010, indicating that the hearing was not held, because the court was conducting other proceedings in the continuation of other trials (annexes to the answering brief, folio 8275); attestation of June 17, 2010, indicating that the hearing was not held because there was no place to hold it (annexes to the answering brief, folio 8298); attestation of July 16, 2010, indicating that the hearing was not held because the accused did not appear (annexes to the answering brief, folio 8314); attestation of September 24, 2010, indicating that the hearing was not held because the defense indicated that he was unwell (annexes to the answering brief, folio 8332); attestation of September 24, 2010, indicating that the hearing was not held owing to the number of continuations of trials to be held that day (annexes to the answering brief, folio 8347); attestation of November 15, 2010, indicating that the hearing was not held because the defense did not appeared (annexes to the answering brief, folio 8363), and attestation of December 9, 2010, indicating that the hearing was not held because the defense did not appeared (annexes to the answering brief, folio 8371).

142 *Cf.* Record of the First Instance Court on the opening of the oral public trial on January 31, 2011 (annexes to the answering brief, folio 8398).

143 *Cf.* Records of the oral public trial of January 31; February 10 and 21; March 10 and 25; April 7 and 26; May 3, 17 and 31; June 16; July 8 and 25; August 4; September 27; October 4 and 17; November 1, 15 and 28, and December 9, 12, 15 and 16, 2011 (annexes to the answering brief, folios 8398, 8411, 8423, 8453, 8475, 8506, 8565, 8600, 8649, 8700, 8730, 8740, 8752, 8772, 8796, 8809, 8821, 8855, 8860, 8871, 8881, 8888, 8896 and 8911).

144 *Cf.* Judgment of the First Instance Court of December 16, 2011 (annexes to the answering brief, folios 8973 and 8974), and Remedy of appeal filed by the Prosecutor on March 16, 2012 (annexes to the answering brief, folios 9042 to 9047).

145 *Cf.* Judgment of the Appellate Court of October 30, 2012 (merits file, folios 927, 930 and 931).

146 *Cf.* Communication of Ignacio Landaeta of February 28, 2013 (merits file, folio 937), and Note IGT N° 1607-13 of May 31, 2013 (merits file, folio 933).

judicial guarantees and judicial protection, and (4) The right to personal integrity of the next of kin.

VII-1
RIGHTS TO LIFE AND TO HUMANE TREATMENT, IN RELATION TO THE OBLIGATION TO RESPECT AND ENSURE THESE RIGHTS WITH REGARD TO IGMAR ALEXANDER LANDAETA MEJÍAS

A. Arguments of the parties and of the Commission

119. The Commission indicated that the cases of the Landaeta brothers have elements in common with the context of extrajudicial executions in Venezuela: the profile of the victims, the impact of the context in the state of Aragua; the actions of the police authorities after the facts, and the situation of impunity. In its final written observations, the Commission specified that it was not alleging that there was a "State policy," but rather a problem of extrajudicial executions mainly by police agents in the region. In particular, in the case of Igmar Landaeta, the Commission determined that the State had violated the obligation to respect the rights established in Articles 4 and 5 of the Convention in his regard. In relation to his death, the Commission considered that Igmar Landaeta had been extrajudicially executed and that, even if he had been armed and had fired at the police agents, the State had not justified the use of force based on the principles of necessity and proportionality, at least in the case of the second shot in the victim's face. The Commission also noted the illegality of the actions of the police agents involved, owing to the absence of identification (they wore civilian clothing and were driving in a vehicle that was not identified as being a police car), as well as their attitude following the death, when transporting the corpse to the medical center without providing any explanation of what had happened, which amounts to additional evidence of the arbitrary nature of the use of force in this case. The Commission also considered it reasonable to infer that the young man experienced profound fear when he was wounded and was begging the agents not to kill him, which constituted a violation of the obligation to respect the right to humane treatment, as well as the lack of a serious and diligent investigation to clarify what happened, in relation to Article 1(1) of the Convention.

120. The representatives agreed with the Commission in general, but asserted that the presumed victim was unarmed and did not represent a danger or threat to the police agents who intercepted him. The representatives also affirmed that the State's responsibility was engaged because: (a) the execution of Igmar Landaeta was committed by agents of the State; (b) the agents used disproportionate lethal force; (c) the State failed to adopt the appropriate measures to ensure an effective investigation of the incident, and (d) the victim experienced profound suffering at the moment of his death. In addition, they indicated that the extrajudicial execution of Igmar Landaeta was not an isolated incident, and should have been investigated in the more general context of the extrajudicial executions that were occurring in the country at that time. They also indicated that the threats and harassment reported by his mother had not been taken into account. The representatives concluded that the State was responsible for the extrajudicial execution of Igmar Landaeta by State agents, in violation of Article 4 of the Convention. They also indicated that "he experienced anxiety and anguish with regard to his life and personal integrity, as well as severe physical, psychological and mental suffering owing to his uncertain future, before he was a victim of extrajudicial execution"; therefore, the State was responsible for the violation of Article 5 of the Convention to his detriment.

121. Meanwhile, the State asserted that the entry in the logbook for November 18, 1996, records that the agents attached to the CTPJ, Mariño Division, "had a gun battle with an individual called Landaeta." However, the State clarified that the confrontation

occurred with agents of the Aragua State Police, known as the Operations Support Brigade, of Police Zone No. 09, Tumero, state of Aragua. It indicated that the circumstances of the death of Igmar Landaeta had not been fully clarified by the eyewitnesses.

B. Considerations of the Court

122. The Inter-American Court has established that the right to life plays a fundamental role in the American Convention, because it is the essential presumption for the exercise of the other rights. States have the obligation to guarantee the creation of the conditions required to ensure that violations of this inalienable right do not occur and, in particular, the obligation to prevent its agents from violating this right. Observance of Article 4, in relation to Article 1(1) of the American Convention, not only supposes that no one may be deprived of their life arbitrarily (negative obligation), but also that States are required to take all appropriate measures to protect and to preserve the right to life (positive obligation),[147] in accordance with the obligation to ensure to all persons subject to their jurisdiction the full and free exercise of their rights.[148]

123. The Court recalls that the use of force must be examined in any case in which force has been deployed and in which State agents have killed or injured anyone. In view of the fact that Igmar Landaeta lost his life owing to a supposed confrontation with police intelligence agents, the Court will now analyze the facts of this case in light of its consistent case law on the right to life in relation to the obligations to respect and to ensure rights and with regard to the use of force,[149] in order to rule on the alleged violation of this right.

124. Accordingly, the Court takes note of the different international instruments in this regard and, in particular, the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the Code of Conduct for Law Enforcement Officials[150] (hereinafter, "the Principles on the Use of Force" and "the Code of Conduct," respectively). On this basis, as indicated by this Court in the case of *Nadege Dorzema v. Dominican Republic,*[151] the Court will analyze the use of force by State agents, taking into account three essential moments:[152] (a) preventive actions; (b) actions at the time of the incident, and (c) actions following the incident.

B.1 Preventive actions: lawfulness and exceptionality of the use of force in relation to the obligations to ensure rights and to adapt domestic law

125. The facts of the case and the evidence provided in the proceedings before the Court reveal that, at the time of the facts, Venezuela did not have laws establishing parameters for the use of force by State agents. In this regard, during the public hearing

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147 *Cf. Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits.* Judgment of November 19, 1999. Series C No. 63, para. 144, and *Case of Luna López v. Honduras. Merits, reparations and costs.* Judgment of October 10, 2013. Series C No. 269, para. 117.

148 *Cf. Case of Velásquez Rodríguez. Preliminary objections, supra,* para. 91, and Case of *Gutiérrez and family members supra*, para. 97.

149 *Cf. Case of Montero Aranguren et al. (Retén de Catia) v. Venezuela. Preliminary objection, merits, reparations and costs.* Judgment of July 5, 2006. Series C No. 150, paras. 67 and *ff.,* and *Case of Nadege Dorzema et al. v. Dominican Republic. Merits, reparations and costs.* Judgment of October 24, 2012. Series C No. 251, para. 77.

150 *Cf.* United Nations, Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Havana, Cuba, from 27 August to 7 September 1990, and Code of Conduct for Law Enforcement Officials, adopted by General Assembly resolution 34/169, of 17 December 1979.

151 Cf. Case of Nadege Dorzema et al., supra, para. 78.

152 *Cf.* Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, *supra,* Principles Nos. 5, 6, 7, 11(f), 22 and 23, and Code of Conduct, *supra,* articles 1 to 8.

and as helpful evidence,[153] the Court asked the State to forward the domestic laws on the use of force by police agents at the time of the events and at the present time. In response, the State forwarded legislation post-2006, but not the laws in force at the time of the events, even though the Court repeated its request on several occasions. Consequently, the Court has no proof of the existence of such legislation.[154]

126. The Court reiterates that, regarding the use of force, it is essential that the State: (a) has an appropriate legal framework regulating the use of force that ensures the right to life; (b) provides appropriate equipment to the agents responsible for the use of force, and (c) selects and trains these agents properly. In particular, with regard to the obligation to ensure rights, the Court has established that the State has the duty to adapt its domestic laws and "to ensure that its security agencies that are entrusted with the legitimate use of force respect the right to life of those who are subject to the State's jurisdiction."[155] The State must establish precise internal policies in relation to the use of force and identify strategies to implement the Basic Principles on the Use of Force and the Code of Conduct.[156] "Thus, it must equip its agents with different types of weapons, ammunition and protective equipment that will allow them to react in a way that is proportionate to the incidents in which they must intervene, limiting the use of lethal weapons that can cause injury or death to the greatest extent possible."[157] In addition, the State must provide courses for its agents to ensure they know the legal provisions that allow the use of firearms and that they have adequate training so that if they are ever faced with a decision on whether to use them, they have the necessary knowledge to do so.[158] This also applies to intelligence work and, thus, to this case.[159]

127. In this regard, in light of Article 2 of the Convention, the Court has indicated that "[t]he general obligation [resulting from this article] entails the adoption of measures of two types. On the one hand, the elimination of norms and practices of any nature that entail the violation of the guarantees established in the Convention and, on the other,

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153 Communication of the Secretariat of February 14, 2014 (CDH-12,606/083) and Communication of the Secretariat of May 20, 2014 (CDH-12,606/099) (merits file, folios 951 and 1225, respectively).

154 Furthermore, the CONAREPOL report (*supra* para. 51) does not reveal the existence of domestic laws concerning the use of force by police agents at the time of the events. The report indicated that, "[a]s regards legislation, the most important efforts relate[d] to the attempts to change the structure of the police transforming it into a "National Police Service" or creating a National Police, a matter that was being debated by the National Assembly even during the diagnosis process. The discussion [was] not new, because already in 1974 the Ministry of the Interior at the time [had] drafted the "Bill on the Organic Law of the National Police"; in 1976, another bill was presented entitled "Organic Law of National Police Services"; in 1987, COPRE presented Congress with an "Organic Law of the Police" and, in 1990, a new bill was presented, "Organic Law of the Federal Police." At this time, with a new constitutional framework that establishes the creation of a national police force, discussions have still not led to a definitive bill." It should be noted that, in 2008, the Organic Law of the Police Service and of the Bolivarian National Police Force was approved establishing the progressive and differentiated use of force by the police.

155 Case of Montero Aranguren et al. (Retén de Catia), supra, para. 66, and Case of Nadege Dorzema et al., supra, para. 80.

156 Cf. Case of Montero Aranguren et al. (Retén de Catia), supra, para. 75, and Case of Nadege Dorzema et al., supra, para. 80.

157 *Case of Nadege Dorzema et al., supra,* para. 80, and Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, *supra,* Principle 2.

158 *Cf. Case of El Caracazo v. Venezuela. Reparations and costs*. Judgment of August 29, 2002. Series C No. 95, para. 127, and *Case of Nadege Dorzema et al., supra,* para. 81. *Cf.* European Court of Human Rights (ECHR), Case of McCann and Others v. The United Kingdom [GS], No. 18984/91. Judgment of 27 September 1995, para. 151, and Case of Kakoulli v. Turkey, No. 38595/97. Judgment of 22 November 2005, paras. 109 and 110.

159 In the *Case of Myrna Mack Chang v. Guatemala* the Court concluded that: "[t]he measures aimed at controlling intelligence work should be particularly strict because, given the confidential conditions in which such activities are carried out, they may result in the perpetration of human rights violations. The intelligence agencies should, *inter alia*: (a) always respect the fundamental rights of the individual, and (b) be subject to the control of the civilian authorities, including not only the Executive branch, but also other public authorities, as pertinent." *Cf. Case of Myrna Mack Chang v. Guatemala. Merits, reparations and costs*. Judgment of November 25, 2003. Series C No. 101, para. 284.

the enactment of laws and the implementation of practices leading to the effective observance of those guarantees."[160]

128. Since the parties did not allege the violation of Article 2 of the American Convention, the Court deems it pertinent to apply the *iura novit curia* principle, which is strongly supported in international case law, and which allows the Court to examine the possible violation of provisions of the Convention that have not been alleged in the briefs presented by the parties, provided that the parties have had the opportunity to state their respective positions in relation to the facts that substantiate this.[161] The Court has used this principle on different occasions since its first judgment[162] to declare the violation of rights that have not been alleged directly by the parties, but that are revealed by the analysis of the facts in dispute, because this principle authorizes the Court to classify the disputed situation or legal arguments differently to the way in which they were classified by the parties, provided that it respect the factual framework of the case.[163]

129. Based on the above, the State did not comply, at the time of the facts, with its obligation to ensure the right to life by appropriate legislation on the use of force. Consequently, it also failed to prove that it had provided training on this matter to law enforcement agents, in violation of the obligation to ensure the right to life, and the obligations arising from Article 2 of the American Convention.[164]

B.2 Actions at the time of the incident: legitimate purpose, absolute necessity and proportionality, in relation to the obligation to respect rights

130. The Court has indicated that, "during an incident in which force is used, the State agents, insofar as possible, must assess the situation and draw up a plan of action prior to intervening."[165] Consequently, police operations should be aimed at the arrest of the presumed offender and not at the deprivation of his life.

131. As a general rule, the use of firearms is established as a measure of last resort in light of both domestic and international law. Thus, the Basic Principles on the Use of Force establish that "[l]aw enforcement officials shall not use firearms against persons

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160 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 Norín Catrimán et al. (Leaders, members and activist of the Mapuche Indigenous People), supra, para. 175.

161 *Cf. Case of Velásquez Rodríguez. Merits, supra,* para. 163, and *Case of Furlan and family members v. Argentina. Preliminary objections, merits, reparations and costs.* Judgment of August 31, 2012. Series C No. 246, para. 55.

162 For example, in the following cases, *inter alia*, the Court declared the violation of rights that had not been cited by the parties in application of the *iura novit curia* principle: (i) in the case of *Velásquez Rodríguez v. Honduras* it declared the violation of Article 1(1) of the Convention; (ii) in the case of the Sawhoyamaxa Indigenous Community *v. Paraguay* it declared the violation of Article 3 of the American Convention; (iii) in the case of the *Ituango Massacres v. Colombia* it declared the violation of Article 11(2) of the Convention; (iv) in the case of *Bueno Alves v. Argentina* it declared the violation of Article 5(1) of the American Convention to the detriment of the next of kin of Mr. Bueno Alves; (v) in the case of *Kimel v. Argentina* it declared the violation of Article 9 of the American Convention; (vi) in the case of *Heliodoro Portugal v. Panama* it declared the violation of Article I of the Inter-American Convention on the Forced Disappearance of Persons, in relation to Article II of this instrument; (vii) in the case of *Bayarri v. Argentina* it declared the violation of Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture; (viii) in the case of *Usón Ramírez v. Venezuela* it declared the violation of Article 9 of the American Convention; (ix) in the case of *Vélez Loor v. Panama* it declared the violation of Article 9 of the American Convention, and (x) in the case of *Furlan and family members v. Argentina* it declared the violation of Article 5 of this instrument.

163 Cf. Case of Bueno Alves v. Argentina. Merits, reparations and costs. Judgment of May 11, 2007. Series C No. 164, para. 70, and Case of Furlan and family members, supra, para. 55.

164 Cf. Case of Nadege Dorzema et al., supra, para. 82.

165 Cf. Case of Montero Aranguren et al. (Retén de Catia), supra, para. 67, and Case of Nadege Dorzema et al., supra, para. 84.

except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life."[166]

132. With regard to the facts surrounding the death of Igmar Landaeta, the Court observes that the arguments and the evidence provided indicate two versions of what happened (*supra* para. 59), which reveal certain differences in how the events occurred. Therefore, it is for domestic law to clarify the facts and to determine individual responsibilities. However, according to the Court's case law, it should be recalled that, "in any case of the use of force [by State agents] that has caused the death of, or injuries to, one or more individuals, the State has the obligation to provide a satisfactory and convincing explanation of what happened and to disprove the allegations of its responsibility with adequate probative elements."[167]

133. Based on the evidence provided by the parties and the Commission, the Court notes that, despite the different versions, the following facts are not disputed (*supra* paras. 60, 61, 62 65, 64, 66 and 79): (a) two individuals in civilian clothing, who were police agents carrying out intelligence work, pursued Igmar Landaeta; (b) the agents used their weapons against Igmar Landaeta, who was hit by two bullets; (c) according to the autopsy, the two shots had different trajectories: (i) the first with "entry hole [located in] the ninth back left intercostal space towards the internal scapular region [and with] the exit hole [located in] the sixth right parasternal intercostal space, [its] trajectory was from the back towards the front, from above to below, from left to rights, and (ii) the second with an "entry hole on the bridge of the nose, with a halo of bruising around it, and a rough, irregular exit hole [in] the right parietal occipital region, [its] trajectory was from front to back, from left to right, from above to below"; (d) the second shot was lethal and caused "death [from] severe cerebral contusion, [owing to] a facio-cranial gunshot wound," and (e) the body of Igmar Landaeta was transported from the scene of the incident to the Outpatient Clinic, where it was deposited in the emergency ward.

B.2.1 The use of force in the case of Igmar Alexander Landaeta Mejías

134. If the use of force becomes unavoidable, it must be used in accordance with the principles of legitimate purpose, absolute necessity, and proportionality:

i. Legitimate purpose: the use of force must be addressed at achieving a legitimate purpose.[168] According to the version of the supposed confrontation, this purpose consisted in detaining Igmar Landaeta, who had run away after the intelligence agents had presumably ordered him to halt while he was engaged in the hand-over of a firearm (*supra* para. 65). Subsequently, according to the agents, in response to shots fired by Igmar Landaeta, they used their firearms to repel the attack and to subdue him (*supra* para. 65). The Court has already indicated the absence of specific legislation on this

[166] *Case of Montero Aranguren et al. (Retén de Catia), supra*, para. 69, and *Case of Nadege Dorzema et al., supra,* para. 84. *Cf.* Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, *supra,* Principle 9.

[167] *Case of Montero Aranguren et al. (Retén de Catia), supra,* para. 80, and *Case of Nadege Dorzema et al., supra, para*. 89.

[168] *Cf. Case of Nadege Dorzema et al., supra*, para. 85, and Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, *supra*, Principles No. 1, 7, 8 and 11.

matter, even though general norms exist on bearing firearms and their use for legitimate defense or public order.[169]

ii. Absolute necessity: it is necessary to verify whether other less harmful means exist to safeguard the life and integrity of the person or situation that it is sought to protect, according to the circumstances of the case.[170] The Court has indicated that it cannot be concluded that the requirement of "absolute necessity" to use force against a person has been met when such a person does not represent a direct danger, "even when the failure to use force results in the loss of the opportunity to capture them."[171] The facts of this case could, in principle, fit the hypothesis of preventing escape and/or repelling attack. The Court considers that, consequently, the use of force could be justified in response to the possible direct threat to the agents or to third persons owing to the supposed confrontation, but it should have been used as the measure of last resort.

iii. *Proportionality*: the level of force used must be in accordance with the level of resistance offered,[172] which implies establishing a balance between the situation that the agent is facing and his response, considering the potential harm that could be caused. Thus, agents must apply a standard of differentiated use of force, determining the level of cooperation, resistance, or aggressiveness of the person involved and, on this basis, use tactics of negotiation, control or use of force, as appropriate.[173]

135. In order to avoid confusion and uncertainty, it is essential that law enforcement officials identify themselves as such and give a clear warning of their intention to use their weapons at all times[174] and, in particular, in situations that, owing to their nature, endanger the fundamental rights of the individual.

136. To determine the proportionality of the use of force, the severity of the situation that the agent faces must be assessed. To this end, among other circumstances, it is

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169 Articles 282, 65 and 66 of the Criminal Code, in force at the time of the events, established: "Article 282. The persons referred to in articles 280 and 281 may only use their weapons in case of legitimate defense or defense of public order. If they use such weapons improperly, they shall be subject to the penalties imposed by articles 278 and 279, as applicable, in addition to the punishments corresponding to the offense in which they have incurred by the use of the said weapons"; "Article 65. The following shall not be penalized: 1. Anyone acting in compliance with a duty or in legitimate exercise of a right, authority, position or function, within the legal boundaries. […] 3. Anyone who acts in self-defense or to defend his rights, provided that this is in the following circumstances: 1. Unlawful attack by the individual who is finally the victim of the event. 2. Necessity of the means used in order to prevent or repel the unlawful attack. 3. Lack of sufficient provocation by the individual who claims to have acted in self-defense," and "Article 66. Anyone who crosses the boundaries imposed by the law in the case of the first paragraph of the preceding article, or by the authority who gave the order in the case of the second paragraph of that article, and anyone who uses excessive force in self-defense, or in the means used to safe himself from grave and imminent danger, doing more than necessary, shall be penalized with the corresponding punishment, reduced by one-third to two-thirds. The pecuniary penalty shall be applied reduced by half."

170 *Cf. Case of Montero Aranguren et al. (Retén de Catia), supra,* paras. 67 to 68, and *Case of Nadege Dorzema et al., supra,* para. 85 ii). *Cf.* Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, *supra*, Principle 4.

171 *Case of Nadege Dorzema et al., supra,* para. 85.ii), and ECHR, *Case of Kakoulli v. Turkey, supra,* para. 108.

172 *Cf. Inter alia, Case of Zambrano Vélez et al. v. Ecuador. Merits, reparations and costs.* Judgment of July 4, 2007. Series C No. 166, para. 85, and *Case of Nadege Dorzema et al., supra,* para. 85.iii). Cf. Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, supra, Principles No. 5 and 9.

173 *Cf. Case of Nadege Dorzema et al., supra,* para. 85 iii), and Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, *supra,* Principles No. 2, 4, 5 and 9.

174 "In the circumstances provided for under principle 9, law enforcement officials shall identify themselves as such and give a clear warning of their intent to use firearms, with sufficient time for the warning to be observed, unless to do so would unduly place the law enforcement officials at risk or would create a risk of death or serious harm to other persons, or would be clearly inappropriate or pointless in the circumstances of the incident." *Cf.* Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, *supra,* Principle 10.

necessary to consider: the level of intensity and danger of the threat; the attitude of the individual; the conditions of the surrounding area, and the means available to the agent to deal with the specific situation. In addition, this principle requires the law enforcement agent, at all times, to reduce to a minimum the harm or injuries caused to anyone, as well as to use the lowest level of force required to achieve the legitimate purpose sought.

137. In this case, despite the statements of six eyewitnesses indicating that they had not seen that Igmar Landaeta was armed, bullet trajectory analyses and fingerprint tests on his right hand gave positive results, so that, in the hypothesis that he had fired at the agents, according to the principle of proportionality, the measures used to repel the attack should have considered a differentiated use of force. Even in the hypothesis of an armed confrontation, the Court considers that, from the evidence assessed, both the shots fired by the State agents were extreme, in other words, high-risk; the first in the top part of the shoulder, which reveals an advantage in the position of the agents and supports the versions that Igmar Landaeta was running, and the second in the bridge of the nose, which killed him owing to severe cerebral contusion.

138. Thus, beyond the supposed "order to stop" and the shots in the air mentioned by the agents, who were not wearing badges to identify themselves, the State has not proved that the least harmful means were used to achieve the intended result, consisting in subduing Igmar Landaeta.

139. In addition, four statements[175] by neighbors (eyewitnesses) who lived in front and at both sides of the place where the body of Igmar Landaeta fell, included the same version that he had begged them not to kill him ("don't kill me, don't kill me"), and after they heard shots they saw him wounded by a bullet with blood on his face, and watched while the agents took him away in a white car (*supra* paras. 61 and 63). Regarding the second shot, expert witness Baraybar indicated that the characteristics of the injury to the face with "entry hole with a halo of bruising around it, correspond to an injury resulting from a firearm 'from a distance'[176] on the nasal septum as indicated in the examination report […] [i]t can be inferred that […] (the injury in part of the head) occurred when he was on the ground."[177] In addition, the Court notes that the body of Igmar Landaeta was transported from the scene of the incident and deposited, lifeless, in the Outpatient Clinic (*supra* para. 64). Moreover, the Second Court and the first decision adopted by the Appellate Court mentioned that the "second shot should not have been necessary"[178] and that there was "a disproportion between the harm caused by the agent and [Igmar Landaeta's] intention of committing an unlawful act."[179]

140. In addition, the Court notes certain inconsistencies in the statements of the two witnesses who supported the version of the agents. The statements reveal that one of the witnesses (July Esther Zacarías de Villanueva) was the sister of police agent CJZM,

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175 *Cf.* Testimony of witnesses Adeisa de la Trinidad Moffi Garcia, Vicmar Loydinet Colmenares Acosta, Francisca Acosta Jaspe and Jesús Chávez Cristin (annexes to the answering brief, folios 9135; 9141, 9142 and 9300; 9128 and 9296; and 9336, respectively).

176 Expert witness José Pablo Baraybar indicated that "Then we have to ask ourselves whether a person lying on the ground, as is the case of [Igmar Landaeta] that has already been established, could have received a shot 'from a distance' in the face from someone who was at a higher level; for example, either standing beside or above him. The answer is clearly positive, because the average measurement between the barrel of a pistol held by an adult with his arm extended is more than 50 cm." *Cf.* Testimony of expert witness José Pablo Baraybar of January 29, 2014 (merits file, folio 834).

177 Testimony of expert witness José Pablo Baraybar of January 29, 2014 (merits file, folios 832 to 833 and 843).

178 *Cf.* First instance judgment of the Second Court of the Transitory Procedural Regime, Judicial District of the state of Aragua of October 13, 2000 (annexes to the answering brief, folio 9605).

179 *Cf.* Judgment of the Appellate Court of April 25, 2002 (annexes to the answering brief, folio 9673).

who had threatened the Landaeta brothers before their death.[180] Also, one of the eyewitnesses (Adeisa de la Trinidad Moffi García) indicated that she was the woman who got out of the agents' white car (*supra* para. 62). In this regard, July Zacarías stated that she ran towards the agents to see what had happened and they told her that she should go home. However, the police agents did not mention this situation. In addition, the other witness (José Gregorio del Rosso Dona) indicated that he saw the incident because he was passing through the area and that, the following day, when he learned about the incident on the news, he decided to go and testify without being summoned by the authorities.[181] Meanwhile, agent GACF stated that he and AJCG threw themselves on the ground and fired from there, which does not concur with the trajectories of the bullets in the body of Igmar Landaeta. Even though all these statements support the hypothesis of the confrontation, they do not reveal clearly the sequence of the injuries and how the shot in the nasal septum occurred, or how, following this, Igmar Landaeta could still have been alive in order to be taken from the scene of the incident (*infra* para. 146). The State, in its defense before the Court, merely cited domestic procedures, without either corroborating or disproving any of the versions. In this regard, the State did not present consistent, congruent, reliable and sufficient evidence to consider that the deployment of lethal force against Igmar Landaeta, in the circumstances of the incident, was proportionate, or that the police agents who took part in the operation had attempted other less lethal means.[182]

141. Consequently, regardless of the complete reliability of such evidence, the narration of the facts, and the probative elements, the Court notes that the use of lethal force would not have been necessary, so that it finds that, in particular, the second shot exceeded the proportionality of the use of force that could be used to achieve the supposed objective sought, consisting in the detention and/or subduing of Igmar Landaeta. Also, considering the above-mentioned problem of police abuse at the time of the events and the threats made against the family by the same agents, the Court finds that there are sufficient indications to consider that the second shot, when Igmar Landaeta was lying on the ground, was deliberate.

142. The Court has established that when State agents use unlawful, excessive or disproportionate force resulting in the loss of life, this is considered an arbitrary deprivation of life.[183] Consequently, the death of Igmar Landaeta, caused while he was being pursued, was the result of the disproportionate use of force owing to the actions of the law enforcement agents, which constituted an arbitrary deprivation of life that can be attributed to the State in violation of Article 4 of the American Convention, to the detriment of Igmar Landaeta.

B.3 Actions following the incident: due diligence and humanity in relation to the obligation to respect and ensure the right to life

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180 July Esther Zacarías de Villanueva was the sister of Carlos Julio Zacarías Moreno and testified in favor of the hypothesis of the confrontation of the police agents. *Cf.* Testimony of July Esther Zacarías de Villanueva of November 19, 1996 (annexes to the answering brief, folio 9180). From statements made in the domestic sphere, it can be inferred that July Esther Zacarías de Villanueva appears to have known the police agents before the incident, and some eyewitnesses stated that they had seen her in the white car during the events. July Zacarías denied these allegations (annexes to the answering brief, folios 9181, 9212 and 9282).

181 José Gregorio del Rosso Dona stated that, supposedly, he was in a brown car 50 meters from the scene of the incident and saw what happened; he was asked if he was able to see any woman or women after Igmar Landaeta had fallen to the ground injured, to which he responded that he only saw a woman who came out of her house but who did not approach the scene of the incident. *Cf.* Testimony of José Gregorio del Rosso Dona of November 19, 1996 (annexes to the answering brief, folio 9224).

182 Cf. Case of Zambrano Vélez et al., supra, para. 110, and Case of Nadege Dorzema et al., supra, para. 89.

183 Cf. Case of Montero Aranguren et al. (Retén de Catia), supra, para. 68, and Case of Nadege Dorzema et al., supra, para. 92.

143. Regarding actions subsequent to the use of force, the Court has affirmed that, pursuant to the Basic Principles on the Use of Force, if injuries occur following the use of force, the necessary medical aid must be facilitated and rendered and relatives or close friends notified at the earliest possible moment.[184] In addition, a report on the situation must be prepared for administrative review and judicial control.[185] Similarly, the events must be investigated in order to determine the level and manner of participation of each of those who intervened, whether directly or indirectly, so that the corresponding responsibilities may be established[186] (*infra* para. 242).

144. The Court has noted that, following the incident in which Igmar Landaeta lost his life, the agents who shot him transported him to the Outpatient Clinic, taking approximately 20 minutes, and leaving him in the emergency ward, following which they withdrew without identifying themselves. According to the statement of the doctor who received the body of Igmar Landaeta, there were no signs of life (*supra* para. 64).

145. In this regard, the Court notes that the judgment of the Third Superior Criminal of November 11, 1997, established that:

> "In the opinion of the Superior Court, this constitutes a kind of behavior that it not in keeping with the regulations and functions of any police agent who participates in an incident such as the one we are examining, because when an incident in which a human being loses his life arises, any law enforcement agent should wait – either at the scene of the incident or, in this case, at the place where the deceased was left – for the arrival of the auxiliary unit of the courts of the Republic of Venezuela, such as the Technical Unit of the Judicial Police, to open the investigation to determine exactly how the events transpired."[187]

146. The Court finds that the actions of the State agents were not in keeping with the above-mentioned principles of due diligence and humanity that must be observed following the deployment of force. In particular, neither the autopsy report nor the death certificate indicate the exact time and/or moment of the death of Igmar Landaeta (*infra* para. 232).[188] However, if the second shot would have killed him immediately, as indicated by expert witness Baraybar,[189] the body should not have been manipulated or transported from the scene of the crime, because this could have drastically affected the collection of evidence. If he had required medical aid, the State agents should have obtained immediate trained ancillary care. If they had transported him alive, they should have delivered him to the competent medical authorities, identified themselves, explained what had happened, and prepared a report on the situation, supervised by an administrative and/or judicial official, and have notified the victim's family (*supra* para. 143). All this has not been substantiated in the instant case, so that the State failed to provide assistance to Igmar Landaeta with due diligence and humanity. In addition, it did not investigate or penalize the said actions by administrative, disciplinary or judicial mechanisms.

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184 *Cf. Case of Nadege Dorzema et al., supra*, para. 100, and Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, *supra*, Principle 5 (c) and (d).

185 *Cf. Case of Nadege Dorzema et al., supra*, para. 100, and Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, *supra*, Principle 6, 11 (f), and 22.

186 *Cf. Case of Montero Aranguren et al. (Retén de Catia)*, *supra*, paras. 79 to 83, and *Case of Nadege Dorzema et al., supra*, para. 100. *Cf.* Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, *supra*, Principles No. 6 and 22.

187 *Cf.* Ruling of the Third Superior Criminal Court of November 11, 1997 (annexes to the answering brief, folio 9379).

188 *Cf.* Certified copy of the death certificate of Igmar Landaeta (annexes to the answering brief, folio 9188), and Police record in which agent Idelgar Farrera registered the statement of Dr. Velmar Quintero of November 17, 1996 (annexes to the answering brief, folio 9111).

189 *Cf.* Testimony of expert witness José Pablo Baraybar of January 29, 2014 (merits file, folio 833).

B.4 Conclusion with regard to Igmar Alexander Landaeta Mejías

147. Therefore, the Court determines that, at the time of the events, the State did not have a legal framework or provide the relevant training to law enforcement agents, including intelligence agents. In addition, in response to the use of force against Igmar Landaeta, the State did not prove that it had respected the principle of proportionality, because extreme measures and lethal force were used that resulted in the arbitrary deprivation of his life. In addition, the State failed to comply with its obligation to provide assistance in keeping with the principles of due diligence and humanity to persons injured by the use of force. The foregoing violated the obligation to respect and ensure the right to life established in Article 4 of the American Convention, in relation to Articles 1(1) and 2 of this instrument, to the detriment of Igmar Landaeta.

148. Lastly, the Court notes that the representatives and the Commission alleged the violation of the right to humane treatment (Article 5 of the Convention) of Igmar Landaeta owing to the suffering he endured before his death. In this regard, the Court considers that it is not necessary to rule on other arguments relating to the same facts, because it finds that, in this case, this violation has been examined under Article 4 of the Convention.[190]

VII-2
RIGHTS TO LIFE, TO HUMANE TREATMENT, TO PERSONAL LIBERTY, AND RIGHTS OF THE CHILD, IN RELATION TO THE OBLIGATION TO RESPECT AND ENSURE THESE RIGHTS WITH REGARD TO EDUARDO JOSÉ LANDAETA MEJÍAS

A. Arguments of the parties and of the Commission

149. The Commission indicated, with regard to the right to personal liberty, that the detention of Eduardo Landaeta was unlawful and arbitrary, because it was implemented without a court order, and in the absence of a situation of *in flagrante delicto*, as required by domestic law. In addition, he was detained without his parents being informed immediately about his detention and its reasons, and without bringing him before a competent authority to conduct the respective judicial control. The Commission also indicated that it had no information that a public defender had been notified. The detention lasted two days without being subject to judicial control, so that the guarantee of "prompt judicial control" was violated. The Commission therefore indicated that the State had violated the guarantees established in Article 7(1), 7(2), 7(3), 7(4) and 7(5) of the American Convention, and that it did not take into account the presumed victim's special condition as a child, pursuant to the obligations established in Articles 19 and 1(1) of this instrument.

150. Regarding the right to life, the Commission determined that, once in State custody, the necessary measures were not taken to protect Eduardo Landaeta's life in his special situation of vulnerability, both because of his condition as a child and because of the threats he had received previously. In addition, numerous circumstantial factors point to the execution of Eduardo Landaeta by the police, such as: the death of his brother "a month and a half before"; the threats made by police agents, through his mother, including a death threat, and the warning given by two agents of the danger that Eduardo Landaeta was in when his father went to the police station. The State failed to conduct a diligent investigation in order to provide a satisfactory answer to the death of a child in its custody and to punish those responsible. In addition, it did not provide a definitive judicial response to what happened that would disprove the presumption of

[190] *Cf. Case of Fernández Ortega et al. v. Mexico. Preliminary objections, merits, reparations and costs.* Judgment of August 30, 2010. Series C No. 215, paras. 132, 150 and 202, and *Case of Luna López, supra,* para. 140.

direct responsibility. Consequently, the Commission concluded that the State was responsible for the violation of the obligation to respect and ensure the right to life recognized in Article 4 of the Convention in relation to the obligations established in Articles 19 and 1(1) of this instrument.

151. In relation to the right to humane treatment, the Commission indicated that, based on the autopsy report, it had been demonstrated that, in addition to the internal injuries caused by the bullets, Eduardo Landaeta's body had other injuries that suggested, *prima facie,* that the victim had been subjected to torture or other cruel treatment. This possibility entailed a duty of the State to open an investigation *ex officio* into the possible acts. In addition, the situation of unlawful and arbitrary deprivation of liberty of Eduardo Landaeta, without judicial control, added to the death of his brother, which had taken place "one month" earlier at the hands of agents of the same police corps, the threats he had received previously, and his condition as a child, constituted cruel and inhuman treatment that affected his mental and moral integrity. Hence, the Commission determined that the State failed to respect and ensure the rights recognized in Article 5(1) and 5(2) of the Convention to the detriment of Eduardo Landaeta, in relation to Articles 19 and 1(1) of the same instrument.

152. The representatives agreed with the violations alleged by the Commission. In particular, they specified that the detention of Eduardo Landaeta was unlawful and arbitrary because there had been no arrest warrant issued by a competent judge ordering, with a reasoned justification, the arrest of the minor, and it had not been proved that he was *in flagrante delicto*; rather, the arrest was merely based on suspicious activities and he was deprived of liberty for the purposes of an "inquiry." In addition, there was no reasoning given with evidence against him to justify it. The representatives also asserted that the police agents who detained Eduardo Landaeta and took him to the Police Station did not advise his father or mother immediately. They added that Eduardo Landaeta was subjected to severe psychological torture at the time he was transferred by the team of police agents, because he could anticipate his probable fate. Given the lack of evidence to the contrary, it may presumed that the injuries indicated in the autopsy report, such as the detachment of the skin of the right buttock and on both elbows, with the appearance of burns, marks on both wrists and the bruising on the lower lip, were caused by the police agents responsible for his custody. Lastly, the representatives indicated that there is sufficient evidence to conclude that the death of Eduardo Landaeta was the consequence of an extrajudicial execution committed by agents of the State.

153. The State referred to the statements corroborating the version of the execution of Eduardo Landaeta by armed and hooded individuals who intercepted the police vehicle. It indicated that the Public Prosecution Service had instituted criminal proceedings against the three police agents in whose custody Eduardo Landaeta was being transferred for the offense of aggravated intentional homicide, in the second degree, and misuse of a weapon. These proceedings ended in an acquittal, which was appealed and, as a result, the Appellate Court had ordered a new oral trial (*supra* paras. 115 and 116).

B. Considerations of the Court

154. The Court noted that, on December 29, 1996, at around 5.10 p.m., Eduardo José Landaeta Mejías, a minor of 17 years of age, was detained by agents of the Public Order and Security Corps (CSOP) of the state of Aragua, and taken to the Police Station of the district of San Carlos, in connection with a supposed inquiry by the Mariño Police Department and, subsequently, to the Central Command Station. Thus, he was detained by police authorities for more than 38 hours and, during a transfer to the CTPJ Mariño Police Department in the custody of police agents, he was deprived of his life.

155. In this regard, the Court will examine the alleged violations under the following headings: (a) right to personal liberty; (b) right to life, and (c) right to humane treatment, all in relation to the rights of the child.

B.1 Right to personal liberty in relation to the rights of the child

156. The Court has indicated that Article 7 of the Convention[191] establishes guarantees that represent limits to the exercise of authority by State agents. These limits apply to the State's control mechanisms, one of which is detention. This measure must be implemented in conformity with the guarantees recognized in the Convention, provided that its application is exceptional and respects the presumption of innocence and the principles of legality, necessity and proportionality, essential in a democratic society.[192]

157. The Court reiterates that children are entitled to all the rights recognized in the American Convention, in addition to the special measures established in Article 19 of this instrument;[193] consequently, any case involving a minor must include an examination of the rights of the child on a cross-cutting basis. Thus, the Court finds that, from the start of his detention, Eduardo Landaeta should have been afforded the treatment and the rights that corresponded to him as an underage adolescent (*infra* paras. 170 and 175).

B.1.1 Unlawful and arbitrary nature of the detention (Articles 7(2) and 7(3))

158. This Court has indicated, with regard to the specific guarantee of Article 7(2) of the Convention, that any requirement established by domestic law that is not met when depriving an individual of his liberty, will cause this deprivation to be unlawful and contrary to the American Convention. In other words, it is necessary to verify whether the detention is carried out in accordance with domestic law in order to establish whether the detention conforms to the Convention.[194]

159. In this regard, article 60 of the 1961 Constitution of Venezuela, in force at the time of the events, indicated that: "no one may be arrested or imprisoned, unless that have been surprised *in flagrante delicto*, without a written order from an official authorized to order the detention, in the cases and respecting the formalities established by law." In addition, it indicated that "if a wrongful act has been committed, the police authorities may adopt the provisional measures, based on necessity or urgency, essential to ensure the investigation of the act." In addition, article 182[195] of the Code of Criminal Procedure

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191 The Court has established that Article 7 of the Convention includes two types of regulations: one general and the other specific. Thus, with regard to the general obligation, the Court recalls that: any violation of paragraphs 2 to 7 of Article 7 of the Convention necessarily entails the violation of Article 7(1) thereof." *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador. Preliminary objections, merits, reparations and costs.* Judgment of November 21, 2007, Series C No. 170, para. 54, and *Case of Norín Catrimán et al. (Leaders, members and activist of the Mapuche Indigenous People) v. Chile, supra,* para. 308.

192 *Cf. Case of the "Juvenile Re-education Institute" v. Paraguay. Preliminary objections, merits, reparations and costs.* Judgment of September 2, 2004. Series C No. 112, para. 268, and *Case of Norín Catrimán et al. (Leaders, members and activist of the Mapuche Indigenous People), supra,* para. 310.

193 *Cf. Case of the "Juvenile Re-education Institute" v. Paraguay, supra, para*. 147, and Rights and guarantees of children in the context of migration and/or need of international protection. Advisory Opinion OC-21/14 of August 19, 2014. Series A No. 21, para. 66.

194 *Cf. Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador, supra,* para. 57, and *Case of J. v. Peru, supra,* para. 126.

195 Article 182 del Code of Criminal Procedure, in force at the time, established: "Provided that it has been fully proved that a wrongful act has been committed that warrants imprisonment, evidently without the corresponding criminal action having prescribed, and there is well-founded evidence of a person's guilt, the investigative court shall order the detention of the suspect, by means of a reasoned order that shall contain: 1. The name and surname of the suspect and any other information that helps to identify him. 2. A brief account of the factual and legal grounds for the arrest warrant and the provisional classification of the offense. The investigative court, if it has access to the accused, shall issue an order of imprisonment that it shall forward to the official in charge of the corresponding detention center. This order shall contain: (a) the name of the court that issues it; (b) the information on the identity of the accused; (c) the classification of the offense in the

in force at the time regulated this constitutional norm and established the specific rules for ordering a detention, by indicating that "the investigative court shall order the detention of the suspect by a reasoned order." Also, article 183[196] established that no one could be detained without meeting the requirements established in article 182, unless it was *in flagrante delicto* as established in article numeral 184[197] of that Code.

160. Regarding the detention of minors, the Court notes that, in the instant case, the State forwarded the Law for the Protection of Minors of December 30, 1980, which was in force at the time of the events, as helpful evidence. Article 99 of this law established that in "any police investigation activity in which children under 18 years of age are involved, the Children's Attorney shall be present." In addition, "if a minor is deprived of his liberty, and the Juvenile Judge has not been informed of his detention, the parents, the legal representative, the guardian, the Children's Attorney, or the National Children's Institute may request the Juvenile Judge to hear the case and immediately order the corresponding measures of protection."[198] However, this Law for the Protection of Minors did not describe the proceeding or its guarantees, other than indicating the authority that should receive the case file.

161. In cases involving minors, the Court has stated that the content of the right to personal liberty cannot be separated from the best interests of the child, and the State's position of guarantor with regard to children.[199] In this regard, Article 37(b) of the Convention on the Rights of the Child, ratified by Venezuela in 1990, establishes that "States Parties shall ensure that: (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time."[200]

162. The Court takes note of the opinion given by expert witness Diego Camaño before the Court, that:

> "The State's first obligation is to possess a specific legal framework that establishes clearly the causes and conditions under which State agents may proceed to deprive an adolescent of his personal liberty. This supposes that it has criminal and procedural laws that reflect the specificity of the rights of anyone under 18 years of age, based on the guiding principle of the best interests of the child. These laws must be in keeping with the paradigms of comprehensive protection that arise from the

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arrest warrant, and (d) the date of issue and the signature of the judge and of the clerk of the court. If the accused is not detained, the court shall issue an arrest warrant to the police authorities, indicating the identity of the suspect and the place where he is, if this is known. If it is not known, a search warrant shall be issued."

196 Article 183 of the Code of Criminal Procedure, in force at the time, established: "No one may be detained without meeting the requirements established in the preceding article, unless, in the case of an offense that warrants imprisonment, the said person is surprised *in flagrante delicto.* In this case, any authority must, and any private person may, arrest the person thus surprised."

197 Article 184 of the Code of Criminal Procedure, in force at the time, established: "For the effects of the preceding article, *in flagrante delicto* shall be considered the offense that is being committed or has just been committed; *in flagrante delicto* shall also be considered the offense when the guilty person is seen being pursued by the police, by the aggrieved person, or by public outcry, or in which he is surprised, shortly after committing the act, in the same place or near the place where it was committed, with weapons, instruments, or other objects that, in some way, allow it to be reasonably presumed that he is the offender."

198 Article 101 of the Law for the Protection of Minors, published on December 30, 1980, in the Official Gazette of the Republic of Venezuela (file of helpful evidence, folio 10559).

199 Cf. Case of the "Juvenile Re-education Institute" v. Paraguay, supra, para. 152, and Case of Mendoza et al. v. Argentina. Preliminary objections, merits and reparations. Judgment of May 14, 2013 Series C No. 260, para. 188.

200 Similarly, the Committee on the Rights of the Child has established that: "[t]he guiding principles for the use of deprivation of liberty are: (a) the arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time; and (b) no child shall be deprived of his/her liberty unlawfully or arbitrarily. *Cf.* United Nations, Committee on the Rights of the Child. General Comment. No. 10, *Children's rights in juvenile justice,* 25 April 2007, para. 79.

> Convention on the Rights of the Child, so that they should establish, among other matters, a minimum age for criminal responsibility, the principle of the clear definition of crimes, the right to due process, the right of defense, and the guarantee of the exceptional nature of deprivation of liberty (which may only be used as a last resort).

163. In this regard, the Court finds that deprivation of liberty in the sphere of juvenile criminal justice may only be justified exceptionally in the cases established by law, and the law must establish clearly its causes and conditions, as well as the State's specialized jurisdiction and bodies, at both the police and judicial level, and the institutions responsible for supervising measures of deprivation of liberty, in order to coordinate "separate justice" for adolescents, that is clearly differentiated from the criminal justice system for adults, at the legal and the institutional level. In addition, the State must establish training programs for administrative and jurisdictional personnel in order to ensure that the specific functioning of the system achieves the objective of the full realization of the rights of children and adolescents.[201]

164. The Court has verified that the evidence provided does not show that, when Eduardo Landaeta was arrested, he was caught *in flagrante delicto* or that there was a court order that would have justified his detention. The police arrest authorization, ordered by the agent CARA, indicated that the presumed victim "was wanted" by the Technical Unit of the Judicial Police, a police agency, in the context of an investigation into a supposed murder; but an order was never issued by a competent authority pursuant to domestic law (*supra* para. 159); in particular, article 182 of the Code of Criminal Procedure in force at the time, which established that the investigative court must order the detention by means of a reasoned order; thus the arrest was unlawful. In addition, the State never proved in what capacity he was detained, or whether any well-founded and justified reason for his detention existed, which made his detention arbitrary.[202] Furthermore, the detention was not used as the measure of last resort, since he was a juvenile. Consequently, the State violated the provisions of paragraphs 2 and 3 of Article 7 of the American Convention, in relation to Article 19 of this instrument, to the detriment of Eduardo Landaeta.

B.1.2 Right to be informed of the reasons for the detention (Article 7(4))

165. Regarding Article 7(4) of the Convention, this Court's consistent case law has established that the information on the "grounds and reasons" for the detention must be given "when this occurs," which "is a mechanism to avoid unlawful or arbitrary detention from the very moment of deprivation of liberty and, also, to ensure the right of defense of the individual concerned."[203]

166. In this regard, the Court noted that the evidence submitted does not reveal that Eduardo Landaeta was provided with either verbal or written information on the reasons for his detention, or any written notice of the charges against him. Furthermore, there is no evidence that he was provided with the assistance of legal counsel or a public defender, or that his situation as a juvenile was taken into account. Therefore, the State failed to comply with the provisions of Article 7(4) of the American Convention, in relation to Article 19 of this instrument, to the detriment of Eduardo Landaeta.

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[201] *Cf.* Expert opinion of Dr. Diego Camaño Viera (merits file, folios 755 and 756), and *Rights and guarantees of children in the context of migration and/or need of international protection*. Advisory Opinion OC-21/14, *supra*, para. 159.

[202] Cf. Case of Chaparro Álvarez and Lapo Íñiguez, supra, para. 96, and Case of Norín Catrimán et al. (Leaders, members and activist of the Mapuche Indigenous People) v. Chile, supra, para. 312.

[203] *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 J. v. Peru, supra,* para. 144. In addition, the right to be informed of the reasons for the detention allows the detainee to contest its lawfulness, availing himself of the legal mechanism that all States must provide, in the terms of Article 7(6) of the Convention. *Cf. Case of Chaparro Álvarez and Lapo Íñiguez, supra*, para. 70, and *Case of J. v. Peru, supra*, para. 144.

167. Moreover, when interpreting Article. 7(4) in relation to juveniles, the provisions of Article 40(2)(b)(ii) of the Convention on the Rights of the Child should be taken in account, which establishes the right of every child "to be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians."[204] Also, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) establish that "[u]pon the apprehension of a juvenile, her or his parents or guardian shall be immediately notified of such apprehension, and, where such immediate notification is not possible, the parents or guardian shall be notified within the shortest possible time thereafter."[205]

168. The Commission and the representatives alleged the failure to notify the family promptly about what had happened to Eduardo Landaeta. However, the Court noted that, at 5.30 p.m. on December 29, 1996, Eduardo was allowed to telephone his father and advise him of his situation (*supra* para. 70). This was approximately 30 minutes after his arrest. In addition, the evidence presented to the Court reveals that several officials were in contact with Eduardo's parents and referred to his situation, so that the Court considers that the State did not fail to comply with this element of its obligation to notify the detention promptly to the parents of the minor.

B.1.3 Judicial control of the deprivation of liberty (Article 7(5))

169. Regarding the right contained in Article 7(5) of the Convention, the Court has indicated that the purpose of prompt judicial control is to avoid arbitrary and unlawful detentions, bearing in mind that, under the rule of law, the judge is responsible for ensuring the rights of the detainee, authorizing the adoption of precautionary or coercive measures when strictly necessary and, in general, ensuring that the accused is treated in a manner in keeping with the principle of the presumption of innocence.[206]

170. The Court finds that the State must ensure, at least, that if children and adolescents are detained as a measure of last resort: (1) they are duly identified, and their condition as minors and the applicable special measures of protection are established; (2) they are brought promptly before a judge or an authority with jurisdiction for juveniles; (3) their parents or guardian are notified as soon as possible and they communicate with their family, and (4) they have prompt access to a lawyer or legal counsel.[207]

171. In this case, the lack of judicial control is particularly serious, because the unlawful and arbitrary detention, without judicial control and, moreover, without considering Eduardo Landaeta's condition as a juvenile, resulted in his death while in police custody. Consequently, the Court will rule on: (a) determination, *ex officio*, of the age of a minor, and (b) prompt judicial control in the case of minors.

B.1.3.1 Determination, ex officio*, of the age of a minor*

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[204] In this regard, the Committee on the Rights of the Child has interpreted the words "prompt and direct information of the charge(s)" of Article 40(2) of the Convention on the Rights of the Child, to mean "as soon as possible, and that is when the prosecutor or the judge initially takes procedural steps against the child." United Nations, Committee on the Rights of the Child. General Comment No. 10, *supra*, para. 47.

[205] United Nations. Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules). Adopted by General Assembly Resolution 40/33, of 29 November 1985, Rule 10.1.

[206] *Cf. Case of Bulacio v. Argentina. Merits, reparations and costs.* Judgment of September 18, 2003. Series C No. 100, para. 129, and Case of J. v. Peru, supra, para. 143.

[207] *Cf.* IACHR. *Juvenile Justice and Human Rights in the Americas,* OEA/Ser.L/V/II. Doc 78, adopted on July 13, 2011, para. 253, and *Case of Bulacio*, *supra*, para.132.

172. The Court notes that, even though Eduardo Landaeta was a minor, the arrest authorization identified him as "18 years old and undocumented" (*supra* para. 69). Subsequently, according to statements, an official of El Cuartelito indicated that Central Command knew that he was a minor (*supra* para. 70). The following evening, Eduardo Landaeta's mother gave a copy of his identity card and birth certificate to an official.[208] Lastly, the Court notes that he was never brought before an authority with jurisdiction for juveniles or provided with special and differentiated measures of protection owing to his condition as a minor.

173. In this regard, the Court considers that, if it is necessary to identify an individual and to determine his or her age, especially a possible minor, the State, through its authorities with jurisdiction in the matter, must take, *ex officio*, the pertinent steps to duly verify the minority,[209] by an assessment that takes into account the physical appearance (morphological and somatic characteristics) and the psychological maturity, and that is conducted in a scientific, safe, child and gender-sensitive and fair manner.[210] In the event of remaining uncertainty, "the individual [should be accorded] the benefit of the doubt such that if there is a possibility that the individual is a child, s/he should be treated as such."[211]

174. Similarly, Article 4 of the Law for the Protection of Minors established that:

> "When it is not possible to establish the minority by the means established by law, the Juvenile Judge may order medical or anthropological appraisal or any other type of scientific means of evidence that is appropriate, in order to establish this. While this evidence is being obtained, the individual shall be subject to the juvenile jurisdiction."

175. In this regard, the Court observes that, in this case, the State authorities, who were not the Juvenile Judge, failed to obtain any medical or other type of evidence in order to determine Eduardo Landaeta's age and his health, so that he was not given a differentiated treatment and special protection that would have allowed him to be brought before a competent authority. This entailed the violation of Article 7(5) of the American Convention, in relation to Article 19 of this instrument, to the detriment of Eduardo Landaeta.

B.1.3.2 Prompt judicial control applicable to minors

176. Expert witness Denotilia Hernández informed the Court that "the [Law for the Protection of Minors] established the obligation for police units who found a minor in an irregular situation or in any of its variations, to take the minor to an establishment of the National Children's Institute, to notify the juvenile judge and the children's attorney […] as established in article 98[212] of the law."[213] In addition, the State also forwarded the

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208 It should be noted that there is a contradiction in the time at which the child's mother delivered the copy of the identity card and birth certificate indicating that Eduardo Landaeta was a minor. The State affirmed that this information was provided on December 30, 1996, at 9 p.m., while the representatives asserted that it was the same day, but at 7.30 p.m.

209 *Cf. Rights and guarantees of children in the context of migration and/or need of international protection*. Advisory Opinion OC-21/14, *supra*, para. 88, and United Nations High Commissioner for Refugees (UNHCR), Executive Committee, Conclusion on Children at Risk, UN Doc. 107 (LVIII)-2007, 5 October 2007, para. (g) (ix).

210 *Cf.* United Nations, Committee on the Rights of the Child. General Comment No. 6, *Treatment of unaccompanied and separated children outside their country of origin,* 1 September 2005, para. 31, and Human Rights Commission of the Federal District, Mexico. Recommendation 5/2004, para. 4.4.4.

211 United Nations, Committee on the Rights of the Child. General Comment No. 6, *supra*, para. 31.

212 Article 98 establishes that: "Any police unit that is advised that a minor is in one of the situations established in Title I of this volume, shall proceed immediately to transfer him or her to an establishment of the National Children's Institute, and shall notify the fact to the juvenile judge and the children's attorney."

213 Testimony of expert witness Denotilia Hernández of January 28, 2014 (merits file, folio 871).

current Organic Law for the Protection of Venezuelan Children and Adolescents, which was not in force at the time of the facts. Its article 37 establishes that "the retention or deprivation of personal liberty of children and adolescents must be carried out pursuant to the law and shall be applied as a measure of last resort and during the shortest possible time." Nowadays in Venezuela, this law also establishes a period of 24 hours to bring the minor before the authorities. It should be noted that, in some States of the Americas, the law establishes a maximum time applicable to such cases ranging from 6 to 24 hours.[214]

177. The Court recalls that article 37 of the Convention on the Rights of the Child, establishes that the detention of minors must be exceptional and for the shortest possible time. In this regard, the Committee on the Rights of the Child, elaborating on this provision, has indicated that "[e]very child arrested and deprived of his/her liberty should be brought before a competent authority to examine the legality of (the continuation of) this deprivation of liberty within 24 hours."[215]

178. The Court has noted that from the time of Eduardo Landaeta's arrest at 5 p.m. on December 29, 1996, until the second transfer where he lost his life – at 8 a.m. on December 31 – he had been detained approximately 38 hours without having been brought before a judge or an authority with jurisdiction for juveniles, which, in the Court's opinion, exceeds the standard applicable to minors for bringing them "promptly" before the competent authority. It should be stressed that, additionally, the second transfer does not reveal the intention of the agents to bring the minor before the competent authority, because the records reveal that he was being taken to the Mariño Police Department. The State has not disproved this fact, or provided evidence to justify or to substantiate clearly the need for these transfers or the duration of the detention, particularly in view of the alleged warnings of Ignacio Landaeta that his son was in danger, owing to the risks that he had reported (*supra* para. 70), which reveals a violation of the provisions of Article 7(5) of the American Convention, in relation to Article 19 of this instrument, to the detriment of Eduardo Landaeta.

B.2 Right to life in relation to the rights of the child

179. The Court will now examine the facts surrounding the death of Eduardo Landaeta in light of its consistent case law on the right to life in relation to the obligation to respect and ensure this right.

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214 The Guatemalan Law for the Comprehensive Protection of Children and Adolescents establishes a time limit of 6 hours to bring the minor before the competent authority. The Uruguayan Children's and Adolescent's Code has implemented, by law, a time limit of 12 hours for children to remain on police premises and a time limit of two hours for the police authority to inform the judge of the detention. Similarly, the Nicaraguan Children's and Adolescent's Code indicates that the police must bring adolescents who are detained before the competent authority within 24 hours. Meanwhile, in the Federal Law on Juvenile Justice, Mexico establishes a limit of 24 hours to inform the Special Juvenile Court about measures that deprive minors of their liberty. Also, in Ecuador, the Children's and Adolescent's Code establishes that no adolescent may be detained without charges for more than 24 hours. Other countries in the region apply the same time limit, for example: the Children's and Adolescent's Code of the Republic of Honduras; the Law on the Responsibility of Adolescents for Violations of Criminal Law of the Republic of Chile, and the Children's and Adolescent's Code of the Republic of Bolivia. In addition, the Code for the Protection of the Rights of Children and Adolescents of the Dominican Republic establishes a time limit of 36 hours, where the ordinary and the special national police have 12 hours to bring the suspect before the Public Prosecution Service, which has 24 hours to bring the minor before a judge.

215 United Nations, Committee on the Rights of the Child. General Comment No. 10, *supra*, para. 83. The European Court of Human Rights, in the case of *Ipek and Others v. Turkey,* referred to the standard recommended by the Committee of Ministers of the Member States of the Council of Europe according to which juveniles "should not be detained in police custody for longer than forty-eight hours in total and for younger offenders every effort should be made to reduce this time further." *Cf.* ECHR, *Case of Ipek and Others v. Turkey*, No. 17019/02 and 30070/02. Judgment of 5 March 2009, para. 18.

180. The Court has noted that the presumed victim died in the custody of the police of the Public Order and Security Corps (CSOP) of the state of Aragua, during his transfer from the Police Central Command to the Mariño Police Department when, according to the State, four armed and hooded individuals intercepted the vehicle transporting him, seizing the weapons of the officials who were guarding him and firing several shots at Eduardo Landaeta who was killed (*supra* para. 73).

181. Regarding the right to life, the Court reiterates that the State has the legal obligation "to prevent, within reason, human rights violations, and to investigate any violations committed within its jurisdiction seriously using the means available to it, in order to identify those responsible, impose the pertinent penalties, and ensure adequate reparation to the victim."[216] The most important element is to elucidate "whether a specific violation […] has been committed with the support or tolerance of the public authorities, or whether the latter have acted in a way that has allowed the violation to be committed without preventing it or with impunity."[217] This obligation requires States to adopt all appropriate measures to protect and to preserve the rights of those subject to their jurisdiction (positive obligation), in accordance with the obligation to ensure the full and free exercise of those rights (*supra* para. 122).[218] This active protection of the right to life by the State involves every State institution, and those who must guarantee security, whether they be its police forces or its armed forces.[219] Accordingly, States must take the necessary measures, not only to prevent and punish the deprivation of life as a result of criminal acts, but also to prevent arbitrary executions by its own security forces (negative obligation).[220]

182. In addition, this Court has indicated that, with regard to the right to life, when the State finds itself in the presence of children deprived of liberty, in addition to the said obligations towards every individual, it has an additional obligation established in Article 19 of the American Convention. "On the one hand, it must assume its special position of guarantor with greater care and responsibility, and it must take special measures aimed at ensuring the best interests of the child. On the other hand, the protection of the life of a child requires the State to pay particular attention to the child's life while he or she is deprived of liberty, because that right has not extinguished and is not restricted by the child's situation of detention or imprisonment."[221]

183. The Court has indicated that, as guarantors of the rights recognized in the Convention, States are responsible for the observance of those rights for every individual who is in their custody.[222] When a person, and especially a child, dies violently while in its custody, the State has the burden of proving that this death cannot be attributed to it. The Court has indicated that the State has the obligation to provide a satisfactory and

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216 *Cf. Case of Velásquez Rodríguez v. Honduras. Merits, supra,* para. 174, and *Case of the Massacres of El Mozote and nearby places v. El Salvador. Merits, reparations and costs.* Judgment of October 25, 2012 Series C No. 252, para. 144.

217 *Cf. Case of Velásquez Rodríguez v. Honduras. Merits, supra,* para. 173, and *Case of the Santo Domingo Massacre v. Colombia. Preliminary objections, merits and reparations.* Judgment of November 30, 2012. Series C No. 259, para. 156.

218 *Cf. Case of Velásquez Rodríguez. Preliminary objections, supra,* para. 91, and *Case of Gutiérrez and family members supra*, para. 97.

219 *Cf. Case of the Pueblo Bello Massacre v. Colombia.* Judgment of January 31, 2006. Series C No. 140, para. 120, and *Case of the Afrodescendant Communities Displaced from the Cacarica River Basin (Operation Genesis) v. Colombia. Preliminary objections, merits, reparations and costs.* Judgment of November 20, 2013. Series C No. 270, para. 217.

220 *Cf. Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits, supra,* para. 145, and *Case of Luna López v. Honduras, supra*, para. 117.

221 *Cf. Case of the "Juvenile Re-education Institute" v. Paraguay, supra,* para. 160.

222 *Cf. Case of López Álvarez v. Honduras, supra,* paras. 104 to 106, and *Case of Mendoza et al. v. Argentina, supra,* para. 202.

convincing explanation of what has happened to individuals in its custody and to disprove the allegations concerning its responsibility with valid probative elements.[223]

184. Based on the above, the Court will examine whether, in this case, the State's responsibility has been engaged owing to the failure to prevent, to protect and, as appropriate, to respect. To this end, first it must verify whether, at the time of the events, there was a situation of real and imminent danger to the life of a specific individual or group of individuals, which the authorities were or should have been aware of, and whether they failed to take the necessary measures within their sphere of authority that could reasonably be expected in order to prevent or to avoid that danger.[224]

185. Regarding the existence of a situation of real and imminent danger, the Court takes note of a first occasion when, a month and a half before Eduardo Landaeta's arrest, CSOP agents deprived his brother Igmar Landaeta of his life. In addition, according to statements by their mother (of November 19 and 20, 1996), a month before Igmar Landaeta's death, the family home had been searched and the family had received threats from agents of the same CSOP who were looking for Eduardo Landaeta[225] (*supra* paras. 56 and 57). In this regard, María Magdalena Mejías testified before the Technical Unit of the Judicial Police that "agent CJZM were harassing Eduardo, and said that they were going to kill him, because there had been a murder in Sorocaima; that Eduardo was present, and from then on they began to harass him."[226]

186. On a second occasion, as already verified, the unlawful and arbitrary detention of Eduardo Landaeta was executed on December 29, 1996, without respecting judicial guarantees or taking into account his condition as a minor, thus increasing the danger that existed.

187. Regarding the authorities' awareness of this situation, while Eduardo Landaeta was detained his parents informed the CSOP officials of the acts of harassment described during the first occasion, and also advised them about the dangerous situation he faced,[227] and the State has not contested this. Ignacio Landaeta referred to this danger on several occasions.

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223 Cf. Case of Juan Humberto Sánchez v. Honduras, supra, para. 111, and Case of Mendoza et al. v. Argentina, supra, para. 203.

224 Cf. Case of the Pueblo Bello Massacre v. Colombia, supra, para. 123, and Case of Luna López v. Honduras, supra, para. 123.

225 During the public hearing before the Court, Ignacio Landaeta stated: "Yes, we did receive threats; during the first week of October 1996, the house where my sons lived was searched without a court order; then, in the third week of October 1996, some agents entered through the roof of the house taking advantage of the fact that no-one was there and, at that moment, María Magdalena, the mother of my sons, arrived when they were leaving the house; she asked them what they were looking for; why they had entered the house in that way; they were looking for Eduardo and she asked why; however, they did not answer but merely told her that when they found him they were going to kill him and, if not, they would kill his brother, Igmar, or otherwise they would kill the other siblings if she wanted to report them; that was how the agents answered María." Testimony of Ignacio Landaeta during the public hearing before the Inter-American Court on February 6, 2014. In addition, in a brief filed before the Ninth Prosecutor of the Public Prosecution Service on August 27, 1997, the Justice and Peace Human Rights Committee of the state Aragua reported the threats received by Maria Magdalena Mejías concerning Eduardo José. *Cf.* Brief of the Justice and Peace Human Rights Committee of the state of Aragua of August 27, 1997 (annexes to the answering brief, folio 7083). In a statement of April 22, 1997, María Magdalena was asked whether agent CJZM continued to harass Eduardo and she gave more details of the way in which he had climbed onto the roof of her home, and the agents had beaten on the door and had broken windows. She also indicated that ACJG had entered the house. *Cf.* Testimony of María Magdalena Mejías of April 22, 1997 (annexes to the answering brief, folio 9283).

226 A newspaper article in "*El Aragüeño*" of January 8, 1998, gives an account of the involvement of police agents in crimes under investigation in the state of Aragua at that time; the same agents who were linked to the death of Eduardo Landaeta's brother one month before.

227 *Cf.* Testimony of Ignacio Landaeta Muñoz of February 13, 2004 (annexes to the answering brief, folios 7378 and 7379), and Testimony of María Magdalena Muñoz of February 16, 2004 (annexes to the answering brief, folios 7382 and 7383). It should be noted that, in the report of the incidents, María Magdalena Mejías

"[When he went to the San Carlos Police Station on December 29, he told an official that his] son was in danger because he had received death threats from police agents. The official recommended that [he] speak to a superior officer who was present, a sergeant. [He] went and spoke to the sergeant; [he] told him also that [his] son was in danger, that they should not transfer him anywhere because it was already nighttime. The sergeant told [him] not to worry, that he would not be transferred, [that the transfer] would be next morning, and that [he] should come back next morning and bring food for [his] son."

[On December 30,] at around 6 p.m., a female agent from the command center came out and asked [them] if they were Eduardo's parents; [they] said yes. This official told [them] not to leave [their] son alone because she [had] observed strange movements against that minor inside, and [they] should not go. She had finished her shift and was leaving.

On December 31, [he went] to the Central Command in order to find out if [Eduardo] had been transferred. [As he had been transferred] to Turmero, [… he] went to the PTJ and asked if [his] son Eduardo had been transferred, and a PTJ official came out and told [him] that he had not arrived, [and that he] should be very careful […] because those police agents [were] very bad, they [were] rats; that [he] should got to the prosecutor's office and file a complaint."

188. María Magdalena also advised the authorities of her son's condition as a minor, when handing over his identity documents to the Police. However, this did not result in Eduardo Landaeta being granted special measures of protection such as informing the authority with jurisdiction for juveniles (*supra* para. 71).

189. Regarding the measures taken by the State in view of this situation of danger, the Court noted that, despite the unlawful and arbitrary context already established (*supra* para. 164), on a third occasion, two transfers were carried out by the police, one to the Central Command, and the other to the Mariño Police Department, increasing the danger that existed. The second transfer was executed in a vehicle without identification or insignia (unit P-66, license plates DAF-91Z, make Fiat, model one, color red, type sedan), accompanied by three agents.

190. The Court finds that there is sufficient evidence to affirm that, following the minor's detention, the agents were aware of the dangerous situation in which he found himself and, despite this, they carried out the second transfer to another police unit, failing to provide Eduardo Landaeta with the measures of protection required owing to his condition as a minor and to the danger in which he found himself.

191. Regarding the evidence relating to the death in custody of Eduardo Landaeta, the version given by the police indicates that, during the journey, their car was struck by a grey vehicle, from which several armed and hooded individuals descended, who took their weapons and shot Eduardo Landaeta (*supra* para. 73). The case file reveals that the results of autopsy No. 1018-96 performed on the body of Eduardo José showed that he had fifteen bullet wounds. The cause of death was severe cerebral contusion produced by two bullets, and thirteen bullet wounds in different parts of the body. In addition, other injuries were observed, such as the partial detachment of the skin of the right buttock "as if it had been burned" with similar characteristics on both elbows, circular marks on the wrists of both hands and bruising on the lower lip (*infra* para. 200).

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stated that, on December 30, 1996, "at around 8 a.m. […] the State Police agents [GACF and AJCG] arrived at the police command center, requesting that the minor be handed over to them in order to transfer him to Headquarters (annexes to the answering brief, folio 7083).

192. The site inspection and the detailed statement in the police record indicated that, at the time of his death, the body of the presumed victim was inside the vehicle lying on his back. Also, seven spent cartridges were found outside the vehicle and one inside it. In addition, during the autopsy on the body, three bullets were extracted and sent to the Recovered Objects Room of the Mariño Police Department (*supra* para. 98). During the expanded autopsy the bullet corresponding to the right paravertebral lumbar region was not found, and the corpse was therefore exhumed (*supra* para. 109). No additional bullet was found in Eduardo Landaeta's body during the exhumation performed on August 9, 2006. However, according to the testimony of one of the gravediggers, at the site of the exhumation, he found a bullet that he handed over to Mr. Landaeta Muñoz on November 1, 2006 (*supra* para. 110), and this was delivered to the prosecutor's office. It should also be mentioned that the analysis of gunpowder residue on the hands of two of the agents who transferred Eduardo Landaeta gave positive results (*supra* para. 99). The judicial case file reveals that "the police agents' firearms were lost."[228] Also, during the reconstruction of the incident, the statements made by the agents who were guarding Eduardo Landaeta contained several contradictions.[229]

193. The Court takes note that, on December 15, 2008, the prosecution filed charges against the three police agents, FABP, CARM and CARA for the offense of aggravated intentional homicide, finding that the accused had simulated that they had been intercepted while they transferred Eduardo Landaeta, and indicated that:

> "From the investigations that have been conducted, it could be determined that the death of the said individual did not occur inside the vehicle in which he was transferred, given the number of bullet wounds that the victim revealed, and it has been established that the circumstances in which this death occurred, were not those indicated by the agents when they reported the incident."[230]

194. Also, in his final oral arguments, on April 6, 2009, the Prosecutor indicated that:

> "There is sufficient evidence to indicate that the accused […] are responsible for the perpetration of the crime of first-degree murder. […] From the evidence, it has been determined that the accused did, in fact, simulate an illegal act; there is no damage to the vehicle and the site inspection does not indicate this; during the proceedings, the accused did not establish their whereabouts at the scene of the crime; there was a presumed confrontation and none of them were injured; in the case of all or the only perforation from inside to outside the vehicle the existence of the accused's weapon has not been established; therefore, the Public Prosecution Service has insisted that the confrontation did not exist […]."[231]

195. In this regard, the Court observes that the interrelationship between the evidence mentioned above, the position in which Eduardo Landaeta's body was found, the numerical inconsistency between the bullet wounds on Eduardo's body and the shells found at the scene of the incident and in the victim's body, some contradictions between the police agents during the reconstruction of the incident, various omission in the investigation of the events in order to clarify the attribution of direct responsibility to the persons who had custody of the minor, which will be described in the chapter relating to Articles 8 and 25 of the Convention, as well as the indictment of the prosecutor, who considered that a simulation was involved, represent decisive presumptions to determine

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228 *Cf.* Summary inquiry into the loss of firearms and murder of detainee (annexes to the answering brief, folios 7332 and 7417).

229 Two of the police agents agreed that both of them got out of the vehicle at the same time (that is, at the moment they were struck by the other vehicle). The other agent mentioned that he was not aware of what happened to his companions. In addition, agent FABP asserted that "the front windows of the vehicle were open wide and the back windows closed," contrary to agent CARM, who affirmed that "all the windows were closed because we had the air conditioning on" (annexes to the answering brief, folios 8061 to 8065).

230 Indictment of the prosecutor of December 15, 2008 (annexes to the answering brief, folio 8128).

231 Hearing of the oral trial of April 6, 2009 (annexes to the answering brief, folios 8946 and 8947).

the direct responsibility of the State for the arbitrary deprivation of the life of Eduardo Landaeta. The State has not provided a convincing and satisfactory explanation for the events that happened to the minor in its custody to contest this, so that to date it has not disproved the State's responsibility for these events.

196. Consequently, the Court has verified that Eduardo Landaeta's life was in danger, and also that the State authorities were aware that he was in real and imminent danger, which materialized in the deprivation of his life. This danger derived from State agents who were members of the unit that was in charge of his custody. In addition, the Court considers that there were a series of contributing factors that constituted a failure by the State to comply with its obligation to respect and to ensure the rights of Eduardo Landaeta, namely: the said problem of police abuse at that time; the threats that have been indicated; the immediacy of the death of his brother Igmar Landaeta, which could be attributed to agents from the same police unit; his unlawful and arbitrary detention as previously described; the absence of special protection due to his condition as a minor, as well as to the danger in which he found himself, being transferred twice without being subject to judicial control or brought before an authority with jurisdiction for juveniles for a prolonged lapse of time; the lack of protection against the agents involved, the non-compliance with their custody duties, as well as all the evidence that permits the direct responsibility of the agents who transferred him to be inferred. Consequently, the Court finds that the State was responsible for the arbitrary deprivation of life of Eduardo Landaeta, in non-compliance with its obligation to respect and to ensure the right to life of individuals in its custody established in Article 4 of the American Convention, in relation to Articles 1(1) and 19 of this instrument.

B.3 Right to humane treatment in relation to the rights of the child and the obligation of guarantee in relation to the alleged acts of torture

197. The representatives and the Commission alleged that, according to the autopsy report, Eduardo Landaeta's body had, in addition to bullet wounds, other injuries that suggested *prima facie* that the victim had been subjected to torture or other cruel treatment.

198. Regarding the right to humane treatment, the Court has indicated that the State is responsible, in its capacity as guarantor of the rights recognized in the Convention, for respecting the right to humane treatment of every person in its custody. Thus, the Court reiterates that, since it is responsible for detention and confinement establishments, the State has the obligation to safeguard the health and well-being of those deprived of liberty, and to ensure that the manner and method of deprivation of liberty does not exceed the inevitable level of suffering inherent in detention.[232] In addition, the Court has indicated in its case law that whenever a person, who is in normal health, is deprived of liberty and later appears with health problems, the State must provide a satisfactory and convincing explanation of that situation[233] and disprove the allegations of its responsibility, with adequate probative elements.[234] In specific circumstances, "the absence of such an explanation [may lead] to the presumption of State responsibility for the injuries revealed by a person who has been in the custody of State agents."[235]

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[232] Cf. Case of the "Juvenile Re-education Institute" v. Paraguay, supra, para. 159, and Case of Mendoza et al. v. Argentina, supra, para. 202.

[233] *Cf. Case of Juan Humberto Sánchez v. Honduras, supra,* para. 100, and *Case of Mendoza et al. v. Argentina*, *supra*, para. 203.

[234] *Cf. Case of Juan Humberto Sánchez v. Honduras, supra,* para. 111, and *Case of Mendoza et al. v. Argentine, supra*, para. 203.

[235] *Cf. Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits*, *supra*, paras. 95 and 17, and *Case of Mendoza et al. v. Argentina, supra,* para. 203.

199. Similarly, the Human Rights Committee has indicated that the deterioration in health that a person may suffer "in custody must be held to be attributable to the State,"[236] so that the burden of proof does not rest exclusively on the complainant, especially considering that the complainant and the State "do not always have equal access to the evidence and that, frequently, the State […] alone has access to relevant information" in circumstances of detention. "The State has the duty to investigate in good faith all allegations of violations of [human rights] made against it […], especially when such allegations are corroborated by evidence submitted by the [complainant. …] When further clarification of the case depends on information exclusively in the hands of the State, the Committee may consider such allegations as substantiated in the absence of satisfactory evidence and explanations to the contrary" to refute the claims of the complainants.[237]

200. In this regard, the Court noted that the report on autopsy No. 1018-96 performed on Eduardo Landaeta's body found other injuries, in addition to the bullet wounds, namely: (a) the partial detachment of the skin of the right buttock "as if it had been burned," with similar characteristics on both elbows; (b) fairly deep, but incomplete circular marks on the wrists of both hands, and (c) bruising on the lower lip (*supra* paras. 102 and 191). In addition, as already indicated, according to the statements made by Eduardo's parents, they advised a State official of the danger faced by their son (*supra* para. 70).

201. Based on this evidence, it is reasonable to infer the existence of injuries with different characteristics to those that caused Eduardo Landaeta's death while in State custody. Despite this evidentiary material, the case file does not include other indications that could corroborate his state of health when he entered the police station and before his transfers, as well as other more convincing evidence that could establish the type of injuries, when they were caused, and the circumstances.[238] Therefore, in principle, it is not incumbent on the Court to determine a direct violation of Article 5(2) of the Convention, arising from possible cruel, inhuman or degrading treatment or torture that can be attributed to the State.

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[236] *Cf.* United Nations, Human Rights Committee, *Case of Sathasivam and Saraswathi v. Sri Lanka*. Communication No. 1436/2005, UN Doc. CCPR/C/93/D/1436/2005, 8 July 2008, para. 6.2.

[237] *Cf.* United Nations, Human Rights Committee. *Case of Irene Bleier Lewenhoff and Rosa Valiño de Bleier v. Uruguay.* Communication No. 30/1978, UN Doc. CCPR/C/OP/1 at 109, 29 March 1982, para. 13.3; *Case of Albert Womah Mukong v. Cameroon.* Communication No. 458/1991, UN Doc. CCPR/C/51/D/458/1991, 21 July 1994, para. 9.2, and *Case of Turdukan Zhumbaeva v. Kyrgyzstan*. Communication No. 1756/2008, UN Doc. CCPR/C/102/D/1756/2008, 29 July 2011, para. 8.7.

[238] In this regard, to avoid situations that endanger juvenile detainees, the Court deems it pertinent to take into account Rule 21 of the "United Nations Rules for the Protection of Juveniles Deprived of their Liberty," which establishes that: "[i]n every place where juveniles are detained, a complete and secure record of the following information should be kept concerning each juvenile received: (a) Information on the identity of the juvenile; (b) The fact of and reasons for commitment and the authority therefor; (c) The day and hour of admission, transfer and release; (d) Details of the notifications to parents and guardians on every admission, transfer or release of the juvenile in their care at the time of commitment; (e) Details of known physical and mental health problems, including drug and alcohol abuse." In addition Rule 22 stipulates that: "[t]he information on admission, place, transfer and release should be provided without delay to the parents and guardians or closest relative of the juvenile concerned." *Cf.* United Nations. Rules for the Protection of Juveniles Deprived of their Liberty (The Havana Rules), adopted by General Assembly Resolution 45/113, of 14 December 1990. Meanwhile, Article 40(1) of the Convention on the Rights of the Child establishes the right of every child accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth; as well as the principle of innocence (Art. 40(2) (b)(i)), and the right to be informed promptly of the charges against him or her (Art. 40(2) (b)(ii)). Lastly, Rule 10 of the Beijing Rules on "Initial Contact" should be mentioned; in particular Rule 10.1 which stipulates the obligation to immediately notify any "apprehension of a juvenile [to] her or his parents or guardian," and Rule 10.3 which regulates the contacts between the law enforcement agencies and a juvenile offender, "in such a way as to respect the legal status of the juvenile, promote the well-being of the juvenile and avoid harm to her or him."

202. In conclusion, although it does not have evidence to establish the State's responsibility for the violation of Article 5(2) of the Convention, based on the injuries found on Eduardo Landaeta's body, the Court observes that the State has not provided an explanation of their origin. Furthermore, based on the evidence and the denunciation of possible acts that constitute violations of humane treatment, the State did not conduct any investigation to clarify the facts and, as appropriate, establish the responsibility of those involved.[239]

203. In addition, the Court finds that the situation of arbitrary and unlawful deprivation of liberty of Eduardo Landaeta in the absence of judicial control, added to the situation of danger that the authorities were made aware of, as well as the death of his brother at the hands of agents of the same police unit, facts that gave rise to suffering and anguish and also resulted in his death, and taking into account his condition as a minor, all reveal that the State failed to guarantee and respect the right to mental and moral integrity,[240] recognized in Article 5(1) of the American Convention, in relation to Article 19 of the same instrument, to the detriment of Eduardo Landaeta.

B.4 Conclusion with regard to Eduardo José Landaeta Mejías

204. Based on the foregoing, the Court finds the State of Venezuela responsible for the violation of paragraphs 1 to 5 of Article 7 and Articles 4 and 5(1) of the Convention, in relation to Articles 1(1) and 19 of this instrument, to the detriment of Eduardo Landaeta.

VII-3
RIGHTS TO JUDICIAL GUARANTEES AND TO JUDICIAL PROTECTION WITH REGARD TO IGMAR ALEXANDER AND EDUARDO JOSÉ LANDAETA MEJÍAS

A. Arguments of the parties and of the Commission

205. The Commission indicated that the State of Venezuela failed to comply with the obligation to conduct a diligent investigation within a reasonable time into the death of Igmar, and in relation to the detention, violation of personal integrity and death of Eduardo, both surnamed Landaeta Mejías. It also concluded that the State had failed to comply with the obligation to provide judicial guarantees and judicial protection because the investigations were conducted in isolation and separately without examining the possible connection and interrelationship between the deaths of the two brothers, despite the existence of threats against them, and because it did not consider whether the deaths were inserted in the pattern of extrajudicial executions that existed at the time of the events, which constituted an additional factor of impunity in the two cases. Consequently, the Commission concluded that the State had not provided the next of kin of the Landaeta Mejías brothers with an effective judicial remedy to establish the truth of the events, the punishment of both perpetrators and masterminds, and adequate reparation. It therefore established that the State of Venezuela had violated the rights to judicial guarantees and to judicial protection established in Articles 8 and 25 of the American Convention in relation to Article 1(1) of the same instrument, to the detriment of the next of kin of the Landaeta brothers.

206. Regarding Igmar Landaeta, the Commission indicated that the investigations and the criminal proceedings were not conducted diligently or within a reasonable time, owing to a series of omissions, in particular: (a) several periods of inactivity in the

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239 *Cf.* United Nations. Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter "Istanbul Protocol"), paras. 78 and 79.

240 *Cf. Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits, supra, para. 163, and Case of Gudiel Álvarez et al. ("Diario Militar") v. Guatemala. Merits, reparations and costs.* Judgment of November 20, 2012. Series C No. 253, para. 204.

investigations and in the proceedings, as well as some unjustified procedural delays, so that the proceedings lasted seven years; (b) the absence of measures to resolve evident contradictions in the assessment of the evidence at the different judicial stages, especially in the determination of the legality of the use of force; (c) the failure to investigate the indications that an extrajudicial execution had been committed; (d) the absence of disciplinary investigations in relation to the actions of the police agents who took part in the incident, and (e) the failure to provide sufficient reasoning with regard to the legality of the use of force in the decision of November 10, 2003.[241]

207. Regarding Eduardo Landaeta, the Commission argued that a series of irregularities, omissions and delays had occurred while the investigation procedures were being conducted, as well as extended periods of procedural inactivity. The Commission underscored the main omissions committed by the State, namely: (a) the lack of knowledge about the events that were being investigated of the authorities in charge of the investigation; (c) the extended periods of inactivity, which at one point lasted three years; (c) the excessive delay in requesting evidence of vital importance, such as the expansion of the autopsy, the ballistics trajectory, and the exhumation of the corpse; (d) the impossibility of obtaining evidence owing to the passage of time; (e) the loss of evidence, such as the photographs taken during the inspection of the corpse prior to the viewing; (f) the requests by the officials in charge of the investigation for information that was never sent and procedures that were never carried out, and (g) the absence of logical lines of investigation, taking into account the statements of the members of Eduardo Landaeta's family. The Commission also indicated that the absolute failure of the domestic authorities to investigate his unlawful and arbitrary detention, as well as the possible violations of his personal integrity, meant that the State did not provide an effective judicial remedy to his family. As regards the reasonable time, the Commission concluded that the State had not presented arguments to justify the delay of more than 17 years in the investigations in the case of Eduardo Landaeta, even though it was not particularly complex, and the failure to clarify the events and to punish those responsible was due to the omissive conduct of the authorities, while it was Ignacio Landaeta Muñoz who was endeavoring to advance the investigations.

208. The representatives of the presumed victims emphasized that, in relation to the investigations into the two deaths, the general context of violence and extrajudicial executions, the threats and harassment that had preceded the death of the Landaeta brothers, and the interrelationship between the two deaths were not take into account, and this prevented the elucidation of the events, thus exacerbating the existing impunity. Regarding the death threats and the harassment suffered in this case, the representatives indicated that, when the parents of the Landaeta brothers tried to denounce these facts, police officials paid no attention to their reports, so that they "were unable to put on record" these threats against their sons "in an investigation case file until the two young men had been killed." This resulted in a police "cover-up" that shrouded and fragmented the investigations. Moreover, if the parents had been able to place the said threats on record, the deaths of the two brothers could have been prevented.

209. With regard to Igmar Landaeta, the representatives agreed with the observations of the Commission and indicated that the case file revealed that the CTPJ committed numerous irregularities in the investigation, such as the failure to carry out a reconstruction of the incident, ballistics comparisons, the identification of the agents who took part in the incident by eyewitnesses, and the absence of evidence from the gunpowder residue on the police agents. Furthermore, in their final written arguments,

[241] The Commission indicated that this judgment did not deal with essential issues that the first and second instance judicial authorities had considered grounds for convicting one of the accused, because it did not take into account the contradictions between the testimony of the accused, and the evidence on which the lack of necessity of the second shot was based, so that the reasoning concerning the use of force was inadequate.

they indicated that the case revealed police conduct designed to conceal the truth, such as the version of the supposed confrontation that was contrary to most of the evidence, in order to produce the effect of fraudulent *res judicata* of the facts. This conduct was endorsed by the Appellate Court in its judgment of November 2003, in which it accepted the police version without analyzing the exceptionality, proportionality, necessity and humanity of the use of force, ignoring most of the testimony and physical evidence that existed. Similarly, the representatives concluded that the State had failed to comply with the obligation to conduct an investigation within a reasonable time, because the criminal proceedings were not conducted with the appropriate speed and lasted seven years, and impunity still reigns in the case. In addition, the representatives indicated that this was not a complex case, that the members of Igmar Landaeta's family had played an active role in advancing the proceedings and that the conduct of the authorities was characterized by the absence of pertinent measures, unnecessary delays, and extensive periods without procedural activity.

210. With regard to Eduardo Landaeta, the representatives indicated that no measures were taken that could have determined who fired the shots. In this regard, they stated that the Public Prosecution Service did not order measures to identity the weapons that had been fired and failed to reconstruct the ballistics trajectory; and it was only in 2006, that it was found that one of the bullets had remained in Eduardo Landaeta's body. The representatives added that there was no continuity and follow-up by a single body in charge of the investigation, which led to extended periods of inactivity, the fragmentation of the investigation, and the extreme inefficiency of the proceedings. They also indicated that the irregularities in the investigation resulted in prolonged delays in considering requests for evidence, and the impossibility of assessing extremely important evidentiary material, because it was lost or the request was made too late. Lastly, the representatives indicated that the case was not concluded within a reasonable time, because, at the present time – in other words 17 years after the events occurred – the proceedings are at the first instance trial stage. In this regard, they concluded that the case was not complex, the proceedings had been advanced, above all, by Eduardo Landaeta's family, and the actions of the authorities were characterized by irregularities and unnecessary procedural delays, all of which adversely affected the legal situation of the next of kin.

211. The State asserted, with regard to the case of Igmar Landaeta, that the investigations conducted by the Public Prosecution Service in order to clarify the events and to punish those responsible were not flawed. It also indicated that, since the contradictory versions of the witnesses in the case had contributed to the procedural delay of the investigation, the events of the death of the Igmar Landaeta had not been totally clarified. Similarly, it affirmed that the representatives of the presumed victims could not argue procedural delay or absence of an investigation, because the first judgment was delivered 12 months after the events by the Court of the Santiago Mariño and Libertador Municipalities of the state of Aragua. The State indicated that, even though five years passed between the guilty verdict in first instance and the judgment delivered by the Appellate Court ratifying it in 2002, this was due to the transition between procedural codes and the establishment of a transitory procedural regime, passing from an inquisitorial to an adversarial system of criminal justice, which benefited the accused. During the hearing in this case, the State affirmed, in relation to the judgment of November 10, 2003, that "the Appellate Court should have ordered a conviction or an acquittal, but not the dismissal of the case, which has given rise, for both the victim and the State, to the appeal for annulment or for constitutional protection *(amparo*) owing to the failure to notify the procedural parties."

212. With regard to Eduardo Landaeta, the State argued that, following the incident, the police investigation was undertaken immediately; in other words, the same December 31, 1996, and provided a list of the investigation measures conducted throughout the

criminal proceedings that were opened owing to his death.[242] It also stressed that, even though the statements of the agents who were transferring Eduardo Landaeta and of the eyewitnesses exonerated the agents in whose custody he was travelling, the prosecutor had decided that their guilt or innocence should be proved in a trial. In addition, the State indicated that, at the present time, criminal proceedings were still underway in which the presumed criminal responsibility of the agents who transferred Eduardo Landaeta would be elucidated because, although the police version of the events is that the vehicle in which Eduardo Landaeta was being transferred was intercepted by armed and hooded individuals and it was the latter who killed the minor Landaeta, the police agents could be connected to his death.[243] In this regard, the State indicated that, on April 4, 2014, a new oral trial had begun, after the appeal filed by the Fifteenth Prosecutor to refer the case back to the stage of a new oral trial had been declared admissible.

213. In relation to the reasonable time in both cases, the State argued that "[i]t was problems related to the Transitory Procedural Regime in Venezuela that had caused the judicial delay in the case of the Landaeta brothers. The Venezuelan State has explained the Transitory Procedural Regime that was established in the country to the Judges of the Court in the cases of the Barrios Family and Néstor Luis Uzcátegui decided by the Inter-American Court." The State also indicated that "it only admits as certain in both trials regarding the Landaeta brothers, that there was a judicial delay in the investigations caused by the new Code of Criminal Procedure […]." Accordingly, the State concluded that it was not responsible for the violation of the rights of the Landaeta brothers and asked the Court to reject the claims of the representatives and of the Commission.

B. Considerations of the Court

214. The Court has established in its consistent case law that the positive measures that a State must adopt in order to ensure the rights recognized in the Convention include the obligation to investigate human rights violations. Compliance with this obligations consists not only in preventing violations, but also in investigating the violation of rights recognized in this instrument, as well as endeavoring, if possible, to restore the right that has been violated and to make reparation, as appropriate, for the harm caused by the violation of human rights.[244]

215. The Court has indicated that States are obliged to provide effective judicial remedies to the victims of human rights violations (Article 25), which must be implemented in accordance with the rules of due process of law (Article 8(1)), all within the general obligation of the States to ensure to all persons subject to their jurisdiction the free and full exercise of the right recognized in the Convention (Article 1(1)).[245]

216. The obligation to investigate means that, when the State authorities become aware of an incident, they should open, *ex officio* and immediately, a serious, impartial and effective investigation by all available legal means aimed at determining the truth and at

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[242] The main procedures described by the State in its answering brief included interviews with witnesses and the police agents who were carrying out the transfer, the autopsy, the analysis of the gunpowder residue on the police agents, inspections of the scene of the crime and the body, forensic and hematological tests, topographic survey, and ballistics trajectory, and reconstruction of the incident.

[243] The State clarified that the failure to make an official inspection of the vehicle that was transferring Eduardo Landaeta was due to the fact that it was a police intelligence unit that, at the time of the events, was operating incognito in the strategic fight against crime.

[244] Cf. Case of Velásquez Rodríguez. Merits, supra, paras. 166 and 176, and Case of Veliz Franco et al. v. Guatemala. Preliminary objections, merits, reparations and costs. Judgment of May 19, 2014. Series C No. 277, para. 183.

[245] Cf. Case of Velásquez Rodríguez. Preliminary objections, supra, para. 91, and Case of *Gutiérrez and family members supra*, para. 97.

the pursuit, capture, prosecution and eventual punishment of all the perpetrators,[246] especially when State agents are or may be involved.[247] This is an obligation of means, rather than of results that must be assumed by the State as its inherent legal duty and not as a mere formality preordained to be ineffective, or as a measure taken at the instigation of private interests that depends upon the procedural activity of the victims or their families or on their offer of probative elements.[248] The State's obligation to investigate must be complied with diligently to avoid impunity and the repetition of the same type of incident. Thus, the Court recalls that impunity encourages the repetition of human rights violations.[249]

217. The Court has also indicated that, for an investigation to be effective in the terms of the Convention, it must be conducted with due diligence, which requires the investigating body to carry out all those measures and inquiries required to obtain the result sought.[250] In other words, it should be implemented "using all available legal means and be aimed at determining the truth."[251] This duty encompasses every State institution,[252] both judicial and non-judicial, so that due diligence extends to the non-judicial bodies in charge of the investigation prior to the proceedings in order to determine the circumstances of a death and the existence of sufficient evidence to institute criminal proceedings. If it fails to meet these requirements, subsequently the "State will be unable to exercise its prosecutorial powers effectively and efficiently and the courts will be unable to conduct the judicial proceedings that this type of violation calls for."[253]

218. In addition, the Court has established that "the right to effective judicial protection requires the judges to direct the proceedings in a way that avoids undue delays and disruptions resulting in impunity and thus thwarting the due judicial protection of human rights." The Court has also considered that "judges, who are in charge of directing the proceedings have the duty to direct and guide the judicial proceedings in order not to sacrifice justice and due process of law to formalism and impunity"; to the contrary, this "leads to the violation of the State's international obligation to prevent violations and to protect human rights, and also impairs the right of the victim and of his next of kin to know the truth about what happened and that all those responsible are identified and punished, and to obtain the respective reparations,"[254] all within a reasonable time.[255] In other words, judges must "act diligently, endeavoring to ensure that proceedings are conducted promptly."[256]

219. Regarding the investigations and the criminal proceedings conducted into the deaths of the Landaeta Mejías brothers, the Commission and the representatives argued

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246 *Cf. Case of Case of Velásquez Rodríguez. Merits, supra,* para. 177 and *Case of Veliz Franco et al., supra,* para. 183.

247 *Cf. Case of Myrna Mack Chang, supra,* para. 156, and *Case of the Afrodescendant Communities Displaced from the Cacarica River Basin (Operation Genesis) v. Colombia. Preliminary objections, merits, reparations and costs*. Judgment of November 20,2013. Series C No. 270, para. 371.

248 *Cf. Case of Velásquez Rodríguez. Merits, supra*, para. 177, and *Case of Veliz Franco et al., supra*, para.183.

249 *Cf. Case of the Ituango Massacres*, *supra*, para. 319, and *Case of Veliz Franco et al., supra*, para. 183.

250 *Cf. Case of the Serrano Cruz Sisters v. El Salvador. Merits, reparations and costs.* Judgment of March 1, 2005. Series C No. 120, para. 83, and *Case of Gutiérrez and family members, supra, para. 98.*

251 *Case of Velásquez Rodríguez, Merits, supra,* para. 177, and *Case of Veliz Franco et al., supra, para. 183.*

252 *Cf. Case of Juan Humberto Sánchez, supra,* para. 110, and *Case of Castillo González et al., supra, para. 122.*

253 *Cf. Case of Cantoral Huamaní and García Santa Cruz v. Peru. Preliminary objection, merits, reparations and costs.* Judgment of July 10, 2007. Series C No. 167, para.133.

254 *Case of Myrna Mack Chang, supra,* para. 211, and *Case of Luna López, supra,* para. 156.

255 *Cf. Case of Bulacio, supra,* para. 114 and *Case of Liakat Ali Alibux, supra,* para. 40.

256 *Cf. Case of Bulacio, supra,* para. 115 and *Case of Luna López, supra*, para. 170.

that a series of omissions, delays and procedural inactivity violated the State obligation of due diligence, as well as the reasonable time for implementing those investigations and proceedings. In this regard, the Court notes that, in the case of Igmar Landaeta, the disputed facts have not been clarified and although, initially, one of the two accused was convicted, his case was "dismissed" in November 2003. In the case of Eduardo Landaeta, the Court notes that the criminal proceedings are currently at the stage of the oral trial, 17 years after the incident occurred. The Court also takes notes that the lines of investigation into the two deaths were unconnected, despite the evidence of the relationship between the deaths and that only 45 days separated them.

220. Based on the above, the Court must decide whether the State violated the rights recognized in Articles 8(1) and 25(1) of the Convention, in relation to Article 1(1) of this treaty. To this end, the Court will make its analysis by assessing: (a) the absence of joint investigations into the deaths of the Landaeta Mejías brothers; (b) due diligence and reasonable time in the case of Igmar Landaeta; (c) due diligence, and the absence of investigations into the detention and presumed violation of humane treatment and reasonable time in the case of Eduardo Landaeta.

B.1 Absence of joint investigations into the deaths of the Landaeta Mejías brothers

221. The Court observes that the investigations into the deaths of Igmar and Eduardo Landaeta were conducted separately and no connection was ever made between them. In the chapter on proven facts, the Court noted that Igmar Landaeta died in November 1996 and his brother, Eduardo Landaeta, died 45 days later in December that year. The Court observes that, on different occasions during the two criminal proceedings, María Magdalena Mejías and Ignacio Landaeta, the parents of the Landaeta Mejías brothers, stated that their sons had previously received threats from police agents, even just before the death of Eduardo Landaeta. Also, in their statements, they mentioned the names of three agents (GACF, AAC[257] and CJZM) (*supra* paras. 56 and 57) as the presumed harassers, and the first two were implicated in and prosecuted for the death of Igmar Landaeta.

222. Furthermore, these statements reveal that the CTPJ authorities were made aware of the presumed harassment and threats in the first statement made by María Magdalena Mejías on November 20, 1996, as this Court has already established (*supra* para. 57). The assertions were confirmed in subsequent statements in April 1997 and February 2004. Also, the evidence in the Court's case file includes testimony indicating that, following the shot that ended Igmar Landaeta's life, a young woman who was in the white vehicle told the individuals that "they had made a mistake"; that this was not the person they were looking for (*supra* para. 62). Thus, prior to Eduardo Landaeta's death, the State already had evidence of the possible connection between the two deaths, and did not initiate any inquiries to confirm this. In addition, the Court has established that while Eduardo Landaeta was detained, his parents informed the authorities not only about the threats against him, but also of the danger to his life (*supra* paras. 70 and 187). Despite this, the authorities failed to take the necessary measures to prevent his death; because, even though they had this information, there is no record in the case file that the State considered lines of investigation that took the family's statements into account.

223. Owing to the death of Eduardo Landaeta, the Justice and Peace Human Rights Committee of the State Aragua filed a request to open a preliminary inquiry into unlawful conduct by a State agent (*averiguación de nudo de hecho*) before the Ninth Prosecutor of the Public Prosecution Service on August 27, 1997. In this request, the Committee

[257] The Court has been unable to identify AAC but, from the evidence provided, it infers that this refers to AJCG (*supra* footnote 62).

expressly indicated that, on December 30, 1997, while María Magdalena Mejías was at the Police Command Center, agents GACF and AAC, who were implicated in the death of Igmar Landaeta, came to the Command Center requesting that the minor, Eduardo Landaeta, be handed over to them in order to transfer him.[258] In the Court's opinion, this reveals a possible linkage between the two cases.

224. The Court notes that, despite the evidence indicating a connection between the two deaths, the fact that the authorities had been advised about the presumed threats, harassment and danger faced by Eduardo Landaeta, and that the Ninth Prosecutor of the Public Prosecution Service was in charge of both cases for some time, the authorities did not conduct joint investigations into these incidents or make inquiries aimed at proving the connections.[259] In this regard, the Court has established that "[i]nvestigating with due diligence requires taking into account the events surrounding other murders and establishing some type of connection between them. This should be done, *ex officio*, without the victims and their family members having to assume this initiative."[260]

225. Based on the above, the Court considers that the isolated investigations that were conducted did not help clarify the facts or determine responsibilities. Thus, the Court finds that the State, by not investigating the two deaths together, failed to exhaust all possible lines of investigation that would have made it possible to clarify the facts.[261]

B.2 Due diligence and reasonable time during the investigations and the criminal proceedings relating to the death of Igmar Alexander Landaeta Mejías

226. The Court has established that Igmar Landaeta died in November 1996 owing to the excessive use of force (*supra* para. 142). As a result of this, the Court notes that an investigation was opened and also criminal proceedings to clarify the incident and to impose the corresponding punishment on those responsible, which concluded with an acquittal and a dismissal. Consequently, and based on the arguments of the Commission and the parties, this Court must decide whether the investigations and the criminal proceedings in relation to the death of Igmar Landaeta were conducted with due diligence and within a reasonable time. Hence, the Court will now analyze: (a) the presumed omissions in the initial measures of investigation, and their impact on the final result of the criminal proceedings; (b) the presumed irregularities in the criminal proceedings, and (c) reasonable time.

B.2.1 The initial investigation measures

227. The Court has established that, in the context of the obligation to investigate a death, the real determination to discover the truth is demonstrated by the thoroughness of the initial steps taken.[262] Thus, the Court has established the guidelines that must be observed in an investigation into a violent death, such as the one revealed by the facts of this case. The State authorities who conduct an investigation of this type must, at least, *inter alia*: (i) identify the victim; (ii) recover and preserve evidentiary material related to the death to aid in any possible criminal investigation of those responsible;

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258 *Cf.* Request to open a preliminary inquiry into unlawful conduct by a State agent (*infra* footnote 294) presented by the Justice and Peace Human Rights Committee of the State Aragua on August 27, 1997 (annexes to the answering brief, folios 7083 to 7085).

259 *Cf. Case of the Barrios Family, supra,* para. 253.

260 *Cf. Case of González et al. ("Cotton Field") v. Mexico. Preliminary objection, merits, reparations and costs.* Judgment of November 16, 2009. Series C No. 205, para. 368, and, *inter alia, Case of the Barrios Family, supra,* para. 253.

261 *Cf. Case of the Barrios Family, supra,* para. 254.

262 *Cf. Case of Servellón García et al. v. Honduras. Merits, reparations and costs.* Judgment of December 21, 2006. Series C No. 152, para. 120, and *Case of Veliz Franco et al., supra,* para. 191.

(iii) identify possible witnesses and obtain statements from them concerning the death; (iv) determine the cause, manner, location and time of death, as well as any pattern or practice that may have brought about the death, and (v) distinguish between natural death, accidental death, suicide and homicide. The autopsies and analysis of human remains must be carried out systematically by competent professionals, using the most appropriate procedures.[263]

228. Similarly, the crime scene must be investigated thoroughly,[264] and some essential basic measures taken to conserve the evidence that could contribute to the success of the investigation.[265] In this regard, international standards indicate that, regarding the scene of the crime, the investigator must, at least: photograph the scene,[266] and any other physical evidence and the body as it was found and after it has been moved; collect and preserve any samples of blood, hair, fibers and threads or other clues;[267] examine the scene for shoe impressions or any other impressions of an evidentiary nature, and prepare a report detailing any observations at the scene, actions of investigators and disposition of all evidence recovered.[268] The Minnesota Protocol establishes, among other obligations, that, when investigating a crime scene the area around the body should be closed off, and only the investigator and his staff should be allowed entry into the area.[269]

229. Based on the foregoing, the Court notes that, among the actions taken shortly after the incident, the State carried out several initial measures. Thus, at 4 p.m. on November 17, 1996, the day of the incident, a summary investigation was opened[270] by the Mariño Division of the Technical Unit of the Judicial Police, who arrived at the scene of the crime and informed the corresponding authorities about what had happened (*supra* para. 75). As a result of this summary investigation measures were taken to collect evidential material, such as: (a) the inspection of the corpse on November 17, 1996 (*supra* para. 76); (b) the inspection of the scene of the crime at 5 p.m. on November 17, 1996 (*supra* para. 77); (c) the autopsy of the corpse on November 18, 1996 (*supra* para. 79); (d) the confiscation and handing in of the weapon taken from Igmar Landaeta on November 17 and 18, respectively (*supra* para. 67); (e) the analysis of the gunpowder residue on Igmar Landaeta on November 19, 1996 (*supra* para. 80); (f) the reception of various statements during November 1996 (*supra* para. 60 to 68),

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263 *Cf. Case of Juan Humberto Sánchez, supra*, para. 127, and *Case of Veliz Franco et al., supra*, para. 191. *Cf.* United Nations. United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary (hereinafter "Minnesota Protocol"), UN Doc. E/ST/CSDHA/.12 (1991).

264 *Cf. Case of Juan Humberto Sánchez*, *supra,* para. 127, and *Case of Veliz Franco et al., supra,* para. 191. Also *Cf.* International Committee of the Red Cross (ICRC). Guidelines for Investigating Deaths in Custody. Annex III. Simplified Checklist for the Management of the Death Scene. October 2013, p. 13. Available at: http://www.icrc.org/eng/assets/files/publications/Icrc-002-4126.pdf.

265 *Cf. Case of González et al. ("Cotton Field"), supra,* para. 301, and *Case of Luna López, supra, para. 164. Cf.* Minnesota Protocol, *supra.*

266 *Cf. Case of González et al. ("Cotton Field"), supra,* para. 301, and *Case of Veliz Franco et al., supra,* para. 192.

267 *Cf. Case of Servellón García et al., supra,* para. 121, and *Case of Veliz Franco et al., supra, para. 192.*

268 *Cf. Case of González et al. ("Cotton Field"), supra,* para. 301, citing the Minnesota Protocol, and *Case of Veliz Franco et al., supra,* para. 192.

269 *Cf. Case of González et al. ("Cotton Field"), supra,* para. 301, citing the Minnesota Protocol, and *Case of Veliz Franco et al., supra,* para. 192.

270 Article 74 of the Code of Criminal Procedure refers to the summary investigation and established that: "Every investigating official is obliged to issue, promptly, an order to open the summary investigation when, in accordance with the provisions of chapter I, title II of this Code, he becomes aware by any means that a wrongful act has been committed within his jurisdiction, which is not the type of act that can only be prosecuted by an action that depends on an accusation or complaint by the aggrieved party or at the request of the Public Prosecution Service." The competent court and prosecutor were advised of the opening of summary investigations, and the police authorities, delegated by the judges, acted as investigating bodies. *Cf.* Testimony of expert witness Magaly Mercedes Vásquez González of January 28, 2014 (merits file, folio 796).

and (g) the topographic survey, the analysis of the ballistics trajectory and the reconstruction of the incident.

230. In addition, the Court notes that, during the investigation, several probative measures or steps to collect evidence were not conducted, or were not conducted appropriately, and that the crime scene was not investigated thoroughly.[271] The Court will therefore analyze whether the shortcoming that have been established in the initial measures had a decisive impact on the clarification of the facts and on the final result of the criminal proceedings.

231. The Court notes that the case file does not reveal that the crime scene was protected in order to preserve the area around the crime and any evidence to be found there.[272] The Court also notes that, in this case, the failure to do this had consequences on the effectiveness of the inspection of the scene, because it was not possible to collect sufficient evidentiary material and the material present had been contaminated by bystanders. In fact, the Court notes that a partially deformed piece of yellow lead and six 9 mm caliber cartridges were collected from the scene of the crime by private citizens, Ignacio Landaeta and José Francisco Hernández Ramírez, respectively, and handed over to the authorities responsible for the investigation (*supra* para. 78). Also, the record of the site inspection includes a general description of the crime scene and does not reveal that either the scene or the evidence found was investigated thoroughly;[273] moreover the location of the evidence was not documented before it was collected[274] in order to help clarify the events.[275] Similarly, although there are photographs of the site inspection and the body,[276] they are not the case file and were not provided by the State, even though the Court requested them as helpful evidence.[277] In this regard, the Court considers that photographs taken during the investigation could ensure certainty and verify the information collected during the inspections.[278]

232. Regarding the autopsy,[279] the Court notes that there were a series of omissions,[280] such as: a superficial analysis of the injuries found, without establishing the presence of

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[271] *Cf. Case of Juan Humberto Sánchez, supra,* para. 127, and *Case of Veliz Franco et al., supra,* para. 191.

[272] *Cf. Case of Juan Humberto Sánchez, supra,* para. 128, and *Case of Veliz Franco et al., supra,* para. 198. *Cf.* United Nations Office on Drugs and Crime (UNODC), Crime scene and physical evidence awareness for non-forensic personnel. New York 2009, p. 10. Available at: http://www.unodc.org/documents/scientific/Crime_scene_awareness_Ebook.pdf and the Minnesota Protocol, *supra*.

[273] *Cf.* UNODC, Crime scene and physical evidence awareness for non-forensic personnel, *supra*, p. 12, and the Minnesota Protocol, *supra*.

[274] *Cf.* UNODC, Crime scene and physical evidence awareness for non-forensic personnel, *supra*, p. 12.

[275] *Cf.* Site inspection record No. 1582 of November 16, 1996 (annexes to the answering brief, folio 9122). The record merely indicated the collection of a "piece of cotton impregnated with a reddish-brown substance."

[276] *Cf.* Minnesota Protocol, *supra,* p. 58.

[277] Letters of the Secretariat dated May 20 and June 9, 2014 (merits file, folios 1224 and 1249). In its communication of June 11, 2014, the State indicated in relation to the photographs of the crime scene inspections and of the bodies that the Code of Criminal Procedure did not establish specifically the need for photographs. Nevertheless, reference is made to the existence of such photographs in the respective inspection records.

[278] The Minnesota Protocol establishes in section C.1, paragraphs (b) and (c) the need to take photographs of both the victim and the scene of the crime and the evidence collected. *Cf. Case of the Barrios Family, supra,* para. 234.

[279] The document in this Court's case file is not the Autopsy Report itself, but a document dated November 19, 1996, prepared by two forensic physicians that describes the result of autopsy No. 872-96 performed on November 18 that year. *Cf.* Autopsy of the body of Igmar Landaeta of November 18, 1996 (annexes to the answering brief, folio 9210).

[280] Regarding the autopsy that was performed, expert witness José Pablo Baraybar concluded that: (a) "there is no autopsy report as such, [but rather] a [very brief] document notifying the results of the autopsy […], that does not meet the standards required for the investigation; (b) photographs that support or corroborate the conclusions of the report are not [attached or mentioned]; (c) [there is no mention of] x-rays being taken, or whether or not there were bullets or fragments of bullets inside the victim; (d) [although the injuries found were listed,] there is no type of photographic record of [them], or any reference to the

residues of soot, gunpowder or a burn, which would permit establishing the approximate distance between the gun barrel and the target; the absence of photographs to support the report's conclusions,[281] and contradictions with the inspection of the body at the crime scene.[282] The Court also notes that this procedure merely concluded that the cause of death was severe cerebral contusion produced by a facio-cranial gunshot wound,[283] and did not collect all the necessary evidence to clarify the case, because it did not establish the time of death,[284] or the time that had elapsed between the moment that Igmar Landaeta was wounded and his death, relevant elements that should have been determined in this case.

233. The Court underscores that an autopsy should observe certain basic formalities,[285] and its purpose is to collect, at least, information to identify the deceased, and the time, date, cause and manner of death. Regarding the establishment of the time of death of Igmar Landaeta, expert witness José Pablo Baraybar indicated that, based on Dr. Velmar Quintero's observations, according to the police record with the statement of agent Ildelgar Ferrera, at "3.20 p.m. on [November 17, 1996,] […] Landaeta Mejía[s], Igmar Alexander, entered this clinic […] and, on entry, he had two bullet wounds and displayed no vital signs."[286] The expert witness concluded that this supported the hypothesis that Igmar Landaeta probably died at the scene of the incident and that, despite this, he was taken to a hospital; in his opinion, "Alexander [Landaeta] probably died on receiving the shot to his head."[287] Mr. Baraybar stated that the transfer was made with the intention

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characteristics of the injuries such as their color, trajectory, depth or structure, and there is no mention of whether there was residue of soot, gunpowder or a burn, […] which would permit establishing the approximate distance between the gun barrel and the target, and (e) [there was] a possible contradiction with regard to the entry and exit holes caused by one of the bullet wounds suffered by Igmar Landaeta, based on the record of the inspection at the crime scene and the autopsy." *Cf.* Testimony of expert witness José Pablo Baraybar of January 29, 2014 (merits file, folios 823 to 829).

281 *Cf. Case of Juan Humberto Sánchez, supra,* paras. 102 and 126 and *Case of Veliz Franco et al., supra,* para. 196 c). *Cf.* Minnesota Protocol, *supra*. In this regard, the State indicated that, at the time of the incident, bodies were not photographed during autopsies, but a general photograph of the body was taken to leave a record of the injuries to the body of the deceased and their specific characteristics. *Cf.* The State's response of May 30, 2014, in relation to the helpful evidence requested by the Court in a letter from the Secretariat (merits file, folio 1247).

282 With regard to the bullet wounds suffered by Igmar Landaeta, Record No. 1581 of the inspection of the body described a "circular hole with regular inverted borders with a radius of 3 mm in the right back area of the thorax, with a circular hole with everted irregular borders in the left scapular area." In addition, the document that referred to the results of the autopsy mentions the existence of an "entry hole: ninth back left intercostal space towards the internal scapular region. Exit hole: sixth right parasternal intercostal space. Trajectory: from the back towards the front, from above to below, from left to right." According to the expert opinion of José Pablo Baraybar, "[this] contradiction appears serious, because if both bullet wounds had been inflicted at the same level (for example, anterior with a trajectory from front to back), it would have to be assumed that the direction from which the shots were fired would have been contrary to that described in the statements […]." *Cf.* Testimony of expert witness José Pablo Baraybar of January 29, 2014 (merits file, folios 836 and 837); inspection record No. 1581 of November 17, 1996 (annexes to the answering brief, folio 9105), and autopsy of the body of Igmar Landaeta of November 18, 1996 (annexes to the answering brief, folio 9210).

283 *Cf.* Autopsy of the body of Igmar Landaeta of November 18, 1996 (annexes to the answering brief, folio 9210).

284 According to the Minnesota Protocol, when investigating the crime scene, the following factors should be recorded in order to help estimate the time of death: "(i) Temperature of the body (warm, cool, cold); (ii) Location and degree of fixation of lividity; (iii) Rigidity of the body, and (iv) Stage of its decomposition." The case file does not record that these factors were taken into account in the autopsy that was performed, because the time of death was not established.

285 The basic formalities that the autopsy should comply with include recording the date, starting and finishing time, and place of the autopsy, and the name of the professional who performs it. In addition, it is necessary, *inter alia*, to photograph the body adequately; to radiograph the body before it is removed from its pouch or wrappings, and after undressing it [if necessary], and to document every injury. *Cf. Case of González et al. ("Cotton Field"), supra*, para. 310, and *Case of Veliz Franco et al., supra*, para. 194. *Cf.* Minnesota Protocol, *supra*.

286 Testimony of expert witness José Pablo Baraybar of January 29, 2014 (merits file, folio 836).

287 Testimony of expert witness José Pablo Baraybar of January 29, 2014 (merits file, folio 843).

of "conveying an impression of humanitarian aid that, in fact, contaminated the crime scene, by removing the body from the scene of the crime, knowing full well that it was a corpse, and not an injured person."[288] In this regard, the Court finds that the action taken did not meet the basic requirements and was incomplete.

234. Furthermore, regarding the appraisals made of who fired the shots and of the ballistics comparison, the Court notes that, although an appraisal was made of the gunpowder residue and forensic and ballistic tests had been performed (*supra* paras. 80 and 81) on the weapon seized by police authorities and presumably used by Igmar Landaeta, no fingerprints were taken,[289] which could have corroborated the hypothesis of its use during the presumed confrontation with the police agents. Similarly, the Court has corroborated that the forensic tests and ballistic comparison appraisal were not performed on the weapons used by the police agents. These weapons were not confiscated from the police agents involved and there is no record in the case file of a ballistics comparison between the bullets that caused the death of Igmar Landaeta and those used by the authorities, and no fingerprints were taken from the weapons of the police agents. The Court considers that this is very significant, because ballistics evidence must be obtained every time a weapon has been used,[290] especially if an investigation involving State agents is being conducted in which the number of shots fired by the said agents must be established so as to help clarify whether the use of force by the police was necessary[291] and proportionate, and to exhaust all the lines of investigation in order to discover the truth. In this regard, the domestic laws in force at the time of the events established the need to identify the weapons used, their type and caliber.[292]

235. In addition, with regard to the establishment of criminal responsibility, the Court notes that no appraisal was made to determine which shots were fired by each agent and no procedure was conducted to allow the eyewitnesses to identify the police agents. This would have been necessary so that these witnesses could identify, if possible, which of the agents fired the shots.[293] In addition, there is no record that the authorities performed other tests that could have provided further technical evidence to clarify the discrepancies between the different versions of what happened, such as an analysis of the vehicles, both the one that transported Igmar Landaeta to the medical center, as the supposed white vehicle behind which he allegedly hid during the presumed confrontation, according to the statements of some witnesses (*supra* paras. 63 and 65). Furthermore, no measure was taken to disprove the dispute regarding the way in which the second shot that caused the death of Igmar Landaeta was fired.

236. Based on the above, the Court considers that the lack of thoroughness in the investigation of the crime scene and in the autopsy, the shortcomings in the preservation

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288 Testimony of expert witness José Pablo Baraybar of January 29, 2014 (merits file, folio 835).

289 *Cf. Case of Garibaldi v. Brazil. Merits, reparations and costs.* Judgment of September 23, 2009. Series C No. 203, para. 124 and *Case of Veliz Franco et al., supra,* para. 196 c).

290 *Cf.* ICRC, Guidelines for Investigating Deaths in Custody, *supra*, p. 13.

291 *Cf. Case of Juan Humberto Sánchez*, *supra*, paras. 111 and 112 and *Case of J. v. Peru*. Preliminary objection, merits, reparations and costs. Judgment of November 27, 2013. Series C No. 275, para. 330.

292 In this regard, article 126 of the Code of Criminal Procedure established that: "If the weapons or instruments used to commit the offense can be obtained, a drawing and a description shall be made which shall be added to the file of the proceedings and, in the case of firearms, their type and caliber shall be noted. When necessary to clarify the incident, the circumstances and the guilt of the perpetrators, a description of the topography of the site where the offense was perpetrated shall be added to the file."

293 Article 181 of the Code of Criminal Procedure indicated specifically that: "[…] If the witnesses or victims do not know the name and other circumstances that would identify the suspect, an identification parade can be organized, so that they may identify the individual who they believe to be the offender […]." And, article 262 of the Code established the possibility of confronting witnesses if their statements were contradictory, as in this case, stipulating that: "The witnesses whose statements are contradictory shall be confronted with each other when one of the parties shall request this, or when the court orders this […]."

of the area around the incident, as well as the absence of other important procedures or the flawed execution of some of them, reveal the State's lack of diligence in the recovery and preservation of evidentiary material. All of this resulted in the lack of reliable and essential technical evidence in view of the contradictory versions of the incident (*supra* paras. 60 to 68), and made it impossible to clarify the truth of what happened.

B.2.2 Criminal proceedings and reasonable time regarding the death of Igmar Landaeta

237. The Court has established that the death of Igmar Landaeta was the result of the disproportionate use of force by the police agents who took part in the presumed confrontation, which constituted an arbitrary deprivation of his right to life (*supra* para. 142). In this regard, the Court emphasizes that, based on the obligation to ensure this right, the State should have opened the corresponding investigation and criminal proceedings in order to determine whether the use of lethal force was lawful (*supra* para. 242). Accordingly, the existence of sufficient evidence was essential to allow the agents of justice to elucidate the incident and assign the corresponding responsibilities.

238. The Court has noted that, since the incident, and in the course of the criminal proceedings held in this case, one of the police agents was convicted and the other acquitted in October 2000, a decision that was confirmed in second instance, following the filing of a remedy of appeal. An appeal for annulment was filed against the second instance judgment and the court ordered that the remedy of appeal be decided anew, as a result of which the Appellate Court dismissed the case on November 10, 2003, revoking the initial conviction (*supra* paras. 92 and 93). The Court notes that the proceedings lasted seven years and concluded with the determination that the presumed authors were not criminally responsible for the death of Igmar Landaeta. Consequently, the Court will assess the alleged existence of procedural delays and irregularities, and whether the State complied with its obligation to investigate the incident, including an analysis of the necessity and proportionality of the use of firearms by police agents. To this end, it will take into account both the decisions at the domestic level, and the evidentiary material on which the said decisions were based.

239. The Court observes that after the preliminary investigation had been opened, and also the "preliminary inquiry into unlawful conduct by a State agent,"[294] the Ninth Prosecutor formally accused agents GACF and AJCG (*supra* para. 82) before the Court of the Santiago Mariño and Libertador Municipalities in February 1997. That court decided to close the preliminary investigation because the evidence collected had not convinced it that an illegal act had been committed or of the guilt of the agents (*supra* para. 83). After this decision was forwarded to the corresponding authorities, it was revoked by the Third Superior Criminal Court on November 11, 1997, because, based on its assessment of the evidence, it considered that "strong evidence of guilt and criminal responsibility was revealed" (*supra* para. 86).

240. When the preliminary proceedings had concluded, the prosecution indicted the two accused and, on October 13, 2000, the Second Court of the Transitory Procedural Regime delivered judgment in first instance acquitting AJCG and sentencing GACF to 12 years' imprisonment (*supra* para. 90). Based on the interpretation of the evidence in the case file, the Second Court concluded that, in the context of the confrontation, the first shot had prevented the victim from continuing the confrontation, so that the "second

[294] The preliminary inquiry into unlawful conduct by a State agent was opened because the Ninth Prosecutor of the Public Prosecution Service of the Judicial Circuit of the state of Aragua asked the judge of the Mariño municipality to conduct such an inquiry owing to the presumed participation of public officials who had allegedly committed offenses in the exercise of their functions or owing to their position. *Cf.* Testimony of expert witness Magaly Mercedes Vásquez González of January 28, 2014 (merits file, folio 809) and article 374 of the Code of Criminal Procedure.

shot should not have been necessary."[295] The judgment attributed the firing of the second shot[296] to GACF and acquitted AJCG because the first shot was fired in circumstances that excluded criminal responsibility under article 65(1) of the Criminal Code: compliance with a duty or the legitimate exercise of a right, authority, profession or position.[297] The defense filed a remedy of appeal against the conviction which was decided by the Appellate Court on April 25, 2002, confirming the guilty verdict delivered in first instance based on the analysis of the evidence, and concluding that the court had "determined a disproportion between the harm caused by the agent and the intention of committing a wrongful act"[298] (*supra* para. 91). An appeal for annulment was filed against this judgment, which was decided by the Cassation Chamber of the Supreme Court of Justice on November 29, 2002, ordering the annulment of the appeal and the restitution of the case to the situation in which the Appellate Court would again decide the appeal[299] (*supra* para. 92).

241. The Appellate Court delivered another judgment on November 10, 2003, in which it examined the evidence from another perspective, accepting as a fact the hypothesis of the confrontation and the account of the accused, "that when turning to fire a shot, the deceased received a bullet in the face with internal trajectory from front to back […]."[300] The Appellate Court concluded that the incident took place in a context of the legitimate use of force by the authorities, after using legitimate defense as the only means of subduing the armed attacker so that he would not continue to commit acts of violence using a firearm against the police agents.[301] In addition, it indicated that the analysis of the "contradictory" testimony of the eyewitnesses did "not reveal clearly that the accused was guilty of the crime of first-degree murder, a doubt that, in any case and for the purposes of the decision to be taken, should benefit him in order to ensure that justice is done,"[302] and therefore decided to dismiss the case, in favor of GACF.[303] The

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295 *Cf.* First instance judgment of the Second Court of the Transitory Procedural Regime, Judicial District of the state of Aragua, of October 13, 2000 (annexes to the answering brief, folios 9605 to 9607).

296 Regarding the characteristics of this second shot, the Second Court underscored that the distance must have been slightly more than 60 centimeters, because the wound only had a halo of bruising rather than incrustations of gunpowder and burns. In this regard, expert witness Baraybar concluded that it is perfectly possible that Igmar Landaeta was lying on the ground and had received a shot "from a distance" in the face from someone who was above him, because the average distance between the barrel of a hand gun held by an adult with his armed extended is more than 50 centimeters. *Cf.* Testimony of expert witness José Pablo Baraybar of January 29, 2014 (merits file, folio 834).

297 *Cf.* First instance judgment of the Second Court of the Transitory Procedural Regime, Judicial District of the state of Aragua, of October 13, 2000 (annexes to the answering brief, folio 9602 and 9604).

298 *Cf.* Judgment of the Appellate Court of April 25, 2002 (annexes to the answering brief, folio 9673).

299 *Cf.* Judgment of the Supreme Court of Justice, sitting as a Criminal Cassation Chamber, of November 29, 2002 (annexes to the answering brief, folios 9735 and 9739).

300 *Cf.* Judgment of the Incidental Chamber of the Appellate Court of the Criminal Judicial Circuit of the state of Aragua of November 10, 2003 (attachments to the Merits Report, folio 1133).

301 This judgment stated that: "in order to decide that the act was not unlawful, not only the legitimate exercise of authority, as has already been established, is required, but also that this extreme measure was used in legitimate defense and as the only means to subdue the armed attacker so that he would not continue committing acts of violence with a weapon, which constituted resisting the authority of the police agents, a circumstance that has been proved […]; therefore, these grounds for excluding penalization are admitted [referring to the grounds under article 65(1) of the Criminal Code]". *Cf.* Judgment of the Incidental Chamber of the Appellate Court of the Criminal Judicial Circuit of the state of Aragua of November 10, 2003 (annexes to the answering brief, folio 9841).

302 *Cf.* Judgment of the Incidental Chamber of the Appellate Court of the Criminal Judicial Circuit of the state of Aragua of November 10, 2003 (attachments to the Merits Report, folio 1134).

303 It should be noted that the Presiding Judge of the Appellate Court, Fabiola Colmenarez, dissented from the majority opinion indicating that, from the evidence in the case it was categorically concluded that "on measuring the result of the action, a disproportion could be determined between the harm caused by agent (GCF) and the intention of committing the wrongful act; [therefore, she] classified the act as intentional homicide" and confirmed the guilty verdict delivered. *Cf.* Dissenting opinion of the Presiding Judge, Judgment of the Incidental Chamber of the Appellate Court of the Criminal Judicial Circuit of the state of Aragua of November 10, 2003 (attachments to the Merits Report, folio 1152 and 1155).

case was forwarded to the Central Judicial Archives following this dismissal (*supra* para. 96).

242. The Court recalls that, in this case, the events in which Igmar Landaeta lost his life occurred in a situation of the use of force by police agents for which this Court has established that the State violated Article 4 of the Convention, owing to the disproportionate use of such force which resulted in the arbitrary deprivation of Igmar Landaeta's life (*supra* para. 142). The State's obligation to investigate is increased in cases of the use of lethal force by State agents where the determination of whether this was excessive and, as a result, there was an arbitrary deprivation of life, should be examined by a serious, independent, impartial and effective proceeding,[304] promptly and thoroughly,[305] taking into account all the circumstances and the context of the events, including the planning and control measures,[306] as well as avoiding omissions in the collection of evidence and in following up on logical lines of investigation.[307]

243. The Court reiterates that it is not a criminal court in which the responsibility of the individual is analyzed,[308] because it is for the domestic courts to assess the evidence and to apply the criminal law to those who commit offenses. However, the Court has indicated that, in order to analyze whether the State violated Articles 8 and 25 of the Convention, it may need to examine the respective domestic proceedings, particularly the investigations on which the opening and progress of such proceedings depend,[309] within the framework of its competence and functions.

244. Accordingly, the Court notes that during the domestic proceedings, the Second Court and the Appellate Court in its first decision indicated that the "second shot should not have been necessary"[310] and that there was "a disproportion between the harm caused by the agent and the intention of committing a wrongful act,"[311] to the detriment of Igmar Landaeta. However, the judgment of November 10, 2003 (the second appeal that was decided) merely indicated that the court had applied grounds to exclude the accused's criminal responsibility, since he had acted in the legitimate exercise of authority and in legitimate defense, without revealing an analysis of the proportionality of the means used. Even though, as has been verified (*supra* para. 147), there was no specific legal framework concerning the use of force, domestic law with regard to legitimate defense established in articles 65 and 66 of the Criminal Code the grounds for this exclusion of responsibility and its limits according to the proportionality used.[312]

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304 *Cf. Case of the Barrios Family, supra,* para. 49, and *Case of Zambrano Vélez, supra,* paras. 81, 83, 84, 86 and 88.

305 United Nations, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted by General Assembly resolution 60/147 of 16 December 2005, Article 3(b).

306 *Cf. Case of Montero Aranguren et al. (Retén de Catia)*, *supra*, para. 82, and *Case of Zambrano Vélez*, *supra*, para. 89. Similarly *Cf.* ECHR, Case of Erdogan and Others *v.* Turkey, No. 19807/92. Judgment of 25 April 2006, para. 68; Case of Makaratzis *v.* Greece [GS], No. 50385/99. Judgment of 20 December 2004, para. 59, and Case of McCann and Others. *v.* The United Kingdom [GS], No. 18984/91. Judgment of 27 September 1995, para. 150.

307 *Cf. Case of the Serrano Cruz Sisters, supra*, para. 166 and *Case of the Massacres of El Mozote and nearby places, supra,* para. 257.

308 *Cf. Case of Velásquez Rodríguez. Merits, supra,* para. 134 and *Case of J., supra, para. 123.*

309 *Cf. Case of the "Street Children" (Villagrán Morales et al.), supra,* para. 222 and *Case of the Barrios Family, supra,* para. 181.

310 *Cf.* First instance judgment of the Second Court of the Transitory Procedural Regime, Judicial District of the state of Aragua, of October 13, 2000 (annexes to the answering brief, folio 9605).

311 *Cf.* Judgment of the Appellate Court of April 25, 2002 (annexes to the answering brief, folio 9673).

312 *Cf.* Article 65 of the Venezuelan Criminal Code establishes that the following shall "not be penalized: 1. Anyone who acts in compliance with a duty or in legitimate exercise of a right, authority, profession or position, without exceeding legal limits. […] 3. Anyone who acts in self-defense or in defense of a right, provided that this is in the following circumstances: (1) Unlawful attack by the victim of the act. (2) Necessity for the means used to prevent or repel the attack. (3) Lack of sufficient provocation by the person claiming to have acted in

Consequently, the decision of November 10, 2003, does not reveal a well-founded and reasoned analysis[313] of the application of legitimate defense, in light of the standards of proportionality under domestic law and the relevant international standards. In addition, the irregularities in the actions of the police agents were not taken into account, leaving the lifeless body of Igmar Landaeta in the Outpatient Clinic, following which they had left without identifying themselves, which could have constituted further evidence of the perpetration of a wrongful act, among other factors mentioned in this Judgment (*supra* paras. 145 and 146).

245. In addition, the Court finds that, owing to the irregularities and omissions during the investigations established by this Court (*supra* paras. 230 to 235), the agents of justice did not necessarily have the technical evidence that could have helped determine the truth about the events with greater certainty in the domestic sphere, owing to the contradictory versions that existed, as well as those responsible.

246. Furthermore, the Court's case law concerning reasonable time[314] has considered the following factors to determine whether the time has been reasonable: (a) the complexity of the matter; (b) the procedural activity of the interested party; (c) the actions of the judicial authorities,[315] and (d) the effects on the legal situation of the person involved in the proceedings.[316] Regarding the first element, the Court notes the existence of some complex factors,[317] which do not justify a delay in the criminal proceedings, which lasted seven years. With regard to the second element, the Court notes that the victims have played an active role during the investigations and the criminal proceedings (*supra* paras. 84, 89 and 95).

247. In the case of the third element, the Court underlines that the State of Venezuela has recognized the existence of a judicial delay in the case of Igmar Landaeta, justifying

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self-defense." Article 66 of the same Code stipulates that "anyone who exceeds the limits imposed by the law in the case described in paragraph 1 of the preceding article, and by the authority who gave the order in the case described in paragraph 2 of that article, and anyone who shall use excessive force in self-defense or in the means used to save himself from grave and imminent danger, doing more than necessary, shall be penalized with the corresponding punishment, reduced by one-third to two-thirds […]."

313 In this regard, the Court has indicated that "the grounds are the reasoned justification that allows a conclusion to be reached." Thus, "the obligation to provide the grounds is one of the 'due guarantees' included in Article 8(1) of the Convention to safeguard the right to due process." *Cf. Case of Chaparro Álvarez and Lapo Íñiguez, supra*, para. 107; *Case of López Mendoza v. Venezuela. Merits, reparations and costs.* Judgment of September 1, 2011. Series C No. 233, para. 141, and *Case of Suárez Peralta v. Ecuador. Preliminary objections, merits, reparations and costs.* Judgment of May 21, 2013. Series C No. 261, para. 109.

314 The concept of reasonable time established in Article 8 of the American Convention is closely connected to the simple, prompt and effective remedy established in its Article 25. *Cf. Case of Baldeón García v. Peru. Merits, reparations and costs*. Judgment of April 6, 2006. Series C No. 147, para. 155, and *Case of Luna López, supra,* para. 188. The Court has indicated that the right of access to justice is not exhausted with the processing of domestic proceedings, but must also ensure, within a reasonable time, the right of the presumed victims or their next of kin that everything necessary is done to know the truth of what happened and for those found responsible to be punished. *Cf. Case of the 19 Tradesmen v. Colombia. Preliminary objection.* Judgment of June 12, 2002. Series C No. 93, para. 188, and *Case of Osorio Rivera and family members v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of November 26, 2013. Series C No. 274, para. 200. The Court has also asserted that the reasonableness of the time must be assessed in relation to the total duration of the proceedings, from the first procedural action until the final judgment is delivered, including any appeals that may eventually be filed. *Cf. Case of Suárez Rosero v. Ecuador. Merits*. Judgment of November 12, 1997. Series C No. 35, para. 71, and *Case of Veliz Franco et al., supra*, para. 217.

315 *Cf. Case of Genie Lacayo v. Nicaragua. Merits, reparations and costs.* Judgment of January 29, 1997. Series C No. 30, para. 77, and *Case of Osorio Rivera and family members, supra,* para. 201.

316 *Cf. Case of Valle Jaramillo et al. v. Colombia. Merits, reparations and costs.* Judgment of November 27, 2008. Series C No. 192, para. 155, and *Case of Osorio Rivera and family members, supra,* para. 201.

317 Regarding the complexity of the case, the Court observes that: (a) there is only one victim; (b) the incident occurred in a public place in the presence of witnesses; (c) the investigations and the possibilities of collecting evidence were immediate, the day the incident occurred; (d) there were only two suspects, who also acknowledged their intervention in the incident, and (e) the fact that there were contradictory versions of the circumstances of the death of Igmar Landaeta introduces certain particularly complex characteristics.

this by the delays caused by the procedural transition owing to the entry into force of the Organic Code of Criminal Procedure on July 1, 1999 (*supra* para. 90). However, in this case, the Court has verified that there were some procedural delays that, in the Court's opinion, are not justified by this transitory regime. For example, there were delays that can be attributed mainly to the judicial activities, as well as several previously established errors and omissions in several procedures that can be attributed to the Technical Unit of the Judicial Police, omissions in the autopsy and in the collection of evidence (*supra* paras. 230 to 235). In this regard, the Court notes that the indictment dates from May 21, 1998, and that, on September 28, 1998, the proceeding to receive reports (*acto de informes*) was held, following which and before the entry into force of the new procedural regime, the case was ready for judgment to be pronounced.[318] Despite this, the Second Court delivered judgment in first instance on October 13, 2000.

248. Then, the Sixth Court referred the case to the Second Transitory Court on October 11, 2000, "two days" before the adoption of the first instance judgment. However, the Inter-American Court has verified that, following the proceeding to receive reports and until the transfer of the case file to the Second Court, there is no record in the case file of the collection of new evidence or of the implementation of significant procedures; or of procedures carried out before or after the entry into force of the new regime. Consequently, the Court does not find that the period of procedural inactivity is justified by the entry into force of the new procedural regime as indicated by the State (*supra* para. 213). In addition, The State indicated during the public hearing in this case that the proceedings could still be inconclusive, since the possibility existed of filing domestic remedies (*supra* para. 16). Lastly, the Court does not find it necessary to analyze the fourth element for the purposes of this case.[319]

249. Based on the above, the Court concludes that the State failed to respect a reasonable time in relation to the investigation and the criminal proceedings with regard to the death of Igmar Landaeta, in violation of Article 8 of the American Convention.

B.2.3 Conclusion with regard to Igmar Landaeta

250. The Court concludes that, with regard to the investigations and the criminal proceedings instituted for the death of Igmar Landaeta, the State did not conduct an exhaustive and diligent investigation, following joint lines of investigation in relation to the death of his brother Eduardo Landaeta, that would have allowed sufficient consistent, congruent and reliable technical evidence to be obtained in order to resolve the contradictory positions assumed by the judicial authorities, which had a relevant impact on the obstruction of the clarification of the events in the domestic jurisdiction, and on the determination of the corresponding responsibilities. The Court also concludes that the State did not provide an effective judicial remedy to the members of Igmar Landaeta's family, owing to the existence of several procedural delays in the prosecution of the case, as well as the failure to make a complete and thorough analysis and to provide comprehensive reasoning as regards the necessity and proportionality of the actions of the agents in compliance with a duty or in exercise of legitimate defense, in order to clarify the events and to punish those responsible as pertinent. Consequently, the Court finds that the State is internationally responsible for the violation of the rights established in Articles 8(1) and 25(1) of the American Convention, to the detriment of the members of Igmar Landaeta's family (*infra* para. 294).

B.3 Due diligence and reasonable time during the investigations and the criminal proceedings regarding the death of Eduardo José Landaeta Mejías

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[318] Article 293 of the Code of Criminal Procedure establishes that "[w]hen the proceeding to receive reports has concluded, the case shall enter the sentencing stage."

[319] *Cf. Case of Garibaldi, supra,* para. 138, and *Case of Luna López, supra,* para. 195.

251. The Court has established that the minor, Eduardo Landaeta, was detained in an unlawful and arbitrary manner by police agents, following which he died while in the State's custody; thus, the State violated his right to liberty and humane treatment and the obligation to respect and to ensure the right to life (*supra* paras. 164, 196 and 203). As a result of these events, the Court notes that an investigation was opened as well as criminal proceedings against the three police agents who took part in the transfer of Eduardo Landaeta. However the proceedings are still underway, at the oral trial stage (*supra* paras. 117 and 212) and, at the present time, the facts have still not been clarified. The Court has also verified that the State has not investigated the lawfulness of the detention of Eduardo Landaeta, as well as the evidence that he was a victim of acts of torture.

252. Consequently, and based on the arguments of the Commission and the parties, the Court must establish whether the investigations and the criminal proceedings with regard to the death of Eduardo Landaeta were conducted with due diligence and within a reasonable time, and also analyze whether the absence of investigations into the detention and presumed acts of torture gave rise to the State's international responsibility. In this regard, the Court will analyze: (a) the obligation to investigate the death of a person in the State's custody; (b) the existence of presumed irregularities and omissions in the initial investigation procedures; (c) the existence of presumed irregularities during the criminal proceedings, and the reasonable time, and (d) the absence of investigations into the detention and the violation of personal integrity.

B.3.1 Obligation to investigate the death of a person in the custody of the State

253. As indicated by the Court's case law, and in light of the State's obligation to investigate the death of a person who is in its custody, as in the instant case, the corresponding authorities have the duty to investigate the events, by all available legal means in order to determine the truth and obtain the prosecution and punishment, if this is deemed pertinent, of all those responsible for the events, especially when State agents are or could be involved.[320] The Court also reiterates its case law with regard to the obligation to provide judicial protection, adding that, in cases involving children, the obligation to combat impunity by all available legal means is increased.[321] In addition, the Court has already indicated that the State has the obligation to provide an immediate, satisfactory and convincing explanation for the death of any individual in its custody (*supra* para. 183).

254. In addition to the guidelines established by this Court and the international standards in cases of violent deaths[322] (*supra* para. 227), the Court finds it pertinent to emphasize that, in the case of deaths in the custody of State agents, the measures taken by the State must be guided by certain specific standards, *inter alia*: (i) an investigation *ex officio,*[323] that is complete,[324] impartial and independent,[325] taking into

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320 *Cf. Case of Velásquez Rodríguez*. *Merits*, para. 177, and *Case of Mendoza et al.*, *supra*, para. 218.

321 *Cf. Case of Servellón García et al., supra,* para. 154 and *Case of Veliz Franco et al., supra,* para. 183.

322 *Cf.* Minnesota Protocol, *supra*. In other words, the State authorities who conduct an investigation into a violent death must, at least: (i) identify the victim; (ii) recover and preserve evidentiary material related to the death to aid in any potential prosecution of those responsible; (iii) identify possible witnesses and obtain statements from them concerning the death; (iv) determine the cause, manner, location and time of death, as well as any pattern or practice that may have brought about the death, and (v) distinguish between natural death, accidental death, suicide and homicide. *Cf. Case of Juan Humberto Sánchez, supra,* para. 127 and *Case of Veliz Franco et al., supra*, para. 191. *Cf.* ICRC, Guidelines for Investigating Deaths in Custody, *supra*, p. 13. Regarding the identification of witnesses and taking their statements *Cf. Case of Garibaldi, supra,* para. 122.

323 *Cf. Case of Velásquez Rodríguez. Merits, supra,* para. 177, and *Case of Veliz Franco et al., supra,* para.183.

324 *Cf. Case of Heliodoro Portugal v. Panama. Preliminary objections, merits, reparations and costs.* Judgment of August 12, 2008. Series C No. 186, para. 146 and *Case of Veliz Franco et al., supra*, para. 250. *Cf.* ICRC, Guidelines for Investigating Deaths in Custody, supra, pp. 13, 15 to 17 and 25.

account the level of participation of all the State agents; (ii) the investigation must be given a certain degree of public scrutiny[326] owing to the possible public interest because of the rank of the agents presumed to be involved; (iii) prompt intervention at the scene of the incident and appropriate handling of the scene of the crime, as well as preserving this in order to protect all the evidence,[327] as well as ballistic tests when firearms have been used,[328] especially by State agents; (iv) determination of whether the body has been touched or moved[329] and of the sequence of events that could have led to the death,[330] as well as a preliminary examination of the corpse to protect any evidence that could be lost in its manipulation and transport,[331] and (v) performance of an autopsy by trained professionals that reveals any evidence indicating presumed acts of torture[332] by State agents

B.3.2 The initial investigation procedures

255. The Court observes that, on December 31, 1996, after the events had occurred, a summary investigation was opened by the Technical Unit of the Judicial Police, Mariño Division (*supra* para. 97) who went to the scene of the crime. A team from the Forensic Medicine Unit and the Ninth Prosecutor also went to the crime scene (*supra* para. 97). In the context of this summary investigation initial procedures were carried out to collect evidential material; these included, in particular: (a) removal of the corpse and its transfer to the Forensic Medicine Unit (*supra* para. 98); (b) visual inspection of the area where the incident occurred at 11 a.m. on December 31, 1996, during which 17 photographs were taken, and seven empty cartridges and a piece of cotton with a reddish-brown substance were collected (*supra* para. 98); (c) two inspections of the corpse on December 31, 1996 (*supra* para. 98); (d) autopsy of the corpse performed the same day, during which three bullets were recovered (the autopsy was expanded subsequently (*supra* para. 98); (e) reception of the statements of the police agents who were transferring Eduardo Landaeta (*supra* paras. 216 and 217); (f) tests for gunpowder residue on the hands of two police agents (*supra* para. 99); (g) topographic survey and ballistics trajectory on August 14, 1997, which were subsequently expanded (*infra* para. 259); (h) appraisal and valuation of the vehicle that transported Eduardo Landaeta of January 1997;[333] (i) appraisal using chemical reagents to search for fingerprints (*experticia de "activación especial"*) on the vehicle that transported Eduardo Landaeta of March 1997,[334] which was carried out again in 2004, and (j) other procedures.[335]

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325 *Case of Velásquez Rodríguez. Merits, supra,* para. 177, and *Case of Veliz Franco et al., supra,* para.183.

326 *Cf.* Istanbul Protocol, *supra,* para. 78(a), and ICRC, Guidelines for Investigating Deaths in Custody, *supra*, p. 13.

327 *Cf*. CICR, Guidelines for Investigating Deaths in Custody, *supra*, p. 13, *Case of Myrna Mack Chang, supra,* para. 166, and *Case of Veliz Franco et al., supra,* para. 191.

328 CICR, Guidelines for Investigating Deaths in Custody, *supra*, pp. 13, 15 to 1*7, Case of Garibaldi*, *supra*, para. 125, and *Case of Nadege Dorzema et al., supra,* para. 192.

329 *Cf.* ICRC, Guidelines for Investigating Deaths in Custody, *supra*, p. 18, *Case of González et al. ("Cotton Field"), supra*, para. 310, and *Case of Veliz Franco et al.,* para. 192.

330 *Cf.* ICRC, Guidelines for Investigating Deaths in Custody, *supra*, pp. 18 and 19.

331 *Cf.* ICRC, Guidelines for Investigating Deaths in Custody, *supra*, pp. 33 a 36.

332 *Cf. Vargas Areco v. Paraguay. Merits, reparations and costs.* Judgment of *September* 26, 2006. Series C No. 155, para. 87, and ICRC, Guidelines for Investigating Deaths in Custody, *supra,* pp. 13 and 18 to 20. Also, under the Istanbul Protocol, investigation of a case of torture requires a general assessment of all the injuries and not the correlation of each of them with a particular form of torture. *Cf.* Istanbul Protocol, *supra,* para. 188.

333 *Cf.* Appraisal and valuation of a vehicle of January 5, 1997 (annexes to the answering brief of the State, folio 7171).

334 *Cf.* Appraisal using chemical reagents to search for fingerprints on vehicle of March 10, 1997 (annexes to the answering brief of the State, folios 7192 and 7193).

335 For example, the reception of testimony from the police agents who took part in the transfer, and also from the parents of Eduardo Landaeta and two eyewitnesses; forensic and hematological testing of Eduardo

256. Despite the foregoing, other possible procedures were not implemented, or procedures were expanded or supplemented many years after the events (*infra* para. 259). The Court has also verified that, during the investigation, some initial procedures revealed omissions and irregularities, namely:

a) Since there were a series of omissions in the autopsy, the court requested its expansion in 2006, because all the bullets that entered Eduardo Landaeta's body and did not have an exit hole had not been recovered (*supra* para. 109). Also, the autopsy had only established the cause of death and made a general mention of other injuries observed (*supra* para. 102), without making a detailed analysis of them, which might have helped provide greater details in order to evaluate whether they could have been caused while Eduardo Landaeta was being detained unlawfully and arbitrarily. Furthermore, the Court considers that the autopsy did not comply with the minimum requirements to establish details of the time, date, cause and manner of the death of Eduardo Landaeta, or to determine how the events occurred, respecting certain basic formalities. The Court therefore concludes that this autopsy suffered from the same omissions,[336] *inter alia*, as those already established by the expert witness José Pablo Baraybar in the case of Igmar Landaeta (*supra* para. 232);
b) There is no record in the Court's case file that the crime scene was cordoned off in order to preserve any evidence that might have been there. In this regard, the Court notes that this error made it impossible to collect all the spent cartridges and the shells of the 15 bullets that hit Eduardo Landaeta's body;
c) The forensic testing of five bullets, nine spent cartridges, and other objects recovered from the scene of the crime and from the body of Eduardo Landaeta was carried out in July 1998; however, it only concluded that the nine spent cartridges found were 7.65 mm caliber, and failed to determine the weapons from which the bullets found had been fired, because no ballistics comparison was made between the bullets found in Eduardo Landaeta's body and the weapons used by the agents,[337] and
d) The weapons used by the police agents were presumably mislaid; however, no precise information on them was requested until 2004.

257. The Court has indicated that it is the actions taken nearest to the time of an incident by the authorities in charge of the investigation that usually provide the most appropriate indications to facilitate the identification of evidentiary material for the case. Therefore, the Court finds that the omissions committed during the initial procedures have resulted in the obstruction of the investigation, in violation of the obligation to investigate with due diligence.

Landaeta's clothes, and of two pieces of cotton with a reddish-brown substance, and some of the bullets handed over by the CTPJ, performed by the CTPJ Criminalistics Laboratory between 1997 and July 1998.

[336] Regarding the autopsy that was performed, expert witness José Pablo Baraybar concluded that: (a) "there is no autopsy report as such, [but rather] a [very brief] document notifying the results of the autopsy […], that does not meet the standards required for the investigation; (b) photographs that support or corroborate the conclusions of the report are not [attached or mentioned]; (c) [there is no mention of] x-rays being taken, or whether or not there were bullets or fragments of bullets inside the victim, and (d) [although the injuries found were listed,] there is no type of photographic record of [them], or any reference to the characteristics of the injuries such as their color, trajectory, depth or structure." *Cf.* Testimony of expert witness José Pablo Baraybar of January 29, 2014 (merits file, folios 826 to 828). In this regard, the State indicated that, at the time of the events, the corpse was not photographed during the autopsy, but rather general photographs were taken of the corpse to show the injuries present on the body of the deceased and their specific characteristics. *Cf.* Response of the State of May 30, 2014, concerning the helpful evidence requested by the Court in a letter of the Secretariat (merits file, folio 1247).

[337] *Cf.* Forensic appraisal issued by Freddy Winderman and Elías Azuz on July 22, 1998 (annexes to the answering brief, folios 7229 and 7230).

B.3.3 Criminal proceedings and reasonable time with regard to the death of Eduardo Landaeta

258. The Court observes that, in this case, the investigations commenced in December 1996, and were conducted under the Code of Criminal Procedure until the entry into force of the new Organic Code of Criminal Procedure on July 1, 1999. In December 2011, the three agents who had been charged were acquitted based on the absence of sufficient evidence concerning their criminal responsibility. This decision was annulled by the Appellate Court, which ordered that a new oral trial be held, and this is underway at the present time, so that the proceedings have lasted more than 17 years. Consequently, the Court will analyze the alleged existence of irregularities in the procedures implemented during the investigations and the procedural delays throughout the proceedings.

B.3.3.1 Procedures and irregularities during the criminal proceedings

259. The Court notes that, in January 2000, the Second Court of the Transitional Regime received Eduardo Landaeta's case file, owing to the entry into force of the new procedural regime (*supra* para. 105). The investigations were reactivated in October 2003, following more than four and a half years of procedural inactivity. In this regard, between January 2004 and 2008 a series of procedures that had initially been implemented during 1997 and 1998 were carried out or supplemented. However, the Court considers that there were some omissions during this stage of the investigation, namely:

a) Prolonged lapses between the occurrence of the event and the performance or expansion of certain expert appraisals, and delays in carrying out procedures requested repeatedly by the prosecution, such as: the technical inspection of the vehicle in which Eduardo Landaeta was transferred;[338] the request for information on the weapons used by the agents who transferred him;[339] the ballistics trajectory and the trajectory of the bullets in the body (requested by the prosecutor on two occasions[340]), and the photographs, the reconstruction of the incident, and the topographic survey (requested by the prosecutor on two occasions[341]), which were not carried out until 2004, 2006 and 2008, respectively;

b) Although the expansion of the autopsy report on May 25, 2006,[342] established the possibility that a bullet had remained in Eduardo Landaeta's body, the omissions of the previous autopsy were not rectified (*supra* para. 256);

c) The exhumation of the corpse on August 9, 2006,[343] according to expert witness Baraybar, was performed with "fundamental flaws" owing to the absence of a

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338 *Cf.* Record of police technical inspection of April 16, 2004 (annexes to the answering brief, folio 7531).

339 The question of whether the weapon used by the police agents who transferred Eduardo Landaeta was 7.65 mm caliber was answered negatively.

340 *Cf.* Request of the prosecutor of the Transitory Procedural Regime of the state of Aragua of October 30, 2003 (annexes to the answering brief, folios 7347 and 7348), and Note No. 05-FT-MCM-2109-06 issued by the prosecutor of the Transitory Procedural Regime of the state of Aragua of April 29, 2006 (annexes to the answering brief, folio 7825).

341 *Cf.* Request of the prosecutor of the Transitory Procedural Regime of the state of Aragua of October 30, 2003 (annexes to the answering brief, folios 7347 and 7348), and Note No. 05-FT-0188-08 issued by the prosecutor of the Transitory Procedural Regime of the state of Aragua of April 18, 2008 (annexes to the answering brief, folios 8017 to 8021).

342 *Cf.* Requests to expand the autopsy report on the body of Eduardo Landaeta of May 22 and 25, 2006 (annexes to the answering brief, folios 7832 and 7833).

343 *Cf.* Record of the exhumation of the corpse of Eduardo Landaeta on September 28, 2006 (annexes to the answering brief, folios 7910 to 7913).

methodology and technique.[344] Consequently, the bullet that had remained in the body of the young Landaeta was not recovered; rather it was found by the gravedigger of the cemetery, and could not be analyzed because it contained cement residues (*supra* paras. 110);

d) A ballistics comparison of all the bullets recovered was not made in order to establish the weapons used, even though Ignacio Landaeta Muñoz requested this on several occasions,[345] and the prosecution[346] requested hematological tests on the said bullets; a request to which the personnel of the CICPC Criminalistics Laboratory did not respond. The numerical inconsistency between the injuries caused to Eduardo's body by the bullets, the number of cartridges cases found at the crime scene and the number of bullet holes in the vehicle that transported Eduardo Landaeta; inconsistencies that were argued in the indictment (*supra* para. 195);

e) The evidence provided during the proceedings before the Court does not reveal that the State conducted a serious and thorough investigation in order to clarify the presumed participation of the hooded individuals who, according to the versions of the police agents, had intercepted the vehicle that was transporting Eduardo Landaeta[347] (*supra* para. 73). In addition, the case file does not show that relevant procedures were implemented to establish the whereabouts of the presumed vehicle that struck the vehicle in which Eduardo Landaeta was being transported, and no line of investigation was opened to identify the masterminds, despite the statements concerning the threats received by the victim (*supra* paras. 56 and 57). Furthermore, the case file before Court does not show the existence of procedures aimed at clarifying what happened, taking into account a joint line of investigation related to the previous death of Igmar Landaeta;

f) There is no record in the Court's case file that significant measures were taken to identify and locate the weapons assigned to the police agents who were carrying out the transfer, which were reported lost having presumably been taken by the supposed hooded individuals who intercepted the vehicle in which Eduardo Landaeta was being transported. Despite this, on June 29, 2004, the weapons continued to be reported as lost, "wanted for the offense of theft."[348] Even though the prosecutor was advised[349] that the type of weapon used by the police agents was not 7.65 mm caliber (the type of cartridges found at the scene of the crime), the weapons assigned on the day of the death was not confirmed,[350] and

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344 Testimony of expert witness José Pablo Baraybar of January 29, 2014 (merits file, folios 838, 839 and 842).

345 *Cf.* Undated brief submitted by Ignacio Landaeta requesting judicial procedures (file of annexes to the answering brief, folio 7551).

346 The prosecution requested the hematological testing on the three bullets recovered from the body of Eduardo Landaeta on two occasions; however, the requests went unanswered. *Cf.* Note of the prosecutor of the Transitory Procedural Regime of November 23, 2005 (annexes to the answering brief, folio 7809), and Note repeating this request on June 19, 2006 (annexes to the answering brief, folio 7842).

347 The State merely indicated in its final written arguments, in answer to the question posed by the Court during the hearing in this case, that this was being investigated at the present time, in the context of the criminal proceedings instituted with regard to the death of Eduardo Landaeta, without sending any specific evidence in this regard. *Cf.* The State's brief with final arguments (merits file, folio 1202).

348 *Cf.* Note No. 11 issued by the Public Order and Security Corps of January 6, 1997, attesting the loss of the weapons assigned to the police agents who transferred Eduardo Landaeta (annexes to the answering brief, folio 7842), and Note No. 9700-064-ST-011430 issued by the Criminal, Penal and Scientific Investigations Corps on June 29, 2004, attesting that the weapons have been requested for the offense of theft (annexes to the answering brief, folio 7578).

349 *Cf.* Note No. 005 issued by the Public Order and Security Corps on April 1, 2004 (annexes to the answering brief, folio 7405).

350 *Cf.* Note No. 05FTMCM-19121-05 issued by the prosecutor of the Public Prosecution Service for the Transitory Procedural Regime on November 21, 2005 (annexes to the answering brief, folio 7807).

g) As a result of the prolonged delays in implementing or expanding procedures, some evidentiary material could not be collected or was lost owing to the passage of time. In this regard, the photographs of the corpse of Eduardo Landaeta could not be handed over, because the roll of film had become hazy and there was no information on the hospital records of FABP,[351] the agent who had been injured during the transfer of Eduardo Landaeta, because these were destroyed after five years (*supra* para. 106). This reveals flaws in the chain of custody of the evidence, as well as its protection, even though the authorities should take reasonable measures to ensure and preserve the necessary evidentiary material to contribute to the success of the investigation and the criminal proceedings.[352]

260. The Court underlines that these omissions were recognized by the Superior Prosecutor, because after the No. 4 Criminal Oversight Court of First Instance decided to deny the request for a dismissal of the case[353] by the Transitory Prosecutor because all the investigation procedures had not been concluded (*supra* para. 107), he forwarded the case to another prosecutor on July 13, 2005, considering that omissions existed that could preclude the punishment of those responsible (*supra* para. 108).

261. It is based on the foregoing that the Court has assessed the actions taken by the Venezuelan State, through its prosecution services, especially after 2004, in order to clarify the incident. Moreover, the Court reiterates that "[t]he negligence of the judicial authorities responsible for […] the opportune collection of evidence […], cannot be rectified [in most cases] by belated probative procedures during the investigations, [because] the inadequacies indicated can be categorized as serious breaches of the duty to investigate the events that occurred,"[354] so that such procedures must be carried out adequately and immediately, because in that way the State may obtain optimal information and this would improve the results of the investigation, by providing reliable data. In this regard, the Court finds that, in this specific case, the procedures carried out between 2004 and 2008, took place from 8 to 12 years after the events in December 1996, and therefore the State incurred in a lack of due diligence.

262. Similarly, in relation to the irregularities in the criminal proceedings, the Court notes that, on December 16, 2011, the First Instance Court handed down a judgment acquitting the three accused after examining the evidence. This was because their responsibility had not been proved (*supra* para. 115), following a series of reschedulings of the court hearing (*infra* para. 266) and even though the prosecutor of the Transitory Procedural Regime had presented an indictment arguing that the police agents had simulated having been intercepted by four individuals during the transfer, since this could not be true according to the evidence and that, given the number of bullets that entered the victim, his death could not have occurred inside the vehicle as the agents had indicated.[355] In consequence, the Fifteenth Prosecutor filed a remedy of appeal (*supra* para. 115) and, on December 30 that year, the Appellate Court decided to annul

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[351] An example of the ignorance of the facts of the case was revealed when the Transitory Prosecutor sent a request to the Maracay Medical Center on November 7, 2005, requesting information on the medical attention provided by Dr. "FABP," who, in fact, was one of the accused in the criminal proceedings regarding the death of Eduardo Landaeta. *Cf.* Note No. 05-FT-MCAL-18397-05 issued by the prosecutor of the Public Prosecution Service for the Transitory Procedural Regime on November 7, 2005 (annexes to the answering brief, folio 7796).

[352] *Cf. Case of González et al. ("Cotton Field"), supra,* para. 301, and *Case of Luna López, supra,* para. 164. Cf. Minnesota Protocol, supra.

[353] In July 2004, the Transitory Prosecutor requested the dismissal of the case based on the absence of sufficient evidence to indict the three police agents for perpetrating the offense of aggravated homicide in the case of the death of Eduardo Landaeta (*supra* para.107).

[354] *Cf. Case of the "Mapiripán Massacre" v. Colombia.* Judgment of September 15, 2005. Series C No. 134, para. 228, and *Case of Veliz Franco et al., supra,* paras. 197 and 198.

[355] *Cf.* Indictment of the prosecutor of December 15, 2008 (annexes to the answering brief, folio 8128).

that judgment and to order that a new oral trial be held, owing to the failure to take into account evidentiary material that had been provided opportunely (*supra* para. 116). In this regard, during the hearing before this Court, prosecutor Yelitza Acacio stressed, in relation to the actions of the first instance judge:

> "that his participation was biased; that his participation was partial, in collusion, trying to favor the defense and the accused, [the judge] would not give the prosecutor the opportunity to submit those elements of evidence […]. That is why he was recused, that is why he was denounced; this is what the disciplinary court of the Supreme Court of Justice is for."
>
> "[There was] collusion – let's call it by the name it merits – with the other party; in other words with the accused and with the defense, [so that the judge] insisted in concluding the deliberations."

263. The Court also takes note that, on December 16, 2011, the day the first instance judgment was delivered with the acquittal, Ignacio Landaeta Muñoz filed a recusal against the same judge that prosecutor Yelitza Acacio, during her testimony at the hearing, indicated had been disqualified because he failed to examine evidence provided by the prosecutor and the presumed "collusion […] between the judge and the accused"[356] CARM. The latter worked with the security agencies in the judicial circuit, with access to all the facilities and personnel of the judicial circuit.

264. Based on the above, the Court considers that, although different procedures were carried out at the onset of the investigations, some of them were flawed. In this regard, the supplementary or expanded procedures were implemented between 8 and 12 years after the events, thus impairing the immediacy of the evidence and the possibility of obtaining reliable information, which resulted in the loss of evidence or the impossibility of collecting it, owing to the passage of time. The Court has verified the failure to take into account substantial evidence that could have helped clarify the events, despite requests by Ignacio Landaeta Muñoz and the prosecutor (*supra* para. 259). Similarly, the Court considers that the lack of procedures to disprove the version of the vehicle being intercepted by hooded individuals, as well as the absence of a joint investigation taking into account the events surrounding the death of Igmar Landaeta, and a series of irregularities in the proceedings, reveal a lack of effectiveness in the actions taken by the State in order to discover the truth and punish those responsible.

B.3.3.2 Reasonable time

265. The Court emphasizes that the State of Venezuela has acknowledged the existence of judicial delay in the case of Eduardo Landaeta, justifying the delays by the entry into force of the Transitory Procedural Regime in Venezuela (*supra* para. 213). However, in this case, the Court notes that more than 17 years have passed since the events of the case and the start of the investigation, and a first instance judgment has still not been delivered. Furthermore, neither the facts of the case nor the truth about what happened have not been established, which has impaired the right of access to justice within a reasonable time of the members of Eduardo Landaeta's family. Indeed, the Court notes the existence of serious procedural delays at the start of the criminal proceedings, owing to initial delays that can be attributed to the Ninth Prosecutor[357] and due to the issue of

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[356] *Cf.* Recusal request by Ignacio Landaeta Muñoz of December 16, 2011 (annexes to the answering brief, folios 8921 and 8922).

[357] The Court has noted the existence of delays by the Ninth Prosecutor, because, although, on August 27, 1997, the Justice and Peace Human Rights Committee of the State Aragua presented a request for a "preliminary inquiry into unlawful conduct by a State agent," it was not until March 25, 1998, when this request was responded to by the Court of the Santiago Mariño and Libertador Municipalities, and it was commenced on May 14 that year (*supra* para. 103). That court received the case file from the Mariño Division on August 13, 1998, when the summary procedures had been concluded, and it was not until February 8, 1999, that the Ninth Prosecutor formally accused the police agents of the offense of aggravated homicide and

duplicated orders and requests for evidence that had already been obtained by the Court of the Santiago Mariño and Libertador Municipalities.[358] This Court has also verified that, owing to the entry into force of the new Organic Code of Criminal Procedure, the case of Eduardo Landaeta was referred to the Second Court of the Transitory Regime on January 7, 2000 (*supra* para. 105). However, it was not until October 30, 2003, that the Transitory Prosecutor reactivated the investigation, requesting the collaboration of the Criminalistics and Criminal Scientific Investigations Unit (previously the Technical Unit of the Judicial Police), in December 2003. Consequently, the Court observes that there was a lapse of procedural inactivity of more than four and a half years, which, in the Court's opinion, was not justified by the transition between procedural regimes.

266. When the investigations were concluded, the prosecutor filed charges against the police agents who transferred Eduardo Landaeta in December 2008 (*supra* para. 112) and the opening of the oral public hearing was set for June 15, 2009, in other words, more than 12 years after the investigation had commenced. The Court has also verified that, in fact, the oral hearing was not held until January 31, 2011; that is, almost one year and nine months after the original date that had been set, owing to around 12 postponements and reschedulings of the public hearing (*supra* para. 113). In this regard, the Court notes that the main delays and reschedulings were due to the fact that "there was no court available"; in other words owing to the first instance judges in charge of the proceedings; four reschedulings were due to the failure to assist of the defense or of the accused, and one, owing to the prosecutor's failure to assist (*supra* para. 113).

267. The Court considers that a prolonged delay, such as the one in this case, constitutes, in principle and in itself, a violation of judicial guarantees. Consequently, it does not find it necessary to include any further considerations on the other elements relating to the reasonable time.

B.3.4 Absence of investigations in relation to the detention and the violations of personal integrity

268. The Court has concluded that the State of Venezuela is responsible for the unlawful and arbitrary detention of the minor, Eduardo Landaeta, because he was not brought before a judge or an authority with jurisdiction for juveniles, or informed of the reasons for his detention (*supra* paras. 164, 166 and 178). However, the Court has verified that the case file does not include any procedure or action aimed at investigating the conduct of the police agents (José Cortez and Carlos Varela) who executed the detention. The evidence before the Court merely shows that these agents were summoned to testify during the investigations into the death of Eduardo Landaeta, but only one of them (José Cortez) attended the proceedings on a single occasion,[359] without the State taking the necessary measures to ensure their appearance.

269. The Court also concluded that the State had failed to comply with its obligation to respect and ensure the right to mental and moral integrity of Eduardo Landaeta, due to a

misuse of weapons to the detriment of Eduardo Landaeta (*supra* para. 104). The case file does not show that any significant measures were taken during that period.

[358] The Court of the Santiago Mariño and Libertador Municipalities issued the same order on two occasions, requiring the opening of a summary investigation, and summoning the deceased, Eduardo Landaeta, to testify. These orders called for testimony and criminal and correctional records to be obtained that had been requested previously. *Cf.* Order of August 13, 1998, with a summons to testify issued by the Court of the Santiago Mariño and Libertador Municipalities of the state of Aragua (annexes to the answering brief, folio 7296), and Order of March 2, 1999 (annexes to the answering brief, folio 7099).

[359] Despite the different summonses issued for the police agents who had detained Eduardo Landaeta to come forward to testify during the investigations and the criminal proceedings, only one of them testified on a single occasion regarding the detention of the minor. *Cf.* Testimony of José Guillermo Cortez Aguirre of February 14, 2007 (annexes to the answering brief of the State, folios 7955 to 7957).

series of factors that caused him anxiety and fear before his death (*supra* para. 203), and also to investigate presumed acts of torture.

270. In this regard, the Court has indicated that, pursuant to Article 1(1) of the American Convention, the obligation to ensure the rights recognized in Article 5(1) and 5(2) of the American Convention entails the State's duty to investigate possible acts of torture or other cruel, inhuman or degrading treatment. This duty to investigate is augmented by the provisions of Articles 1, 6 and 8 of the Convention against Torture, which obliges the State "to take […] effective measures to prevent and punish torture within the sphere of its jurisdiction," and also "to prevent and punish […] other cruel, inhuman or degrading treatment or punishment." In addition, in accordance with Article 8 of this Convention, States Parties guarantee: "[…] that any person making an accusation of having been subjected to torture within their jurisdiction shall have the right to an impartial examination of his case[, and] if there is an accusation or well-founded reason to believe that an act of torture has been committed within their jurisdiction, […] 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."[360]

271. Furthermore, the Court observes that the investigation of a death in detention may reveal that it is directly or indirectly linked to a pattern or practice. In such situations, the investigation must examine the possible root causes in order to prevent this type of incident. In this regard, States must record essential information concerning persons in custody, including: (a) the time and place of their arrest; (b) the state of their health upon arrival at the place of detention; (c) the names of the persons responsible for holding them in custody, or at the time, and (d) the place of their interrogation. All of this must be recorded and made available for judicial or administrative proceedings.[361]

272. In particular, the Court notes that the autopsy revealed a series of injuries (*supra* para. 200) that the authorities were aware of, and they also knew of the danger that the detainee faced. However, the evidence provided by the State does not show that a forensic examination was performed to verify the health of Eduardo Landaeta when he entered the police station. On May 21, 2001, the presumed victim's father, through his legal representative, asked the prosecutor for the Criminal Procedural Regime of the Judicial Circuit of the state of Aragua to investigate the possible acts of torture, which could have been ordered and witnessed by agents of the Public Order and Security Corps of the state of Aragua.[362]

273. The Court notes that, despite this situation, the State failed to conduct any investigation *ex officio* to determine the origin of the said injuries or who caused them,[363] even though the authorities were aware of them and also knew of the danger that the detainee faced.[364] After these facts had been reported on May 21, 2001, the

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[360] *Cf. Case of Ximenes Lopes v. Brazil.* Judgment of July 4, 2006. Series C No. 149, para. 147 and *Case of García Cruz and Sánchez Silvestre v. Mexico. Merits, reparations and costs.* Judgment of November 26, 2013. Series C No. 273, para. 55 and 69 to 71.

[361] *Cf.* ICRC, Guidelines for Investigating Deaths in Custody, p. 21, *Case of Chaparro Álvarez and Lapo Íñiguez, supra,* para. 53 and *Case of J., supra,* para. 152.

[362] *Cf.* Undated brief requesting judicial measures presented by the legal representative of Ignacio Landaeta Muñoz (annexes to the answering brief, folio 7550).

[363] The evidence provided by the State reveals that, when Samuel Uzcátegui's testimony was being taken, in answer to the question regarding Eduardo Landaeta's condition at the time of one of the transfers, he stated that he was in perfect health. However, the question was isolated and in general, and not in the context of investigations into the presumed acts against the integrity of Eduardo Landaeta in the custody of the State. *Cf.* Testimony of Samuel Uzcátegui before the Prosecutor of the Transitory Procedural Regime of the state of Aragua of October 2, 2006 (annexes to the answering brief, folio 7914).

[364] *Cf.* Testimony of Ignacio Landaeta Muñoz of February 13, 2004 (annexes to the answering brief, folios 7378 and 7379), and Testimony of María Magdalena Mejías of February 16, 2004 (annexes to the answering brief, folios 7382 and 7383).

judicial case file does not reveal any measure taken in this regard, even in the expansion of the autopsy report (of May 25, 2006) only the injuries caused by the firearm were analyzed, without any mention of the other types of injuries present on the body of Eduardo Landaeta.

274. Consequently, the Court finds that the State failed to comply with its obligation to ensure the right to humane treatment, by a serious investigation, *ex officio,* and did not provide an effective judicial remedy to the members of Eduardo Landaeta's family.

B.3.5 Conclusion with regard to Eduardo Landaeta

275. The Court concludes with regard to the investigations and the criminal proceedings instituted with regard to the death of Eduardo Landaeta, that the State did not conduct a diligent investigation owing to the flaws during the collection of evidence, which involved the implementation of important procedures more than eight years after the events had occurred. The Court also concludes that the State did not follow joint lines of investigation in relation to the death of Igmar Landaeta, despite the indication of a connection between the two deaths. Furthermore, the Court considers that there were serious irregularities and procedural delays in the criminal proceedings that were underlined by the domestic authorities themselves, so that they were not conducted within a reasonable time, in order to clarify the events and punish those responsible. Lastly the Court concludes that the State did not conduct any type of inquiry into the unlawful and arbitrary detention of Eduardo Landaeta or into the indications of torture during his detention. Consequently, the Court finds that the State is internationally responsible for the violation of the rights established in Articles 8(1) and 25(1) of the American Convention, to the detriment of the members of Eduardo Landaeta's family (*infra* para. 294).

VII-4
RIGHT TO PERSONAL INTEGRITY OF THE FAMILY MEMBERS

A. Arguments of the parties and of the Commission

276. The Commission alleged that the State had violated the right to mental and moral integrity recognized in Article 5(1) of the American Convention in relation to Article 1(1) of this instrument, to the detriment of the members of the Landaeta Mejías brothers' family, owing to the suffering and anguish caused by the ineffective actions and the omissions of the domestic authorities in response to the extrajudicial execution of their loved ones. The Commission asserted that the manner in which the events occurred, as well as the impunity surrounding the case, had had both mental and moral effects on the next of kin owing to the profound suffering and radical change in their lives. Despite the efforts to obtain justice and to clarify the events, the offenses remain unpunished; a situation that has been a constant source of frustration, sadness and helplessness. In order to establish the violation of the mental and moral integrity of the next of kin, the Commission considered the profound suffering due to the threats and subsequent extrajudicial execution of Igmar and Eduardo Landaeta Mejías, only a month and a half apart, added to the anguish they must have felt by anticipating the fate of Eduardo, once he had been detained and was being kept incommunicado, taking into account the previous threats and the death of his brother.

277. The representatives agreed that the State had violated the right recognized in Article 5(1) of the Convention owing to the "mental and moral" effects on the family members due to the unlawful detention of Eduardo and the death of both Eduardo and his brother Igmar, both surnamed Landaeta Mejías. The representatives mentioned the following factors that caused "suffering, anguish, insecurity, frustration and helplessness" to their next of kin: the failure of the public authorities to conduct a thorough and diligent investigation; the remedies that were ineffective to respond to

their demands; the absence of an official version of the events, and the failure to punish those responsible even though 16 years had passed. According to the representatives, all of this has prevented "healing the wounds caused by the death of Igmar and Eduardo," particularly the suffering of the parents during the latter's detention, because they did not receive "due attention and information from the State agencies and their agents," regarding his whereabouts or when he would be transferred. The representatives indicated that the facts have harmed the affective, "social and work-related" relationships of the members of the Landaeta brothers' family, thus altering "their dynamics and their life projects." In addition, the representatives emphasized some of the suffering they endured in particular, such as the trauma suffered by their mother, the physical and emotional toll on their father and two sisters, the elder of whom, Victoria Eneri Landaeta Galindo, had to undergo psychological treatment "to overcome the death of her brothers, and the emotional distance that separated her from her father." With regard to Igmar Landaeta's companion, the representatives alleged that his death had an impact on her life project, because she was left in charge of the "task of bringing up their daughter" alone. Lastly, the representatives indicated that Igmar Landaeta's daughter also suffered emotionally owing to the absence of her father.

278. The State did not submit arguments on the alleged violation of the personal integrity of the family members, but merely rejected all the allegations of the Inter-American Commission in its Merits Report.

B. Considerations of the Court

279. The Court has already established that the State of Venezuela is responsible for the violation of the obligation to respect the right to life to the detriment of Igmar Landaeta, and for the unlawful and arbitrary detention of the minor, Eduardo Landaeta, followed by his death, because it failed to comply with its obligation to respect and ensure their rights. In numerous cases, the Court has considered that the next of kin of the victims of human rights violations may also, in turn, be victims.[365] On this point, the Court has understood that the right to mental and moral integrity of some family members has been violated owing to the additional suffering they have endured as a result of the specific circumstances of the violations perpetrated against their loved ones, and due to the subsequent acts or omissions of the State authorities in relation to the facts.[366]

280. In this case, the Court considers that the following are presumed victims: María Magdalena Mejías (mother); Ignacio Landaeta Muñoz (father); Victoria Eneri and Leydis Rossimar, both surnamed Landaeta Galindo (sisters); Francy Yellut Parra Guzmán (permanent companion of Igmar Landaeta), and Johanyelis Alejandra Landaeta Parra (daughter of Igmar Landaeta).

281. Therefore, the Court will assess whether there were particularly close ties between the family members and the victims in this case that would establish a violation of the personal integrity of the next of kin and, consequently, a violation of Article 5 of the Convention in their regard.[367] In addition, it will analyze the alleged existence of harm to the mental and moral integrity of the members of the Landaeta Mejías brothers' family based on their testimonial statements,[368] as well as on the psychological report prepared

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365 *Cf. Case of Castillo Páez v. Peru*. *Merits*. Judgment of November 3, 1997. Series C No. 34, fourth operative paragraph, and *Case of Veliz Franco et al., supra,* para. 233.

366 *Cf. Case of Blake v. Guatemala. Merits.* Judgment of January 24, 1998. Series C No. 36, para. 114, and *Case of Veliz Franco et al., supra,* para. 233.

367 *Cf. Case of Blake, supra*, para. 114, and *Case of Luna López, supra*, para. 201.

368 Affidavits made on January 24, 2014, by: María Magdalena Mejías (mother); Victoria Eneri and Leydis Rossimar, both surnamed Landaeta Galindo (sisters), and Francy Yellut Parra Guzmán (permanent companion of Igmar Alexander Landaeta Mejías) (merits file, folios 773 to 778; 779 to 783; 784; 788 to 794, respectively).

by expert witness Claudia Carrillo Ramírez[369] and on the statement of Ignacio Landaeta Mejías during the public hearing before the Court.

282. In this regard, the Court notes that the existence of close ties between the family members and the Landaeta Mejías brothers has been demonstrated, because they formed part of a single family group, and both brothers "made a financial contribution to the household before their death."[370] In this regard, María Magdalena Mejías Camero stated that the family was very close and carried out activities together.[371]

283. In addition, the Court has declared the responsibility of the State for the violation of Article 4 (Right to Life) to the detriment of Igmar Landaeta and for the violation of Articles 7, 4 and 5 to the detriment of the minor Eduardo Landaeta, facts that caused profound suffering to the members of the victims' family. In this regard, the statements made during the processing of this case and the expert appraisal made by Claudia Carrillo reveal that the deaths have had a psychological, personal and emotional impact on the family members, causing them profound anguish, sorrow and suffering.[372]

284. In this regard, the expert witness indicated that the parents had endured the greatest suffering,[373] because the unexpected death of their sons had caused symptoms of "trauma, anxiety, and emotional disorders, such as depression."[374] Similarly, María Magdalena stated that, "despite the years that have passed, [she] still cannot accept that [her] two sons are dead" and that she "still ha[s] not found consolation";[375] hence, the expert witness concluded that "her life has passed trying to overcome the empty space that her two sons left in her home and in her life."[376]

285. The expert witness also observed psychological damage in the individuals she evaluated, which, in the case of Victoria Eneri Landaeta Galindo, meant that, since her brothers died, she has suffered from sleep disorders and even "fantasized, while playing, that she had conversations with them,"[377] which resulted in her parents taking her to receive psychological and psychiatric treatment. Meanwhile, Francy Yellut Parra stated that both she and Igmar Landaeta were full of illusions and had made many plans for

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369 Expert psychological appraisal prepared by affidavit by the psychologist Claudia Carrillo Ramírez of: Ignacio Landaeta Mejías, María Magdalena Mejías, Victoria Eneri and Leydis Rossimar, both surnamed Landaeta Galindo, José Luis Tovar Mejías, Francy Yellut Parra Guzmán and Johanyelis Alejandra Landaeta Parra, on January 29, 2014 (merits file, folios 855 to 866).

370 Expert psychological appraisal made by Claudia Carrillo Ramírez dated January 29, 2014, *supra* (merits file, folio 854).

371 *Cf.* Affidavit made by María Magdalena Mejías (mother) on January 23, 2014 (merits file, folio 773).

372 *Cf.* Affidavits made on January 23, 2014, by the family members, *supra* (merits file, folios 773 to 778; 779 to 783; 784, and 788 to 794); Testimony of Ignacio Landaeta Muñóz during the public hearing before the Inter-American Court on February 6, 2014, and Expert psychological appraisal made by Claudia Carrillo Ramírez dated January 29, 2014, *supra* (merits file, folios 855 and 860). One of the sisters, Victoria Eneri Landaeta Galindo, stated that, even though she was very young, she "was aware that death was irreversible"; she knew that she would not see her brothers again. In addition, both Victoria Eneri and Leydis Rossimar Landaeta Galindo stated that the "aloofness that their father adopted following the events" and his attitude, since he was always "focused on the cases" before the courts, affected them profoundly. *Cf.* Expert psychological appraisal made by Claudia Carrillo Ramírez dated January 29, 2014, *supra* (merits file, folio 858), and Affidavit made by Leydis Rossimar Landaeta Galindo on January 23, 2014 (merits file, folio 784).

373 *Cf.* Expert psychological appraisal made by Claudia Carrillo Ramírez dated January 29, 2014, *supra* (merits file, folio 861).

374 Expert psychological appraisal made by Claudia Carrillo Ramírez dated January 29, 2014, *supra* (merits file, folio 855).

375 Affidavit made by María Magdalena Mejías on January 23, 2014 (merits file, folio 776 and 777).

376 Expert psychological appraisal made by Claudia Carrillo Ramírez dated January 29, 2014, *supra* (merits file, folio 861).

377 Expert psychological appraisal made by Claudia Carrillo Ramírez dated January 29, 2014, *supra* (merits file, folio 858).

when their daughter Johanyelis Alejandra Landaeta Parra would be born[378]); however, these plans were thwarted with his death. Their daughter, who was not yet born at the time of the events, because her mother was only five months' pregnant, indicated that "even though [she had] never kn[own] [her] father, [she] felt the need to know about him and about his love for [her]."[379] Regarding Johanyelis Alejandra, the Court finds that she is a victim because, besides the gestation period, she experienced suffering because she lived in surroundings characterized by distress and uncertainty owing to the failure to establish the truth of the events, added to the effects that the absence of her father and the manner of his death had on her life, causing feelings of anguish and suffering.[380]

286. The Court has also declared the violation of Articles 8 and 25 of the Convention. Consequently, it considers that the family group as a whole has suffered effects as a result of the absence of a complete, diligent and effective investigation and the lack of access to justice, which have increased the feelings of sorrow, helplessness and anguish.[381] Thus, expert witness Claudia Carrillo indicated that "the search for the truth and justice"[382] during 18 years became a life project of the Landaeta Mejías family.

287. The Court considers that the physical and emotional strain resulting from the facts and the search for justice have had a negative impact on the family group, mainly as regards financial, social and work-related aspects.[383] The case file before the Court also reveals that, from the very start, María Magdalena Mejías Camero and Ignacio Landaeta were involved in the investigations, providing statements in the domestic sphere. The Court also notes that it was Ignacio Landaeta who played the most active role in advancing the proceedings, through his statements, the briefs submitted, and the numerous requests to obtain evidence and to recuse agents of justice (*supra* paras. 263 and 264), so that he intervened constantly before the domestic judicial system and continues to do so today, before the inter-American system.

288. Lastly, the Court takes note of the suffering that it is alleged that the family group endured owing to the presumed threats they had allegedly received before the death of the Landaeta brothers, as well as for the supposed persecution of Ignacio Landaeta by the police on December 31, 1996, who, according to the representatives, had been ordered to kill him. These events increased the family's tension and fear during the period following the events, in view of the constant search for justice in the domestic jurisdiction and before the inter-American court.[384]

289. Consequently, the Court finds that the failure to comply with the obligation to respect and to ensure the right to life of Igmar and Eduardo Landaeta, added to non-compliance with the provisions of Articles 4, 5(1) and 7 in relation to Article 19 of the Convention to the detriment of the latter, resulted in psychological, personal and emotional problems. Moreover, the ineffectiveness of the measures adopted to clarify the events (Articles 8 and 25 of the Convention) has caused suffering and anguish to the

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[378] *Cf.* Affidavit made by Francy Yellut Parra Guzmán on January 23, 2014 (merits file, folio 788).

[379] Affidavit made by Francy Yellut Parra Guzmán on January 23, 2014 (merits file, folio 794).

[380] The effects of the death of Igmar Landaeta on the life of his daughter, which caused her to feel "anxiety, sorrow, irritability, and fear" have been indicated by her mother, Francy Yellut Parra Guzmán, and established by the expert witness in her report. *Cf.* Expert psychological appraisal of Johanyelis Alejandra Landaeta Parra made by Claudia Carrillo Ramírez on January 29, 2014, *supra* (merits file, folio 861). *Cf. Inter alia, Case of Contreras et al., supra*, para. 122, and *Case of Gudiel Álvarez et al. ("Diario Militar"), supra,* para. 287.

[381] *Cf. Case of the Barrios Family, supra,* para. 310, and *Case of Luna López, supra*, para. 212.

[382] Expert psychological appraisal made by Claudia Carrillo Ramírez dated January 29, 2014, *supra* (merits file, folio 861).

[383] *Cf.* Expert psychological appraisal made by Claudia Carrillo Ramírez dated January 29, 2014, *supra* (merits file, folio 856).

[384] *Cf.* Expert psychological appraisal made by Claudia Carrillo Ramírez dated January 29, 2014, *supra* (merits file, folio 855).

next of kin of the Landaeta Mejías brothers, in addition to feelings of insecurity, frustration and helplessness, thus affecting their mental and moral integrity. Therefore the Court finds that the State is responsible for the violation of Article 5(1) of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of: María Magdalena Mejías (mother); Ignacio Landaeta Muñoz (father): Victoria Eneri and Leydis Rossimar, both surnamed Landaeta Galindo (sisters); Francy Yellut Parra Guzmán (Igmar Landaeta's permanent companion), and Johanyelis Alejandra Landaeta Parra (Igmar Landaeta's daughter).

VIII
REPARATIONS
(Application of Article 63(1) of the American Convention)

290. Under Article 63(1) of the American Convention,[385] 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 is one of the fundamental principles of contemporary international law on State responsibility.[386]

291. Based on the violations of the Convention declared in the preceding chapters, the Court will now examine the claims presented by the Commission and the representatives, in light of the criteria established in its case law concerning the nature and scope of the obligation to provide reparation, in order to establish measures aimed at redressing the harm caused to the victims.[387]

292. The Court has established that the reparations must have a causal nexus to the facts of the case, the violations declared, the harm proved, and the measures requested to repair the respective harm; hence, it must observe the concurrence of these factors in order to rule appropriately and pursuant to law.[388]

293. The Court recalls that, under Article 78(2) of the Convention,[389] the State is obliged to comply with this Judgment.

A. Injured party

294. The Court reiterates that, in accordance with Article 63(1) of the American Convention, it considers the injured party to be those who have been declared a victim of the violation of any of the rights recognized therein. Therefore, in this case, the Court consider that the following are the "injured party": Igmar Alexander Landaeta Mejías, Eduardo José Landaeta Mejías, Ignacio Landaeta Muñoz, María Magdalena Mejías Camero, Francy Yellut Parra Guzmán, Johanyelis Alejandra Landaeta Parra, Victoria Eneri

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385 Article 63(1) of the Convention establishes that "[i]f the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party."

386 *Cf. Case of Velásquez Rodríguez. Reparations and costs, supra,* para. 25, and *Case of Norín Catrimán et al. (Leaders, members and activist of the Mapuche Indigenous People)*, supra, para. 412.

387 *Cf. Case of Velásquez Rodríguez. Reparations and costs, supra,* paras. 25 to 27, and *Case of Norín Catrimán et al. (Leaders, members and activist of the Mapuche Indigenous People), supra,* para. 415.

388 *Cf. Case of Ticona Estrada v. Bolivia. Merits, reparations and costs.* Judgment of November 27, 2008. Series C No. 191, para. 110, and *Case of Norín Catrimán et al. (Leaders, members and activist of the Mapuche Indigenous People), supra,* para. 414.

389 Article 78(2) of the American Convention, concerning the denunciation of the Convention by a State, stipulates that: "Such a denunciation shall not have the effect of releasing the State Party concerned from the obligations contained in this Convention with respect to any act that may constitute a violation of those obligations and that has been taken by that State prior to the effective date of denunciation."

Landaeta Galindo and Leydis Rossimar Landaeta Galindo and, as victims of the violations declared in this Judgment, they will be considered the beneficiaries of the reparations ordered by the Court.

B. Obligation to investigate the events that resulted in the violations and to identify, prosecute and punish, as appropriate, those responsible

295. The Commission recommended that the State conduct a complete, impartial, effective and timely investigation of the human rights violations that it had declared, in order to establish the intellectual and material responsibility for the facts described and to impose the corresponding punishment. It also recommended the State to order the appropriate administrative, disciplinary or criminal measures to address the acts and omissions of the State officials that had contributed to the denial of justice and the impunity surrounding the facts of the case.

296. The representatives asked that the State conduct, within a reasonable time, a complete, impartial and effective investigation, in order to identify, prosecute and punish all the perpetrators and masterminds of the violations of the victims' human rights with penalties proportionate to the gravity of the acts committed against the Landaeta Mejías brothers. The State did not refer to this measure of reparation.

297. Regarding the arbitrary deprivation of the lives of the Landaeta Mejías brothers, the Court has established in this Judgment that the State was responsible for violating the right to life established in Article 4 of the American Convention, with regard to Igmar Landaeta, as well as the rights established in Articles 4, 5 and 7 of the American Convention, in relation to Articles 1(1) and 19 of the same instrument (*supra* paras. 147 and 204) with regard to Eduardo Landaeta. In addition, in both cases, the Court concluded that the State had failed to conduct a complete and thorough investigation, within a reasonable time, following joint lines of investigation in relation to the death of the brothers, in order to clarify the events and punish those responsible and, therefore, that the State was responsible for the violation of Articles 8(1) and 25(1) of the American Convention (*supra* paras. 250 and 275).

298. Furthermore, the Court observed that, in the case of Igmar Landaeta, during the public hearing in this case the State agents declared that "the Appellate Court should have delivered a conviction or an acquittal, but not the dismissal of the case, which has given rise, for both the victim and the State, to the appeal for annulment or for constitutional protection *(amparo*) owing to the failure to notify the procedural parties (*supra* para. 211). In addition, prosecutor Yelitza Acacio Carmona, proposed by the State, testified before the Court that "with regard to the investigation conducted owing to the ruling of the Appellate Court, to date there is no record of this notification to the representative of the Public Prosecution Service, which gives rise to the possibility and provides the grounds for an additional appeal to return to the stage of the appeal for annulment for a final ruling, either confirming or rejecting the last judgment delivered."

299. Owing to the State's indication of the possibility of filing another appeal in the proceedings in the case of Igmar Landaeta, and taking into account the errors and omissions in the investigation and in the proceedings, which resulted in the violations declared in this Judgment (*supra* paras. 250 and 275), the Court establishes that the State should re-open, *ex officio*, the investigation in order to clarify the facts and, as appropriate, determine the responsibilities for the arbitrary deprivation of the life of Igmar Landaeta, within a reasonable time.

300. In the case of Eduardo Landaeta, the Court establishes that the State must continue, and conclude within a reasonable time, the investigation into the said facts in its ordinary jurisdiction, pursuant to domestic law and the corresponding international

standards, in order to identify, prosecute and punish, as appropriate, those responsible for the arbitrary deprivation of the life of Eduardo Landaeta.

C. Measures of rehabilitation, satisfaction and guarantees of non-repetition

C.1 Measures of rehabilitation

301. The representatives indicated that the profound suffering that the death of the Landaeta Mejías brothers caused their next of kin is undeniable and therefore asked that the State ensure that they received free and permanent medical and psychological treatment. The representatives also asked that the services be provided by competent professionals, after the medical requirements of each victim had been established, and should include the provision of any medicines that might be required. They also asked that the State assume other expenses arising in connection with the provision of treatment, such as transportation costs. Neither the Commission nor the State referred to this measure of reparation.

302. In this case the Court has verified that the violations committed by the State to the detriment of Igmar and Eduardo Landaeta caused suffering and anguish to their family members, as well as feelings of insecurity, frustration and helplessness, in violation of Article 5(1) of the American Convention (*supra* para. 289).

303. To help redress this harm, the Court establishes the obligation of the State to provide immediately and free of charge, through its specialized health care institutions, the psychological treatment required by the victims, following their informed consent, for as long as necessary, including the provision of medicines free of charge. If the State is unable to provide this treatment, it must have recourse to private institutions or specialized civil society institutions.[390] Furthermore, the respective treatments should be provided, insofar as possible, in the centers nearest their place of residence. To this end, the victims have six months from notification of this Judgment to request the State to provide this treatment.[391]

C.2 Measures of satisfaction

C.2.1 Publication and dissemination of the Judgment

304. The representatives asked that the State publish, within six months, at least the sections of the Judgment on the context and the proven facts, together with the operative paragraphs in the Official Gazette and in a national newspaper with widespread circulation. In addition, they asked that this publication be uploaded to the website of the Public Prosecution Service at no more than three "clicks" from the home page and that it be maintained until the Judgment has been complied with fully. Neither the Commission nor the State referred to this measure of reparation.

305. Owing to the violations declared in this Judgment, the Court deems it pertinent to establish, as it has in other cases[392] that, within six months of notification of this Judgment, the State must make the following publications: (a) the official summary of this Judgment prepared by the Court, once, in the Official Gazette and in a Venezuelan

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390 *Cf. Case of the Las Dos Erres Massacre v. Guatemala. Preliminary objection, merits, reparations and costs.* Judgment of November 24, 2009. Series C No. 211, para. 270, and *Case of Norín Catrimán et al. (Leaders, members and activist of the Mapuche Indigenous People), supra,* para. 426.

391 *Cf. Case of the Las Dos Erres Massacre, supra*, para. 270, and *Case of Norín Catrimán et al. (Leaders, members and activist of the Mapuche Indigenous People), supra,* para. 426.

392 *Cf. Case of Cantoral Benavides v. Peru. Reparations and costs*. Judgment of December 3, 2001. Series C No. 88, para. 79*, and Case of Norín Catrimán et al. (Leaders, members and activist of the Mapuche Indigenous People), supra,* para. 428.

national newspaper with widespread circulation, and (b) this Judgment in its entirety, available for one year, on an official website of the State accessible to the public.

C.2.2 Public act to acknowledge international responsibility and make a public apology

306. The representatives asked that the State organize a public act to acknowledge international responsibility, to make amends, to ensure non-repetition, and to offer apologies to the members of the Landaeta Mejías brothers' family, as well as to Venezuelan society. The representatives indicated that the State must reach agreement on the characteristics of the public act with the members of the family. They also asked that the act be covered by the media with widest national coverage and at peak viewing or listening time, in order to ensure the widest possible dissemination of the event. Neither the Commission nor the State referred to this measure of reparation.

307. As it has in other cases,[393] the Court considers it necessary, in order to redress the harm caused to the victims and to avoid events such as those of this case being repeated, to establish that Venezuela should organize, in the state of Aragua, a public act to acknowledge international responsibility and to offer a public apology for the facts of this case. During this act reference must be made to the human rights violations declared in this Judgment. The act must be held by means of a public ceremony in the presence of senior State officials and the victims in this case. The State must reach agreement with the victims or their representatives on the method of complying with the public act of acknowledgement, as well as on its characteristics, such as the place and the date on which it will be held. The State has one year from notification of this Judgment to implement this measure.

C.3 Guarantees of non-repetition

C.3.1 Measures relating to the use of force and accountability

308. The Commission recommended that the State provide "mechanisms to prevent repetition, including: (i) training programs on international human rights standards in general, and with regard to children and adolescents, in particular, for the Police of the state of Aragua; (ii) measures to ensure effective accountability in the criminal, disciplinary, and administrative jurisdiction, in cases of presumed abuse of power by State agents responsible for public security, and (iii) legislative, administrative, and other types of measures for investigating with due diligence and in accordance with relevant international standards the necessity for and proportionality of the lethal use of force by State agents, to ensure the existence of effective protocols for the implementation of adequate control and accountability mechanisms in response to the actions of such agents." Neither the representatives nor the State referred to this measure of reparation.

309. It should be noted that, the Court has previously ordered Venezuela to implement guarantees of non-repetition in relation to the use of force by its security agencies. However, to date, the monitoring of compliance with those judgments has not revealed that the State has complied with the measures ordered in them.[394]

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[393] *Cf. Case of Cantoral Benavides. Reparations and costs, supra,* para. 81, and *Case of Veliz Franco et al., supra,* para. 257.

[394] In this regard: (1) in the case of *El Caracazo* the Court ordered the State to adopt all necessary measures to educate and train all the members of its armed forces and security agencies on the principles and norms for the protection of human rights and on the limits to which the use of weapons by law enforcement officials should be subject, even in states of emergency. *Cf. Case of El Caracazo. Reparations and costs*, *supra,* fourth operative paragraph; (2) in the case of *Montero Aranguren et al. (Retén de Catia)* the Court ordered the State to educate and train adequately the members of the security agencies in order to ensure the right to life, and to avoid the disproportionate use of force. *Cf. Case of Montero Aranguren et al. (Retén de Catia), supra,*

310. According to the information forwarded by the State in this case, the Court takes note of the advances made by the State in the process of reforming the Venezuelan policing model. Among other matters, the Court underlines the following: (1) the 2006 establishment of the National Commission for Police Reform (CONAREPOL) in order to make a diagnosis of the Venezuelan police forces;[395] (2) the approval, in 2008, of the Organic Law of the Police Service and the Bolivarian National Police Force, establishing the progressive and differentiated use of force by the police as a tool for police agents in their interactions with the population;[396] (3) the creation, in 2009, of the Police Council, with the functions of providing advice on and taking part in the definition, planning and coordination of public policies on policing;[397] (4) the creation, in 2009, of the *Universidad Nacional Experimental de Seguridad*,[398] with the task of training police agents in keeping with the new Venezuela policing model, and (5) the elaboration and distribution, starting in 2010, of a collection of self-instruction manuals called "*Baquías*," [Skills Manuals] designed to establish institutional management indicators that allow each police force, autonomously, to evaluate the level of compliance with the reform processes.[399]

311. In addition, regarding measures to ensure effective accountability, the Court notes that the Law on the Statute of the Police Function establishes that police agents shall respond in the disciplinary, administrative, civil and criminal sphere for wrongful acts, offenses, errors and administrative irregularities committed in the exercise of their functions.[400] In addition, this law establishes the Office to Control Police Actions, the Office to Respond to Police Irregularities, and the Police Disciplinary Council as internal control bodies for the police,[401] and encourages the creation of citizen committees to oversee the police, community councils and any other organization of a community nature duly structured as a body for the external oversight of the police.[402]

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eleventh operative paragraph; (3) in the case of *the Barrios Family,* the Court ordered the Venezuelan State to organize training courses on human rights for members of the police force of the state of Aragua. *Cf. Case of the Barrios Family*, *supra,* para. 341, and (4) in the case of *Uzcátegui* the Court did not find it necessary to order a guarantee of non-repetition, in view of the efforts made by the State to enhance the institutional capacity of security agents, in keeping with the principles and norms for the protection of human rights. *Cf. Case of Uzcátegui et al., supra,* para. 265. In addition, the Court has issues the following Orders on monitoring compliance with judgment: *Case of El Caracazo v. Venezuela. Monitoring compliance with judgment.* Order of the Inter-American Court of Human Rights of July 6, 2009, declaratory paragraph 2.d), and *Case of Montero Aranguren et al. (Retén de Catia) v. Venezuela. Monitoring compliance with judgment.* Order of the Inter-American Court of Human Rights, August 30, 2011, declaratory paragraph 2.e). In the *Case of the Barrios Family*, the Court has not yet issued an order on monitoring compliance with the measures that the State was ordered to take in the judgment in this case.

395 *Cf.* National Commission for Police Reform created on April 10, 2006 (file of helpful evidence, folio 13982).

396 *Cf.* Decree No 5,895, with the rank, value and force of Organic Law of the Police Service and the Bolivarian National Police Force (file of helpful evidence, folio 10914).

397 *Cf.* Creation of the Police Council (file of helpful evidence, folio 13943).

398 *Cf.* Creation of the *Universidad Nacional Experimental de Seguridad* (file of helpful evidence, folio 13943).

399 *Cf. Baquías* 1 to 10 (file of helpful evidence, folios 11434, 11510, 11682, 11758, 11834, 11934, 12058, 12134, 12210 and 12286, respectively); *Baquías* 12, 14 to 16 and 19 (file of helpful evidence, folios 12362, 12438, 12514, 12580 and 12704, respectively).

400 Article 11 of the Law on the Statute of the Police Function establishes that "Police agents shall respond in the disciplinary, administrative, civil and criminal sphere for wrongful acts, offenses, errors and administrative irregularities committed in the exercise of their functions pursuant to the law, regulations and resolutions" (file of helpful evidence, folio 10866).

401 Article 75 of the Law on the Statute of the Police Function establishes that "The following are internal oversight mechanisms of the police: the Office to Control Police Actions, the Office to Respond to Police Irregularities, and the Police Disciplinary Council" (file of helpful evidence, folio 10886).

402 Article 83 of the Law on the Statute of the Police Function establishes that "The external oversight mechanisms of the police, pursuant to article 81 of the Organic Law of the Police Service and the Bolivarian National Police Force, are the citizen committees to oversee the police, community councils, and any other organization of a community nature duly structured that can contribute to improving the procedures, performance and productivity of the police within the framework of the constitutional and legal norms" (file of helpful evidence, folio 10888).

312. Based on the above, the Court assesses positively the progressive efforts made by the State. However, since, in this case, it has established the State's responsibility for the violation of Article 2 of the Convention owing to the lack of adequate legislation and training on the use of force at the time of the facts, and considering the measures ordered in its previous judgments in this regard, the Court reiterates the need to comply with the aspects ordered in its judgments that are pending compliance. In particular, it considers it important that the State enhance its capability to monitor and to require accountability from police agents involved in episodes when force is used, in accordance with the international standards reflected in this Judgment.

C.3.2 Other measures requested

C.3.2.1 Adaptation of the laws on the detention of minors

313. The representatives indicated that Eduardo Landaeta had been arbitrarily deprived of his liberty and subsequently processed under an ordinary procedure in which his status as a minor was not considered, even though his family members pointed this out to the State agents in charge of him. In this regard, the representatives asked that the State adapt its laws to international standards for cases of the detention of minors, to ensure that events such as those of this case are not repeated. Neither the Commission nor the State referred to this measure of reparation.

314. The Court takes note of the relevant laws in force in Venezuela on juvenile detention. First, article 526 of the Organic Law for the Protection of Children and Adolescents, promulgated in 2007, created a system for Adolescent Criminal Responsibility[403] composed of different State bodies and entities.[404] Its purpose was to establish a regime of responsibility that was differentiated from the ordinary regime based on the specialized jurisdiction and on the sanctions imposed on adolescents.[405] In addition, article 548 of this law established that the deprivation of liberty of an adolescent was an exceptional measure and was only admissible if a court order exists.[406] If the detention was executed *in flagrante delicto*, the law established a time limit of 24 hours for the authorities concerned to bring the adolescent before a judge.[407] If the detention was executed in order to identify the minor, it could not exceed 96 hours

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403 Article 2 of the Organic Law for the Protection of Children and Adolescents defines the adolescent as anyone who is 12 years old or more and less than 18 years of age.

404 Article 526 establishes that: "The Adolescent Criminal Responsibility System is the series of bodies and entities that are responsible for establishing the responsibility of the adolescent for the wrongful acts he commits, as well as for the application and control of the corresponding sanctions." In addition, article 527 establishes that: "The Adolescent Criminal Responsibility System is composed of: (a) the Adolescents Section of the Criminal Court'(b) the Criminal Cassation Chamber of the Supreme Court of Justice; (c) the Public Prosecution Service; (d) the Autonomous Public Defense Service; (e) the Investigating Police, and (f) programs and entities that provide attention to adolescents."

405 Article 528 establishes that: "The adolescent who commits a wrongful act shall respond for the act to the extent that he is guilty, in a way that is differentiated from that of the adult. The difference consists in the specialized jurisdiction and in the sanction imposed."

406 Article 548 establishes the exceptional nature of the deprivation of liberty and indicates that: "With the exception of detention *in flagrante delicto,* the deprivation of liberty is only admissible with a court order in the cases, under the conditions, and for the period established in this law. Preventive detention may be reviewed at any time at the request of the adolescent."

407 Article 557 refers to detention *in flagrante delicto,* and indicates that: "The adolescent who has been detained *in flagrante delicto* shall be brought immediately before the prosecutor of the Public Prosecution Service who, within the following 24 hours, shall bring him before the Oversight Judge and shall explain how the arrest was made. The judge shall decide, during the same hearing, if he orders an oral trial directly within the following 10 days. The prosecutor and, if appropriate, the complainant, shall present the charges directly in the hearing of the oral trial and, in other matters, the ordinary rules of procedure shall be followed. During the hearing to present the individual detained *in flagrante delicto,* the judge shall decide the precautionary measure to ensure appearance at trial, and may order pre-trial detention only in the cases that are admissible pursuant to the following articles."

and must cease once the minor had been identified.[408] Lastly, it established that adolescents must always be separated from adults when in preventive detention or serving a prison sentence. In addition, the offices of the investigating police must have exclusive areas for adolescents who are detained *in flagrante delicto* or who are awaiting the prosecutor of the Public Prosecution Service in order to be brought before the judge.

315. Bearing in mind the foregoing, and that the representatives did not identify or provide the reasons why the current laws of the State would be contrary to or omissive with regard to the relevant standards, the Court does not find it pertinent to order a measure of reparation in this regard in this case.

C.3.2.2 Request for a construction project to preserve the memory of the victims

316. The representatives asked that the State build a library, a multi-use sports arena and a cafeteria in the "Rosa Amelia Flores" school attended by the Landaeta Mejías brothers, and that these facilities be named after the Landaeta Mejías brothers. According to the representatives, this project would contribute to the development of the children who attend this educational establishment, providing them with spaces that encourage their physical and intellectual development. Neither the Commission nor the State referred to this measure of reparation

317. The Court observes that the measure request lacks a causal nexus with the violations established in this case, and finds that the delivery of this Judgment and the reparations ordered in this chapter are sufficient and adequate to preserve the memory of the victims. Consequently, the Court does not find it pertinent to order the measure of reparation requested.

D. Compensation

318. The Court takes into consideration that the Commission recommended that the State make adequate reparation for the human rights violations in both pecuniary and non-pecuniary terms. The State did not refer to this measure of reparation.

D.1 Pecuniary damage

D.1.1 Loss of earnings

319. Bearing in mind the ages of the Landaeta Mejías brothers at the time of their death (18 years and 17 years), the life expectancy of a man in Venezuela in 1996 (71.80 years) and the minimum wage,[409] the representatives calculated the loss of earnings of Igmar Landaeta as US$601,219 (six hundred and one thousand two hundred and nineteen United States dollars) and that of Eduardo Landaeta as US$604,049 (six hundred and four thousand and forty-nine United States dollars). However, they asked

[408] Article 558 establishes that: "During an investigation, the Oversight Judge, at the request of the prosecutor of the Public Prosecution Service and, if appropriate, of the complainant, may decide the pre-trial detention of the adolescent for up to 96 hours, when he has not been identified or it is necessary to verify the identity provided, if there are any well-founded doubts. This measure shall only be decided if there is no other way of ensuring that he will not escape. Once full identification is achieved, the detention shall cease."

[409] The representatives used the following method to calculate the loss of earnings: Part A. Loss of earnings of the victim from the year of the murder until September 2012 (the last month in which the rate of inflation was published): (a) they took the minimum wage in Venezuela by year, as of the year of the victim's murder; (b) they converted the minimum wage into Bolívares Fuertes based on data from the Central Bank of Venezuela; (c) they adjusted the minimum wage for inflation from the first year (of the murder of the victim) until December 2010, and (d) at September 2012, the adjusted wages were converted into United States dollars. Part B. Loss of earning of the victim from October 2012, based on his life expectancy: (a) they took the minimum wage in Venezuela for 2012, multiplied it by 12 months and then by the years that remained according to the victim's life expectancy (annexes to the motions and arguments brief, folio 6677).

the Court to establish compensation, in equity, for loss of earnings in favor of Igmar and Eduardo Landaeta in the sum of US$600,000 (six hundred thousand United States dollars) each.

320. In view of the fact that the State was found responsible for violations of the obligation to respect and to ensure the right to life, and taking into account the age of the victims, life expectancy in Venezuela, and the minimum wage at the time of their death,[410] the Court establishes that the State must pay the sum of US$177,540 (one hundred and seventy seven thousand five hundred and forty United States dollars) as compensation for the loss of earning of Igmar Landaeta and US$180.840 (one hundred and eighty thousand eight hundred and forty United States dollars) as compensation for the loss of earning of Eduardo Landaeta, in favor of the members of the Landaeta Mejías brothers' family, in accordance with paragraph 326 of this Judgment.

D.1.2 Consequential damage

321. The representatives indicated that the death of the Landaeta Mejías brothers entailed unexpected expenses, all of which were covered by the family. Since the family does not have vouchers for these expenses, the representatives asked the Court to establish, in equity, the sum of US$500 (five hundred United States dollars) for funeral expenses. The representatives also indicated that the psychological problems of Maria Magdalena Mejías and Victoria Landaeta caused the family to incur different expenses to obtain medical care and medicines, because they had to visit a psychologist. Since they do not have documentation regarding these expenses, the representatives asked the Court to establish, in equity, the sum of US$500 (five hundred United States dollars). They also indicated that this treatment will be required in future, and therefore asked to Court to order the payment of compensation, in equity, of US$2,000 (two thousand United States dollars).

322. Regarding the funeral expenses incurred by the Landaeta Mejías family, the Court notes that no vouchers were provided; nevertheless, the Court presumes, as it has in previous cases,[411] that the family incurred different expenses owing to the death of the Landaeta Mejías brothers. Bearing in mind that the State was found responsible for violations of the obligation to respect and to ensure the right to life (*supra* para. 147 and 204), the Court decides that the State must pay a proportionate sum of US$500 (five hundred United States dollars), as compensation for funeral expenses to Ignacio Landaeta Muñoz and María Magdalena Mejías Camero.

323. Regarding the presumed health care expenses incurred, the Court has no evidence that would substantiate the disbursements alleged by the representatives.[412] In addition, the Court finds that future medical care is included in the measure of rehabilitation indicated above (*supra* para. 303). Consequently, it is not necessary to establish the compensation requested for health care expenses.

D.2 Non-pecuniary damage

324. The representatives asked that the State be ordered to pay compensation for the non-pecuniary damage caused by the extrajudicial execution of Igmar Landaeta, the

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410 The Court determined the loss of earnings by multiplying the minimum wage, that was US$3,300 a year in 1996 by the years corresponding to life expectancy in 1996 (71.8 years), and deducting the age of the victim at the time of his death). *Cf. Case of Bámaca Velásquez v. Guatemala. Reparations and costs.* Judgment of February 22, 2002. Series C No. 91, para. 434 and *Case of Luna López, supra*, para. 250.

411 *Cf. Case of the Gómez Paquiyauri Brothers v. Peru. Merits, reparations and costs.* Judgment of July 8, 2004. Series C No. 110, para. 207 and *Case of Veliz Franco et al., supra,* para. 296.

412 *Cf. Case of Chitay Nech et al. v. Guatemala. Preliminary objections, merits, reparations and costs.* Judgment of May 25, 2010. Series C No. 212, para. 271 and *Case of Veliz Franco et al., supra*, para. 297.

arbitrary detention and extrajudicial execution of Eduardo Landaeta, and the non-pecuniary damage to the detriment of the next of kin. Consequently, they asked the Court to order the State to pay the sum of US$100,000 (one hundred thousand United States dollars), to be distributed in equal parts to the parents and permanent companion. In the case of Eduardo Landaeta, the representatives argued that, while he was in the custody of the State authorities, he was subjected to a prolonged detention of a day and a half during which he was made to feel very afraid; moreover, they emphasized that he had suffered other injuries caused during the detention. They therefore requested the sum of US$100,000 (one hundred thousand United States dollars) as reparation for the non-pecuniary damage caused, to be distributed between his father and mother. Lastly, with regard to the non-pecuniary damage suffered by the family members, the representatives indicated that, owing to the extrajudicial executions, as well as the different threats, harassment and persecution suffered by several members of the family and the absence of justice in the judicial proceedings, the family had endured severe anguish and suffering. They therefore asked the Court to establish compensation, in equity and pursuant to its case law, of US$50,000,00 (fifty thousand United States dollars) for María Magdalena Mejías, Ignacio Landaeta, Francy Parra and Johanyelis Landaeta Parra. In addition, they requested compensation of US$25,000,00 (twenty-five thousand United States dollars) for Victoria Eneri and Leydis Rossimar Landaeta Galindo.

325. The Court, based on its consistent case law,[413] and taking into account the circumstances of this case, the violations committed against each of the victims, the suffering caused, the time that has passed, the specific denial of justice in this case, the alterations in daily life, the proved harm to their personal integrity, as well as all the other consequences of a non-pecuniary nature they suffered, establishes in equity the following amounts in favor of the victims as compensation for non-pecuniary damage.

Name	**Amount**
Igmar Alexander Landaeta Mejías	$60,000
Eduardo José Landaeta Mejías	$60,000
María Magdalena Mejías Camero	$35,000
Ignacio Landaeta Muñoz	$35,000
Francy Yellut Parra Guzmán	$30,000
Johanyelis Alejandra Landaeta Parra	$20,000
Victoria Eneri Landaeta Galindo	$15,000
Leydis Rosimar Landaeta Galindo	$15,000

326. The compensation established in this chapter in favor of Igmar Landaeta shall be shared in equal parts between Ignacio Landaeta Muñoz, María Magdalena Mejías Camero, Francy Yellut Parra Guzmán and Johanyelis Alejandra Landaeta Parra. And, the compensation established in this chapter in favor of Eduardo Landaeta shall be shared in equal parts between Ignacio Landaeta Muñoz and María Magdalena Mejías Camero.

E. Costs and expenses

327. The representatives indicated that the family of the Landaeta Mejías brothers has not kept receipts for the expenses incurred and therefore asked the Court to establish this amount in equity. In addition, the representatives indicated that the Justice and Peace Human Rights Committee of the state of Aragua had supported the Landaeta Mejías family over the last ten years in their search to obtain justice; however, since they did not have receipts for the expenses incurred, they asked the Court to establish, in equity, the sum of US$6,000 (six thousand United States dollars). They also indicated

[413] *Cf. Case of Neira Alegría et al. v. Peru. Reparations and costs.* Judgment of September 19, 1996. Series C No. 29, para. 56, and *Case of Veliz Franco et al., supra,* para. 300.

that the Center for Justice and International Law (CEJIL) started to work on this case in 2006, and therefore asked the Court to establish, in equity, the sum of US$7,238 (seven thousand two hundred and thirty-eight United States dollars). In addition, in their final written arguments, the representatives provided information on the expenses incurred following the presentation of their motions and arguments brief by the Episcopal Vicariate for Human Rights of Caracas, the Justice and Peace Human Rights Committee of the state of Aragua, and the Center for Justice and International Law (CEJIL). Lastly, they asked that the amount indicated be reimbursed directly to the representatives by the State. Neither the Commission nor the State referred to this measure of reparation.

328. The Court has indicated that "the claims of the victims or their representatives for costs and expenses, and the evidence to support such claims, must be presented to the Court at the first procedural moment granted to them; that is, in the motions and arguments brief, without prejudice to these claims being updated subsequently, in accordance with the new costs and expenses incurred owing to the proceedings before this Court."[414] In addition, the Court 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 fact that it is supposed to represent and, in the case of alleged financial disbursements, to establish clearly the items and their justification.[415]

329. In this case, the evidence submitted by the representatives and the corresponding arguments do not provide a complete justification of the amounts requested. Consequently, the Court establishes a proportionate sum of US$1,500 (one thousand five hundred United States dollars) for Ignacio Landaeta Muñoz for his expenses in the domestic jurisdiction; US$2,000 (two thousand United States dollars) for the Justice and Peace Human Rights Committee of the state of Aragua for the expenses of processing the proceedings before the inter-American human rights system; US$2,000 (two thousand United States dollars) for the Episcopal Vicariate for Human Rights of Caracas for the expenses of processing the proceedings before the inter-American human rights system, and US$6,511 (six thousand five hundred and eleven United States dollars) for the Center for Justice and International Law (CEJIL) for authenticated expenses[416] while processing the proceedings before the inter-American human rights system. These amounts must be delivered to Ignacio Landaeta Muñoz and to his representatives, as appropriate, within one year of notification of this Judgment. When monitoring compliance with judgment, the Court may establish that the State reimburse the victims or their representatives subsequent reasonable and duly authenticated expenses.[417]

F. Reimbursement of expenses to the Victims' Legal Assistance Fund

330. In an Order of February 13, 2013, the President of the Court declared admissible the request submitted by the presumed victims through their representatives to access the Legal Assistance Fund, and approved the necessary financial assistance for the presentation of a maximum of three statements, either by affidavit or during the public hearing (*supra* para. 8).

331. In a communication of May 30, 2014, the Secretariat of the Court forwarded the State a copy of the report on the disbursements made in application of the Fund in this

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414 *Cf. Case of Chaparro Álvarez and Lapo Íñiguez, supra,* para. 275 and *Case of Norín Catrimán et al. (Leaders, members and activist of the Mapuche Indigenous People), supra,* para. 451.

415 *Cf. Case of Chaparro Álvarez and Lapo Íñiguez, supra,* para. 277 and *Case of Norín Catrimán et al. (Leaders, members and activist of the Mapuche Indigenous People), supra, para*. 451.

416 *Cf.* Documents of evidence provided by CEJIL (annexes to the motions and arguments brief, folios 6702 to 6722 and 9920 to 9939).

417 *Cf. Case of Ibsen Cárdenas e Ibsen Peña v. Bolivia. Merits, reparations and costs.* Judgment of September 1, 2010. Series C No. 217, para. 291 and *Case of Norín Catrimán et al. (Leaders, members and activist of the Mapuche Indigenous People), supra,* para. 454.

case, which amounted to US$2,725.17 (two thousand seven hundred and twenty-five United States dollars and seventeen cents), and granted it until June 15, 2014, to present any observations it deemed pertinent on this information. However, Venezuela did not present any observations in this regard. In application of article 5 of the Rules for the Operation of the Fund, the Court must assess whether it is appropriate to order the defendant State to reimburse the disbursement incurred to the Legal Assistance Fund.

332. In view of the violations declared in this Judgment, the Court orders the State to reimburse the sum of US$2,725.17 (two thousand seven hundred and twenty-five United States dollars and seventeen cents) to the Fund for the expenditure incurred. This amount must be reimbursed to the Inter-American Court within ninety days of notification of this Judgment.

G. Method of complying with the payments ordered

333. The State shall pay the compensation for pecuniary and non-pecuniary damage and to reimburse costs and expenses established in this Judgment directly to the persons indicated herein, within one year of notification of this Judgment, in accordance with the following paragraphs.

334. If any of the beneficiaries should die before they receive the respective compensation, this shall be delivered directly to their heirs, pursuant to the applicable domestic law.

335. The State must comply with its obligation by payment in United States dollars or Venezuelan currency, using the exchange rate between these two currencies in force on the New York Stock Exchange (United States of America), the day before the payment to make the respective calculation.

336. If, for reasons that can be attributed to the beneficiaries of the compensation, they are unable to receive it within the indicated time frame, the State shall deposit the said amounts in their favor in an account or certificate of deposit in a Venezuelan financial institution, in United States dollars and in the most favorable financial conditions allowed by banking law and practice in Venezuela. If, after 10 years, the compensation has not been claimed, the amounts shall be returned to the State with the interest accrued.

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

338. If the State should fall in arrears, it shall pay interest on the amount owed corresponding to the bank interest on arrears in Venezuela.

IX
OPERATIVE PARAGRAPHS

339. Therefore,

THE COURT

DECIDES,

unanimously,

1. To reject the preliminary objections filed by the State on the failure to exhaust domestic remedies, in the terms of paragraphs 22 to 30 of this Judgment.

DECLARES,

unanimously, that:

2. The State is responsible for the violation of the obligation to respect and to ensure the right to life recognized in Article 4 of the American Convention on Human Rights, in relation to Article 1(1) and 2 of this instrument, to the detriment of Igmar Alexander Landaeta Mejías, in the terms of paragraphs 122 to 147 of this Judgment.

3. The State is responsible for the violation of the right to personal liberty, recognized in Articles 7(1), 7(2), 7(3), 7(4) and 7(5), as well as for the violation of the obligation to respect and to ensure the rights to life and to humane treatment, recognized in Articles 4 and 5(1) of the American Convention on Human Rights, all in relation to Articles 1(1) and 19 of this instrument, to the detriment of Eduardo José Landaeta Mejías, in the terms of paragraphs 154 to 204 of this Judgment.

4. The State is responsible for the violation of the rights to judicial guarantees and to judicial protection, recognized in Articles 8(1) and 25(1) of the American Convention on Human Rights, to the detriment of the members of the Landaeta Mejías brothers' family, in the terms of paragraphs 214 to 275 of this Judgment.

5. The State is responsible for the violation of the right to personal integrity, recognized in Article 5(1) of the American Convention on Human Rights, in relation to Article 1(1) of the same instrument, to the detriment of the members of the Landaeta Mejías brothers' family, in the terms of paragraphs 279 to 289 of this Judgment.

6. It is not incumbent on the Court to rule on the alleged violation of the right to humane treatment, recognized in Article 5(1) of the American Convention on Human Rights, to the detriment of Igmar Alexander Landaeta Mejías, in the terms of paragraph 148 of this Judgment.

7. It does not have sufficient evidence to conclude that the State violated the right to humane treatment, recognized in Article 5(2) of the American Convention on Human Rights, to the detriment of Eduardo José Landaeta Mejías, in the terms of paragraph 201 of this Judgment.

AND ESTABLISHES

unanimously, that:

8. This Judgment constitutes *per se* a form of reparation.

By four votes to one, dissenting Judge Roberto F. Caldas, that:

9. With regard to Igmar Landaeta, the State must investigate and clarify the facts and, as appropriate, determine responsibilities, within a reasonable time, in the terms of paragraphs 298 and 299 of this Judgment.

10. With regard to Eduardo Landaeta, the State must continue and conclude, within a reasonable time, the investigation into the facts described in the ordinary jurisdiction and, as appropriate, punish those responsible, in the terms of paragraph 300 of this Judgment.

unanimously, that:

11. The State must provide, free of charge and immediately, through its specialized health care institutions, the psychological treatment required by the victims, following their informed consent, and for as long as necessary, including the provision of medicines free of charge, in the terms of paragraph 303 of this Judgment.

12. The State must organize a public act to acknowledge international responsibility and to apologize publicly in relation to the facts of this case, in the terms of paragraph 307 of this Judgment.

13. The State must make the publications indicated in paragraph 305 of this Judgment.

14. The State must pay the sums established in paragraphs 320, 322, 325 and 329 of this Judgment for pecuniary and non-pecuniary damage, and to reimburse costs and expenses within one year of notification hereof.

15. The State must reimburse the Victims' Legal Assistance Fund of the Inter-American Court of Human Rights the amount disbursed during the processing of this case, as established in paragraph 332 of this Judgment.

16. The State must, within one year of notification of this Judgment, provide the Court with a report on the measures taken to comply with it.

17. The Court will monitor complete compliance with this Judgment, in exercise of its authority and in fulfillment of its duties under the American Convention on Human Rights, and will consider this case closed when the State has complied fully with all its provisions.

Judge Roberto F. Caldas informed the Court of his dissenting opinion, which accompanies this Judgment.

Done, at San José, Costa Rica, on August 27, 2014, in the Spanish language.

Humberto Antonio Sierra Porto
President

Roberto F. Caldas

Manuel E. Ventura Robles

Eduardo Vio Grossi

Eduardo Ferrer Mac-Gregor Poisot

Pablo Saavedra Alessandri
Secretary

So ordered,

Humberto Antonio Sierra Porto
President

Pablo Saavedra Alessandri
Secretary

INTER-AMERICAN COURT OF HUMAN RIGHTS

CASE OF THE LANDAETA MEJÍAS BROTHERS *ET AL. v*. VENEZUELA

PARTIALLY DISSENTING OPINION OF JUDGE ROBERTO F. CALDAS

JUDGMENT OF AUGUST 27, 2014
(Preliminary objections, merits, reparations and costs)

1. This separate opinion refers to only one part of the Judgment, in which I respectfully dissented from the majority opinion – which only occurs very rarely. Four other judges took part in the discussions, because the Court deliberated with the minimum quorum of five judges.

2. Specifically, I dissented from that part of the Judgment in which the Court deliberated on Chapter VIII: "Reparations (Application of Article 63(1) of the American Convention)," with regard to section B, on the "Obligation to investigate the events that resulted in the violations and to identify, prosecute and punish, as appropriate, those responsible."

3. In point of fact, the Court was unanimous in determining the responsibility of the State. However, in my intervention, I tried to insist on the *effet util* of the order to investigate the events, which, in my opinion, did not have practical effects owing to the way in which it was considered by the other judges, leaving the victims without an effective remedy.

4. When examining the errors, omissions and delays verified in the investigations and in the proceedings in the cases of the two brothers, we agreed unanimously on the international responsibility of the State, established in paragraphs 297, as follows:

> *297. Regarding the arbitrary deprivation of the life of the Landaeta Mejías brothers, the Court has established in this Judgment that the State was responsible for violating the right to life established in Article 4 of the American Convention, with regard to Igmar Landaeta, as well as the rights established in Articles 4, 5 and 7 of the American Convention, in relation to Articles 1(1) and 19 of the same instrument (supra paras. 147 and 204) with regard to Eduardo Landaeta. In addition, in both cases, the Court concluded that the State had failed to conduct a complete and thorough investigation, within a reasonable time, following joint lines of investigation in relation to the death of the brothers, in order to clarify the events and punish those responsible and, therefore, that the State was responsible for the violation of Articles 8(1) and 25(1) of the American Convention (supra paras. 250 and 275).*

5. However, I dissented from the type of reparation adopted for the two brothers, which the Judgment established as follows:

> **Case of Igmar Landaeta:**
> *"[…] the Court establishes that the State should re-open,* ex officio*, the investigation in order to clarify the facts and, as appropriate, determine the responsibilities for the arbitrary deprivation of the life of Igmar Landaeta, within a reasonable time"* (para. 299*).*
> *"[…] the State must investigate and clarify the facts and, as appropriate, determine responsibilities, within a reasonable time, in the terms of paragraphs 298 and 299 of this Judgment"* (operative paragraph 9*).*
>
> **Case of Eduardo Landaeta:**
> *"[…] the Court establishes that the State must continue, and conclude within a reasonable time, the investigation into the said facts in its ordinary jurisdiction, pursuant to domestic law and the corresponding international standards, in order to identify, prosecute and punish, as appropriate, those responsible for the arbitrary deprivation of the life of Eduardo Landaeta"* (para. 300).
> *"[…] the State must continue and conclude, within a reasonable time, the investigation into the facts described in the ordinary jurisdiction and, as appropriate, punish those responsible, in the terms of paragraph 300 of this Judgment"* (operative paragraph 10*).*

6. Thus, the Court merely established, in one case, the re-opening of the investigation and, in the other, the continuation and conclusion of the investigation, followed by all the subsequent procedural stages up until the possible sentencing and conviction of those responsible was obtained, without establishing an alternative or supplementary penalty, if no sanctions were imposed. To the contrary, with due respect, I understand that a compensatory sum should have been established in case it was not possible to establish the guilt of those responsible, which unfortunately will be very difficult or perhaps impossible. Moreover, since laws and judgments should not contain words or orders that are meaningless, at the very least, compensation should be established.

7. There are many reasons for the facts of this case to remain unpunished. The incidents occurred almost 18 years ago, in 1996. However, they remain at the investigation stage and, in the future, must be processed at all the levels of the courts, perhaps for decades. It is difficult to imagine when there could be a final decision. Furthermore, it is easy to foresee the limited possibility of effective punishment, due either to lack of evidence, increasingly scarce with the passage of time, or to a possible statute of limitations.

8. In my opinion, the Court should establish pecuniary compensation for the cases that, when the judicial stage has concluded, have not obtained a conviction, resulting in impunity and feelings of injustice for the victims. Although it is not possible to remedy the pain and the thirst for justice, my proposal was to establish in this and in similar cases, a sum of between US$50,000.00 and US$150,000.00 as compensation in cases where no conviction is obtained.

9. If the law should not include words that are meaningless at the risk of being a simple piece of paper, much less are innocuous decisions acceptable in the judgment delivered by a court at the risk of being merely an empty promise.

Roberto F. Caldas
Judge

Pablo Saavedra Alessandri
Secretary